



February 2009

InSure

This month's roundup of developments affecting the insurance industry sees the FSA starting to regulate connected travel insurance, publishing a clarification of ICOBS requirements and proposing changes to GABRIEL, the insurance industry urging to delay disclosure of complaints, CEA setting out key issues arising from QIS4, ...

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General News

Government Responds To Equitable Life Report

On 15 January 2008 the Government responded to the [Parliamentary Ombudsman's Report](#) into the prudential regulation of the Equitable Life Assurance Society from 1988 to December 2001.

The Government accepts some, but not all of the Ombudsman's report's findings of maladministration by public bodies during the period under review.

Responding to the report, Chief Secretary to the Treasury Yvette Cooper said:

"We are concerned that some policy-holders have been disproportionately affected by the events at Equitable. It is on that basis that we intend to set up an ex-gratia payment scheme to help. We need to consider the fairest way to respond to policy holders and this is what we have asked Sir John Chadwick to advise us on."

To see such a payment scheme established as quickly as possible, the Government has asked the Rt Hon Sir



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John Chadwick to examine the information and advise on:

- the extent of relative losses suffered by Equitable Life policyholders;
- the proportion of losses which can be apportioned to a) the maladministration accepted by the Government, and b) the actions of Equitable Life and its advisers;
- which classes of policyholder have suffered the greatest impact as a result of the maladministration accepted by the Government; and
- factors arising from this work which the Government might take into account when reaching a final view on determining whether disproportionate impact has been suffered.

Please click [here](#) to access the response. (Source: *HM Treasury, press release 04/09, 16 January 2009*) - [Back↑](#)

FSA Consumer Purchasing And Outcomes Survey

On 29 January 2008 the FSA published the results of its consumer purchasing and outcomes survey. The Report explains that under the first of its strategic aims, 'to help retail consumers achieve a fair deal', the FSA has committed to ensuring that consumers receive and use clear, simple and relevant information from the industry and from the FSA.

The Consumer Purchasing Survey was commissioned to provide information in relation to this objective.

Please click [here](#) for a copy of the report. (Source: *FSA Consumer purchasing and outcomes survey, January 2009*) - [Back↑](#)

FSA Publishes Research On Financial Crime

The Financial Services and Markets Act (**FSMA**) requires the FSA to consider firms' awareness of their financial crime risks. For this reason the FSA regularly commissions research among its stakeholders to assess their views on financial crime, current policy and practice and the FSA's effectiveness in meeting its statutory objective.

The latest research has now been made available on the FSA website. The results show that many firms (59% of large firms and 44% of small firms) believe that

financial crime is increasing, albeit at a slower rate than in 2006.

Please click [here](#) for a copy of the report. (Source: *FSA Financial Crime - Stakeholder Research, January 2009*) - [Back↑](#)

FSA Handbook Development No. 107

On 23 January 2009 the FSA published Handbook Development No. 107. This newsletter contains:

- information about recent Handbook-related and other developments;
- information about recently issued Handbook-related and other publications;
- an updated timetable for forthcoming publications;
- information about consumer publications; and
- a link to the FSA Events web page which provides information about forthcoming conferences and training events.

Please click [here](#) for a copy of the publication. (Source: *FSA, Handbook Development No. 107, January 2009*) - [Back↑](#)

FSA Financial Crime Newsletter

On 19 January 2009 the FSA published Financial Crime Newsletter No.19. This publication covers the following issues:

- boiler rooms: raising consumer awareness;
- tackling mortgage fraud;
- stakeholder perceptions survey;
- small firms project update;
- data security: customer communications;
- home Office identity theft initiatives;
- APACS card fraud figures;
- enforcement actions: Aon Ltd and –Sindicatum Holdings; and
- Philip Robinson's BBA speech

Please click [here](#) for a copy of the publication. (Source: *FSA, Financial Crime Newsletter No. 19, January 2009*) - [Back↑](#)



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State To Step In As Credit Insurance Drought Imperils Small Businesses

The Times reported that a multibillion-pound scheme to help tens of thousands of companies that are struggling to secure crucial business insurance will be announced by the Government in February. Retailers, electronics groups and motor manufacturers have all been threatened by the widespread withdrawal of credit insurance, a complex protection that allows businesses to trade with each other without worrying about unpaid bills. Business leaders believe that the “unprecedented” rate at which credit insurance is being cancelled or refused could be as devastating to industry as the credit crunch has been to the banking sector. (Source: *Times*, 2 February 2009) - [Back↑](#)

Insurers Seek To Delay Disclosure Of Complaints

Insurers are urging the Financial Ombudsman Service to delay plans to name companies with the worst customer service, just as consumer complaints are expected to reach record levels. In a drive to be more open, the ombudsman wants for the first time to name the companies involved in the tens of thousands of consumer disputes it hears.

