

# Horizon scanner Insurance

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## RISK RATING

Potential impact



Legal issue/risk	When?	What's next?	Supporting information (hyperlinks)
<p><b>Understanding firm's pricing practices in retail general insurance</b></p> <p>The FCA has published its thematic report on household pricing practices and announced a package of measures to follow up its work on pricing practices is necessary.</p> <p>The FCA found as a result of this work that:</p> <ul style="list-style-type: none"> <li>– firms do not have appropriate strategies, governance, control and oversight to enable them to assess whether they are treating customers fairly</li> <li>– differential pricing means some groups of customers with similar risk and cost to serve characteristics may pay higher prices than others</li> <li>– use of rating factors relating to protected characteristics can give rise to a risk of discrimination between consumers</li> </ul> <p>The FCA has made it clear in a "Dear CEO" letter published alongside the thematic report but they expect firms to address these issues.</p>	Ongoing	In its "Dear CEO" letter of 31 October 2018, the FCA made it clear it expects firms to address the issues identified in the Thematic Report and to be able to explain and evidence any remedial actions taken. Consider the findings in the report and review pricing strategy to ensure it is appropriate and has effective governance and controls to determine and monitor pricing activities and assess how pricing decisions affect consumer outcomes.	<a href="#">FCA Business Plan 2018/19</a>



Immediate impact  
(in force now or imminently)



Short term impact (development expected or due to be in force by 1 April 2019)



Medium term impact (development expected or due to be in force after 1 April 2019)



Legal issue/risk	When?	What's next?	Supporting information (hyperlinks)
<p><b>General Insurance Pricing Practices market study MS 18/1</b></p> <p>The FCA has published the terms of references for a market study into retail, home and motor insurance pricing practices. It is intended to deepen the FCA's understanding of consumer outcomes from pricing practices and what drives this, fairness of pricing practices and the impact of pricing practices on competition.</p> <p>The market study will look at three key areas:</p> <ul style="list-style-type: none"> <li>– harm from pricing practices and what drives this</li> <li>– fairness of pricing practices</li> <li>– impact of pricing practices on competition</li> </ul> <p>If the market study identifies that consumers are being harmed through pricing practices, the FCA is likely to consider proportionate remedies which may include:</p> <ul style="list-style-type: none"> <li>– changes to how firms price insurance</li> <li>– contractual changes e.g. limiting auto-renewal</li> <li>– limiting differences in prices between different groups of consumers</li> </ul> <p>Consider each of the three key areas above and the specific questions listed in the terms of reference as the FCA intends to engage directly with stakeholders to gather their views and gather specific data from firms and third parties.</p>	Ongoing	An interim market study report is expected to be published in Summer 2019, with the final market study report (and consultation on any proposal remedies) published by the end of 2019.	<a href="#">General Insurance Pricing Practices MS/1</a>
<p><b>Product Oversight and Governance Implementing Regulation</b></p> <p>On 21 September 2017, the EU Commission adopted an implementing regulation (c(2017)6218 final) which sets out requirements mainly addressed to manufacturers of insurance products which will require them to maintain, operate and review a product oversight and governance policy to ensure that all products marketed are appropriate for their target market at all times. Insurance distributors must ensure they have all the information needed to sell the product in line with the manufactured product oversight and governance policy set out by the manufacturer.</p>	1 October 2018	FCA Policy Statements PS17/21, PS17/27 and PS18/1 incorporate the requirements of these regulations. Ensure effective processes are in place to ensure compliance with the regulations following the IDD implementation date on 1 October 2018 and ensure that distribution arrangements are clear who is the manufacturer and has the primary compliance responsibility.	<a href="#">Commission Implementing Regulation</a>



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(in force now or imminently)



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Medium term impact (development expected or due to be in force after 1 April 2019)



