

Industry Seminar – 23 November 2017

Conduct Unit Presentation

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Slide: Brexit, Innovation and International Standards

Good afternoon everyone. First of all I would like to thank you for joining us here today and, more importantly, for the help that many of you have given us over the period to assist in moving your sectors forward. I would also like to introduce Keith Le Parmentier, who I am sure a number of you will already know. Keith is my right hand person in the Conduct Unit and has valuable previous knowledge and experience both from working in industry as well as in other supervisory divisions of the Commission.

As was mentioned yesterday, the Commission seeks to add value in all the areas in which it operates to help create an environment in which the good, skilled and hardworking can prosper and the reckless and wrongdoers face justice. To do this effectively, and proportionately, we need to consider and be informed by the consequences of Brexit, innovation and ever-evolving international standards – not least in the area of conduct – and my presentation will give you an insight into our work over the last year.

Slide – The Conduct Unit

In our session today, I will begin by speaking about matters most relevant to those with a general insurance intermediary licence and talk about progress that has been made in relation to our expectations, through the implementation of a new code of conduct and other initiatives, of those advising or arranging general insurance or long term pure protection contracts of insurance.

I will then move on to areas of importance for the those of you with a long term insurance or controlled investment licence and talk about our thematic work on sales practices on these products. The conclusions from which will also be of wider interest and relevance to all.

I will then touch on some of our supervisory and policy work for other financial services areas and our educational and consumer initiatives. Finally I will summarise our plans for 2018 and beyond.

Slide – General insurance - Code of Conduct for Authorised Insurance Representatives

You may recall that towards the end of 2015 we carried out a thematic on the sales practices of general insurance intermediaries focussing on the sale of add-on policies. This was the first time that we had approached this subject and we drew some quite significant conclusions – the main one from our perspective was that the Code of Conduct for Authorised Insurance Representatives was out of date compared to what was happening in practice in industry and as a consequence was no longer suitable for the way that business was being transacted. Importantly though, the review did not find evidence of serious detriment to policyholders – although it did find evidence of poor practice on the part of licensees and their Authorised Insurance Representatives. These deficiencies often also applied to the sale of the core policies upon which the add-ons were sold.

This time last year we were shortly due to release the consultation paper on the new Code of Conduct which we developed with assistance from an external expert and in conjunction with industry. It was released in early December. During the consultation period we held two drop-in sessions for industry to discuss any queries, or raise concerns, prior to submitting a response. We are grateful to those firms who gave their time, both at the drop-in sessions and in their representations in giving the impact of the code due consideration from an “in practice” perspective. With this assistance and feedback from industry, the new code is much more effective and proportionate for those who are required to use it and provides licensees with an up-to date minimum standard to be expected from their representatives.

You may be relieved to hear that I am not going to go through the changes in the new code today but I would just like to highlight a couple of areas. The transitional arrangements in the penultimate section of the code were included to effectively allow for changes to be made to IT systems and policies renewing on an annual basis. Where a licensee does not have a previous opt-in for a customer for a particular add-on policy, this should be obtained at the next renewal. Also, now that the disclosure of prior year premium is mandatory, in order to cater for system changes, a 12 month transitional period ending on 31 March 2018 is in force to allow the relevant changes to be made.

Another new area in the code is in relation to vulnerable customers. Here we have included an expectation that an Authorised Insurance Representative should recognise that some customers might be classed as vulnerable and take reasonable account of their needs. This is a new minimum standard, consistent with the growing global acknowledgement that those that are vulnerable should be treated fairly having taken their particular circumstances into account. I will return to this subject later.

The code became effective on 1 April 2017 and during April and May we held 6 workshops for industry – 2 for personal lines Authorised Insurance Representatives, 2 for commercial and 2 for compliance officers. Our aim through these workshops was to enable as many people as possible to attend – hence the 2 sessions on each subject. I was really encouraged that almost 40% of those who attended had never met with anyone from the Commission before or been to an event

hosted by the Commission. 144 people attended and all locally based licensees bar 1 sent at least 1 representative to the workshops, with others sending all of their Authorised Insurance Representatives.

The workshops gave me an opportunity to explain the legislative and regulatory structure behind the code and how the Authorised Insurance Representatives fit into this structure as well as explain the major changes between the old code and the new one.

