



Happy New Year and 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.

The FCA published a lot of information in December including a [video](#) covering the latest TechSprint event and a [warning](#) about a fake email, which appeared to be from the FCA's press office entitled "FCA Regulation 2017."

The December edition of the FCA's [Regulation Round-up](#) was published and includes the following notices: the FCA's Advice Unit re-opens for applications on 3rd January 2017; from 1st January 2017 if firms wish to remove the permission to advise on P2P agreements a variation of permission application will need to be submitted; videos of speeches made during the FCA's Financial Crime Conference in November have been released; and an enhancement to online invoicing has been announced. The Round-up also mentions OFSI's financial sanctions guidance, which has been summarised below.

The FCA's [Policy Development Update](#) webpage was refreshed on 2nd December 2016.

In respect of MiFID II, the FCA has issued a fourth consultation paper ([CP16/43](#)). Briefing notes covering all the MiFID II consultation papers will be released by Gem Compliance in early 2017. In the meantime, for the latest on MiFID II visit the FCA's dedicated [webpage](#).

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

- * Financial Sanctions: Guidance
- * Retail Mediation Activities (RMA): A high-level summary of why the FCA collects the data and how it feeds into the FCA's supervisory approach
- * TR16/9: Review of general insurance intermediaries' professional indemnity insurance
- * FS16/13: Interim feedback to the Call for Input to the post-implementation review of the FCA's crowdfunding rules
- * CP16/42: Reviewing the funding of the Financial Services Compensation Scheme (FSCS)
- * Insight article: Creating and sustaining cultures of compliance
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Industry News

The Personal Finance Society (PFS) supports HMT's proposal to amend the definition of advice but suggests only authorised firms should be able to offer guidance services. Keith Richards, the chief executive of the PFS, said, "as the prevalence of scams continues to rise, consumers must be able to rely upon minimum standards from any firm or individual offering financial guidance, coupled with appropriate levels of protection."
[Click here for article.](#)

Complaints Commissioner (CC) rejects firm's argument that it should not be fined £250 for late submission of complaints return. The firm claimed a technical issue prevented submission of the return by the due date (18th May 2016). In his response to the firm the CC said: "you claim you made numerous attempts to log into GABRIEL. Unfortunately there is no record of you having done so." The CC also acknowledged the error made by a member of the FCA's contact centre team who said the firm may not be fined for late submission. The firm was sent several communications regarding the submission requirement before writing to the firm on 6th June 2016 to confirm it would be charging the firm a late fee. This adjudication follows a complaint made to the CC last year where a firm said it had not submitted on time because it hadn't received a reminder from the FCA, to which the CC responded that the FCA is not obliged to issue reminders.
[Click here for article.](#)

FOS instructs advice firm to compensate customer £100 even though the firm's advice – to take the benefits of one of the customer's pension policies using the firm's guaranteed annuity rate – was not unreasonable and did not put the customer in a worse position than if she had left the benefits until a later date. Part of the customer's complaint was that that she was concerned the firm failed to ensure her investments fully utilised her annual ISA allowance. The distress and inconvenience relating to the firm's failure to fully utilise this allowance was the reason for the compensation.
[Click here for article.](#)

Barrister questions the enforceability of restrictive clauses in relation to soliciting existing clients following the High Court ruling in the case against five former Affinity advisers, brought forward by new owner, Wealth at Work, where the covenants for two advisers were so broad they were seen to be unenforceable. The ruling caused Wealth at Work to drop legal action against the other three advisers.
[Click here for article.](#)

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Financial Sanctions: Guidance

The Office of Financial Sanctions Implementation (OFSI), part of HMT, has published this guide to explain its approach to issuing licences and considering compliance in relation to financial sanctions. The guide comprises two parts: Part A provides a general overview of the UK's financial sanctions framework; and Part B provides practical examples regarding licencing - HMT can issue licences in certain explicit situations to enable firms to act for clients caught by sanctions - and compliance questions.

The guide defines financial sanctions as “*restrictions put in place by the UK government or the multilateral organisations that limit the provision of certain financial services or restrict access to financial markets, funds and economic resources in order to achieve a specific foreign policy or national security objective.*”

The following groups must comply with UK/EU financial sanctions irrespective of where their activities take place:

- * All EU nationals and legal entities established under EU law must comply with the EU financial sanctions;
- * All UK nationals and UK legal entities established under UK law, including their branches; and
- * Subsidiaries, which are incorporated under EU or UK law.

Also, all individuals and legal entities who are within or undertake activities within the UK need to comply with EU and UK financial sanctions that are in force.