Legal issue/risk	When?	What's next?	Supporting information (hyperlinks)
<p><b>Insurers start moving towards the SMCR: latest developments PS1/18</b></p> <p>The PRA has published a policy statement PS1/18 (February 2018) providing feedback to consultation issued in June 2017 on proposed amendments to the senior insurance managers regime (SIMR) and a proposal to strengthen governance through requiring insurers to take steps to encourage board diversity.</p> <p>The aim behind the amendments is to bring the SIMR more closely into line with the senior managers regime as the PRA moves to a more integrated regime.</p> <p>The SIMR originally put in place a streamlined version of the senior managers and certification regime (SMCR) but it had always been the intention to amend that regime to incorporate the other aspects of the SMCR that had not previously been included. There has been separate consultation on extending the SMCR regime to insurers.</p>	10 December 2018	PS1/18 statement is an initial step in this process pending final PRA/FCA policy statements in summer 2018. The extended regime will apply from 10 December 2018.	<a href="#"><u>Strengthening individual accountability in insurance: optimisations to the SIMR PS1/18</u></a>
<p><b>Extension of Senior Managers &amp; Certification Regime (SMCR) (PRA PS15/18, FCA PS18/15)</b></p> <p>The FCA and PRA has published its Policy Statement on the extension of the SM &amp; CR to insurers.</p> <p>The extended regime will come into force on 10 December 2018 for insurers and from mid-to-late 2019 for solo-regulated FCA firms. The FCA proposes that approved persons at core and limited scope firms will be automatically converted to corresponding senior management functions (SMFs) wherever possible. Individuals at enhanced firms will be converted to SMFs subject to the submission of a conversion notification (Form K) and accompanying documentation (statements of responsibilities and responsibilities map).</p> <p>The conduct rules in COCON are expected to apply to senior managers and certified staff from commencement of the new regime. Firms will have 12 months to apply the conduct rules to "other conduct rules" staff (those subject to the conduct rules but who do not hold SMFs or certification functions).</p>	10 December 2018	The consultation closed on 21 February 2018 and the near final PRA and FCA rules have been published. These are due to come into effect on 10 December but the actual date for their commencement will be made by regulation. Consider the rules and assess whether required roles will be correctly allocated and filled and all personnel aware of their responsibilities. If approved person regime functions need to be converted to senior management functions (SMFs), this must be done by midnight on 2 December 2018. If any FCA Prescribed responsibilities are to be assigned to a person holding a PRA SMF this can be done from 10 December 2018.	<a href="#"><u>Eversheds Sutherland article</u></a> <a href="#"><u>FCA near-final rules (PS18/15)</u></a> <a href="#"><u>PRA Policy Statement PS15/18</u></a>




Immediate impact (in force now or imminently)



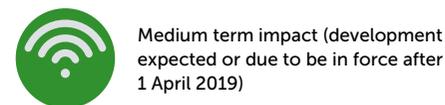
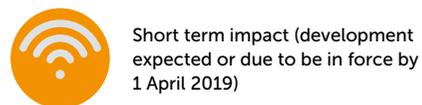
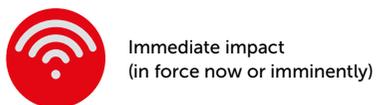
Short term impact (development expected or due to be in force by 1 April 2019)



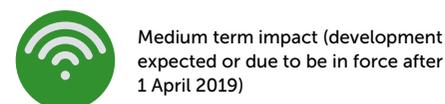
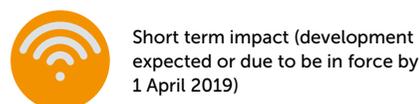
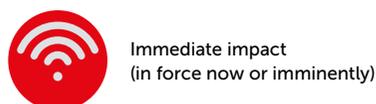
Medium term impact (development expected or due to be in force after 1 April 2019)



