

FINANCIAL REGULATION WEEKLY BULLETIN

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

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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](#).

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GENERAL //

1 EUROPEAN CENTRAL BANK

- 1.1 FIDA - ECB publishes opinion regarding supervisory competence - 3 September 2024** - The European Central Bank (ECB) has published an opinion on the European Commission's legislative proposal for a Regulation on a framework for financial data access (FIDA), which the European Commission adopted on 28 June 2023.

The ECB welcomes the objectives of FIDA, which seeks to establish a robust legal framework for the management of customer data sharing in the financial sector beyond payment accounts. However, the ECB is concerned that FIDA assigns the ECB supervisory tasks which are not prudential in nature but rather relate to consumer protection, and suggests that FIDA be amended to clarify the ECB's supervisory competence.

[Opinion of the ECB on FIDA \(CON/2024/29\)](#)

BANKING AND FINANCE //

2 EUROPEAN CENTRAL BANK

- 2.1 Operational resilience in banking - ECB publishes speech - 4 September 2024** - The European Central Bank (ECB) has published a speech given by Frank Elderson, Member of the Executive Board of the ECB and Vice-Chair of the Supervisory Board of the ECB, on the importance of ensuring that banks build up and maintain adequate operational resilience. Of particular interest - and further to concerns about the risks posed by banks' use of cloud service providers (CSPs) - Mr Elderson notes that European banking supervisors have started on-site inspections of certain CSPs to get a better insight into their risk controls.

Mr Elderson also urges prudential supervisors to coordinate with competition authorities given that an emerging challenge in the digital financial landscape is the blurring of lines between policy areas; and prudential supervisors would be well advised to understand the dynamic market forces at play.

[ECB speech: The art of bending without breaking - banking on operational resilience](#)

3 HM TREASURY

- 3.1 The Financial Services and Markets Act 2023 (Commencement No. 7) Regulations 2024 - SI made - 3 September 2024** - The Financial Services and Markets Act 2023 (Commencement No. 7) Regulations 2024 (SI 2024/891) (the Regulations) have been published, having been made on 2 September 2024. The Regulations act to revoke, on 1 November 2024, certain instruments and provisions of assimilated EU law specified in the Financial Services and Markets Act 2023 relating to securitisation.

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[The Financial Services and Markets Act 2023 \(Commencement No. 7\) Regulations 2024 \(SI 2024/891\)](#)

4 FINANCIAL CONDUCT AUTHORITY

4.1 Payment account access and closures - FCA publishes follow-up report - 4 September 2024 -

The FCA has published a new report on UK payment account access and closures, following its September 2023 report on the same subject. The FCA found that:

- Basic Bank Account (BBA) customer journeys varied, leading to differences in apparent rejection rates, and firms were poor at making customers aware of BBAs;
- data on account access was limited or unclear, and varied significantly from firm to firm;
- as in September 2023, the FCA did not see evidence of political beliefs or other views lawfully expressed being used as a rationale for account denial, suspension or termination; and
- ‘reputational risk’ is used in varying ways by different firms to deny or close accounts.

The FCA highlights a number of areas for improvement for some payment account providers, which include reviewing payment account access policies and procedures through the lens of the Consumer Duty. Generally speaking, firms are expected to ensure their decisions on account access are based on reasonable and properly considered grounds, including where ‘reputational risk’ is cited as basis for account denial or termination.

The FCA has also published an independent research report on the experiences faced by some of the most financially excluded consumers when accessing and using financial products and services.

[FCA Report: UK Payment Accounts Access and Closures: Update](#)

[FCA research report: Exploring financial exclusion](#)

[Press release](#)

5 COMPETITION AND MARKETS AUTHORITY

5.1 Retail Banking Market Investigation Order 2017 - CMA publishes letter to bank regarding breach of Part 3 - 3 September 2024 -

The CMA has published a letter addressed to Starling Bank Limited (the Bank) regarding its failure to comply with Part 3 of the Retail Banking Market Investigation Order 2017 (the Order).

