

REGULATION NEWSLETTER FOR INTERMEDIARIES

Monday 26th to Friday 30th October 2009

Welcome to the weekly regulation newsletter designed specifically for intermediaries. This newsletter is compiled by IFact Services and includes regulatory and topical information relating to Independent Financial Advisers, General Insurance and Mortgage and Home Finance Advisers.



Final Notice - Swinton to offer refunds on over 480,000 PPI policies following FSA intervention

Financial Services Authority

<http://www.fsa.gov.uk/pubs/final/swinton.pdf>

The Financial Services Authority (FSA) has fined Swinton Group Ltd, the high street insurance broker, £770,000 for serious failings in their advised sales of single premium payment protection insurance (PPI). Following discussions with the regulator, Swinton has also agreed to contact over 350,000 customers who paid for the PPI and offer a full refund.

Between December 2006 and March 2008 the FSA found that the firm's PPI sales process was flawed. The problems arose as a result of an "assumptive" selling technique in which PPI was automatically included in insurance quotes without first establishing that the customer had any real demand or need for the PPI cover. This resulted in unacceptable levels of non-compliant sales.

In addition, Swinton did not make it sufficiently clear that PPI was optional and did not properly disclose the cost of PPI at the point of sale. Firstly, the cost was bundled within the initial insurance quote and secondly, Swinton failed to disclose before the sale completed that the policy only cost £1.21 with the remainder of the £15/£20 charged being a fee taken by Swinton. Swinton's PPI customers will now be able to get a full refund. Swinton will also pro-actively review previously rejected claims and pay compensation where appropriate. Swinton accrued approximately £7.8 million from its PPI sales. Swinton exited the PPI market in March 2008 following a request from the FSA when these failings came to light.

Margaret Cole, FSA director of retail enforcement and financial crime, said: "These were deliberate breaches. Swinton was fully aware it should establish a customer's need for PPI before recommending it, yet nearly half a million policies were sold to customers who didn't necessarily require them. Swinton's PPI sales fell a long way short of our requirements and the firm clearly failed to treat its customers fairly. This penalty, the remedial action, and Swinton's departure from the PPI market - along with our recent announcement outlining the FSA's tougher measures for regulating PPI - serve as a shot across the industry's bow to remind it to play fair, or not play at all."

By agreeing to settle at an early stage of the investigation Swinton qualified for a 30% reduction on the full fine; were it not for this discount, the FSA would have imposed a financial penalty of £1.1 million.

www.qbeeurope.com/pi
tel: 020 7105 4000
e-mail: enquiries@uk.qbe.com

Final Notice - GMAC-RFC Limited fined £2.8million for unfair treatment of customers & will pay up to £7.7m

Financial Services Authority

http://www.fsa.gov.uk/pubs/final/gmac_rfc.pdf

The Financial Services Authority (FSA) has announced it has fined GMAC-RFC Limited (GMAC-RFC) £2.8million for failing to treat customers fairly and secured redress of up to £7.7million (plus interest) for over 46,000 mortgage customers. Between 31 October 2004 and 30 November 2008, a number of serious failings by GMAC-RFC were identified in relation to its dealings with customers experiencing arrears and repossessions. These include:

- excessive and unfair charges for customers that did not reflect administration costs;
- proposing repayment plans that did not always consider a customer's individual circumstances;
- inadequate training of mortgage servicing staff in handling of arrears and repossessions; and
- issuing repossession proceedings before fully considering all the alternatives.

The case sets a precedent, with the FSA concluding this investigation in a matter of weeks, and the firm working with the FSA to agree a process to enable customers to receive redress as quickly as possible. As a result of early settlement, the firm qualified for a 30% discount under the FSA's settlement discount scheme. Without the discount the fine would have been £4million.

Margaret Cole, director of Enforcement and Financial Crime, said: "This case shows credible deterrence in action. It is an excellent example of what the FSA's more intrusive approach can achieve for consumers, and it reflects what we said in our Mortgage Market Review last week about unfair mortgage arrears charges. Mortgage lenders and third party administrators should read this final notice and the Mortgage Market Review and take action in the interests of their customers."

Statement - Lehman-backed structured products - update

Financial Services Authority

http://www.fsa.gov.uk/pages/Library/Communication/Statements/2009/lehman_update.shtml

Arc Capital and Income plc (ACI) has announced that it is going into administration. The firm focused on delivering structured investment products to retail investors, including Lehman-backed structured products. This announcement follows an extensive Financial Services Authority (FSA) review of structured products and subsequent discussions with the firms. The FSA's review looked at the UK structured products market, including those backed by Lehman, and as part of this review examined the firm's systems and controls and marketing literature. As a result, the FSA asked the firm to assess its financial position in relation to potential claims by investors with Lehman-backed structured products.

