

# COMPLIANCE RULES



Welcome to the third edition of BIBA's quarterly regulatory newsletter, *Compliance Rules*, for 2009. The publication was recently shortlisted in the prestigious Trade Association Forum's Best Practice Awards in the Newsletter of the Year category. We narrowly missed winning this time round, but with your input for next year, who knows? If there is a regulatory topic you would like featured in a forthcoming edition, please contact Steve or Vanessa.

In this issue of *Compliance Rules*, we bring you our usual centre spread round-up of BIBA's regulation updates, together with a back-page article on sanctions.

### The Times They Are A-Changin'

So sang Bob Dylan in his famous 1960s song and we have found ourselves humming the tune as we contemplate the various changes in the regulatory landscape that are appearing on the horizon.

The first of these will be the **revision of the Insurance Mediation Directive (IMD)** or IMD2, as it is likely to become known. As part of BIBA's involvement with the European Federation of Insurance Intermediaries (BIPAR), we have met with the European civil servants responsible for the IMD to listen to their current thinking.

The IMD was implemented to help facilitate cross-border intermediation, but the manner in which the directive was introduced has not had the desired outcome. It is very likely that IMD2 will be a 'maximum harmonisation' directive, ie, the European Union states will not be able to implement measures that go beyond the directive – no gold-plating!

IMD2 is also likely to look again at the scope, ie, who needs to be regulated. Rest assured, BIBA will be lobbying for a level playing field, as will BIPAR themselves.

The third aspect of a revised IMD will clearly be the area of transparency. The civil servants pointed out to us that they are planning for "much greater transparency" in IMD2 and will be working

closely with BIPAR to try to ensure that an appropriate and proportionate solution is found.

The second of these changes arises from the political announcements concerning the **future of financial services regulation**.

The Conservatives issued a high-profile white paper on their plans for banking regulation which included the abolition of the Financial Services Authority, with prudential regulation passing to the Bank of England and conduct of business to a newly-created Consumer Protection Agency. Clearly, the devil will be in the detail and, should the Tories form the next Government, we at BIBA will be actively involved in the inevitable consultations about these details.



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Under the Conservative white paper, prudential regulation would pass to the Bank of England

## REGULATORY ROUND-UP

### FSA Chairman comments on political uncertainty

Political uncertainty is unsettling, but it is a fact of democratic life, according to Adair Turner, FSA Chairman.

Turner was speaking at the regulator's annual public meeting in London, where he referred to the Government's regulatory response to the financial crisis and the Conservatives' proposals that would see the abolition of the FSA, should that particular political party come to power.

Turner thought the two white papers said "pretty much the same thing" on issues of capital and liquidity regulation, but diverged dramatically on appropriate organisational arrangements. There were pros and cons to different models of regulation, he continued. The key challenge was not to decide which model to have, but to make whatever is the chosen model work effectively.

Turner added: "Faced with that uncertainty, the FSA's task is simple – to concentrate on ensuring that we have the regulations, supervisory processes, people and the skills required to deliver a more stable financial system in future. These things will be required whatever the division of responsibility between different institutions results from whatever the electorate decides."

[www.conservatives.com/News/News\\_stories/2009/07/~/\\_/media/Files/Downloadable%20Files/PlanforSoundBanking.ashx](http://www.conservatives.com/News/News_stories/2009/07/~/_/media/Files/Downloadable%20Files/PlanforSoundBanking.ashx) \_  
**Conservative white paper**

[www.hm-treasury.gov.uk/d/reforming\\_financial\\_markets080709.pdf](http://www.hm-treasury.gov.uk/d/reforming_financial_markets080709.pdf) \_  
**Government white paper**

### New SFO self-reporting regime for overseas corruption

The Serious Fraud Office has produced guidance on its approach to dealing with cases of overseas corruption.

The guidance is designed to assist corporate entities in England, Wales and Northern Ireland self-report overseas corruption to the SFO in return for civil settlements, without criminal sanctions being imposed and avoiding debarment from further involvement in public contracts.

The move marks a significant increase in efforts to combat corruption by the SFO. The organisation has set up a separate work area, the anti-corruption domain, under Keith McCarthy, and is moving significant skills into this area while investing heavily in training. Ultimately, the SFO intends to have 100 staff working in this area. [www.sfo.gov.uk/news/downloads/SFO-COP-dealing-with-overseas-corruption.pdf](http://www.sfo.gov.uk/news/downloads/SFO-COP-dealing-with-overseas-corruption.pdf)

### Firms fined for lax data security

Three HSBC firms have been fined more than £3 million by the FSA for having inadequate systems and controls after they admitted losing confidential data for tens of thousands of their customers.

The fine sends a tough message to firms that the FSA will not tolerate lax information security which could allow criminals to steal customers' identities and commit financial crime.

