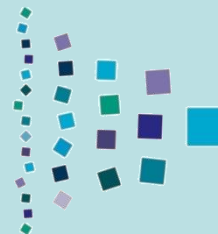


PROTECT

Legal and Regulatory Review

November 2018

Malcolm
Padgett
LEGAL
REGULATORY
COMPLIANCE
TRAINING

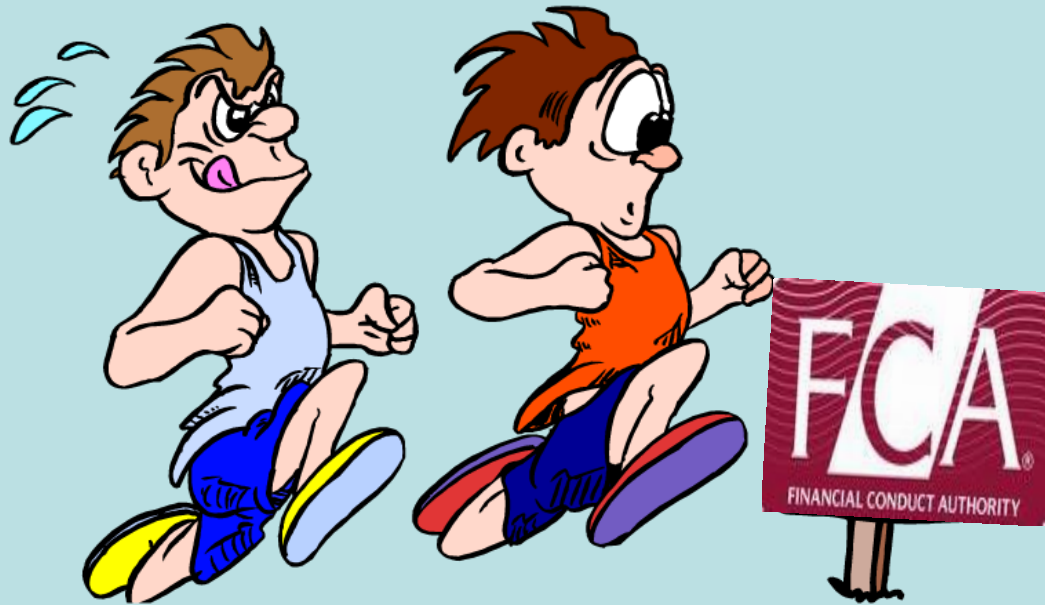


The Agenda



- A catch up from July to date
- Another quick look at the “Big Boys”:-
 - the implementation of the IDD and what firms should have done
 - the extended SM&CR and what firms will have to do

The catch up



What are these?



Consumers!!!



- The Government love consumers (see Treasury Committee inquiry into consumer access)
- The FCA love consumers
- The Government wants the FCA to love consumers even more
- The FCA will love consumers even more
- So you will have to love consumers even more

How the FCA expresses its love for consumers

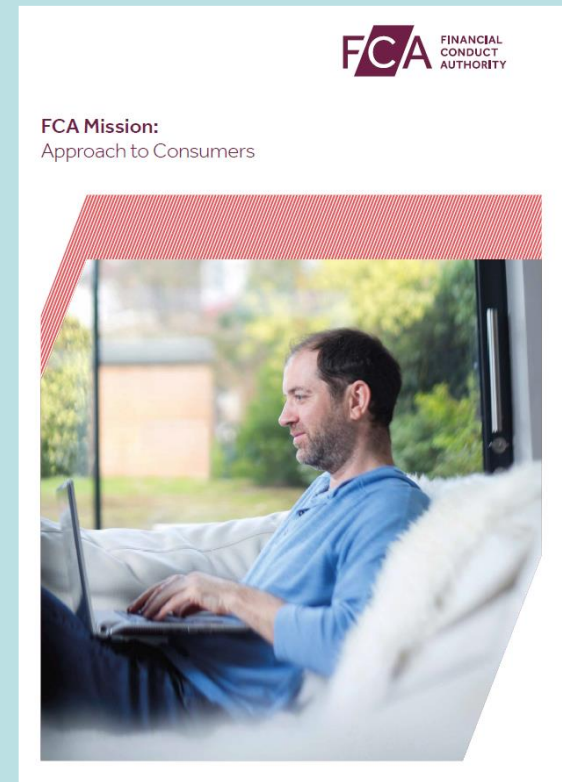
- By pursuing its operational objectives (set out in FISMA) to:-
 - protect consumers
 - ensure market integrity
 - promote effective competition

What the FCA already does to protect consumers

- Focusing regulation on:-
 - delivery of the Principles for Business;
 - delivery of the TCF Outcomes;
 - the protection/consideration of vulnerable consumers; and
 - ensuring a competitive market for consumers
 - individual conduct rules for senior managers

In July . . .

FCA published its “Mission:
Approach to Consumers”



What FCA are working towards

Consumers can buy the products and services they need because they are sold in a way that is clear, fair, not misleading and has a good choice architecture (sales, disclosure or marketing environment that helps consumers to make good decisions).

In markets with effective choice architecture, we see the following:

- Where consumers are active and able, it is easy for them to get relevant information and to switch to better products.
- Where consumers intend to be more active and able, they are supported to become so.
- Where consumers cannot be active and able, or face constraints in being so they are matched with products that better meet their needs wherever possible.

Products: High-quality, good value products and services that meet consumers' changing needs.

In markets where consumers are offered good products and services, we see the following:

- A range of products offered by a range of suppliers.
- Good quality products and services that meet consumer needs.
- Competitively priced products that are value for money.

And . . .

Inclusion: Where the financial needs of all consumers, including vulnerable consumers, are taken into account when accessing financial products.

