SLAUGHTER AND MAY/

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FINANCIAL REGULATION WEEKLY BULLETIN

Major UK and European regulatory developments of interest to banks, insurers and reinsurers, asset managers and other market participants

QUICK LINKS

If you have any comments or questions, please contact: Selmin Hakki.

Slaughter and May also produces a periodical Insurance Newsletter. If you would like to go on the distribution list, please contact: Beth Dobson.

SELECTED HEADLINES //

Enforcement

GENERAL //

1 TREASURY SELECT COMMITTEE

1.1 **Sexism in the City inquiry - Treasury Select Committee publishes report** – *8 March 2024* - The Treasury Select Committee (the Committee) has published a report on its findings from its inquiry, launched in July 2023, into sexism in the City.

The Committee reports that its inquiry "*has painted a negative picture of widespread sexual abuse and harassment towards women*", where many whistleblowers are inadequately protected, and states that the "*widespread misuse of non-disclosure agreements (NDAs) in sexual harassment cases is shocking*". It further notes that the financial services sector has the largest gender pay gap of any sector in the UK economy, and which could take 70 years to close at the current rate of progress.

In response, the Committee makes a number of recommendations including that:

- the PRA and FCA formally review the impact of the bonus cap removal on gender pay inequality in two years' time;
- the government makes it mandatory for firms with a pay or bonus gap above a certain threshold to publish a narrative explaining the drivers of the gap(s) and an action plan for how they will reduce them;
- the employer size threshold for pay gap reporting be reduced from 250+ employees to 50+ employees for financial services firms; and that
- the government legislates both to ban the use of NDAs and to strengthen protection for whistleblowers in sexual harassment cases.

The Committee further recommends that the PRA and FCA drop their plans for boosting diversity and inclusion via extensive data reporting and target setting, and instead focus their efforts on ensuring that the boards and senior leadership of firms take greater responsibility for improving diversity and inclusion. In a separate statement, the FCA states that it shares the Committee's view that there is an important role for regulators to play, and that it will consider the recommendations of the Committee carefully.

Treasury Select Committee report: Sexism in the City

FCA statement

Press release

2 FINANCIAL CONDUCT AUTHORITY

2.1 **Use of synthetic data in financial services - FCA publishes report** – *8 March 2024* – The FCA has published a report, produced by its Synthetic Data Expert Group (SDEG), on the use of synthetic data to support innovation in financial services. Synthetic data works by generating statistically realistic but artificial data that can be used to create advanced modelling techniques and train artificial intelligence (AI) models without compromising individual privacy or data protection law.

The report concludes that synthetic data presents a potential solution to data scarcity and quality issues by bringing different stakeholders together to generate novel data sets. However, there are still open questions for practitioners to consider, including when it is ethically permissible to use synthetic data. The next phase of the SDEG will look to further understand where synthetic data is used to drive beneficial innovation in financial services and how stakeholders can collaborate to overcome potential barriers. Stakeholders are invited to complete a survey to provide feedback on the report.

Synthetic Data Expert Group report: Using Synthetic Data in Financial Services

Webpage

2.2 **Cryptoasset-backed ETNs - FCA publishes statement on position for professional investors** – *11 March 2014* – The FCA has published a statement confirming that, following a longer period of trading history and increased insight and data, it will not object to requests from recognised investment exchanges (RIEs) to create a UK-listed market segment for cryptoasset-backed exchange traded notes (cETNs). The FCA states that these products would only be available to professional investors, such as investment firms and credit institutions authorised or regulated to operate in financial markets.

The FCA further emphasises that exchanges will need to continue to make sure sufficient controls are in place, so that trading is orderly and proper protection is afforded to professional investors. cETNs must meet all the requirements of the UK Listing Regime, for example on prospectuses and on-going disclosure. The FCA continues to believe that cETNs and crypto derivatives are ill-suited for retail consumers due to the harm they pose, and the ban on their sale to retail consumers remains in place.

