



December 2008

## InSure

This month's roundup of developments affecting the insurance industry sees CEIOPS publishing the results on QIS4, the FSA setting out proposals to regulate the retail distribution market and concluding its review of insurance comparison websites, Lloyd's of London consulting on LRO, ...

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## General News

### Persistency Of Life And Pensions Policies

On 17 November the FSA published the 2008 Survey of the Persistency of Life and Pensions policies.

Since 1995, regulated firms have been required to submit returns each year giving information about the persistency of their life assurance and pensions business. Persistency is calculated as the proportion of investors who continue to pay regular premiums to their life and pensions policies, or who do not surrender their single premium policy.

The report contains a summary of, and a commentary on, the findings of the survey. The FSA gathered data on policies written from 2003 to 2006.

Please click [here](#) for a copy of the 2008 Survey. (Source: *FSA 2008 Survey of the Persistency of Life and Pensions policies, 17 November 2008*) - [Back](#)

### New FSA Small Firms Website

On 11 November 2008 the FSA modernised its small firms website. An accompanying update highlights the major changes and explains some of the new features. These include:

- sixty [One minute guides](#) which provide the basics on a subject with a link to more information if required;
- a [Resource Centre](#) has links to all the case studies, fact sheets and web resources such as favourite links.

Please click [here](#) to access the new site. (Source: *FSA, small firms website, 11 November 2008*) - [Back](#)

### FSA Bans Insurance Directors

On 19 November the FSA published a press release announcing that it has banned two directors of an insurance broker for failing to ensure that their firm complied with FSA client money rules.



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Roger Muse and his son Daniel Muse are prohibited for three years from performing any significant influence functions at firms carrying out regulated financial activities. This order will prevent them from running or managing a regulated business whether as sole traders, employees or appointed representatives of another firm. In the opinion of the FSA Roger Muse and Daniel Muse failed to ensure amongst other things that:

- proper records were kept relating to the firm's transactions and commitments in respect of client money;
- client money calculations were performed at the firm and that the firm kept a record of how it performed the calculations; and
- the firm dealt with any shortfall or surplus in client money in accordance with the FSA's rules relating to client money;

The Final Notices for [Roger Muse](#) and [Daniel Muse](#) include the background to the case, the relevant statutory provisions and the regulatory requirements contravened and factors taken into account.

Please click [here](#) for a copy of the press release. (Source: *FSA/PN/135/2008*, 19 November 2008) - [Back↑](#)

## 18 Weeks Suspended Sentence For Misleading The FSA

On 18 November the FSA announced on its website that a former mortgage adviser, Simon Robert Gray, has been sentenced at City of Westminster Magistrates Court to 18 weeks imprisonment suspended for 18 months, for making misleading statements and using forged documents in repeated applications to become an FSA approved person.

This is the first time the FSA has prosecuted an individual for providing false information in an application for approval or authorisation.

A full version of the [charges](#) against Mr Gray and the FSA's victim impact assessment [statement](#) can be found on the FSA website. (Source: *FSA website*, 18 November 2008) - [Back↑](#)

## CEIOPS Report On Risk Management Standards On Assets

On 17 November the Committee of European Insurance and Occupational Pensions Supervisors

(CEIOPS) published its [Report on Risk Management Standards on Assets](#).

CEIOPS conducted a survey to assess the current level of Risk Management Standards on Assets applicable to insurance and reinsurance undertakings within the European Economic Area under the current regulatory framework and in the future Solvency II framework.

The publication follows CEIOPS' recent report on issues regarding the valuation of structured credit products (CEIOPS-DOC-30/08) which concluded that robust governance, risk management and internal control arrangements within undertakings are necessary and deserve further analysis, particularly in the case of illiquid assets.

(Source: *CEIOPS-DOC-31/08*, 13 November 2008) - [Back↑](#)

## Life Assurers Look To Delay New Reporting Rules To Retain Profits

Several British life assurers are seeking to delay new financial reporting rules that would sharply reduce their profits and valuations after pressure on their balance sheets from weak stock and bond markets. Companies that write large numbers of annuity contracts such as Prudential, Legal & General and Aviva are likely to be particularly hard hit by the change, said analysts. European life assurers plan to move to so-called market consistent embedded value, a stricter version of the standard they use to value in-force policies, by the end of next year, which would mean reporting under Market Consistent Embedded Value (MCEV) in spring 2010. Some life assurers have pledged to report their 2008 performances under MCEV, with announcements on the restatement of their 2007 figures expected imminently.