In a response to a consultation on how best to present this data, the Association of British Insurers has urged the ombudsman to halt its plans until a number of its concerns are addressed. (Source: *Financial Times*, 17 January 2009) - [Back↑](#)

New Legislation & Consultations

Amendments To The FSA Handbook

During January 2009 the FSA Board made five instruments changing its Handbook. Handbook Notice 84 which was published on 26 January 2009 introduces these changes. It also contains information about other publications relating to the Handbook and, if appropriate, lists minor corrections made to previous instruments made by the Board. The following instruments were made:

- 1) On 14 January it made an instrument which extends its disclosure obligation for short selling of stocks in UK financial sector companies until 30 June 2009. The decision follows strong support for

the proposals on which the FSA consulted last week (FSA 2009/1).

- 2) On 15 January the FSA Board made an instrument which enables a building society which merges with the subsidiary of another mutual society to keep its separate depositor protection compensation limit; the rule will operate on a temporary basis until September 2009 (FSA 2009/2).
- 3) On 22 January, at its normal monthly meeting, the FSA Board made three instruments which:
 - make corrections to and clarify various Handbook provisions (FSA 2009/3);
 - ensure PII indemnity limits are adjusted in line with the increase in the European Index of Consumer Prices from 15 January 2003 to 15 January 2008 (FSA2009/4); and
 - ensure that an appropriate level of investor protection is maintained in electronic authorisations of transfer of title (FSA 2009/5).

Please click [here](#) for a copy of Handbook Notice 84. (Source: *FSA Handbook Notice 84, January 2009*) - [Back↑](#)

FSA Starts Regulating CTI

On 31 December 2008 the FSA [published](#) a reminder that it began regulating Connected Travel Insurance (CTI) from 1 January 2009. This is insurance sold by firms such as travel agents and airlines alongside a travel product such as a holiday, or a train ticket.

The new regulations will affect travel firms dealing in CTI in the UK. Dealing includes selling, arranging, advising, administering and handling of claims in relation to CTI. This would typically include the following types of firms: travel agents, tour operators, coach operators, ferry companies, train companies, airlines and holiday accommodation firms. - [Back↑](#)

Rome II Enters Into Force

On 11 January 2009 Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (**Rome II**) came into force.

In summary, this Regulation defines the conflict-of-law rules applicable to non-contractual obligations in civil and commercial matters, including product liability,



negotiorum gestio (acts relating to the affairs of another person) and culpa in contrahendo (non-contractual obligations arising out of dealings before the conclusion of a contract). Applicable from 11 January 2009 in all Member States except Denmark, it does not attempt to harmonise the substantive law of the signatories in the field of non-contractual obligations, but only their conflict-of-law rules, so that, no matter where in the EU an action is brought, the rules determining the applicable law will always be the same. As a general rule, and in order of priority, the law applicable is:

- the law of the country where the damage occurs;
- the law of the country where both parties were habitually resident when the damage occurred;
- the law of the country with which the case is manifestly more closely connected than the other countries. It authorises the parties to choose, by mutual agreement, the law that will be applicable to their obligation.

Rome II applies to events giving rise to damage that occur after it came into force (20 August 2007).

Please click [here](#) for a copy of the Regulation. (Source: *European Union, [website](#), 11 January 2008*) - [Back↑](#)

FSA Quarterly Consultation Proposes Changes To GABRIEL

The FSA's Quarterly Consultation Paper 09/2 (No. 19) was published on 6 January 2009. Comments on all the proposed amendments should be submitted by 6 March 2009.