HSBC Life UK Limited (HSBC Life) was fined £1,610,000, HSBC Actuaries and Consultants Limited (HSBC Actuaries) was fined £875,000 and HSBC Insurance Brokers Limited (HSBC Insurance Brokers) was fined £700,000.

The firms have since taken a number of remedial actions to address the concerns raised, including contacting the customers concerned, improving staff training and requiring that all electronic data in transit is encrypted. [www.fsa.gov.uk/pubs/final/hcbc\\_inuk0907.pdf](http://www.fsa.gov.uk/pubs/final/hcbc_inuk0907.pdf)  
[www.fsa.gov.uk/pubs/final/hcbc\\_ins0709.pdf](http://www.fsa.gov.uk/pubs/final/hcbc_ins0709.pdf)  
[www.fsa.gov.uk/pubs/final/hcbc\\_actuaris0709.pdf](http://www.fsa.gov.uk/pubs/final/hcbc_actuaris0709.pdf)

### FSA overhauls operational structure

The FSA is putting the final touches to a new operational structure designed to better align its internal operating model to its core activities in identifying and mitigating risk, supervision and enforcement.

The changes will take effect from 1 October 2009 and involve:

- Integration of retail and wholesale firm supervision into one supervision business unit under Managing Director Jon Pain.
- Integration of risk identification, risk management and policy formulation into one Risk business unit under Managing Director Sally Dewar.
- Expansion of the existing financial stability team to become a new, enhanced division under Director David Strachan, focusing on macro-prudential issues.
- Creation of a new international division, under Director Verena Ross, which will enable the FSA to significantly increase its engagement with international fora.
- Integration of enforcement and financial crime to form one division under Director Margaret Cole.
- The financial capability division moving from the existing retail business unit to become a standalone division under Director Chris Pond and will report directly to Hector Sants. This will put the FSA in a better position to take forward the national roll-out of the Money Guidance service.

### Walker review recommends strengthening governance

The corporate governance review led by Sir David Walker has recommended substantial changes to the way the boards of banks and other big financial institutions function – in particular, through boosting the role of non-executives in the risk and remuneration process.

The review has published a consultation paper that recommends the strengthening of bank boards, making rigorous challenge

in the boardroom a key ingredient in decisions on risk and measures to encourage institutional shareholders to play a more active role as engaged owners of banks and other financial institutions.

The consultation document proposes that most of the recommendations are enforced through inclusion in the *Combined Code on Corporate Governance*, which operates on a 'comply or explain' basis. It would be for the Financial Reporting Council, which is currently reviewing the Combined Code, to decide exactly how this would be done.

Comments about the paper should be submitted to the following email address [feedback@walkerreview.org](mailto:feedback@walkerreview.org) no later than 1 October 2009. [www.hm-treasury.gov.uk/d/walker\\_review\\_consultation\\_160709.pdf](http://www.hm-treasury.gov.uk/d/walker_review_consultation_160709.pdf)

### FSA issues CP09/21 on transparency and firms' complaints data publication

The FSA has published proposals that will enable consumers to see how firms handle complaints. The proposals set out in consultation paper CP09/21, titled *Transparency as a Regulatory Tool and Publication of Complaints Data, including Feedback to DP08/3*, would see firms publishing their own complaints data every six months and the FSA publishing results from the whole sector twice yearly.

Chapter three of the consultation paper looks at the publication of firms' complaints data.

The requirement to publish will be limited to firms that have reported receiving 500 or more complaints in the relevant six-monthly period. The FSA estimates that this cut-off point will mean that just under 200 firms will need to publish their complaints figures each half-year – those firms will account for 95 per cent of all complaints reported to the regulator.

Comments about the consultation paper should be

submitted to the FSA by 30 October 2009. The FSA will then finalise draft rules in light of responses to CP09/21 and publish a policy statement giving feedback in the first quarter of 2010.

[www.fsa.gov.uk/pubs/cp/cp09\\_21.pdf](http://www.fsa.gov.uk/pubs/cp/cp09_21.pdf)

## Competition Commission consults on measures for PPI market

The Competition Commission (CC) has published a draft order for consultation setting out how measures designed to boost competition into the payment protection insurance (PPI) market will be implemented.

Publication comes despite Barclays Bank launching an appeal against the Commission's decision and proposed measures. A hearing at the Competition Appeal Tribunal is set for 7-10 September 2009.

The CC said it had started consultation on the detailed implementation of the changes to enable it to move quickly once the appeal is finalised and it has considered the tribunal's judgement.