Financial sanctions can take a variety of forms but the most common are:

- * Targeted asset freezes restricting access to funds and economic resources;
- * Restrictions on a wide variety of financial markets and services; and
- * Directions to cease all business of a specified type with a specific person, group, sector or country.

Currently OFSI maintains two lists of financial sanctions targets: one is a consolidated list of all designated persons (known as the consolidated list); and another is a list of entities subject to specific capital market restrictions. The lists can be accessed [here](#).

When searching the list a name match could be found. Where this occurs a firm should consider all the information it holds on the person to determine if it is a real (or target) match. If there is uncertainty as to whether the match is a target match the firm should contact OFSI for assistance. If a target match is identified the action that should be taken will depend on the specific sanctions that apply. Appropriate next steps are outlined in chapter 3 of Part A of the guidance document.

Chapter 4 of Part A covers exemptions and licencing. It should be noted that OFSI might only issue licences where there are specific and relevant grounds to do so and when the conditions of those grounds have been met. OFSI may attach conditions to licences and it will not issue licences retrospectively.

Those listed as targets can challenge their listing, or request their delisting, however sanctions will remain in place whilst the challenge/request is being considered.

When considering breaches reported to it OFSI works with relevant agencies and regulators. The decision to prosecute for breach of financial sanctions ultimately rests with the CPS and Attorney General. However, when considering the action to take following a breach the following would be taken into account:

- * whether the breach was self-disclosed fully and promptly – the form to report breaches can be accessed [here](#);
- * the level of cooperation; and
- * actions being taken to improve future compliance.

Part B contains practical information for financial services firms to assist with sanctions compliance. It also includes the link to the [FCA's dedicated webpage on sanctions](#), which all firms are encouraged to visit.

[Click here for guidance.](#)

Industry News continued...

Industry survey reveals 61% of advisers think Key Features Illustrations in relation to pension and investment charges fail to clearly set out what the client will need to pay and what benefits they will receive.

[Click here for article.](#)

EU announces PRIIPs implementation delay until 1st January 2018.

[Click here for article.](#)

The Pensions Regulator confirms over 7m people are now a member of a workplace pension scheme.

[Click here for article.](#)

It is reported that Sian Fisher, Chief Executive of the CII, has said “it is no longer enough for individuals and firms to simply ‘comply’ with regulators – we must aspire to ‘go beyond compliance’ and drive up ethical standards within our industry.”

[Click here for article.](#)

Report into online investment and advice services, on behalf of the Financial Services Consumer Panel, is issued. The report includes examples of good and poor practice, which firms may find helpful when reviewing/updating policies, processes and customer facing material.

[Click here for article.](#)

It is reported that many advisers could be running into compliance issues regarding powers of attorney. Advisers may not realise that the legal documents should explicitly give permission to invest or continue investing in a discretionary fund management (DFM) scheme.

[Click here for article.](#)

ESMA publishes updated Q&A on UCITS Directive.

[Click here for updated Q&A.](#)

ESMA to provide free credit ratings information to the public.

[Click here for press release.](#)

ESMA recognises ICE Clear US Inc. as third-country CCP (central counterparty) under EMIR.

[Click here for article.](#)

Updated Q&A on MiFID II Investor Protection Topics published by ESMA.

[Click here for updated Q&A.](#)

A Q&A on AIFMD has recently been updated by ESMA.

[Click here for updated Q&A.](#)

Market Abuse Q&A published by ESMA.

[Click here for Q&A.](#)

High Court determines (in *Lehman Brothers International (Europe) versus Exxonmobil Financial Services*) ‘close of business’ in respect of commercial banks could reasonably be taken as 7pm.

[Click here for judgment.](#)

Citywire reports on how to minimise reputational damage after an FCA investigation becomes public knowledge.

[Click here for article.](#)

Retail Mediation Activities (RMA): A high-level summary of why the FCA collects the data and how it feeds into the FCA's supervisory approach

This paper provides firms with a high-level summary of why the FCA collects data in its Retail Mediation Activities Return (RMAR) and how the data reported by firms feeds into its supervisory approach.

The data helps the FCA to check firms' compliance with the threshold conditions and other requirements (e.g. conduct and prudential). The data also enables the FCA to:

- * spot trends in individual firms and in the market as a whole;
- * identify the firms to which supervisory attention should be allocated; and
- * better understand the activities undertaken by firms, and whether such activities pose any risks to consumers.

