



**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.

January has been a quiet month for publications and speeches. During the month the FCA held another MiFID II roundtable, which is summarised on page 3. The FCA also updated its [unfair contract terms library](#), where firms are advised to refer to the Competition and Markets Authority's [finalised guidance](#) on the unfair terms provisions under the Consumer Rights Act 2015.

The FCA's monthly [Regulation Round-up](#) was published and reminds firms that from the 15<sup>th</sup> February 2016, where consumers are able to buy products and services online, firms will need to include a reference to the European Commission's Online Dispute Resolution Platform and a company email address for complainants on their website and within their Ts and Cs. This month's Round-up also includes information on The Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation, which comes into force on the 31st December 2016.

The latest issue of the FCA's [Policy Development Update](#) (Issue 29) was also released.

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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### Main features

- \* Report on Retirement Income Market Data
- \* CP16/3: Financial Services Compensation Scheme – Management Expenses Levy Limit (MELL) 2016/17
- \* CP16/2: Mortgage Credit Directive: Minor changes to our rules and guidance
- \* MiFID II Roundtable - January 2016
- \* Industry News
- \* Enforcement Actions and Prosecutions
- \* Other FCA News, Speeches and Publications

### Industry News

EBA publishes final guidelines on sound remuneration policies and its Opinion to the European Commission on proposals to amend CRD IV. The guidelines come into force on 1<sup>st</sup> January 2017 and will apply to the 2017 performance year.

[Click here for guidelines.](#)

[Click here for the EBA's Opinion.](#)

FOS Lead Ombudsman, Caroline Mitchell, comments on insistent clients and suitability reports. Mitchell says: "People have a right to do what they want to with their money but if the proposed investment is unwise (too risky, for example) with potentially damaging consequences, those consequences have to be laid out clearly and the consumer left in no doubt about what might happen. Then they make their own decision in full knowledge of the risks."

Regarding suitability reports Mitchell states they don't "have to be the length of 'War and Peace' – the consumer won't read it if it is – but it needs to explain why that particular product is right for that particular consumer at that particular time."

[Click here for article.](#)

ESMA publishes final report on guidelines for cross-selling under MiFID II.

[Click here for final report.](#)

FOS rules that investment advice provided by advisory firm was unsuitable "because 90% of Mr G's [the complainant's] capital was invested in assets that exposed his capital to material risk, with at least 20% at very high (speculative) risk. The firm argues that the advice was suitable because: the investment represented less than 20% of his overall wealth; Mr. G had previously invested with a 100% exposure to equities: and between March 2009 and April 2011 Mr. G's portfolio increased by 45%. FOS has ordered the firm to pay the difference between the actual value and the fair value of the investment as well as £250 for the distress and inconvenience caused by the unsuitable advice."

[Click here for article.](#)

FCA abandons its review of firm culture within UK retail and wholesale banks and says it believes engaging individually with firms is the best way to support existing efforts by firms and other entities in this area.

[Click here for article.](#)

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## Report on Retirement Income Market Data

This report covers information collected from retirement income providers for the quarter July to September 2015 and contains commentary on the following topics:

- \* choices made by consumers accessing their pensions;
- \* guaranteed annuity rates – levels taken up and not taken up;
- \* levels of pension withdrawals for customers making a partial withdrawal;
- \* use of regulated advisers;
- \* consumers' stated use of Pension Wise; and
- \* whether consumers change providers when accessing their pensions.

The FCA has produced a summary of its key findings, which are as follows:

- \* Over 178k pensions have been accessed during the quarter;
- \* 68% of these pensions were fully cashed out and 32% were used to take an income;
- \* 68% of Guaranteed Annuity Rates (GARs) were not taken up;
- \* 71% of customers taking a partial withdrawal took less than 2% of their pot after tax free cash;
- \* 58% of drawdown and 37% of annuity customers used a regulated adviser; and
- \* 58% of drawdown and 64% of annuity customers stayed with their existing provider.
- \* In future this data will appear in the Data Bulletin.

