



## Issue 49 - October 2018

Welcome to the latest edition of Gem Compliance's monthly regulation newsletter. The aim of the newsletter is to present industry news in an easily digestible format. As such, not all sources of industry information and FCA publications (and no PRA publications unless specified) will be covered. Therefore, clients and associates of Gem Compliance should periodically check the FCA's and PRA's websites for regulatory developments. We hope you find this newsletter useful and should you have any compliance queries or require advice on any of these topics, please do not hesitate to contact us.

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## Other Newsletters & Updates

The latest edition of the [FCA Regulation Round up](#) was issued on 18 October, and the [FCA Policy Development Update](#) was updated on 5 October 2018.

The ICO's October [newsletter](#) has been issued, which highlights that the Office has started issuing formal enforcement against organisations who haven't paid the new data protection fee.

## Main features

### **FCA consults on its approach ahead of the UK's exit from the EU**

The FCA has published [two consultation papers](#), CP18/28 Brexit: proposed changes to the Handbook and Binding Technical Standards – first consultation and CP18/29: Temporary permissions regime for inbound firms and funds.

CP18/28 Brexit: proposed changes to the Handbook and Binding Technical Standards

While the European Union (Withdrawal) Act 2018 will convert existing EU law at the point of exit into UK law, preserve existing UK laws which implement EU obligations, and give the Government powers to amend that law so it functions effectively when the UK leaves the EU, the Treasury intends to give the FCA responsibility for amending EU binding technical standards (BTS), which are detailed EU rules, for exit day. This consultation paper proposes changes that may need to be made to the FCA Handbook and BTS, whilst setting out the FCA's approach after Brexit to EU non-legislative material. No policy changes are being made.

### **CP18/29: Temporary Permissions Regime**

The FCA is also consulting on its proposals for the Temporary Permissions Regime. At present, certain European Economic Area (EEA) firms can provide financial services in or into the UK, and EEA investment funds can be marketed in the UK, through the passporting regime. The paper sets out how EEA firms and investment funds can continue to carry on regulated business in or into the UK for a limited period after exit day while seeking full authorisation in the UK.

The paper also provides details of how the FCA expects the regime to work in practice, how firms and investment funds can enter into it, how long it will operate for, and the rules it proposes that should apply to firms and investment funds.

Both consultations are open until 7 December 2018.

The guidance also included specific information on:

Temporary authorisation regime for [data reporting services providers](#)(DRSPs)

Registering as a [credit rating agency](#)

Registering as a [trade repository](#)

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## **DP18/8: Climate change and green finance**

The FCA has published a [discussion paper](#) focusing on climate change and green finance as climate change is likely to have an impact on financial markets. The regulator is seeking input in the following areas:

- climate change and pensions – ensuring that those making investment decisions take account of risks including climate change;
- enabling competition and market growth for green finance;
- ensuring that disclosures in capital markets appropriately give adequate information to investors of the financial impacts of climate change; and
- the scope for the introduction of a new requirement for financial services firms to report publicly on how they manage climate risks

The FCA is targeting consumer groups and individual consumers, charities, industry groups/trade bodies, regulated firms, policy-makers and regulatory bodies, industry experts, commentators, academics and think tanks.

The green finance market is gaining traction, with over 70 green bonds listed on the London Stock Exchange in seven currencies, worth over US \$22 billion. Thirty-eight green companies have raised \$10 billion in London, including 14 renewable investment funds. On the retail side, some banks have been providing green mortgages and loans.

Andrew Bailey, Chief Executive at the FCA commented: “Climate change presents a disruptive and potentially irreversible threat to the planet. The impact of climate change on financial markets is uncertain but legal frameworks – at a global, European and UK level – have already begun to adapt to reflect a move to a low carbon economy. The FCA can play a key role in providing more structure and protection to consumers for green finance products and ensuring that the market develops in an orderly and fairway which meets users’ needs.”

The FCA is also setting up the Innovate FinTech Challenge, whereby they are looking for innovative financial products and services to assist the UK's transition to a low carbon economy. More information on the Challenge is provided [here](#).

The PRA also published a consultation on enhancing banks' and insurers' approaches to managing the financial risks from climate change and the PRA and FCA are also setting up a Climate Financial Risk Forum.

Comments are due by 31 January 2019.

## [Other publications](#)

[The Office of Financial Sanctions Implementation](#) has published its annual review.

PS18/20: [FCA](#) confirms final rules on improving the quality of pension transfer advice.

