# Regulatory Roundup

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COMPLIANCE LEADERSHIP

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Of relevance to
*All firms*

## FCA fines LBGI £90 million for failures in communications for home insurance renewals between 2009 and 2017

The FCA has fined LBGI (Lloyds Bank General Insurance Limited, St Andrew's Insurance Plc, Lloyds Bank Insurance Services Limited and Halifax General Insurance Services Limited) £90,688,400 for failing to ensure that language contained within millions of home insurance renewals communications was clear, fair and not misleading.

Between January 2009 and November 2017, LBGI sent nearly 9 million renewal communications to home insurance customers which included language to the effect that they were receiving a 'competitive price' at renewal. LBGI did not substantiate the 'competitive price' language included in the renewal communications by taking steps to check that it was accurate. Policies were renewed in respect of approximately 87% of renewal communications containing this language.

Although LBGI rewrote its renewal communications and began to remove 'competitive price' wording from 2009 onwards, the language remained in a substantial number of renewals communications throughout the relevant period despite repeated missed opportunities to address it.

This caused a risk of harm for the majority of LBGI's home insurance customers who received these communications, because it was likely that the premium quoted to them at renewal would have increased when compared to their prior premium. Renewal premiums offered to customers would also likely have been higher than the premium quoted to new customers, or customers that chose to switch insurance provider. This was particularly likely to be the case for customers who renewed repeatedly.

Separately, LBGI informed approximately half a million customers that they would receive a discount based on either their 'loyalty', on the fact they were a 'valued customer', or otherwise on a promotional or discretionary basis, where the described discount was not applied and was never intended to apply. This affected approximately 1.2 million renewals, with approximately 1.5 million communications sent by LGBI. The erroneous discount language was only identified and rectified by LBGI during the course of the FCA's investigation.

The FCA therefore found that LBGI breached Principle 3 and Principle 7 of the FCA's Principles for Businesses between 1 January 2009 and 19 November 2017.

LBGI has voluntarily made payments of approximately £13.5 million to customers who received communications that erroneously referred to the application of a discount when none was applied, and this has been taken into account in the assessment of the financial penalty. LBGI is contacting customers proactively, meaning customers do not have to take any steps to receive payment. The FCA continues to engage with LBGI on the voluntary payments process.

Under the FCA's new rules, which come into effect on 1 January 2022, insurers will be required to offer renewing customers a price that is no higher than they would pay as a new customer. The FCA estimates that these measures will save consumers £4.2 billion over 10 years, by removing the loyalty penalty and making the market work better.

https://www.fca.org.uk/news/press-releases/fca-fines-lbgi-90-million-failures-communications-home-insurance-renewals-2009-2017

## FCA, PRA and Bank of England set out plan to improve diversity and inclusion in regulated firms

On 7 July 2021, the FCA, the PRA and the Bank of England published a discussion paper on regulatory plans to improve diversity and inclusion in financial services.

In the discussion paper, the regulators have set out policy options including, among others, the use of targets for representation, measures to make senior leaders directly accountable for diversity and inclusion in their firms, linking remuneration to diversity and inclusion metrics and the regulators' approach to considering diversity and inclusion in non-financial misconduct. The discussion paper also focuses on the importance of data and disclosure in order to enable firms, regulators and other stakeholders to monitor progress.

The regulators believe that increased diversity and inclusion will advance their statutory objectives by resulting in improved governance, decision-making and risk management within firms, a more innovative industry, and products and services better suited to the diverse needs of consumers.

To assess progress the authorities are proposing collecting data from firms about their workforce. Prior to this there will be a one-off, pilot survey later this year which will help to develop the proposals set out in the discussion paper and test how firms' can provide data with a view to considering regular reporting in the future.

The regulators are also asking for views on how any changes could be tailored to specific categories of firms to ensure it is proportionate.

The discussion paper is open until 30 September 2021. The feedback and data received will be used to develop detailed proposals, with a joint consultation planned for Q1 2022.

https://www.fca.org.uk/news/press-releases/fca-pra-and-bank-england-set-out-plan-improve-diversity-and-inclusion-regulated-firms

### FCA Implementation of Investment Firms Prudential Regime

On 29 June 2021, the FCA published Policy Statement PS21/6 which is the first of the Policy Statements issued to introduce the UK Investment Firms Prudential Regime (IFPR).

