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Diversity

Box ticking? Cranfield's latest annual FTSE Board Report 2019 has found that more needs to be done to promote diversity across all levels of the FTSE 100

Report Overview | The Female FTSE Board Report 2019

Key Takeouts

- **33% target is in sight:** Over the past 12 months the percentage of women on FTSE 100 boards has increased from 29% to 32% putting the Hampton Alexander target of 33% by the end of 2020 well in sight. For FTSE 250 boards, the target is also achievable with a 'concerted push'
- **Some companies are taking a 'tick box' approach to appointing women:** The report found that female board members have significantly shorter tenures and are less likely to be promoted into senior roles than their male counterparts, suggesting that women are in some cases, being appointed for their symbolic value
- **Little progress on narrowing the gender pay gap:** The report found there has been little progress on narrowing the gender pay gap, but welcomed moves by FTSE companies to invest time in analysing their own particular issues and developing clear action plans

The Female FTSE Board Report is produced annually by Cranfield University's School of Management, which has been monitoring trends in women's representation on FTSE 350 boards since 1998. The latest annual edition, which is supported by the Financial Reporting Council, was released on 11 July. The report has found that over the past 12 months, the percentage of women on FTSE 100 boards has increased from 29% to 32%, putting the 33% target set for 2020 within sight. However, the report also raises concerns that some companies may be appointing women for their 'symbolic value' only and calls on firms to address the issue.

A high level summary is below.

Some Key Findings

FTSE100 boards: on track to meet the 33% target

- In total, 292 women hold 339 directorships on FTSE 100 boards
- 100% of FTSE 100 companies have at least one female director and almost half (48%) of FTSE100 boards have already met the 33% female representation target (ie 48% of firms have 33% or more female directors)
- The percentage of female non-executive directors (NEDs) is also at a 'record high' of 38.9% (or 311)
- The number of women in a Chair position has dropped to five, and the number of women in a senior independent director (SID) position has increased only slightly to 21
- The percentage of female executives remains 'worryingly low' at 10.9%

FTSE 250 boards: target is achievable (with a 'concerted push')

- The percentage of women on FTSE 250 boards has risen from 23.7% to 27.3%
- 98.8% of FTSE 250 boards have at least one female director and 35.2% have already met the 33% target (with 33% or more female directors)
- The percentage of female NEDs is 32.8% (up from 29.1% in 2018)
- There are still three firms with all male boards
- The percentage of female executive directors (EDs) remains low at 8.4%

Intersectional perspective: 'women directors have many more strengths to offer beyond being women'

The report also looks 'beyond the numbers' at the diversity characteristics of the total population of FTSE 100 boards in terms of age, nationality, race/ethnicity, education, financial qualifications and experience and public awards (as a marker of established reputation).

- **Ethnicity:** The majority of female directors are British (55%) and the remaining women come from 18 countries across the world. Only 11% of the women directors are from black or ethnic minority backgrounds.
- **Age:** Consistent with the findings every year since age was first measured in 2003, female directors are younger than their male peers. The average age of the female directors is 57.3, approximately two years younger than the male directors at 59.2 years of age. The gap is slightly larger at 3.6 years for NEDs – 57.9 years for women and 61.5 years for men. The report comments that the fact that women tend to be younger is counter-intuitive as women are more likely to have taken career breaks than men and may indicate that mature women are being overlooked for appointment to NED roles.
- **New female appointments are more highly educated than established female directors:** 76% of the women directors have an undergraduate degree, compared to 86% of the new women directors appointed during 2011-2015, indicating that the new appointments are better qualified academically than the established women directors.
- **Financial qualifications and experience:** Though only 13% of the women have a recognised financial qualification, 22% have a MBA degree (in which finance is a core subject) and 55% of the women have held various roles in finance, indicating a high degree of financial literacy.
- **Public awards:** 61% of women directors have won various awards over their lives with many winning over ten awards.

The report writers conclude from this that more work needs to be done to improve diversity on boards. Dr Doyin Atewologun, co-author of the report and Director of the Gender, Leadership and Inclusion Centre at Cranfield comments that 'Although it is positive to see more women on boards, we need to be sure that we are not only advancing progress for a certain group of women, but are truly pushing board diversity in every sense'.

'Ticking a box?'

Though the report welcomes the progress being made, it also raises concern at the 'mounting evidence' showing that once women are appointed to boards they have significantly shorter tenures and are less likely to be promoted into senior roles.

According to the report:

- the average tenure for male directors in executive directorships is 6.6 years compared to 3.3 years for women executive directors (in 2003 the figures were 5.2 years and 2.9 years)
- the average tenure for male non-executive directors is 5 years for men and 3.8 years for women (in 2003 the figures were 5.4 years and 4.3 years)
- the majority of women have been in their roles for less than three years and the majority of appointments to NED roles still go to men
- the number of women in holding Chair roles across FTSE 100 boards has decreased to five, whilst the number of women in a senior independent director (SID) position has increased slightly to 21

Professor of Women and Leadership at Cranfield University, and lead author of the report Sue Vinnicombe, is quoted as saying that 'There has clearly been great progress on the numbers front but scratch beneath the surface and we suggest that some companies have simply been ticking a box…We need urgent action to make sure that women are being appointed to boards on and recognised for their contribution, and not simply for symbolic value.'

Gender Pay Gap

The report also looked at the relationship between the percentage of women on the FTSE 100 boards and the gender pay gap (GPG). The report focused on the ten best and ten worst companies in the FTSE 100 in terms of women on their boards and their gender pay gaps.

As was the case last year, the top companies had a lower gender pay gap than the bottom companies – 15.7% (for the top ten companies) compared to 22.6% (for the bottom ten companies).

The report adds that 'all companies should be congratulated on their GPG (gender pay gap) reports which generally provide comprehensive analyses of their data and clear action plans'.

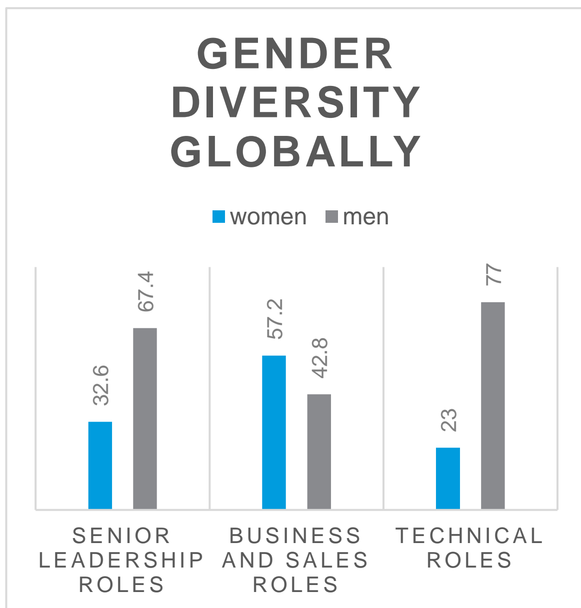
Response to the report

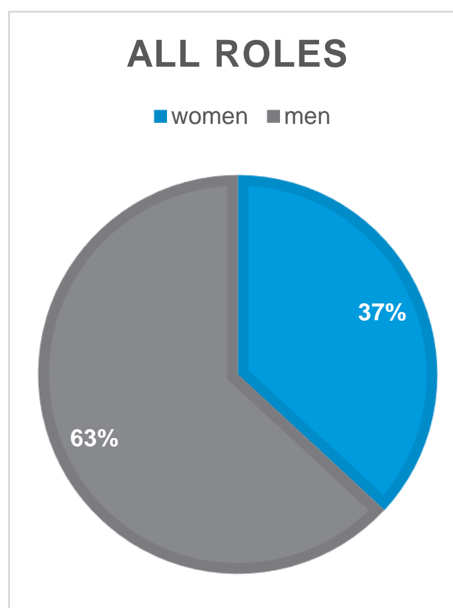
Commenting generally on the findings in the report, FRC CEO Stephen Haddrill said that the report demonstrates that more needs to be done: 'Diversity at Board level, and at all levels of the workforce, adds real value to business culture and the bottom line. While I welcome positive progress at some of the UK's largest companies in appointing more women to board level roles, it is clear more needs to be done to promote diversity across all levels of FTSE companies. Current efforts need to be reinforced.'