[Click here for report.](#)

## CP16/3: Financial Services Compensation Scheme – Management Expenses Levy Limit (MELL) 2016/17

This joint consultation paper (CP) published by the PRA and FCA confirms the proposed management expenses levy limit (MELL) for the Financial Services Compensation Scheme (FSCS) for 2016/17 is £72.7m. This levy is to cover the costs of running the FSCS and is made up of two components; the Management Expenses Budget and the contingency reserve, which provides the FSCS with additional funds for unforeseen management expenses that arise at short notice. The budget is made up of:

- \* a specific costs element – which includes the costs of assessing claims and making payments relating to a particular funding class; and
- \* a base costs element – related to the general running costs of the FSCS (and is not dependent on the level of claims received). Base costs are split 50:50 between the FCA and PRA regulatory classes and then allocated in proportion to regulatory fees.

The MELL doesn't include compensation costs, which are consulted on by the FSCS separately.

The Management expenses budget for 2016/17 is £67.4m, which is a 2.5% reduction on the previous financial year and the contingency reserve for 2016/17 is £5.3m, which is unchanged from 2015/16.

The consultation period closes on 15<sup>th</sup> February 2016 and the final MELL will apply from 1<sup>st</sup> April 2016.

[Click here for consultation paper.](#)

## Industry News continued...

The FCA has said its informal enquiry into allegations that HSBC's Swiss division helped wealthy clients conceal assets to avoid paying tax ended several months ago. However, HMRC is apparently still investigating.

[Click here for article.](#)

The FOS agrees with a firm's decision to refute a complaint from a claims management company (CMC) regarding the sale of two savings plans to a client in 1988 and 1989. The CMC states its client did not have a requirement for long term plans and the terms were misrepresented causing its client to believe they were suitable as medium term investments.

[Click here for article.](#)

The Pensions Ombudsman has ordered the Police and Crime Commissioner of South Wales to refund an officer's tax liabilities after failing to provide the officer with information regarding the tax implications of re-employment on his retirement benefits.

[Click here for article.](#)

Industry trade bodies and experts have queried comments made by acting FCA CEO, Tracy McDermott, on Radio 4's Money Box programme that the Financial Advice Market Review could reintroduce some form of commission. However, McDermott stated there would be no reversal of the RDR.

[Click here for article.](#)

The Treasury Select Committee Chair, Andrew Tyrie, is reported to have said after a committee meeting with FCA bosses that "the way the regulator quietly dropped the banking review just before New Year's Eve reflects wider problems with the FCA's effectiveness, and with its communications strategy, which the new chief executive will need to address as a high priority."

[Click here for article.](#)

The FOS upholds complaint against firm for failing to inform the complainant of the risks associated with a biofuel SIPP investment. The firm argues that the risks were explained and the complainant confirmed he was an experienced investor. However the complainant said he does not remember the conversation. The firm has been ordered to pay the difference between the fair and actual value of the investment plus £300.

[Click here for article.](#)

Iran experiences relief from certain sanctions, however some export restrictions and asset freezes remain in place.

[Click here for more information on financial sanctions.](#)

An agreement has now been reached between the European Commission, Council and Parliament regarding reform of the data protection laws that will replace the UK's Data protection Act 1998. The ICO has published a blog on the key changes, which all firms are encouraged to read.

[Click here for blog.](#)

Managing Director of financial adviser firm launches parliamentary petition calling for a vote of no confidence in FOS and for all FOS decisions to be approved by a judge.

[Click here for article.](#)

## CP16/2: Mortgage Credit Directive: Minor changes to our rules and guidance

In this CP the FCA consults on a number of minor changes mainly to its Perimeter Guidance manual and its Glossary but also to its Mortgage Code of Business rules. The changes reflect upcoming legislation to ensure mortgage contracts entered into by housing associations on or after 21st March 2016, which are outside the scope of the MCD, are not a bridging loan and do not involve a restricted public loan, remain outside the scope of the FCA's mortgages regime.

