

# COMPLIANCE RULES



Welcome to the fourth and final edition of *Compliance Rules* for 2010. In this issue of *Compliance Rules* we bring you our usual centre-spread roundup of BIBA's regulatory updates, together with a back-page article on changes to the European supervisory structure for financial services.

#### New regulatory approach

HM Treasury has been consulting on their proposals to change the regulatory architecture in the UK. The consultation paper raised a number of questions relating to the new infrastructure but did not directly give respondents the opportunity to comment more widely. For this reason BIBA prepared and submitted a formal two-part response – based on the comments of a cross-section of members. We provided answers to the questions in the paper and additionally provided both quantitative and qualitative comments on the current Financial Services Authority (FSA) regime. The aim is to enforce the message that the approach to regulating the insurance broking community needs to be proportionate, appropriate and cost-effective.

#### FSCS fundamental review

BIBA has been in regular dialogue with the FSA during

the year as part of their review of the Financial Services Compensation Scheme (FSCS). The huge increase in FSCS levies this year has highlighted the fact that the current model, with its built in cross-subsidies, is fundamentally unfair. We believe that the provision of compensation to consumers plays an important part in increasing public confidence in financial services. As part of our involvement in the fundamental review, we are calling for 'separation' – separating insurance brokers from the secondary market. The FSA's consultation paper is due in November and we have been gearing up to both encourage and support members in responding. Our membership database now matches each member with their local MP and we will be publishing both a draft response to the FSA and, if appropriate, a draft letter to send to MPs.

#### Revision of the Insurance Mediation Directive (IMD)

It seems we have been talking about the IMD revision for ages, as we have been actively involved with BIPAR (the European Federation of Insurance Intermediaries) in preparing positions on what are likely to be the key elements of the review. The EU Commission is expected

to publish their consultation paper in November and we will keep a close eye on our three key issues. **Scope** – we believe that any firm undertaking a mediation activity for business should be included within the scope (as is the case now). **Level playing field** – we believe the customer should be entitled to the same suite of disclosures irrespective of where the insurance is sourced and that therefore the Directive's disclosure and professional requirements should apply to all persons selling insurance. **Disclosure/transparency** – the revised IMD will provide for greater transparency. We believe that our current 'on-request' regime is the most appropriate of the likely options.

BIBA ensures that members are made aware of significant regulatory developments (publication of relevant consultation papers etc) in a number of ways. We publish Regulation Updates on our website on a frequent basis, we issue weekly and monthly emails to members which give details of these updates, plus of course we publish *Compliance Rules*. If you do not get to see any of these communications or would like any of your colleagues to receive them, please do not hesitate to let us know.



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[www.biba.org.uk](http://www.biba.org.uk)

Member helpline:  
0844 77 00 266



**BIBA**

## REGULATORY ROUND-UP

### BIBA responds to proposals for change to the regulatory framework

The British Insurance Brokers' Association (BIBA) has demanded a more proportionate and cost effective regulatory regime for the insurance intermediary community in its formal response to the HM Treasury consultation paper on a new approach to regulation.

[www.biba.org.uk/PDFfiles/HMTreasuryConsultationApproacht financialregulation.pdf](http://www.biba.org.uk/PDFfiles/HMTreasuryConsultationApproacht financialregulation.pdf)

### FSA looks to abolish 'two-stage' complaints handling process in CP10/21

The Financial Services Authority (FSA) has proposed changes to its complaints handling rules (DISP) as part of a package of measures to improve the way in which firms deal with complaints from their customers.

Consultation Paper CP10/21 entitled 'Consumer complaints – The ombudsman award limit and changes to complaints-handling rules', is published jointly by the FSA and the Financial Ombudsman Service (FOS).