(Source: *Financial Times*, 17 November 2008) - [Back↑](#)

## CEIOPS 2008 Report On Market Developments

On 12 November CEIOPS published its 2008 Report on Market Developments. The report details developments in the field of cross-border occupational pension provision across the European Economic Area following the implementation by Member States of the Pension (activities and supervision of institutions for occupational retirement provision) (IORP) Directive. CEIOPS' first report on market developments was published in 2007. This 2008 update covers the period of 18 months to June 2008 and shows a 46% increase



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in the number of IORPs operating cross-border. (Source: CEIOPS, [website](#), 12 November 2008) - [Back](#)

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## New Legislation & Consultations

### CEIOPS Publishes Results On QIS4

On 19 November CEIOPS announced the publication of the report on its [Fourth Quantitative Impact Study \(QIS4\)](#) for Solvency II.

One of the main objectives of QIS4 was to collect detailed information on the impact of the testing proposals on the insurance industry's balance sheet.

Areas of particular relevance in this exercise were the impact on groups' balance sheets, including diversification effects and transferability of own funds, the use of simplifications and undertaking-specific parameters, the design and calibration of the minimum capital requirement (MCR), and the comparability of the standard formula and internal models for the calculation of the solvency requirements.

According to CEIOPS the results of the study show that measured against the level of stress embedded in the QIS4 simulations, as of year end 2007 the European insurance industry appeared to be well capitalized. Under QIS4, the aggregated capital surplus of participating undertakings remains fairly stable.

For more information see <http://www.ceiops.eu/content/view/118/124/#>

Please see the accompanying [press release](#). (Source: CEIOPS, *press release*, 19 November 2008) - [Back](#)

### Provisional Decision On Remedies On PPI

On 13 November the Competition Commission (CC) published for consultation its proposed remedies designed to increase competition in the Payment Protection Insurance (PPI) market.

In its provisional findings report published in June 2008, the CC concluded that distributors of PPI—such as banks, mortgage providers and credit card providers—face little or no competition when selling PPI to their credit customers.

Following a series of hearings and a considerable amount of analysis, the CC is now proposing a package of measures which it considers will be practical and effective in increasing competition in the market to the benefit of customers. These are set out in full on the CC website at [www.competition-commission.org.uk](http://www.competition-commission.org.uk). The proposed package of remedies includes:

- A prohibition on the sale of PPI by a distributor to a customer within 14 days of the distributor selling credit to that customer.
- Credit providers will be required to provide a 'personal PPI quote', which will clearly state the cost of the PPI policy individually and when added to the credit product.
- A prohibition on the selling of single-premium PPI policies, which act as a barrier to customers switching and the costs of which are difficult to compare with other PPI policies.
- A requirement on all PPI providers to provide certain information and messages in PPI advertisements.
- A requirement on distributors to advertise PLPPI (personal loan) and SMPPI (second-charge mortgage) alongside their respective credit advertisements.
- A requirement on all PPI providers to provide certain information on PPI policies to the FSA and a recommendation to the FSA that it uses this information for its PPI price comparison tables.
- A requirement on all PPI providers to provide an annual statement for PPI customers, including information similar to that provided in the personal quote, to encourage customers to review their policy annually and make it easier for customers to decide whether to switch.

(Source: *Competition Commission*, [News Release 33/08](#), 13 November 2008) - [Back](#)

### Lloyd's Consults On LRO

On 11 November 2008 Lloyd's of London published a market bulleting asking for feedback in relation to the HM Treasury's Legislative Reform Order (LRO) to amend the Lloyd's Act 1982.

Six of the LRO proposals related to improving Lloyd's governance arrangements to bring them more in line



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with modern practices in the wider corporate arena. The other two were market related namely repeal of section 8(3) Lloyd's Act 1982 which provides that, generally, syndicates may only accept business from a Lloyd's broker and repeal of the divestment provisions.

