

September 2016

# INSURE

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# InSure

This month's roundup of developments affecting the insurance industry sees the final provisions of the CMA's Order on Private Motor Insurance come into effect, the FCA publish its policy statement on the renewal process in general insurance markets and the FCA provide a long-overdue update on CASS 5.

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## **Brexit**

### Brexit concerns from BIBA

The British Insurance Brokers Association (BIBA) has written to the government, [asking](#) for the following 11 points affecting customers and brokers to be considered during the move towards exiting the EU:

- 1 The Single Market and Passporting
- 2 Equivalence regime
- 3 The importance of UK regulatory reform
- 4 Captive insurance arrangements
- 5 Maintaining employment opportunities
- 6 Motor insurance cover
- 7 Travel insurance
- 8 Acquisition activity
- 9 Under-insurance risk
- 10 Taxation
- 11 Opportunities with trade credit insurance

The letter states that the three most important issues for BIBA's members are (1) remaining in the single market, (2) the UK regulator supporting international competitiveness and (3) achieving a positive solution for UK staff working in Europe and EU nationals working at BIBA member firms in the UK.

*BIBA, 29 July 2016*

## General Update

### Financial Ombudsman Service news - Issue 134

The Financial Ombudsman Service has published [issue 134](#) of ombudsman news which includes first quarter statistics on complaints and case studies. The statistics show that PPI complaints still make up for more than half of the complaints received by the FOS.

*FOS, 26 July 2016*

### ABI commemorates Great Fire of London

To mark the 350th commemoration of the Great Fire of London on 2nd September the Association of British Insurers has also produced a [timeline](#) showing how the event created the modern property insurance industry and the fire service.

The ABI has also conducted a [survey](#) showing that a third of people would reach for their mobile phone but only 16% would save jewellery or valuables in the event of a fire.

*ABI, 29 August 2016*

### ABI on insurance for university students

The Association of British Insurers is urging students [preparing](#) for the new academic year to ensure they have protection in place for their possessions, since one in five are likely to be the victim of theft during their time at university. They should consider initially if existing home insurance policies can be extended to cover possessions at university or whether student halls of residence already have cover in place.

*ABI, 20 August 2016*

### ABI reports quarterly fall in household insurance premiums

The Association of British Insurers has [published](#) its property premium insurance tracker for the second quarter of 2016. Data from the second quarter of this year shows an average combined home insurance policy costs £309, the lowest in four years.

*ABI, 18 August 2016*

### ABI reports quarterly rise in motor insurance premium

The Association of British Insurers' Quarterly Average Private Comprehensive Motor Insurance Premium Tracker has [shown](#) the average price for private comprehensive motor insurance has risen slightly by 1% since the previous quarter, but increased by 10% on the same period last year. The continuing pressure on premiums is driven by increases in IPT and rising costs of PI claims.

*ABI, 8 August 2016*

### EIOPA signs IAIS MMoU

The European Insurance and Occupational Pensions Authority and the International Association of Insurance Supervisors have published a [press release](#) announcing that the EIOPA has become a signatory to the IAIS multilateral memorandum of understanding. The MMoU creates a global framework of co-operation and information sharing among insurance supervisors and has 56 signatories, including the FCA.

*EIOPA, 28 July 2016*

### IAIS paper on cyber risk in insurance sector

The International Association of Insurance Supervisors has published a [paper](#) to raise awareness of the issues presented by cyber risk. The paper includes current and proposed supervisory approaches to addressing cyber risks and aims to raise awareness amongst insurers and supervisors of issues such as cyber security incidents in the insurance sector, insurer cyber resilience and supervisory response to cyber risk.