[Sources: Cranfield University media release 11/07/2019; Cranfield School of Management Report: The Female FTSE Board Report 2019 Moving beyond the numbers; FRC media release 11/07/2019; The Guardian 11/07/2019]

Facebook Diversity Report 2019 released: Facebook has set a five year target for 50% of its workforce to be from 'diverse' backgrounds

Gender Diversity across Facebook's Global Workforce

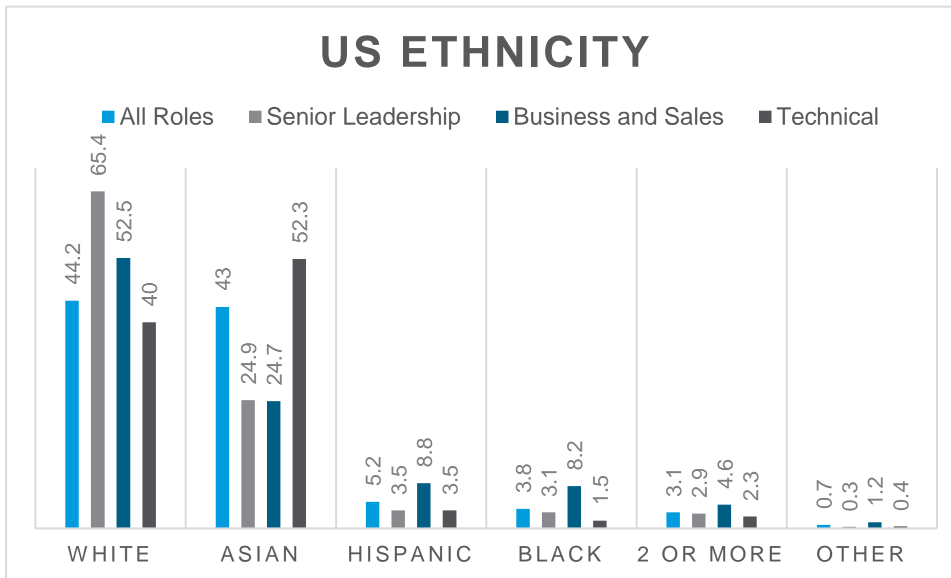




Women now account for 37% of all roles across Facebook's global workforce, a slight increase on 36.3% in 2018, and 31% in 2014.

According to the report, there are also more women in senior leadership roles with women accounting for 32.6% of roles as compared with 30% last year, and 23% in 2014.

Women are least well represented in technical roles — which Facebook defines as 'a position that requires specialisation and knowledge needed to accomplish mathematical, engineering, or scientific related duties' — with 77% of technical roles held by men. This is an improvement on 2014, when men held 85% of roles and a slight improvement on 2018 when men held 78.4% of roles.



US Workforce Ethnicity

Overall, 87.2% of Facebook's US workforce across all roles is white (44.2%) or Asian (43%) as compared with 88% in 2018. At senior leadership level, the proportion of roles held by white employees increases to 65.4%. Asian employees comprise 52.3% of Technical roles and 21.6% of senior leadership roles. Only 3.1% of Facebook's senior leaders are Black, and Black employees hold only 1.5% of technical roles. 8.2% of business and sales staff are Black.

50% diversity target: Commenting on the findings Facebook writes that it considers diversity to be 'critical to our success as a company'. Facebook adds that though progress has been made since 2014 when its strategic efforts began, more work is needed. The company outlines a number of initiatives in place to continue to drive improvement.

Facebook has also set a goal for 50% of its workforce to be from diverse backgrounds — 'women, people who are Black, Hispanic, Native American, Pacific Islanders, people with two or more ethnicities, people with disabilities, and veterans' over the next five years.

Commenting on the figures released by Facebook, Forbes suggests they underline how far the company has to go.

[Note: A number of shareholder proposals on the topic of diversity were put forward at the recent Facebook AGM. The board recommended against all proposals and none were successful.]

[Sources: Facebook 2019 Diversity Report; Facebook media release 09/07/2019; Forbes 11/07/2019; BusinessInsider 11/07/2019]

Uber has tied diversity targets to executive compensation for some senior executives

Uber has released its third diversity report. Among other things, the report has set diversity targets tied to the compensation packages of some senior leaders.

Some Key Points:

- Overall, in 2019, women comprise 40.9% of Uber's global workforce, an increase of 2.9% on last year. Women are least well represented in tech roles, representing 21.9% of Uber's global workforce, and most represented in general administrative/support roles (52.6%)
- The proportion of women grew across most global regions (ranging between +0.2 and +4.0%, holding steady in Europe, the Middle East, and Africa
- At leadership level, women account for 28% of leadership roles overall and 13.8% of tech roles
- In the US, the percentage of underrepresented employees increased overall. Black/African American employees now account for 9.3% of Uber's US workforce (an increase of 1.2% on last year) and Hispanic/Latinx employees now account for 8.3% (an increase of 2.2% on last year)
- At leadership level: the majority of Uber's leaders are white (59%) and male (86.2%); Asian employees make up 32.1% of leaders; 2.7% of leaders are Hispanic/Latinx; and 3.3% are African American

The report highlights a number of initiatives Uber is undertaking to improve diversity at the company eg paid parental leave for full time employees globally. The report also sets diversity and inclusion targets.

Diversity targets: According to the report, Uber aims to increase the percentage of women at Uber's L5 level and above to 35% and to increase the percentage of underrepresented employees at the L4 level and above to 14% by 2022

Achievement of the targets is tied to executive compensation for Uber's 'most senior executives': To ensure accountability for progressing diversity targets, 'progress on measurable D&I goals' will be used as a key metric to evaluate senior executive job performance and to determine compensation.

[Sources: Uber Media release 16/07/2019; Uber 2019 Diversity Report; CNN 15/07/2019; Techcrunch 16/07/2019]

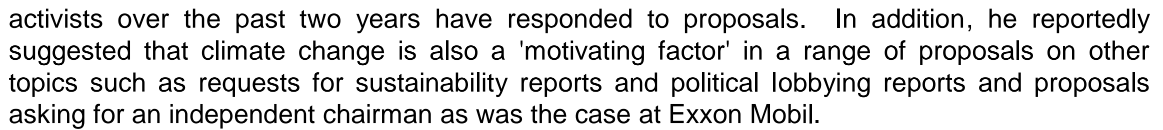
Shareholder Activism

United States | Governance issues have emerged as a key concern for US shareholders according to research from Activist Insight

Among other things, Activist Insight's H1 2019 Review, highlights that US shareholders have been most concerned with governance enhancements, rather than with environmental issues per se, this proxy season.

