EVERSHEDS SUTHERLAND

UK Horizon scanner

Financial Services Regulatory Investigations and Enforcement

Autumn 2022

EVERSHEDS SUTHERLAND

IMPACT RATING

Immediate impact

Short-term impact

On the horizon

Immediate impact

Legal risk	Action required / Next steps	Supporting information
New Consumer Duty The FCA has published final rules and guidance on the new Consumer Duty (PS22/9 and FG22/5). The new duty has three key elements: (1) A new Consumer Principle (Principle 12), to replace Principles 6 and 7 for retail business (2) Cross-cutting rules requiring firms to: act in good faith towards retail customers; avoid causing foreseeable harm to retail customers; and enable and support retail customers to pursue their financial objectives; and (3) Four outcomes that the FCA wants to see, relating to products and services, price and value, consumer understanding, and consumer support. The new requirements are broad in scope and relate to matters including product governance, distribution arrangements, price and value, customer communications, customer support, governance and culture, outcomes monitoring, redress, and the sale and purchase of product books. A new Individual Conduct Rule requiring conduct rules staff to act to deliver good outcomes for retail customers will also be introduced. The FCA is not introducing a private right of action for breaches of the duty, although this will be kept under review. Foreseeable outcomes of the new duty include increased compliance activity and costs for firms, increases in the cost of retail products and services, increased complaints and litigation, and the regulation of pricing and value.	Firms are required to apply the duty to: (1) new and existing products and services that are open to sale (or renewal) from 31 July 2023; and (2) closed products and services from 31 July 2024. The FCA expects firms' boards (or equivalent management bodies) to have agreed their implementation plans by the end of October 2022. The FCA also expects manufacturers to aim to complete all reviews needed to meet the outcomes required for their existing products and services by the end of April 2023, so that they can share with distributors the information necessary for distributors to meet their obligations under the duty. In view of the October deadline, firms should prioritise implementation planning. Boards and senior management should maintain close oversight of their firms' implementation programmes, to ensure everything remains on track. The FCA has published a new webpage on the Duty which contains advice on meeting the October deadline. Firms should also revisit any implementation work they commenced prior to publication of the final rules and guidance, to check there are no gaps. Note that the duty will not apply to cryptoassets or Buy Now, Pay Later products as these are not currently regulated by the FCA, although this is likely to change if and when these sectors are brought within the UK regulatory perimeter.	PS22/9 FG22/5 Eversheds Sutherland briefing Eversheds Sutherland podcast series Speech by Sheldon Mills, Executive Director, Consumer and Competition, FCA FCA webpage – Consumer duty - information for firms
Rising cost of living The FCA has reminded lenders of the regulatory standards they should meet to support borrowers, including those in financial difficulty. The letter is relevant to all retail lending firms.	Review the letter and take action where necessary to ensure the FCA's expectations are being met (with a particular eye to vulnerability). Notably the FCA has also recently sent a Dear CEO letter to firms in the high-cost lending products portfolio.	FCA letter Update on the fair treatment of vulnerable customers

