



**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.

The last month has been a busy month for publications and news. Since the last issue, the FCA held its Annual General Meeting on 19<sup>th</sup> July, and some of the content of this month's newsletter reflects communications arising from this event. In addition, on 3 July, the New Market Abuse Regulation (MAR) regime began.

The FCA's monthly [Regulation Round-up](#) was published along with the latest issue of the FCA's [Policy Development Update](#) (Issue 35).

FOS issued its regular [newsletter](#), no. 134.

ICO issued its [July newsletter](#), which is the final publication from the current Information Commissioner, Christopher Graham after 7 years.

In the meantime, the financial world continues to react to and seek guidance on regulation (amongst other things) post - Brexit, although many regulators have re-iterated that for the time being, it is business as usual. Specifically in the last month, many headlines have related to challenges faced on property funds, with an increase in redemptions, with penalties being enforced or withdrawals suspended until markets calm.

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

- \* FCA Retirement Outcomes Review
- \* FG 16/5 – Finalised Guidance on Outsourcing Arrangements
- \* FCA issues annual report
- \* TR16/6 – Thematic Review on Principals and Appointed Representatives in the General Insurance Sector
- \* Speech – Andrew Bailey, FCA CEO, 'Recent work and future challenges'
- \* Speech – Jonathan Davidson, Director of Supervision, 'Getting culture and conduct right – the role of the regulator'
- \* Industry News
- \* Enforcement Actions and Prosecutions
- \* Other FCA News, Speeches and Publications

## Jonathan Davidson speech continued...

The FCA considers that the role of all leaders of firms is to encourage a culture of personal responsibility and to impress on all staff the value of good culture.

Culture and governance are one of the FCA's seven priorities as set out in the 2016/2017 Business Plan and so is reflected throughout in policy work, thematic work and day to day authorisation and supervision activities.

The FCA define culture as the typical, habitual behaviours and mindsets that characterise a particular organisation and the 'way things get done around here', without thinking consciously about it.

He confirmed that the FCA will not prescribe the overall culture and does not believe that there should be a 'one-size fits all'. It is however making assessments of culture by looking at the examples of behaviours that are noted in supervision and looking closely at what management is doing to shape culture and 'set the tone from the top'.

The onus is not just on senior management, middle management also plays a crucial role in exhibiting the right behaviours to their staff to show what type of culture is – or is not – acceptable within the firm. This is also linked to the new Senior Managers and Certification Regime.

[Click here for full speech](#)

## Industry News

SFO says SIPP scams on the increase.

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TPAS chief warns that SSAS scheme scams are rife in the industry .

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It is reported that the police are carrying out an investigation into the boss of a collapsed platform and SIPP provider Avalon Investment Services regarding allegations of fraud by false representation.

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Firms with Defined Benefit transfer permissions up 60%.

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## FCA Retirement Outcomes Review

FCA issues a number of documents regarding its Retirement Outcomes Review including Terms of Reference and an update on their work to date in this area and current 'highlights' regarding activity.

[Click here for the Terms of Reference for the Retirement Outcomes Review](#)

[Click here for the update on the FCA's work around pensions and retirement income](#)

[Click here for the FCA's findings on signposting to pensions guidance](#)

## FC 16/5 - Finalised guidance on Cloud computing outsourced arrangements issued

The FCA has issued its finalised guidance on outsourced arrangements in relation to Cloud computing following its guidance consultation at the end of 2015. The majority of earlier guidance has been carried forward to the finalised guidance.

This guidance is not mandatory however it is prudent that firms and IT providers to regulated firms consider this guidance (and evidence such consideration) to identify any impacts. The FCA confirm that Cloud computing is considered an outsourcing arrangement that can come under SYSC 8.1 of the FCA's Systems and Controls rulebook. The guidance is relevant to both existing authorised firms and new firms seeking authorisation.

The overall aim of the high level regulatory obligations on outsourcing, and the detailed requirements that underpin them, is that a firm appropriately identifies and manages the operational risks associated with its use of third parties. This includes undertaking appropriate and risk based due diligence before making a decision to outsource an operational aspect which is 'critical' or 'important' or 'material'.

The guidance includes areas that firms should consider when outsourcing any arrangements including Cloud based arrangements.

The main feedback issues included:

- physical access to business premises, including data centres,
- the scope of firms' obligations relating to supply chain and sub-contracting arrangements,
- clarifying expectations around aspects of risk management including concentration risk,
- points around the choice and control in relation to jurisdictions where data is processed, stored and managed,
- the provisions to ensure firms have effective access to data specific expectations around existing plans.

[Click here for the full guidance](#)

## FCA issues Annual Report

The FCA has issued its third Annual Report which looks back on the key pieces of work undertaken by the FCA over 2015/2016. It has also published a report summarising the activity it has undertaken over that period to promote completion.