Webpage

2.3 **Consumers, markets and competitiveness - FCA publishes speech** – *14 March 2024* - The FCA has published a speech given by Nikhil Rathi, FCA Chief Executive, on the FCA's regulatory approach to deliver for consumers, markets and competitiveness.

In particular, Mr Rathi emphasises that the FCA's Consumer Duty is not "*a Trojan horse for price regulation. We do not want to regulate prices*". He further opined on how the FCA's workstream on historic motor finance commission arrangements might develop, stating that "*in my view it is improbable we will find nothing to report as we look at historic motor finance sales… Equally, I do not anticipate this issue playing out as PPI did, not least because we have intervened early in the interests of market orderliness.*"

FCA speech: Investing in outcomes: a regulatory approach to deliver for consumers, markets and competitiveness

3 FINANCIAL OMBUDSMAN SERVICE

3.1 **Increased award limits - announced by the FOS** - *13 March 2023* - The Financial Ombudsman Service (FOS) has announced increases in its award limits for complaints referred to it with effect from 1 April 2024, as follows:

- £430,000 for complaints about acts or omissions by firms on or after 1 April 2019; and
- £195,000 for complaints about acts or omissions by firms before 1 April 2019.

Press release

BANKING AND FINANCE //

4 HM TREASURY

4.1 **The Payment Services (Amendment) Regulations 2024 - HM Treasury publishes near-final draft statutory instrument and policy note** – *12 March 2024* - HM Treasury has published a near-final draft version of the Payment Services (Amendment) Regulations 2024 (the Regulations) alongside an accompanying policy note. The Regulations will allow payment service providers (PSPs) to delay the execution of an outbound payment transaction by up to four business days from the time the order is received, which is currently not permitted by the legislation. The delay will be available only where:

- there are reasonable grounds to suspect that a payer's payment order has been placed subsequent to fraud or dishonesty perpetrated by someone else (excluding the payer) and those grounds are established by no later than the end of the next business day following receipt of the payment order; and where
- the payer's PSP requires further time to contact the customer or a third party, such as law enforcement, to establish whether to execute the payment.

This change seeks to tackle Authorised Push Payment (APP) fraud - which has increased in recent years and on which the government has already taken strong action - while minimising impacts on legitimate payment flows. The government is publishing the Regulations for technical comments, which are to be provided by 12 April 2024. The government intends to lay the Regulations before Parliament in summer 2024.

Draft SI: The Payment Services (Amendment) Regulations 2024

Policy note

4.2 **The Payment Services and Payment Accounts (Contract Terminations) (Amendment) Regulations 2024 - HM Treasury publishes near-final draft statutory instrument and policy note** – *14 March 2024* - HM Treasury has published a near-final draft version of the Payment Services and Payment Accounts (Contract Terminations) (Amendment) Regulations 2024 (the Regulations) alongside a policy note. The Regulations make amendments to the Payment Services Regulations 2017 (SI 2017/752) (PSRs) in order to:

- increase the notice period for payment service provider (PSP)-initiated terminations of framework contracts from two months to 90 days; and
- require PSPs to give affected users a sufficiently detailed and specific explanation for the termination.

Both requirements are subject to exceptions, and the Regulations also make consequential amendments to the Payment Accounts Regulations 2015 (SI 2015/2038) to reflect changes to the PSRs.

The Regulations remain open for technical comments until 14 April 2024 and HM Treasury intends to legislate in summer 2024.

Draft SI: The Payment Services and Payment Accounts (Contract Terminations) (Amendment) Regulations 2024

Policy note

Webpage

5 PRUDENTIAL REGULATION AUTHORITY

5.1 **Solvent exit planning for non-systemic banks and building societies - PRA publishes Policy Statement (PS5/24)** – *12 March 2024* - The PRA has published a Policy Statement (PS5/24) appending new rules and expectations for non-systemic banks and building societies in the UK to prepare, as part of their business-as-usual (BAU) activities, for an orderly 'solvent exit' and, if needed, to be able to execute one. This follows the publication in June 2023 of the PRA's Consultation Paper on proposals for these rules and expectations (CP10/23), which added a new Chapter 7 of the Recovery Plans Part of the PRA Rulebook and introduced a new supervisory statement (SS2/24, *Solvent exit planning for non-systemic banks and building societies*) for firms that are in scope.

