

Horizon scanner

Financial Services Regulatory Investigations
and Enforcement



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| <p>Diversity and inclusion (D&I) in financial services</p> <p>The FCA is increasing its focus on D&I in financial services. In addition to a number of recent speeches from senior FCA figures (see links), the FCA, the PRA and the BoE have published a joint discussion paper seeking views on regulatory plans to improve D&I. The paper sets out policy options which include: (1) the use of targets for representation; (2) measures to make senior leaders directly accountable for D&I in their firms; (3) linking remuneration to D&I metrics; and (4) the regulators' approach to considering D&I in non-financial misconduct.</p> <p>A one-off survey to capture D&I data is planned for later in the year. The survey will cover a sample of solo-regulated firms, all dual-regulated firms, and selected financial market infrastructure entities (FMIs).</p> <p>The FCA is also consulting on proposals to improve transparency for investors on the diversity of listed company boards and their executive management teams.</p> <p>The FCA has recently issued a letter to Chairs of Remuneration Committees highlighting the need to "review pay data across all protected characteristics and to act swiftly to address any discrepancies".</p> <p>The Financial Services Skills Council has also launched an inclusion measurement guide to improve and develop inclusion data metrics and analysis across the FS sector.</p> | <p>The deadline for submitting comments on the discussion paper is 30 September 2021. The regulators will use the feedback and data received to develop more detailed proposals, which they intend to consult on in Q1 2022, with a formal policy statement expected in Q3 2022. Firms should take the opportunity to shape future regulatory policy on D&I by responding to the discussion paper.</p> <p>Although detailed regulatory rules and guidance are some way off, firms should start to now consider the feasibility of complying with the types of requirements discussed in the paper.</p> <p>Separately firms may be interested to read the FCA's ethnicity action plan, the FCA's annual diversity report, and the BoE review of ethnic diversity and inclusion, which describe the internal work being undertaken by the regulators on ethnicity and D&I.</p> | <p>Bank of England Court Review</p> <p>Discussion paper</p> <p>ES Briefing - regulators outline their plans</p> <p>FCA CP21/24</p> <p>FCA letter</p> <p>FCA speech: Georgina Philippou</p> <p>FCA speech: Sheldon Mills</p> <p>FCA diversity report</p> <p>FCA ethnicity action plan</p> <p>McKinsey 'Diversity Wins' report</p> <p>FCA annual diversity report 2020</p> <p>FSSC inclusion measurement guide</p> |



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| <p>Operational resilience</p> <p>In March 2021, the Bank of England, PRA and FCA published final rules and guidance on operational resilience. The new rules are designed to ensure financial services firms and FMIs 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. Additionally, an important component of operational resilience is outsourcing and various papers have been published specifically on that topic (including the PRA paper SS 2/21 and the FSB report).</p> | <p>The rules apply to banks, building societies, PRA-designated investment firms, insurers, Recognised Investment Exchanges, Enhanced scope Senior Managers, Certification Regime firms and entities authorised and regulated under the Payment Services Regulations 2017 and Electronic Money Regulations 2011.</p> <p>Firms have until 31 March 2022 to complete the first phase of changes to internal structures and external arrangements in order to meet regulatory expectations and take the first step towards compliance with the rules. There is then a hard stop date of 31 March 2025 for firms to achieve full compliance.</p> | <p>PS21/3 ES Briefing ES FSDI hub – operational resilience FSB report ES Flash update (time to act is now) ES Flash update (PRA view) ES Flash update (FCA Business Plan) ES Flash update (ESMA call for evidence)</p> |
| <p>Climate related disclosures</p> <p>Focus on climate change by the Government and regulators means that companies (including financial services firms) can expect to provide much more information about their environmental, social and governance (ESG) risks in their annual report, including whether climate related risks have been identified and are being managed. In December 2020, the FCA published PS20/17 which confirms its final policy position in relation to climate-related disclosures by commercial companies with a UK premium listing.</p> <p>In June 2021, the FCA published new proposals on climate-related disclosure rules for listed companies and certain regulated firms. The FCA is proposing to: (1) extend the application of its TCFD Listing</p> | <p>The new listing rule applies for accounting periods beginning on or after 1 January 2021. The Technical Note will apply with immediate effect. Firms in scope should prepare.</p> <p>The closing date for the FCA's latest consultations is 10 September 2021 and the FCA intends to confirm its final policy before the end of 2021. 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.</p> <p>Separately, firms should also review the Financial Reporting Council's (FRC) recently published Statement of Intent on ESG challenges. The FRC is interested in hearing views on its statement and also intends to focus on climate change considerations in</p> | <p>ES ESG hub ES Briefing ES Briefing FCA: PS20/17 FCA: CP21/18 FCA: CP21/17 FRC Statement of Intent ES Briefing – FRC statement</p> |



