



Money Covered: The Week That Was – 22 November 2024

22 November 2024

Welcome to **The Week That Was**, a round-up of key events in the financial services sector over the last seven days.

The fourth episode of Season 3 of our podcast, Money Covered – The Month That Was, where the team discusses key developments and topical issues in the financial services area, is now available. This episode features Ash Daniells, Matt Watson, Kim Wright and Rachael Healey discussing management liability risks, from a D&O, EPL and PTL perspective.

To listen to this and all previous episodes, please click [here](#).

Headline Development

FCA letter to House of Commons Treasury Select Committee regarding motor finance judgment

The FCA recently sent a letter to the House of Commons Treasury Select Committee (**Select Committee**) regarding the recent Court of Appeal judgment on motor finance commission in *Johnson v FirstRand Bank Ltd (London Branch) (t/a MotoNovo Finance) [2024] EWCA Civ 1282*. The letter was published by the Select Committee on 19 November 2024. In the letter, the FCA provided background to the case, and explained what the FCA has done in response to raise standards in the market. Key points include:

- 11 firms paused motor lending while they made changes to comply with the law confirmed by the judgment. 8 of these firms have returned to lending and 3 have switched to a zero-commission model. Firms' share prices have also been impacted by the decision.
- The FCA is reviewing firms' approach to ensuring they have received their customers' informed consent. Once there is more clarity on what changes are being made, the FCA will consider whether further guidance for firms is required.
- The FCA is considering whether it should publish its views on whether the judgment applies beyond motor finance. It recognises that the final position will be decided by the court.

To read the letter to the Select Committee, please click [here](#).

Auditors

NMC Health Plc (in administration) v Ernst & Young LLP [2024] EWHC 2905 (Comm)

On 11 November 2024, the Commercial Court of the King's Bench Division published the judgment in the above case involving alleged auditor negligence and the failure to spot fraud. The key issue was around the disclosure of documents and whether litigation privilege attached to them.

The Judge found that the relevance hurdle for disclosure had not been overcome with respect to documents relating to administrator investigations and that although interview transcripts and witness statements were relevant, litigation privilege applied, as they were created in contemplation of litigation.

It was acknowledged by the Judge that this was a complex and unenviable position for NMC to find itself in, however, the case highlights the balance that needs to be struck between privilege and investigation.

To read the full judgment, please click [here](#).

Insolvency Practitioners

Insolvency Service's latest statistics show positive movement for companies

The Insolvency Service has now published its October 2024 insolvency statistics on company and individual insolvencies in England and Wales, which show a downwards trend. Company insolvencies totalled 1,747, a 10% drop from September 2024 and 24% lower than October 2023. Individual insolvencies were 8,952, down 14% from September 2024 but similar to October 2023. Key figures include:

- 188 compulsory liquidations
- 100 administrations
- 1,445 creditors' voluntary liquidations
- 12 company voluntary arrangements
- 3,793 debt relief orders
- 4,563 individual voluntary arrangements
- 7,099 Breathing Space registrations

R3 President Tim Cooper attributed the decline in corporate insolvencies to fewer Members' Voluntary Liquidations, which had previously been driven by concerns over potential tax charges ahead of the recent budget. He noted a positive trading climate due to falling interest rates and inflation, benefitting the retail, hospitality, and construction sectors. He also highlighted the impact of the upcoming change to employer National Insurance Contributions, which could increase costs for businesses, advising firms to seek professional advice.

For personal insolvencies, the month on month decrease is attributed to fewer Debt Relief Orders (**DROs**) and Individual Voluntary Arrangements (**IVAs**). However the number of DROs has risen compared to the same period last year. This increase is due to adjustments in the debt threshold and the

elimination of the administration fee earlier this year, making the process more accessible to a larger number of people.

Overall, despite a slight improvement in personal financial distress in England and Wales, over 16,000 people still sought debt or insolvency support last month, indicating that personal finance issues remain a significant concern for many.

To read the Insolvency Services commentary on individual insolvencies, please click [here](#), and for company insolvencies, [here](#).