*IAIS, 12 August 2016*

### G20 meeting of finance ministers and central bank governors

The G20 has published a [communiqué](#) following its meeting in Chengdu, China, where finance ministers and central bank governors discussed issues such as:

- ▶ Continued commitment to finalising remaining critical elements of the regulatory framework including Basel III and TLAC
- ▶ FSB's 2nd annual report
- ▶ Systemic risk within the insurance sector
- ▶ Joint work by the IMF, FSB and BIS on experiences with macro-prudential tools and policies
- ▶ FSB consultation on proposed recommendations to address asset management structural vulnerabilities  
*G20 Information Centre, 25 July 2016*

## Data Protection

### EU data protection watchdog will not challenge EU-US Privacy Shield (yet)

The Article 29 Working Party (WP29) has released a statement on the EU-US Privacy Shield (Privacy Shield) adequacy decision, which was adopted by the EU Commission on 12 July 2016.

Overall, the WP29 welcomes the final changes made to the Privacy Shield and commended the efforts of the EU Commission and the US authorities for taking measures to address its concerns. However, it flags that a number of concerns are still outstanding.

WP29 requested that the Privacy Shield be reviewed post General Data Protection Regulation (GDPR) in order for rights that are equivalent under this to be incorporated into the Privacy Shield going forwards. The WP29 has indicated that it will not challenge the legality of the shield for at least one year – until the first annual review.

Regardless of the introduction of the Privacy Shield, organisations will still be able to rely on Binding Corporate Rules and the Standard Contractual Clauses (Model Clauses) for transferring data from the EU to the United States. Both these methods have been acknowledged by the European Commission as being valid methods of transferring EU personal data across the Atlantic.

BBC News coverage is available [here](#).

The Article 29 Working Party statement is available [here](#)

### ICO releases comments on EU-US Privacy Shield

Much has been written about the EU-US Privacy Shield (Privacy Shield) since its adoption in July, and now the Information Commissioner's Office (ICO) has released a statement on how organisations should approach data transfers to the US. The ICO reminds organisations that if they are still relying on the Safe Harbour regime as the basis to transfer data to the US, that they must review their position. The Safe Harbour regime is no longer considered to give adequate protection and should not be included in contracts. The new Privacy Shield is one alternative option for organisations to use when transferring data to the US, and as a starting point, organisations should check whether their US counterparts are intending to become part of the Privacy Shield regime. The US Department of Commerce has released guidance for organisations which contains a link to a current list of Privacy Shield participants.

Alternative options for organisations include putting into place model clauses in contracts with their US partners, or adopting Binding Corporate Rules. But, as the ICO flags, "Doing nothing is not an option".

The ICO statement is available [here](#).

The US Department of Commerce advice is available [here](#)

### EU Commission on E-Privacy Directive consultation

The EU Commission has published a summary report of the public consultation on the review of the Privacy and Electronic Communications Directive (2002/58/EC) (E-Privacy Directive). The public consultation forms part of the EU Commission's evaluation of the E-Privacy Directive and could potentially have an impact on upcoming legislative reform. The review of the E-Privacy directive aims to reinforce trust and security in EU digital services and forms a key part of the Digital Single Market Strategy.

Last week, EU data regulators published opinions on the E-Privacy Directive, which advocated extending the scope of the regime beyond traditional telephone and internet service providers, to cover all "functionality equivalent" services such as messaging in social networks and voice over IP services. They also suggested increasing consent requirements.

The full report is available [here](#).

## New Legislation and Consultations

### Insurance Act 2015 comes into force

The Insurance Act 2015 (**IA**) came into [force](#) on 12 August 2016. The IA applies to all business insurance contracts that incept on or after 12 August 2016. It replaces the duty of disclosure for business insurance by a duty to make a fair representation and it creates a new range of remedies for a breach of the new duty. The IA also makes further changes to insurance law applicable to all insurance contracts relating to warranties, fraud and group insurance. See our detailed visual [briefing](#) for more information.

*Legislation.gov.uk, 1 August 2016*

### EIOPA consultation on proposed IPID under IDD

The European Insurance and Occupational Pensions Authority has published a [consultation](#) on proposed Implementing Technical Standards on a standardised presentation format of the Insurance Product Information Document (IPID) under the Insurance Distribution Directive (IDD).