IFPR is a new prudential regime for UK firms authorised under the Markets in Financial Instruments Directive (MiFID). This is the first of a series of policy statements that will set out the FCA's rules to introduce the IFPR.

Introducing the IFPR means that there will be a single prudential regime for all FCA investment firms, simplifying the current approach for globally active systemically important banks.

It should reduce barriers to entry and allow for better competition between investment firms. Some firms will have meaningful capital and liquidity requirements for the first time, adequate with the potential harm they can cause.

The rules apply to any MIFID investment firm currently subject to any part of the Capital Requirements Directive (CRD) and the Capital Requirements Regulation (CRR). These include:

- investment firms that are currently subject to BIPRU and GENPRU
- 'full scope', 'limited activity' and 'limited licence' investment firms currently subject to IFPRU and CRR
- 'local' investment firms
- matched principal dealers
- specialist commodities derivatives investment firms that benefit from the current exemptions on capital requirements and large exposures including:
    - oil market participants (OMPs)
    - energy market participants (EMPs)
    - 'exempt-CAD' firms
    - investment firms that would be exempt from MiFID under Article 3 but have 'opted-in' to MiFID

The rules also apply to any regulated and unregulated holding companies of groups that contain an investment firm that are currently authorised under MiFID and or a Collective Portfolio Management Investment (CPMI).

https://www.fca.org.uk/publications/policy-statements/ps21-6-implementation-investment-firms-prudential-regime

### FCA fines Crosfill & Archer Claims Limited £110,000

On 28 June 2021, the FCA announced that it had fined claims management company, Crosfill & Archer Claims Limited, £110,000.

This fine was for making unsolicited telemarketing calls to people who registered not to receive this type of sales call, where the firm had no evidence they had consented to receive the call or where the firm was unable to confirm what consent had been obtained on customer data purchased from third party data providers.

This decision follows the transfer of regulatory responsibility for claims management companies (CMCs) to the FCA on 1 April 2019. The fine was originally imposed by the MOJ in 2018 but appealed by the firm. The appeal was struck out by the Upper Tribunal after the firm failed to file relevant documents in time.

https://www.fca.org.uk/news/press-releases/fca-fines-crosfill-archer-claims-limited

### FCA Review of host Authorised Fund Management firms

On 30 June 2021, the FCA published its review of host Authorised Fund Management firms. The FCA wanted to test the viability of the host Authorised Fund Manager (AFM) business models and assess whether conflicts of interests were being effectively managed.

The FCA included a range of AFMs that delegate investment management to third parties outside of their corporate group. They are often referred to as host AFMs or host Authorised Corporate Directors (ACDs).

From Q4 2019 to Q4 2020, the FCA visited a sample of host AFMs to review the effectiveness of their governance, controls and monitoring. These firms operate a significant number of authorised funds. The FCA also asked them questions about the risks in their business models. The FCA did not include any firms currently under investigation in their review.

The FCA examined:

- how well host AFMs understand their responsibilities for the funds they operate;

- whether these firms had adequate governance, controls and resources to carry out their role;
- how effectively the host AFM firms considered their regulatory responsibilities, primarily under the Collective Investment Scheme Sourcebook (COLL);
- how their oversight of delegated third-party investment managers considered the interests of fund investors; and
- whether they had appropriate resources for the nature and scale of the business they carried out.

The FCA found that firms that operate a host model effectively, typically have the following attributes:

- They are well capitalised, having assessed their risks and the harm their activities may pose and considered the resources they need to operate throughout the economic cycle.
- Their senior management can demonstrate good governance throughout the organisation, supporting a clear purpose and strategy.
- They are well resourced in terms of systems, staff and staff expertise, and have clear and relevant asset management experience for overseeing delegated third-party investment managers.
- Their firm's senior management clearly recognises and controls the conflicts of interest inherent in the business model.
- They hold their delegated third-party investment managers to account to achieve fair results for investors.
- They are prepared to make decisions in the interest of the schemes they operate and of investors, disregarding the impact on their business.
- They have a credible wind-down plan, with realistic timescales and assessments of how the firm maintains resources for an orderly exit from the market.