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| <p>Rule for premium-listed commercial companies to issuers of standard listed equity shares; and (2) introduce TCFD-aligned disclosure requirements for asset managers, life insurers, and FCA-regulated pension providers, with a focus on the information needs of clients and consumers.</p> | <p>its 2020/21 Corporate Reporting Review and Audit Quality Review monitoring. The FRC will include any findings in this regard in its Review of Corporate Reporting/Developments in Audit publications in Autumn 2021.</p> | |
| <p>Culture – the ‘tone from within’</p> <p>The Senior Managers and Certification Regime (SMCR) aims to reduce harm to consumers and strengthen market integrity by setting a new standard of personal conduct for everyone working in financial services. Firms should be thinking about SMCR in the context of their wider culture as the FCA looks to senior managers to foster/drive healthy cultures. Failure to do so may result in enforcement action and reputational damage.</p> <p>In a recent speech on compliance, culture and evolving regulatory expectations, Mark Steward (FCA Executive Director of Enforcement and Market Oversight) stated that the regulator’s 5 Conduct Questions, which start with ‘tone from the top’, are increasingly focusing on ‘tone from within’, which requires every person in an organisation to be personally accountable and engaged.</p> | <p>Firms should review the FCA’s expectations, including the 5 Conduct Questions, and keep under review how they can best meet them.</p> <p>The PRA was expected to publish an evaluation of the effectiveness of SMCR in Q2 2021 but nothing has been published to date. Firms to keep a watching brief. The evaluation findings could lead to consequential policy proposals that would be subject to further consultation.</p> | <p>FCA 5 Conduct Questions</p> |
| <p>FCA Business Plan 2021</p> <p>The FCA has recently published its Business Plan (Plan) setting out its key priorities for 2021/22. The Plan is arranged into four key themes: Change, Consumers, Wholesale and All Markets. The Plan was introduced in a speech by FCA CEO Nikhil Rathi in which he pledged the FCA will “continue to become a forward-looking, proactive regulator. One that is tough, assertive, confident, decisive, agile.</p> | <p>Firms should review the Plan (our linked briefings provide an overview on each of the themes). According to Nikhil Rathi, firms over the next 18 months will continue to see an “FCA that looks and feels even more different. One that operates differently, partners differently and communicates differently”.</p> | <p>FCA Business Plan Nikhil Rathi speech ES Briefing – FCA Business Plan ES Briefing – Consumers ES Briefing – Wholesale ES Briefing – All Markets</p> |



