

The following Compliance articles are for the week ending 10 July 2009.

COMMENTARY

FSA - SPEECH BY DAN WATERS ON RDR

Dan Waters, FSA Director of Retail Policy and Conduct Risk addressed the Personal Finance Society Conference on 10 July and discussed key issues and challenges arising from the Retail Distribution Review. He covered the following areas:

- Independence and types of advice
- Adviser charging
- Professional standards
- The implications for General Insurance products
- Changes to the inducement rules

Source: [FSA Website](#)

FSA PLANS BETTER INFORMATION ON COMPLAINTS

On 9 July the FSA published proposals that will enable people to see how firms handle complaints – including the number received, the main products and services covered and how quickly they are resolved.

The proposals would see firms publishing their own complaints data every six months and the FSA would publish results from the whole sector twice a year.

The FSA is inviting stakeholders to comment on its proposals relating to the publication of firms' complaints data – the closing date for responses is 30 October 2009.

Dan Waters, the FSA's Director of retail policy and conduct risk, said: "Transparency is an important regulatory tool. Publishing complaints data will mean that people can learn more about how firms handle complaints and the frequency with which they arise. We also consider that publishing this information will incentivise firms to deal more effectively with complaints and help to raise industry standards in this important area. It is essential that the information is meaningful and genuinely brings benefits by enhancing customers' experiences of the firms they deal with."

The FSA is proposing that firms receiving the largest number of complaints publish information on:

- How many complaints they have opened and closed
- The percentage closed within eight weeks
- The percentage of complaints upheld

This information will need to be broken down into five product areas:

1. Banking
2. Home Finance

3. General Insurance and Pure Protection
4. Life and Pensions
5. Investments

To make it easier for people to understand the data and compare the standard of different firms' complaints handling, firms will need to provide contextual information such as the number of complaints per 1000 customer accounts.

The proposals are part of a number of steps the FSA is announcing to improve transparency, building on the discussion paper it published in May last year.

In addition, the FSA is confirming that it will make greater use of a number of tools already at its disposal, including publishing anonymised results of thematic work and real-life case studies demonstrating where it has taken action against firms for producing poor financial promotions.

[Source: FSA Website](#)

FSA - STATEMENT ON THE GOVERNMENT WHITE PAPER

On 8 July FSA made the following statement: "The FSA notes the publication of the Government White Paper and welcomes the intention to legislate to give the FSA a statutory objective in respect of financial stability, as well as new powers to act in pursuit of this objective. The Government has endorsed the key findings of the Turner Review, in particular, the recommendations in respect of capital and liquidity reforms and has proposed additional powers to help the FSA act on the lessons learned from the global crisis.

These include new powers in the areas of enforcement and information gathering and an explicit statutory duty to promote sound international regulation and supervision.

The White Paper recognises the role the FSA is playing in reaching global agreement on how to pursue these issues, working in international fora.

Also welcome is confirmation of the Government's intention that the FSA's work on financial capability will be strengthened and the Money Guidance service rolled-out nationally, reinforcing the importance of supporting and protecting consumers."

[Source: FSA Website](#)

FSA PROPOSES BIGGER FINES TO ACHIEVE CREDIBLE DETERRENCE

The FSA has published plans to create a consistent and more transparent framework for calculating financial penalties which could mean some fines treble in size.

The new plans reflect the FSA's determination to change behaviour and address concerns that firms are repeatedly failing to improve standards (e.g. in relation to mis-selling to consumers and market misconduct).

They will also ensure that fines better reflect the scale of the wrongdoing and that any profits made from the breaches are clawed back.

The consultation will close on 21 October 2009 and any new policy is likely to apply to breaches committed after February 2010.

Under the new proposals, fines will be linked more closely to income and be based on:

- Up to 20% of the company's income from the product or business area linked to the breach over the relevant period
- Up to 40% of an individual's salary and benefits (including bonuses) from their job relating to the breach in non-market abuse cases
- A minimum starting point of £100,000 for individuals in market abuse cases

The total fine imposed will also take into account other factors, such as the desired deterrent effect and any settlement discount.

Margaret Cole, Director of Enforcement at the FSA, said: "These proposals are an important step in pushing forward our ethos of credible deterrence. By hitting companies and individuals in the pocket where it hurts, the fines will be a stark warning to others on what they can expect to pay for flouting our rules. Moving to this new framework will enable our enforcement policy to continue making a real difference to consumers and to changing behaviour in the financial services sector."

The full framework will consist of the following steps:

1. Removing any profits made
2. Setting a figure to reflect the nature, impact and seriousness of the breach
3. Considering any aggravating and mitigating factors
4. Achieving the appropriate deterrent effect
5. Applying any settlement discount

This approach is the latest stage of the FSA's credible deterrence strategy and will apply to all enforcement actions including against firms, individuals and listed companies.

