

# REGULATION NEWS

## ISSUE 34

July 2017



**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.

MiFID II/MiFIR implementation plans continue and Gem will be issuing briefing notes on specific topics from MiFID II in H2 of this year. In the meantime, please visit the FCA's dedicated [webpage](#) for the latest developments. A summary of the recently issued main MiFID II Policy Statement (PS 17/14) is also included in this newsletter.

Otherwise, this month there have been a number of major FCA publications issued and covering the end of 1<sup>st</sup> half of 2017.

These include the Asset Management Review, also further publications on the Financial Advice Market Review and next steps regarding implementation of the Payment Services Directive. Comments on these items are included as main features below.

The FCA held its Annual General Meeting on 18<sup>th</sup> July. A link to the video of the meeting is shown [here](#) and certain key messages are reflected in this newsletter.

The [July edition](#) of the FCA's Regulation Round up has been issued and the [Policy Development Update page](#) was last updated on 14 July.

The Information Commissioner has also recently issued its [July monthly newsletter](#), and the Financial Services Compensation Scheme has also issued its [annual report](#).

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 Asset Management Review – final report and consultation paper CP17/18
- MiFID II – Policy Statement PS 17/14
- Payment Services Directive ('PSD') 2 - Consultation Paper (CP) 17/22
- FCA Annual General Meeting
- Other FCA Publications
- Other FCA Speeches
- Enforcement Actions and Prosecutions
- Industry News

### Enforcement Actions and Prosecutions continued

An Essex tax adviser who instructed his clients on how to fraudulently claim £1.5m in tax repayments has been jailed for five years.

[Click here for article](#)

David Parker, a tax accountant and business manager with 1980's band UB40, and the group's bass player, have been banned from being company directors due to their inappropriate actions on the firm's assets to the sum of around £250,000.

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Film tax fraudsters including an accountant, two film producers and an independent adviser have been ordered to pay back more than £2m of profit arising from financial criminal activities.

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Four previous senior executives from Barclays Bank have appeared in court charged with fraud by the Serious Fraud Office. However it is also reported that the individuals will have until January 2019 to prepare for their defence.

[Click here for article](#)

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An employee of a pension advice firm at the centre of a multi-million pound scam enquiry has been convicted of refusing to provide information to the investigation.

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An Aviva employee has been convicted of bribery offences relating to the selling of customer information.

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The former executive director of a company linked to the Law Society was given a 12 month sentence after he admitted stealing more than £50,000 from the accounts of two clients.

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RBS has reached a \$4.75bn (£3.65bn) settlement with US authorities regarding the sale of mortgage products before the financial crisis.

[Click here for article](#)

The Federal Reserve has fined BNP Paribas \$246m (£188m) regarding the firm's 'unsafe and unsound' practices in the foreign exchange (FX) markets.

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## Asset Management Review

The FCA has issued its final report in June 2017 relating to the Asset Management Review. This followed an interim report issued in November 2016, with no major changes or surprises arising from the final report.

The FCA confirmed that its main findings include that price competition in the asset management sector is weak; investors are not always clear on the objectives of a fund; and fund performance is not always reported against an appropriate benchmark.

Remedies that the FCA are considering fall into three general areas:

- to help provide protection for investors who are not well placed to find better value for money;
- to drive competition pressure on asset managers; and
- to help improve the effectiveness of intermediaries.

With regard to investor protection, the FCA intends to:

- strengthen the duty on fund managers to act in the best interests of investors and use the forthcoming Senior Managers Regime to bring individual accountability, with a new responsibility reflecting customers best interests;
- require 'authorised fund managers' to appoint a minimum of two independent directors to their boards with this representing at least 25% of the board; and
- introduce technical changes to improve fairness around the management of share classes and the way in which fund managers profit from investors buying and selling their funds.

To drive competitive pressure on asset managers, amongst other things the FCA will:

- support the disclosure of a single, all-in-fee to investors;
- support the consistent and standardised disclosure of costs and charges to institutional investors;
- chair a working group to focus on how to make the fund objectives more useful and consult on how benchmarks are used and performance reported.

To help improve the effectiveness of intermediaries, the FCA will:

- launch a market study into investment platforms;
- seek views on rejecting the undertakings in lieu of a market investigation reference regarding the institutional advice market to the Competition and Markets Authority; and
- recommend that HM Treasury considers bringing investment consultants into the FCA's regulatory perimeter.

Some of the remedies will require consultation and some will not. The FCA has issued its first consultation in this area (CP 17/18). Implementation of the remedies will take place in a number of stages.

With regard to fund governance, most of the impact will be on 'Authorised Fund Managers' (AFM) which are fund managers of retail funds including authorised corporate directors. This will include the need for AFMs to assess 'value for money' and to do this annually and publish its findings.

Once final changes are announced, there is likely to be a transition period, possibly 12 months, for such reports.