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| <p><i>One that acts, acts fast – and where we can't act, engages enthusiastically with those who can".</i></p> | | <p>ES Briefing – focus on fraud</p> |
| <p>New Consumer Duty</p> <p>The FCA has recently consulted on proposals for a new Consumer Duty, which would set a higher level of consumer protection for firms to adhere to. The proposed duty has three key elements:</p> <ul style="list-style-type: none"> • A new Consumer Principle which will reflect the overall standards of behaviour the FCA expects. • Cross-cutting rules which require: taking all reasonable steps to avoid foreseeable harm to customers; taking all reasonable steps to enable customers to pursue their financial objectives; and to act in good faith. • A suite of rules and guidance that set more detailed expectations in relation to four outcomes – communications, products and services, customer service, and price and value. <p>The consultation also looks at the potential benefits of attaching a private right of action to the proposed Duty.</p> <p>Some foreseeable outcomes of the FCA's proposals (if implemented) may include increased compliance workload, increased costs for firms and increased prices for consumers, increased complaints and litigation, and the regulation of pricing and value.</p> | <p>The consultation closed on 31 July 2021. The FCA expects to consult again on proposed rule changes by the end of 2021 and make any new rules by the end of July 2022 (in accordance with s29 of the Financial Services Act 2021). Firms will be interested to note that the FCA has reaffirmed its commitment to introducing a new Consumer Duty in its Business Plan.</p> | <p>ES briefing CP21/13</p> <p>Financial Services Act 2021</p> <p>FCA update</p> <p>FCA Business Plan</p> <p>Nikhil Rathi speech</p> <p>ES Briefing – FCA Business Plan</p> <p>ES Briefing – Consumers</p> |
| <p>Cessation of LIBOR</p> <p>As the countdown to the end of LIBOR continues, regulators are increasing the pressure on the market to prepare in order to ensure a smooth transition to a new risk-free rate. Failure to do so</p> | <p>Firms should expect to see more regulatory scrutiny as the 31 December 2021 deadline draws closer. 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</p> | <p>ES Briefing: "You'll never stop me loving you" - transitioning from LIBOR to SONIA</p> |



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| <p>will expose firms to the risk of regulatory enforcement and customer/counterparty claims.</p> | <p>firms must take reasonable steps to treat customers fairly. Firms should continue with preparations and identify potential risks in contracts. Firms should also consider the recently published UK Finance guide, intended as a toolkit to support the move away from LIBOR.</p> | <p>ES Briefing: Will the death of LIBOR be the birth of a new wave of litigation?</p> <p>ES Briefing: FCA announcement triggers LIBOR endgame</p> <p>UK Finance toolkit</p> |
| <p>Fair treatment of vulnerable customers</p> <p>In February 2021, the FCA published final guidance setting out its view of what firms should do to comply with their obligations under the Principles and take particular care to ensure vulnerable customers are treated fairly. There are six consumer outcomes to achieve to ensure fair treatment.</p> | <p>Firms should continue to consider and follow the Guidance. The FCA is monitoring firms and if they are not able to show that they comply with the Principles then they may face enforcement action and/or reputational damage. Firms should also note that the FCA has published FAQs on its treatment of vulnerable customers guidance.</p> <p>Further customer feedback can help firms to identify where customers are being treated unfairly and where improvements are needed. The FCA has stated that firms can expect to be asked to demonstrate how their business model, the actions they have taken and their culture ensures the fair treatment of all customers, including vulnerable customers. Firms should also continue to consider whether customers may now be vulnerable due to COVID-19. Firms should also consider the Financial Lives survey findings as the FCA is actively encouraging firms to use the results of the survey in their own work.</p> | <p>FCA FG21/1</p> <p>Financial Lives Survey findings</p> <p>ES Briefing: FCA Guidance - fair treatment of vulnerable customers?</p> <p>FCA FAQs</p> |
| <p>COVID-19: Government Lending Schemes</p> <p>The FCA has published a Dear CEO Letter setting out the its expectations on the reporting of any instances where an FCA firm, as a BBLBS borrower, has committed or otherwise been involved in fraudulent activity. The letter also reminds firms of their wider obligations for reporting fraud and the</p> | <p>The Dear CEO letter indicates that: (1) the FCA wants firms to ensure they investigate and report fraud to all relevant stakeholders; (2) firms need to be properly resourced to make sure this is done thoroughly and in a timely manner; (3) the FCA's absolute focus is on the fair treatment of, and appropriate outcomes for, SME customers in collections and recoveries activities; and (4) SMCR</p> | <p>FCA Dear CEO Letter</p> <p>ES briefing</p> |



