



Financial Services Reward – February 2022

We have summarised below the key reward regulatory developments impacting firms in the financial services sector over the past quarter.

Key reward regulatory developments in the UK

Implementation of the new UK Investment Firm Prudential Regime (IFPR) by the Financial Conduct Authority (FCA)

There have been a number of developments relating to the implementation of the IFPR, the new

prudential regime for investment firms in the UK. The IFPR impacts:

- Any MiFID investment firm authorised and regulated by the FCA that was subject to any part of the Capital Requirements Directive (CRD) and the Capital Requirements Regulation (CRR), including BIPRU and IFPRU firms, specialist commodities dealers, oil and energy market participants.

- Collective Portfolio Management Investment Firms (CPMIs).

- Regulated and unregulated holding companies of groups that contain an investment firm authorised and regulated by the FCA and authorised under MiFID and/or a CPMI.

The new MIFIDPRU Remuneration Code (SYSC 19G) sets out the remuneration requirements under the IFPR and

applies to all performance periods beginning on or after 1 January 2022.

FCA publishes a new webpage on the MIFIDPRU Remuneration Code

On 13 January 2022, the FCA published a new webpage designed to assist firms in complying with the new MIFIDPRU Remuneration Code, by including information relating to proportionality, performance adjustment, reporting requirements and disclosure.

On this webpage, firms can find the template MIFIDPRU Remuneration Policy Statement (RPS) and accompanying RPS table in which firms can record their Material Risk Taker (MRT) list.

While not compulsory, the RPS is intended to assist firms in recording how their remuneration policies and practices comply with the new Remuneration Code, by setting out the principal questions that the FCA is likely to ask if it were to carry out a review of a firm's remuneration policies. Firms can choose to record their remuneration policies and MRT lists in a different way, but the FCA has highlighted that it does expect firms to ensure that they document this information in a clear and structured manner.



Please find a link to our update on the MIFIDPRU Remuneration Code and new RPS template [here](#). The FCA's new webpage can be found [here](#).

FCA webinars to address practical implementation of the IFPR

Overview: On 30 November 2021, the FCA hosted two webinars addressing areas of the new IFPR regime where it has received the most queries to date.

The second session focused on the more practical aspects of the regime, including important clarifications around remuneration. In particular, the FCA has confirmed that the variable to fixed remuneration ratio requirement will only apply to MRTs.



A summary of the key points relating to remuneration can be found [here](#) and a link to access the relevant webinar can be found [here](#).

FCA publishes final IFPR remuneration disclosure rules

Overview: On 26 November 2021, the FCA published its third in a series of Policy Statements which includes the final rules on public remuneration disclosure under the IFPR. This follows the publication of its Consultation Paper in August 2021 which set out the draft requirements on remuneration disclosure.

Timing: The first reporting under the new reporting requirements will be required in 2023, in respect of the 2022 performance year. The relevant FS Act statutory instruments have been made and these rules took effect from 1 January 2022. Note that commodity and emission allowance dealers are exempt from the disclosure requirements for five years.



A link to our alert on these remuneration disclosure rules can be found [here](#).

Prudential Regulation Authority (PRA) Policy Statement on MRT Identification under CRD V

Overview: On 17 December 2021, the PRA published its Policy Statement on the amendments to the PRA's remuneration rules and regulatory guidance relating to MRT identification.

As proposed by the PRA in its Consultation Paper in September 2021, the amendments incorporate into the Remuneration Part of the PRA Rulebook the provisions relating to MRT identification set out in the Regulatory Technical Standards (RTS) on MRT identification under CRD V which were published in the EU's Official Journal on 9 June 2021, as well as making corresponding changes to the PRA's Supervisory Statement on remuneration (SS2/17).

The effect of these changes is to on-shore the RTS into UK law and means that UK firms will no longer have to consider the previous CRD IV regime when undertaking MRT identification for the 2022 financial year.

The PRA is also updating the Certification Part of the PRA Rulebook to ensure alignment with the amended remuneration rules.