The work undertaken included:

- implementing the Senior Managers and Certification Regime to improve accountability,
- influencing policy and technical standards working with European and International Regulatory bodies,
- making significant progress on the implementation of major initiatives including the Markets and Financial Instruments Directive (MiFID 2) and the Market Abuse Regulation
- progressing Project Innovate, and the Financial Advice Market Review,
- enforcement action including significant fines,

## Industry News continued...

The Pensions Regulator has intervened in what it considered to be a risky pension scheme arrangement involving an IFA firm.

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SIPP firm enters into administration.

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FCA investigates collapsed ethical investment firms.

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FCA fines against individuals doubles in a year.

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FRC to investigate PWC roles in BHS audit.

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Retired adviser slams FOS for case fee on dismissed complaint.

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Ashcourt Rowan told to compensate for lack of advice on impaired annuity.

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Court allows claimant to go to FOS over complaint.

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Court tells broker to repay £31k in corporate health insurance scam for commission.

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FOS rules against Positive Solutions and annuity advice.

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FOS fines against Harlequin where a pension transfer originally valued at £48k is reduced to £1.

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The FCA confirms regulatory levy of £74m.

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The regulator re-appointed Sue Lewis as chair of the Consumer Panel.

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FCA questioned on consolidator's review process.

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The FCA has been criticised by the independent Complaints Commission regarding the FCA's decision not to investigate allegations against Lloyds Bank of mistreatment of bond holders.

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The FCA is reportedly concerned by the move of retail investors into the Peer to Peer (P2P) market.

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Three advisers arrested following HMRC investigation into a suspected £132m tax fraud involving offshore trusts.

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The Personal Finance Society intends to expand the Money Plan service with Citizens Advice in England as a number of new advisers sign up to provide pro-bono services.

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- implementing the regulation of the consumer credit regime including integration of over 25,000 firms into FCA regulation.

The Competition Report which is the first such report from the FCA since it was established over 3 years ago, reported on such activities over the period including:

- launching ten new market studies or calls for input,
- publishing the findings following the Retirement Income Market Study,
- publishing an interim report into the credit card market.

The reports were issued in advance of the Annual Public meeting on 19 July.

The annual report also includes details regarding S.166 Skilled Persons Report activity and the findings of the Regulatory Decisions Committee (RDC) in 2015/2016.

[Click here for the full report](#)

## TR 16/6 – Thematic Review on Principals and Appointed Representatives in the General Insurance Sector.

The FCA has found significant shortcomings in the control and oversight of appointed representatives ('ARs') by their principal firms in the general insurance sector in a thematic review. Although this has focused on the insurance sector, the FCA has also indicated that any principals and appointed representatives should also consider its findings as general messages.

Messages include:

- that the FCA considers that some firms had not appeared to have understood the full extent of their obligations for ensuring ARs comply with regulatory requirements
- over 50% firms sampled could not consistently demonstrate that they had effective risk management and control frameworks to identify and manage the risk arising from AR activities, and that over 50% of firms sampled could not demonstrate that they had understood the nature, scale and complexity of the risks arising from their ARs' activities and in particular the risks to customer,
- the FCA also identified examples of potential miss-selling at AR level, most of which had not been identified by the principals. Poor customer outcomes identified including customers being sold products they did not need, or were not eligible for or had not been adequately disclosed for customers to make an informed decision.

As a result of the review, the FCA has taken early intervention actions in relation to 5 principal firms. This includes commissioning S166 reviews, asking firms to cease sales activities or agreeing the imposition of requirements on firms' regulatory permissions to stop them taking on new ARs. This may also include considering customer redress or further regulatory action.

[Click here for the full review](#)

## FCA Speech - Chief Executive speaks about recent work and future challenges

Andrew Bailey the new FCA Chief Executive spoke at the Annual Public Meeting of the FCA on 19th July. The speech focused on two parts:

- an overview of the work of the FCA and
- first thoughts on future challenges for the regulator.

The overview of current work looked at three areas, which were supervision, policy and enforcement. Mr Bailey confirmed that in relation to authorisations, the work of the FCA is to examine the sustainability of firms' business models and assessing the fitness and propriety of individuals.

## Industry News continued..

Brexit fails to halt progress of regulation.

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FCA accused of using Brexit to bury bad news on broker fees.

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Feedback from industry on what firms should expect from the new FCA chief.

[Click here for article](#)

FCA chief paid £350k for PRA role.

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It is reported that the FCA costs are 8 times than that of the Pensions Regulator.

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It is reported that nine of ten IFAs fear the onset of 'robo' advice.

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The FCA is reported to have invested £500k in the new 'robo' advice unit.

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It is reported that the US was persuaded not to progress charges against HSBC regarding money laundering following intense pressure from the then FSA.

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Treasury warns of setting auto-enrolment contributions too high which might lead to an increase in member opt outs.

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The FSCS issued its 2015 annual report and indicated that it has paid out over £271m against failed financial services firms in one year. The report also summarises the sectors where most payments have been made but that overall running costs of the FSCS have been reduced.

[Click here for article](#)

FSCS to consider fixed levy for small firms.

