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Insights

FCA'S CASH SAVINGS MARKET REVIEW

A SIGNIFICANT EMERGING AREA OF RISK FOR FIRMS

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SUMMARY

On 31 July 2023, following roundtable discussions held with banks earlier that month, the FCA published its Cash Savings Market Review (the "**Review**") in which it set out:

1. its findings on the extent to which firms are passing on base rate rises to savers appropriately;

2. its expectations of firms in this area pursuant to its new Consumer Duty; and

3. a 14-point action plan for both the FCA and firms.

In this insight we explore the content of the Review, as well as considering the seemingly significant risks that might arise for firms that fall foul of the FCA's expectations in this area. This is an area which gives the FCA an early opportunity to demonstrate the impact of its new Consumer Duty, countering the suggestion that the Consumer Duty adds little to existing regulatory rules. It is also an area that is ripe for high volumes of Ombudsman complaints and potentially even mass claimant litigation.

THE FCA'S FINDINGS, EXPECTATIONS AND PLANS SET OUT IN THE REVIEW

The FCA's headline finding in the Review is that increases in savings rates have "*significantly lagged increases in bases rate over the last 18 months*", with this lag being particularly pronounced for easy access savings rates. The FCA acknowledged the complexity of this area, and that there will not be a "*direct relationship*" between savings rates and the base rate. The extent and speed of pass-on may legitimately differ for different organisations (due to, for example, the impact of macro-economic factors on firms' appetite to attract more saving deposits, the impact of regulatory requirements and ring-fencing rules, different business models, different hedging strategies etc).

The FCA also acknowledged that pass through of higher base rates to savers has accelerated over the last two to three months.

Nonetheless, the FCA concluded that the speed of pass through for savings products “*should be quicker*” and that “*much more is required to ensure savers consistently get a better deal*.” The FCA, further to its previous work in this area, has also made clear that it considers failures in competition in the cash savings market to be the “*underlying issue*”. 75% of savings account holders hold their savings account with their main current account provider. There has been a significant increase in consumers switching current accounts, but (whilst it can be difficult to measure), the evidence suggests there has been less switching between savings accounts.

It appears that, to remedy these issues, the FCA will primarily look to use its new Consumer Duty, which came in force on 31 July 2023. In this regard, the Review sets out for firms what the FCA currently expects them to achieve in relation to cash savings under the four outcomes that the Consumer Duty seeks to promote.

FAIR VALUE

In relation to the **fair value** outcome, the FCA expects:

- a reduction in the proportion of easy access accounts with very low interest;
- firms to review savings rates quickly following base rate changes; and
- the difference in rates between existing and new products to continue to narrow.

PRODUCTS AND SERVICES

In relation to the **products and services** outcome, it expects:

- the proportion of balances held in non-interest bearing accounts to fall; and
- firms to achieve cash ISA to cash ISA switching within 7 working days.

CUSTOMER SUPPORT AND UNDERSTANDING

In relation to the **customer support and understanding** outcomes, it expects:

- firms to make clear to customers that they are in the lowest paying accounts; and
- firms to help more consumers to save regularly to increase their financial resilience.

The FCA has also set out in the Review a detailed 14-point action plan of the next steps that it will now take and that it requires firms to take (see the drop-down list below).

THE FCA'S 14-POINT ACTION PLAN

THE FCA WILL:

- Require firms offering the lowest rates to provide their fair value assessments under the Consumer Duty by 31 August 2023 and take "robust action" by the end of 2023 against those who cannot demonstrate fair value.
- Review the timing of firms' savings rate changes each time there is a base rate change.
- Publish an analysis every 6 months of firms' easy access savings rates, listing distribution from best to worst.
- Analyse the difference between on-sale and off-sale products, challenging firms to explain how large differences offer fair value and considering further action if this gap does not continue to close.
- Review firms' performance on cash ISA to cash ISA switching.
- Conduct further analysis into the contribution of cash savings to firms' profitability.
- Review the effectiveness of firms' engagement with customers by the end of March 2024 and take action if firms have not effectively delivered the outcomes set out above.
- Work with others, including the Money and Pensions Service, to identify what more can be done to support consumers to save regularly, strengthening their financial resilience.