Part 3 of the Order requires Business Current Account (BCA) providers with 20,000 or more small to medium-sized enterprise (SME) customers in Great Britain to take part in a survey which assesses how likely those customers are to recommend that provider. The results form part of the Order’s Service Quality Indicator (SQI) remedy. The Bank breached Part 3 of the Order by failing

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to provide the market research company with data on all the required business lines for this survey, as none of the surveys published between August 2021 and August 2024 included the responses of Starling Sole Trader Account customers.

The CMA states that the cause of this breach was the Bank misunderstanding the requirements of Part 3 of the Order. The Bank self-reported this breach, and it has taken proactive steps to end the breach, to prevent a recurrence, and, as far as possible, to put things right. This includes paying for a survey 'boost' which will involve surveying additional customers. The CMA does not consider it appropriate to take further formal enforcement action in relation to this breach at present. However, the CMA will monitor the results of the survey boost and consider whether any further action is required.

[CMA letter](#)

SECURITIES AND MARKETS //

6 FINANCIAL CONDUCT AUTHORITY

- 6.1 UK EMIR - FCA launches consultation on Q&As for UK trade repositories - 4 September 2024** - The FCA has published a consultation seeking feedback on draft Q&As for UK trade repositories (TRs) registered under Article 55 of UK EMIR (648/2012/EU).

The Q&As are intended to support TRs in complying with the FCA's and the Bank of England's joint policy statement PS23/2, published in February 2023, which confirmed changes to the derivative reporting framework under UK EMIR. The majority of the new requirements apply from 30 September 2024, with a transition period for some aspects. The consultation for these Q&As closes on 25 September 2024, and feedback that the FCA receives will be incorporated into final guidance.

[FCA consultation paper: UK EMIR Trade Repositories: draft questions and answers](#)

- 6.2 FCA makes final announcement about forthcoming end of LIBOR - 5 September 2024** - The FCA published a press release announcing that it is less than one month to go until the 1-, 3- and 6-month synthetic US dollar London Interbank Offer Rate (LIBOR) settings cease permanently after their final publication on Monday 30 September 2024. Ahead of the deadline, firms with outstanding US dollar LIBOR exposures must continue their active transition efforts.

The FCA states that the cessation of the last remaining LIBOR settings is the final milestone in the transition away from LIBOR and will mark the end of LIBOR overall.

[Press release](#)

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ASSET MANAGEMENT //

7 FINANCIAL CONDUCT AUTHORITY

- 7.1 **OFR gateway - FCA confirms opening date - 22 August 2024** - The FCA has updated its webpage on the overseas funds regime (OFR) to confirm that it will open the gateway to new schemes (in other words, schemes that are not in the temporary marketing permissions regime (TMPR)) on 30 September 2024.

New schemes will be able to apply at any time from that date for 'recognised scheme' status under the OFR without a landing slot. For schemes in the TMPR, landing slots will start in October 2024 and will be available for operators of stand-alone EEA UCITS.

[Webpage](#)

INSURANCE //

8 HM TREASURY

- 8.1 **UK pensions review - HMT publishes terms of reference for first phase - 16 August 2024** - HMT has published the terms of reference for the first phase of the UK government's review of pensions. The review will focus on defined contribution workplace schemes and the Local Government Pension Scheme. The first phase will focus on developing policy in four areas:

- driving scale and consolidation of defined contribution workplace schemes;
- tackling fragmentation and inefficiency in the Local Government Pension Scheme;
- the pensions ecosystem and delivering better outcomes for future pensioners; and
- encouraging further pension investment into UK assets to boost growth across the country.

[Pensions Review - Terms of Reference: Phase One](#)

[Webpage](#)

9 FINANCIAL CONDUCT AUTHORITY

- 9.1 **General insurance value measures - FCA publishes 2023 data - 22 August 2024** - The FCA has published a new webpage on general insurance (GI) value measures data covering January to December 2023, the second full year of GI value measures data. This follows the FCA's letter of September 2023 to manufacturers of guaranteed asset protection (GAP) insurance asking them to address concerns over value.