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Legal risk	Action required / Next steps	Supporting information
The letter also sets out the emerging findings from the FCA's review of outcomes for borrowers in financial difficulty and highlights that many of the firms reviewed need to improve the experience and outcomes customers receive to meet FCA expectations. Separately, the FCA has published examples of good and poor practice on the fair treatment of vulnerable customers. The FCA has also published a statement on switching in the mortgage market, which sets out its expectations of lenders.	When considering what steps to take, document clearly the rationale for any decisions taken, to ensure that senior managers can demonstrate that they have given due consideration to the guidance and taken reasonable steps to comply with their regulatory obligations. The FCA will continue to monitor outcomes and scrutinise firms and will use its supervisory and enforcement powers to take further action as necessary. The detailed findings from the FCA's work on borrowers in financial difficulty are expected to be published later this year.	FCA speech - financial inclusion Press release - struggling consumers FCA update - expectations of lenders FCA statement - switching in the mortgage market Dear CEO letter
Operational resilience Ensuring the UK financial sector is operationally resilient is important for consumers, firms and financial markets. Operational disruptions can cause wide-reaching harm to consumers and pose a risk to market integrity, threaten the viability of firms and cause instability in the financial system. Key developments include: (1) In March 2021, the Bank of England, PRA and FCA published final rules and guidance on operational resilience. The rules are designed to ensure financial services firms and financial market infrastructures are better prepared to deliver and maintain 'important' business services in the face of a significant disruption event (such as a cyber-attack or a major IT failure). Financial institutions are expected to map the services they deliver and identify those which are most important. They are also expected to define risk-tolerances and test their ability to respond to and recover from a range of severe but plausible events. Regulators expect these services to be delivered (or quickly restored), no matter the cause of the disruption (2) Additionally, various papers have been published on outsourcing (including PRA SS2/21 and the FSB report), and the PRA has published a policy statement on operational resilience and operational continuity in resolution (OCIR); and	By 31 March 2022, firms should have completed the first phase of changes to internal structures and external arrangements in order to meet regulatory expectations and taken the first step towards compliance with the rules. There is then a hard stop date of 31 March 2025 to achieve full compliance. This means that as soon as reasonably practicable after 31 March 2022, and by no later than 31 March 2025, firms will need to have: performed mapping and testing so that they can remain within impact tolerances for each important business service; and made the necessary investments to enable them to operate consistently within their impact tolerance. The PRA's rules on OCIR (PS 2/22) come into force on 1 January 2023. The discussion paper on oversight of CTPs is open for comments until 23 December 2022. Subject to the outcome of Parliamentary debates on the Financial Services and Markets Bill and responses to the discussion paper, the regulators plan to consult on proposed requirements and expectations for CTPs in 2023.	PS21/3 PRA speech DP3/22 Eversheds Sutherland FSDI hub - operational resilience

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(3) In July 2022, the Bank of England, the PRA and the FCA published a joint discussion paper setting out potential measures to oversee and strengthen the resilience of services provided by critical third parties (CTPs) to the UK financial sector (DP3/22). The measures include: a framework for identifying CTPs; minimum resilience standards; and a framework for testing the resilience of material services that CTPs provide.		
Climate-related disclosures Government and regulatory focus on climate change means that financial services firms have to provide much more information about their ESG risks in their annual reports, including whether climate related risks have been identified and are being managed. Key developments include: (1) New rules (PS21/23) mean from 1 January 2022 standard listed companies have to make climate-related disclosures (the first annual reports subject to the new rule will be published in early 2023) (2) New rules (PS21/24) also apply to asset managers, life insurers and FCA-regulated pension providers from 1 January 2022 for the largest in-scope firms and one year later for smaller firms above the £5 billion exemption threshold; the first public disclosures in line with the requirements must be made by 30 June 2023 (3) The FCA's latest annual report provides an update on the regulator's progress towards a number of ESG-related outcomes (4) The FCA has published its first climate-related disclosure report, which sets out the regulator's own approach; and (5) The FCA has also published a review of climate-related financial disclosures by premium listed commercial companies, which sets out the FCA's preliminary observations on the quantity and quality of disclosures.	The FCA will separately consider stakeholder views on the ESG-related discussion topics in capital markets, with a view to publishing a Feedback Statement in the first half of 2022. The FCA will monitor progress against its ESG strategy commitments and measure the success of its interventions, provide interim updates, and provide a more detailed stock-take on progress in 2023. Separately, firms should also review the Financial Reporting Council's (FRC) Statement of Intent on ESG challenges. The FRC's Annual Review of Corporate Reporting 2020/21, published in October 2021, states that the FRC's routine monitoring of annual reports and accounts during the 2021/22 cycle will include a focus on climate-related risks and new disclosures. The FRC has also published a thematic review of climate-related disclosures in financial statements.	FCA ESG Strategy FCA Business Plan FCA Annual Report FCA climate-related financial disclosure FCA review of TCFD-aligned disclosures PS21/23 PS21/24