The paper is designed to ensure that more firms resolve complaints promptly and fairly and includes proposals on:

- Requiring firms to identify a senior individual responsible for complaints handling;
- Abolition of the 'two-stage' complaints handling rule to incentivise firms to resolve complaints fairly the first time;
- Underlining the requirement for firms to carry out root cause analysis, by identifying and remedying any recurrent or systemic problems with complaints, and to take action where appropriate; and
- Additional guidance in relation to taking account of ombudsman decisions and previous customer complaints and learning from

the outcome.

The proposed changes would have a staggered implementation date. The FSA is proposing that the new guidance relating to taking account of ombudsman decisions and root cause analysis would come into force on 1 August 2011, as would the new rule requiring firms to nominate an individual with responsibility for complaints handling. Abolition of the 'two-stage' process would take effect from 1 July 2012 to allow firms to make the necessary system changes.

The paper also includes proposals to increase the limit on awards made by the FOS from £100,000 to £150,000 to provide fairer and more effective redress for customers. The increase would come into effect from 1 January 2012.

The consultation period on CP10/21 closes on 31 December 2010. The FSA intends to publish a Policy Statement, including made rules if approved, in April 2011. [www.fsa.gov.uk/pubs/cp/cp10\\_21.pdf](http://www.fsa.gov.uk/pubs/cp/cp10_21.pdf)

### MoJ consults on guidance around Bribery Act

The Ministry of Justice has published details of the formal consultation to support the Bribery Act 2010. The consultation seeks views on draft guidance about procedures that relevant commercial organisations can put in place to prevent persons associated with them from bribing and proposes six general principles that are designed to be applicable across all sectors and for all types and size of business. It is intended that these general principles will aid businesses to formulate procedures appropriate to their particular circumstances should they choose to do so.

The consultation will provide the basis for the publication of effective but flexible guidance on bribery prevention for commercial organisations seeking to ensure that they conduct business competitively while

maintaining high standards of integrity and transparency.

[www.justice.gov.uk/consultations/docs/bribery-act-guidance-consultation1.pdf](http://www.justice.gov.uk/consultations/docs/bribery-act-guidance-consultation1.pdf)

The consultation also contains a questionnaire which can be found at

[www.justice.gov.uk/consultations/docs/bribery-act-questionnaire.doc](http://www.justice.gov.uk/consultations/docs/bribery-act-questionnaire.doc)

Separately, Vivian Robinson QC, General Counsel for the Serious Fraud Office (SFO), discussed the Bribery Act 2010 and its implications for businesses in a new webcast on the organisation's website. The SFO is responsible for enforcing the Act.

[www.sfo.gov.uk/bribery--corruption/bribery-act---what-doesit-all-mean.aspx](http://www.sfo.gov.uk/bribery--corruption/bribery-act---what-doesit-all-mean.aspx)

### FSA granted new consumer redress power

The FSA has been granted a new power to deliver prompt and effective redress for consumers from firms that have not followed its rules. The new power will be used in instances when there is evidence of widespread or regular failings that have caused consumer detriment. It is a rule making power, so the FSA must undertake cost-benefit analysis and consult each time it wants to establish a redress scheme.

The FSA has issued a guidance note on what constitutes a consumer redress scheme, the type of failures that can be dealt under one and the process that has to be undertaken in order to make a scheme. [www.fsa.gov.uk/pubs/guidance/guidance10.pdf](http://www.fsa.gov.uk/pubs/guidance/guidance10.pdf)

### FSA announces chairman of new consumer education body

The FSA has appointed Gerard Lemos as chairman of the Consumer Financial Education Body (CFEB). Lemos is a partner at social researchers Lemos & Crane where he leads the research team.

The CFEB is an independent body,

created in April 2010 by the Financial Services Act 2010, responsible for helping consumers understand their finances better. It will be responsible for providing impartial information, education and advice through a national financial advice service.

### FSA proposes improvements to auditors' reports on client assets in CP10/20

The FSA has published proposals to improve the quality and consistency of auditors' reports on client assets in Consultation Paper CP10/20. The proposed changes are targeted at firms holding client money under investment business, but will also apply to insurance intermediaries holding client assets exceeding £30,000. The changes will take effect from June 2011.

