

Compliance Rules

Do not miss...

2 BIBA's Regulatory Working Party has created additional guidance for members around PS16/21 increasing transparency and engagement at renewal

4 BIBA's guide to the Foreign Account Tax Compliance Act is a must for those placing US sourced risks

Mission impossible?

It is difficult, if not impossible, for BIBA's compliance team to read the title of the Financial Conduct Authority's *Our Future Mission* publication without the opening notes of the theme tune from a certain classic thriller stirring inside our heads. That word Mission is the culprit, bringing to mind a challenge accepted and complex plot turns.

In his foreword, Andrew Bailey, CEO of the FCA, described the publication as being "a very important part of that challenge, to create a clear understanding of the FCA's remit and ensure that it is well communicated and understood."

The intention is to "set a clear path ahead for the future of conduct regulation in the UK", which steers away from the metaphorical explosions of conduct of business failures. Payment protection insurance and interest rate hedging products mis-selling, LIBOR rigging, money laundering and the breach of financial sanctions, are all mentioned. "This is a very sorry history, and the future needs to be radically different from the past," Bailey said.

The paper poses a series of questions to focus concentration on what a radically different future for the regulator could involve. Understandably, protecting consumers features highly in the document given that one of

the FCA's operational responsibilities is to deliver an 'appropriate degree' of consumer protection. But what constitutes 'appropriate' and does it differ for different customers and when buying different financial services? Should the FCA, for example, prioritise the protection of vulnerable customers and if so how?

Similarly when things go wrong and consumer redress is necessary what should the role of the FCA be in redress schemes, and what about dealing with unregulated activities carried on by regulated firms?

The Mission paper considers the remit that the FCA has for taking action including with regard to firms' unregulated activities. The interaction between regulation and public policy is also explored.

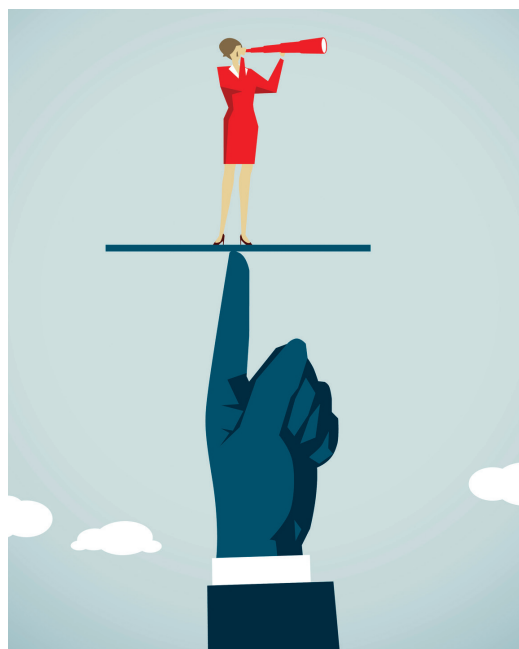
Another of the questions posed in the Mission paper is 'Do you think the way we measure performance is meaningful? What other criteria do you think are central to measuring our effectiveness?' How well does the regulator measure the impact of their policy interventions and measure outcomes from any new rules introduced? Members may want to consider the FCA's work around improving transparency at renewal (see this page 2-3) when responding to this particular question.

Bailey promised a review of the FCA Handbook at the Mission's launch. BIBA welcomes that review as members have frequently expressed concerns that the length and complexity of the Handbook may lead to something being missed or misunderstood. We have already seen the regulator start the process in removing the Initial Disclosure Document from the ICOBS rules and BIBA will actively engage with the FCA during the review.

The Mission provides the industry with an unprecedented opportunity to shape the regulator's future approach. BIBA will be submitting an official response to the paper. The mission for you our members, should you choose to accept it, is to read the paper and then provide us with your thoughts and feedback about it. Comments should be sent to David Sparkes at sparkesd@biba.org.uk by 13 January 2017. The consultation closes on 26 January 2017. The final Mission paper will be published alongside the FCA's 2017/18 Business Plan.

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BIBA Guidance

Policy Statement PS16/21: Increasing transparency and engagement

The Financial Conduct Authority (FCA) has published new rules and guidance for general insurance renewals which are intended to address concerns about levels of consumer engagement and the treatment of consumers by firms at renewal. The new rules come into force on 1 April 2017 and impact all retail (personal lines) general insurance markets, requiring firms to:

- Disclose last year's premium at each renewal;
- Include text to encourage consumers to check their cover and shop around for the best deal at each renewal;
- Identify consumers who are renewing with them for the fourth consecutive time, and give these consumers an additional prescribed message encouraging them to shop around, and;
- Maintain records to demonstrate compliance including keeping a record of premiums.

The FCA has also included non-Handbook guidance to help firms meet their obligations towards consumers at renewal which must be considered as part of members' work in introducing changes to renewal practices.

BIBA's Regulatory Working Party (RWG) has produced the following Q&As as additional guidance, as it has become apparent that there has been much dialogue in the industry regarding the interpretation of PS16/21. Our thanks go to the RWG for its assistance. This guidance is also based upon clarification that BIBA has received from the regulator.