The accompanying newsletter clarifies that the amendments and proposed changes are driven by enquiries and requests for clarification following the implementation of the new FSA reporting system (**GABRIEL**). This had identified some anomalies caused by other legal instruments, as well as some inconsistencies and duplications.

Hence, the FSA now proposes amendments to Chapter 16 of the Supervision manual (**SUP**) relating to the reporting requirements in SUP 16.12 – Integrated Regulatory Reporting.

Please click [here](#) for to access the online response form. (Source: *FSA [Newsletter](#) Consultation Paper 09/2, January 2008*) - [Back↑](#)

FSA Consultation Paper On Obtaining And Using Firm-Commissioned Reports

On 26 January 2009 the FSA published Consultation Paper 09/5 entitled 'Obtaining and using firm-commissioned reports'.

The FSA proposes a small amendment to the Enforcement Guide (**EG**) – to insert guidance for firms who decide to give it a copy of an internal investigation report in anticipation of the FSA potentially taking enforcement action.

The consultation paper will be primarily of interest to regulated firms who may consider giving the FSA a copy of an internally commissioned report. It does not directly affect consumers.

The consultation process will last for a limited period of 28 days and will close on 23 February 2009. The FSA plans to publish feedback on responses, along with a final amended text of EG, at the beginning of April 2009.

Please click [here](#) for a copy of the consultation paper. (Source: *FSA [Newsletter](#) to CP 09/5, January 2009*) - [Back↑](#)

European Commission Launches Consultation On Review Of Prospectus Directive

The European Commission (**Commission**) has launched a consultation on its review of the application of the Prospectus Directive, including some proposals to improve and simplify this Directive.

The proposal is a key element of the Commission's action plan to reduce administrative burdens on EU companies. The closing date for replies is 10 March 2009.

Following an extensive and continuous dialogue with stakeholders, including the Committee of European Securities Regulators (**CESR**) and the European Securities Markets Expert Group (**ESME**), the Commission has concluded that some particular elements of the Prospectus Directive merit a review and has put forward proposals to improve and simplify the Directive.

Measures to address the problems identified include:

- definition of qualified investors;
- revision of exempt offers ('retail cascade' issue and employee shares schemes);



- revision of annual disclosure obligation;
- time limit for exercise of right of withdrawal; and
- certain thresholds of the Directive

The consultation is available at: http://ec.europa.eu/internal_market/securities/prospectus/index_en.htm

(Source: *European Union, rapid press release, 9 January 2009, IP/09/27*) - [Back↑](#)

Regulatory Developments

CC Publishes Its Final Report On PPI

On 29 January 2009 the Competition Commission (**CC**) published its final report into the Payment Protection Insurance (**PPI**) market, setting out the measures it has decided are needed to introduce competition between suppliers.

In its report the CC concluded that businesses that offer PPI alongside credit face little or no competition when selling PPI to their credit customers. Many consumers are unaware that they can buy PPI from other providers, they rarely shop around to compare prices and terms and conditions of PPI policies, and they rarely switch PPI providers. To address the lack of competition, the CC will be introducing a package of measures to introduce competition in the market including:

- a ban on the sale of PPI during the sale of the credit product and for seven days afterwards,
- a prohibition on single-premium policies,
- personal PPI quotes,
- annual statements; and
- measures to make sure that improved information is available to consumers to make it easier for them to compare and search for products and switch policies at a later point.

Please click [here](#) to access the CC website. (Source: *CC News Release, 04/09, 29 January 2009*) - [Back↑](#)

FSA Clarification Of ICOBS Requirements

Following the Competition Commission's (**CC**) publication of the Final Report of its market investigation into the supply of Payment Protection Insurance (**PPI**) the FSA has considered the remedies package set out in this report and welcomed this intervention to enhance competition in PPI markets as complementary to its own work to improve sales standards. (See previous article for details of the CC Final Report.)

In addition, the FSA provided on its website a clarification of the conduct of business requirements for firms selling PPI, which are set out in the Insurance Conduct of Business sourcebook (**ICOBS**), to ensure that firms are clear that these standards and requirements remain in place. In particular, the FSA sets out its expectations around ICOBS 6.1.5R, which requires that firms provide appropriate information about a policy in good time and in a comprehensible form so that a customer can make an informed decision about the arrangements proposed.