In this paper the FCA has included a table of RMAR sections listing what information is required and why. For fixed portfolio firms (the largest/systemically important firms), the FCA uses RMAR data alongside other GABRIEL returns to build a picture of a firm. For the remaining firms (known as flexible portfolio firms) regular baseline monitoring of regulatory returns forms a key part of conduct and prudential supervisory work. Through alerts defined against RMAR data the FCA explains that it can spot potential breaches of threshold conditions that can then be investigated further by supervision teams.

The data reported by firms in their RMARs helps the FCA meet two of its three operational objectives – protecting consumers and protecting financial markets – as regularly collecting information helps the FCA to identify and address risks within firms and markets that could lead to consumer detriment. The FCA also comments that requiring firms to submit accurate information regularly:

- * promotes awareness within the industry of the FCA's rules and increases the probability of them being followed; and
- * imposes discipline on firms, which helps to maintain confidence in the professionalism and financial security of firms within the industry.

Common misreporting errors in RMAR submissions involve section B – profit and loss, where data should be reported on a cumulative basis; section G – training and competence; and section J – data required for collection of fees. The FCA reminds firms to follow the resubmission process within GABRIEL if errors in previous submissions are discovered. It also refers firms to its website for [RMAR misreporting errors](#).

[Click here for paper.](#)

TR16/9: Review of general insurance intermediaries' professional indemnity insurance

This paper summarises the findings into a review of general insurance intermediaries' professional indemnity insurance (PII) to assess whether the policies bought comply with the rules in MIPRU – the FCA's prudential sourcebook for mortgage and general insurance intermediaries.

Key findings:

- * firms have access to a sufficiently broad market for PII providing firms with choice;
- * firms were able to obtain cover for high limits of indemnity, however a small number of firms did not have the minimum level of cover required by the Handbook or had a policy excess greater than that permitted;
- * policies contained exclusion clauses - relating to: suitability of insurer (11 policies); unrated insurers (2 policies); non-admitted insurers (13 policies); and insurer insolvency (140 policies) - which caused significant concern, as their effect could be to reduce the scope of the cover below that required by MIPRU; and
- * a high level of policy inaccuracies particularly around the scope of cover for Financial Ombudsman awards and for appointed representatives.

Firms subject to MIPRU are advised to review their policies to ensure they meet FCA requirements. Firms that have taken out PII under another prudential sourcebook, or on a voluntary basis, may also like to review their policies against the findings reported in this thematic.

[Click here for review.](#)

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Industry News continued...

HMRC Chief Executive, Jon Thompson, reveals 43 footballers are being investigated for the use of offshore image rights companies. However, Thompson also mentioned that a ruling in 2000 means the law currently permits income from image rights to be treated differently to income from playing.

[Click here for article.](#)

Enforcement Actions and Prosecutions

Director of financial advice firm, TIM, fined £233,600 and prohibited from performing any senior management function and any significant influence function in relation to any regulated activity. The action was taken for advice failings in relation to pensions and investments. The decision notice also refers to breaches of APER 7 and the FCA's fit and proper test (FIT) criteria relating to conflicts of interest and a lack of fitness/propriety. The decision has been referred to the Upper Tribunal.

[Click here for decision notice.](#)

Final Notice issued regarding the FCA's decision to refuse an application for approval from Warranty Management Services Ltd (WMS) for Andy Pattini for CF 1(AR). The application was refused because WMS failed to provide the information requested by the FCA and failed to communicate with the FCA, and for non-disclosure by Pattini regarding a CCJ, which meant the candidate was not able to satisfy the FCA's FIT criteria. The information the FCA had requested from WMS in relation to Pattini included:

- * full details of the pre-submission due diligence used to determine the candidate was fit and proper;
- * copies of regulatory references;
- * credit check;
- * detailed role profile;
- * details of proposed supervision and monitoring; and
- * an assets and liabilities statement including full details of income and expenditure.

[Click here for final notice.](#)

Manjeet Mohal and Reshim Birk plead guilty to three counts of insider dealing on the third day of their trial. Both individuals used inside information to buy shares and options in Logica Plc prior to the takeover of Logica by CGI Holdings (Europe) Ltd. They will be sentenced on 13/01/17.

[Click here for press release.](#)

Four men involved in a boiler room scam that defrauded 193 people, of whom many were vulnerable and elderly, of £7.5m have been sentenced to a total of 35-and-a-half years in prison.

[Click here for article.](#)

Upper Tribunal upholds FCA's decision to ban Tariq Carrimjee, former chief executive of Somerset Asset Management, from performing the CF 10 and CF 11 functions. The FCA found Carrimjee had failed to act with due skill, care and diligence in failing to escalate the risk that his client, Rameshkumar Goenka, might have been intending to engage in market manipulation, and that this risk should have been apparent to him.