Some Key Points

- **The numbers:** According to data from Proxy Insight, of the 575 shareholder proposals voted on in the 2018-2019 proxy season:
  - 31 related to environmental topics (down from 47 the season prior)
  - 47 proposals regarding social issues were put forward this proxy season (up from 42 the season prior)
  - nearly half of all demands focused on improving shareholder rights, up from around 30% in the previous period
- **Behind the numbers:**
  - **increased focus on human capital management**: Activist Insight quotes Courteney Keatinge, Glass Lewis' environmental, social, and governance research senior director as saying that human capital management has emerged as a key shareholder concern. 'There are no companies that don't operate and are dependent on human capital management so it's a risk for every company out there and has been talked about a lot more,' Ms Keatinge is quoted as saying. Ms Keatinge reportedly cited the '#MeToo' and human capital movements to explain her overview of the uptick in proposals. According to Ms Keatinge human capital management is gaining traction among every kind of investor, especially as the competitiveness of the job market increases and businesses are competing more for talent.
  - **increased focus on political issues:** Institutional Shareholder Services' environmental and social research associate vice president, Enver Fitch, is quoted as saying that shareholders are focusing more on political issues (eg political spending) as the 2020 US elections come into focus. For example, at Mallinckrodt, 80% of shareholders backed a proposal to create a political and lobbying contributions report. The same proposal received narrow support from investors at Macy's, Cognizant, and Alliant Energy.
  - **Environmental issues incorporated into broader governance focus?** Activist Insight quotes managing director of Strategic Governance Advisors Steve Balet as saying that shareholders have not lost their focus on environmental issues, rather they are dealing with environmental issues when focusing on governance. 'It's all about governance but the environmental and social portion is how the board is operating…Institutional investors are concerned with boards talking about environmental and social risks and if it's a well-functioning board' Mr Balet reportedly said. Mr Balet reportedly attributed the drop in the number of environmental shareholder proposals (eg those purely on the subject of climate change) to the fact that many companies targeted by


activists over the past two years have responded to proposals. In addition, he reportedly suggested that climate change is also a 'motivating factor' in a range of proposals on other topics such as requests for sustainability reports and political lobbying reports and proposals asking for an independent chairman as was the case at Exxon Mobil.

[Source: [registration required] Activist Insight H1 2019]

Financial Services

Top Story | Poor value products and harmful sales practices: ASIC review of consumer credit insurance released

Report Overview | ASIC REP 622 Consumer credit insurance: Poor value products and harmful sales practices

Key Takeouts

- **Poor consumer outcomes:** ASIC reviewed the sale of CCI by 11 of Australia's biggest banks and lenders, for the period 2011 to 2018 and found that CCI sales practices and product design are still delivering poor outcomes for consumers
- **Court action against some entities:** ASIC Commissioner Sean Hughes said that an 'inevitable consequence' of the issues identified, 'will involve ASIC taking significant enforcement action against some of the entities named' in the report. ASIC did not specify beyond this the banks/lenders it plans to take action against
- **ASIC plans to consult on using its product intervention powers to ban the practice of selling CCI insurance through unsolicited phone calls**
- **The report also confirms the standards ASIC expects** of lenders who sell CCI and insurers who design the products and handle claims. ASIC says that it expects lenders and insurers to meet these standards or cease selling CCI until they do. ASIC adds that it expects new products to meet the standards before being sold.

ASIC's review of the sale of consumer credit insurance (CCI) by 11 major banks and other lenders has found that the design and sale of CCI has consistently failed consumers. A high level overview of some of the key findings in the review, its planned actions in response to the issues identified, and its expectations of lenders/insurers is below.

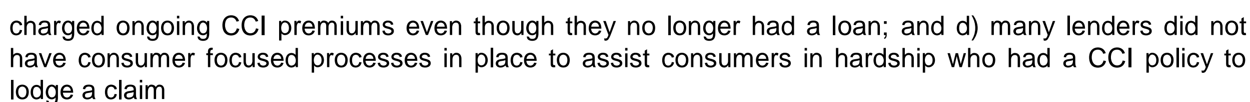
About the Review

In December 2017, ASIC commenced a review of the design and sale of CCI. ASIC required 11 lenders to undertake an independent review of their CCI sales practices and collected detailed data about the way the products performed for consumers.

The lenders in ASIC's review are: Australia and New Zealand Banking Group Limited; Australian Central Credit Union Ltd; Bank of Queensland Limited; Bendigo and Adelaide Bank Limited; Citigroup Pty Limited; Commonwealth Bank of Australia - Retail Banking Services and Bankwest; Credit Union Australia Limited; Latitude Finance Australia and Latitude Personal Finance Pty Ltd; National Australia Bank Limited; Suncorp-Metway Limited; Westpac Banking Corporation.

Some Key Findings

- **CCI is extremely poor value for money:** For CCI sold with credit cards, consumers received only 11 cents in claims for every dollar paid in premiums. Across all CCI products sold by lenders, only 19 cents was recovered in claims for every premium dollar which consumers paid
- **CCI sales practices caused consumers harm:** ASIC identified a number of concerns about the way in which consumers were sold CCI. These include: a) that consumers were sold CCI when they were ineligible to claim under their policy; b) telephone sales staff used high-pressure selling and other unfair sales practices when selling CCI; c) consumers were incorrectly charged for CCI, including being



charged ongoing CCI premiums even though they no longer had a loan; and d) many lenders did not have consumer focused processes in place to assist consumers in hardship who had a CCI policy to lodge a claim

- **Lenders are exiting the CCI market:** During ASIC's work on CCI, 7 of 8 lenders have stopped selling CCI with credit cards, 5 of 9 lenders have stopped sales with personal loans, and 4 of 9 lenders have stopped sales with home loans

Commenting on the report findings, ASIC Commissioner Sean Hughes said, 'Regrettably, the ongoing systemic failings and misconduct we have seen in the CCI market demonstrate that a range of robust regulatory responses is required. ASIC is committed to address the unfairness to consumers and lack of transparency our report has uncovered. Product issuers and distributors in the CCI market need to start to put their consumers front and centre.'

ASIC's actions to address these issues

- **ASIC is undertaking investigations into the suspected misconduct of several entities involved in the CCI product market, with a view to enforcement action**. The defendants to ASIC's future action will be publicly identified at the time proceedings commence.
- **ASIC plans to consult on banning unsolicited telephone sales of CCI:** ASIC writes that in light of the consumer harms identified in the report, and more particularly the concerns with respect to the unsolicited outbound sale of CCI by phone, it will shortly consult on using its product intervention powers to ban the practice.
- **Consumer remediation program:** ASIC's work has led to a significant remediation program expected to exceed $100 million paid to over 300,000 consumers. To date, over $51 million has been paid to over 186,000 consumers. ASIC's work to secure further compensation will continue.
- **Possible further action?** ASIC's expectation is that lenders and insurers design and offer products with significantly higher claims ratios. ASIC will continue to collect and publish data to measure improvements. 'If we do not see early, significant and sustained improvement in the design and sale of consumer credit insurance, our next steps may involve the deployment of our new product intervention power where we see a risk of significant consumer detriment. We also will not hesitate to pursue civil penalties where there has been a failure by any lender or insurer to act efficiently, honestly and fairly. All options are on the table,' ASIC Commissioner Sean Hughes said.
- **ASIC expects all CCI lenders to incorporate a four-day deferred sales model for all CCI products** across all channels, not just those entities that subscribe to the Banking Code of Practice.

ASIC's expectations — design and distribution standards for CCI

The report also confirms the standards with respect to product design and value, compliance and monitoring, improved sales practices and improved post sale conduct that ASIC expects of lenders who sell CCI and insurers who design the products/handle the claims. ASIC's expectation is that lenders and insures 'meet these standards or entirely cease selling CCI until they do'. ASIC adds that the standards also apply to any new market entrants who should ensure their products and sales processes comply with the standards as soon as they start business.

Improved product design and value

- ASIC expects that consumers should be able to select cover they are eligible to use and that meets their needs. As such CCI products should be 'unbundled'.
- Claims ratios must be significantly increased from the current poor levels of 19 cents in the dollar, so CCI provides real consumer value.
- Lenders should assess product value including claims ratios of new and existing products before deciding to sell CCI.
- Benefits should reflect the needs of consumers (eg payments for periods of unemployment rather than arbitrary limits)

Compliance and monitoring

- Lenders should not sell CCI unless they can demonstrate compliance with the standards (outlined here) and the 10 recommendations in REP 256 for the sale of all CCI products through all channels.