Please click [here](#) to access the FSA website. (Source: *FSA website, 29 January 2009*) - [Back↑](#)

Update On FSA Work On The Sale Of PPI

In a press release, published on 20 January 2009, the FSA welcomed the move by Alliance & Leicester, Barclays, The Co-Operative Bank, Lloyds Banking Group (including Lloyds TSB, Halifax, and Bank of Scotland), and RBS/Natwest to stop selling single premium Payment Protection Insurance (**PPI**) with unsecured personal loans by the end of January 2009.

The press release explains that some of these firms, along with other market players, now offer or plan to offer regular premium PPI instead of a single premium product. The FSA expects other firms still selling single premium PPI to take note of these developments.

Furthermore, the press release clarifies that the FSA recognises the importance of appropriate protection insurance in the current economic climate, but remains concerned over the standard of sales of single premium PPI. "*Customers being sold this type of product should be told how the product works, what it covers and how much it costs – especially as the cost of the PPI is added to the loan and interest charged on this amount.*"

Please click [here](#) for copy of the press release. (Source: *FSA press release, FSA/PN/012/2009, 20 January 2009*) - [Back↑](#)



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CEA Sets Out Key Issues Arising From QIS4

On 9 January 2009 the European insurance and reinsurance federation (**CEA**) submitted a paper to CEIOPS setting out the key issues that have been highlighted by insurers as a result of last year's QIS4 exercise. The paper outlines the issues that the industry would like to see addressed in the development of possible QIS5 technical specifications and, ultimately, the implementing measures for the proposed Solvency II Framework Directive.

In an accompanying press release the CEA highlights the need for more analysis on the calculation of technical provisions and the calibration of some solvency capital requirement (**SCR**) models. It also calls for more work to be done on how to apply the proportionality principle in Pillar I.

The CEA paper is available on the CEA [website](#). (Source: [CEA press release, 9 January 2008](#)) - [Back↑](#)

CEIOPS Report On The Stock-Take Exercise

On 28 January 2009 CEIOPS published a report on the outcome of the stock-take exercise on the current use of internal models in insurance following its approval in the Members' Meeting of 21 January 2009.

As the accompanying press release explains, the report is the result of an exercise initiated in late 2007 by the CEIOPS' at the request of the European Commission. The stock-take exercise and the report have fully delivered on their initial purpose, significantly improving supervisors' understanding of current industry practices on internal models and fostering discussions about the application of models both for risk management and regulatory purposes.

Please click [here](#) for a copy of the report. (Source: [CEIOPS, Press Release, 28 January 2009](#)) - [Back↑](#)

CEIOPS Publishes Two Papers In Relation To The Reinsurance Directive

On 20 January 2009 CEIOPS published a paper on the criteria for the assessment of supervisory equivalence under Directive 2005/68/EC outlining the methodology for the assessment of supervisory equivalence of third country regimes for the purposes of the application of Article 49 of the Reinsurance Directive. This paper followed a report by CEIOPS, that highlights the main findings drawn from CEIOPS Members' responses to a Questionnaire on the Regulatory Treatment of Third

Country Reinsurance Undertakings and on Existing Equivalence Procedures.

Please click [here](#) for a copy of the paper on the criteria and click [here](#) for a copy of the report. - [Back↑](#)

Work Programme Of The CEIOPS Committee On Consumer Protection

On 28 January 2009 the CEIOPS Committee on Consumer Protection published its 2009 Work Programme. Some of the highlights for this year include:

- Information Requirements: Analysis of national disclosure measures of unit-linked life-insurance and other insurance products where the investment risk is born by the policy holder.
- Consumers' Complaints: Publication of information regarding out-of-court handling of consumers' complaints.
- Intermediaries Issues: Contribution to a possible IMD review of the EC.

Please click [here](#) for copy of the 2009 Work Programme. - [Back↑](#)

Survey On Equalisation Provisions

CEIOPS published the main conclusions of a survey on equalisation provisions among its members. The survey was conducted by the Financial Requirements Expert Group using a questionnaire drafted to map the use and impact of equalisation provisions in the European Economic Area (**EEA**).