Lloyd's has already consulted on necessary amendments to its byelaws that would need to be made in order to implement the governance reforms if the proposed LRO is passed. In order to give proper effect to the market related reforms in the LRO, Lloyd's will also need to amend its intermediary byelaws. This bulletin therefore explains the market related reforms, sets out the necessary amendments if the LRO in its current draft is made by Parliament. The bulletin also seeks market feedback.

Please click [here](#) for a copy of the bulletin. (Source: *Lloyd's of London, Market Bulletin, Y4204, 11 November 2008*) - [Back↑](#)

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## Regulatory Developments

### Regular Premium Insurance Policies: Further Clarification On The ICOBS Requirement To Disclose Total Premium

The FSA has issued further information following its July 2008 communications where it sent letters to several trade bodies setting out expectations in relation to the disclosure of total premium by firms selling regular premium Mortgage Payment Protection Insurance (MPPI).

Discussions with firms and trade associations have led the FSA to conclude that many firms selling MPPI disclose only the monthly premium. The FSA states that it is now aware that some firms' interpretation of total premium is not consistent with the requirement to provide sufficient information to enable consumers to make an informed decision.

Please click [here](#) to read the clarification document. (Source: *FSA website, 28 November 2008*) - [Back↑](#)

### FSA's Retail Distribution Review Feedback Statement

On 25 November the FSA published the feedback statement to its Retail Distribution Review (RDR) which includes proposals to increase consumer confidence and trust in the retail investment market.

The key proposals in the feedback statement include distinguishing between independent advice and sales advice to create better clarity for consumers about the investment services available. The key points of this distinction are:

- **Independent advice** is where adviser firms provide recommendations that are unrestricted and unbiased and consider all investments and providers from across the market to ensure they meet a customer's needs. Consumers will agree the cost of advice up front – removing the potential for bias – and independent advisers will adhere to significantly higher professional standards.
- **Sales advice** will be where firms recommend the products of one or a limited range of providers and make this clear to customers. Sales advisers will also have to meet the same professional standards as independent advisers and show clearly the cost of their advice.

The FSA also announced that it will be consulting on policy proposals for the RDR during the first half of next year with the intention that all firms will have implemented the changes by the end of 2012.

In parallel with the RDR, the FSA has been reviewing the prudential requirements for personal investment firms (PIFs) and will publish a consultation paper on raising the minimum standard and improving the quality of capital and making it consistent for all firms.

The FSA's [RDR feedback statement](#) can be found on its website. (Source: *FSA [press release](#), FSA/PN/139/2008, 25 November 2008*) - [Back↑](#)

### FSCP Asks For More Clarity On The RDR

Responding to the publication of the FSA Feedback Statement on the RDR, the Financial Services Consumer Panel (FSCP) published a [press release](#) welcoming much of the progress that the FSA has made in setting out a new regulatory regime for financial advice for consumers. However, the FSCP also warned that there are still many questions unanswered including:

- **The guided sales process.** How is it going to work, how is it going to be kept up to date, is it going to properly incorporate complicating factors such as the interaction between financial products and the benefits system?



- **The remuneration of sales people.** If it is right that independent advisers should not be remunerated by commission, can that also apply to non-independent advisers?
- **The qualifications of those in the non-independent sector,** where the panel believes that these should be parallel to those in the independent sector.
- **The cost to customers.** One way or another customers are going to have to pay for the guidance they are getting. Is this going to be properly transparent to them, as it should be?
- **The products that can be sold.** The idea of a simple suite of products has been discredited, largely because the model was so constructed and regulated as to prove unprofitable, so what will the new products look like?

(Source: *FSCP press release, 25 November 2008*) - [Back↑](#)

## FSA Publishes Findings Of Basic Advice Review

In parallel with the Retail Distribution Review the FSA carried out a post implementation review of the Basic Advice regime. A feedback paper published on 25 November includes the findings from this post-implementation review and sets out the FSA's next steps.