[Note: In October 2011, ASIC issued Report 256 Consumer credit insurance: A review of sales practices by authorised deposit-taking institutions (REP 256), which made 10 recommendations to raise industry standards and reduce the risk that CCI may be missold to consumers. The recommendations cover the areas of sales practices, disclosure, training programs and monitoring systems. The recommendations are summarised in Table 2 of the Report, page 10]

- Where these standards have not been met, lenders should conduct a complete, thorough and robust review to assess any consumer harm, and identify and remediate affected consumers in a timely manner.

Improved sales practices

- Outbound unsolicited phone sales of CCI should cease
- Lenders should use 'hard filters' for key eligibility criteria for online sales and 'knock- out' questions in scripts for phone and branch sales to prevent the sale of CCI to consumers who are ineligible to claim on any primary cover.
- Lenders should take into account information they have about the consumer to ensure consumers are not being sold a CCI policy where they are ineligible to claim (this does not have to mean that personal financial advice is being provided).
- Lenders should obtain and record positive, clear and informed consent before discussing the sale of CCI with a consumer.
- Lenders should, within a short timeframe, incorporate a four-day deferred sales model for all CCI products across all channels, with the deferral period starting the day after the consumer is told their loan is approved.

Improved post sales conduct

- Lenders and insurers should not charge premiums for CCI where primary benefits are no longer available under the policy (ie the loan has been repaid).
- Lenders and insurers should give consumers appropriate annual communication about the price, limits and exclusions of the policy and remind them to lodge a claim if they had a claimable event in the last 12 months.
- Lenders and insurers should, every two years, contact consumers with CCI on a credit card (or other revolving lines of credit) about whether they want to keep their policy or cancel their cover.
- Lenders should notify a consumer with a CCI policy who applies for changes to their loan contract due to financial hardship that they have a CCI policy and provide or transfer their claim details to the insurer for assessment.
- Insurers should accurately and reliably record the number of (and reasons for) withdrawn claims and claims that did not proceed.

Attestations that the standards have been met

ASIC state that it is writing to lenders and insurers to set out the standards it expects for their processes and procedures for monitoring and supervision and will seek confirmation by an attestation from each lender that: a) the recommendations from the independent reviews have been implemented and are working effectively; b) the standards in this report are being met; and c) the remediation programs are complete, thorough and robust.

ASIC comments that the its expectations are supported by recommendation 4.1 (no hawking of insurance), 4.3 (an industry-wide deferred sales model for the sale of any add-on insurance products should be developed)m and 4.8 (removal of the claims handling exemption) in the Final Report of the Royal

Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Financial Services Royal Commission).

Financial Sector Union of Australia response: Responding to ASIC's report, the Finance Sector Union of Australia has said the report is 'proof that self-regulation won't fix the deep-seated cultural problems in the major banks'. Finance Sector Union of Australia (FSU) National Secretary Julia Angrisano said bank workers were under intense pressure to sell CCI to customers and this report has revealed the enormous profit motive for managers who pushed this product, no doubt receiving large bonuses themselves for meeting targets. 'The banks have only themselves to blame for leaving themselves exposed to $100 million in compensation payments' Ms Angrisano is quoted as saying.

[Sources: ASIC media release 11/07/2019; ASIC Report 622: Consumer credit insurance: Poor value products and harmful sales practices; The SMH 11/07/2019; The ABC 11/07/2019; Finance Sector Union media release 12/07/2019]

35% more complaints than the combined average of predecessor schemes: AFCA has released its first six month report

Overview | AFCA's first six month report

Key Takeouts

- **High volume of complaints:** In its first six months of operation, AFCA has 35% more complaints than the combined average of the predecessor schemes. Based on the current volume of complaints, AFCA anticipates that it will receive 80,000 complaints in its first year (excluding complaints arising from its new jurisdiction for legacy complaints going back to 2008)
- **60% of complaints had already been resolved, with 74% resolving in favour of the complainant or by agreement**
- **Banks received the most complaints of all financial institutions (12,305)**, followed by general insurers (6,839), credit providers (5,447), debt collectors or buyers (1,366) and superannuation fund trustees/advisors (1,210)
- **Credit cards (5,191) were the most complained about product**
- **Systemic issues:** AFCA also said it was investigating 85 systemic issues across the financial services sector and had identified 16 breaches that were potentially 'serious contraventions'. Common issues under investigation include: 1) misleading conduct; 2) conduct of employee/authorised representatives; 3) adequacy of claims handling process; and 4) processing errors
- **Criteria for 'fairness' under development:** To promote clear, consistent decision making and in the interests of transparency, AFCA is undertaking a 'fairness project' to 'map community expectations' and produce a set of criteria for fairness to help explain how AFCA assesses fairness in any given complaint

The Australian Financial Complaints Authority (AFCA) released its six month report on 15 July. According to the report, AFCA has received over 35,000 complaints.

AFCA Chief Ombudsman and CEO David Locke said that the purpose of publishing the report is to allow consumers to 'see which financial products and services receive the most complaints and how they are being handled by the financial firms'. He added, that the large number of complaints highlighted the important role AFCA plays in rebuilding customer trust in the Australian financial services sector.

Some Key Points

- In the first six months of operation, AFCA has received 35,263 complaints. This figures is 35% higher than the combined average of the predecessor schemes
- Based on the current volume of complaints, AFCA anticipates that it will receive 80,000 complaints in its first year – a 25% increase on its initial forecast (excluding complaints arising from its new jurisdiction for legacy complaints going back to 2008)

[Note: From 1 July 2019, consumers and small businesses will be able to seek redress for eligible financial disputes dating back to 1 January 2008 by lodging a complaint with AFCA. MinterEllison's Kemsley Brennan has prepared an article providing expert insights into the implications for financial firms, which is available on the MinterEllison, website here: https://www.minterellison.com/articles/afca-to-commence-look-back-program-from-1-july-2019]

- 60% of complaints received have been resolved and most of these (77%) were resolved within 60 days. Most complaints (74%) were resolved by agreement or in favour of the complainant
- Banks received the most complaints of all financial institutions (12,305), followed by general insurers (6,839), credit providers (5,447), debt collectors or buyers (1,366) and superannuation fund trustees/advisors (1,210)
- The five most complained about financial products were: 1) credit cards (5,191); 2) home loans (2,921); 3) personal loans (2,704); 4) motor vehicle (comprehensive) (1,789) and personal transaction accounts (1,236)
- 87.7% of financial firms had no complaints lodged against them in the first six months of AFCA's operation.
- $83m has been obtained in settlements over the past six months, though this figure includes matters previously received by AFCA's predecessor, Financial Ombudsman Service (FOS), and resolved by AFCA since 1 November 2018

Systemic issues

- During its first six months of operation, AFCA identified 16 potentially serious contraventions and other breaches of the law. At the end of April, APRA had 85 'definite systemic issue' investigations open.
- Common issues AFCA is currently investigating include: 1) misleading conduct; 2) conduct of employee/authorised representatives; 3) adequacy of claims handling process; and 4) processing errors.