DISCLAIMER: The following provides an interpretation of the requirements emanating from the rules created by the Financial Conduct Authority following publication of their Policy Statement PS16/21. BIBA does not hold this guidance out to be the only possible interpretation of the requirements and firms should take their own legal advice regarding the specific implementation of the rules within their own organisation.

1 Do the changes apply to retail customers (aka consumers) only?

At the time of writing; yes, but the FCA's non-handbook guidance (issued at the same time the rules were made) states: "Although commercial customers are not within scope, the FCA would encourage firms to consider whether any of the issues raised by us about retail consumers would also apply to commercial customers and whether there is benefit to making wider changes".

BIBA members may either decide not to implement the requirements for commercial customers, or adapt/implement only part of the requirements (or for certain commercial customers – e.g. micro-enterprises). Whatever is decided it is recommended that members document any rationale behind their decision.

2 What should be displayed to meet the requirements?

The figure that should be displayed depends on whether the policy has had any mid-term adjustments (MTA) resulting in a permanent change to the risk covered, during the policy period:

- No MTA – show the renewal premium the policyholder paid last year;
- Had one or more MTA – show the annualised premium for the expiring risk.

3 Explain how you would show the 'annualised premium for the expiring risk' as 'last year's premium'?

By way of example:

- 12 months policy, with an annual premium at the third renewal (or at inception if this was a new policy that year) = £100.
- MTA takes place after six months and raises an AP of £20 for the remaining six months to renewal and would have revised the annual premium to £140 had the revised risk been the basis on which the policy had renewed (been taken out) at the beginning of the year.
- Show the 'last year's premium' on the renewal notice as £140. Members may wish to consider how they comply with the 'fair, clear and not misleading' obligation, by describing 'last year's premium' in a way that more accurately reflects what the amount actually represents.

Where an MTA has taken place on a policy that was set up for a 10 month period, the FCA rule on annualising the premium includes the direction: 'or otherwise adjusting as appropriate to the duration of the proposed policy'.

4 What exactly is meant by 'premium' for the purpose of these rules?

The FCA Handbook Glossary defines premium as:

'the consideration payable under the contract by the policyholder to the insurer' (For ICOBS purposes, insurer is interchangeable with insurance undertaking.)

Therefore, the premium figure to be shown is the gross premium (inclusive of commission and IPT).

Fees and charges should not be included within the premium figure but should be shown separately.

5 I have provided a bundle of additional 'add on' products, does this require brokers to include last year's premiums for all products (individually) in the bundle?

Bringing the FCA's requirements in PS16/21 and PS15/22 (add-ons) together; the premium to be shown for comparative purposes is the combined (total) premium for the main insurance contract and any add-ons products to which the client has previously opted-in to purchasing.

The FCA's Consultation Paper (CP15/41 - section 2.28), provided the following confirmation:

'Where a renewal notice covers a bundle of products, the requirement to disclose last year's premium applies to the total package. For example, for a motor insurance policy with breakdown and legal expenses cover as add-ons, we expect the firm to provide last year's premium on the total package rather than each insurance policy in the bundle. The firm will still need to tell the customer the

Premium at renewal in general insurance markets

prices for individual add-on policies, as required under the Insurance Conduct of Business Sourcebook (ICOBS)

So the comparative needs to be provided on the premium for the bundle and separately disclosed elsewhere in the renewal pack; this year's prices (only) for any add-on products.

Fees and charges should not be included within the premium figure but should be shown separately.

6 How should last year's premium be displayed?

Disclosures must be displayed in a prominent place and in a manner that make it easy to compare it with this year's renewal premium (e.g. next to each other).

The FCA expects firms to take note of their trials which show disclosure is more effective on the front page of the renewal notice.

If your firm does charge fees in addition to the premium offered by the insurer; make sure it is obvious to the customer how much they are required to pay in total, for you to renew their package of cover for them.

A breakdown of costs can be set out further into the renewal pack.

7 The policy statement says changes are effective from 1 April 2017 – Does this mean renewals issued from the 1 March 2017 must be compliant with the new requirements?

The requirements apply to activities that firms undertake from 1 April 2017, so for example:

- If a firm's normal process is to start renewal generation four-weeks in advance of a renewal date – the requirement will apply to activities that take place on 1 April 2017, for 1 May renewals (and so on);
- If a firm's normal process is to start renewal generation six-weeks in advance of a renewal date – the requirement will apply to 15 May renewals and after.

8 How will I know if the policy is coming up for its fourth renewal, particularly where I have taken over as the customer's broker part way through the customer's insurance policy year?

At the time of writing, BIBA is engaging with Polaris and the software houses (SWHs) to determine what changes if any are needed to SWH systems to store and recall this information (along with store and recall of the annualised premium where an MTA has taken place).

In the meantime, members may wish to consider manual approaches to noting inception dates of policies within their own system or paper records.

9 The FCA has indicated that firms have discretion over the first three years 'shopping around' message, is there any guidance you can provide for this wording?

As the wording is not prescribed, but the FCA's suggested format is in the style of a question:

'Have you checked that your insurance cover still meets your needs? Have you considered shopping round to find the best deal for the cover you want?'