[The Foreign & Commonwealth Office](#) has published guidance on Sanctions policy if there's no Brexit deal.

[FCA and TPR](#) publish joint pensions strategy. [The document warns](#) that some schemes do not manage their clients' money properly. [Comments](#) from the industry highlight that the FCA and TPR have a clear joint focus. Highlights of joint action points can be found [here](#).

PS18/21: [FCA confirms](#) greater access for SMEs to the Financial Ombudsman Service.

[FCA](#) adds new events for Live & Local 2018/19 programme

## [FCA Speeches](#)

[Going green](#): the FCA's developing approach, by Christopher Woolard, Executive Director of Strategy and Competition

[Prisoners, wellness programmes and the rats of Hanoi](#): why the FCA tests its interventions, by Christopher Woolard, Executive Director of Strategy and Competition

[Rolling the rock](#): The cycle of deregulation, crisis and regulation, by Charles Randell, Chair, FCA

[Trust and ethics – a regulator's perspective](#) by Andrew Bailey, Chief Executive of the FCA

## Enforcement Actions & Prosecutions

[The FCA](#) fined Tesco Bank £16.4m for failing to “exercise due skill, care and diligence in protecting its personal current account holders against a cyber-attack” in November 2016.

[The FCA](#) has fined Linear Investments, a discretionary fund manager prime broker and hedge fund incubator, £409,300 for failing to enable the detection and reporting of market abuse. An investigation by the regulator showed that the firm had limited oversight of trading conducted through its Direct Market Access service. The FCA stated that: "Tackling market abuse is a priority for the FCA and firms are expected to play their part by ensuring that they are able at all times to identify and manage the market abuse risks to which they are exposed. “The firm has disputed the fine and intends to take the regulator to court. The firm [later admitted](#) that it did not act sufficiently on its market abuse shortcomings.

[The Financial Ombudsman Service](#) has upheld 84 complaints against advice firm Portafina, largely in relation to pension transfers. Another 41 cases are currently under investigation.

[A Westminster City Council](#) pension fund manager siphoned off almost £1m from a fund to fund home renovations, cars and tax bills. The trial is ongoing.

[The ICO](#) issued a fine of £175,000 to BUPA for failing to protect its clients’ personal information. In 2017, an employee was able to extract data on 547,000 Bupa Global customers which they later sold on the dark web.

[The Advertising Standards Authority](#) has banned two print adverts which advertised the value increase of Bitcoin. The ads were ran by Cryptocurrency investment firm Crypto Bank Global.

[Former HBOS banker](#) Lynden Scourfield has been ordered to repay £130,000 despite being involved in a swindle worth £245m. The banker forced his struggling clients to use the services of his consultant friend who did not help the clients while charging very high consultancy fees. The proceeds were used to pay for jewellery, hospitality and prostitutes.

[Two people](#) have been arrested in an investigation into potentially fraudulent activity in Suffolk-based inheritance tax planning firm Universal Wealth Management following more than 100 reports to the police.

[A pension fund manager](#) from Westminster City Council has been found guilty of stealing £1bn

from a council employee retirement pot.

## [Industry News](#)

### [FCA & Regulation](#)

[The FCA](#) has modified its [register](#)'s search function to allow consumers to search for financial advice firms in their area. The results now also highlight unregulated firms which are flagged with advice to not use them. The move has however been [criticised](#) for not being clear enough and it has also been suggested that adding [professional qualifications](#) and professional body membership would make the register more robust. [The FCA](#) has admitted that there are risks.

[Claims management companies](#) will be regulated by the FCA from 1 April 2019 which means that they will have to complete an authorisation application. This will enable the FCA to ensure that associated individuals are in line with its suitability requirements and not phoenixing companies which previously shut down to avoid liabilities.

[The Securities & Exchange Commission \(SEC\)](#), the US regulator, has charged Tesla's CEO Elon Musk over a Tweet which suggested that he had secured funding to take the electric car manufacturer private. He later abandoned the plans. The tweet had caused Tesla's stock price to jump by more than 6 per cent on 7 August and led to "significant market disruption", according to the SEC. Mr Musk called the actions unjustified. Tesla's share price has since [stabilised](#).

[Linda Woodall](#), the FCA's former director of financial advice passed away.

[A survey](#) has found that debt has had a negative impact on the mental health of more than half of its respondents. The FCA will be further assessing early next year how firms treat vulnerable clients, including those with poor mental health.

[The FCA](#) has been accused in court of not understanding its own pension governance rules.