As this firm is now in administration, consumers who had invested in Lehman-backed products with the firm may be entitled to compensation from the Financial Services Compensation Scheme (FSCS). The firm's administrators, Robin Davis, Melvyn Carter and John Alexander of Carter Backer Winter LLP will shortly contact all customers who bought products through this firm, setting out what they need to do next. The FSA's Moneymadeclar website provides further information on what this means for consumers who bought Lehman-backed structured products and other products from ACI. Further information on the FSA's structured products review can be found on the Wider Implications website. The FSA will publish the full findings of its review later this month.

www.qbeeurope.com/pi
tel: 020 7105 4000
e-mail: enquiries@uk.qbe.com

Press Release - FSA takes action to help investors with Lehman-backed structured products

Financial Services Authority

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2009/144.shtml>

The Financial Services Authority (FSA) has announced tough and wide-ranging action to help investors who received unsuitable advice or misleading promotional material when they bought a Lehman-backed structured product, as well as measures to address issues in the wider structured products market. This follows an FSA review of the marketing and distribution of structured products, particularly those backed by Lehman Brothers, to achieve the best outcome for all investors who were affected by the insolvency of the firm.

The FSA found significant advice failings on Lehman-backed products in most of the financial advice firms sampled, as well as serious deficiencies in the marketing literature provided by a number of the plan managers selling these products. As a result, the FSA is taking direct action to address the detriment this has caused for investors with Lehman-backed products and robust steps to ensure all future structured products investors are treated fairly, including:

Lehman-backed structured products

- following the FSA's review of their promotional material and its subsequent discussions with the firms, three plan managers that packaged and marketed Lehman-backed structured products - NDF Administration (NDFA), Defined Returns Limited (DRL) and Arc Capital and Income plc (ACI) - have gone into administration. As a result, investors who purchased Lehman-backed structured products through these firms may be entitled to compensation from the Financial Services Compensation Scheme (FSCS). The firms' administrators are contacting investors with information on how this affects them;
- issuing all firms that gave advice to investors on Lehman-backed structured products with a template they should use to deal with customer complaints - it outlines the criteria the FSA expects them to use to assess the advice they gave to ensure investors are treated fairly and consistently;
- writing to all remaining investors that will not be contacted as a result of the plan managers' administration, and publishing guidance, to help investors consider what steps to take, including making a complaint, if they believe they were misled by product literature or received unsuitable advice;
- referring three advice firms to enforcement for giving unsuitable advice, and instructing other advisers it looked at to review past sales of Lehman-backed structured products and pay redress where appropriate;
- providing clear guidance to all firms advising on structured products (both those backed by Lehman Brothers and other firms) on the standards it expects them to meet, including examples of good and poor practice it identified during its review;

Wider structured products market (non Lehman-backed)

- writing to the largest sellers of other structured products, asking them to examine how they have sold these products in the past against the standards reiterated by the FSA and, if necessary, to review past sales and provide investor redress where appropriate, as well as change their approach for future advice and sales;
- in the course of 2010 the FSA will undertake follow-up assessments to ensure that firms are meeting its advice standards; and
- following-up with plan managers where the FSA had concerns about their marketing of non Lehman-backed structured products, to assess whether firms' current literature meets its requirements, and setting out the standards it expects firms to meet when designing and marketing structured products.

www.qbeurope.com/pi
tel: 020 7105 4000
e-mail: enquiries@uk.qbe.com

Financial Promotions - Structured deposits

Financial Services Authority

<http://www.fsa.gov.uk/Pages/Doing/Regulated/Promo/thematic/structured.shtml>

The FSA carried out a thematic review of structured investment products in response to the collapse of Lehman Brothers. Structured deposits were not within the remit of this review. However, as there are similarities between structured investments and structured deposits in terms of both product marketing and legitimate consumer expectation, the FSA reviewed a sample of structured deposit promotions in order to identify any concerns. Visit this new web page for details of the findings.

Discussion Paper DP09/5: Enhancing financial reporting disclosures by UK credit institutions

Financial Services Authority

http://www.fsa.gov.uk/pubs/discussion/dp09_05.pdf

The Financial Services Authority (FSA) has announced that the major UK-headquartered banks have agreed to implement a tough new code for financial reporting disclosure. The code forms part of proposals, designed to enhance investors' confidence in financial reporting and to aid their ability to compare and contrast banks' performance. It is based on an overarching principle that UK banks are "committed to providing high quality, meaningful and decision-useful disclosures to users to help them understand the financial position, performance and changes in the financial position of their businesses".