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| <p>FCA's key messages in collections and recoveries from SME customers.</p> | <p>is the key tool the FCA will use to ensure this is all achieved.</p> | |
| <p>Proposals to streamline FCA decision-making</p> <p>The FCA is consulting on moving some decision-making from its Regulatory Decisions Committee (RDC) (a committee of the FCA Board) to its Authorisations, Supervision and Enforcement Divisions to give greater responsibility for certain decisions to senior members of FCA staff close to matters. The changes involve streamlining the FCA's decision-making process and governance so that it can move more quickly to stop and prevent harm faster.</p> <p>The FCA is proposing that certain decisions will now be made by FCA staff, including:</p> <ul style="list-style-type: none"> • imposing a requirement on a firm or varying its permissions by limiting or removing certain types of business; • making a final decision in relation to a firm's application for authorisation or an individual's approval that has been challenged; • making a final decision to cancel a firm's permissions because a firm does not meet the FCA's regulatory requirements; • the decision to civil and/or criminal proceedings. <p>The consultation indicates that the RDC will continue to make decisions in relation to contentious enforcement cases, where the FCA is proposing a disciplinary sanction or seeking to impose a prohibition order.</p> | <p>Firms to keep a watching brief. The consultation closes on 17 September 2021, following which, the FCA will consider the feedback. The FCA aims to publish a Policy Statement in or around November 2021.</p> | <p>CP21/25</p> |



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| <p>Reforming consumer protection law</p> <p>Presently, the CMA and sector regulators (e.g. the FCA) have to apply to court for an enforcement order against firms who have infringed consumer protection law if the firm does not agree to voluntarily make the required changes.</p> <p>A recent Government consultation paper proposes that the CMA and potentially sector regulators including the FCA, be granted direct powers of enforcement for infringements of consumer protection laws. Under the proposals, the CMA and other sector regulators would have the power to determine if a business is likely to or has infringed consumer protection law and impose a fine (up to 10% of global turnover). If implemented, the proposals would represent an expansion of the CMA's and potentially the FCA's powers and may lead to more enforcement action being taken. The Government considers that the proposals could shorten enforcement proceedings by many months, or years.</p> <p>The paper also proposes to shorten complaint waiting times in markets where alternative dispute resolution is mandatory. If taken forward, this could mean that firms would have four weeks (instead of eight) to deal with complaints before customers' FOS referral rights kick in. It is considered that it will incentivise firms to deal with problems promptly and allow referrals to FOS more quickly.</p> | <p>The consultation closes on 1 October 2021. Firms may wish to consider providing a formal response.</p> | <p>Consultation document</p> |
| <p>Independent review of Interest Rate Hedging Products (IRHP)</p> <p>John Swift QC has led an independent review into the FSA's and subsequently the FCA's approach to the implementation and oversight of the IRHP</p> | <p>The draft report has been provided to the FCA. The report is expected to be finalised and published in summer 2021. Firms to keep a watching brief.</p> | <p>FCA announcement FCA Terms of Reference Extension update</p> |



