

“The only way to make sense out of change is to plunge into it, move with it and join the dance”

- Alan Watts

As we continue to adjust and work through the effects of Covid-19 the FCA and other regulators are adjusting with us, to adapt to these strange and unprecedented times.

FCA sets out priorities for 2020/21

The FCA set out its business priorities for the year ahead – with specific focus on the challenges presented by the coronavirus (Covid-19) pandemic. In responding to the challenge of coronavirus the FCA will focus on ensuring that financial services businesses give people the support they need, that people avoid scams, and that financial services businesses and markets know what we expect of them.

The FCA is also focusing on transforming its operations. This includes looking at its entire system - from the data it collects, to how it analyses, manages and shares intelligence across the organisation, and how it decides which firms and individuals can operate.

It will also look at how firms are supervised, and how unacceptable firms and individuals are stopped and removed from the regulated sector as quickly as possible.

To deliver these outcomes, the FCA will build its capacity by investing in skills, systems, people and technology. The FCA will review its plans as the implications of coronavirus become clearer and provide updates as appropriate.

FCA expectations re Complaints Handling

They understand that firms' capacity to handle complaints could be reduced as a result of coronavirus. They therefore expect firms to prioritise:

1. paying promptly complainants who have been offered redress and accepted that offer
2. the prompt and fair resolution of complaints from:
 - a. consumers who are likely to be vulnerable to harm if their complaint is not resolved promptly and fairly, and
 - b. micro-enterprises and small businesses who are likely to face serious financial difficulties if their complaint is not resolved promptly and fairly
3. sending timely holding responses to those complainants in 2. where their complaints cannot be resolved promptly

If a firm cannot deliver these three priorities effectively, or sufficiently, through home working, then the FCA consider it could be appropriate for the firm to maintain the minimal physical onsite presence needed to do so, provided that the site is configured for social distancing in line with Government guidelines.

Joint FCA and PRA statement Senior Managers and Certification Regime (SM&CR) and coronavirus (Covid-19): our expectations of dual-regulated firms

The FCA and the PRA recognise that firms directly affected by coronavirus will need to keep their governance arrangements under review. Where we they can, they intend to provide flexibility to FCA and PRA dual-regulated firms. The regulators have made specific provisions for firms in these circumstances. The regulators expect firms to resubmit relevant SoRs as soon as reasonably practicable taking into account the current circumstances; and understand that firms may take longer than usual to submit revised SoRs in the present environment.

The FCA's and PRA's rules allow individuals to perform Senior Management Function(SMF)s without approval for up to 12 weeks in a consecutive one-year period if their firm experiences an SMF vacancy that is (a) temporary; and/or (b) reasonably unforeseen. This is sometimes referred to as the '12-week rule'. The FCA and PRA are currently gathering evidence on whether the 12-week rule is likely to give dual-regulated firms enough flexibility to deal with temporary absences of SMF as a result of coronavirus. If the FCA and PRA conclude that the 12-week rule is insufficient to allow firms to respond to temporary SMF absences linked to coronavirus, they will consider additional measures.

In normal circumstances, if an SMF becomes temporarily vacant, firms should reallocate those SMFs' Prescribed Responsibilities (PRs) among their remaining SMFs until a permanent replacement for the vacant SMF is identified and approved. Where possible, this remains the FCA's and PRA's preference for firms dealing with temporary SMF absences linked to coronavirus.

However, if firms cannot reallocate an absent SMF's PRs among their remaining SMFs due to reasons relating to coronavirus, they can temporarily allocate them to the individual who is acting up as interim SMF under the 12-week rule, even if they are, at the time, unapproved as an SMF.

Firms should also update their PRA and/or FCA Supervisors of any temporary allocation of Prescribed Responsibilities to unapproved individuals acting up as SMFs under the 12-week rule.

The FCA and PRA do not require or expect firms to designate a single SMF to be responsible for all aspects of their response to coronavirus. While it is important for firms to have a clear framework for allocating responsibilities to various SMFs for different aspects of their response to coronavirus, the FCA and PRA do not generally prescribe a 'one-size-fits-all' approach.

Firms should continue to take reasonable steps to complete any annual certifications of employees that are due to expire while coronavirus restrictions are in place.

FCA Skilled Persons Reports

The FCA released details of the Skilled Persons reports commissioned in the last quarter ending 31/3/2020. This gives an indication of areas of concern for the FCA.