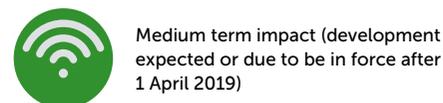
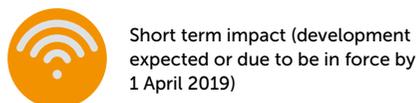
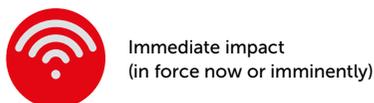
Legal issue/risk	When?	What's next?	Supporting information (hyperlinks)
<p><b>Strengthening accountability: implementing the extension of the SM&amp;CR to insurers CP18/18</b></p> <p>The PRA is proposing a technical correction to the Solvency II firms: Insurance General Application Part of the PRA Rulebook, along with some consequential changes and minor administrative amendments related to the extension of the SM&amp;CR to insurers.</p> <p>This CP includes a proposal for a technical correction to rule 2.2 in the Solvency II firms: Insurance General Application Part of the PRA Rulebook clarifying how the rule applies to insurers which were Solvency 1 or Non-Solvency 1 firms on 31 December 2015. The other changes consist of:</p> <ul style="list-style-type: none"> <li>– an extension of the “overlap rule” which allows a PRA senior manager no longer performing PRA senior management functions to perform FCA responsibilities without being approved by the FCA for a maximum of three months;</li> <li>– the inclusion of some cross-references to the FCA handbook; transitional arrangements for the application of the regulatory references requirements; and</li> <li>– the deletion of obsolete transitional rules relating to the SIMR.</li> </ul>	<p>10 December 2018</p>	<p>The consultation closed on 1 October 2018 to allow for final rules to be published in good time before 10 December 2018. The substantive rules are detailed in PS15/18 but continue to monitor the position in relation to these more minor changes.</p>	<p><a href="#">Strengthening accountability: implementing the extension of the SM&amp;CR to insurers</a></p>



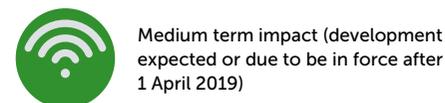
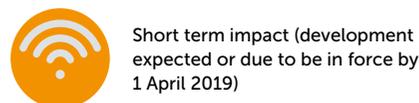
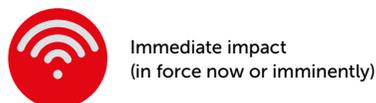
Legal issue/risk	When?	What's next?	Supporting information (hyperlinks)
<p><b>Strengthening accountability: implementing the extension of the SM&amp;CR to insurers (Part 2) (CP20/18)</b></p> <p>The PRA is proposing some further consequential changes and minor administrative amendments related to the extension of the SM&amp;CR to insurers.</p> <p>The PRA's proposed consequential amendments are to ensure that:</p> <ul style="list-style-type: none"> <li>– when insurers are considering which form(s) should be completed in respect of an individual seeking approval for a PRA senior management function (a "senior manager"), an individual who had previously been approved, or deemed to be approved, by the FCA for a "designated senior management function" would have the same status as an individual who was previously approved by the FCA for a "significant influence function"; and</li> <li>– the term "equivalent process contained in the rules of the FCA Handbook" will encompass any deemed approval given by the FCA on: <ul style="list-style-type: none"> <li>(a) 7 March 2016 following a "conversion notification" that was made (on Form K) to the FCA when the Senior Insurance Managers Regime (SIMR) was implemented by the PRA; or</li> <li>(b) the commencement of the extension of the SM&amp;CR to insurers following the submission of a "conversion notification" to the FCA for the purpose of this extension.</li> </ul> </li> </ul>	10 December 2018	The consultation closed on 17 October 2018 to allow for final rules to be published in good time before 10 December 2018. The substantive rules are detailed in PS15/18 but continue to monitor the position in relation to these more minor changes.	<a href="#">Final Guidance: the Duty of Responsibility for insurers and FCA solo-regulated firms (PS18/16)</a>
<p><b>Strengthening accountability: implementing the extension of the SM&amp;CR to insurers PS26/18</b></p> <p>The FCA has made minor changes to the policy it consulted on relating to the definition of "individual conduct requirements". The first change relates to small non-Directive firms only. The PRA has decided not to delete from the definition references to parts of the FCA and PRA handbooks which are no longer in force. This is consistent with the requirement to disclose breaches of individual conduct requirements for the past six years. The final rules come into force on 10 December 2018.</p>	10 December 2018	No further substantive changes are expected to be made to the final policy and rules in PS26/18 and the rules will come into force together with those contained in the other policy statements extending SM&CR to insurers, on 10 December 2018.	<a href="#">Strengthening accountability: implementing the extension of the SM&amp;CR to insurers PS26/18</a>