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| <p>Redress Scheme. The review covers the period from 1 March 2012 to 31 December 2018 and examines the quality and effectiveness of supervisory intervention, including judgments relating to securing redress for SMEs. The review will provide an assessment of the FSA/FCA's actions relating to the redress exercise and set out the lessons (if any) that should be learned from the review.</p> | | |
| <p>Tailored support for consumers – impact of COVID-19</p> <p>From 1 April 2021, lenders have been obliged to provide tailored support for customers struggling to keep up with repayments, taking into account their individual circumstances. Firms will also need to consider the potential wider impact on vulnerable customers.</p> | <p>Firms should continue to comply with the measures (with a particular eye to vulnerability). Where appropriate, customers should be signposted towards sources of debt advice. When considering what steps to take, firms should document clearly the rationale for any decisions taken, to ensure that senior managers are able to demonstrate that they have given due consideration to the guidance and taken reasonable steps to comply with their regulatory obligations. Given ongoing uncertainties arising from the impact of COVID-19, the FCA is keeping this guidance under review and intends to review the situation at the end of 2021/early 2022.</p> | <p>FCA updated guidance – consumer credit FCA update</p> |
| <p>Climate risks in the UK mortgage market</p> <p>Coastal communities are being affected by climate change as sea levels are projected to rise. This will be an issue of concern to firms who are mortgage lenders given the prudential risks involved. Other climate related factors such as flooding, erosion and subsidence create similar risks.</p> | <p>Firms should continue to consider the risk to existing mortgage books and carefully assess strategies for future lending as a result of climate risks to security and the impact that these could have on future performance. Material climate risks of this nature will need to be reported particularly where firms are mandated by the FCA to provide TCFD disclosures.</p> | <p>ES briefing Climate change report ES climate hub</p> |
| <p>FCA's powers regarding non-financial misconduct</p> <p>Tackling non-financial misconduct is a regulatory priority:</p> | <p>Firms should consider their approach and policies on non-financial misconduct. Misbehaviour which crosses the line of acceptability may lead to an individual failing a fitness and propriety test or worse.</p> | <p>ES Briefing: Non-financial misconduct - the limits of the regulator's powers FCA prohibitions Discussion paper</p> |



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| <ul style="list-style-type: none"> Recent FCA prohibitions resulted from convictions for serious sexual offences leading to prison sentences and requirements to sign the sex offenders register (see linked ES briefing). However, the High Court decision (<i>Beckwith</i>) may give employees who are dismissed for non-financial misconduct which does not directly relate to the work they carry out some assistance in arguing that the decision was unfair. In the recent discussion paper by the FCA, PRA and BoE on diversity and inclusion in financial services, it was recognised that it may be useful to develop guidance as to what constitutes non-financial misconduct so that firms could assess whether evidence of such behaviour constitutes a breach of the Conduct Rules. It is envisaged that a failure to take reasonable steps to address certain behaviours could also constitute a breach of the Conduct Rules. | <p>As noted above, the deadline for submitting comments on the discussion paper is 30 September 2021.</p> <p>We understand that the SRA has confirmed that it has not appealed the <i>Beckwith</i> High Court decision (the outcome from the Tribunal (its reconsideration) is awaited).</p> | |
| <p>Cryptoassets</p> <p>The FCA estimates that new products, such as cryptoassets, have captured the interest of 2.3 million UK consumers (up from 1.9 million last year) but they bring 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. Recent developments include:</p> <ul style="list-style-type: none"> Commitment by the FCA in its Business Plan 2021/22 to tackle firms and individuals who cause consumers harm. | <p>To the extent firms are involved in cryptoasset related activities/investments then they should consider their approach in accordance with the current developments. Given the potential risks of cryptoassets, the FCA is expected to come down hard on firms where harm is caused.</p> <p>The FCA is due to publish its 3-year Consumer Investments Strategy shortly. Alongside the strategy, the FCA will publish its second data report, detailing its work to protect consumers from investment harm.</p> <p>The consultations by the Treasury are now closed and next steps are awaited.</p> | <p>FCA consumer warning</p> <p>FCA cryptoassets – AML/CTF regime</p> <p>FCA Business Plan</p> <p>ES Briefing – Consumers</p> <p>FCA PS21/4</p> <p>Treasury Consultation – financial promotions</p> <p>Treasury Consultation – regulatory approach</p> |



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| <ul style="list-style-type: none"> The FCA continues to warn of the risks associated with cryptoasset investments. E.g. in June 2021, the FCA published a consumer warning about Binance Markets Limited (a cryptoasset exchange) and investing in cryptoassets generally. Since 10 January 2020, the FCA has been anti-money laundering and counter-terrorist financing supervisor of UK cryptoasset business under the Money Laundering Regulations 2017. The FCA has recently extended the end date of the Temporary Registration Regime for existing cryptoasset businesses from 9 July 2021 to 31 March 2022. The extended date allows cryptoasset firms to continue to carry on business whilst the FCA continue with robust assessment. In March 2021, the FCA announced that UK cryptoasset firms must submit annual financial crime reports (see PS21/4). <p>In parallel, the Treasury is considering extending financial promotion rules to investment in cryptoassets so that appropriate warnings are a requirement. It has also consulted on the wider regulatory approach to cryptoassets.</p> | | |