Equalisation provisions aim to equalise fluctuations in loss ratios in future years or to provide for special risks. They are part of the technical provisions on the balance sheet and the change in equalisation provisions is included in the technical account of the profit and loss account.

The survey shows that equalisation provisions are widely used among countries and they reach substantial amounts. However, the application of the different equalising systems and consequently their valuation rules and sizes vary considerably from one country to another. QIS4 showed that different views exist on the future classification of equalisation provisions in own funds following their exclusion from the technical provisions.



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Please click [here](#) for a copy of the publication. (Source: *CEIOPS-DOC-No.32/08, January 2009, Summary of a survey on equalisation provisions*) - [Back↑](#)

FSA Chairman Sets Out Agenda For Reforming Financial Regulation

The FSA published on its website a speech given by Adair Turner, chairman of the FSA at The Economist's Inaugural City Lecture on 21 January 2009.

In his speech Lord Turner addressed the root causes of the current global financial crisis and outlined three key long-term regulatory initiatives to reduce the probability and severity of future financial crises:

- new approaches to capital adequacy, entailing more capital held against risky trading strategies and counter-cyclical capital requirements to build up adequate buffers during good economic times, which can be drawn on in bad;
- a new liquidity regime focused not just on individual firms' liquidity but also on market-wide risk; and
- ensuring that financial activity is regulated according to its economic substance not its legal form.

Lord Turner said that these themes would be outlined more fully in the Turner Report which will set out the changes the FSA has already made, those where there are proposals in principle but need consultation, and those where the regulator has defined objectives but needs to play a role in achieving international agreement.

Please click [here](#) to access the speech. (Source: *FSA press release, FSA/PN/013/2009, 21 January 2009*) - [Back↑](#)

Financial Reform: A Framework For Financial Stability

In January 2009 the Group of Thirty, a consultative think tank on international economic and monetary affairs, published a report on fixing the global financial system.

The report addresses flaws in the global financial system and provides 18 specific recommendations to: improve supervisory systems by redefining the scope, boundaries, and structure of prudential regulation; enhance the role of the central banks; improve

governance practices and risk management; address pro-cyclicality via capital and liquidity standards; enhance accounting practices; strengthen the financial infrastructure; and increase coordination internationally.

The project was led by Paul Volcker, Chairman, and Tommaso Padoa-Schioppa and Arminio Fraga Neto, Vice Chairmen. Please click [here](#) to read a copy of the list of recommendations. - [Back↑](#)

General Legal Issues

JMLSG Guidance On Equivalent Markets

On 21 January 2009 the JMLSG published on its website Guidance on 'Equivalent Markets' to assist firms in determining whether they are 'equivalent' for the purposes of the money laundering directive.

The material discusses markets where there may be a presumption of equivalence, and those where such a presumption may not be appropriate without further investigation. It then discusses issues that a firm should consider in all cases when coming to a judgement on whether a particular market is, in its view, equivalent.

JMLSG explains that the Guidance has been discussed with HM Treasury and reflects their input, although it is not formal guidance that has been given Ministerial approval.

Please click [here](#) for copy of the Guidance. (Source: *JMLSG Guidance on Equivalent Markets, 21 January 2009*) - [Back↑](#)

FSA Confirms Disclosure And Model Code Obligations In Respect Of The Use Of Shareholdings As Security

Following a number of queries relating to disclosure obligations, the FSA confirmed that grants of security over shares (by the creation of a security interest such as a pledge, mortgage or charge) are covered by the disclosure requirement in its Rules. The FSA considers that this is consistent with the statements it made in 2005.

However, the FSA also recognises that whilst implementing a European regime it has become clear that there are differing approaches in some other Member States, based in part on local practices and structures or procedures for granting security over



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shares, including the circumstances in which legal title to shares transfers.

Therefore, the FSA seeks to reach a common understanding on the detail of the MAD requirements in this area with the European Commission and its counterparts in the Committee of European Securities Regulators.

In the same statement the FSA also reminds listed issuers and their PDMRs (Persons discharging managerial responsibilities) that they should consider their obligations under the Model Code (Annex 1 to Chapter 9 of the Listing Rules), in particular the requirement to obtain clearance before dealing.