[The FCA](#) has published a paper proposing new rules on property funds. The paper includes proposals on when to suspend trading, identifier names and rules on liquidity management.

[MP Nicky Morgan](#) has criticised the Financial Ombudsman Service's proposed case review and said that the focus should be on whether the right decision was made rather than on the process.

[The FCA](#) will go ahead with digital regulatory reporting and will publish a technical paper on the

subject early next year.

[The FCA's](#) former technical specialist, Rory Percival, criticised the regulator for not clamping down on incompetent providers citing Aegon and Aviva's platform problems as examples.

[David Blunt](#), head of conduct specialists at the FCA, has suggested that financial advice businesses should use the looming Senior Managers and Certification Regime to get rid of bosses who are not fit for 21st century business. [Meanwhile](#), Andrew Bailey, the chief executive at the FCA, said that SM&CR will restore trust in the financial services sector.

[The FCA](#) has proposed to increase Fos compensation from £150k to £350k as part of its plans to expand the body's services to SMEs.

[The FCA](#) has promised to tackle sexual harassment in the financial services industry.

## [Brexit](#)

[The Bank of England](#) is concerned about the "limited progress" achieved by the leaders of the EU in case of a no deal Brexit. The Bank noted that: "The FPC [Financial Policy Committee] has been monitoring risks of disruption that could arise in the absence of an implementation period or any other agreement. There has been considerable progress in the UK to address these risks, but only limited progress in the EU. In the limited time remaining, it is not possible for companies on their own to mitigate fully the risks of disruption to cross-border financial services. The need for authorities to complete mitigating actions is now pressing."

## [HMRC & Tax](#)

[HMRC](#) has admitted that it is not aware as to the number of people who have been sent death benefit payments P6 tax notices in error since 2016.

[Research](#) has shown that almost 7 million parents have made early gifts to their children to decrease inheritance tax.

[HMRC](#) has won an appeal to charge capital gains tax on a property, despite the property never having been built.

[HMRC](#) has won a case that has been labelled cruel and bizarre by providers. The case featured a woman who had, post-divorce, transferred money into a pension pot which was to be left to her

children. As Mrs Staveley was terminally ill, HMRC charged inheritance tax on the transaction.

## **Financial Crime**

[Purchase scams](#) were the most popular as criminals stole £500m in the first half of 2018. These scams involve consumers paying for goods or services which do not exist and often take place online. Financial service providers were able to return just over £30m.

## **Pensions & Sipps**

[The Pensions Regulator](#) (TPR) issued fines triple the value of fines in 2017-18 than in the previous year. The regulator also announced that it will introduce one-to-one supervision for the 25 biggest defined contribution, defined benefit and public service pension schemes from next month.

[A survey](#) has shown that 45% of its respondents struggle with understanding pension investments and find it difficult to access guidance in relation thereto.

[HM Treasury](#) is working on closing a loophole which prevents low earners from accessing pension tax relief.

[The FCA's new pension transfer](#) rules make contingent charging financially unviable. [According to industry experts](#), they should also see a decrease in complaints against advisers.

[The FCA](#) has backed a new clear and concise two-page annual statement for pension providers' clients.

[Advisers](#) have criticised the FCA's new transfer value comparator which shows how much the benefits in their defined benefit (DB) scheme would cost today in the open market.

[The FCA](#) is to publish a consultation on new guidance on climate change financial risk for providers of workplace pensions schemes.

## **Business**

[The government](#) has launched a review into the barriers female entrepreneurs face when building businesses. Women currently make up only a third of entrepreneurs in the UK.

[The head of British Money](#) has warned that the UK investment industry is missing out on £100bn

[The Head of Doing Money](#) has warned that the UK investment industry is missing out on £100bn by not connecting with women.

## **Mortgages & Housing**

[A study by Hometrack](#) shows that first-time buyers must now earn about £53,000 to buy a house in the UK's largest cities as property prices increased by 18% over three years.

[Citizen's Advice](#) and the Competition and Markets Authority have teamed up to launch a super complaint against over-charging loyal customers in five markets: mortgages, savings, broadband, mobile telephony and home insurance. [The FCA](#) supports the complaint and will aid the investigation.

[The Bank of England](#) reported that August saw the highest level of mortgage approvals this year.

[The Secretary of State for housing](#), communities and local government has announced the creation of a New Homes Ombudsman, whose task will be to address quality issues in new homes, amongst others.

[A RICS survey](#) found that the residential market has slowed down with buyer enquiries dropping.

[First-time buyers](#) hit their highest activity level in August since June 2017.

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