[www.competition-commission.org.uk/inquiries/ref2007/ppi/pdf/notice\\_intention\\_to\\_make\\_an\\_order.pdf](http://www.competition-commission.org.uk/inquiries/ref2007/ppi/pdf/notice_intention_to_make_an_order.pdf)

## FSA boosts fines in quest for credible deterrence

Firms could see some enforcement fines for regulatory breaches treble in size after February 2010 under proposals from the FSA to create a consistent and more transparent framework for calculating financial penalties.

Consultation Paper 09/19 titled *Enforcement of financial penalties* reflects the FSA's determination to change behaviour and address concerns that firms are repeatedly failing to improve standards.

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

- up to 20 per cent of the firm's income from the product or business area linked to the breach over the relevant period

- up to 40 per cent 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.

The full framework will apply to all enforcement actions including against firms, individuals and listed companies and will comprise:

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.

The consultation period closes on 21 October 2009.

[www.fsa.gov.uk/pubs/cp/cp09\\_19.pdf](http://www.fsa.gov.uk/pubs/cp/cp09_19.pdf)

## Financial Services Consumer Panel finds new Chairman

The FSA has announced that Adam Phillips has been appointed Chairman of the Financial Services Consumer Panel. He has been Vice Chairman of the panel since 2005 and Acting Chairman since December 2008.

## Credit rating agencies come under scrutiny from international regulators

The Joint Forum, which brings together international banking, securities and insurance regulators on common issues, has released the final version of its paper titled *Stocktaking on the use of credit ratings*.

The paper provides valuable information on the regulatory use of credit ratings by a broad range of regulatory authorities, including banking, securities, and insurance supervisors across 12 countries. It will provide a useful reference when considering the extent to which credit ratings should

be relied on in regulation and supervision going forward.

[www.iaisweb.org/\\_temp/Joint\\_Forum\\_Stocktaking\\_on\\_the\\_use\\_of\\_credit\\_ratings\\_15\\_June\\_2009.pdf](http://www.iaisweb.org/_temp/Joint_Forum_Stocktaking_on_the_use_of_credit_ratings_15_June_2009.pdf)

## FSA names new Director of Insurance Sector

The FSA has appointed Ken Hogg, currently Interim Chief financial Officer at MGM Assurance, as Insurance Sector Director. He will report to Jon Pain, FSA Managing Director, Retail Markets.

## FOS annual review shows insurance disputes rising sharply

The Financial Ombudsman Service (FOS) has published its annual review of personal finance disputes for the 2008/09 financial year.

The FOS handled 789,877 consumer enquiries and a record 127,471 new complaints. It resolved 113,949 disputes – a 14 per cent annual increase – with the Ombudsman's involvement resulting in compensation for consumers in 57 per cent of cases.

The FOS saw the number of insurance disputes increase by 84 per cent, with complaints about payment protection insurance (PPI) tripling in number reflecting the worsening economic environment. More than half of these PPI disputes were brought to the FOS by claims management companies on behalf of consumers. Pages 49-53 of the review deal with insurance complaints in more detail.

[www.financial-ombudsman.org.uk/publications/ar09/ar09.pdf](http://www.financial-ombudsman.org.uk/publications/ar09/ar09.pdf)

## Broker disciplinary actions

Recent FSA disciplinary actions against brokers Ambrose Darby and AIF Limited serve as useful reminders to members about two areas of compliance which cause intermediaries recurrent problems.

The first relates to Richard Holmes, a Director of insurance broker AIF Limited, who was fined £20,020 for

control failings in relation to an appointed representative (AR) firm. As a Director of the firm, Richard Holmes failed to carry out sufficient initial checks and then failed to monitor adequately the activities of the AR over a period of almost a year despite identifying a number of concerns early on during the AR agreement.

The second relates to Graham Darby, a director of Ambrose Darby, who was banned from performing significant influence functions at any authorised financial firm for failing to control the business of the broker adequately.

The FSA found that Darby, who was diagnosed with a severe medical condition in July 2008, did not conduct client money reconciliations as required and did not have a full understanding of the firm's responsibilities regarding the handling of client money.

[www.fsa.gov.uk/pubs/final/Richard\\_Holmes.pdf](http://www.fsa.gov.uk/pubs/final/Richard_Holmes.pdf)  
[www.fsa.gov.uk/pubs/final/graham\\_darby.pdf](http://www.fsa.gov.uk/pubs/final/graham_darby.pdf)

## Practitioner panels publish annual reports

The Financial Services Practitioner Panel and the FSA Small Business Practitioner Panel have both published their annual reports. The reports can be found at the following links:

**Financial Services Practitioner Panel**  
[www.fs-pp.org.uk/docs/annual\\_reports/annualreport2009.pdf](http://www.fs-pp.org.uk/docs/annual_reports/annualreport2009.pdf)

**Small Business Practitioner Panel**  
[www.sbpp.org.uk/documents/AR\\_2009.pdf](http://www.sbpp.org.uk/documents/AR_2009.pdf)

## Passported insurers and the FOS

The FSA has provided BIBA with an updated list of insurers which have passported into the UK and elected to join the Financial Ombudsman Service's voluntary jurisdiction, as of 31 July 2009.