The FCA grouped its key observations into 4 main areas:

- Due diligence over delegated third-party investment managers and funds;
- Oversight of delegated third-party investment managers and funds;
- Governance and oversight; and

- Financial resources.

The FCA expects all AFMs to consider the lessons in this summary and how they should apply it to the way they conduct their business. While the main focus of the review was AFMs managing UK UCITS funds through a host model, AFMs managing other types of authorised funds and other firms who manage AIFs should also consider the implications for their business. While its observations are focused on conflicts and issues that arose in a host model, there are also useful lessons for firms operating within a group structure.

https://www.fca.org.uk/publications/multi-firm-reviews/host-authorised-fund-management-firms

## FCA research reveals increase in cryptoasset ownership

On 17 June 2021, the FCA published research estimating that 2.3 million adults now hold cryptoassets (up from 1.9 million last year). 78% of adults have now heard of cryptoassets, up from 73% in a year.

The consumer research shows that as holding cryptoassets has become more common, attitudes to them have changed. 38% of crypto users regard them as a gamble (down from 47% last year), while increasing numbers see them as either a complement or alternative to mainstream investments.

By contrast, the level of overall understanding of cryptocurrencies is declining, suggesting that some people who have heard of crypto may not fully understand what they are buying, with only 71% correctly identifying the definition of cryptocurrency from a list of statements.

Enthusiasm for cryptoassets is growing with over half of crypto users saying they have had a positive experience so far and are likely to buy more (rising from 41% to 53%). Fewer people also regret having bought cryptocurrencies, down from 15% to 11%.

1 in 10 who had heard of cryptocurrency said they are aware of consumer warnings on the FCA website. Of these, 43% said they were discouraged from buying crypto. Most consumers recognise that crypto investments are not protected, although 12% of crypto users believe otherwise.

The research is the FCA's fourth consumer research publication on cryptoassets ownership. It is part of the FCA's strategy to develop its thinking on the potential harms and benefits to consumers from cryptoassets and help better understand consumers' attitudes and patterns of use.

During that period the FCA issued further consumer warnings, stating that investing in cryptoassets is high risk and that investors should be prepared to lose all their money. The FCA will continue working closely with HM Treasury and other regulators, including through the UK Cryptoasset Taskforce.

https://www.fca.org.uk/publications/research/research-note-cryptoasset-consumer-research-2021

### FCA Temporary Registration Regime extended for cryptoasset businesses

On 3 June 2021, the FCA announced it would extend the end date of the Temporary Registrations Regime (TRR) for existing cryptoasset businesses from 9 July 2021 to 31 March 2022.

The TRR was established last year to allow existing cryptoasset firms that applied for registration before 16 December 2020, and whose applications are still being assessed, to continue trading. A significantly high number of businesses are not meeting the required standards under the Money Laundering Regulations. This has resulted in an unprecedented number of businesses withdrawing their applications. The extended date allows cryptoasset firms to continue to carry on business while the FCA continues with its assessment.

Anti-money laundering and counter terrorist financing legislation are aimed at protecting against enabling the transfer and disguise of funds from criminal activity, or funding of terrorist groups. While this is not the only element that the FCA will assess in relation to an applicant, the FCA will only register firms where it is confident that processes are in place to identify and prevent this activity.

Many cryptoassets are highly speculative and can therefore lose value quickly. The FCA does not have consumer protection powers for the cryptoasset activities of firms. Even if a firm is registered with the FCA, it is not responsible for making sure cryptoasset businesses protect client assets (i.e. customers' money), among other things.

It is unlikely that consumers will have access to the Financial Ombudsman Service or Financial Services Compensation Scheme, irrespective of whether a firm has temporary or full registration.

https://www.fca.org.uk/news/press-releases/temporary-registration-regime-extended-cryptoasset-businesses

### FCA confirms measures to raise standards in the funeral plans market and consults on further proposals

On 5 July 2021, the FCA confirmed the rules funeral plan providers will have to follow when they come under regulation from 29 July 2022.

The new rules will introduce high standards in the funeral plans market and require firms to ensure that plans are sold fairly, perform as expected and provide value for money.

