

REGULATION

NEWS | ISSUE 11 AUG 15



GEM Compliance Consulting

Welcome to the latest edition of Gem Compliance's monthly regulation newsletter. The aim of the newsletter is to tailor 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 website for other developments.

This month the FCA announced its next round of positive compliance workshops for firms in the North West. Authorised firms with relevant postcodes will be contacted by the FCA shortly. The stream of enforcement actions and prosecutions continues to flow with the first individual to be charged and stand trial in the UK's LIBOR manipulation investigation having now been sentenced to 14 years imprisonment.

The FCA's monthly [Regulation Round-up](#) was issued along with the FCA's latest [Policy Development Update \(Issue 25\)](#), which provides a list of recent and upcoming publications.

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.

Email – emma@gemcompliance.com
Website – www.gemcompliance.com

Main features

- * FG15/10 - Risks to customers from performance management at firms
- * CP15/26 - PSR regulatory fees 2015/16
- * FCA Speech: "Wholesale Conduct Risk," by Tracey McDermott, the FCA's Director of Supervision, Investment, Wholesale and Specialists
- * TR15/10: Fair treatment for consumers who suffer unauthorised transactions
- * TR15/11: Financial Benchmarks: Thematic Review of Oversight and Controls
- * PS15/20: Implementation of the Mortgage Credit Directive (MCD): Consequential Changes to the Consumer Credit Sourcebook (CONC)
- * Industry News
- * Enforcement Actions and Prosecutions
- * Other FCA News and Publications

Industry News

Latest edition of FOS newsletter contains an article on customers in vulnerable circumstances.
[Click here for article.](#)

Tax experts issue double tax warning to non-domiciled private equity managers, however a HMRC spokesperson said the legislation includes an express provision preventing a double tax charge.
[Click here for article.](#)

Friends Life admits a data protection breach caused a 5-month delay in the provision of annuity figures because Friends Life had failed to update its system with the new adviser's details. Friends Life was informed of the change in February but its systems were not updated and continued to send information to the client's previous adviser.
[Click here for article.](#)

The Pensions Ombudsman upholds a pension liberation complaint and advises the complainant that if the firm doesn't comply with the direction (as the firm has failed to co-operate throughout the investigation), they could try and enforce it through the courts. However, the complainant is warned they may find that "some or all the money is no longer there."
[Click here for article.](#)

The Pensions Regulator issues latest quarterly compliance and enforcement bulletin.
[Click here to access bulletin.](#)

UK disapproval of pan-European pension product.
[Click here for article.](#)

Supreme Court permits appeal against Court of Appeal decision relating to a claim for tax by HMRC against a pension scheme.
[Click here for article.](#)

European Commission rules out delay to MiFID II.
[Click here for article.](#)

This newsletter contains generic information and has been generated for professional clients and associates of Gem Compliance Consulting Limited only and should not be regarded as advice. We will not be liable for loss, however caused by parties acting on the information contained herein.

FG15/10 - Risks to customers from performance management at firms

This guidance is aimed at firms that deal with retail customers, however there are a number of principles that apply across the industry. Therefore, firms are advised to review the FCA's one minute guide, as a minimum.

The following are key points from the finalised guidance:

- * How staff are rewarded and what values are recognised by the firm are key elements of culture, a current regulatory hot topic and one of the main components of conduct risk.
- * Performance management is the process of managing the actions/ activities of individuals and teams in order to meet operational/ commercial objectives, such as appraisals and targets.
- * It is normal for performance management practices to result in some pressure. However, poor performance management can lead to undue pressure, which can result in poor customer outcomes.
- * Firms should ensure there is a good balance between the 'how' and the 'what' in all relevant aspects of its people strategy/ employee lifecycle.
- * Senior management should encourage an open environment and actively listen to what employees are saying about the firm's culture and the pressures they face.

[Click here for consultation paper.](#)

[Click here for one-minute guide.](#)

CP15/26 - PSR regulatory fees 2015/16

In this paper the PSR outlines its decision to allocate PSR fees between payment systems equally and also sets out how it plans to collect PSR fees from participants in each regulated payment system through indirect billing to operators.