In markets where consumers are fairly included, we see the following:

- Fair treatment and fair risk pricing mean consumers are not unduly excluded.
- All consumers can access basic financial services.
- The needs of all consumers, including vulnerable consumers, are taken into account.

Protection: Consumers will be appropriately protected from harm.

In markets where consumers are well protected, we see the following:

- Consumers are not exposed to deceptive or unfair practices by financial services firms.
- Consumers are provided with the appropriate level of protection against fraud and scams.
- When things go wrong, there are mechanisms in place to support redress.
- Where appropriate, consumers are prevented from taking out products that carry a high risk of harm.

This adds upto

- An ever increasing focus on consumers and their needs
- A massive focus on FCA ensuring that it applies its competition objective effectively to deliver the best outcomes for consumers

The focus on consumers and their needs

- Also in July, FCA issued a Discussion Paper
- A duty of care to consumers?
- *“In response to our consultation on our Approach, some stakeholders have raised concerns that our current regulatory framework does not provide adequate protection for consumers. They have called for the introduction of a ‘Duty of Care’ on firms when dealing with consumers. In response, alongside this Approach document we are issuing a discussion paper to help us better understand whether there is a gap in our regulatory and legal framework, or the way we apply it in practice, that could be addressed by introducing a New Duty”*
- In the insurance market we are almost there already . . .

The customer's best interests rule

- From 1 October
- ICOBS 2.5.-1R - The customer's best interests rule
- A firm must act honestly, fairly and professionally in accordance with the best interests of its customer
- That is a LOT more than TCF – that is a fundamental cultural requirement to be demonstrated by your firm and its staff
- When you add that to

PROD

- The Product Intervention and Product Governance Sourcebook
- Also effective 1 October
- We have a massive change in regulatory requirement upon the whole distribution chain to ensure that products are only designed and distributed to meet established and tested consumer need
- Have you got your product oversight and “co-manufacturer” and revised distribution agreements in place to meet PROD?

ICOBBS + PROD

- Consumer best interests
- plus
- PROD requirements
- means
- you must only design, underwrite and distribute products which you can demonstrate will meet your targeted consumers' best interests

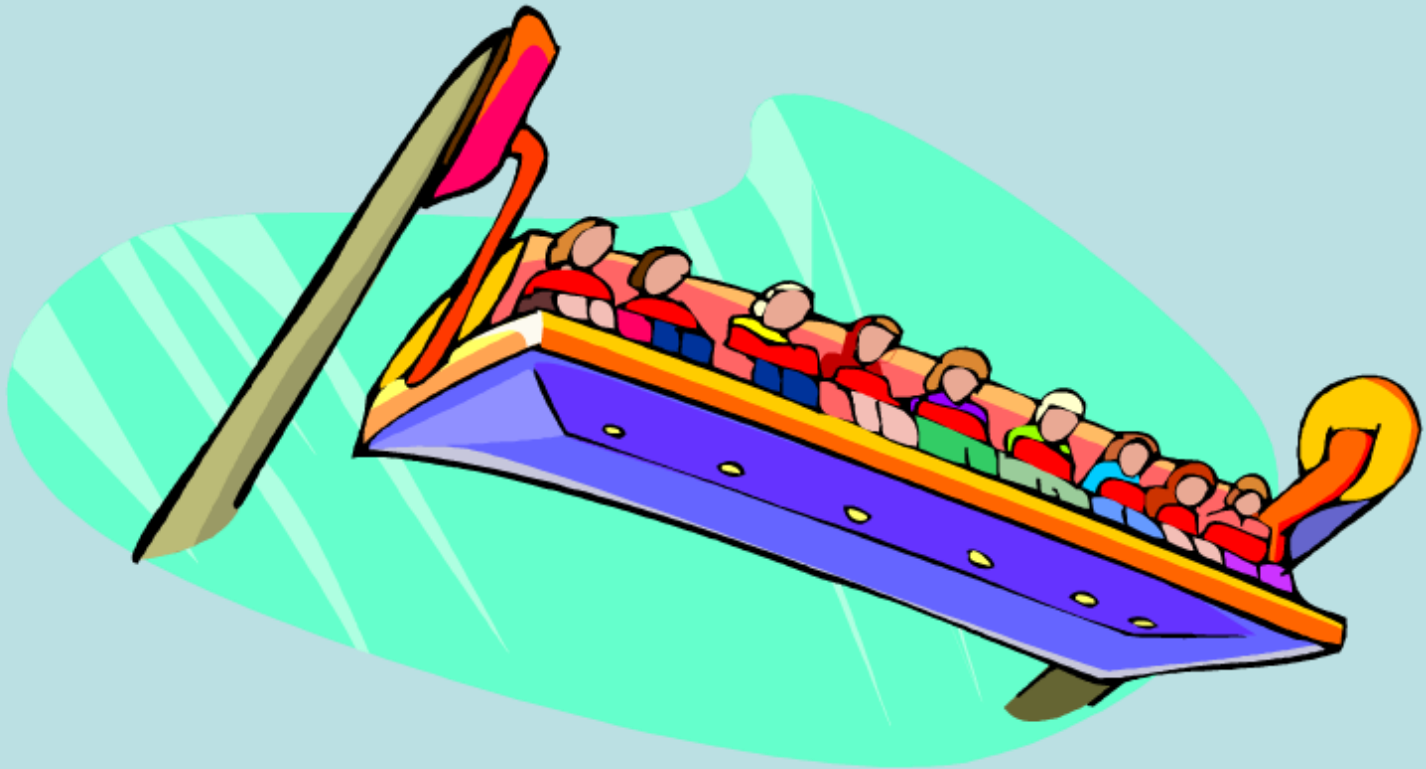
Whilst you digest all that!