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Cessation of LIBOR Publication of 24 LIBOR settings has ended, and the six most widely used sterling and Japanese yen settings are now being published using a changed methodology. Following a consultation (CP22/11), the FCA announced cessation of 1- and 6- month synthetic sterling LIBOR at the end of March 2023. The FCA is assessing feedback on winding down US dollar LIBOR and will respond later this year. The FCA has made clear that: senior managers and boards are expected to understand the risks associated with LIBOR transition and take appropriate action to move to alternative rates; and firms must take reasonable steps to treat customers fairly. The FCA has also published a statement encouraging issuers and bondholders of outstanding LIBOR-linked bonds to take action to transition to fair alternative rates.	Firms should take steps to ensure that their senior managers understand the risks associated with LIBOR transition, act appropriately to move to alternative rates, and take reasonable steps to treat customers fairly during and after the transition.	UK Finance Toolkit Eversheds Sutherland briefing Eversheds Sutherland briefing CP22/11 UK Finance response to CP22/11 FCA statement FCA press release
FCA guidance consultation on branch and ATM closures or conversions The FCA has updated its guidance relating to changes in the provision of in-person banking services, such as branch and ATM closures or conversions. The guidance sets out the FCA's expectations when firms are considering a long-term closure of a branch or ATM or conversion of an ATM. This includes: a full planned closure of a branch or ATM; a reduction in branch opening hours or reduction in branch services where this would have a significant impact on customers, i.e. a partial closure; or conversion of a free-to-use ATM to pay-to-use. While the FCA recognises that decisions on whether to close or convert branches or ATMs are for firms to take, it expects firms to pay due regard to the interests of customers and treat them fairly when considering and implementing such decisions. The guidance builds on the Lending Standards Board review of the Access to Banking Standard and reflects many of its requirements. Alongside the guidance, the FCA has published examples of good and poor practice.	The updated guidance applies from 11 October 2022 and is relevant to firms that operate (or have agents who operate) branches or ATMs, and who are subject to Principles 6, 7 and 11. Firms should review the guidance and have regard to the FCA's expectations when considering branch or ATM closures or conversions. The FCA expects to challenge processes and may ask firms to delay their closure or conversion plans where it is not satisfied that they are complying with Principles 6 or 7. The guidance is potentially relevant to supervisory and enforcement action and the FCA may take it into account when considering whether firms could reasonably have understood or predicted that their conduct fell below the standards required by Principles 6, 7 and 11.	FG22/6 Examples of good and poor practice Access to Banking Standard Review Financial Services and Markets Bill

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Diversity and inclusion (D&I) in financial services A lack of D&I in financial services may increase conduct risk and compromise a firm's ability to understand and meet the needs of its customers. The FCA is increasing its focus on D&I and failure by firms to drive change/make real progress could be met with regulatory action / reputational damage. Key developments include: (1) The FCA, the PRA and the BoE have published a discussion paper seeking views on plans to improve D&I (2) The FCA has also: finalised requirements to improve transparency for investors on the diversity of listed company boards and their executive management teams (PS22/3); and issued a letter to Chairs of Remuneration Committees highlighting that remuneration and incentives have a part to play in supporting diversity within firms (3) Further, the FCA has launched a diversity, equity and inclusion 'spotlight' initiative encouraging firms developing innovative products focusing on fair treatment of consumers, vulnerability, and the new Consumer Duty to work with the FCA's Innovation services. The Financial Services Culture Board and the Financial Services Skills Commission have published a joint report on a common approach to measuring inclusion across the FS sector.	The regulators will use the feedback and data received to develop more detailed proposals, which they intend to consult on, with a formal policy statement expected in 2023. Given the far-reaching nature of many of the policy options, firms should consider the feasibility of complying with the types of requirements discussed in the paper. Separately firms may be interested to read the FCA's ethnicity action plan, the FCA's annual diversity report, and the BoE Court review of ethnic diversity and inclusion, which describe the internal work being undertaken by the regulators on ethnicity and D&I. New FCA rules to improve transparency on diversity for investors apply to in-scope firms for financial years starting on or after 1 April 2022.	DP21/2 FSCB/FSSC report PS22/3 Eversheds Sutherland briefing
Oversight of the Appointed Representatives regime The FCA has finalised new rules and guidance to strengthen oversight of Appointed Representatives (ARs) by principal firms (PS22/11). Under the new rules, principal firms will be required to: (1) Apply enhanced oversight of their ARs, including ensuring they have adequate systems, controls and resources (2) Assess and monitor the risk that their ARs pose to consumers and markets (3) Review information on their ARs' activities, business and senior management annually, and be clear on the	The new rules and guidance come into effect on 8 December 2022. Firms should assess their arrangements for appointing and overseeing ARs and make any changes necessary to comply by this date.	PS22/11 Consultation Flash Update