Financial Institutions

FSCS sees 18% rise in claims decisions

The Financial Services Compensation Scheme (**FSCS**) has reported an 18% increase in claims decisions for the first half of 2024, according to interim CEO Martyn Beauchamp. This growth comes as more than two-thirds of advice claims are now classified as "highly complex", a significant rise from the previous period, when one third of cases were so categorised.

Due to the rise in claim complexity, the FSCS expects to pay out £10m more compensation than previously anticipated this year. Beauchamp explained that these claims require additional resources, deeper investigations, and more time, particularly due to challenges in gathering data.

Efforts are ongoing to improve claim processing times whilst managing costs. The FSCS also announced that PwC, its new claims partner, began handling cases in June as part of a gradual transition to a new operation model, which is set to be fully implemented by the 2025/26 financial year.

For 2024/25, the levy remains at £265m, but compensation is now expected to reach £372m, up from £363m. This is driven by the increased volume of claims decisions. The FSCS has also secured substantial recoveries, almost doubling its previous forecast, which has helped keep the levy stable despite higher compensation payouts.

Looking ahead, the levy for 2025/26 is forecasted at £394m.

To read more, please click [here](#).

Pensions

High Court gives warning to pension scheme trustees regarding scheme amendments

In *Ballard and others v Buzzard (sued as a Representative Beneficiary of any Scheme Members in whose interests it would be for the Claimants not to obtain the relief that they seek)* [2024] EWHC 2765 (Ch), the High Court addressed the legal requirements for rectification of certain pension scheme documents which had not been validly executed.

The dispute arose when it became clear that 3 amendments to the scheme, dating back to 2001 and 2005, had not been validly made at the time, as they did not comply with a requirement under the scheme rules for amendments to be signed by all five trustees of the scheme. The court therefore had to consider the legal requirements of rectification, the legal mechanism by which the court can retroactively

give effect to contracts and other legal documents which do not reflect the intentions of the parties at the time the documents were prepared and executed.

Rectification is primarily about discerning the intention of the parties at the time of creating the document and, in this case, there was ample evidence of the parties' intentions to allow the court to comfortably grant the application for rectification.

However, although the outcome here was ultimately positive, the judgment says that it should be viewed as a "cautionary tale" for trustees to ensure they comply with scheme rules in such matters, as, had the trustees of the scheme in this case done so, costly litigation could have been avoided.

To read the full judgment, click [here](#).

FOS Developments

FOS and FCA make joint call for modernisation of the redress system

The Financial Ombudsman Service (**FOS**) and the Financial Conduct Authority (**FCA**) have called for input on how to modernise the system for redress, as unveiled in Chancellor Rachel Reeve's first Mansion House speech on 14 November. The regulators are concerned with ensuring (1) when things do not go to plan, that appropriate levels of redress are provided to consumers; (2) harm is identified as soon as possible, and proactively addressed, to reduce the number of complaints made to the FOS; (3) issues are identified as soon as possible, to enable efficient and timely resolution; (4) better lines of communication with consumer and industry stakeholders, to facilitate awareness of matters affecting the wider market.

Input has been requested on how to prevent financial issues that lead to complaints, which creates uncertainty for both customers and firms. A refreshed Memorandum of Understanding has also been signed by the two regulators in an attempt to work better together and share their insights.

To read the full speech, please click [here](#). To read RPC's blog, click [here](#).

Regulatory developments for FCA regulated entities

FCA deems FNZ a co-manufacturer for the purposes of consumer duty regulation

The FCA has classified FNZ as a co-manufacturer for the purposes of consumer duty regulation. The new classification means that FNZ will have more regulatory responsibilities due to their ability to "determine or materially influence the manufacture of a product or service", rather than the responsibility solely being placed with the advisors that use the technology and services. In bringing FNZ under the scope of the consumer duty rules, they could be held liable or fined for customers' financial losses if things go wrong.

It is understood that FNZ engaged with the FCA in the investigation and classification following the implementation of the consumer duty last year, prior to this announcement. It isn't clear if any other platform technology firms will also be deemed "co-manufacturers", as FNZ provides some of the largest software and platform operations, which was a likely focus of the FCA.

With thanks to this week's contributors: Lauren Butler, Heather Buttifant, Cory Gilbert-Haworth, Hattie Hill, Eleanor Jones, Melanie Redding, Kristin Smith, Alison Thomas and Kerone Thomas.