Respondents to the consultation were generally supportive of the PRA's proposals. Changes to the PRA's final policy clarify the PRA's expectations and are not considered to have a significant impact on firms. Chapter 7 of the Recovery Plans Part of the PRA Rulebook will now come into force on 1 October 2025, and firms are also expected to meet the expectations in SS2/24 by the same date.

PRA Policy Statement: Solvent exit planning for non-systemic banks and building societies (PS5/24)

INSURANCE //

6 EUROPEAN INSURANCE AND OCCUPATIONAL PENSIONS AUTHORITY

6.1 EU-wide strategic supervisory priorities for 2024-2026 - EIOPA publishes report - *11 March 2024* - The European Insurance and Occupational Pensions Authority (EIOPA) has published a report containing its EU-wide strategic supervisory priorities for 2024-2026. Over this three-year cycle, national competent authorities should prioritise two strategic objectives: the financial robustness of insurance undertakings, and consumer protection in a disruptive environment.

In addition, EIOPA indicates that its focus for 2024 will be on:

- continuous monitoring of the impact of the macroeconomic environment;
- risk transfers, including the capacity and appropriateness of risk transfers; and
- value for money, including in relation to inflation and current macro-economic trends.

EIOPA report: Union-wide strategic supervisory priorities 2024-2026 (EIOPA-BoS-23/547)

Webpage

7 FINANCIAL CONDUCT AUTHORITY

7.1 The future of pensions - FCA publishes speech – *13 March 2024* - The FCA has published a speech given by Nikhil Rathi, FCA Chief Executive, on the future of pensions, urging action now "*rather than waiting for a future perfect solution*".

While Mr Rathi praises the success of auto enrolment, he notes that there are still significant gaps in many retirement plans. One in five pensioners do not derive an income beyond the state pension and benefits available to them, and younger generations face financial pressure from the higher costs of rent, home ownership and student loans, and as a result retirement savings are deprioritised.

Considering these challenges, Mr Rathi raises questions around the appropriate level of employer contributions to pensions, the adequacy of current products (including a discussion on collective defined contribution schemes and the government's 'pension pot for life' proposal), and whether products deliver the value they should. HM Treasury and the FCA's ongoing Advice Guidance Boundary Review is flagged as important against a backdrop where, over time, more people approaching retirement will only have a defined contribution pot on which to rely and, by extension, more people take on greater responsibility when it comes to their pensions.

FCA speech: The future of pensions: act today to plan for tomorrow

FINANCIAL CRIME //

8 EUROPEAN COMMISSION

8.1 **MLD 4 - European Commission publishes report on implementation** – *11 March 2024* – The European Commission has published a report addressed to the European Parliament and the Council of the EU on the implementation of the Fourth Money Laundering Directive (EU 2015/849) (MLD 4). The report covers a number of areas, including member state implementation of the EU's existing anti-money laundering and counter-terrorist financing (AML/CFT) framework, beneficial ownership information regarding entities incorporated outside of the EU and the enhanced due diligence measures applied in cases of business relationships with politically exposed persons.

The report concludes that the last few years have been marked by many challenges in the AML/CFT area, and that the Commission has continuously reacted to changes in the risk environment. In particular, substantial improvements have been made in the fields of information exchange and cooperation between AML/CFT supervisors in the financial sector.

European Commission report on the implementation of MLD 4 (COM(2024) 112 final)

8.2 **MLD 4 - European Commission adopts Commission Delegated Regulation amending the list of high-risk third countries** – *14 March 2024* - The European Commission has adopted Commission Delegated Regulation (C(2024) 1754 final) amending Delegated Regulation (EU) 2016/1675 which identifies high-risk third countries with strategic deficiencies for the purposes of the Fourth Money Laundering Directive ((EU) 2015/849) (MLD 4). The Delegated Regulation adds Kenya and Namibia to the list of high-risk third countries, and removes Barbados, Gibraltar, Panama, Uganda and the UAE from this list.