[Click here for article.](#)

Three banks (HSBC, JP Morgan and Credit Agricole) have been fined a total of £412m by European regulators for their involvement in Euribor manipulation.

[Click here for article.](#)

FS16/13: Interim feedback to the Call for Input to the post-implementation review of the FCA's crowdfunding rules –

The FCA currently regulates loan-based and investment-based crowdfunding platforms. In July 2016, following continual growth and evolution of the crowdfunding market, the FCA issued a Call for Input. The feedback received – which is summarised in this paper – has caused the FCA to conclude that some of its rules need to be modified/enhanced and a consultation paper is expected to be published early next year outlining proposals to address the more immediate concerns. Possible future changes include setting investment limits and additional controls for more complex business models. The final conclusions of the post-implementation review are to be reported mid-2017.

Key concerns in respect of loan-based crowdfunding:

- * Inadequate disclosures about risk and loan performance;
- * Risk of arbitrage with investment management or banking activities resulting from testing of the boundaries of the regulated crowdfunding perimeter by firms.
- * A desire to maintain confidence in platforms has occasionally led firms to act in a non-transparent manner, masking true loan performance and exposing investors to risks.
- * Firms have limited scope to increase market share with their current products and are instead targeting growth through new products or in new markets, which introduces the risk of operating in unfamiliar markets without appropriate expertise.
- * Consumers may not realise they do not have the usual protections as borrowers where agreements are non-commercial, and firms may not make them aware of this.
- * Institutional investors could bring benefits for retail investors (e.g. due diligence) but better controls are needed to mitigate the risks, particularly around conflicts of interest.
- * Some platforms allow investment in loans formed on other platforms, which can make it harder for investors to conduct due diligence or to understand the level of risk they are taking on. Failure of one firm could also cause problems for other firms in the market where investors in one platform are exposed to loans on a third-party platform.

Key concerns in respect of investment-based crowdfunding:

- * Inadequate disclosures on investment-based crowdfunding platforms and the downplaying of risk.
- * Due diligence standards vary from firm-to-firm and not all firms explain their due diligence processes on their websites.
- * None of the platforms reviewed provided an assessment of the valuation of an investment pitch, although they did challenge the figures proposed by fundraisers.
- * Not all firms aligned their business models with the possible future success of businesses raising finance (and, ultimately, the investors).
- * Not all firms had an effective internal control system in place for approving or communicating financial promotions.
- * Not all firms satisfied the requirements to conduct an appropriateness test to assess whether investors have the knowledge or experience to understand the risks involved in the investment.

[Click here for feedback statement.](#)

CP16/42: Reviewing the funding of the Financial Services Compensation Scheme (FSCS)

This paper proposes a number of changes to how the FSCS is funded and operated, and the coverage provided by it, including:

- * the professional indemnity insurance (PII) market and the coverage that it provides – perhaps more comprehensive cover could increase the proportion and value of claims covered by insurance when firms fail;
- * introducing product provider contributions towards intermediation claims to reflect the wider responsibilities of providers in the process;
- * changing the FSCS funding classes for intermediation activities – options include alternative class structures where all or some of the intermediation classes are grouped together;
- * updating limits on consumer coverage in light of the pension freedoms;
- * introducing FSCS coverage for debt management firms;
- * extending coverage in respect of fund management;

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Enforcement Actions and Prosecutions continued...

Former BlackRock fund manager, Mark Lyttleton, has been sentenced to 12 months in prison – although he will only serve half of this – after pleading guilty to two counts of insider dealing in relation to stock purchases in EnCore Oil and Cairn Energy.

[Click here for article.](#)

John Thompson, Andrew Spiteri and Stephen Leary, former directors of Worldwide Commodity Partners Ltd, a carbon credit investment scheme that lost investors £3m, have been disqualified by the Insolvency Service for a total of 44 years.

[Click here for article.](#)

FCA Speeches

“Competition and savings: the regulator’s perspective”

by Christopher Woolard, the FCA's Director of Strategy and Competition.

[Click here for speech.](#)

“Conduct risk in FX markets” by Edwin Schooling Latter, Head of Markets Policy at the FCA, delivered at FX Week Europe.

[Click here for speech.](#)

FCA Press Releases

FCA launches call for input on high-cost credit and overdrafts.

[Click here for press release.](#)

FCA publishes new data on savings interest rates and announces new rules coming into effect.

[Click here for press release.](#)

FCA proposes stricter rules for contract for difference products.

[Click here for press release.](#)

A third of over 75s targeted by investment scams, as FCA urges consumers to take the time to check investment ‘opportunities’ are legitimate before they hand over their money.