Further Detail: sector specific findings

Sector	Key Findings
Banking and Finance	▪ Banking and finance complaints made up 61% of the total number of complaints received. The majority of complaints were about credit at 45% ▪ 67% of complaints received related to the four largest banks. ▪ The top five most complained about products in this sector were: 1) credit cards (5,191); 2) home loans (2,921); 3) personal loans (2,704); personal transaction accounts (1,236); and 5) hire purchase/lease (579). Overall across all sectors, credit cards, home loans and personal loans were the top three most complained about products ▪ The most complaints about issues were: 1) credit reporting (2,282); 2) unauthorised transactions (2,071); 3) responsible lending (1,474); 4) misleading product/service information (1,241); and 5) incorrect fees/costs (1,127) ▪ 77% of complaints were resolved by agreement or in favour of complainants ▪ AFCA adds that there has been a 'dramatic increase' in the number of banking and finance complainants that are in financial difficulty. In 2018 under the Financial Ombudsman Service (FOS), there were 2,074, under AFCA in 6 months, there have been 3,819 complainants in financial difficulty. AFCA anticipates even higher levels of financial difficulty complaints as awareness of AFCA increases.
Investments and Advice	▪ Over the past six months, AFCA received 1,684 investments and advice complaints, which made which accounts for 5% of the total number of complaints received. This is a 69% increase on investment and advice complaints received by

	FOS (998) over the same period. ▪ The five most complained about investments and advice products were: 1) foreign exchange (402 or 24% of all investment complaints); 2) self managed superannuation fund (160); 3) shares (138); 4) mixed asset funds (136); and 5) timeshare schemes (68) ▪ Almost 55% of foreign exchange complaints were against one financial firm who had their Australian Financial Services Licence suspended by Australian Securities and Investments Commission (ASIC) but remains a member of AFCA, which enables AFCA to deal with complaints ▪ The most complained about issues were: 1) failure to follow instructions/agreement (350); 2) inappropriate advice (229); 3) failure to act in client's best interests (141); 4) incorrect fees/costs (133); and 5) service quality (93) ▪ 57% of complaints were resolved by agreement or in favour of complaints
Superannuation	▪ 9% of the total number of complaints received concerned superannuation. This is more than double the number of superannuation complaints initially predicted ▪ The five most complained about superannuation products were: 1) superannuation account (1,060); 2) total and permanent disability (508); 3) death benefit (246); 4) total and temporary disability (152) and 5) pension (56) ▪ The top five most complained about issues were: 1) incorrect fees/costs (416); 2) delay in claims handling (332); 3) account administration error (229); 4) death benefit distribution (200) and 5) denial of claim (198). ▪ 66% of complaints were resolved by agreement or in favour of complainants ▪ AFCA comments that given the media focus on responsiveness to consumers and dealing with their matters as quickly as possible, 'financial firms need to ensure that their internal dispute resolution and external dispute resolution teams are adequately resourced to deal with the complaints coming through the doors'.
Life Insurance	▪ AFCA received 879 complaints about life insurance, which accounts for 2% of total complaints received over the first six months. In comparison with the same period last year, life insurance complaints have increased 28% from 685 under FOS. AFCA suggests that the increase may be partially driven by an increase in complaints about level premium increases for income protections policies, which are up 52% from 182 under FOS to 276 under AFCA. AFCA's view is that the life insurance industry 'could be doing more in terms of the information provided at the time of taking out the policy' to help consumers understand how level premiums work ▪ The top five most complained about life insurance products were: 1) income protection (276); 2) term life (105); 3) funeral plans; 4) total and permanent disability (66); and trauma (63) ▪ The most complained about issues were: 1) claim denial (113); 2) incorrect premiums (101); 3) delay in claim handling (73); 4) claim amount (68); and 5) cancellation of policy. ▪ 59% of complaints were resolved by agreement or in favour of complainants
General Insurance	▪ 23% of the total number of complaints received over the period (or 7,969 complaints) related to general insurance. This is a 20% increase on the number of complaints received by the FOS over the same period last year ▪ The top five most complained about products were: 1) motor vehicle – comprehensive (1,789); 2) home building (1,176); 3) travel (793); 4) motor vehicle –

	uninsured third party (529); and 5) home contents ▪ The top five most complained about issues were: claims handling delay (1,4176); 2) claim amount (1,327); 3) denial of claim (exclusion/condition) (1,227); 4) denial of claim (1.011); and 5) service quality (422) ▪ 78% of complaints were resolved by agreement or in favour of complainants ▪ AFCA comments that the high number of complaints relating to delays in claims handling (1,476) and service quality (422) indicate that the industry is still not meeting customers' expectations. AFCA adds that 'In our view, complaints relating to delays or service quality should be able to be resolved by financial firms internally and should not be one of the top issues in complaints we receive. General insurers need to make sure their teams are adequately resourced and have the right skill sets to deal with these sorts of complaints at the internal dispute resolution stage'.

Fairness project

- To promote clear, consistent decision making and in the interests of transparency, AFCA is undertaking a 'fairness project' to 'map community expectations' and produce a set of criteria for fairness to help explain how AFCA assesses fairness in any given complaint. The project consists of two elements:
  - **decision maker review:** AFCA has engaged independent consultants to conduct a review of a sample of its decisions and test them against current decision making criteria, as set out in the AFCA Rules. The sample will be representative of the wide range of complaints that received
  - **approach to fairness:** the consultants will also investigate how AFCA assess fairness in the relationship between a financial firm and a complainant and develop a roadmap of AFCA's approach to fair outcomes

Member service offerings

In addition to resolving complaints, AFCA intends to provide a number of member offerings aimed at helping members to improve internal practices to avoid and resolve disputes. These include: internal dispute resolution training workshops; case study workshops; best practice seminars; improved online written resources including approach documents and case studies and increased access to benchmarking reports.

Service complaints about AFCA

- Since 1 November AFCA have received 315 complaints about its service, 185 of which relate to complaints about predecessor schemes and 130 of which relate to complaints about AFCA.
- The 130 complaints that relate directly to AFCA raised 215 issues. Issues raised include: delays, incorrect or insufficient information provided, an inability to understand the information provided and disagreement with AFCA's decision to discontinue a complaint.

[Sources: AFCA media release 15/07/2019; AFCA six month report; The ABC 15/07/2019]

AFCA has reminded insurance companies to focus on fairness

In a statement, the Australian Financial Complaints Authority (AFCA) reminded insurance companies that complaints it receives will be assessed on how fairly the company treats its customers.

Noting that its remit is not only to resolve financial disputes, but to influence reform in the financial sector AFCA says it issued the reminder in response to media reports that consumers have been denied insurance or have been asked to undertake genetic testing.

Lead Ombudsman Dr June Smith commented since July 1, in many cases, life insurers are not able to ask consumers to undertake genetic testing and that AFCA can help resolve complaints where a person says an insurer has discriminated against them because of genetic testing.

Dr Smith added that AFCA's expectation is that insurers will behave fairly when assessing insurance applications and more particularly that 'where a person has taken measures to reduce their risk, for example by having a mastectomy to reduce the risk of breast cancer, we would expect the life insurance company to take this into consideration when assessing an application for insurance. It is also difficult to understand why genetic testing would impact on travel insurance.'

[Source: AFCA media release 11/07/2019]

ASIC is targeting firms slow to sign up to the AFCA scheme

The Australian Financial Complaints Authority (AFCA) has advised the Australian Securities and Investment Commission (ASIC) that since the commencement of AFCA operations on 1 November 2018, 58 financial services licensees and 217 credit licensees, who previously held external dispute membership with one of the previous schemes, had not obtained AFCA membership and may be in breach of their licence conduct obligations.

Following ASIC's intervention with these potentially non-compliant financial and credit licensees:

- 50 financial services licensees subsequently obtained AFCA membership
- 4 financial services licensees voluntarily cancelled their licenses
- 4 financial services licensees were cancelled or suspended by ASIC
- 131 credit licensees subsequently obtained AFCA membership
- 38 credit licensees voluntarily cancelled their licenses, and
- 48 credit licensees were cancelled or suspended by ASIC.

ASIC says that it will continue to work closely with AFCA to identify and take formal action to cancel/suspend the licences of non-compliant financial services licensees and credit licensees.

ASIC Commissioner Sean Hughes said the regulator's intervention against non-compliant licensees means that 'consumers now have access to the independent dispute resolution scheme of AFCA if their complaints are not being properly considered by the financial services licensee or credit licensee'.