There's more

- We have looked at what you must do to ensure that the consumer's best interests are met
- We have seen what you must do to ensure that you manufacture and distribute insurance with full oversight as to meeting those interests
- What must the insurance market generally be also doing to ensure that it delivers insurance products in a manner which will meet FCA's competition objective?

Hold on tight – this is a bumpy ride



Three months of competition activity . . .

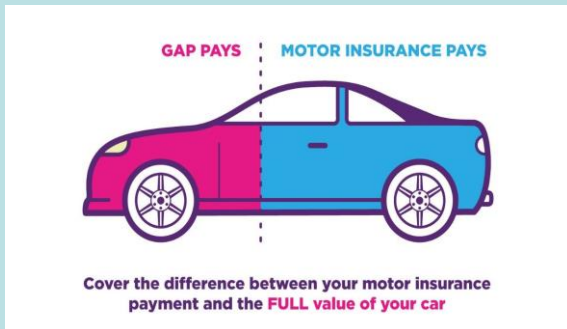
- A change to the PPI Market Investigation Order 2011
- A GAP Insurance remedy evaluation
- More on FCA's value measures
- FCA publishes its Mission: Approach to Competition
- A Citizens Advice Super-Complaint
- An FCA Market Study, a Thematic Review Report and a Dear CEO Letter

PPI



- The PPI Market Investigation Order 2011 required delivery of a Policy Summary as part of annual information supplied to customers. The Order is to be varied by the CMA to replace this with an IPID
- FCA have also issued further Guidance and a Consultation regarding the impact of “Plevin” on regular premium PPI

GAP

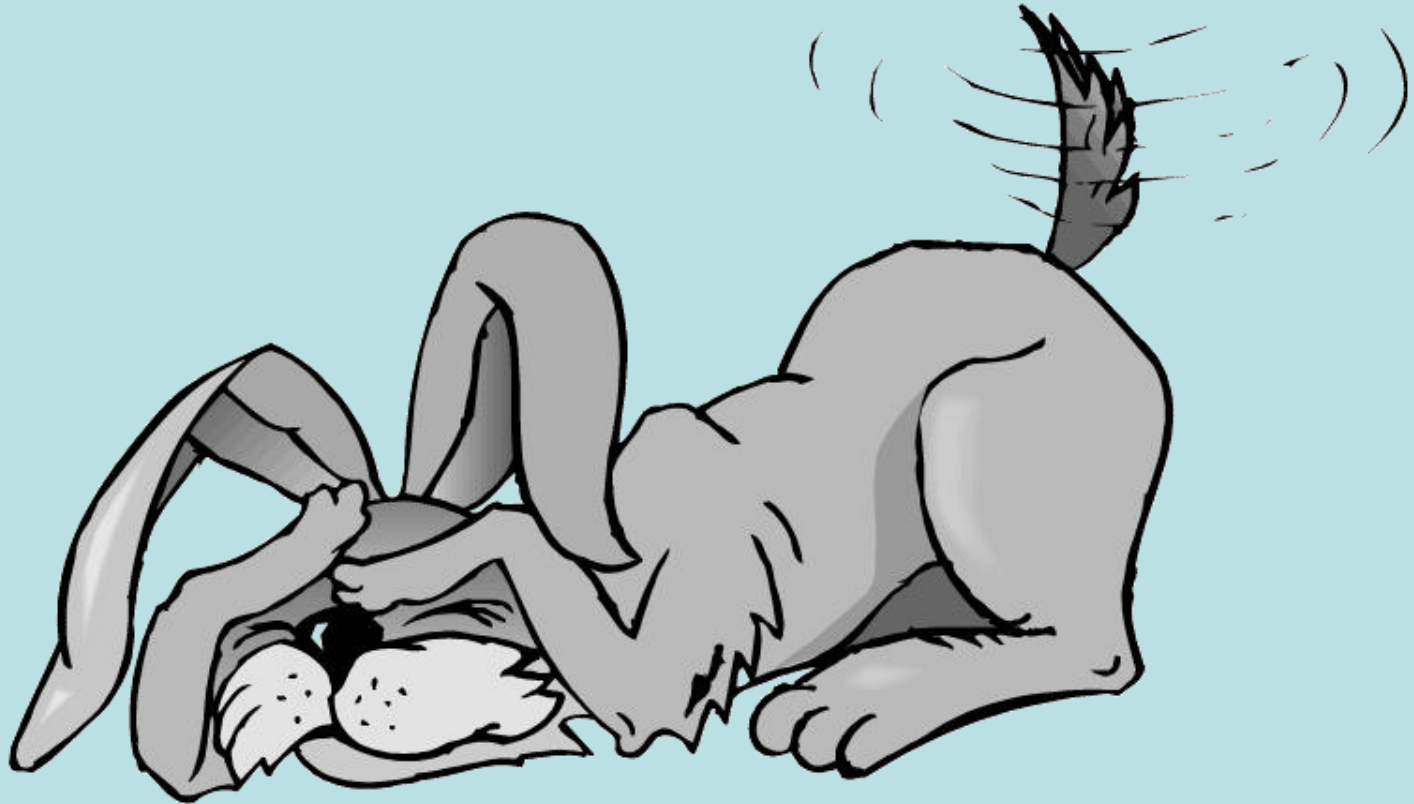


- FCA have published an evaluation of how its remedy to promote competition in the GAP market has worked
- FCA were upto 50% out in their estimation of the impact on add-on sales and 80% out in its estimation of increase in the standalone market
- You would never believe this if you read how pleased FCA say they are!
- This underlines the dangers and the lack of clarity in the FCA using its competition objective to achieve outcomes which really should be delivered via its consumer objective
- That isn't stopping FCA – it has decided to pursue its pilot study on GI value measures . . .