Slide – General insurance supervision and policy - Final slide from Code of Conduct workshops

I have taken the liberty of incorporating the final slide from the workshops on the new code into my talk today to give you a flavour of our approach. We acknowledge that anyone can make a mistake but it is the manner in which mistakes are addressed by the person who made them and their employer that can make all the difference. So often this can be down to integrity and doing the right thing for the customer. As supervisors we will work with the licensee to set our expectations of how this should be resolved, which may be through a risk mitigation programme requiring the licensee to take certain actions to address the issues that have been identified.

That said where mistakes are made through poor or reckless judgement or where this clearly is a case of potential deliberate wrongdoing, and a risk mitigation programme may not be sufficient, as supervisors we will consider whether referral to the Enforcement Division is the appropriate, yet exceptional, proportionate way forward.

Slide – General insurance supervision and policy – Annual seminar & thematic

In June we held our fourth annual seminar for insurance intermediaries. The event was primarily designed to assist those with a general insurance intermediary licence, although we opened up the afternoon session to others. The seminar considered “Under insurance and other current themes in the insurance broking profession” and was attended by some 50 industry representatives.

The seminar covered key topical insurance themes including the risks of under insurance, use of unrated insurers, identifying weaker insurers and revisited the impact of the UK’s Insurance Act 2015 - the focus of last year’s seminar. The day also included a thought-provoking session on vulnerable customers and how businesses could adapt to assist them. We were fortunate in securing returning guest speakers Robin Wood and Roger Franklin as the main presenters, fresh from leading masterclasses across the UK where similar topics were on the agenda.

The feedback that we received after both the code workshops and the summer seminar was that they were helpful and that industry would appreciate more of them. We will continue to offer similar events and, in keeping with the opportunities for self-assurance that were mentioned yesterday, and in earlier presentations today, will ensure there are clear learning objectives that

can be taken back to your firm and put into practice. As always, we would welcome further input from you to help us ensure that seminars and workshops deliver content that is helpful to industry and will consequently benefit firms as well as their customers.

As already mentioned, next year our thematic work we will be on general insurance. I would encourage all relevant licensees to revisit our thematic report on the sale of add-ons and assess whether improvements are still required, and can be made, in the areas that we highlighted whilst there is still time to do so – such as the lack of suitable arrangements being in place to meet training and competence requirements and that licensees were not correctly identifying and recording complaints. I would even go as far to say that some Authorised Insurance Representatives were unaware of the existence of the Code of Conduct at the time of our on-site visits in late 2015. These weren't the only areas we highlighted but are probably a fairly good indicator of some of the areas we may be considering in our thematic next year. You may also find it helpful to revisit the slides from the workshops on the Code of Conduct and the Code itself. Our 2017 thematic report, available on our website, may also provide you with some ideas.

Clearly those firms that have made improvements will have less to do as a result of our thematic than anyone who has failed to address concerns that we have highlighted on earlier occasions.

Slide – Long term insurance (and controlled investments)

As was trailed during last year's industry presentation, this year the Conduct Unit carried out a thematic review of sales practices in relation to long term insurance business and controlled investments. You may recall that the Commission has conducted previous thematic reviews on this subject – firstly in 2012 in relation to advice given under long term insurance intermediary licences, then in late 2013 when we included advice being given on controlled investments. The results of this latter review were particularly alarming with 3 licensees being sanctioned following referral to, and further investigation by, the Commission's Enforcement Division and 4 licensees subsequently surrendering their licences.

Thus with the backdrop of these previous thematics and streamlined requirements under the conduct of business rules for advice given to retail clients on both long term insurance and controlled investments, 2017 was an appropriate time to review how industry has adapted to the Commission's messaging and these changes. The thematic review was led by Keith, who, with me, will be happy to answer any specific questions on its conclusions.

In our 2 previous thematics information was only sought from those we planned to visit. This year we issued a questionnaire through the Commission's online portal to the 40 licensees, who had told us they provide advice to retail clients on controlled investments – or hold a long term insurance intermediary licence. This population included clearing banks, private banks, stockbrokers and other advisory firms. The questionnaire was designed to address key issues raised from previous onsite visits and looked to form an overview of how firms conduct their

business – for example we included questions on call recording and on the use of personal email accounts.

On receiving the questionnaire, 4 firms told us they no longer provide advice to retail clients and so did not complete it. Questionnaire responses were submitted by all bar 1 of the remaining firms. I am particularly grateful to those firms, and their honesty in completing the questionnaire.