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circumstances when they should terminate an AR relationship (4) Notify the FCA of a future AR appointment 30 calendar days before it takes effect; and (5) Provide complaints and revenue information for each AR to the FCA on an annual basis. The new rules are intended to reduce the level of misconduct by ARs, increase consumer protection, and reduce consumer harm.		
Government announces plans to strengthen regulation of Buy Now, Pay Later (BNPL) products HM Treasury has published its response to its October 2021 consultation on regulation of BNPL products, which set out proposals for regulation of the sector. The consultation followed publication of the FCA's Woolard Review, which identified an urgent need to regulate the sector in view of the risk of consumer harm posed by BNPL products. Under the new proposals: (1) BNPL lenders will need to be approved by the FCA, and borrowers will be able to refer complaints to FOS (2) BNPL products will have to be affordable and financial promotions should be clear, fair and not misleading (3) The proposals will also cover other forms of unsecured short-term credit that pose similar risks to consumers. Exemptions will be provided for specific agreements where there is limited risk of potential consumer detriment, and where regulation would otherwise have an adverse impact on day-to-day business activities (4) The approach to controls for agreements that will be brought into regulation will tailor the application of the Consumer Credit Act 1974 to these products, and the elements of lending practice most linked to consumer detriment. Meanwhile, the FCA has written to firms to warn that although BNPL agreements are unregulated, the marketing of BNPL products must comply with financial promotion rules to address concerns that non-compliant BNPL promotions could mislead consumers.	The government intends to commence a consultation on draft legislation towards the end of 2022. Following this, the government aims to lay secondary legislation by mid-2023, after which the FCA will consult on rules for the sector. BNPL providers should draw the FCA's letter to the attention of their boards, as the FCA expects firms' boards to consider the issues raised by the FCA and to approve the action taken in response. The FCA will proactively monitor the BNPL market to assess compliance and, where it identifies non-compliant financial promotions, will consider what further action (including potential enforcement action) may be appropriate.	Press release Consultation response Consultation Woolard Review FCA press release - BNPL FCA letter – BNPL providers Eversheds Sutherland podcast series

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New financial promotion rules for high-risk investments and firms approving financial promotions As part of its Consumer Investments Strategy, the FCA aims to reduce the number of people who invest in high-risk products that do not reflect their risk appetite. This is because the FCA is concerned that a significant number of people who invest in high-risk products do so without understanding the risks involved. The FCA has now finalised new rules for the promotion of high-risk investments and firms that approve and communicate financial promotions (PS22/10). Under the new rules, firms approving and issuing financial promotions must have appropriate expertise, while firms marketing some types of high-risk investments will need to conduct improved checks to ensure that consumers and their investments are well-matched. Firms will also need to use more prominent risk warnings, while certain incentives to invest, such as 'refer a friend' or 'new joiner' bonuses, will be banned.	Consider the policy statement and assess the applicability and impact of the new rules. Rules related to risk warnings for financial promotions of high-risk investments will take effect from 1 December 2022, while all other rules and non-Handbook guidance will take effect from 1 February 2023. Note that the new rules will not apply to cryptoasset promotions. Once the government and Parliament legislate to bring cryptoasset marketing within the FCA's remit, the FCA will publish final rules on the promotion of qualifying cryptoassets, which are likely to follow the same approach as for other high-risk investments.	PS22/10
FCA warns consumer credit firms on misleading financial promotions The rising cost of living is expected to lead to a greater demand for credit, particularly by consumers in vulnerable circumstances. The FCA has written to consumer credit firms: (1) Warning against using misleading terms (e.g. 'no credit check loans', 'loan guaranteed', 'pre-approved', or 'no credit checks') when marketing credit products and services, otherwise they may face regulatory action. The FCA expects consumer credit firms to ensure all financial promotions are clear, fair and not misleading and otherwise comply with the rules in CONC 3 (2) Firms should focus on customers' needs, delivering the right information, at the right time, and in accordance with FCA rules. Firms have a responsibility to ensure they do not exploit the cost of living crisis to promote their services; and (3) Firms must also comply with the ASA's UK Code of Non-broadcast Advertising and Direct & Promotional Marketing The letter is consistent with the FCA's new strategy, which includes a focus on driving up standards and making firms put consumers' needs first.	Firms should satisfy themselves that any financial promotions they have issued or approved which are currently in use comply with the requirements in CONC 3. Firms should draw the FCA letter to the attention of their boards and senior management, as the FCA expects firms' boards to have considered the issues raised in the letter and to have approved the action taken in response. The FCA has also advised firms to consider conducting a review of their processes and systems and controls for financial promotions, to determine whether they are sufficiently robust to comply with CONC 3. The FCA will proactively monitor credit advertising to assess compliance. Where firms fail to comply, the FCA may take action which could include banning adverts, requiring firms to change or withdraw them, or removing a firm's permission to engage in regulated credit activity.	FCA letter FCA press release FCA speech