The consultation period on CP10/20 closes on 31 December 2010. The FSA plans to publish a policy statement during the first quarter of 2011.

The FSA still intends to review CASS 5 (Client Money: insurance mediation activity) in the early part of 2011.

[www.fsa.gov.uk/pubs/cp/cp10\\_20.pdf](http://www.fsa.gov.uk/pubs/cp/cp10_20.pdf)

### FSA issue policy statement on sale of pure protection products

The FSA has published Policy Statement 10/13 on the sale of pure protection products under the Conduct of Business (COB) sourcebook. These changes are aimed at investment firms rather than insurance intermediaries.

There are no changes currently being proposed to the sale of protection policies under ICOBS. The regulator does not believe that remuneration structures are a key driver of the problems that they see in the pure protection market. The main problem they have seen with the sales of pure protection relates to product disclosure, particularly customers

not understanding the exclusions to the cover they hold on their critical illness policies. FSA published their research on this at the start of the summer and they are considering if further work is needed.

The main points from the Policy Statement can be summarised as follows:

### **Sales of pure protection under the Conduct of Business sourcebook (COBS)**

- FSA are amending their rules to allow firms who sell to pure protection products under COBS, rather than the Insurance Conduct of Business sourcebook (ICOBS), to continue to do so after the RDR is implemented. Advisers will not have to apply the adviser charging rules to their pure protection sales.

### **Remuneration transparency**

- Where pure protection sales and advice are associated with investment advice, firms will have to explain how they are remunerated and disclose the amount of commission or commission equivalent received.
- In response to feedback, FSA have adopted a more flexible approach than the draft rules consulted on in CP10/8. Firms will be required to make a judgment about whether the pure protection transaction is 'associated' with investment advice. FSA have added guidance to help firms make this judgment.

### **Next steps**

Firms should look at the new rules and make changes to their business to ensure that they comply. The new rules will come into force 31 December 2012.

[www.fsa.gov.uk/pages/Library/Policy/Policy/2010/10\\_13.shtml](http://www.fsa.gov.uk/pages/Library/Policy/Policy/2010/10_13.shtml)

### **BIBA Compliance Manual and Update Service 2010**

The 2010 version of the BIBA Compliance Manual is now available for sale. Now in its sixth year of publication, the manual has proved to be a practical and reassuringly comprehensive way for member firms to keep abreast of the FSA's rules and regulations. The manual is now even better value for money as the price has been held at the 2009 rate of £350 + VAT (£411.25).

For those members that purchased the 2009 version of the manual there is the BIBA Compliance Manual Update Service for 2010 which provides a cost-effective way of ensuring that their information remains current. [www.biba.org.uk/BrokerComplianceManual.aspx](http://www.biba.org.uk/BrokerComplianceManual.aspx)  
[www.biba.org.uk/PDFfiles/BIBAManual2010Renewal.pdf](http://www.biba.org.uk/PDFfiles/BIBAManual2010Renewal.pdf)

### **Increase in IPT from 4 January 2011 – an update**

Members will be aware that the Government announced an increase in insurance premium tax (IPT) in the emergency budget. The standard rate of 5% increases to 6% and the higher rate from 17.5% to 20%, with effect from 4 January 2011. The announcement was not accompanied by any transitional provision (unlike the previous occasion when IPT was increased).

Representations have been made to HM Revenue & Customs to reintroduce transitional measures but confirmation has been received that the Treasury is not prepared to do so.

Discussions are now underway with insurers to determine whether agreement can be reached that for all risks incepting pre 4 January 2011 the insured should be asked to pay 5% IPT (or 17.5% on higher rate contracts), irrespective of when the tax is entered into insurers' accounts. From both the insureds' and the brokers' perspective we see this as

by far the best option. From the insurers' point of view this raises several issues which may be difficult to overcome. BIBA will keep members abreast of any developments on this issue.