The PSR's Annual funding Requirement of £28.1m includes £12.2m worth of costs in setting up the PSR. The remainder is the budget to cover ongoing regulatory activities in 2015/16.

The PSR has amended its original timeline taking into account the supplementary paper issued in May and additional liaison with the industry. The consultation period closes on 17/09/15 and it expects to issue final rules on 26/10/15, which take effect from 29/10/15. Invoices from operators to direct members are expected at the end of October/ early November. Payments by direct members are due by 10/12/15 and collections from operators by 21/12/15.

The FCA's On-Account fee-paying regime will apply to direct members who pay more than £20k to a specific operator.

[Click here for Consultation paper.](#)

"Wholesale Conduct Risk," by Tracey McDermott, the FCA's Director of Supervision, Investment, Wholesale and Specialists

McDermott spoke about the FCA's role in ensuring and renewing trust in markets and described its duties and expectations of firms in three main areas:

Continued on page 3...

Industry News continued...

FOS rejects adviser's claim that complainant was an insistent client and upholds complaint.

[Click here for article.](#)

FCA confirms it is in talks with the Financial Industry Regulatory Authority in the US regarding implementation of the RDR reforms.

[Click here for article.](#)

Enforcement Actions and Prosecutions

Following a voluntary notification to the FCA in June '14 that the firm had acted unfairly, and a subsequent independent review, Cash Genie has agreed to provide £10m in redress after voluntarily writing off £10.3m in fees and interest. It's unfair practices included excessive charges and interest rates, failing to send annual statements to customers who had not repaid their loans within 12 months and rolling over/ refinancing loans without consent or conducting appropriate affordability assessments.

[Click here for press release.](#)

Former Rabobank trader, Lee Stewart has been banned from the UK financial services industry following a criminal conviction in the US for his role in a conspiracy to manipulate Rabobank's US Dollar LIBOR submissions.

[Click here for press release.](#)

Following a joint investigation by the FCA and the PRA, Co-op Bank has been publicly censured for breach of Principle 3 in relation to the flawed design and operation of its three lines of defence risk management model, and for breaching the Listing Rules. Co-op Bank's failings would normally attract a substantial fine, however this would significantly impact compliance with its Individual Capital Guidance, which is issued to firms by the PRA to assist them in meeting the PRA's financial adequacy rule.

[Click here for press release.](#)

A High Court has granted the FCA permanent injunctions and penalties totalling just over £7.5m against five individuals found to have committed market abuse in relation to 186 UK-listed shares for market abuse. The individuals used a manipulative trading behaviour called layering, which created a false/misleading impression of the supply and demand of shares enabling trades at artificial prices.

[Click here for article.](#)

The FCA is to discontinue its investigation into the business and accounting practices at Quindell Plc after the Serious Fraud Office announced its decision to investigate.

[Click here for article.](#)

“Wholesale Conduct Risk” by Tracey McDermott continued...

1. **Regulators and the industry** - The risks of misconduct are believed to be one of the largest on a firm's balance sheet. With a risk this big, firms need a very good reason why steps aren't being taken to proactively manage it. Also, if firms fail to identify conduct risks they will find it difficult to manage conduct and even harder to demonstrate to the FCA that conduct is being effectively managed.

McDermott said: “To steal an analogy from a colleague of mine – a good regulator should be like a good referee – constantly on the pitch, keeping up with what is going on, respected, firm, consistent and fair – and tough when required – but not interrupting the flow unnecessarily and being largely invisible to the spectators most of the time.”