Our thematic work didn't just focus on the responses but included onsite visits to 5 licensees. Keith led each of these visits and was assisted throughout by an external consultant, who had also joined us in the earlier thematic visits, together with 2 other members of the Conduct Unit – one of whom had also been involved in the previous thematics. This gave us a first-hand opportunity to see how sales practices had changed since earlier visits.

Slide – Thematic report – key areas

I would expect that many of you here today would have read our thematic report or attended one of the workshops that we have held or both. Again, we tried to accommodate as many people as possible by organising 2 sessions for Financial Advisers and 1 for compliance. Altogether, just over 100 people attended these sessions which were well received by those present. A key message being that everyone, Commission and industry alike, has a part to play in moving the sector forward.

In the thematic report's executive summary we highlighted 6 main areas where we felt improvements could possibly be made – these are shown on the slide – however there are a couple of other matters within the report that I will touch on now.

Yesterday, mention was made of the FCA's Mission document and the Commission's similar document, "Our Regulatory Framework". In its Mission, the FCA has restated its commitment to protecting vulnerable retail consumers, considering both consumer capability and vulnerability when making decisions. Its Chief Executive has observed, and I quote, "*we recognise that vulnerability itself changes during any individual's life and in different circumstances, with consumer income being only one factor in assessing vulnerability*". Our Regulatory Framework identifies our role in the protection of consumers where normal market conditions cannot apply by creating requirements typically to facilitate customer decision making or to control outcomes from the decisions customers actually make. In this, consumer vulnerability is a key factor.

Slide – Thematic report – vulnerable customers and self-assurance

Turning back to our thematic questionnaire, we asked licensees if the firm's policies and procedures identify the steps to be taken by a Financial Adviser when a customer is first identified as possibly being vulnerable and to provide their definition of a vulnerable client. The responses were quite surprising with 46% of respondents not having a vulnerable clients' policy.

1 respondent based vulnerability solely on age whilst others identified a wide range of possible scenarios. 2 respondents advised that they were in the process of drafting vulnerable clients' policies.

The thematic report includes examples of those that licensees might consider as vulnerable – you may find this helpful – as with an occasional paper issued by the FCA in February 2015 <https://www.fca.org.uk/publication/occasional-papers/occasional-paper-8.pdf> which includes a practitioner's pack intended to support firms and share good practice. This paper highlights that the pack is a helpful resource – not the FCA's view - and I would echo this comment.

In relation to firms conducting self-assurance, our thematic report is quite detailed and covers a number of topics. It identifies many areas that enable a firm to benchmark itself against its peers. Indeed there are a number of questions which have a surprising number of outliers. Here, if we had time and resources available, we would query some of the most curious responses. Instead we are asking for your engagement on these anomalies.

We have recommended that licensees review the paper to consider how they fare and implement changes to their policies, procedures and controls where required. Conclusions and action taken in this regard, will be a consideration for the Commission in respect of the self-assurance that has been provided to the licensee's board by undertaking this review.

Slide – Other supervisory and policy work

Turning to our other supervisory work, we have carried out on-site visits and risk assessments at bank, insurance, insurance manager and insurance intermediary licensees in accordance with our risk-based framework, thus increasing our exposure and expertise on the fair treatment of customers across the sectors, as with each of these there is a local consumer nexus. We also continue to supervise all low impact insurance licensees, through reactive supervision.

The Conduct Unit continues to assist and support other areas within the Commission on conduct issues. Consequently, when a significant conduct risk is identified on a licensee's Full Risk Assessment, a Conduct Unit representative will be asked to be part of the Risk Governance Panel that quality assures the work of the supervisory team.

We also assist our supervisory colleagues through regular contact with the Channel Islands Financial Ombudsman. Under the law establishing the Ombudsman and the Memorandum of Understanding between us, the Ombudsman informs the Commission if there are matters of concern to it which may have an impact on the work of the Commission. For example, the Ombudsman informs us if particular licensees appear to generate a concerning number of complaints as this may indicate poor licensee conduct.

I would hope you are already aware of this but, just in case, from 1 January next year the Ombudsman will be publishing the name of the firm involved in any determination that has to be made. Although currently no determinations have been published by the Ombudsman, its website has a number of case studies on banking, credit, investments and pensions. You may be relieved to see that there are no insurance case studies as yet!

Turning to 2018, we will be considering more closely, together with other colleagues in the division, the effectiveness of the codes that are currently in place for the conduct of business by insurers licensed in the Bailiwick, in particular for those insurers with retail customers. This review will also consider whether gaps exist against current international standards and if so, whether it would be proportionate to address these gaps locally.