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| <p>The Government's vision for financial services</p> <p>On 1 July 2021, Rishi Sunak, Chancellor of the Exchequer, delivered his Mansion House speech. Alongside the speech, a document entitled "A new chapter for financial services" was published. The document sets out the vision for an open, green and technologically advanced financial services sector that is globally competitive and acts in the interests of communities and citizens, creating jobs, supporting businesses and powering growth across the UK. It is based around four key themes: (1) an open and global financial hub; (2) a sector at the forefront of technology and innovation; (3) a world leader in green finance; and (4) a competitive marketplace promoting effective use of capital.</p> | <p>Firms to keep a watching brief. By the end of this Parliament, the Government intends to have: (1) secured best-in-class financial services agreements with new partners and deepened existing relationships, supporting stable and open markets; (2) put in place the building blocks to enable financial markets to support the transition to net zero in the UK and across the world; (3) delivered regulatory changes to harness the most innovative and cutting-edge technology in financial services; and (4) tailored the regulatory framework to ensure the UK is recognised internationally as one of the safest and most competitive places to locate financial services businesses and activities.</p> | <p>Mansion House speech</p> <p>A new chapter for financial services</p> |
| <p>FCA review of the retained provisions of the Consumer Credit Act 1974</p> <p>In March 2019, the FCA submitted its final report on the review of the retained provisions of the Consumer Credit Act 1974 to HM Treasury. The FCA report indicated that most of the key provisions which generally create high compliance costs for firms should be retained or incorporated into CONC as FCA rules. This includes s75 and s140 which is the cause/subject of a substantial amount of litigation.</p> | <p>Firms to keep a watching brief. The decision on the future of the legislation falls on the Government. It is unlikely that there will be any changes in the immediate future given that Parliament remains concerned with COVID-19 and the fact that the FCA has not recommended any radical changes to the retained provisions (as regards the protections afforded to consumers).</p> | <p>FCA final report on retained provisions of CCA 1974</p> <p>ES briefing</p> <p>FCA update</p> |
| <p>Financial Services Future (FSF) Regulatory Framework Review</p> <p>The Government is undertaking 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). In October 2020, HM Treasury published a consultation, setting out proposals for redesigning the regulatory framework.</p> | <p>Firms to maintain a watching brief. The consultation closed in February 2021 and further news is awaited. The Select Committee intends to start its second inquiry later in 2021 which will focus on a wide range of issues, including what the Government's financial services priorities should be when negotiating trade agreements with third countries, how consumer interests should be taken into account and how policy/UK regulators can</p> | <p>HMT response to Call for Evidence</p> <p>Consultation</p> <p>Regulatory Initiatives Grid – May 2021</p> <p>HM Treasury report</p> |



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| <p>In November 2020, the House of Commons Select Committee announced an inquiry into the future of FSF and has recently published its first report which includes a recommendation that HM Treasury consider how the decision-making processes of FOS would interact with the future regulatory framework for the FCA.</p> | <p>facilitate the emergence of FinTech and new competition.</p> | |
| <p>Claims Management Companies (CMCs) Phoenixing</p> <p>CMC phoenixing is the practice of firms closing themselves down to avoid their redress liabilities and then re-emerging as an authorised CMC to bring claims against their own misconduct. The FCA has announced proposals to stop the practice of phoenixing by banning CMCs from managing Financial Services Compensation Scheme (FSCS) claims where they have a relevant connect to the scheme.</p> | <p>The FCA consultation closed on 21 June 2021. Firms to keep a watching brief.</p> | <p>FCA consultation</p> |



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