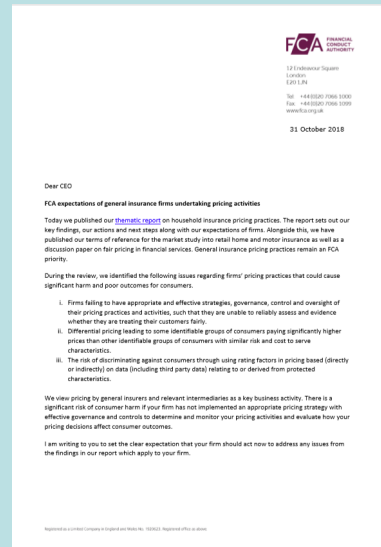
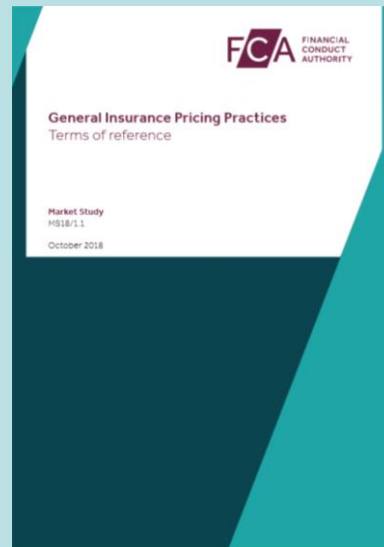
GI Value Measures

*“We consider that the pilot has had a positive impact. It has improved market transparency around a wider range of value metrics other than price, and we have seen firms using the data at a senior level to assess the value of their products and to make improvements. Following the success of the pilot, we have decided to collect a third set of data so we can continue to monitor how the market is changing and its response to the published data. We also intend to consult on rules requiring the regular reporting of general insurance value measures data by firms to us. This will **extend the scope of value measures across a wider range of general insurance products and to all relevant general insurance firms**. Collecting a third set of value measures data will help inform our consultation, which we intend to publish in the new year”.*

So be afraid – very afraid . . .



When the FCA launches new competition initiatives . . .



This month the FCA has . .

- launched a Market Study into how general insurance firms charge their customers for home and motor insurance
- published a Thematic Review report (TR18/4) setting out the findings of its Thematic Review into pricing practices in the retail general insurance sector
- published a “Dear CEO letter” setting out its expectations of general insurance firms undertaking “pricing activities”

The Market Study

- Strongly linked to the Citizens Advice Super-Complaint on Prices for Disengaged Customers (in various financial services markets)
- The FCA Study will be focused on how firms charge their customers for home and motor insurance – but
- FCA say that “where possible, we will identify lessons from this Market Study that are relevant to other markets that we regulate”
- So you need to keep a close eye on how this Market Study evolves
- We can, however, get a good idea of the outcome from . . .

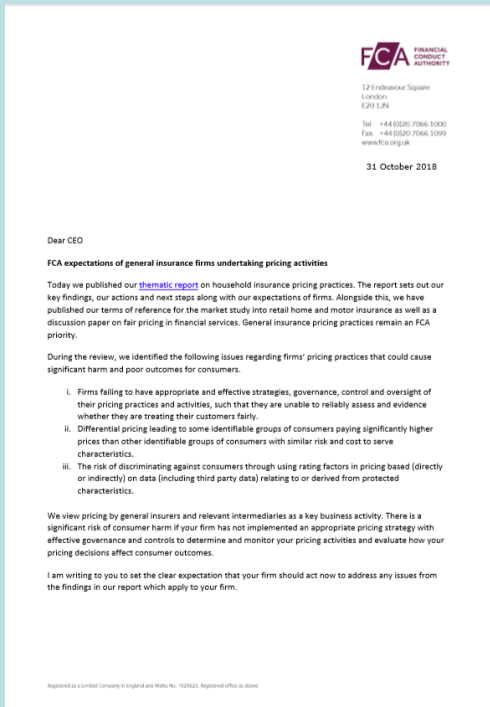
The Thematic Report (TR18/4)

- Focused on home insurance because FCA say that it shows “the best example of the range of consumer outcomes arising from current (more wide ranging) pricing practices”
- FCA identified a number of issues which it saw presenting the potential for significant harm and poor outcomes for consumers. These are:-
 - firms failing to have appropriate and effective strategies, governance, control and oversight of their pricing practices and activities, such that they are unable to reliably assess and evidence whether they are treating their customers fairly;
 - differential pricing, leading to some identifiable groups of consumers paying significantly higher prices than other identifiable groups of consumers, with similar risk and cost to serve characteristics; and
 - the risk of discriminating against consumers through using rating factors in pricing based (directly or indirectly) on data (including third party data) relating to, or derived from, protected characteristics

Before you pop this one on the shelf

- The FCA is very clear that it is looking at a matter which is already the subject of its regulatory regime
- It underlines that pricing is subject to the Principles for Business - paying due regard to the interests of customers and treating them fairly when they purchase, or renew, their general insurance products
- FCA expects all firms to take reasonable care to establish and maintain such systems and controls to this end “as are appropriate to their business”. FCA goes on to say that its “overall aim” is to ensure that general insurance markets deliver **competitive and fair pricing outcomes for consumers**.
- It intends to "act as required to ensure this happens, including where appropriate, taking steps that may fundamentally change pricing practices“
- Be warned – and there’s more

A “Dear CEO” letter



- The letter says that the FCA expects firms to demonstrate how they have considered the issues raised in TR18/4 and be able to explain, and evidence, any remedial actions they have taken. In particular, firms are reminded that they need to:-
 - assess whether their pricing practices result in their customers being treated fairly; and
 - make clear who, within the business, is responsible for pricing decisions
- The letter emphasises that, when considering pricing issues, firms must note the new PROD rules on governance and oversight