Slide – Working with others

Over the past year the Conduct Unit has continued to be, or become, involved in a number of policy initiatives, with the interest of consumers, and consumer protection, at heart. I shall touch briefly on these to give you an idea of some of the topics we have been progressing with others at the Commission and from elsewhere.

We have been working with colleagues in the Fiduciary and Innovations Supervisory and Policy Division on the Lending, Credit and Finance Project which is progressing the consideration of consumer credit legislation and the regulation of alternative financial services businesses. My colleagues in Fiduciary spoke in depth on this earlier today and, if you missed that presentation, I would suggest you have a look at it when this becomes available on our website. However at this time, I would like to thank all of you who responded to the recent Consultation Paper on the subject and your involvement in the workshops and feedback sessions that have been held; your comments are greatly appreciated.

We were also involved in the project to regulate pension providers, pension schemes and gratuity schemes which resulted in a change to the Fiduciaries' law and the consequent introduction of conduct of business rules. These rules mirror many of the requirements for investment and insurance intermediary licensees to assist firms which may have more than 1 licence through having common conduct of business requirements – apart from a section of rules relating to the pension schemes and gratuity schemes themselves.

Our relationships with Guernsey Citizens Advice and with Trading Standards have continued with the former playing a significant part in taking the Lending, Credit and Finance Project forward. Financial exclusion, an area of common concern, continues to be on our radar. The Commission continues to engage on this subject, remaining mindful of the licensing requirements in this regard.

We continue to consider and learn from developments, good and poor practice in other jurisdictions and have met with other regulators to discuss common concerns, at both a licensee

and sector level. We have also attended relevant training events to help us gauge progress locally in comparison to practices elsewhere.

Slide – Educational Initiatives

I have mentioned on a previous occasion that I like to describe the role of the Conduct Unit as narrowing the gap between the provider of financial services and the consumer who acquires them. We are working with industry to ensure that consumers are treated fairly and that they are sold products and services from firms they can trust. We are also trying to improve the information that is readily available to consumers, either directly or through those that have a face to face relationship with them. This, in turn, should lead to consumers having increased knowledge, a better understanding and being more able to make an informed decision.

I have already mentioned some of our educational initiatives for industry – the workshops on the introduction of the Code of Conduct, the annual seminar for insurance intermediaries and the workshops on the thematic. Altogether we have held 10 different events for industry with close on 300 attendees – and offered 2 drop-in sessions. Thank you to all who attended – especially those who provided feedback. If there are any burning topics you would like us to cover next year, please let me know and I will see what we can do.

You may also have noticed that the Commission took part in World Investor Week in early October. This was jointly organised with our colleagues in Investment. World Investor Week is an initiative of the International Organisation of Securities Commissions (IOSCO) of which the Commission is a member. We held a breakfast meeting for interested stakeholders and partners, who have a direct link to local consumers, on the work of the Commission. We also released a daily tip of the day on social media. I am sure you will not be surprised to hear that one of these tips was “As the saying goes, if it sounds too good to be true, it probably is!”

We have continued to enhance the consumer pages of our website. If you have any non-branded information that you think may be useful for consumers that we could add, please don't hesitate to contact me.

Slide – Plans for 2018 and beyond

In conclusion, I will touch on the Conduct Unit's plans for 2018 and beyond. In view of the variety of subjects I have covered today, in order to be cohesive, I incorporated much of our future plans into the sector-specific parts of my presentation.

The Commission's supervisory framework enables us to focus on the areas where risk is unacceptable. These risks may relate to poor conduct and poor consumer outcomes and may also be demonstrated by poor corporate governance and poor culture. We will continue to assess and address these risks with licensees through thematic and other supervisory work being mindful of how global events and international standards are influencing expectations. Where existing regulatory requirements are insufficient to address these risks, due consideration will be

given to whether the existing framework may require enhancement, engaging with industry and relevant stakeholders at an early stage if such a need is identified.

In order to narrow the gap I referred to earlier, I remain keen that the Conduct Unit continues to further financial literacy initiatives with industry, other stakeholders, consumers and the community at large, focusing our effort in areas where we can have the greatest effect and working with others where we can.

As I have mentioned before, we will listen to what you have to say. We will work with you to enhance the regulatory framework underpinning your business, to facilitate you being able to meet consumer expectations that the financial services and products they receive, from you, meet their needs and, that these financial services and products have been provided by firms they can trust. We are grateful to you and I look forward to your continued support in the future.

Thank you for listening.