

**C L I F F O R D**  
**C H A N C E**

**CLIFFORD CHANCE INSURANCE INSIGHTS 2024**  
SESSION 3 – REGULATORY INSIGHTS  
OCTOBER 2024

## SESSION 3

### REGULATORY INSIGHTS



The session featured a panel discussion chaired by Ashley Prebble, a partner and head of the Financial Institutions Group at Clifford Chance. The panellists included Dorian Drew, a Clifford Chance partner specialising in investigations and regulatory enforcement action; Hilary Evenett, a director in Clifford Chance's Financial Institutions Group; and Michael Sicsic, the founder of Sicsic Advisory and former head of supervision for the UK general insurance retail sector at the FCA. The panel explored key regulatory developments impacting the UK insurance industry.

The UK insurance sector is currently undergoing a significant transformation as it adjusts to the post-Brexit economic landscape. At the heart of this transformation are the strategic reforms being led by HM Treasury and the Prudential Regulation Authority (PRA), which include the adaptation of the Solvency II framework into a customised 'Solvency UK' model. This new model is meant to cater to the UK market, whilst ensuring compliance with international regulatory standards. The aim is to strike a balance between fostering a dynamic, competitive environment for insurers and maintaining the robustness of the UK financial system.

Simultaneously, the Financial Conduct Authority (FCA) is reinforcing its commitment to consumer protection through the introduction of the Consumer Duty, a priority highlighted in its Business Plans for both the current and previous years. The Duty aims to establish higher and more explicit standards of consumer care across the financial services sector, compelling insurers to place policyholders' interests at the forefront of their business models. These reforms, together with the new regulatory accountabilities introduced by the Financial Services and Markets Act (FSMA) 2023, are designed to ensure that the UK insurance industry remains resilient and responsive in this post-Brexit era. However, the effectiveness of these reforms will depend on their execution and the ability to align them with global insurance practices, while also responding to the needs of policyholders and the wider economy.

## MOVING TO SOLVENCY UK



### **The most recent Solvency UK reform that took effect in June 2024 is the overhaul of the matching adjustment mechanism.**

This allows insurers to offset the value of their liabilities against the returns from matching assets, mitigating capital volatility. The revision of the matching adjustment is more significant for life insurers, who hold long-term liabilities and can now better match these with appropriate assets. By enabling more favourable capital treatment for certain long-term investments, the PRA hopes to encourage insurers to invest in infrastructure and other projects, including 'green assets' that can contribute to the wider economy and help meet the UK's net zero aims. However, the reforms are not as substantial as the industry had hoped, so significant capital deployment and economic investment is not expected.

The PRA has also raised the threshold for annual gross written premiums before Solvency UK applies to £25 million. The benefit of doing so is linked to the mobilisation regime which aims to reduce the time and cost associated with setting up a new insurance company. The PRA's initiative is expected to attract not only traditional insurers but also encourage tech-driven firms to enter the insurance space, bringing with them innovative products and services. By lowering the barriers to entry, the regime may lead to increased competition, which typically results in more choice and potentially lower prices for consumers. Additionally, the regime is likely to contribute to the UK's reputation as a hub for financial innovation and has the potential to draw international attention and investment. The Solvency UK changes also aim to simplify the regulatory reporting processes, thereby reducing the administrative burden on UK insurers and allowing them to focus more on strategic business activities.

## THE CONSUMER DUTY AND FCA ASSERTIVENESS



### The FCA has significantly enhanced its regulatory framework with the introduction of the Consumer Duty.

This represents a fundamental shift in focus, demanding that firms prioritise consumer outcomes over traditional compliance. Beyond mere guidelines, the Duty requires firms to ensure their products and services consistently deliver positive outcomes for consumers. With a particular emphasis on vulnerable customers, the FCA expects firms to identify and address their specific needs. To demonstrate adherence to the Duty, firms must develop robust metrics that measure performance and drive service improvement, with some firms revisiting their complaints data to indicate areas of focus. These metrics must be transparent and open to scrutiny as firms will be accountable for their actions to the FCA. The regulator has made it clear that it will actively monitor the market, utilising data to identify non-compliance and take decisive action where necessary to uphold the high standards set by the Consumer Duty.

In its enforcement role, the FCA is moving towards a more assertive stance, focusing on investigations to address potential regulatory breaches. This approach is complemented by the PRA's "early account scheme," which incentivises firms to engage early with the regulator during investigations, potentially leading to reduced penalties for those that demonstrate cooperation and a commitment to rectifying issues promptly.

The FCA is also taking a firmer line on non-financial misconduct, such as workplace harassment and discrimination, signalling that such behaviours will not be tolerated within regulated firms and that they have implications for the integrity of the financial services industry. Concurrently, the regulation of Artificial Intelligence (AI) is becoming increasingly significant, as the FCA seeks to encourage innovation in this area while ensuring that the deployment of AI technologies does not compromise consumer protection. The regulator is closely monitoring the development and application of AI in financial services, ready to intervene where necessary to ensure that the use of AI aligns with regulatory standards and serves the best interests of consumers.