So we are seeing

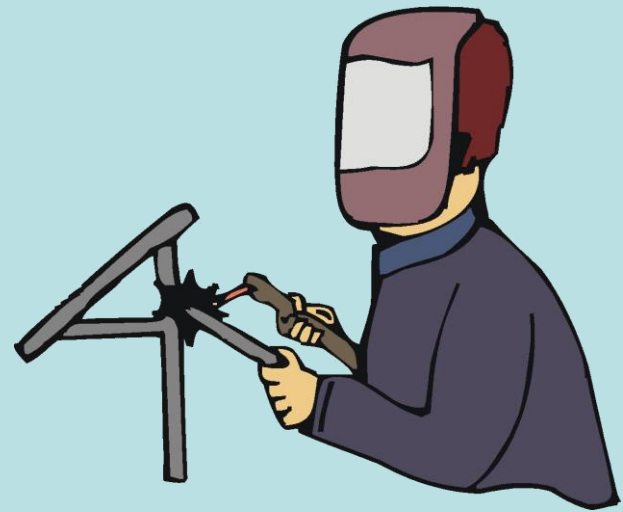
- Customer's best interests under ICOBS

joined

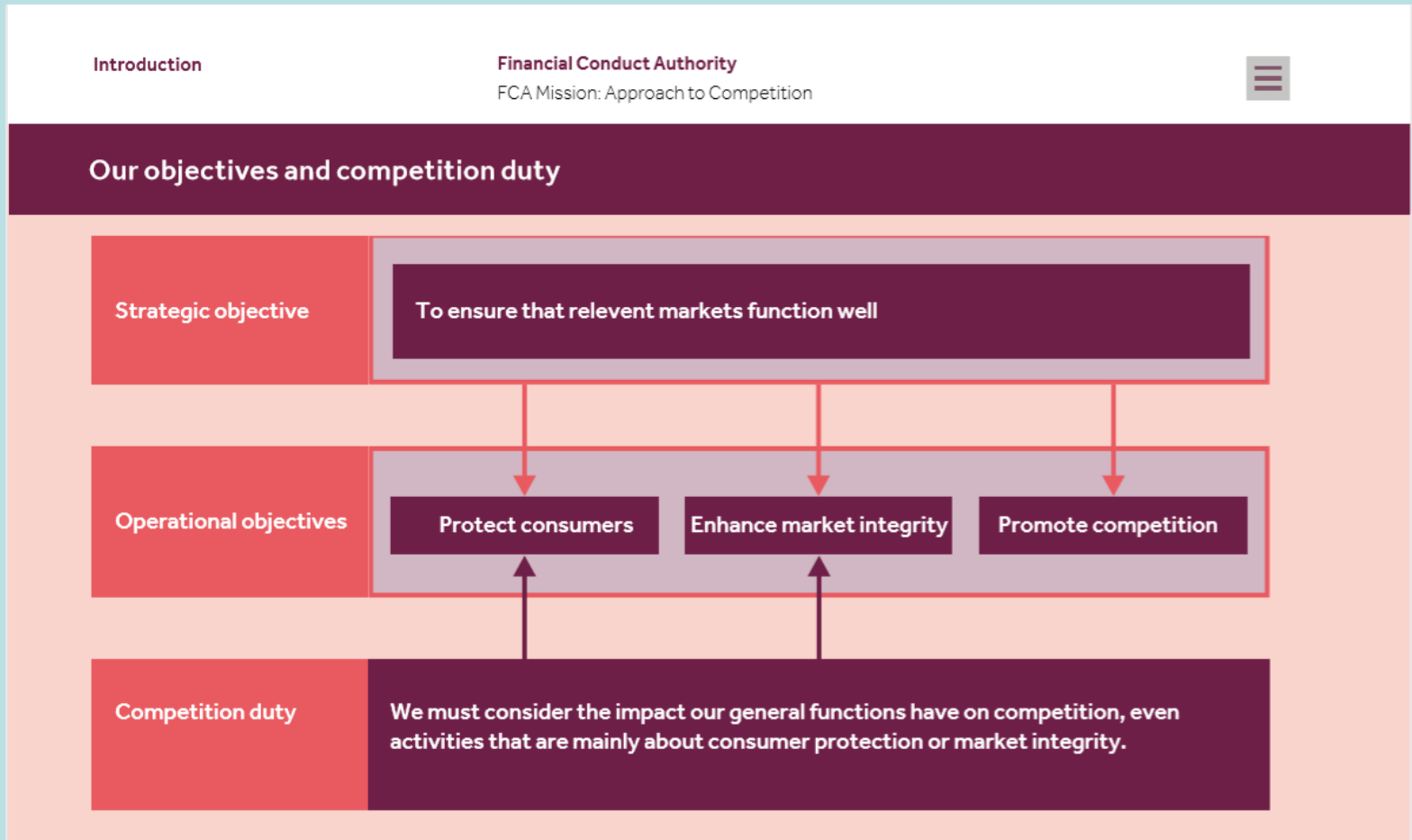
- with product oversight and governance under PROD

joined

- with market integrity and pricing regulated by competition law

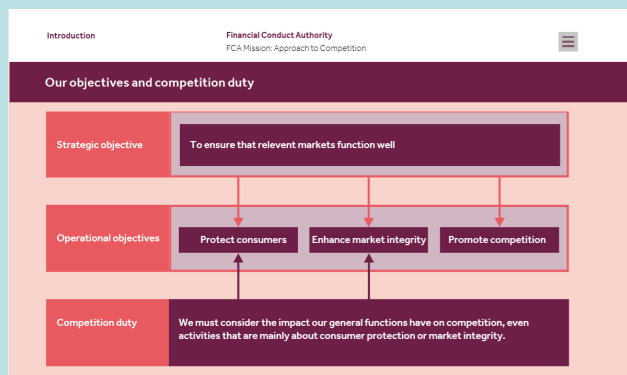


This is how FCA link this together . . .