The FSA is inviting views on the application of this code to banks and other credit institutions. In the meantime, the major banks, at the FSA's request, have agreed to implement the code in their 2009 year end annual reports. If the banks are unable to sufficiently improve the quality and comparability of their disclosures in their 2009 annual reports, the FSA is also seeking views as to whether the code needs to be supplanted by more detailed disclosure templates.

Paul Sharma, FSA director, prudential policy, said: "In the Turner Review we set out our view that the financial crisis had raised questions as to the adequacy of financial disclosure by banks throughout all major economies and the level of confidence that investors could place in their financial reports. The tough disclosure code puts UK banks further ahead of the game internationally in addressing these concerns. But when applying this code to their 2009 year end accounts, the FSA expects firms to achieve significant improvement in the quality and comparability of disclosures."

The code is being launched to the industry by the British Bankers Association (BBA). The Turner Review identified a concern that in spite of banks' efforts to enhance disclosures during 2008 and 2009, investor confidence in financial reports appeared to remain low. The FSA has worked closely with the BBA and major firms to develop the code, which sets out key principles accompanied by explanatory text to highlight how the principles should be applied in practice.

Speech - Examining the causes of the financial crisis

Financial Services Authority

http://www.fsa.gov.uk/pages/Library/Communication/Speeches/2009/1029_at.shtml

Speech by Adair Turner, Chairman, FSA at The Economic Club of America and National Journal Group. This speech covers:

- the causes of the financial crisis
- specific features which illustrate that this was not just a crisis of specific institutions or regulations, but a crisis of economic theory.
- two issues where more thinking has to be done and where there needs to be a wide range of different policy options.

www.qbeeurope.com/pi
tel: 020 7105 4000
e-mail: enquiries@uk.qbe.com

Press Notice - FSA begins new banking regulation to promote fairness for consumers

Financial Services Authority

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2009/146.shtml>

The Financial Services Authority (FSA) will begin regulating banks' and building societies' day-to-day contact with their customers from 1 November 2009, covering everything from direct debits, payments, instant access and savings accounts through to unauthorised transactions and notification of interest rate changes. This new framework will deliver wide-ranging benefits for consumers, including:

Getting information up front - Banks will have to provide prospective customers with full information on the service or product that interests them. Previously customers only received limited information up front, with the remainder following once they had signed up to the service or product. The change in approach will let consumers make more informed decisions.

Advance notification of changes - Banks and building societies must provide advance notice of changes to key terms and conditions. For current and instant access accounts, they will have to give customers at least two months' prior notice of any disadvantageous interest rate changes (except if the account explicitly 'tracks' a reference rate; e.g. 2% above the Bank of England Base Rate or the change is an explicit part of the contract).

Unauthorised transactions - Where a customer claims that an unauthorised transaction has taken place, the bank must refund the amount unless they can show some good reason why they need to investigate the claim.

Giving value when money is received - For current and instant access accounts, consumers will now begin receiving interest on money transferred into their account from the moment that the bank receives the funds. This is referred to as giving value, and will be extended to all accounts from 1 February 2010.

Unexpected sums - If a debit is made from a customer's credit or debit card, or indeed a direct debit, and it is more than they could reasonably have expected, the entire amount must be refunded by the bank unless they can provide evidence to justify refusing the refund. They must do so within 10 days.

Commenting on these reforms, Dan Waters, the FSA's director of conduct risk, said: "From the 1 November there will be specific standards covering many aspects of everyday banking transactions that have been major concerns for customers. New regulations will put banking customers in the driving seat by setting down clear standards that people can expect from their institution, like speeding up payments between accounts, adequate notice of changes in terms and conditions, and smoothing the procedure for querying an unauthorised or unexpected transaction. If firms fall short of these standards or fail to treat their customers fairly, the FSA will take action."

From 1 November 2009 the FSA will also regulate money remitters - firms that transmit money across the world. For the first time their customers will have the protection of the Financial Ombudsman Service. Other benefits for customers of money remitters:

- Remitters will have to provide more information to customers before they commit to using their services - for example how long the transfer will take, how much it will cost, details of any applicable exchange rate and if they are FSA regulated.

- Where transfers are made within the European Economic Area, firms will have to clear payments more quickly - once remitters have received money from the customer they will need to ensure the payee receives it the following business day (although until January 2012 as long as the customer agrees this can be extended to the third business day).

Areas of retail banking which fall outside the FSA's remit, such as overdrafts and credit card lending, will continue to be regulated by the Office of Fair Trading under the Consumer Credit Act.

www.qbeeurope.com/pi
tel: 020 7105 4000
e-mail: enquiries@uk.qbe.com

From PADA - Consultation Responses Published on the draft Scheme Order and Rules

Other Items of Interest

<http://www.dwp.gov.uk/docs/draft-scheme-order-and-rules-government-response.pdf>

The Department for Work and Pensions (DWP) and the Personal Accounts Delivery Authority (PADA) have published a summary of responses to the joint public consultation on the personal accounts scheme entitled "Pensions - Consultation on the draft scheme order and rules". The document summarises stakeholders' views to the consultation questions and provides the Government's and PADA's response.