Of 24 reports commissioned only 2 were relating to Investment Management firms, whereas 18 were in the Retail banking/lending/investments space. The largest category of these investigations is Financial Crime related (9), 6 were Controls and Risk Management Framework focused and 4 Conduct of Business related.

Work-related travel – responsibilities of Senior Managers

All firms should be clear that coronavirus (Covid-19) constitutes a public health emergency. The FCA strongly supports the UK Government's efforts to protect the public by ensuring only those workers who cannot work from home, continue to travel to and from work. Each firm's designated Senior Manager or equivalent person is responsible for identifying which of their employees are unable to perform their jobs from home, and have to travel to the office or business continuity site. The UK Government has made clear that employers and employees should discuss their working arrangements, and employers should take every possible step to facilitate their employees working from home, including providing suitable IT and equipment to enable remote working. The number of exceptions to this should be low. Firms should continue to follow the Government's guidance closely and take the recommended steps.

FCA confirms temporary financial relief for customers impacted by coronavirus

Following a short consultation the FCA implemented proposals which gives firms the flexibility under their rules to provide temporary financial relief to those facing payment difficulties during the coronavirus (Covid-19) pandemic. The measures include firms being expected to:

- offer a temporary payment freeze on loans and credit cards for up to three months, for consumers negatively impacted by coronavirus
- allow customers who are negatively impacted by coronavirus and who already have an arranged overdraft on their main personal current account, up to £500 charged at zero interest for three months
- make sure that all overdraft customers are no worse off on price when compared to the prices they were charged before the recent overdraft pricing changes came into force
- ensure consumers using any of these temporary payment freeze measures will not have their credit file affected

The FCA confirmed that the following products are covered: guarantor loans, logbook loans, home collected credit, a loan issued by Community Development Finance Institution and some loans issued by credit unions, but only where these are regulated. The guidance also applies to firms which have acquired such loans. The FCA will keep this guidance under review.

FCA expectations for wet-ink signatures in light of coronavirus (Covid-19) restrictions

The FCA set out their expectations of firms when dealing with the need for 'wet-ink' signatures (i.e. signing a document by hand using a pen).

The FCA stated that for agreements the rules do not explicitly require a 'wet-ink' signature, so they do not prevent firms from using electronic signatures in agreements.

The validity of electronic signatures is a matter of law. Firms should consider the legal position. Firms must also consider any related requirements set out in the Principles for Businesses and general rules. Regarding Forms, the FCA have recently stated that they would accept electronic signatures for fund-related applications and on applications from mutual societies. Firms may use electronic signatures for all interactions with the FCA.

FCA data show 6.02m complaints in the second half of 2019

The increase in complaints was mainly driven by a 75% increase in the volume of PPI complaints received, from 2.12m to 3.71m. PPI complaints made up 62% of all complaints received during this period, continuing to be the most complained about product. This was the highest level of PPI complaints reported to the FCA by firms, aligning with the deadline for submitting claims to firms by the 29 August 2019. The data show that fewer PPI complaints were closed in 8 weeks by firms, down from 76% in 2019 H1 to 56% in 2019 H2. 50% of PPI complaints were upheld in 2019 H2, compared with 54% in 2019 H1.

As well as PPI complaints increasing during H2 2019, there was a 6% increase in all other complaint volumes compared with 2019 H1, from 2.18m to 2.31m. Excluding PPI complaints, the most complained about products were current accounts (10% of all complaints), credit cards (6%) and other general insurance products (5%). Over the same period, complaints about home finance products decreased from 8.7 to 8.4 complaints per 1,000 balances outstanding, while investment products increased from 2.1 to 2.3. Overall, excluding PPI, the average redress per complaint upheld decreased from £200 in 2019 H1 to £184 in 2019 H2.

Statement of Policy: Delaying annual company accounts during the coronavirus crisis

Companies and their auditors currently face unprecedented challenges in preparing audited financial information as a result of the coronavirus pandemic. As part of this wider initiative, the FCA have announced temporary relief for listed companies facing the challenges of corporate reporting during the coronavirus crisis.

This temporary relief will permit listed companies which need the extra time to complete their audited financial statements an additional 2 months in which to publish them. This means instead of the usual 4 months under the Transparency Directive, companies will have 6 months from their financial year end in which to publish audited financial statements.

The coronavirus pandemic is causing companies of all types to re-think and re-plan almost all aspects of their business and operations. The FCA recognise that some companies, given the nature of their operations, may feel it appropriate to maintain the 4 month calendar, but the FCA urges all those companies that feel it appropriate to utilise the additional 2 months to do so.