Relevant housing association loans entered into before 1<sup>st</sup> April 2014 will remain regulated under the Consumer Credit Act 1974. Therefore, housing associations with a 'back book' of second charge loans which were entered into before 1 April 2014 and who currently hold interim permission will need to ensure they apply for the appropriate consumer credit permissions by the earlier of 21 March 2016 and the end of their application landing slots.

Housing Associations are also advised to assess whether they hold, or should hold, permission for the regulated activity of exercising or having the right to exercise the lender's rights and duties under a regulated credit agreement in relation to their back book of second charge mortgage loans entered into before 1 April 2014.

The consultation period will close on the 15<sup>th</sup> February 2016.

[Click here for consultation paper.](#)

## MiFID II Roundtable - January 2016

On the 6th January 2016 the FCA held a trade association roundtable at its offices in Canary Wharf. Attendees included representatives from the Association of British Insurers, Association of Professional Compliance Consultants, Association of Professional Financial Advisers and British Bankers' Association.

Key points from the minutes are as follows:

- \* At the time of the roundtable, greater clarity on a delay to the implementation of MiFID II was expected during the month.
- \* It is still unclear whether the European Commission will impose any substantive changes to the Level 1 text.
- \* Trade associations report that large firms are continuing with plans for MiFID II implementation despite talk of a delay. However, it was reported that smaller firms might be falling back.
- \* Progress on the delegated acts and technical standards is expected in the next month or so.
- \* The FCA's transaction reporting guidance (TRUP) is to be replaced by the EU's transaction reporting guidelines.
- \* The FCA is not able to provide further clarification on the date the next CP will be published however it expects it to be in the first half of 2016.
- \* As well as guidelines on cross-selling, the Investor Protection and Intermediary Standing Committee (IPISC) has also recently issued guidelines on [complex debt instruments and structured deposits](#), and [training and competency](#).
- \* The next roundtable is scheduled for 22<sup>nd</sup> February 2016.

[Click here for minutes.](#)

## Industry News continued...

FCA faces further criticism for continued delays in publishing the findings of its thematic review into inducements and conflicts of interests.

[Click here for article.](#)

The Investment Association publishes guidance on paperless transfer/renunciation for authorised funds.

[Click here for article.](#)

Private Equity Reporting Group - an independent body promoting enhancements in transparency and disclosure within the UK private equity industry - publishes report summarising the private equity industry's conformity with the Guidelines for Disclosure and transparency in Private Equity (the Walker Guidelines).

[Click here for report.](#)

MPs to debate whether FCA is fit for purpose.

[Click here for article.](#)

Draft guidance notes on elements of the Small Business, Enterprise and Employment Act 2015 are issued.

[Click here for access to guidance notes.](#)

## Enforcement Actions and Prosecutions

Ariste Holding Ltd, trading as Cash Genie, has agreed to provide over £20m in redress to more than 92k customers after notifying the FCA in 2014 that it had engaged in unfair practices. A number of serious failings had also taken place dating back to September 2009.

[Click here for article.](#)

Stockbroking firm, WH Ireland, has confirmed it is in the process of negotiating a settlement with the FCA following a systems and controls review into its business in 2013 and expects the resulting fine to be "substantial."

[Click here for article.](#)

After admitting to stealing almost £3k from a pensioner's account to clear credit card debts former Halifax customer service adviser, Ikram Ahmed, has been given a 12-month suspended prison sentence, 180 hours of unpaid work and ordered to repay the stolen money to Halifax, plus costs of £100. The victim was able to claim back the full amount from the bank.

[Click here for article.](#)

Former employee of Financial Ltd confirms the FCA is reviewing the pension advice given by the network between 2008 and 2012. This news comes after the FCA tried to fine and ban the former CEO of Financial Ltd, Charlie Palmer. However, Palmer has challenged the FCA's decision and the case is currently being reviewed by the Upper Tribunal.