These rules mean:

- funeral instalment plan products will always deliver a funeral (after a moratorium period) as we will be banning those that don't guarantee this
- cold calling will be banned and new standards on advertising will be implemented to ensure plans are sold fairly
- commission payments to intermediaries will be banned to ensure products represent fair value
- those selling funeral plans are subject to full checks on their fitness to operate to improve governance standards and oversight

Consumers should be aware that under Government legislation, funeral plan providers will not come under regulation until 29 July 2022. This will mean consumers will not be able to make a complaint to the Financial Ombudsman Service, nor will they have protection from the Financial Services Compensation Scheme (FSCS) should their provider fail before 29 July 2022. Consumers should be alert to any cold calls they receive about funeral plans before the ban comes into effect. High-pressure sales tactics such as cold calling can result in consumers taking out products which are not suitable for their needs.

Consumers thinking of purchasing a pre-paid funeral plan before regulation should look into their options carefully to decide whether it's the right product for them. Consumers should be sure they understand what their plan does and doesn't provide before they pay, and whether there are extra charges applicable.

Firms that want to continue conducting funeral plan activities after regulation should prepare now so that they can apply for authorisation as soon as possible after the application gateway opens in September 2021. For applications made after November 2021, the application fee will increase by 40%.

Any firms that are not authorised or do not become Appointed Representatives by 29 July 2022 will have to cease trading in relation to funeral plans before FCA regulation takes effect. From 29 July it will be a criminal offence for plan providers to carry out funeral plan contracts without authorisation.

If a provider knows it will not apply for authorisation, withdraws its application, or has its application refused, it should stop selling new funeral plans from that point in time. Providers in this position must, before 29 July 2022, transfer their existing books of business or wind down in an orderly way. It is unacceptable and may be unlawful for plan providers to sell new plans which they will not be able to deliver once regulation starts as they will not be authorised to do so.

*Further proposals*

Following feedback received from the March consultation and the launch of a government consultation on proposed legislation in relation to funeral plans and the FSCS, the FCA is now consulting on the outcomes for consumers in the event of firm failure.

The proposed rules aim to minimise harm to customers if a regulated funeral plan provider fails by ensuring that contracts can be transferred to new providers where possible, and that the FSCS can arrange continuity of funeral plan contracts or pay appropriate compensation if a firm is not able to meet its liabilities.

The proposals also aim to mitigate any undue impact on FSCS levy payers by providing the FSCS with additional powers to help it to recover its costs from failed firms. The FCA is asking for feedback on the draft rules by 31 August 2021.

https://www.fca.org.uk/publications/policy-statements/ps21-8-regulation-of-funeral-plans-feedback-to-cp21-4-and-final-rules

https://www.fca.org.uk/publications/consultation-papers/cp21-20-regulation-funeral-plans-further-proposals

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## FCA review finds fund managers falling short on assessing the value of their funds

On 6 July 2021, the FCA published a review of 18 fund managers between July 2020 and May 2021, covering different business models and sizes, and found most had not implemented Assessments of Value (AoVs) arrangements that met FCA standards.

The FCA requires Authorised Fund Managers (AFMs) to carry out an AoV at least annually. This requirement was put in place after the Asset Management Market Study found evidence of weak demand-side pressure in the market for authorised funds, resulting in a lack of competition among fund providers on fees and charges. The rules addressed this by requiring firms to assess whether fund fees are justified by the value provided to fund investors, by using a set of minimum considerations. Details of these assessments must be reported to investors together with a clear explanation of what action has been or will be taken if they find that the charges paid by investors in the funds are not justified.

The FCA review found that, while some had been conducting AoV assessments well, too many AFMs often made assumptions that they could not justify, undermining the credibility of their assessments.

When considering a fund's performance, many firms did not consider what the fund should deliver given its investment policy, investment strategy and fees. Firms spent a disproportionate amount of time looking for savings in administration service charges that cost investors relatively little compared with the time spent reviewing the costs of asset management and distribution that typically cost investors much more.

Other firms did not meet the standards the FCA expect by using poorly designed processes that led to incomplete assessments of value (e.g. failing to assess elements such as fund performance, AFM costs and classes of units, or failing to perform assessments at share class level). Some of the independent directors on the governing bodies (or Boards) of AFMs did not provide the robust challenge the FCA expect and appeared to lack sufficient understanding of relevant fund rules.