Although these measures represent an important relief for companies and auditors at this time, regulation is only part of the solution. It is equally important that market practice adjusts. In UK markets, it is common to publish year-end financial information, often in the form of preliminary statements of final results, well in advance of the 4 months required by the Transparency Directive.

Markets often draw adverse inferences when companies move results announcements. Financial reporting is important, and the practical challenges of completing financial statements during the coronavirus pandemic are significant. Companies and auditors should be granted time. Without a shift in market practice, the relief will not be effective.

FCA confirms support for motor finance and high-cost credit customers

The FCA introduced a package of measures to support consumer credit customers facing payment difficulties due to coronavirus (Covid-19). The targeted temporary measures being implemented are :

Motor Finance:

Firms to provide a 3 month payment freeze to customers who are having temporary difficulties meeting finance or leasing payments due to coronavirus.

High-cost short-term credit (including payday loans)

Firms to provide a 1 month payment freeze to customers facing temporary payment difficulties due to the coronavirus pandemic. No additional interest should be charged to the customer as a result of the payment freeze.

Other credit products

Firms that enter into RTO, BNPL, or pawnbroking agreements to provide a 3 month payment freeze to customers facing payment difficulties due to coronavirus.

Firms and consumers should consider the amount of interest on outstanding balances which may build up, and balance this against the need for immediate temporary support. The measures announced by the FCA over the last few weeks do not prevent firms from providing more favourable forms of assistance to any customer, including a longer payment freeze if appropriate. These measures have been in force from Monday 27 April 2020. Customers should be able to request a payment deferral at any point for a period of 3 months.

FCA commences civil proceedings in relation to alleged unauthorised investment advisers

The FCA has commenced proceedings in the High Court against a Trading Academy and its sole director. The FCA alleges that from 2017 onwards, the Firm and/or the Director have been advising on investments and arranging deals in investments without FCA authorisation, and engaging in financial promotions without being an authorised person or having the promotions approved by an authorised person.

The Firm/Director had been transmitting 'trading signals' and making other investment recommendations to clients via WhatsApp and other social media platforms.

Clients were told that if they followed these trading instructions, they would make significant profits. In addition, consumers were induced to sign up with a 'partnered' broker to place their trades. The defendants would receive sign up and other commissions from the brokerages in addition to the monthly payments from clients for the signals.

The FCA has secured an interim injunction stopping these activities from continuing and freezing the defendants' assets up to £624,311 pending further hearing.

The FCA is seeking final orders including a declaration from the Court that the defendants carried on regulated activities without the required FCA authorisation and unlawfully made financial promotions as well as an order preventing them from carrying out these activities in the future. The FCA will also seek a restitution order that would distribute the defendants' frozen assets to consumers who suffered financial losses as a result of the alleged breaches of the Financial Services and Markets Act.

Insider dealer sentenced and banned

In a recent notice a person formally approved by the FCA as a CF30 was issued an order by the FCA prohibiting him from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm. The prohibition order follows the conviction of the individual for offences involving dishonesty.

In particular, he pleaded guilty to Insider Dealing and was sentenced to 2 years imprisonment and ordered to pay £245,657.58 under the Proceeds of Crime Act 2002.

The offences took place at the time involved him using insider information as an equities dealer at the central dealing desk at an Investment Management firm.

On the basis of the facts and matters the FCA deemed the CF30 was not a fit and proper person to perform any function in relation to any regulated activity carried on by any authorised person.

FCA Cancel firms permissions

Whilst this has not been the only instance this month, firms should be reminded by this case that they should continue at all times to meet Threshold Conditions or the FCA could withdraw the firms permissions.

In this case the firm in question the firm failed to comply with the regulatory requirement to submit their CCR007 Return.

In subsequent correspondence the firm had not been open and co-operative in all its dealings with the FCA having failed to respond adequately to the FCA's repeated requests for it to submit the Return. It has thereby failed to comply with Principle 11 of the FCA's Principles for Businesses and to satisfy the FCA that it is ready, willing and organised to comply with the requirements and standards under the regulatory system.

These failures, which are significant in the context of the firms suitability, lead the FCA to conclude that it had failed to manage its business in such a way as to ensure that its affairs are conducted in a sound and prudent manner, that it is not a fit and proper person, and that it is therefore failing to satisfy the Threshold Conditions in relation to the regulated activities for which the firm had been granted a Part 4A permission.

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UK and Ireland

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