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FCA tells banks to improve treatment of struggling small business owners The FCA has written to the chairs of all retail banks with small business customers to remind them of the regulatory standards they should meet to support small and medium sized enterprises (SMEs) during collections and recoveries. This follows a multi-firm review by the FCA of how retail banks treat SME customers who are in collection and recoveries. The review found repeated instances of poor customer outcomes and failures to treat customers fairly. Themes driving poor customer outcomes included: (1) Gaps in policies and procedures (2) Inadequate staff training (3) Absence of outcomes testing or quality assurance that considered whether customers had received fair outcomes (4) Poor record-keeping; and (5) Inadequate consideration of information indicating characteristics of customer vulnerability. The FCA's letter reminds firms of the importance of considering how they will ensure fair customer outcomes in light of the current pressures placed upon SMEs due to the adverse impacts of Covid-19 and the cost of living crisis.	Firms should draw the Dear Chair Letter and SME collections and recoveries review to the attention of their boards and senior management, as the FCA expects firms' boards to have considered the issues raised and to take action where necessary to ensure the FCA's expectations are being met. If firms are aware, or become aware, that they are unable to meet regulatory expectations, they should inform the FCA in a timely manner, with a plan to fix any issues identified. In future, the FCA is likely to ask firms with SME customers to demonstrate compliance with its expectations. The FCA will continue to monitor outcomes and scrutinise firms in this sector and will use its supervisory and enforcement powers to take further action where necessary.	Dear Chair Letter SME collections and recoveries review
FCA warns alternative asset managers about mis-selling, conflicts and remuneration The FCA has written to alternative asset management firms setting out its supervisory strategy for the sector. The FCA remains concerned by inappropriate distribution and marketing practices and states that firms can reduce the risk of consumers being exposed to inappropriate investment strategies by conducting thorough investor assessments. The letter expresses concern about poor management of conflicts of interest and highlights that where the FCA identifies investor harm, it will assess whether inadequate management of conflicts played a role and consider the need for enforcement action. The letter also reminds firms of the link between remuneration and incentives and organisational culture, noting that inappropriate incentives can increase conflicts of interests and the potential for harm.	Firms should satisfy themselves that their approaches to marketing and distribution, managing conflicts of interest, and remuneration and incentives are in line with the FCA's expectations. Firms should also draw the FCA's letter to the attention of their board or executive committee, as the FCA expects them to consider which of the risks highlighted in the letter are applicable to their business and whether their firm has appropriate strategies in place to address them.	FCA letter