2. **Five conduct questions firms should be asking themselves** -
 - i. How do you identify the conduct risks inherent within your business?
 - ii. Who is responsible for managing the conduct of your business? Firms are expected to ask themselves how they are encouraging employees to take responsibility for conduct management in their areas.
 - iii. What support mechanisms do you have to enable people to improve the conduct of their business or function? The FCA suggests this might include: details of the firm's expectations of staff within training and induction programmes; and ensuring supervisors are provided with accurate, regular and meaningful MI to help them supervise staff.
 - iv. How the board and executive committees gain oversight of the conduct of the organisation. This refers to the information provided to and used by the board and executive and how it is used to inform every strategic decision. “Boards need to understand that their decisions can have just as big an impact on the way business is conducted as the behaviour and decisions of those who report to them.” Therefore, the effect on conduct should be considered at every turn.
 - v. The existence of any incentives or other activities that may undermine any strategies put in place to answer the first four questions. McDermott comments that the role models of most staff are not board members, “they are the top trader, the desk head.” Therefore, if colleagues are rewarded even where their behaviour is out of kilter with the values of the firm, this clouds the message that poor behaviours are not tolerated.
3. **Individual accountability** – The final rules for the Senior Managers Regime (currently only applicable to UK banks, building societies, credit unions and PRA designated investment firms) have been issued and involve the building of a responsibilities map by firms within scope setting out the allocation of responsibilities between individuals, and statements of responsibility that describe in detail the areas for which each senior leader will be accountable.

In conclusion culture and conduct are referenced as “two sides of the same coin.” It makes good commercial sense to manage conduct risk effectively. McDermott also states “the industry does some great things {in relation to culture and conduct} but is often very bad at explaining these to those outside it.” Firms should assess how well it explains the value and utility of what it does to its own staff before deciding on how best to explain it to others, including the regulator.

[Click here for full speech.](#)

Enforcement Actions and Prosecutions continued...

Robert Shaw, former director of advisory firm, TailorMade Independent Ltd (TMI), has been fined £166k and banned from holding senior positions in financial services for suitability failings in relation to SIPP investments, and for failing to effectively manage conflicts of interests. Shaw was also the director of an associated firm that introduced clients to TMI, for which Shaw received a financial benefit. However, this connection was not adequately disclosed to customers. The situation was compounded when Shaw failed to act on warnings from TMI's external compliance consultants concerning the identification and management of conflicts of interests.

[Click here for press release.](#)

An appeal by a debt purchasing firm and debt management firm, against the OFT's refusal to renew the firms' licences on fitness and propriety grounds has been quashed by the FCA. Neither firm is FCA authorised therefore any consumer debt held has been written off or otherwise disposed of. The firms/ individuals are not prevented from applying for authorisation/approval however the FCA is able to reference the underlying facts gathered in the course of the OFT investigation to inform its decisions.

[Click here for press release.](#)

ICO fines The Money Shop £180k for the loss of two servers in separate incidents, which contained the details of thousands of customers and employees. It is reported that neither server had sufficient encryption for the company to be confident that the information could not be accessed.

[Click here for press release.](#)

Mortgage broker and director of Lifestyle Mortgages, Asim Hussain, has been given a two-year suspended sentence and 240 hours community service for tax and mortgage fraud. Hussain is said to have lied about his company profits to pay less corporation tax.

[Click here for article.](#)

Former Arch Cru administrators fined £260k collectively by the Guernsey Financial Services Commission for failing to submit up-to-date net asset values for Arch Cru Guernsey ICC, which created a “false market”.

[Click here for article.](#)

Tom Hayes, former employee of UBS and Citigroup, has been sentenced to 14 years in prison for 8 counts of conspiracy to defraud. Hayes is the first individual to be charged and stand trial in the UK in relation to the SFO's investigation into LIBOR manipulation. 12 other individuals are awaiting trial.

[Click here for article.](#)

Upper Tribunal upholds FCA's decision to fine CEO and former director of failed Capital Investment Group a total of £500k.

[Click here for article.](#)

TR15/10: Fair treatment for consumers who suffer unauthorised transactions

The FCA's review focused on firms' treatment of current account and credit card customers who suffer unauthorised transactions. The Payment Services Regulations 2009, Consumer Credit Act 1974 and, in some instances, the Handbook provides protection for consumers who experience fraudulent or other unauthorised transactions.