[Source: FSA Website](#)

SPEECH ON MORTGAGES AND REGULATION

Ms Lesley Titcomb, FSA Director of Small Firms and Contact Centre, addressed the Council of Mortgage Lenders on 6 July 2009. She covered the following topics:

- The results of the CML recent Member survey
- Current market conditions
- FSA approach
- Mortgage Market Review to achieve two objectives:

1. a market that is sustainable for all participants – and that includes lenders, consumers, intermediaries and investors
 2. a flexible market that works for consumers
- Responsible lending
 - Distribution
 - Disclosure and changing consumer behaviour
 - Buy- to-let
 - Second charge lending
 - Arrears and repossessions

[Source: FSA Website](#)

NEW INITIATIVE ON CRITICAL ILLNESS FOR CONSUMERS

The ABI has launched a three-month consultation on changes to its Statement of Best Practice for Critical Illness Cover.

The main change proposed is to replace the Total Permanent Disability (TPD) clause included in critical illness insurance policies with a set of carefully worded definitions to ensure clarity for consumers about precisely what conditions are, and are not covered.

The majority of critical illness insurance claims are paid promptly as they are based on a straightforward diagnosis, but that is not always the case with TPD.

Although TPD accounts for just 3% of claims, 55% of these are declined because the definition has not been met. The ABI believe the current position is not sustainable, and these proposals address this.

Nick Kirwan, the ABI's Assistant Director, Health and Protection, said: "We have seen the number of declined claims fall significantly as a result of our ongoing determination to tackle this issue. This consultation builds on our work and should see the number of declined claims fall further. We've been in long and detailed discussions with medical experts about the causes of most Total Permanent Disability claims. As a result, we are confident that the new set of definitions provides clarity and a better understanding about what makes a valid claim. We are hoping to spark interest and get a good cross-section of consultation responses. It is vital that consumers, insurers and other interested parties make their voices heard."

[Source: ABI Website](#)

ABI COMMENTS ON TRIPARTITE SYSTEM

Responding to the Treasury's proposals on the possible future direction of the Tripartite System, Stephen Haddrill, the ABI's Director General, said: "It is clear there were serious failings and all elements of the tripartite system have to work better, now more than ever. On balance, the Chancellor is right to resist the temptation to dismantle the tripartite arrangement and start again.

We want effort to be focused on ensuring the system works better, rather than a major structural upheaval which will delay much-needed change.

We think that improved calibrated capital requirements based on the activities of banks, coupled with better application of competition rules, would be a better way of addressing banks that are considered 'too big to fail' than splitting them up.

We support the proposed Council for Financial Stability (CFS), as we have already called for the Governor of the Bank to Chair a Macro-prudential Committee, containing representatives of the tripartite authorities. This would deal with long-term risk assessment, flagging up systemic risks such as asset price bubbles. This makes more sense than having a long turf war between the Bank and the FSA. The Treasury also has a vital role to play, through regular consultation with business and promoting UK interests in the EU and globally.

A key change should be a more mature, transparent relationship between the FSA and the companies it regulates. This will require a more accountable FSA, with an honest, regular appraisal of its performance.

This will require a higher seniority of supervisors at the FSA who fully understand the businesses they are supervising.

The ABI will look at this in further detail and will respond to the consultation in due course."

Source: ABI Website

TIGHTENING IN LENDING ABATES

New estimates from the Council of Mortgage Lenders (CML) suggest that a higher proportion of young first-time buyers than ever before are getting help from parents to enter the market.

But more positively, the CML's latest data shows signs that lending criteria stopped tightening in May. Since reaching a record 25% in February, the average first-time buyer deposit has remained unchanged. And the typical first-time buyer income multiple has held at 2.97 from April.

Home movers typically borrowed 67% of the value of the property in May, unchanged from April, and borrowed 2.68 times their income, up from 2.63 in April.

The economy might expect to see a modest easing in these measures over the summer, as some higher loan-to-value products came on to the market in recent months and lenders reported that they intend to increase lending at higher loan-to-value ratios in the Bank of England's recent Credit Conditions Survey.

The number of loans for house purchase edged up 4% from April to 37,400 (worth £4.7 billion), but this is 28% lower than the number of loans in May 2008. House purchase lending is still depressed by historical standards: in the last seven years the May average was 96,000 house purchase loans.

Re-mortgaging volumes remain extremely weak with 29,000 loans in May, a 9% fall from April and a 63% decline from a year earlier. Demand for re-mortgage is falling away as many borrowers exiting fixed rate periods find themselves reverting to relatively attractive standard variable rates.

In addition, lower house prices and tighter loan-to-value constraints continue to limit access to the better priced re-mortgage products. First-time buyer numbers were little changed with 14,000 loans worth £1.5 billion in May, compared with 13,700 loans worth £1.5 billion in April. But that doesn't mean the challenges for first-time buyers are over. Newly updated CML analysis suggests that around 80% of first-time buyers aged under 30 are likely to be receiving help from parents as they are unlikely to have been able to build up the deposits needed to enter the market from their own resources.

Source: CML Website

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