Firms in scope: Banks, building societies and PRA-designated investment firms, including third country branches.

Timing: The amended remuneration rules and updated guidance apply in relation to a firm's first performance year starting after 30 December 2021. The changes to the Certification Part will come into effect on 1 March 2022.



A link to our more detailed alert and the full Policy Statement (which includes links to the updated rules and Supervisory Statement) can be found [here](#).

Publication of the FCA's Environmental, Social and Governance (ESG) strategy

The FCA published on 3 November 2021 its strategic approach to ESG, which sets out the outcomes that the FCA wants to achieve and the strategic themes and key actions that the FCA expects to take to deliver these outcomes.

The FCA highlights that it is considering its conclusions from its July 2021 joint Discussion Paper with the PRA and Bank of England on diversity and inclusion in the financial services sector (expected to be issued in 2022) and that this will remain a core area of focus for the FCA.



A link to the FCA's full ESG strategy can be found [here](#).

PRA publishes its Policy Statement on Pillar 3 disclosures

Overview: On 14 October 2021, the PRA published its Policy Statement on the 'Implementation of Basel standards: Final rules.' The update includes the reporting templates and instructions for the Pillar 3 reporting disclosures.

Firms in scope: UK banks, building societies and PRA-designated investment firms, as well as UK financial holding companies and UK mixed financial holding companies of certain PRA-authorised firms.

Timing: The amended remuneration disclosure requirements are effective from 1 January 2022.

Key provisions to note: The Policy Statement introduces a UK specific template for firms to use when completing their Pillar 3 remuneration disclosures (Annex XXXIII).

The PRA provides additional guidance to support firms in their remuneration disclosures, including supplementary information on the FX rates and the categorisation of employees and pay elements (see Annex XXXIV).

As compared to the previous reporting requirements, there have been amendments to both the qualitative and quantitative disclosures that firms should be aware of, including more granular disclosure requirements relating to severance pay and payment in instruments.

In line with the changes introduced under CRR II, firms will have to disclose, as part of the qualitative information relating to their remuneration policy, information on whether the firm relies on proportionality in order to disapply the rules on deferral, payment in instruments and/or discretionary pension benefits. This would include whether the firm is relying on firm-level proportionality under the relevant thresholds and/or proportionality on an individual employee level, based on the individual de minimis threshold. Firms will also need to disclose the number of staff that benefit from that application of proportionality, as well as their total remuneration, split into fixed and variable remuneration.



A link to the Policy Statement and accompanying tables and guidance can be found [here](#).

Key reward regulatory developments at an EU and international level

European Banking Authority (EBA) publishes final Implementing Technical Standards on ESG risks in Pillar 3 disclosures

Overview: On 24 January 2022, the EBA published binding technical standards relating to how ESG risks should be addressed in the Pillar 3 disclosures issued by large credit institutions, in order to ensure that stakeholders are appropriately informed about the firms' ESG exposures, risks and strategies.

Firms in scope: Large credit institutions (as defined under the CRR) which have securities traded on a regulated market of any Member State.

Further details: The technical standards provide the framework for large institutions to disclose qualitative and quantitative information relating to ESG

risks. Among the qualitative disclosures required is information relating to the firm's governance arrangements, including the "alignment of remuneration policy with ESG risks".



A link to the EBA's report can be found [here](#).

EBA launches consultation on updating its Guidelines on the remuneration benchmarking exercise under the CRD

Overview: On 21 January 2022, the EBA published a Consultation Paper on updating its Guidelines on the remuneration benchmarking exercise under the CRD. These Guidelines were first published in 2012 and then updated in 2014. The EBA is proposing to incorporate the additional requirements introduced by CRD V and CRR II regarding the application of proportionality by firms and to include new provisions relating to the benchmarking of the gender pay gap.

Firms in scope: EU credit institutions and investment firms which have remained subject to the CRD.