*EIOPA, 1 August 2016*

### CMA Order on Private Motor Insurance comes into effect

The final requirements of the Competition and Markets Authority's [Order](#) concerning Private Motor Insurance (**PMI**) came into effect on 1 August 2016. Amongst other things the Order:

- ▶ bans agreements between price comparison websites and insurers which stop insurers from making their products available more cheaply on other online platforms
- ▶ ensures better information for consumers on the costs and benefits of no-claims bonus protection

These measures are the result of an investigation by the CMA into PMI and they are intended to boost competition and reduce premiums for drivers.

*CMA, 1 August 2016*

### FCA policy statement on financial crime policy reporting

The FCA has [published](#) a policy statement (PS16/19) which summarises responses received to its consultation on the introduction of a financial crime report, amending chapter 16 of the supervision manual to allow the FCA to obtain consistent data to identify financial crime risk. Taking into account the responses, the FCA has changed its original proposal to include:

- ▶ Excluding general insurers and their intermediaries from the initial implementation
- ▶ Excluding credit unions from the initial implementation
- ▶ Allowing free-form group-based reporting
- ▶ Extending the remittance period to 60 business days and allowing firms to complete their first financial crime return on a best endeavours basis.

*FCA, 29 July 2016*

### Insurance Europe response on proposed EU services passport

Insurance Europe has responded to the European Commission [consultation](#) on a proposed EU services passport for the single market.

*Insurance Europe, 27 July 2016*

## IAIS update on G-SII assessment methodology

The International Association of Insurance Supervisors has [published](#) a summary of responses to its consultation on proposed updates to its assessment of G-SIIs. The document includes members' comments on the November 2015 consultation and IAIS's responses, presented by theme.

*IAIS, 25 July 2016*

## Responses to IAIS consultation on NTNI activities and products

The International Association of Insurance Supervisors has [published](#) summarised responses to its consultation on non-traditional non-insurance activities and products. IAIS members commented on the proposed analytical framework in the November 2015 consultation and the summarised responses include the IAIS's comments, presented by theme.

*IAIS, 22 July 2016*

# Regulatory Developments

## FCA update on review of CASS 5 for insurance intermediaries

The FCA has [written](#) to firms providing an update on proposed changes to rules and guidance in Chapter 5 of their Client Assets Sourcebook (CASS 5). Back in 2012 a consultation paper had been published by the then FSA on a potential review of client money rules for insurance intermediaries (CP12/20). In the letter the FCA has however stated that it will not pursue any rule changes to CASS 5 without a new consultation. The existing CASS 5 rules remain in place and general insurance intermediaries holding client money or operating under risk transfer agreements must continue to comply with these.

*FCA, August 2016*

## FCA policy statement on renewal process

The FCA has published a [policy statement](#) (PS16/21) on increasing transparency and engagement at renewal in general insurance markets. This follows from the consultation it carried out in 2015 to address the lack of competition within the general insurance industry (CP15/41). The consultation proposed a number of changes, such as for instance including the previous year's premium on renewal notices. In the policy statement the FCA confirms it will implement the changes it has proposed but with minor amendments to reflect some of the responses to the consultation. Insurers and intermediaries have until 1 April 2017 to comply.

Subsequently the FCA published Handbook [Notice 36](#) setting out changes to be made to ICOB 6 to implement the proposals made in the above policy statement.

*FCA, 10 August 2016*

The Association of British Insurers has published its [response](#) to the policy statement, stating it is pleased about the changes but disappointed the FCA has not followed the ABI's recommendation to exclude health and pet insurance products.

*FCA & ABI, 10 August 2016*

## FCA "Dear CEO" letters on ARs

The FCA has published a "Dear CEO" [letter](#) referring to its thematic review of "Principals and their Appointed Representatives in the general insurance sector" which we reported on in our last edition. The FCA notes the serious shortcomings it has identified and requires the CEOs to consider the review and to take any necessary remedial action.