(Source: [FSA statement](#), FSA/PN/005/2009, 9 January 2009) - [Back↑](#)

[ABI Code Of Practice On Non-disclosure In Protection Insurance Claims](#)

On 19 January 2009 the ABI published a Code of Practice entitled "*Managing Claims For Individual and Group Life, Critical Illness and Income Protection Insurance Products*"

This Code covers the continuing fair treatment of claims for UK individual and group life, critical illness, income protection and other long-term protection insurance contracts in the light of evolving industry practice, FSA regulations and the treating customers fairly (TCF) regime and experience. It covers individual policies and individually underwritten benefits within group schemes, but does not apply to any non-disclosure by scheme owners.

ABI believes that this Code goes beyond the current legal position in many aspects. However, insurers should note that it does not purport in any way to replace the Law.

Please click [here](#) for a copy of the Code. (Source: *ABI Code of Practice, January 2009*) - [Back↑](#)

[CESR Statement On The Reclassification Of Financial Instruments And Other Related Issues](#)

In October 2008, the IASB approved an amendment to IAS 39 and IFRS 7 concerning the reclassification between some categories of some financial instruments. At the same time the amendments were endorsed to be used in the European Union.

The European Commission requested, in a statement dated 15 October 2008, that the IASB and CESR begin work immediately to find appropriate solutions to the issues associated with the fair value option, embedded derivatives, insurance questions and other problem areas in IAS 39 and IFRS 7, which in CESR's view were of concern to the public interest, taking into account an appropriate level of transparency.

The statement published on 7 January 2009 is available on the CESR [website](#). (Source: CESR, [press release](#), 7 January 2009) - [Back↑](#)

Enforcement

[FSA Fines Firm For Failings In Its Anti-bribery And Corruption Systems And Controls](#)

On 8 January 2009 the FSA announced that it has fined Aon Limited (**Aon**) £5.25 million for failing to take reasonable care to establish and maintain effective systems and controls to counter the risks of bribery and corruption associated with making payments to overseas firms and individuals.

According to the accompanying press release, Aon failed to properly assess the risks involved in its dealings with overseas firms and individuals who helped it win business and failed to implement effective controls to mitigate those risks. As a result of Aon's weak control environment, the firm made various suspicious payments, amounting to approximately US\$7 million, to a number of overseas firms and individuals.

Please click [here](#) for a copy of the Final Notice. (Source: *FSA press release*, FSA/PN/004/2009, 8 January 2009) - [Back↑](#)

[Pacific Continental Former Chief Executive And Former Finance Director Both Banned And Fined £80,000 And £95,000](#)

The FSA announced that it has banned the former chief executive of stockbroking firm Pacific Continental Securities UK Limited, Mr Steven Griggs, and its former finance director, Mr Charles Weston, and fined them £80,000 and £95,000 respectively for serious failures in the company which led to customers buying high risk shares without suitable advice.



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The FSA found that between 1 April 2005 and 20 June 2007, Mr Griggs and Mr Weston had acted without integrity, and had failed to ensure that customers were treated fairly or that PCS was properly run.

The final notices for [Mr Griggs](#), [Mr Weston](#) and [Pacific Continental](#) can be found on the FSA website.

(Source: FSA [press release](#), FSA/PN/018/2009, 28 January 2009) - [Back↑](#)

[Legacy Financial Planning Ltd Fined £28,000 For Failing To Adequately Explain Risk To Investors](#)

The FSA fined Legacy Financial Planning Limited £28,000 for failing to adequately advise investors about the risks associated with certain transactions.

According to the accompanying press release the firm also failed to make and retain records that demonstrate the suitability of its advice and ensure that its business is conducted in accordance with FSA requirements.

Between September 2006 and September 2007, the firm issued suitability letters to customers that did not explain why the recommended transaction was suitable and failed to adequately disclose the risks and any disadvantages of recommended transactions. Legacy also failed to make or retain records to demonstrate the suitability of its advice.

The Final Notice for [Legacy Financial Planning Limited](#) can be found on the FSA website.

(Source: FSA [press release](#), FSA/PN/016/2008, 26 January 2009) - [Back↑](#)

If you wish to discuss any of the above, or for more information, please contact one of the Insurance and Reinsurance Group



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