Overall, the FCA expects more rigour from AFMs when assessing value in funds. This will help ensure that investment products represent good value. The FCA expects all AFMs to consider these findings and use them to assess their AoV processes. Where necessary, they should make changes to address shortcomings. The FCA intends to review firms again within the next 12 to 18 months and we will assess how well firms have reacted to its feedback. The FCA will consider other regulatory tools should we find firms are not meeting the standards we expect to be necessary to comply with its rules.

https://www.fca.org.uk/publications/multi-firm-reviews/authorised-fund-managers-assessments-their-funds-value

**Of relevance to**
*All firms*

## Financial Action Task Force Recommendations on Opportunities and Challenges of New Technologies for Anti-Money Laundering/Countering the Financing of Terrorism

In July 2021, the Financial Action Task Force (FATF) issued recommendations on Opportunities and Challenges of New Technologies for Anti-Money Laundering/Countering the Financing of Terrorism.

New technologies can improve the speed, quality and efficiency of measures to combat money laundering and terrorist financing. They can help financial institutions and supervisors, assess these risks in ways that are more accurate, timely and comprehensive. When implemented using a responsible and risk-based approach, new technologies and innovative products and services can also improve financial inclusion, bringing more people into the regulated financial system and thereby reinforcing the effectiveness of AML/CFT measures.

This FATF report identifies emerging and available technology-based solutions. The report highlights the necessary conditions, policies and practices that need to be in place to successfully use these technologies to improve the efficiency and effectiveness of AML/CFT. The report also examines the obstacles that could stand in the way of successful implementation of new technology.

New technologies for AML/CFT refer to:

- innovative skills, methods, and processes that are used to achieve goals relating to the effective implementation of AML/CFT requirements; or
- innovative ways to use established technology-based processes to comply with AML/CFT obligation.

FATF members adopted a set of suggested actions for government authorities to advance the responsible development and use of new technologies for AML/CFT covering the following areas:

- Create an enabling environment by both government and the private sector for responsible innovation to enhance AML/CFT effectiveness;
- Ensure Privacy and Data Protection when implementing new technologies;
- Promote AML/CFT innovation which supports financial inclusion by design;
- Develop and communicate policies and regulatory approaches to innovation that are flexible, technology-neutral, outcomes-based and

in line with the risk-based approach;

- Exercise informed oversight; and
- Promote and Facilitate Cooperation.

https://www.fatf-gafi.org/media/fatf/documents/reports/Suggested-actions-New-Technologies-AML-CFT.pdf

https://www.fatf-gafi.org/media/fatf/documents/reports/Opportunities-Challenges-of-New-Technologies-for-AML-CFT.pdf

https://www.fatf-gafi.org/media/fatf/documents/reports/opportunities-and-challenges-of-new-technologies-handout.pdf

https://www.fatf-gafi.org/media/fatf/documents/reports/Suggested-actions-New-Technologies-AML-CFT.pdf

Complyport is a regulatory compliance consulting firm supporting the UK financial services industry for around 20 years. We specialise in providing Governance, Risk and Compliance services to firms in the financial services industry in the UK and overseas. We advise and assist firms to become authorised and to comply with the rules and requirements of regulators on an ongoing basis and have successfully assisted over 300 firms to become authorised with the FCA and have been providing regulatory support to over 500 regulated firms on an ongoing basis at a Group level. With presence in the UK, EU and Hong Kong, Complyport can assist firms across multiple jurisdictions.

Complyport's multidisciplinary consultants possess deep expertise in their field, having acted in FCA skilled person reviews, as expert witnesses in legal cases and as expert investigators for firms or their legal advisers. The team assists firms on issues relating to corporate governance, risk management, business controls, compliance and business improvement. We conduct audits and reviews of a firm's products, processes, policies and procedures to identify scope for business, to determine the impact of regulatory developments and to verify compliance with local regulations. Complyport offers full support with financial reporting, capital adequacy assessments and compliance training as well as a suite of online RegTech applications to enable a firm to demonstrate continued compliance with the regulatory obligations.

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