[Click here for press release.](#)

FCA reminds debt management firms about annual review requirements through Dear CEO letter.

[Click here for press release.](#)

FCA issues statement regarding progress on CP16/20, which included the proposal for a deadline for PPI complaints.

[Click here for article.](#)

Pension providers making good progress on reducing fees and charges.

[Click here for press release.](#)

Updated statement on Which? super-complaint on push payments.

[Click here for press release.](#)

CP16/42: Reviewing the funding of the Financial Services Compensation Scheme (FSCS)

(Continued from right-hand column of page 4)

- * exploring the potential for FSCS levies to better reflect the risks posed by particular practices - a specific rule to introduce data collection for activities linked to higher risk products is also proposed;
- * applying FSCS protection to advice and intermediation of structured deposits;
- * requiring Lloyd's of London to contribute appropriately to the retail pool, which would be called upon if costs in a particular intermediary funding class were so high that they breached the class's affordability thresholds; and
- * amending payment arrangements so that firms may be asked to pay a proportion of the levy on account – this would align the amount of the levy to the years that each element is charged to enable firms and the FSCS to better plan.

The consultation period closes on 31st March 2017 and a policy statement containing rules will be published later in 2017. The FCA will also consult separately on those areas within this paper where a range of options is discussed.

[Click here for consultation.](#)

Insight article - Creating and sustaining cultures of compliance: insights from psychology and beyond (by FCA economist Peter Lukacs)

Alongside the publication of two occasional papers (24 and 25, see below) the FCA has issued an article looking at the psychological, social and other influences on decision making within organisations, as a way of improving effective compliance.

The article comments on work-place biases, such as: work-related rules of thumb; how differently people behave when they are in a group; and how the make-up of a group of people further changes individual behaviours. Therefore, to improve firms' compliance with relevant regulations and legislation, the environment in which decisions are made needs to be improved.

Internal incentives also need to be addressed. The article states that peoples' behaviour is controlled by their desire to view themselves as virtuous and moral. Therefore, when moral considerations are absent, behaviour is more likely to be driven by external incentives. Although codes of conduct and declarations reduce wrong doing, there is also evidence that individuals will act in their own interests where they feel they have been absolved of the need to meet certain standards – e.g. disclosure of a conflict of interest.

Distance from the act of rule-breaking and its negative consequences are said to make wrong-doing easier and an environment that seems to normalise, and even incentivise, misconduct significantly influences whether or not an individual decides to break the rules.

So in summary, *“penalties can go a long way to deter wrongdoing. But to rely on them alone is to overlook one of the fundamental drivers of all our behaviour: social and psychological influences.”*

[Click here for article.](#)

[Occasional Paper 24: Behaviour and Compliance in Organisations](#) – It is thought the concepts discussed in this paper - behavioural biases, morality and social/environmental factors - provide a useful basis on which existing approaches to drive compliance can be assessed.

[Occasional Paper 25: Incentivising Compliance with Financial Regulation](#) - The paper notes many parallels in the compliance practices of both the FCA and HMRC, such as both are concerned with the prevailing culture within firms and efforts are being made to push for/enforce compliant cultures within firms. The paper also considers a way to measure the “regulatory gap” – an indication of the overall level of compliance within firms, similar to the “tax gap” used by HMRC – as such a measure could be used to allocate resources within the FCA.

Other FCA Publications

[CP16/35](#): PSR regulatory fees 2017/18

[CP16/36](#): Regulatory reporting: retirement income data

[CP16/37](#): Implementing information prompts in the annuity market

[CP16/38](#): Proposed changes to DTR 2.5 on delay in disclosure of inside information

[Call for Input](#): High-cost credit including review of the high-cost short-term credit price cap

[CP16/39](#): Quarterly Consultation Paper No. 15

[CP16/40](#): Enhancing conduct of business rules for firms providing contract for difference products to retail clients

[Co-operation Agreement](#) between FCA and Hong Kong Monetary Authority

[TR16/10](#): Early arrears management in unsecured lending

[Collaborative Publication](#): Remediating poor value legacy workplace pension schemes: Findings from the Joint Review of Industry Progress against the Independent Project Board Recommendations

[PS16/25](#): Home finance customers with a payment shortfall: minor Handbook changes and feedback to CP16/16

[GC16/8](#): Amendment to guidance on loan to income ratios in mortgage lending

[FG16/8](#): Fair treatment of long-standing customers in the life insurance sector

[MS16/2](#): Mortgages Market Study

[FCA Service Standards](#) November 2016