Your firm must

- Understand the entire jigsaw
- Be able to demonstrate that its:-
 - Conduct of business
 - Product oversight
 - Pricing and market behaviourmeets FCA's expectations
- If you don't



Ignoring a Dear CEO Letter



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www.fca.org.uk

FINAL NOTICE

To: **Liberty Mutual Insurance Europe SE**

Firm Reference Number: **202205**

Address: **20 Fenchurch Street, London, EC3M 3AW**

Date: **29 October 2018**

1. ACTION

1.1. For the reasons given in this Final Notice, the Authority hereby imposes on Liberty Mutual Insurance Europe SE ("Liberty") a financial penalty of £5,280,800.

1.2. Liberty agreed to settle at an early stage of the Authority's investigation and therefore qualified for a 30% (stage 1) discount under the Authority's executive settlement procedures. Were it not for this discount, the Authority would have imposed a financial penalty of £7,544,000 on Liberty.

2. SUMMARY OF REASONS

2.1. Between 5 July 2010 and 7 June 2015 ("the Relevant Period") Liberty breached Principle 3 (Management and Control) and Principle 6 (Customers' interests) of the Authority's Principles for Businesses ("the Principles") in its oversight of its mobile phone insurance ("MPI") claims and complaints handling processes administered through a third party retail Coverholder (the "Third Party"). The

1

A final word about market integrity

- This is the third of FCA's objectives – to protect and enhance the integrity of the UK financial system
- It is placed into the regulatory regime via Principle 5 – “*A firm must observe proper standards of market conduct*”
- It is also placed as an obligation for individual (senior management) conduct at ICR 5
- ICR 5 will be extended to apply to all staff involved in insurance distribution from 1 December 2019
- So – every individual will have to observe proper standards of market conduct
- That raises the question – in which markets?

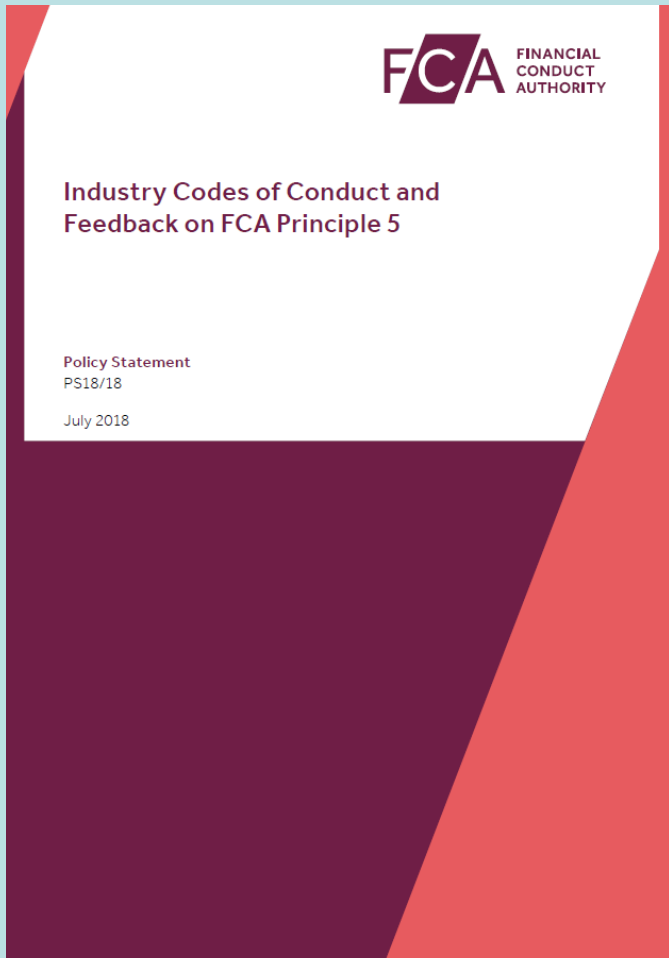
Why is this important?

- Take a typical Protect member firm
- It has:-
 - Regulated activity distributing insured motor warranties; and
 - Unregulated activity administering “service” warranties
- The pressure can be for the firm (and its staff) to have lower “standards” in the unregulated market
- Can FCA regulate in respect of behaviour in the unregulated market?

The answer

- The firm wide obligation under Principle 5 extends to the firm's activity in the market for which the firm is regulated - and to activity ancillary ("in connection") with that activity
- ICR 5 applies to an individual's conduct in both regulated and unregulated markets
- An individual (assuming competent) will be aware of the regulatory standards within the regulated market
- But how do they (and the FCA) know what are proper standards for the individual to follow when working in an unregulated market?
- FCA has issued PS18/18 to answer that question

PS18/18



- a Policy Statement which sets out a process by which industry codes of practice can be formally recognised by the FCA in order to provide individuals, who follow such a code, with the comfort that they have observed proper standards of market conduct for the purpose of ICR 5
- The reverse will, of course, apply!
- FCA have decided not to extend (the firm wide) Principle 5 to all unregulated activity - as this would extend its scope “through the backdoor”, without legislative extension of the Regulated Activities Order

Talking of Unregulated Markets . .

- In July FCA issued a brisk reminder regarding how you disclose your regulated status (Gen 4)
- You must not:-
 - do this “in a promotional way”
 - imply that your firm is authorised (or supervised) by the FCA for areas of its business for which it is not authorised.