The FCA states that the latest value measures data continues to highlight some products that do not appear to be delivering fair value as required by PROD 4 and the Consumer Duty. The FCA is concerned that a number of firms appear to be reporting data that could suggest a large

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difference between the risk price and the total price paid by the customer. The FCA has outlined what needs to be done to demonstrate value, which requires firms to consider how they assess value, differential outcomes, and contextual factors. The FCA also refers to the steps it has taken to challenge and correct material data quality issues.

[Webpage](#)

- 9.2 Product oversight and governance arrangements in manufacturers and distributors - FCA findings from thematic review - 21 August 2024** - The FCA has published the findings from its product oversight and governance (POG) thematic review relating to general insurance and pure protection products (TR24/2), carried out to check whether firms are meeting their PROD 4 obligations.

The FCA assessed the POG arrangements of 28 insurance manufacturers and 39 insurance distributors, covering ten different general insurance and pure protection products. In particular, it looked at whether firms have assessed and can demonstrate that their products and services offer fair value, and whether they have taken effective action where products may not be providing the intended value. Examples of better practice and poor practice are set out in chapters 4 and 5 of the report.

The FCA is giving feedback to the firms involved in the review. It is also considering the most appropriate supervisory and regulatory actions it can take to address the issues identified as soon as possible.

[Thematic Review 24/2](#)

- 9.3 Pure protection products market study - FCA publishes terms of reference - 28 August 2024** - The FCA has published the terms of reference for a market study (MS24/1.1) to examine the distribution of pure protection products to retail customers following concerns that competition is not working well in the market. The study will be launched later in 2024/25.

Among other things, the FCA has concerns that the design of commission arrangements may not allow firms to deliver good outcomes to policyholders. It is also concerned that some products may be providing poor value, for example if the total premiums paid over a lifetime far exceed the maximum conceivable payout. The FCA will focus primarily on the sale of 4 specific types of products - term assurance, critical illness cover, income protection insurance and whole of life insurance, including policies for over 50s that offer guaranteed acceptance.

[Terms of Reference: FCA Market Study into the Distribution of Pure Protection Products to Retail Customers \(MS24/1.1\)](#)

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FINANCIAL CRIME //

10 FINANCIAL CONDUCT AUTHORITY

10.1 Tackling financial crime - FCA publishes speech - 5 September 2024 - The FCA has published a speech given by Sarah Pritchard, Executive Director of Markets and International, on the FCA's targeted and outcomes-based approach to combating financial crime. Ms Pritchard highlights that the FCA is using its powers to tackle financial crime more assertively than ever, and has charged 21 individuals with financial crime in the last financial year (the highest number of charges the FCA has achieved in any single year).

Ms Pritchard goes on to discuss the FCA's innovative methods to counter financial crime. These include establishing a dedicated financial crime function within its Consumer Investments department, which works to identify outlying data proactively, spot trends earlier and eliminate threats before they escalate.

[FCA speech: A targeted and outcomes-based approach to tackling financial crime](#)

11 PAYMENT SYSTEMS REGULATOR

11.1 Faster Payment APP scams reimbursement level - PSR launches consultation - 4 September 2024 - The Payment Systems Regulator (PSR) has published a consultation paper (CP24/11) proposing to reduce the maximum level of reimbursement for the Faster Payments authorised push payment (APP) scam reimbursement requirement from £415,000 to £85,000. The reimbursement requirement will still come into force on 7 October 2024, and no other changes to the policy are proposed.

The PSR believes that this approach will ensure that the PSR and industry can deliver timely and effective consumer protection from Faster Payments APP scams - the new cap will still see over 99% of claims (by volume) covered - while mitigating concerns the PSR has heard about the potential risks and impacts of its original approach. In particular, prudential concerns for some smaller firms in the market have been raised with the PSR. The PSR further notes that if this approach is adopted the Bank of England will also adjust the CHAPS maximum level of reimbursement to £85,000.