### **FSA/ FSCS – BIBA's current position**

BIBA has clarified its current position and key messages with regards to the FSA and the Financial Services Compensation Scheme (FSCS). This move is in response to strong interest from membership resulting from the increased costs of regulation and the FSCS in particular. BIBA has produced a document setting out its thoughts and concerns in these areas which it is urging members to familiarise themselves with. BIBA is very involved in the ongoing process and in the coming months will ask members to add their weight behind its campaign.

[www.biba.org.uk/pdffiles/FSA%20update.pdf](http://www.biba.org.uk/pdffiles/FSA%20update.pdf)

### **New FSA board appointment**

Margaret Cole has been appointed to the FSA board as managing director of enforcement and financial crime. Cole joined the FSA in 2005 after 20 years in private practice, specialising in commercial litigation.

### **Broker banned for life for client money failings**

David Marriott, former chief executive of insurance intermediaries Target Underwriting Ltd and Professional Insurance Select Ltd, has received a lifetime ban from the FSA for failing to segregate and protect money from clients' insurance premiums.

The two intermediaries were run as one business under the control of Marriott who used the client money to support the day-to-day finances at both failing firms. He also used client money to give himself and his staff bonuses, salary increases and purchase vehicles.

These payments were made against a background of worsening trading positions and business being lost by Target. There was a client money deficit of £570,841 in the firms as a result of Marriott's dishonesty.

Marriott also provided false and misleading information to the FSA in his applications for authorisation in order to cover up his misuse of clients' money. He stated that client money was safe and that a client money audit had been conducted at the firms, when he knew both statements were false.

[www.fsa.gov.uk/pages/Library/Communication/PR/2010/139.shtml](http://www.fsa.gov.uk/pages/Library/Communication/PR/2010/139.shtml)

### **Zurich data loss results in FSA fine**

A failure to have effective systems and controls to manage the risks relating to the security of customer data arising from an outsourcing arrangement has resulted in a record FSA fine of £2.23m for the UK branch of Zurich Insurance plc.

The failings came to light following the loss of 46,000 customers' personal details, including identity details, and in some cases bank account and credit card information, details about insured assets and security arrangements. An unencrypted data tape was lost in South Africa during a routine transfer in August 2008 to a data storage facility. The loss could have led to serious financial detriment for customers and even exposed them to the risk of burglary, according to the FSA.