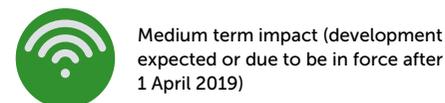
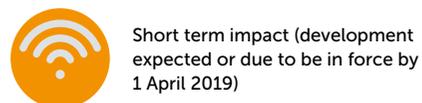
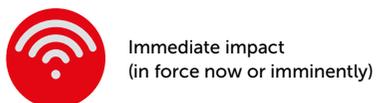
Legal issue/risk	When?	What's next?	Supporting information (hyperlinks)
<p><b>Strengthening accountability: implementing the extension of the SM&amp;CR to insurers PS27/18</b></p> <p>The PRA has published its final policy statement on implementing the extension of SM&amp;CR to insurers. The PRA has made no changes to the rules it consulted on in CP20/18.</p> <p>The PRA's consequential amendments (set out in CP20/18) ensure that when applying for approval of a senior manager who has been previously approved (or deemed to be approved) by the FCA for a designated senior management function that individual would have the same status as an individual previously approved by the FCA to perform a significant influence function. The consequential amendments also clarify the meaning of "equivalent process contained in the rules of the FCA handbook". Be aware of these minor amendments to the substantive rules and take them into account as necessary when implementing the transition from the SIMR to SM&amp;CR.</p>	10 December 2018	No further substantive changes are expected to be made to the final policy and rules extending the SM&CR to insurers. Implementation of changes should be nearing completion.	<a href="#">Strengthening accountability: Implementing the extension of the SM&amp;CR to insurers PS27/18</a>
<p><b>Final Guidance: the Duty of Responsibility for insurers and FCA solo-regulated firms (PS18/16)</b></p> <p>This policy statement sets out how the FCA will apply the duty of responsibility (accountability for breaches in an area for which a senior manager is responsible) to insurers when it comes into force.</p> <p>The Duty of Responsibility specifies that the FCA can take action against a senior manager where the FCA can show that:</p> <ul style="list-style-type: none"> <li>– there was misconduct by the senior manager's firm</li> <li>– at the time of the misconduct or during any part of it, the senior manager was responsible for the management of any of the firm's activities in relation to which the misconduct occurred</li> <li>– the senior manager did not take such steps as a person in their position could reasonably have been expected to take to avoid the misconduct occurring or continuing</li> </ul> <p>The burden of proof lies with the FCA. The FCA will apply the existing DEPP guidance in relation to senior managers of insurers in determining if the senior manager has complied with its duty of responsibility.</p>	10 December 2018	The Duty of Responsibility for insurers will come into effect on 10 December 2018. Be aware of how the FCA and PRA intend to apply this duty (ie in line with their existing guidance in DEPP) and that the burden of proof for enforcing the duty lies with the FCA, not the senior manager. Internal procedures for senior managers should include a requirement to keep records of any relevant steps taken.	<a href="#">Final Guidance: the Duty of Responsibility for insurers and FCA solo-regulated firms (PS18/16)</a>