*FCA, 27 July 2016*

## PRA supervisory statement on capital extractions by run-off firms

The PRA has [issued](#) a supervisory statement (SS4/14 – updated July 16) on capital extractions by run-off firms within the general insurance sector. The supervisory statement has been updated and now sets out expectations for senior management considering making a request to the PRA to extract capital from the firm during a run-off. Reflecting proposals considered in consultation CP42/15 published in November 2015, it has been amended to align with a revised approach when considering requests.

*PRA, 28 July 2016*

## Solvency II

### PRA Solvency II policy statement on remuneration requirements

A [policy statement](#), PS22/16, published by the PRA sets out responses to its April 2016 consultation paper on expectations around remuneration requirements in Article 275 of the Solvency II Delegated Regulation which applies to UK insurance and reinsurance firms. In general, responses supported a proportionate approach and requests for clarity on some points have been reflected in the final text of the statement.

*PRA, 12 August 2016*

### EC Implementing Regulation on information for calculation of technical provisions and basic own funds

On 8 August, the European Commission adopted [Implementing Regulation](#) (2016/1376) laying down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 30 June until 29 September 2016 in accordance with the Solvency II Directive. The Regulation was [published](#) in the Official Journal of the EU on 18 August 2016.

*European Commission, 18 August 2016*

### EIOPA publishes compulsory Solvency II information on equity capital charges

EIOPA has set out what compulsory [information](#) must be applied by EU insurance and reinsurance undertakings under Solvency II for the calculation of the symmetric adjustment based on the behaviour of an equity index built by EIOPA.

*EIOPA, 5 August 2016*

### New EIOPA Q&As

EIOPA has [published](#) new sets of questions and answers on its webpages concerning the following:

- ▶ Valuation of technical provisions guidelines
- ▶ Guidelines on reporting for financial stability purposes
- ▶ Final report on the ITS on the templates for the submission of information to the supervisory authorities (CP-14-052)
- ▶ Final report on the ITS on procedures, formats and templates of the solvency and financial condition report (CP-14-055)

*EIOPA, 04 August 2016*

## Fraud

### Supreme Court decisions on fraud

The Supreme Court has made two recent decisions on fraud that should be of interest to all those involved in the insurance industry. The first is the case of *Versloot Dredging BV v HDI Gerling Industrie Versicherung AG*, where the Supreme Court found that the use of a fraudulent device (reckless untruth to support an otherwise valid claim), which it described as a "collateral lie", did not constitute a fraudulent claim. In practice, it means that a claim is still valid and payable even if some of the evidence in support is false. See out [briefing](#) for more information.

In the second case, *Hayward v Zurich Insurance Company plc*, the Supreme Court unanimously held that a settlement agreement could be set aside for fraudulent misrepresentation, even if the insurer had suspected fraud at the time it had entered into the agreement. This was a case where the insurer suspected fraud but had decided to settle because of the risk that, in the absence of compelling evidence, the judge may believe the claimant. See our [briefing](#) for more information.

### Suspended jail term for "ghost broker"

A London-based [ghost](#) broker has been given a 21 month suspended sentence for attempting to defraud 25 companies of over £39,000. He took out several fraudulent motor insurance policies between October 2010 and April 2012 and submitted fraudulent injury claims to insurers based on fake collisions. The City of London Police's Insurance Fraud Enforcement Department (IFED) and the Insurance Fraud Bureau (IFB) worked together sending a clear message of commitment to tackling fraud.

IFED, 19 August 2016

## Former broker jailed over conspiracy to defraud Willis

A former broker for maritime [insurance](#) at Willis Towers Watson and his partner have been jailed over a conspiracy to defraud Willis by lying about commissions. Together they defrauded Willis of \$2,300,000 over a ten year period by making false statements concerning a sham third party introducer.

IFED, 19 August 2016

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