Timing: The updated Guidelines are expected to take effect on 31 December 2022, with the new reporting format expected to apply for the collection of remuneration data in 2023 in relation to the 2022 financial year.

The first data on the gender pay gap will be collected in 2024 in relation to the 2023 financial year.

Key provisions to note: The EBA proposes to update the Guidelines in order to address the following:

- The new requirement under CRR II that firms must disclose information on whether they rely on proportionality and the basis for this. Firms must also disclose which of the remuneration rules that they disapply

(for example, deferral and payment in instruments), the number of staff members that benefit from this disapplication and their total remuneration split into fixed and variable remuneration.

- The disclosure of information relating to the gender pay gap in order to allow competent authorities to monitor the implementation of the principle of equal pay for equal work or work of equal value (and the development at different levels of pay), in line with the CRD V requirement for firms to have a gender neutral remuneration policy, and as reflected in the updated EBA Guidelines on sound remuneration policies and internal governance. Specific templates for the benchmarking of the gender pay gap are being introduced under the updated Guidelines.
- The benchmarking of bonus caps higher than 1:1 which are approved by firms' shareholders. CRD V requires competent authorities to use the information received from firms in relation to the approval of higher bonus caps by shareholders to benchmark the practices of firms in this regard and to provide the EBA with that information. To ensure a consistent submission, the updated Guidelines and template are designed to ensure the consistency of the information collected on a biennial basis.



A link to the EBA's Consultation Paper can be found [here](#).

EBA launches consultation on new Guidelines on the remuneration and gender pay gap benchmarking exercise under the IFD

Overview: The EBA published on 21 January 2022 a separate Consultation Paper with draft Guidelines on how

competent authorities will collect information from investment firms relating to their remuneration practices and gender pay gap data, for onward submission to the EBA.

Firms in scope: EU investment firms which are subject to the IFD.

Timing: The new Guidelines are expected to apply from 31 December 2022.

The remuneration benchmarking data for the 2022 financial year (other than in relation to the gender pay gap data) is expected to be submitted by investment firms to competent authorities by 31 August 2023 and to be provided by competent authorities to the EBA by 31 October 2023.

The first benchmarking exercise in relation to the gender pay gap is expected to relate to the 2023 financial year.

Key provisions to note: The EBA intends for the Guidelines to be consistent with the Guidelines on the remuneration benchmarking exercise under the CRD, currently being updated by the EBA (see above). As such, the new Guidelines contain draft templates for the disclosure of general information relating to remuneration at investment firms, both on an all-staff and identified staff basis, and specific templates for the disclosure of information relating to the gender pay gap and the representation of male and female staff at different remuneration levels.



A link to the EBA's consultation paper can be found [here](#).

EBA launches consultation on new draft Guidelines on the high earner data collection exercises under the CRD and IFD

Overview: On 21 January 2022, the EBA published for consultation new

Guidelines on the data collection exercise in relation to high earners, to replace the current Guidelines which were originally published in 2012 and revised in 2014. The proposed changes reflect amendments introduced by CRD V but also the introduction of the IFD.

Firms in scope: EU credit institutions and larger investment firms which have remained subject to the CRD, as well as EU investment firms which are subject to the IFD.

Timing: The new Guidelines will take effect from 31 December 2022.

The new reporting format will apply for the collection of high earner data in 2023 in relation to the 2022 financial year.

For the 2021 financial year, the high earners data collection exercise will be conducted under the existing Guidelines for both institutions and investment firms, unless the latter are small and non-interconnected.

Key provisions to note: The CRD and the IFD require competent authorities to collect information on the number of natural persons, per institution and investment firm respectively, who are remunerated EUR 1 million or more per financial year, in pay brackets of EUR 1 million. The information should also include details on their job responsibilities, the business area and the main elements of the salary, bonus, long-term award, and pension contribution.



A link to the EBA's Consultation Paper can be found [here](#).