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FCA Perimeter Report The FCA's annual Perimeter Report explains what it does and does not regulate, describes specific issues the FCA sees around the perimeter and the action it is taking in response, and sets out the areas in which the FCA considers changes to the perimeter are needed. Topics covered in the latest report include the impact of technological changes and issues relating to: specific firm business models; lending; consumer investments; and wholesale markets. On 19 July 2022, the FCA wrote to the then Chancellor of the Exchequer in response to remit letters from the previous Chancellor which set out recommendations to the FCA about aspects of the government's economic policy to which the FCA should have regard when considering how to advance its objectives and discharge its functions. In its response, the FCA stated that it would welcome the power to recommend changes to ensure that the perimeter enables the FCA to protect consumers and markets in a dynamic and ever-changing financial services sector.	The Financial Services and Markets Bill, which was introduced to Parliament on 20 July 2022, includes measures that take forward the outcomes of the Future Regulatory Framework Review and the Chancellor's vision for financial services (see separate entries). These include measures that may change the perimeter. The Bill is now at Committee Stage. Review the Perimeter Report to ensure familiarity with the FCA's proposed changes to the perimeter. Any decision to extend the regulatory perimeter rests with the government.	FCA Perimeter Report FCA letter Financial Services and Markets Bill
FCA strategy and business plan The FCA has published its strategy for 2022 to 2025 and its new business plan for the next 12 months. Consistent with messaging from FCA executives, firms can expect to see the regulator become more innovative, assertive and adaptive going forward. The FCA is changing its operating model to focus on results (rather than being driven by processes) and the problems in front of it (rather than addressing types of firms or sectors). The strategy makes commitments focusing on three key areas: (1) Reducing and preventing serious harm (2) Setting and testing higher standards; and (3) Promoting competition and positive change.	The business plan describes the outcomes the FCA wants to achieve across each focus area and the key activities it will undertake in each area over the next year. See our linked briefing for an overview and for further information on each focus area. Firms should ensure familiarity with the FCA's direction of travel. Also, in its latest annual report (July 2022) the FCA describes the work it has undertaken over the past 12 months to achieve its key priorities, its cross-cutting priorities, and its priorities within specific sectors.	FCA strategy FCA business plan Eversheds Sutherland briefing FCA annual report
PRA business plan The PRA's new business plan sets out its strategy and workplan for the next 12 months. A central aspect of the plan is to make changes to improve the efficiency and effectiveness of the PRA and to accommodate global changes. Following a strategic review, the PRA has replaced its eight previous strategic goals with four new priorities which recognise that the resilience of the banking and insurance sectors are materially improved and the PRA's focus has shifted to maintaining that improved level of resilience while	Review the business plan and ensure familiarity with the PRA's new strategic priorities. Separately, in its latest annual report, published in June 2022, the PRA describes the work it has undertaken over the past 12 months to deliver its strategic goals. The PRA has also published its latest Enforcement Decision Making Committee	PRA business plan PRA annual report PRA EDMC annual report

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tailoring rules more effectively to UK markets and firms. The new strategic priorities are to: (1) Retain and build on the strength of the banking and insurance sectors delivered by the financial crisis reforms (2) Be at the forefront of identifying new and emerging risks, and developing international policy (3) Support competitive and dynamic markets in the sectors that the PRA regulates; and (4) Run an inclusive, efficient and modern regulator within the central bank.	(EDMC) report, which reports on the work of the EDMC over the past 12 months.	
Guidance on the FCA's approach to compromises for regulated firms The FCA has published finalised guidance on its general approach to compromises, which are arrangements between a firm and its creditors and/or shareholders that can be used to reorganise a company or group structure, including restructuring debts. Key points include: (1) The FCA has seen an increase in the number of regulated firms proposing compromises to deal with significant liabilities to consumers, in particular redress liabilities (2) The guidance is to help firms understand what information the FCA needs on proposed compromises and the factors it will consider when deciding what actions to take; and (3) The guidance reminds firms of their obligations, under Principle 11, to notify the FCA immediately and provide relevant information at an early stage if they are considering proposing a compromise. The guidance relates only to compromises in relation to liabilities.	The guidance makes it clear that if a firm proposes a compromise in respect of redress liabilities, the firm should ensure that it is the best proposal the firm can make, which includes the firm providing the maximum amount of funding for the compromise so that consumers receive the greatest proportion of what is owed to them. Firms should consider the guidance and assess its applicability to/impact on their business. Failure to act in accordance with the guidance could result in the FCA using its regulatory powers to prevent the firm from pursuing the compromise, including by objecting to the proposals in court. The FCA also has the option to intervene by using its regulatory powers, including taking enforcement action against firms and their senior managers where appropriate.	FG22/4
FCA sets out supervisory strategies for mainstream consumer credit lenders (MCCL), lifetime mortgage providers and debt advice firms The FCA has written Dear CEO Letters on its supervisory strategies for firms in the MCCL, Lifetime Mortgage Providers, and Debt Advice portfolios. Each letter provides an updated view of the key risks in each portfolio, outlines the FCA's expectations of firms, and provides an overview of the FCA's supervisory strategy and	Firms should review the letter(s) relevant to their business activities and take action where necessary to ensure the FCA's expectations are being met. The FCA expects firms' CEOs and their boards to consider the extent to which their firm presents the key risks identified in the letters and strategies that could be used to mitigate them, and to be able to demonstrate the steps being taken to address and mitigate those risks.	Dear CEO Letter - MCCL portfolio Dear CEO Letter – lifetime mortgage providers Dear CEO Letter – debt advice firms