Another warning from the FCA

- In August FCA gave a warning regarding the due diligence which it expects brokers to undertake before selecting an insurer
- This warning was issued in the light of UK brokers arranging mass consumer insurance coverage via “failed” insurers such as Alpha and Enterprise
- Bizarre since the whole idea of the PRA is to regulate and provide assurance as to the solvency of insurers, and of the FCA to monitor the conduct of insurers
- If you are a broker selecting insurers you better, nevertheless, take very careful notice of the FCA warning - because FCA concludes the Statement by saying:-

“We are planning to do further work to verify that insurance brokers are conducting appropriate due diligence on the insurers they use”

FOS is expanding its empire



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FOS – Scope and Amount

- The **scope** of FOS' jurisdiction will be extended from 1 April 2019 to a “wider spectrum” of small and medium-sized enterprises (SMEs), charities and trusts
- The **amount** that FOS can award is the subject of a Consultation Paper (CP18/31). It is proposed that the award limit should increase, from 1 April 2019, to:-
 - £350,000 for new complaints (complaints about acts or omissions by firms on or after 1 April 2019); and
 - £160,000 for all other complaints (complaints about acts or omissions by firms before 1 April 2019, and which are referred to FOS after that date)
- The limit will remain at £150,000 for any complaints referred to FOS before 1 April 2019
- The FCA also proposes that, from 1 April 2020 onwards award limits should be automatically adjusted to keep pace with inflation, as measured by the CPI

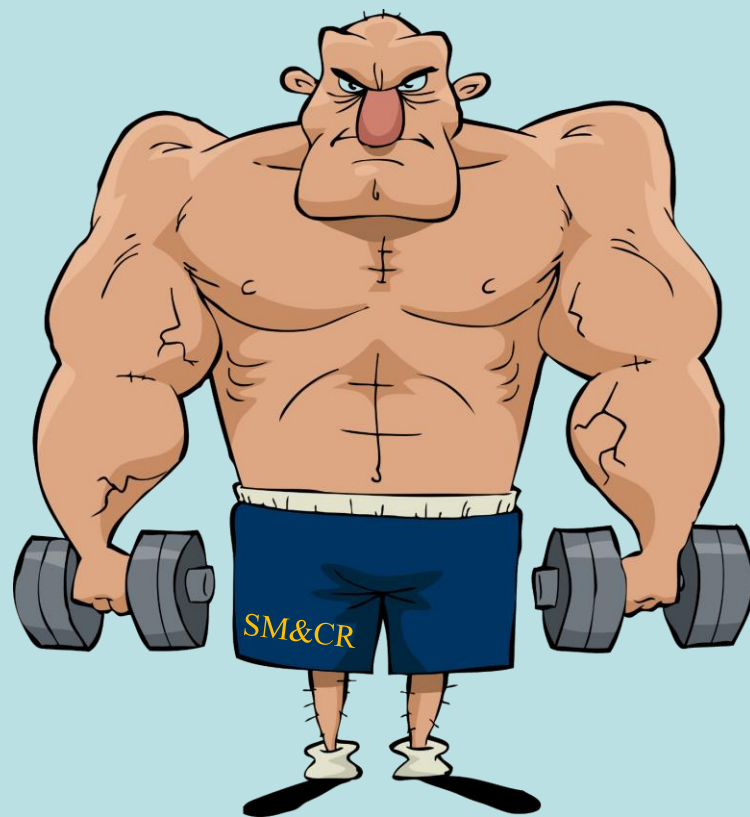
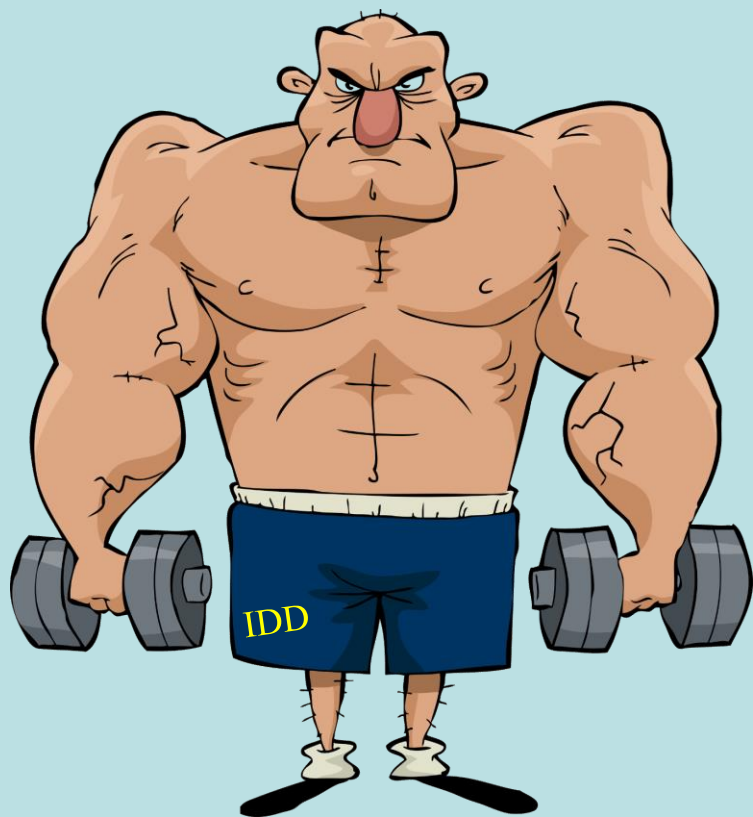
A word about Brexit



Planning for Brexit

- It is important to audit how your business is affected by Brexit and to keep an eye on what the FCA is saying and doing to prepare for Brexit
- Most of FCA's attention is (understandably) focused on cross border conduct of business
- However a huge amount of domestic legislation is not only based on EU law, but often directly refers to, or incorporates, it
- An example of this is that the Government has issued draft Consumer Protection (Amendment etc.)(EU Exit) Regulations which will revoke the operation of the EU Online Dispute Resolution platform about which firms must currently inform customers
- There will be hundreds of such small changes – many of which the Government and the FCA, are struggling to identify and to communicate
- Monitor the information provided at www.fca.org.uk/brexit