EBA publishes a report on the application of its Guidelines on the remuneration of sales staff

Overview: On 9 December 2021, the EBA published a report assessing the implementation of its Guidelines on the remuneration of sales staff, which were originally published in 2016. The Guidelines are intended to complement the EBA Guidelines on sound remuneration policies under the CRD.

Scope: EU credit institutions involved in the sale and provision of retail banking products and services.

Further details: The EBA reviewed 70 financial institutions across 12 EU member states and analysed their application of the Guidelines. Analysis focussed on firms' internal arrangements for the design, approval and monitoring of remuneration policies and practices for sales staff, and especially the procedures around the making of variable remuneration awards.

The EBA identified some shortcomings, for example that the same function often manages the design, approval and monitoring of remuneration policies and practices; a consolidation of governance structures that the EBA considers increases the risk of inaction bias.

However, the EBA also identified 17 different practices that it considers to be compliant with the Guidelines and reflective of best practice. A selection of the identified practices is listed below:

- Involving HR, compliance and risk management functions in the design of remuneration policies
- Applying a mix of quantitative and qualitative criteria in determining variable remuneration of sales staff
- Refraining from setting sales performance as the determining

criterion for the promotion of staff

- Implementing measures that explicitly disincentivise sales staff from acting to the detriment of consumers
- Including measurements for customer satisfaction/detriment in key performance indicators that determine variable remuneration
- Exercise discretion to reduce or forfeit the variable remuneration of sales staff when acting to the consumer's detriment
- Ensuring that pay-out curves for variable remuneration do not create an incentive to maximize sales at a specific point in time.



A link to the EBA's report can be found [here](#).

Final EBA Guidelines on sound remuneration policies under the IFD

Overview: On 22 November 2021, the EBA published its updated Guidelines on sound remuneration policies under the IFD. The final Guidelines will apply from 30 April 2022.

Scope: EU investment firms subject to the IFD.

Timing: A firm's remuneration policy should be applied in line with these Guidelines for the performance year starting after 31 December 2021.

Investment firms should implement any adjustments to their remuneration policies by 30 April 2022 and update the required documentation accordingly. Where shareholder approval is required for such revisions, approvals should be requested before 30 June 2022.



A link to the final EBA Guidelines on sound remuneration policies can be found [here](#).



A summary of the final Guidelines can be found [here](#)

Effective Implementation of Financial Stability Board (FSB) Principles for Sound Compensation Practices and Implementation Standards

Overview: On 4 November 2021, the FSB published its seventh progress report on 'Effective Implementation of FSB Principles for Sound Compensation Practices and Implementation Standards'. In the context of compensation arrangements, the report considers:

- the regulatory and supervisory framework;
- the effective use of metrics/criteria and compensation tools; and
- the legal and regulatory challenges to the effective use of compensation tools.

Further details: The report notes that a common approach to assessing employee performance and determining variable pay is to use a balanced scorecard based on key performance indicators, complemented by other inputs. The FSB considers that it is critical to establish and apply such a framework to promote a sound risk culture in a firm.

While in-year adjustments and malus are commonly used, the report notes that use of clawback is not widespread due to ongoing legal and practical constraints. The report advocates incorporating clawback terms and severance clauses in employment contracts to enhance their enforceability and effectiveness.

The report also notes that non-financial measures and disclosure of compensation-related information are increasingly used to shape and promote a sound risk culture and positive behaviours, as well as to contribute to robust risk management.

The FSB further notes that firms are increasingly incorporating ESG aspects to drive accountability for delivering outcomes. The report states that this must be underpinned by robust

governance, as the increasing application of non-financial measures requires the board and internal control functions to use discretion and judgement appropriately.

The report finds that most existing compensation frameworks, and associated governance mechanisms, have demonstrated sufficient flexibility to date. However, while banking authorities in most jurisdictions have powers to direct firms to hold back

and/or limit bonuses, especially in cases where there are concerns about capital conservation, or to increase deferral periods, the FSB notes that this is much less prevalent in the asset management and insurance sectors.



A link to the full publication can be found [here](#).

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