The Delegated Regulation will enter into force on the 20th day following its publication in the Official Journal of the European Union.

Commission Delegated Regulation (EU) …/... of 14.3.2024 amending MLD 4 as regards adding Kenya and Namibia to the table in point 1 of the Annex and deleting Barbados, Gibraltar, Panama, Uganda and the UAE from that table (C(2024) 1754 final)

9 HM TREASURY

9.1 **Improving the effectiveness of the MLRs - HM Treasury launches consultation** – *11 March 2024* – Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (SI 2017/692) (the MLRs). HM Treasury is committed to consulting on changes to the MLRs as part of a wider programme of work aimed at reducing money laundering, which was set out in the Economic Crime Plan 2023-26.

The consultation covers four core themes:

- making customer due diligence more proportionate and effective;

- strengthening system coordination;
- providing clarity on the scope of the MLRs, particularly following the UK's exit from the EU; and
- reforming registration requirements for the Trust Registration Service.

The consultation is open until 9 June 2024. Alongside the consultation, HM Treasury is also publishing a short survey on the current cost of compliance with the MLRs.

HM Treasury Consultation Paper: Improving the effectiveness of the Money Laundering Regulations

Webpage

ENFORCEMENT //

10 FINANCIAL CONDUCT AUTHORITY

10.1 **British Steel Pension Scheme - FCA fines financial advice firm and bans individuals for DB pension transfer advice and oversight failings** – *11 March 2024* – The FCA has published Final Notices addressed to Inspirational Financial Management Ltd (in administration) (IFM), Arthur Cobill (an advisor at IFM) and William Hofstetter (a director at IFM) for defined benefit (DB) pension advice and oversight failings.

Between 8 June 2015 and 22 December 2017 IFM poorly advised people to transfer out of DB pension schemes, including the British Steel Pension Scheme, putting customers' retirement funds unnecessarily at risk against their best interests. The firm operated a contingent charging model, only collecting fees if customers transferred out of their DB pension schemes following the firm's advice. The FCA states that while this approach benefited IFM, Mr Hofstetter and Mr Cobill, it risked the long-term financial health and interests of their customers.

IFM has been fined £897,840 and Mr Cobill and Mr Hofstetter have agreed to pay £120,000 and £40,000, respectively, to the Financial Services Compensation Scheme to contribute to compensation for IFM's customers. The FCA has banned both Mr Cobill and Mr Hofstetter from advising customers on pension transfers and pension opt outs. Mr Hofstetter, who was responsible for the compliance oversight of IFM's process for pension transfer advice, has also been banned from holding any senior management function at any regulated firm.

Final Notice: Inspirational Financial Management Ltd (in administration)

Final Notice: Arthur Jonathan Cobill

Final Notice: William Hofstetter

Press release

This Bulletin is prepared by the Financial Regulation Group of Slaughter and May in London.
The Group comprises a team of lawyers with expertise and experience across all sectors in which financial institutions operate.

We advise on regulatory issues affecting firms across the financial services sector, including banks, investment firms, insurers and reinsurers, brokers, asset managers and funds, non-bank lenders, payment service providers, e-money issuers, exchanges and clearing systems. We also advise non-regulated businesses involved in financial regulatory matters. In addition, our leading financial regulatory investigations practice is regularly instructed by financial institutions requiring specialist knowledge of financial services regulation together with experience in high profile and complex investigations and contentious regulatory matters.

Most of the projects that we advise on have an extensive international or cross-border element.
We work in seamless integrated teams with leading independent law firms which offer many of the most highly regarded financial institutions lawyers in Europe, the US and Asia, as well as strong and constructive relationships with local regulators.

Our Financial Regulation Group also produces occasional briefing papers and other client publications. The five most recent issues of this Bulletin and our most recent briefing papers and client publications appear on the Slaughter and May website **here**.

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