THE FCA EXPECTS FIRMS TO:

- From 31 July 2023, use their fair value assessments of on-sale savings products to assure themselves and the FCA, where needed, that these represent fair value for customers.
- Accelerate their fair value assessments for off-sale accounts ahead of the July 2024 Consumer Duty deadline for off-sale accounts.
- Take action to prompt their customers in lower paying savings accounts or non-interest bearing accounts to consider alternatives.
- Closely monitor the effectiveness of customer communications, with larger firms providing the FCA with an evaluation by end 2023 and any follow up action they are taking.
- Support consumer financial resilience by encouraging customers to start saving and/or search for higher rates, with the largest firms committing to support a targeted firm-by-firm communications campaign.

- Consider how they can support their customers to access the free advice available from MoneyHelper.

EMERGING RISKS FOR FIRMS

The passing on of base rate rises to cash savers is clearly an area of significant risk for firms, particularly given the number of consumers potentially impacted in a clear and quantifiable way, the FCA's overt interest in the matter and the wider publicity it is receiving in the national press. For firms that do not meet the FCA's expectations, we anticipate that this could give rise to significant disputes risks from a number of different angles.

COMPLAINTS

We expect that there will be a significant rise in complaints to firms and the Financial Ombudsman Service relating to cash savings, even before any regulatory or litigious action is taken against specific firms. This, in itself, could be a significant risk for firms not meeting the FCA's requirements - not least because the Consumer Duty includes a new requirement that, where a firm identifies that retail customers have suffered harm, it must proactively take action to rectify the situation, including by providing redress where appropriate. A FOS decision in relation to an individual customer's savings account could, therefore, potentially trigger a proactive requirement to pay redress to other customers holding the same type of account.

REGULATORY ACTION

The FCA states in the Review that "*[t]hrough assertive supervision and our data-led approach, we will be able to quickly identify practices that don't deliver the right outcomes for consumers and intervene…Firms can expect us to take robust action, such as interventions or investigations, along with possible disciplinary sanctions.*" Moreover, as is set out above, the FCA has threatened in its 14-point plan to start taking action by as soon as the end of the year. There is, of course, also the real risk that any action taken by the FCA might result in the imposition of a skilled persons report to examine the wider savings business and/or costly redress schemes on firms (for example, under section 384 FSMA).

LITIGATION

The risks here are tempered by the fact that the most obvious set of FCA rules under which firms' liability might be established, i.e. the Consumer Duty, does not give rise to private rights of action under section 138D FSMA. Claimants may well, however, explore other routes through which firms might be held liable for perceived failures to pass on base rate rises. Any individual claims are likely to be relatively low in value but the bigger risk is that of mass-litigation, particularly given the increasing trend for this in the UK courts at present. For example, we anticipate that we may see funders and claimants seeking to make use of the competition "opt out" class actions regime to bring high-value claims against firms. Whilst the FCA did not call out any cartelist behaviour in its paper, the weaknesses of competition that it identified in the market may well give rise to claimant theories of abuses by large current account providers of dominant positions in the market.

NEXT STEPS

In order to avoid the risks identified above, firms should consider very closely the FCA's expectations and next steps set out in the Review and will need to communicate to their FCA supervisors how they are complying with these. The situation also remains dynamic, with the FCA indicating that it will conduct a further review of the cash savings market before the end of the year. Firms should, therefore, anticipate that the FCA may set out further expectations or required actions at that stage. Firms should also be ready to address *ad hoc* questions from supervisors about their implementation of the Consumer Duty in this and other areas – a trend we are already seeing and advising clients about.

RELATED PRACTICE AREAS

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