[www.biba.org.uk/BrokerContentDetails.aspx?ContentID=1357](http://www.biba.org.uk/BrokerContentDetails.aspx?ContentID=1357)

## What's in a name?

It depends. A name may mean nothing, but it could spell up to seven years' imprisonment and/or a fine if it belongs to a target person or organisation on the Treasury's *Consolidated List of Financial Sanctions Targets in the UK* and your firm has had business dealings with them.

It pays to know who you are doing business with, particularly as the last few years have seen greater emphasis being given to the use of financial sanctions to prevent the financing of terrorism or nuclear proliferation.

Yet despite the potentially heavy penalties, the Financial Services Authority's (FSA) recent thematic review of firms' approach to UK financial sanctions found worrying misconceptions among some businesses about the legislation.

These included:

- The belief that firms are exempt from the financial sanctions regime because they only process low value transactions – there is no minimum value.
- The belief that UK financial sanctions are a type of FSA enforcement action – they are not. The FSA is only responsible for ensuring firms have appropriate systems and controls to reduce the extent to which they could be used for a purpose connected with financial crime.
- Individuals and entities on the Treasury's list are all based overseas (of the approximately 1,400 names of individuals included, 50 are UK residents, while of the 500 entities listed, 12 are based in the UK).
- Sanctions screening is not necessary as the firm does not hold client money, make payments and only deals in products assessed as low risk for the purposes of financial crime. This is not the case. Under the Terrorism Order the prohibition extends to financial services as well as funds.

- Politically-exposed persons (PEPs) are all financial sanctions targets.
- Insurance is a no or low risk area for sanctions.
- UK financial sanctions do not apply to insurance products.
- The funds of sanctioned individuals cannot be frozen because it may constitute 'tipping off'.
- Checks carried out for anti-money laundering purposes cover sanctions. Checking client identity will not ensure that the individual is not on the Treasury list. Only screening against that list will cover the possibility.

## The role of the Treasury

Financial sanctions are implemented, administered and enforced in the UK by the Treasury, with its Asset Freezing Unit (AFU) acting as a single point of contact for businesses.

There are various statutory instruments that give effect to the 15 financial sanctions regimes currently in the UK. The legislation typically prohibits the making available of funds or economic benefits/resources directly or indirectly to an individual or entity listed by the United Nations, the European Union and/or the UK as a target of financial sanctions and requires that any funds held for or on behalf of such a target should be frozen.

The legislation relating to terrorist financing also bans the making available of financial services, directly or indirectly, to listed individuals/entities. These requirements are separate and distinct from anti-money laundering requirements and should not be confused.

## What can I do?

The Treasury is keen that all sectors of the financial services industry are aware of the current UK financial sanctions legislation, the obligations therein and the consolidated list of targets, all of which can be found on its website. In addition, there is an investment ban

list relating to targets of additional 'investment' prohibitions that presently cover only the Burma/Myanmar regime. [www.hm-treasury.gov.uk/fin\\_sanctions\\_subscribe.htm](http://www.hm-treasury.gov.uk/fin_sanctions_subscribe.htm)

Members should also consider the findings from the FSA's thematic review which provides some excellent examples of firms' good and poor practice. [www.fsa.gov.uk/pubs/other/Sanctions%20Final%20Report.pdf](http://www.fsa.gov.uk/pubs/other/Sanctions%20Final%20Report.pdf)

## What if a client name matches a target?

If after a check a customer is found to be a financial sanctions target (a 'target match') then it is important that no further business is transacted with them and a report is made as soon as possible to the AFU at: Asset Freezing Unit, HM Treasury, 1 Horse Guards Road, London, SW1A 2HQ or by email to [assetfreezingunit@hm-treasury.gov.uk](mailto:assetfreezingunit@hm-treasury.gov.uk)

Bear in mind that some of the names on the Treasury list are common and a firm may end up with a 'name match' which does not necessarily mean that their customer is one and the same as the target.

In such cases, a firm should initially conduct its own enquiries assessing the information it holds on the customer relating to their identity and their profile against the details available on the Treasury list. If, after assessing all available information, the firm is unable to determine whether a customer is indeed one and the same as a listed person/entity, they should contact the AFU for guidance either by post or by e-mail.

**Vannessa Young is BIBA's London Market and Compliance Co-ordinator.**

## Your Contacts

We hope that you will find this issue of *Compliance Rules* useful. If you have any comments about the content or have ideas for future issues, please contact either



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