For a broker, an alternative suggestion might be:

'Please feel free to speak to us if you want to look at other alternatives and we can shop around for you or you can shop around for an alternative policy yourself.'

10 Am I permitted to include additional statements to the customer?

This is permitted as long as the messaging is not more prominent than any prescribed wording.

It may be worth speaking to your software house on, for example:

- Members may want to include wording that explains the impact of any claims or impact of any pre-existing conditions
- Also whether they include an explanation as to how the MTA annualised calculations have been performed to help customer understanding; taking due regard of FCA Principle 7 (due regard to customers' information needs and give enough information in a way which is clear, fair and not misleading).

Members should consider any proposed wording carefully, to avoid the accusation that it tips over from being an explanation, into an attempt to discourage shopping around.

Contacts

We would be interested to hear your views about *Compliance Rules* and its contents. Please direct any comments to:



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Regulatory Round-up

US tax law hits members as FATCA extension arrives

BIBA has launched new guidance designed to assist members with the complexities of the Foreign Account Tax Compliance Act (FATCA) which is a US law designed to prevent tax evasion by US taxpayers with offshore investments.

London and international market intermediaries and insurers have had to comply with FATCA legislation since 2014. However, many more UK-based brokers, intermediaries and insurers are likely to fall within FATCA's scope as a result of changes to the legislation which extend tax withholding obligations to foreign-to-foreign transactions from 1 January 2017. Member firms which place any insurance business touching on the US in any shape or form may be caught as a result.

BIBA has produced two pieces of guidance: a simpler quick reference guide aimed more at retail brokers, and a comprehensive guide to FATCA, which are available in the members' section of the website.

IPT return submissions moving online

HM Revenue & Customs (HMRC) is changing the way in which Insurance Premium Tax (IPT) returns are made as it moves its tax and duty accounting systems onto a more modern IT platform. Businesses will be able to complete and submit their IPT returns online for the first time as a result, once they have enrolled in the new service. The HMRC will be introducing a new fifteen digit registration number for businesses to replace their existing number. Businesses need not register again, as they will be able to continue to use the old number on their pre-printed stationery stock if they wish, but it is important that they use the new number on all communications with HMRC once it has been issued to them. The changes are likely to affect returns from the beginning of 2017.

Regulatory fees and levies 2017/18 policy proposals

The FCA has published Consultation Paper CP16/33 which sets out policy proposals for how regulatory fees and levies will be raised from 2017/18. Members may access the document by clicking here.

<http://bit.ly/2ggICYA>

Chapter 2 of the consultation paper includes details of a proposed new levy to be introduced from 2017/18 to provide funding for action carried out by HM Treasury against



illegal money lending. This will be levied on all consumer credit firms, with those firms with full authorisation (fee-block CC2) being charged: £10 if they receive up to £250,000 in income from consumer credit; and £10 + variable rate per £1,000 if their consumer credit income is in excess of £25,000. The proposed rules relating to the levy are set out in a new chapter of the Handbook, FEES 13. The consultation closes on 16th January 2017. The online response form can be found by clicking here: <http://bit.ly/2hcizhD>.

The FCA will publish its feedback, along with rules, in a Handbook Notice in February or March 2017.

ISPVs receive fast track authorisation under FCA and PRA proposals

Further steps in Government efforts to lure insurance linked securities business to London have been taken with the FCA and the Prudential Regulation Authority (PRA) publishing a joint consultation paper on the authorisation and supervision of Insurance Special Purpose Vehicles (ISPVs). Members can access the FCA's consultation paper CP16/34 (PRA reference consultation paper CP42/16) by clicking here.

<http://bit.ly/2g3nQlj>

HM Treasury is introducing a new framework for insurance linked securities business, and is already consulting on regulations which are intended to take effect from 1 April 2017. The PRA and FCA are consulting on the proposed approach

to authorisation and supervision of ISPVs, which will facilitate ILS business under this new framework.

ISPVs will be subject to dual regulation by the PRA and FCA; the PRA will lead the authorisation process but will require the FCA's consent before granting approval. Applications for ISPVs that represent a relatively straight-forward proposal and are supported by good quality documentation could be determined within a 6-8 week period, according to the FCA.

Responses to CP16/34 should be submitted to the FCA by Thursday 23 February 2017.

Head of FCA looks back and forward in financial crime fighting

Andrew Bailey, CEO of the FCA, sought to unpick how well the financial system had performed in providing effective prevention of financial crime, in a recent speech to the industry. Bailey looked back over the last thirty years in which the scope of regulation to combat financial crime had expanded progressively, as had the movement of capital and funds across borders to pay for more globalised goods and services.

"These developments, along with the emergence of very sensible societal norms in terms of hostility to financial crime, have created a very challenging landscape for the work of preventing financial crime," he noted.

Bailey said that he wanted to strike the right balance between enabling innovation and having a predictable and clear framework of rules. "It is vital that everyone knows the rules of the game, and then everyone sticks to them," he added.

He also thought that technology to harness the power of Big Data in helping to combat financial crime was ripe for exploitation.

<http://bit.ly/2gsPLkJ>