[Source: ASIC media release 12/07/2019]

Implementing Hayne recommendations | The ACCC has granted interim approval of changes to the ABA Banking Code

Context: On 22 May 2019 the Australian Banking Association (ABA) sought authorisation from the Australian Competition and Consumer Commission (ACCC) to implement revisions to the ABA Banking Code in response to the recommendations of the Hayne Royal Commission.

The proposed changes would come into force on 1 March 2020, pending ASIC approval of a second round of changes to the Banking Code (see: Governance News 03/07/2019).

Why is ACCC approval needed? The ACCC's decision is separate to ASIC's review process. The ACCC's decision in relation to interim authorisation permits the ABA and member banks to begin preparations for the implementation of the revised Code next year, and for individual ABA member banks to make changes in accordance with the recommendations of the Hayne Royal Commission.

The Changes

Default interest changes: On 11 July, the ACCC granted interim authorisation to allow the ABA to take immediate steps to implement changes to the Code.

The interim authorisation allows member banks to agree not to charge default interest on loans secured by agricultural land in drought or natural disaster declared areas. It also removes the risk that the ABA and its member banks would breach competition laws by agreeing to make, and implement, changes to the Code.

Interim authorisation commences immediately and remains in place unless it is revoked by the ACCC or the when the ACCC completes its assessment of the application for authorisation. The ACCC expects to issue a draft determination on the ABA's authorisation application in September 2019.

Basic Banking changes — interim authorisation pending: The ACCC writes that the ABA also intends to amend Code to define the minimum features of a basic bank account. Noting that some consumer groups have raised concerns with respect to this, the ACCC says that it will consider any submissions and possible changes the ABA proposes in response, before deciding whether to grant interim authorisation for the basic banking proposals.

[Source: ACCC media release 11/07/2019]

APRA has applied additional capital requirements on three major banks to reflect the operational risk identified in their risk governance self-assessments

The Australian Prudential Regulation Authority (APRA) has announced it will require Westpac, ANZ and NAB to hold an additional $500m in capital to reflect the operational risk identified in their risk governance self-assessments.

[Note: Following the CBA Inquiry's Final Report, APRA wrote to the boards of 36 financial institutions asking them to gauge whether the weaknesses uncovered by the Inquiry also existed in their own companies. APRA recently released an information paper setting out the common key themes to emerge from its analysis of the self-assessments and flagging that it was considering applying an additional operational risk capital requirement to reflect the higher risk profile of these some institutions. See: Governance News 28/05/2019]

The additional capital requirements will apply until the banks have completed their planned remediation to strengthen risk management, and closed gaps identified in their self-assessments.

APRA notes that the decision follows its decision in May 2018 to apply a $1 billion dollar capital add-on to the CBA in response to the findings of APRA's CBA Prudential Inquiry.

Commenting on the regulator's decision, APRA Chair Wayne Byres said: 'Australia's major banks are well-capitalised and financially sound, but improvements in the management of non-financial risks are needed. This will require a real focus on the root causes of the issues that have been identified, including complexity, unclear accountabilities, weak incentives and cultures that have been too accepting of long-standing gaps'.

Next steps? APRA states that its supervisors continue to provide tailored feedback to other banks, insurers and superannuation licensees that provided self-assessments to APRA. Where weaknesses have been identified, the level of supervisory scrutiny is being increased as remediation actions are implemented. Where material weaknesses exist, APRA is also considering the need for the application of an additional operational risk capital requirement.

[Sources: APRA media release 11/07/2019; [registration required] The AFR 11/07/2019]

Response from Westpac: Westpac Group CEO Brian Hartzer, said that the self-assessment exercise was valuable and that Westpac 'acknowledge the need to improve non-financial risk management and oversight and we are working to resolve the issues raised. Our Board and senior executives are committed to addressing the shortfalls identified in the report and will continue to provide regular updates on our progress.' The statement adds that Westpac Group Chief Risk Officer, David Stephen, is leading a program of work, overseen by the Board, to implement the self-assessment's recommendations and that to date, approximately 20% of the recommendations have been implemented. In addition, Westpac released the full copy of the self-assessment.

Response from NAB: NAB CEO and Chair elect Philip Chronican said that NAB's self assessment (which was released publicly in November 2019) sets out a clear program of reform with 26 action items to ensure the lender meets the 'highest standards and to further strengthen non-financial risk management'. He added that work is underway on all 26 action items and that 'material progress' had been made on a number of these and gave a number of examples of progress to date. Mr Chronican added that the program is board led and has a 'significant amount of executive engagement with group executive oversight of the program's five work streams'.

Response from ANZ: ANZ also issued a statement acknowledging the regulator's decision. ANZ said that the additional capital requirements represent an 18 basis point impact on ANZ's Common Equity Tier 1 capital ratio. The increased capital requirement is effective from 30 September 2019.

[Sources: Westpac media release 11/07/2019; ANZ media release 11/07/2019; NAB ASX Announcement: 11/07/2019; [registration required] The AFR 11/07/2019; The SMH 11/06/2019]

APRA has released updates to FAQs on the new outcomes test

The Australian Prudential Regulation Authority (APRA) has released three frequently asked questions (FAQs) on the development of Prudential Standard SPS 515 Strategic Planning and Member Outcomes (SPS 515) and the introduction of an annual outcomes assessment resulting from recent changes to the *Superannuation Industry (Supervision) Act 1993* (SIS Act).

The FAQs are focused on APRA's expectations for RSE licensees undertaking their first annual outcomes assessment, and APRA's timeline for finalising SPS 515 and engaging with RSE licensees on its implementation.

1. **What time period is an RSE licensee expected to use for the first annual legislated outcomes assessment?** Under the legislation, RSE Licensees have discretion to determine which 12 month period they utilise for the purposes of meeting the annual outcomes assessment requirements under section 52 of the SIS Act. APRA states that the 12 month period could be the calendar year, financial year, income year for the RSE licensee or any other 12 month period. APRA suggests that the 2019-2020 financial year is likely to be the appropriate first period for the majority of RSE licensees, as this aligns with their income year. APRA adds that once Prudential Standard SPS 515 Strategic Planning and Member Outcomes (SPS 515) is finalised, it plans to release supporting prudential guidance which will include its expectations for timing of the annual outcomes assessment and alignment with the business performance review under SPS 515. APRA's supervisors are already engaging with RSE licensees on their approach to assessing member outcomes, including implementation of SPS 515 and preparation for the outcomes assessment.
2. **APRA's timeline for finalising SPS 515**: APRA plans to release the final SPS 515 and supporting prudential guidance in the third quarter of 2019. Given the key elements of SPS 515 are likely to remain largely unchanged, APRA expects to maintain the standard's current effective date of 1 January 2020.
3. **APRA's engagement with RSE licensees on implementation**: APRA says that supervisors will continue to engage with RSE licensees over the second half of 2019 on their preparations for commencement of SPS 515 on 1 January 2020. APRA adds that its expectation is that:
   - by the fourth quarter of 2019, all RSE licensees will have updated, or be in the process of updating, their strategic objectives, business plans and expenditure management processes, in readiness to comply with the new standard from 1 January 2020
   - by 31 December 2020m APRA supervisors will be seeking from RSE licensees, an understanding of their proposed design and their plans for the timing of their first business performance review (BPR). In particular, APRA supervisors will seek information on cohort construction, benchmarking, data sources and alignment with the business planning process. APRA expects that an RSE licensee will approach the design of the BPR as one of continuous improvement, encompassing the identification of new and enhanced sources of data. APRA will also seek to understand how the RSE licensee intends to undertake the legislated outcomes assessment for each of its MySuper and choice products, including the timing and publication of the assessments and data sources.