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programme of work to ensure that firms are meeting the FCA's expectations and harms are being appropriately mitigated.		
Regulatory focus on loyalty – risk of long term customers overpaying for financial products Ensuring that markets work well and provide fair outcomes for longstanding and vulnerable consumers continues to be a priority for the FCA. Failure to look after the interests of all customers and treat them fairly may result in the FCA exploring all options to address this using the full range of its powers. Recent developments include: (1) The FCA continues to monitor the market closely following its package of remedies to improve competition and protect home and insurance customers from loyalty penalties (PS21/5). The FCA is due to review the effects of the remedies over the course of 2022, ahead of a full evaluation in early 2024 (2) The FCA will support the government as it considers the timing, scope and nature of legislation on open finance; and (3) The FCA's Mortgage Prisoner Review has been laid before Parliament. In the meantime, the FCA is encouraging lenders to consider if they can amend their lending criteria to lend to mortgage prisoners who are close to their risk appetite.	Firms should also consider the final rules and guidance relating to the new Consumer Duty (see separate entry), as one of the harms that the duty intends to address is the exploitation of consumer loyalty or inertia.	PS21/5: General insurance pricing practices market study PS21/11 General insurance pricing practices - amendments General insurance pricing practices - Q&As on the published rules
Financial Services Regulatory Initiatives Forum publishes fifth edition of the Regulatory Initiatives Grid (the Grid) The Financial Services Regulatory Initiatives Forum comprises representatives from the Bank of England, FCA, PRA, Payment Systems Regulator, Competition and Markets Authority, Information Commissioner's Office, The Pensions Regulator, and the Financial Reporting Council, and was established to strengthen coordination between members. The Grid, which is published twice a year, sets out planned regulatory initiatives for the next 24 months and assists the financial services industry and other stakeholders in understanding and planning for the timing of initiatives that may have a significant operational impact on them.	The current Grid includes initiatives related to the Financial Services and Markets Bill that aims to reform the rules that regulate the UK's capital markets, protect access to cash, introduce new consumer protections, and harness innovation. Review the Grid to identify and plan for those regulatory initiatives that may have a significant operational impact on their business.	Regulatory Initiatives Grid

On the horizon

Legal risk	Action required / What's next	Supporting information
Financial Services Future Regulatory Framework (FRF) Review A review of the UK financial services regulatory framework to address the need for it to adapt to be fit for the future (particularly in light of Brexit) has been undertaken. Key developments include: (1) In June 2022, the Treasury Committee published a report on the future of financial services regulation, which outlined that while there are real opportunities to improve competitiveness through regulatory reform, competitiveness should not become a primary objective of financial regulators. The report also warned against any inappropriate weakening of the UK's regulatory standards (2) In July 2022, HM Treasury published a breakdown of the key themes raised in response to its November 2021 consultation and the government's final proposals to implement the FRF Review; and (3) The Financial Services and Markets Bill implements the outcomes of the FRF Review, revoking retained EU law relating to financial services and enabling HM Treasury, the FCA and the PRA to replace it with legislation designed specifically for UK markets.	The government's final policy to implement the FRF Review is set out in the Financial Services and Markets Bill and the accompanying Impact Assessment and Explanatory Notes. The Bill is now at Committee Stage.	Treasury Committee report HM Treasury, PRA and FCA responses to Treasury Committee Report HM Treasury second consultation TSC Future of Financial Services hub HM Treasury response to second consultation Financial Services and Markets Bill
Government's vision for financial services In July 2022, Nadhim Zahawi, then Chancellor of the Exchequer, delivered his Mansion House speech. Points of interest include: (1) The government intends to give the FCA and the PRA a new, secondary objective to help promote the global competitiveness of the UK's financial sector (2) An important part of the government's vision for the future of financial services in the UK is the Financial Services and Markets Bill, which aims to tailor financial services regulation to UK markets to bolster the competitiveness of the UK as a global financial centre and deliver better outcomes for consumers and businesses; and	Maintain a watching brief. The Bill is now at Committee Stage. Further, recent changes in government may result in changes in approach to the financial services sector.	Mansion House 2022 hub Mansion House speech Financial Services and Markets Bill State of the sector report