The use of Section 166 skilled person reports has notably increased, with twelve commissioned in the past nine months. This reflects a growing trend across the financial services sector, particularly in general insurance, where the practice is becoming more commonplace. These reports serve a dual purpose: they provide confirmation that specific actions have been taken by firms and they are instrumental in embedding the Consumer Duty into firm practices. Additionally, they play a significant role in addressing governance issues and managing information effectively. Alongside S166, Section 165 requests for information are also employed by the UK regulators. The strategic use of S165 is often indicative of the quality of the relationship and the level of trust between the regulator and the firm, as it allows the regulator to gather necessary information directly from the firms to monitor compliance and assess the risk profile of regulated entities.

## APPROACH TO INSURER RESOLUTION AND SOLVENT EXIT



**Despite insurer insolvency being rare, the PRA is intensifying its focus on facilitating an orderly exit for insurers.**

In line with this, the Bank of England is set to become the resolution authority under the proposed Insurer Resolution Regime (IRR), a framework which is awaiting legislation to bring it into effect. This regime aims to provide the Bank with resolution tools to safeguard policyholders and reduce systemic risks associated with the potential collapse of significant insurers, particularly those with large-scale operations or niche product lines. Now that a new government is in place, we expect to see the legislation be enacted sooner.

The PRA is also playing a role in shaping the exit strategies of insurers. As part of its broader mandate, the PRA is emphasising the importance of solvent exit planning, which requires insurers to develop comprehensive plans for an orderly wind-down of their operations when solvent. This planning is to help ensure that insurers can exit the market without adversely affecting policyholders or the wider financial system. The PRA's guidance on solvent exit planning complements the IRR by ensuring that insurers maintain a clear strategy for resolution in the event of financial distress, thereby reinforcing the overall resilience of the UK insurance sector.

## ENHANCING THE UK'S INTERNATIONAL COMPETITIVENESS



**The introduction of a secondary competitiveness objective following FSMA 2023 within the regulatory framework was hoped to impact the insurance sector, particularly in terms of fostering innovation.**

This objective aims to strike a balance between encouraging innovation across the sector and maintaining the need for rigorous oversight. The broking market, known for its adaptability, may especially benefit from this new focus, as it represents a readily approachable target for technology-focused innovative practices to assist in connecting with, listening to, and advising customers.

Regarding the Insurance Linked Solutions (ILS) regime, there is a broad recognition of its potential to enhance the competitiveness of the UK insurance market. The PRA recognises the need to streamline the ILS application process, but faster approvals are still needed to draw market participants and bolster the UK's position as a leading global insurance hub given the high levels of competition

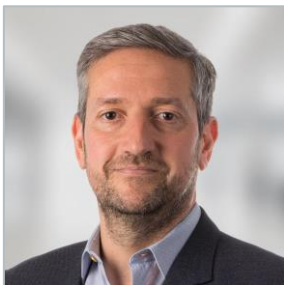
In terms of the onshore 'captive market', a bespoke regime for the formation of UK captive insurers has long been discussed and promoted by market participants. This initiative aims to create a regulatory framework tailored for captive insurers, which provide insurance coverage for their parent companies or affiliated groups. Compared to traditional insurers, captives would benefit from expedited approval processes and reduced reporting requirements. By focusing exclusively on internal risks, the onshore captive model is designed to streamline regulation while promoting innovation and efficiency within the UK insurance sector.

To conclude, the UK insurance industry is facing a complex and evolving regulatory landscape. The PRA and FCA's concerted efforts to reform capital management, facilitate market entry, enhance consumer protection, and strengthen the resolution regime are indicative of a proactive approach to safeguarding the UK sector's stability and competitiveness. As firms navigate these changes, proactive engagement with regulators, robust risk management, and a strong focus on consumer outcomes will be paramount.



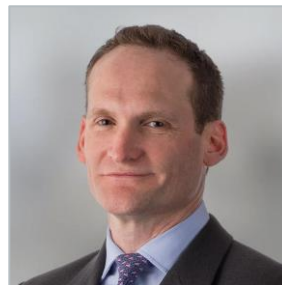
## KEY CONTACTS

We would be delighted to discuss these topics further with you.



**ASHLEY PREBBLE**  
Head of the Insurance Sector,  
London

**T** +44 20 7006 3058  
**M** +44 7753 832505  
**E** ashley.prebble  
@cliffordchance.com



**DORIAN DREW**  
Partner, London

**T** +442070061389  
**M** +447943526743  
**E** dorian.drew  
@cliffordchance.com



**HILARY EVENETT**  
Senior Director, London

**T** +442070061424  
**M** +447717542658  
**E** hilary.Evenett  
@cliffordchance.com

# CLIFFORD CHANCE

Clifford Chance, 10 Upper Bank Street, London, E14 5JJ

© Clifford Chance 2024

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street, London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

[www.cliffordchance.com](http://www.cliffordchance.com)

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

Abu Dhabi • Amsterdam • Barcelona • Beijing • Brussels • Bucharest • Casablanca • Delhi • Dubai • Düsseldorf • Frankfurt • Hong Kong • Houston • Istanbul • London • Luxembourg • Madrid • Milan • Munich • Newcastle • New York • Paris • Perth • Prague • Riyadh\* • Rome • São Paulo • Shanghai • Singapore • Sydney • Tokyo • Warsaw • Washington, D.C.

Clifford Chance has a best friends relationship with Redcliffe Partners in Ukraine.

\*AS&H Clifford Chance, a joint venture entered into by Clifford Chance LLP.