The deadline for comments is 18 September 2024.

[PSR consultation paper: Faster Payments APP scams: Changing the maximum level of reimbursement \(CP24/11\)](#)

[Press release](#)

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12 FINANCIAL OMBUDSMAN SERVICE

12.1 Fraud and scam complaints hit highest ever level - FOS releases Q1 2024/25 data - 4 September 2024 - The Financial Ombudsman Service (FOS) has announced that 8,734 fraud and scam complaints have been lodged in the first quarter of this financial year (1 April - 30 June 2024), over half of which were in relation to authorised push payment (APP) scams. By comparison, in the same period in 2023/24, there were 6,094 fraud and scam complaints.

The FOS attributes the rise in cases to various factors, including:

- an increasing numbers of multi-stage frauds, which can see consumers put in multiple claims due to the number of firms involved;
- a growth in people inadvertently using their credit or debit cards to pay fraudsters; and
- more online fraud cases being brought by professional representatives.

[Press release](#)

ENFORCEMENT //

13 FINANCIAL CONDUCT AUTHORITY

13.1 London Capital & Finance plc - FCA fines audit firm - 16 August 2024 - The FCA has published a final notice issued to PricewaterhouseCoopers LLP (PwC), fining it £15 million for failing to report its suspicions of fraudulent activity at London Capital & Finance plc (LCF).

From 8 September 2016 to 17 October 2017, PwC was engaged as LCF's statutory auditor. According to the FCA, PwC was obliged to report its suspicions of fraud promptly under Regulation 2 of the Financial Services and Markets Act 2000 (Communications by Auditors) Regulations 2001 (SI 2001/2587) and, in respect of money laundering investigations, under section 342(6) of the Financial Services and Markets Act 2000.

The FCA recognises that PwC was not involved in the misconduct of LCF and as an auditor it was not responsible for seeking out or fully investigating suspected fraud. However, it should have reported the various red flags that indicated a risk of fraud and had caused the audit team to question what was going on. Its failure to do so deprived the FCA of potentially vital information that would have allowed it to determine whether it should exercise its powers in relation to LC&F.

[Final Notice: PwC](#)

[Press release](#)

13.2 Annual enforcement data published by FCA - 5 September 2024 - The FCA has published data for the enforcement action it took in 2023/24 as part of its annual report. Highlights include:

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- the FCA has made it easier to identify trends and instances of harm by introducing platforms to support automation. This includes the development of a ‘Digital Unified Intelligence Environment’;
- there has been a small increase, compared to the previous financial year, in the instances where the FCA used own initiative powers; and
- on 31 March 2024, the FCA had 188 open enforcement operations, investigating 341 individuals and 162 firms.

[FCA Enforcement data 2023/24](#)

14 RECENT CASES

14.1 *Saranac Partners Limited v The Financial Conduct Authority* [2024] UKUT 00254 (TCC), 28 August 2024

Upper Tribunal (Tax and Chancery Chamber) - referral of FCA decision notice - SMF application

The Upper Tribunal (Tax and Chancery Chamber) has dismissed a reference made by Saranac Partners Ltd (Saranac), a wealth and investment management firm, in relation to its founder, Thomas Llewellyn Kalaris. The reference relates to the FCA’s decision to refuse Saranac’s application for approval of Mr Kalaris (previously employed by a bank) to perform the senior management functions of SMF1 (Chief executive function) and SMF3 (Executive director function) on the grounds that Mr Kalaris was not a fit and proper person. The Tribunal agreed with the FCA’s finding that Mr Kalaris had not been candid in his answers to some of the questions asked by the Authority during an interview relating to a capital raising exercise by the bank, and that one of his answers was dishonest. The Tribunal also made further findings based on evidence that was not relied on or considered by the FCA.

The FCA has published a separate statement welcoming the Tribunal’s decision.

[Saranac Partners Limited v The Financial Conduct Authority \[2024\] UKUT 00254 \(TCC\)](#)

[Webpage](#)

[FCA statement](#)

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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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