Legal risk	Action required / What's next	Supporting information
(3) Progress has been made in a number of other areas, including: accepting the recommendations to the government of the Secondary Capital Raising Review; reform of the Prospectus Regime; reform of Solvency II; supporting the work of the Transition Plan Taskforce; working to understand the application of distributed ledger technology to sovereign debt issuance; and publishing the first edition of the State of the sector report jointly with the City of London Corporation.		
UK government commits to reform of the Consumer Credit Act 1974 (CCA) HM Treasury has announced that the UK government is committed to reform of the CCA. The government intends to move much of the CCA from statute to sit under the FCA. This will enable the FCA to respond quickly to emerging developments in the consumer credit market, rather than having to amend existing legislation. The government also intends to simplify ambiguous technical terms to make clear to consumers what protections they have and make it easier and more cost effective for businesses to comply with regulation. The reforms will build on the recommendations of the FCA's report on the retained provisions of the CCA and the Woolard review, both of which made recommendations for reform.	A consultation outlining the government's proposals and seeing views from stakeholders on how the CCA should be reformed is expected by the end of 2022. As reform of the CCA will be complex and require substantive work, the government expects it to take place over an extended timeframe to ensure the reforms are fit for purpose.	HM Treasury announcement Woolard Review FCA final report on retained provisions of CCA
Regulation of cryptoassets Cryptoasset ownership is on the increase but brings significant risks to consumers and market integrity due to their potential use in financial crime and their highly volatile nature. Consequently, the FCA is focussing its interest on trying to stop the harm they may cause. Once the government and Parliament legislate to bring cryptoasset marketing within the FCA's remit, the FCA will publish final rules on the promotion of qualifying cryptoassets, which are likely to follow the same approach as for other high-risk investments (see separate entry). Other developments include: (1) FCA Chief Executive Nikhil Rathi has indicated that the UK and US will deepen ties on financial innovation, including in	Keep a watching brief in relation to financial promotion rules for qualifying cryptoassets. Firms should also review the FCA notice reminding regulated firms of their obligations in relation to cryptoassets. Given the potential risks of cryptoassets, the FCA is expected to come down hard on firms where harm is caused. The Advertising Standards Authority (ASA) has recently released guidance on cryptoassets. Until some forms of cryptoassets are brought into FCA regulation, all unregulated cryptoassets will continue to be subject to the Advertising Code. When the FCA takes on responsibility for regulation of most forms of cryptoassets, the ASA will retain	FCA notice FCA speech IOSCO Crypto Roadmap FCA CryptoSprint Outputs ASA guidance

Legal risk	Action required / What's next	Supporting information
relation to stablecoins and the exploration of central bank digital currencies (2) IOSCO published its cryptoasset roadmap for 2022/23 comprising two workstreams, focusing on crypto and digital assets (CDA) and decentralised finance. The CDA workstream will be led by the FCA and focus on market integrity and investor protection (3) The FCA has held a number of 'CryptoSprint' events, seeking industry views on the current market and the design of an appropriate regulatory regime (4) The FCA has made clear a commitment to tackle firms and individuals who cause consumers harm in its Business Plan (5) The FCA has published a notice reminding regulated firms of their existing obligations when interacting with or exposed to cryptoassets. The PRA also wrote to the CEOs of banks and designated investment firms on the treatment of cryptoassets under the current regulatory framework (6) The FCA continues to warn of the risks associated with cryptoasset investments; and The All-Party Parliamentary Group on Crypto & Digital Assets has launched an inquiry into the need for further regulation of the UK crypto sector.	oversight across all forms of cryptoasset advertising.	

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Service Excellence

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