The Basic Advice Regime allows firms to sell some stakeholder products through a streamlined sales process when compared to the 'full' conduct of business regime. This simpler process is based on posing pre-scripted questions and warnings to the customer as principally governed by COBS 9.6 and COBS 9 Annex 2 of the Handbook.

To increase and improve consumer access to investments, the FSA will help firms develop a simplified sales service for a limited range of products, building on the work already underway in the industry and by individual firms. The FSA will remove its current rules for Basic Advice to simplify further this landscape.

Please click [here](#) for a copy of the publication. (Source: *FSA Basic Advice regime – a post implementation review, 25 November 2008*) - [Back↑](#)

## FSA Statement On TCF initiative

On 12 November the FSA [announced](#) its intent to accelerate the full integration of Treating Customers Fairly (TCF) into core supervisory work. The [FSA update on the Treating Customers Fairly initiative and the December deadline](#) can be found on the FSA website.

The FSA made clear that TCF remains central to its retail strategy, and firms are expected to meet the December 2008 deadline.

From next year, TCF will be embedded into ARROW and firms' compliance with the December deadline will be assessed by using ARROW – it will become an integral part of regular assessments of relationship managed firms; and the progress of small firms will be assessed via the three-year regional assessment programme under the enhanced strategy.

As a result of this, the FSA will no longer publish a report on the final TCF December 2008 deadline, originally planned for Q3 2009.

In response to the FSA's announcement the Financial Services Consumer Panel (**FSCP**) [said](#) it was seriously concerned about the FSA's intention to wind up its TCF initiative early and rely instead on day to day supervision of firms to check that firms were working according to this principle. For the FSA's more principles based regulation to work effectively for consumers, the Panel believes that effective implementation of the principle of Treating Customers Fairly is crucial.

(Source: *FSA press release, FSA/PN/130/2008, 12 November 2008/ FSCP, website press release, 12 November 2008*) - [Back↑](#)

## FSA Concludes Its Review Of Insurance Comparison Websites

On 12 November the FSA published the results of a further review of insurance comparison websites. The review found that many sites have made significant improvements and are consistently providing clear, fair and not misleading information, but some firms need to go further to address a few specific concerns.

The FSA visited a sample of the firms responsible for the 17 websites that were assessed during the initial review and found that many of them had made improvements to their websites and processes.



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However, the FSA has identified two specific areas where some firms need to make further improvements:

- Obtaining better information from insurers about the level of excesses that apply to insurance policies; and
- Making clearer the assumptions about consumers' needs and circumstances that some websites use to obtain quotes.

In addition, the FSA carried out a review of aggregator firms' advertising and found the vast majority of firms have clear, fair and not misleading adverts. In a small number of cases, the FSA found a lack of clarity in some of the terms used, and adverts which could give consumers a misleading expectation of the firm's market coverage and the amount they could save on insurance premiums.

The FSA's report '[Review into insurance comparison websites](#)' can be found on the FSA website.

(Source: FSA [website](#), FSA/PN/131/2008, 12 November 2008) - [Back↑](#)

representation made by the syndicates' reinsurance brokers constituting grounds for avoidance. However, after the passage of 19 months, after a which a new treaty was entered into in relation to which no such representation was made, the earlier representation ceased to be relevant.

Court of Appeal, Civil Division, (Ward, Longmore and Jackson LJJ), 12 November 2008. - [Back↑](#)

## Aspen Insurance UK Ltd and others v Pectel Ltd

On the true construction of the insurance policy in issue, the defendant had failed to comply with a condition precedent that 'immediate written notice with full particulars of any occurrence which may give rise to indemnity under this insurance' should be provided to the claimants. Accordingly, the claimants were entitled to decline liability in respect of the defendant's claims.

Queen's Bench Division, Commercial Court, (Teare J), 18 November 2008. - [Back↑](#)

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## Case Summaries

### Limit No2 Ltd V Axa Versicherung AG

The Court of Appeal allowed in part the syndicates' (for whom the claimant acted) appeal against the ruling of the Commercial Court that the defendant reinsurers were entitled to avoid fac/oblig reinsurance treaties, a

If you wish to discuss any of the above, or for more information, please contact one of the Insurance and Reinsurance Group



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