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FSCS declares 24 firms in default including 12 investment firms, 5 pension providers and the remainder being insurance brokers.

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FSCS faces claims from customers of advice firm connected with a number of ex-footballers who now face losses.

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## Enforcement Actions and Prosecutions

FCA decides to cancel interim permission for payday lender and bans the firm's director.

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Three ex Barclays traders found guilty of Libor fixing.

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FCA fines Jersey resident in relation to benefits from insider dealing.

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Once authorised, firms are subject to the supervision regime.

The largest firms are subject to the closest supervision, with a program of supervision tailored to their needs. Supervision work also includes thematic reviews and recent themes have included: consumer credit, life insurance, debt markets, and LIBOR.

Turning to the Senior Managers Regime, Mr Bailey considered this to be one of the most important reforms in financial services since the start of the financial crisis. The regimes represent the beginning of a new era of increased individual accountability.

The regime will hold individuals working at all levels within relevant firms to appropriate standards of conduct and ensure that senior managers are held to account for misconduct that occurs in their area of responsibility. The FCA is now reviewing how best to implement the full regime across all regulated firms not just banks.

FCA activity also includes work on policy and this has included changes to PPI rules including complaints handling. Pension reforms are regarded as the biggest single challenge ahead in the provision of financial services in the UK and the FCA has introduced a number of new rules to reflect the issues and risks regarding pensions freedom. This includes increasing disclosure requirements, capping charges and ensuring schemes have appropriate corporate governance. Feedback on this sector has also been reflected in the FCA's Retirement Outcomes Review (see above).

Policy work also covers advice and the Financial Advice Markets Review ('FAMR').

The FCA consider that although the Retail Distribution Review achieved its aims of improving transparency of costs and competency of advice, it has in turn created an advice gap where affordability of advice can be a barrier to the less well off. The FAMR intends to address this and address three main areas, which are affordability and accessibility for consumers and liability risks for advisers.

Improving competition is another key factor of current work and this includes Project Innovate, which has provided a 'testing' area i.e. a regulatory 'sandbox' for firms to test innovative products prior to progressing to authorisation. Enforcement work also continues including the largest retail fine for a firm, (£117m), for failures when dealing with PPI complaints, a large fine for financial crime failings (£72m) and the culmination of the largest, most complex insider dealing investigation to date, with 5 convictions.

Mr Bailey concluded by highlighting two main future challenges ahead for the FCA which are Brexit and clarity on the FCA's mission. He reiterated that despite the Brexit vote, regulation and compliance continues as before. The FCA will continue to implement EU legislation for as long as appropriate and until there is more certainty on what regulatory structure exists in the future. He also highlighted that the FCA is launching a review into establishing clearly what the FCA's mission is in the future, and that work has begun to produce a proposal for consultation on this mission, currently intended for publication in the early autumn.

[Click here for full speech](#)

### **FCA Speech - Getting culture and conduct correct – the role of the regulator - Jonathan Davidson, Director of Supervision (Retail and authorisations) at the FCA**

Mr Davidson stated that his speech was about 'getting culture and conduct right' and in particular the FCA's role in that. He confirmed that the FCA's ambition is for the conduct element of culture, that mindsets and incentives will shift to make doing the right thing for consumers and the markets the objective that is always considered.

## **Enforcement Actions and Prosecutions continued...**

FCA fines Towergate and Timothy Philips as director for insurer client money failings.  
[Click here for article](#)

The FCA has cancelled the permissions of an IFA firm where the director has received a jail sentence regarding insurance fraud.  
[Click here for article](#)

Cardiff IFA struck off for not paying FCA fees.  
[Click here for article](#)

## **Other FCA Press Releases, News, Speeches and Publications**

FCA gives guidance on recent property fund suspensions.  
[Click here for press release](#)

In the meantime, Andrew Bailey, CEO of the FCA hints at rule review and reform by questioning whether it is appropriate that property funds should be priced daily due to their illiquid nature.  
[Click here for press release](#)

## **FCA Speeches**

John Griffith Jones, Chairman of the FCA - On global regulation in the post crisis era.  
[Click here for speech](#)

## **Other Publications**

- [CP 16 /17 – Quarterly consultation](#)
- [CP 16/18 - FCA consults on changes to disclosure for PRIIPS regulation](#)
- [PS 16/16 – final rules on regulated fees and levies](#)
- [PS 16/17 – rules on PSR related regulatory fees](#)
- [PS 16/18 – Changes to Decision Procedure and Penalties manual](#)
- [FS 16/04 – feedback statement on call for input: RegTech](#)
- [GC 16/6 – Guidance Consultation on changes to the Listing Rules, Prospectus Rules and Disclosure and Transparency Rules.](#)
- [TR 16/5 - FCA issues thematic review into dark pools](#)
- [Occasional Paper no. 19 – FCA paper on cash savings remedies including new data on interest rates](#)
- [Call for input into post implementation review of crowdfunding rules](#)