The FCA acknowledges this is a complex area but has found that firms are generally meeting requirements and "tend to err on the side of the customer when reviewing claims."

[Click here to access thematic review.](#)

TR15/11: Financial Benchmarks: Thematic Review of Oversight and Controls

The FCA defines benchmark activities as any action "that can affect a benchmark either directly or indirectly." There are a variety of benchmarks, some of which are not regulated, that are important to financial stability. Therefore, it is vital that benchmarks are "credible, trustworthy and accurate."

This TR summarises the FCA's findings of its thematic review into firms' oversight and controls in relation to financial benchmarks (with the exception of LIBOR and FX) following numerous enforcement cases/prosecutions, the regulation of a number of benchmarks and the use of supervisory tools to improve standards.

The FCA found that no firm within its sample of 12 had fully implemented changes across all benchmark activities and the progress firms had made was slow and varied significantly across the sample. However, the FCA believes enforcement cases/fines have been effective in driving change. The FCA has published six key messages from its work:

- * Firms should ensure all benchmark activities are identified;
- * Firms' senior management need to act quickly to address any gaps in their approach to benchmark activities;
- * Firms need to strengthen governance and oversight of benchmark activities;
- * Firms need to continue to identify, raise awareness and effectively manage conflicts of interest;
- * Firms should ensure they establish robust controls and oversight for any in-house benchmarks used; and
- * When existing benchmarks; firms need to give due consideration to the impact of their actions.

The FCA plans to follow up on this work through its supervision teams.

[Click here to access thematic review.](#)

PS15/20: Implementation of the Mortgage Credit Directive (MCD): Consequential Changes to the Consumer Credit Sourcebook (CONC)

The FCA reports that the majority of respondents agreed with the proposed MCD changes to CONC, most of which will come into force on 21st March 2016. The FCA will publish the response to non-MCD changes to CONC later this year.

The MCD makes "virtually all agreements secured on land subject to MCOB" and "MCD lending not secured on homes will require consumer credit permissions," such as the new permission of advising on MCD lending.

The FC will also consult later in the year on changes required to make the administration of first charge consumer credit mortgages a regulated mortgage activity.

[Click here to access policy statement.](#)

Other FCA News and Publications

Press Releases

FCA announces Antonio Simoes, CEO of HSBC in the UK, as the new Chairman of the Practitioner's Panel. [Click here for press release.](#)

FCA announces appointment of Megan Butler as Director of Supervision – Investment, Wholesale and Specialist from 1st September. Butler joins the FCA on a year's secondment from the PRA. [Click here for press release.](#)

FCA announces appointment of Christopher Woolard, Director of Strategy and Competition, to its Board. [Click here for press release.](#)

HMT and FCA launch Financial Advice Market Review (FAMR) which will explore ways of improving the provision of financial advice across the market. [Click here for press release.](#)

FCA announces thematic review into staff remuneration and incentives at firms conducting consumer credit activities, including firms where consumer credit is secondary to their main business. The information gathering process has already begun and publication of findings/conclusions is scheduled for Q1/Q2 2016. [Click here for press release.](#)

FCA publishes its planned approach for a thematic review into arrears management in short-term lending. [Click here for press release.](#)

FCA announces the opening of a consumer redress scheme for card security product holders and invites claims for compensation. [Click here for press release.](#)

New Handbook website to be launched on 29/08/15. [Click here to access press release.](#)

MiFID II update: minutes of the FCA's round-table with trade associations published. [Click here to access update.](#)

Other Publications

CP15/25: Changes to the Approved Persons Regime for insurers not subject to Solvency II: reforms for larger Non-Directive Firms, feedback on CP 15/15, forms, consequential and transitional aspects.

FS15/3: Strengthening accountability in banking: UK branches of foreign banks – Feedback on FCA CP15/10

PS15/21: Changes to the Approved Persons Regime for Solvency II firms: Final rules (including feedback on CP14/25, CP15/5 and CP15/16), and consequential relating to CP22/15 on strengthening accountability in banking