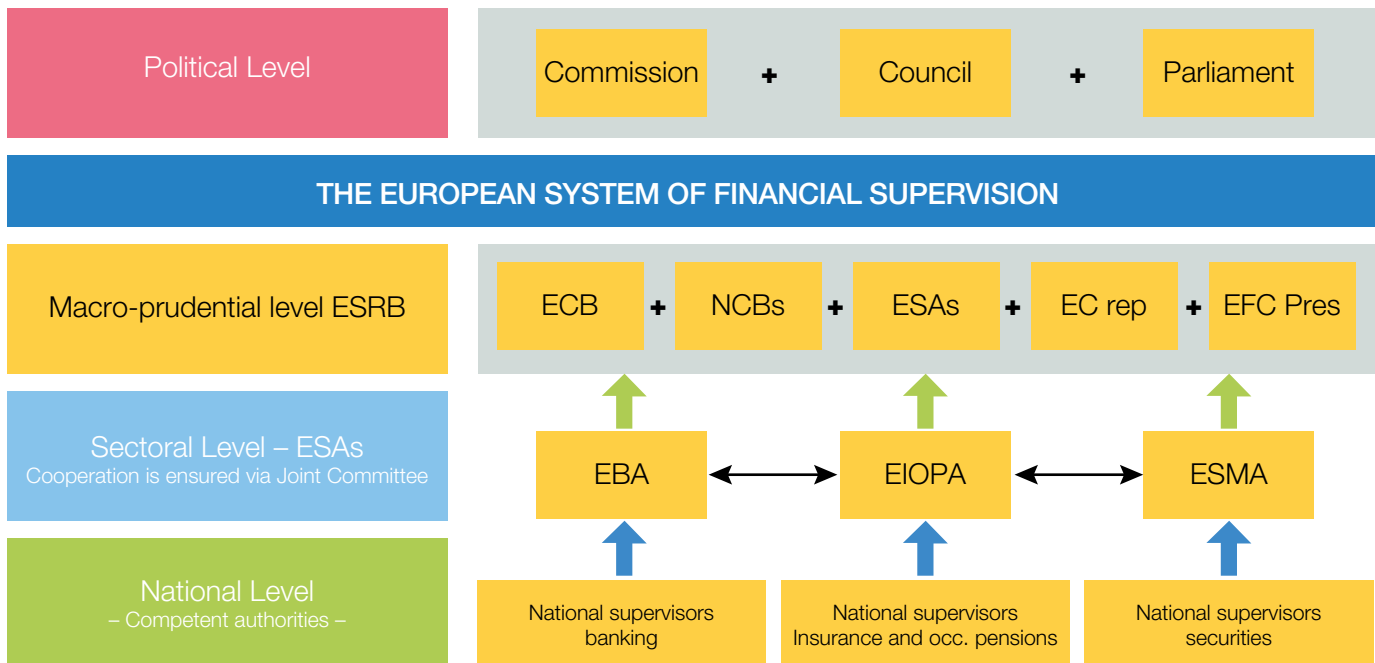
Margaret Cole, the FSA's director of enforcement and financial crime, said that firms across the financial sector would do well to look at the details of this case and learn from the mistakes that Zurich UK made.

[www.fsa.gov.uk/pubs/final/zurich\\_plc.pdf](http://www.fsa.gov.uk/pubs/final/zurich_plc.pdf)

## CHANGES TO THE EUROPEAN REGULATORY SYSTEM

Members may be aware that there have recently been some changes to the European supervisory structure announced. The chart below, sourced from CEIOPS (the Committee of European Insurance and Occupational Pension Supervisors), sets out the new structure.

### THE EUROPEAN SYSTEM OF FINANCIAL SUPERVISION – THE FUTURE IS HERE



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Political agreement has been reached recently between member states and EU legislators which allows Europe to move into a new era of financial supervision.

The new European System of Financial Supervisors (ESFS) integrates the three European Supervisory Authorities (ESAs) and the European Systemic Risk Board (ESRB), establishing the key pillars of a new institutional infrastructure which aims to ensure a stable, reliable and robust single market for financial services.

The European Parliament vote also launches the 3L3 Committees' institutional transformation. This is a complex process, requiring the existing Level 3 Committees (the Committee of European Securities Regulators (CESR), the Committee of European Banking Supervisors (CEBS) and CEIOPS) to evolve quickly into European Authorities by January 2011. It will entail significant enhancements

to current competencies and the implementation of support structures for the new tasks ahead. This work is now well underway in each of the Committees, in close cooperation with the European Commission.

The 3L3 Committees are more than ever committed to enhance the existing EU financial supervisory architecture. This involves, among other things, upgrading the quality and consistency of supervision; reinforcing the oversight of cross-border groups; strengthening risk assessments and stress testing; establishing a single European rule book applicable to all financial institutions in the single market, which will lead to a high degree of convergence in the field of supervision; as well as an efficient dialogue with all market participants, investors and consumers of financial services; and a commitment to strengthen cooperation among the three ESAs.

Commenting on these changes, Nic De Maesschalck, Director of BIPAR (the European Federation of Insurance Intermediaries) said: "The new European system of financial services supervision is another step on the long route to more European harmonisation and integration.

For insurance intermediaries, EIOPA, with its new powers, will create both opportunities and challenges. It will make the cooperation between national insurance associations of insurance intermediaries and their European federation even more important in order to defend and promote their interests effectively".



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