[Source: APRA: Legislated outcomes assessment and Prudential Standard SPS 515 Strategic Planning and Member Outcomes – frequently asked questions 11/07/2019]

In Brief | Updated MySuper Product Authorisation form and instruction guide: APRA has released an updated form and guide to implement new requirements resulting from the passage of Treasury Laws Amendment (Improving Accountability and member Outcomes in Superannuation Measures no 1) Act 2019

[Source: APRA media release 12/07/2019]

In Brief | Change in control of superannuation licensees form and guide finalised: APRA has released a new application form and instruction guide for parties seeking to request approval from the regulator to control a stake greater than 15% in a registrable superannuation entity

[Source: APRA letter in response to consultation, 15 July 2019]

Regulators

Stop Press | APRA Capability Review released

The government released the Capability Review of the Australian Prudential Regulation Authority (APRA) on 17 July.

- The Review makes 24 'forward looking' recommendations, 19 directed at APRA and five directed to the government.
- APRA has released a response, stating that it supports all 19 recommendations and is with work already underway on many as part of APRA's current Corporate Plan
- Treasurer Josh Frydenberg said that the government will action the five recommendations directed to the government

A list of the recommendations is included at page xii of the report and can be accessed here: https://treasury.gov.au/sites/default/files/2019-07/190715_APRA%20Capability%20Review.pdf

APRA's response to the recommendations can be accessed here: https://www.apra.gov.au/media-centre/media-releases/apra-welcomes-capability-review-report-and-outlines-action-plan

Treasurer Josh Frydenberg's statement can be accessed here: http://jaf.ministers.treasury.gov.au/media-release/080-2019/

MinterEllison is preparing a summary of the report which will be published on the website shortly. Governance News subscribers will be alerted when it is available.

Council of Financial Regulators has adopted a new charter with a new emphasis on fairness

Among the points of discussion at the 5 July meeting of the Council of Financial Regulators (Council), was the adoption of a new charter. The Council says that the new charter, 'emphasises the Council's financial stability objective, while also recognising the benefits of a competitive, efficient and fair financial system. It also highlights the Council's focus on cooperation and collaboration to support the activities of its member agencies'.

Commenting on the change, the Australian suggests that the inclusion of the concept of fairness and the new emphasis on engagement/cooperation between regulators in the new charter may be in response to criticism of the regulators' lack of effective coordination/cooperation and the various examples of failures to meet community expectations identified in the Financial Services Royal Commission's final report.

[Sources: [registration required] The Australian 11/07/2019; Council of Financial Regulators media release 10/07/2019; Council of Financial Regulators Charter]

Accounting and Audit

United Kingdom | Latest FRC audit inspection results released: 25% of assessed audits are below an acceptable standard

The UK Financial Reporting Council (FRC) has published the results of its most recent audit inspections relating principally to audits of companies' December 2017 year-ends.

Some Key Findings

- **FRC Quality Target not met:** 75% of FTSE 350 audits were assessed as good or requiring limited improvements. The FRC's target is 90%.

- **Stalled?** 75% of FTSE 350 audits reviewed were assessed as 'good' or required no more than limited improvements, compared to 73% in 2017/18. Overall, across all audit reviews completed at the largest seven firms, the outcome was 75% compared to 74% in 2017/18.
- **Each of the firms audited has committed to specific actions to enhance audit quality** including, for the worst performers, detailed audit quality improvement plans. The FRC says that it will assess the success of these initiatives and secure further action if necessary.
- **Enforcement action:** All audits assessed as requiring improvements or significant improvements are considered for enforcement action. Over the past two inspection cycles, across all firms inspected, 16 audits have been referred for possible enforcement action. Investigations have so far been opened in eight cases.
- **Failure of auditors to challenge management remains an issue:** The FRC found cases in all seven firms where auditors failed to challenge management sufficiently on 'judgemental issues'. The FRC comments that this has been a recurring finding over a number of years and is attributable to a number of 'contributory factors'. These include: a) the mindset of audit teams (especially an absence of professional scepticism in evaluating evidence presented by company management); b) tight reporting deadlines; c) the complexity of the judgements involved; and familiarity arising from long standing audit relationships (particularly if the company comes to be considered as 'the client' for the auditor, rather than the shareholder or investor). The FRC said that it is undertaking 'detailed work to assess how audit firms are responding to the issue' and called on audit firms to work harder to address this issue.

(Some) Firm specific findings

Grant Thornton: The FRC assessed that 50% of reviews were good or required limited improvements at Grant Thornton, compared to 75% last year. In total, 26% of Grant Thornton's audits reviewed in the past five years have required significant improvement. In light of this, the FRC has 'increased its scrutiny' of Grant Thornton, including by: requiring a new audit quality improvement plan and increasing the number of audits to be inspected in 2019/20.

PwC: The FRC found that PwC's FTSE 350 audit inspection results deteriorated from 84% to 65% and in light of this, PwC is required 'to take prompt and targeted action to address this decline'. The FRC adds that in June 2019, PwC announced an action plan to strengthen its focus on audit quality. The plan includes additional investment in people, training and technology, structural changes to PwC's business, and a reinforced focus on culture and quality control. The FRC states that it will closely scrutinise the implementation of this plan.

KPMG: The FRC says that though there was an improvement on last year, KPMG remains subject to increased FRC scrutiny. This will continue until KPMG has demonstrated a sustained improvement in audit quality. The FRC scrutiny will cover the impact of KPMG's recently announced changes to governance of their audit practice, as well as on key aspects of the firm's Audit Improvement Plan, including the firm's central review process and new audit guidance.

New 100% quality target

Commenting on the findings overall Stephen Haddrill, FRC CEO, said 'At a time when the future of the audit sector is under the microscope, the latest audit quality results are not acceptable. Audit firms must identify the causes of their audit shortcomings and take rapid and appropriate action to improve quality. Our latest results suggest that they have failed to achieve this in recent years.'

Mr Haddrill went on to say that that for 2019/2020, the FRC will extend its 90% quality target for FTSE 350 audits to all audits inspected. 'We will set a new target for audit firms, for 2020/21 onwards, that 100% of audits inspected should require no more than limited improvement. In other words, starting from June 2019 financial statement year ends, we expect no audit to be assessed as either a 2B or a 3' Mr Haddrill said.

[Sources: FRC media release 10/07/2019; Firm's inspection results]

Program of improvements announced at Grant Thornton

On 21 June, Grant Thornton announced a program of actions to strengthen audit quality including: a) establishing an Audit Quality Board with powers to hold the Leadership of the Firm to account; b)

commissioning an independent review of audit at the firm; c) establishing new centres of excellence in London and Birmingham for the Firm's most complex audit work; and d) committing to invest £7m in people and technology at the Firm over the coming year.

In addition, Grant Thornton said that it is supportive of the introduction of joint audits; the independent appointment of audits and stronger governance and a 'stronger, more effective regulator'.

The Institute of Chartered Accountants in England and Wales, is quoted as commenting that the results underline the need for urgent action on audit reform. ICAEW Chief Operating Officer Vernon Soare reportedly said: 'As a profession, chartered accountants acknowledge that we face a watershed moment' said.

[Sources: Grant Thornton media release 21/06/2019; [registration required] The WSJ 09/07/2019; The Guardian 10/07/2019; AccountancyAge 10/07/2019]

United Kingdom | The FRC is consulting on proposed changes to the UK's Ethical and Auditing standards

The Financial Reporting Council (FRC) is consulting on proposed changes to strengthen the 2016 UK Auditing and Ethical Standards.

The FRC says that the proposed changes intended to: 1) enhance confidence in audit; 2) ensure that consideration of the public interest is placed at the core of UK audit firm culture; and 3) strengthen auditor independence.