Legal issue/risk	When?	What's next?	Supporting information (hyperlinks)
<p><b>The FCA has launched its Wholesale Insurance Market Study</b></p> <p>The FCA has launched its Wholesale Insurance Market Study to assess how competition is working in the wholesale broker sector. The FCA wants to ensure that the sector is working well and fosters innovation and competition in the interests of its diverse range of clients.</p>	1 January 2019	The feedback period for responses to FCA's terms of reference has closed. The FCA expects to publish an interim report by Q1 2019, setting out its analysis and preliminary conclusions and where appropriate, possible remedies to address any identified concerns.	<a href="#">Market study</a>
<p><b>Fair pricing in Financial Services DP18/9</b></p> <p>The FCA has launched a public debate on the fairness of certain pricing practices in financial services. It is focusing debate on two key areas:</p> <ul style="list-style-type: none"> <li>– firms charging different prices to different consumers based solely on consumers' price sensitivity; and</li> <li>– firms charging existing customers higher prices than new customers.</li> </ul> <p>The paper also includes commentary on remedies the FCA might introduce if they consider it is appropriate to take action in the market. The FCA is also clear that it will take action against any firm operating unfair pricing practices.</p>	31 January 2019	Comments and any accompanying evidence is to be provided to the FCA by 31 January 2019 for any organisation which wishes to participate. This will be considered and a Feedback Statement published. No data has been given yet for the publication of the Feedback Statement.	<a href="#">Fair Pricing in Financial Services DP18/9</a>
<p><b>SME access to the Financial Ombudsman Service PS 18/21</b></p> <p>The FCA has published near final rules on extending the Financial Ombudsman Service to more small and medium-sized enterprises, larger charities and trusts and a new category of personal guarantors. The FCA has made some changes to its proposals in CP 18/3 in relaxing the proposed eligibility criteria for SMEs and given the FOS and the FCA more time to prepare for and implement the changes to the FOS.</p> <p>This policy statement sets out the FCA's near final position on the extension of the FOS, allowing a wider range of entities to access FOS. These will include small and medium sized enterprises, larger charities and trusts and a new category of personal guarantors.</p>	1 April 2019	Final Rules are expected to be published before the end of 2018. Consider the near final rules (published on 16 October 2018) and their impact on the relevant Business Areas in terms of training and procedures.	<a href="#">SME access to the Financial Ombudsman Service PS18/21</a>



Legal issue/risk	When?	What's next?	Supporting information (hyperlinks)
<p><b>Insuring Driverless Vehicles – The Automated and Electric Vehicles Bill was published on 18 October 2017</b></p> <p>The Bill advocates a single insurer model, whereby the same insurance policy would cover accidents caused by the driver's operation of a vehicle and the automated operation of the vehicle. This model is designed to avoid confusion on the part of the victim over who it should pursue for its losses, as there could be liability on the manufacturer, owner or highway authority depending.</p>	1 June 2019	The Bill received Royal Assent on 19 July 2018. It is not known when the provisions will come into force, but may be after 31 March 2019.	<a href="#">Automated and Electric Vehicles Act</a>
<p><b>The FCA published a "Call for Input" on issues consumers with a history of cancer may have when trying to access travel insurance</b></p> <p>The FCA has published "Call for Input: Access to insurance", referring to a recent survey of 2,000 individuals which revealed that 35% of UK adults suffer from a medical condition and 23% of those surveyed found difficulty in getting cover for a pre-existing medical condition within the past three years.</p> <p>The FCA is seeking evidence of the challenges firms face in providing travel insurance for consumers who have, or have had, cancer and the rationale for pricing differentiations in quoted premiums. The FCA wants to understand how consumer outcomes can be improved, whether by traditional methods or innovation.</p>	1 September 2019	The Feedback Statement was published on 25 June 2018. The FCA has identified three key themes from the responses; namely pricing, signposting and consumer understanding and is taking action on each of these.	<a href="#">Calls for input: Access to insurance</a> <a href="#">Eversheds Sutherland Article</a> <a href="#">Calls for input: Access to insurance – Feedback Statement</a>



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