[Click here for article.](#)

Former financial adviser, Martin Rigney, has appeared at Chesterfield Magistrates Court accused of 8 counts of fraud and 11 counts of forgery between 2003 and 2012. Rigney's actions caused the loss of over £200k to customers. Rigney has been released on unconditional bail and the case has been referred to the Derby Crown Court.

[Click here for article.](#)

## Other FCA News, Speeches and Publications

### FCA Press Releases

The FCA reports that Tracy McDermott, acting CEO of the FCA, has decided to withdraw from the selection process for the next CEO of the FCA.

[Click here for press statement.](#)

For a second year running the FCA has featured in the top 100 of Stonewall's annual Workplace Equality Index. The FCA moved up from 82<sup>nd</sup> to 40<sup>th</sup> in this latest index.

[Click here for press statement.](#)

New Bank Start-up Unit launched by the FCA and PRA to provide newly authorised banks, and those thinking of becoming a new bank, with information and support.

[Click here for press statement.](#)

FCA has issued a warning about, and advice to investors in, Secured Energy Bonds plc. The firm has failed and investors have mostly lost the money they invested.

[Click here for press statement.](#)

Andrew Bailey, who is currently Deputy Governor for Prudential Regulation at the Bank of England and CEO of the PRA, has been appointed as the new CEO of the FCA and is expected to take up the role in July 2016.

[Click here for press statement.](#)

### FCA Speeches

No speeches were published this month.

### Other Publications

**GC16/1: Proposed guidance on voluntary redress schemes under the Competition Act 1998** – this guidance consultation explains how the FCA proposes to exercise its powers for approving redress schemes in relation to an infringement of the prohibitions on anti-competitive behaviour under competition law.

[Click here for guidance consultation.](#)

**CP16/4: Loan-based crowdfunding platforms and segregation of client money** – in this CP the FCA proposes changes to its client money rules for firms that operate electronic lending systems (P2P platforms) and hold money for clients in relation to both P2P agreements (CASS 7) and unregulated lending.

[Click here for consultation paper.](#)

## Enforcement Actions and Prosecutions continued...

After a 5-year investigation, former tax adviser and accountant to the media industry, Denis Christopher Carter Lunn, has been given a 5-year prison sentence for evading more than £6m in tax. Lunn's offences included inflating accountancy fees and the fraudulent use of trading losses.

[Click here for article.](#)

FCA refuses to lift ban on former broker Mark Thorogood, who was also fined £104k in 2010 for submitting 2 mortgage applications with inflated incomes.

[Click here for article.](#)

The FCA has refused consent to an individual trying to buy a 33% controlling interest in Ubiety Wealth Management stating it had sufficient information to believe the individual, known as Ms. Croome, lacked integrity. Croome was dismissed from her previous employer following allegations that she signed money laundering certificates and certified money laundering documents as "a true likeness" without having met the clients. The FCA issued a final notice this month confirming its decision to reject her control application.

[Click here for article.](#)

The PRA has fined and banned the former CEO of Co-Op Bank and the former MD of the Bank's corporate and business banking division £174k and £89k respectively. The PRA's CEO, Andrew Bailey said in a statement: "The actions of Mr Tootell and Mr Alderson posed an unacceptable threat to the safety and soundness of the Co-op Bank, which is why we have decided a prohibition is appropriate in these cases."

[Click here for article.](#)

Former legal adviser, Godofredo D'alpoim Guedes, has been jailed for 2 years and 8 months for tax fraud. Guedes failed to declare income he received for providing legal advice to people in police custody between 2006 and 2013 and also fraudulently charged his clients VAT. Guedes filed for bankruptcy a third time in February 2013.

[Click here for article.](#)

Six companies (Claremont Partnerships Ltd, Brookepoint Ltd, Brookcourt Trading Ltd, Cotexx Trading Ltd, and Manor Trade Ltd) that were effectively boiler room scams have been ordered into liquidation by the High Court after causing members of the public losses of more than £350k.

[Click here for article.](#)