Ongoing and completed reviews: In light of the various reviews, including the Kingman Review, and the (as yet to be completed) Brydon Review (among others) the FRC says that the proposed changes are limited to instances in which the FRC has itself identified audit weaknesses or failings as a result of its own inspection and enforcement work. The proposals are not intended to anticipate or to pre-empt the outcome of the Reviews or government policy.

Some Key Proposed Changes

- Clarifying and restructuring the Ethical Standard for clarity and to promote compliance
- Redefining the 'objective, reasonable and informed third party test' to require audit firms to consider whether a proposed action would affect their independence from the perspective of public interest stakeholders rather than another auditor. This is supported by additional material to encourage a wide-ranging assessment, which considers both the spirit and the letter of the standard.
- Enhancing the authority of the Ethics Partner function within audit firms, in order to ensure firm wide focus on ethical matters and the public interest, and to require reporting to those charged with governance where an audit firm does not follow the Ethics Partner's advice.
- Introducing a list of permitted services that auditors of Public Interest Entities (PIEs) can provide, limiting these to those which are closely related to the audit and/or required by law and regulation. This proposed new list would replace the existing list of prohibited non-audit services.
- Expanding the scope of certain ethical requirements to cover entities which may not be formally designated as PIEs, but are clearly of significant public interest
- Other amendments to individual standards clarify the auditor's responsibilities when considering whether the bodies they have audited are compliant with relevant laws and regulations, and when checking there are no material misstatements in the 'other information' companies include in their annual financial reports (other than the financial statements which are subject to audit).

Timing: The consultation period closes on 27 September 2019

[Sources: FRC media release 15/07/2019; Consultation on Revisions to Ethical and Auditing Standards 2019; Revised Ethical Standard and Exposure Draft; Changes to the International Standards on Auditing (UK) and International Standard on Quality Control (UK) Exposure Draft; Glossary of Terms (Auditing and Ethics)]

Technology, Cybersecurity and Privacy

United Kingdom | The UK Information Commissioner's Office intends to fine Marriott £99 million under GDPR in connection with a data breach

The UK Information Commissioner's Office has released a statement announcing its intention to fine Marriott International Inc £99,200,396 for infringements of the General Data Protection Regulation (GDPR).

Details

- The ICO says that the proposed fine relates to a cyber incident (notified to the ICO by Marriott in 2018) in which 339m guest records globally were exposed, over a four year period (2014 to 2018)
- According to the ICO the vulnerability began when the systems of the Starwood hotels group were compromised in 2014. Marriott subsequently acquired Starwood in 2016, but the exposure of customer information was not discovered until 2018
- The ICO's investigation found that Marriott failed to undertake sufficient due diligence when it bought Starwood and should also have done more to secure its systems

Information Commissioner Elizabeth Denham said: 'The GDPR makes it clear that organisations must be accountable for the personal data they hold. This can include carrying out proper due diligence when making a corporate acquisition, and putting in place proper accountability measures to assess not only what personal data has been acquired, but also how it is protected…If that doesn't happen, we will not hesitate to take strong action when necessary to protect the rights of the public.'

Next steps? The ICO writes that Marriott has co-operated with the ICO investigation and has made improvements to its security arrangements since these events came to light. Marriott will now have an opportunity to make representations to the ICO as to the proposed findings and sanction.

The ICO will consider carefully the representations made by the company and the other concerned data protection authorities — the ICO has been investigating the case as lead supervisory authority on behalf of other EU Member State data protection authorities — before it takes its final decision.

[Note: The ICO's action follows a similar action against British Airways for infringements of the General Data Protection Regulation. See: Governance News 10/07/2019]

Response: Marriott has reportedly issued a statement expressing 'disappointment' at the statement of intent and confirming that it will 'contest' it.

[Source: ICO media release 09/07/2019; [registration required] The AFR 11/07/2019]

Facebook to be fined $5bn for Cambridge Analytica privacy violations? The $5bn fine would reportedly be the largest ever levied by the Federal Trade Commission against a technology company

- Reportedly, the US Federal Trade Commission (FTC) has approved a record $5 billion fine against Facebook for privacy breaches in connection with the Cambridge Analytica scandal though the settlement is yet to be approved by the Justice Department. According to media reports, if approved, the fine would be the largest ever levied against a technology company.
- The New York Times reports that as part of the settlement, Facebook has also agreed to more comprehensive oversight of how it handles user data. However, reportedly the conditions in the settlement do not impose strict limitations on Facebook's ability to collect and share data with third parties. According to the New York Times, the five member commission was split on this issue, the vote was 3:2, with the two democrats seeking stricter limits on the company.
- Reportedly, shares of Facebook rose to $205.27 — the stock's highest price in the past year — in after-hours trading on Friday after news of the vote became public.

- Some media reports, consumer groups and democrats have reportedly questioned whether the fine, despite its scale, is a large enough disincentive, given Facebook's profitability. Reportedly the fine represents one month of Facebook's revenue.

[Sources: The Guardian 13/07/2019; The New York Times 12/07/2019; The Verge 12/07/2019]

Other Developments

United Kingdom | The Chartered Institute of Internal Auditors is consulting on a new draft Internal Audit Code of Practice

The UK Chartered Institute of Internal Auditors (CIIA) has released a draft Internal Audit Code of Practice for consultation. The consultation is in response to the corporate governance challenges, and more particularly the challenges for internal audit, identified in the wake of the Carillion collapse.

The Code is intended to provide an industry benchmark for best practice in internal audit and a gauge for boards, audit committees and UK regulatory authorities to assess the role, function and effectiveness of internal audit functions.

Key Recommendations

The draft Code makes 30 recommendations to strengthen internal auditing including:

- Full access for internal audit to board and executive committee meetings;
- Full and timely access to key management information
- Unrestricted access for internal audit to any part of the organisation it serves

The paper includes a number of consultation questions including seeking views on the scope of the application of the Code.

Timeline: Consultation closes on 11 October 2019

[Source: CIIA media release 15/07/2019; Consultation paper: internal Audit Code of Practice: Consultation on the draft Code]

In Brief | The Risk Coalition is consulting on proposed principles and guidance for board risk committees and risk functions in the UK financial services sector. Consultation closes 20 September 2019

[Sources: FRC media release 12/07/2019; Consultation paper: Effective Risk Oversight in a changing world: Principles and guidance for board risk committees and risk functions in the UK financial services sector 26/06/2019]

Corporate Misconduct and Liability

United Kingdom | The current approach to addressing corruption is inadequate? A UK Fraud Council Report has called among other things, for the establishment of a new corporate criminal offence 'failure to prevent economic crime' to hold executives to account

On 2 July, the UK Fraud Advisory Panel released the 'Hidden in plain sight: domestic corruption, fraud and the integrity deficit' report.

The report outlines the UK's current approach to addressing corruption and identified a number of weaknesses in that approach. Among other things, the report highlights the lack of focus on the issue domestically and lack of transparency as areas of concern.

According to the report, corruption appears to be more widespread now than previously. For example, according to the report, 24% of UK businesses were asked to pay a bribe in 2017 or 2018 (up from 5% in 2016) and 34% of UK executives think corruption is widespread (up from 18% in 2014).

The report also includes a 'blueprint for action' which sets out five actions to address the issue:

- Greater 'transparency and openness' of courts and proceedings (including easier access to court information and documents' should be 'at the very centre' of the government's existing £1bn reform of the UK's courts program
- The establishment of a central, public reporting mechanism to support a systemic approach to recording and analysing domestic corruption data risk
- Improved training and reduced bureaucracy surrounding bribery case authorisations to improve the use of the Bribery Act in domestic and small-scale cases
- The establishment of a new criminal offence of 'failure to prevent economic crime' to enable corporate executives to be held to account
- Public consultation on a statutory framework to replace the current principles based, 'light touch approach'

[Source: Fraud Advisory Panel Report: Hidden in Plain Sight: domestic corruption, fraud and integrity deficit 02/07/2019]