The Pensions Act 2008 included enabling powers to allow a pension scheme to be established through secondary legislation. In common with many other occupational pension schemes, the personal accounts scheme is being established under a trust the terms of which are set out in the scheme order and the scheme rules. Earlier this year the DWP and PADA undertook a public consultation on the main measures, the scheme order and non-statutory scheme rules which closed on 20 July.

DWP and PADA received 36 written responses to the consultation from the pensions industry, employers and organisations representing employers' interests as well as collecting views from PADA's advisory committees. There was broad support for the overall policy approach. No substantial policy changes are recommended as a result of the consultation. However, both DWP and PADA are proposing a range of minor drafting amendments to make the policy intent clearer and to clarify meaning.

From the FOS - Warning! Fraudulent phone calls claiming to be from the ombudsman service

Financial Ombudsman Service

<http://www.financial-ombudsman.org/news/updates/fraudulent-phonecalls.htm>

Phone calls are being made by a firm claiming to be the Banking Ombudsman or Insurance Ombudsman and asking consumers to pay an upfront fee and reveal their bank account details or passwords. These calls are not genuine. The Financial Ombudsman Service is a free service for consumers and there is no need for consumers to make any payment to us. The ombudsman service does not "cold call" consumers and ask for their banking details. If you get a phone call that seems a bit suspicious from someone who claims to be from the ombudsman service - or who says the ombudsman service has passed on your contact details - you can check it out by calling the FOS on 0300 123 9 123.

From the FOS - Debt Collecting

Financial Ombudsman Service

http://www.financial-ombudsman.org/publications/technical_notes/debtcollecting-note.html

The FOS has issued a technical note on complaints where a third-party debt-collection agency has been employed to recover a debt. Click on the link above to view the technical note.

www.qbeeurope.com/pi
tel: 020 7105 4000
e-mail: enquiries@uk.qbe.com

From CIFAS - Increases in fraud reveal a bleak landscape across UK

Other Items of Interest

http://www.cifas.org.uk/default.asp?edit_id=938-57

At the end of the third quarter of 2009, data provided by the 260 Member organisations of CIFAS - the UK's Fraud Prevention Service, proves that fraud continues its inexorable rise. They report:

- an 11% increase in the level of fraudulent activity,
- a 38% upturn in misuse of facility fraud (where an account, policy or other facility is used fraudulently) when compared with the same period in 2008,
- and the continuing scourge of identity fraud and facility takeover fraud.

For full details click on the link above.

Important notice

QBE Insurance (Europe) Limited and any of its associated companies and contractors ("QBE") shall not be liable for any losses or damages whatsoever, whether in contract, tort (including negligence except in the case of death or personal injury) or otherwise arising from use of or reliance on information in, derived from or absent from this Newsletter, or from any delay in receiving or accessing this Newsletter for whatever reason.

QBE does not represent or warrant that access to the Newsletter will be uninterrupted or that there will be no failures, errors or omissions or loss of transmitted information.

QBE shall not be liable to the reader or any third parties for any direct, indirect, special, consequential or punitive damages allegedly sustained arising out of use of or reliance on this Newsletter or any of the information or materials available in it or via the links referred to by it or any subsequent links.

Third party websites

The Newsletter contains links to websites over which QBE has no control. QBE does not accept responsibility or liability for the operation or content of such websites.

Applicable law

The Newsletter (including these terms) shall be governed by English law. The English courts shall have exclusive jurisdiction over any disputes arising in connection with the Newsletter.

Complimentary Helpdesk

Should you require further information or have questions relating to this update or any regulatory issues, QBE has arranged for IFACT Services Ltd to provide a complimentary telephone service to assist intermediaries.

IFACT can be contacted at:

Telephone Number: 08456 121211
Email: queries@ifact.co.uk
Website: www.ifact.co.uk

QBE PI is a combination of the professional indemnity strengths and capabilities of the market leading DA Constable Syndicate 386 and QBE Insurance (Europe) into one specialist team. With over 30 years experience combined, QBE PI is the largest professional indemnity team in the market offering a broad range of flexible solutions to suit the needs of brokers and clients - from major multinational to sole practitioners. QBE PI has been structured to provide the most effective underwriting and claims service reflecting the diversity of our clients' size and professions. Our four underwriting units provide comprehensive insurance solutions across the spectrum of client sizes and buying preferences. For more information, visit www.QBEEurope.com/pi

www.qbeurope.com/pi
tel: 020 7105 4000
e-mail: enquiries@uk.qbe.com