The Big Boys



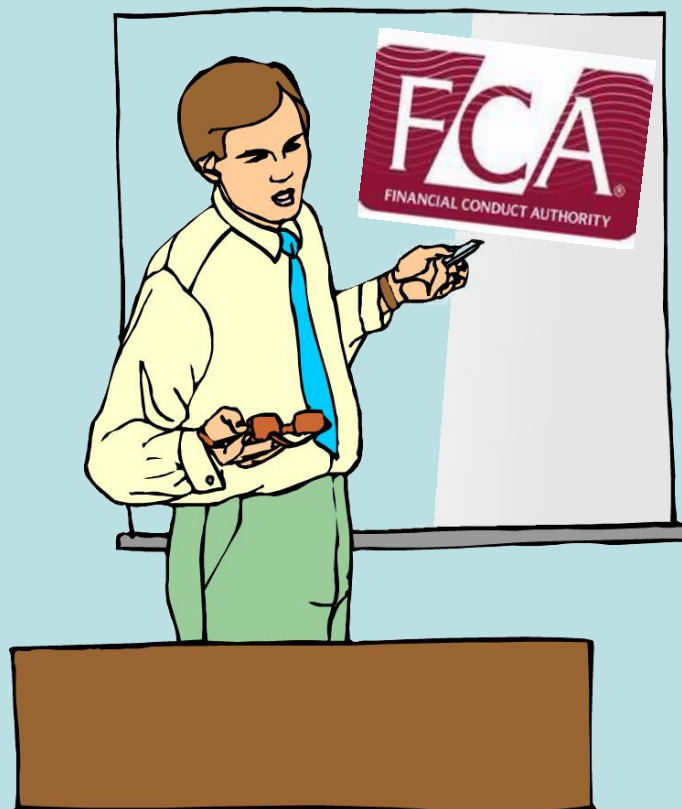
The IDD

- You should be now meeting all the changes to compliance required as a result of the implementation of the IDD on 1 October. This includes:-
 - enhanced pre-contract disclosure (who's who and who acts for who)
 - full compliance with PROD (who is the manufacturer, product reviews and testing, agreements within distribution + IPIDS)
 - operating your entire business centered on customer best interests
 - remuneration disclosure – avoiding conflict of interest
 - establishing demands and needs by interactivity
 - online – agreeing with the customer how information will be provided (website/pdf)

The SM&CR

- Just a year to go
- Your planning for compliance should be well in progress:-
 - a staff audit (who does what? – senior, non-exec, certified, ancillary or other)?
 - assigning Prescribed Responsibilities and developing Statements of Responsibility
 - preparing for annual assessments as to whether senior managers, certified staff and non-execs are “fit and proper”
 - developing the awareness and understanding of all affected staff of their Individual Conduct Rules - and how compliance and enforcement will be undertaken
- Most important of all

Training



A huge leap in requirements

- The FCA Handbook (SYSC 28) requires (via the IDD) specified “core” knowledge and competency must be demonstrated by all relevant staff
- You must ensure that:-
 - each relevant employee possesses appropriate knowledge and ability in order to complete their tasks and perform their duties adequately; and
 - that each relevant employee, complies with continued professional training and development requirements of **15 hours** of professional training or development in each 12 month period in order to maintain an adequate level of performance corresponding to the role they perform and the relevant market
- SYSC sets out precisely the core professional knowledge which must be obtained and then demonstrated

Knowledge of GI to be demonstrated

- Terms and conditions of policies offered, including ancillary risks covered by such policies; (firm specific)
- Applicable laws governing the distribution of insurance products, such as consumer protection law, relevant tax law and relevant social and labour law;
- Claims handling;
- Complaints handling;
- Assessing customer needs;
- The insurance market;
- Business ethics standards; and
- Financial competence

Couple this with the SM&CR requirements

- Firms must deliver “Suitable Training”
- “Suitable Training” is the training necessary to always ensure that those who are subject to the Individual Conduct Rules have an awareness and broad understanding of:-
 - all of the Rules; and
 - a deeper understanding of the practical application of the specific rules which are relevant to their work
- FCA will expect to see a “deep understanding” in staff as to how their conduct in their particular role(s) can affect consumer outcomes

This is not online tick box training

- The requirements and outcomes will not be delivered to (or demonstrated by) staff via online or basic training
- All staff are required to take a quantum leap forward in knowledge and competency
- They must obtain a deep understanding of the regulatory regime, of the conduct it requires of them and the outcomes it requires for customers
- They need to be engaged in this process
- Which is why . . .

The Protect Knowledge and Competency Foundation Course



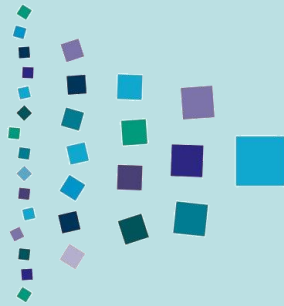
- Upto 5 hours high quality (cost effective) CPD covering all (non-firm specific) SYSC required core knowledge
- Delivered by me - either:-
 - via delegates attending at the FLA
 - for large companies delivered in-house via the FLA
 - for smaller companies delivered in-house via me

Two options

- | | |
|---|---|
| <ul style="list-style-type: none">■ 5 hr Course
■ Applicable laws and regulation governing the distribution of insurance products
■ Assessing customer needs
■ The insurance market
■ Business ethics standards
■ Financial competence
■ Claims handling
■ Complaints handling | <ul style="list-style-type: none">■ 3 hr Course
■ Applicable laws and regulation governing the distribution of insurance products
■ Assessing customer needs
■ The insurance market
■ Business ethics standards
■ Financial competence
■ [Claims handling]
■ [Complaints handling] |
|---|---|

For more information contact

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