The FCA also recognises the need to align proposed changes with other related changes happening at the same time including through MiFID II and Packaged Retail and Insurance-based Investments Products ('PRIIPs').

Further information can be found [here](#) and [here](#).

## Enforcement Actions and Prosecutions continued

The Information Commissioner ('ICO') has fined Provident Personal Credit Ltd in relation to unsolicited marketing including nuisance texts.

[Click here for article](#)

The ICO has also fined Money Supermarket in relation to marketing activities and for ignoring customers marketing email opt outs.

[Click here for article](#)

## Industry News

Former FCA interim Chief Executive, Tracy McDermott has taken up a role at a City bank lobbying role, adding to her role at Standard Chartered.

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It is reported that former Chancellor, George Osborne has secured his sixth post government employment role as honorary professor at the University of Manchester.

[Click here for article](#)

UBS has hired tennis player, Maria Sharapova, for their female advisory board.

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Aberdeen Life, to be formed by the merger of Aberdeen Asset Management and Standard Life, have appointed Otto Thorsen, ex Director General of the ABI, to act as chairman. Mr Thorsen was previously Aegon's Chief Executive.

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New City Initiative ('NCI') believes that the FCA could do more to help wealth and fund boutique start-ups get off the ground.

[Click here for article](#)

A research paper published by the International Longevity Centre and Royal London states that consumers are £40k better off having received advice compared to those who did not receive advice.

[Click here for article](#)

In a recent research paper from the Pensions Policy Institute, it is reported that annuitants are collectively £130m worse off for not shopping around for annuities before purchase.

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UK Finance is a major new banking and finance trade body introduced from July 17 which will take over the role of a number of other bodies including the Council of Mortgage Lenders and the British Banking Association.

[Click here for article](#)

The Professional Trustee Standard Working Group has been created with the goal of establishing a set of fit and proper protocols to be met by professional trustees.

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Elite Insurance, regulated by the Gibraltar Financial Services Commission and which carried out insurance business by way of a UK passport, has ceased trading in the UK.

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## MiFID Policy Statement

The FCA has published its second policy statement on the implementation of MiFID II (PS 17/14). PS 17/14 summarises the feedback the FCA received to previous consultation papers and issues raised therein including CP 15/43, CP 16/19, CP 16/29, CP 16/43 and CP 17/8.

PS 17/14 follows the FCA's first policy statement on MiFID II implementation (PS 17/5) published earlier in March. The first policy statement covered the FCA's near final rules on market issues and organisational requirements, including systems and controls.

The rules set out in PS 17/14 are final and the FCA has also finalised the near final rules published in PS 17/5.

This current policy statement covers a number of key areas including the following (although not an exclusive list):

- Perimeter Guidance Manual;
- Client Assets Sourcebook;
- Complaints Handling;
- Inducements relating to research;
- Client categorisation;
- Disclosure requirements;
- Suitability and Appropriateness;
- Dealing and Managing;
- Product Governance; and
- Taping.

Specific points to note include:

- the introduction of the definition of a 'MiFID compliant' which will include complaints from professional clients;
- the requirements for investment managers to tape record calls relating to client orders where exemptions previously existed, maintain records for 5 years and sample such calls under monitoring arrangements;
- increased transaction reporting including more data fields which need to be reported and more onus on investment managers to report transactions themselves rather than reliance on brokers to do so on their behalf;
- increased best execution requirements including annual disclosure requirements;
- 'unbundling' commission payments which included costs for research;
- more stringent conflicts of interests requirements including ensuring firms take 'appropriate' steps compared to 'reasonable' steps to manage conflicts;
- the requirement to take steps to prevent conflicts occurring in the first place, in addition to managing those that do occur; and
- ongoing stricter regulations around inducements and hospitality arrangements including that there must be a genuine business reason for such events, that this must be in the best interests of clients and evidenced as such.

The above is a brief summary of the [Policy Statement](#). Firms should ensure that they can evidence they have fully reviewed the implications of the most recent PS and have clear and timely implementation plans for relevant aspects of MiFID II in the lead up to the end of 2017.

## Payment Services Directive ('PSD') 2

The FCA has issued a further PSD 2 consultation paper ([CP 17/22](#)) on authorisation and reporting forms under the revised Payment Services Directive ('PSD 2'). The FCA is asking for feedback on the proposals by 18 August 2017. This CP follows on from CP 17/11, published in April 2017, which considered the majority of changes being brought about by PSD 2. The previous CP also provided a revised draft approach document as to how the FCA intend to implement PSD 2. This current CP includes draft application forms that are likely to be required for relevant firms including existing authorised payment institutions which may be required to re-apply to the FCA under transition arrangements under the PSD 2.

## Industry News continued

Capita has announced it has sold its administration business for £888m to Australian firm, Link Administration Holdings.

[Click here for article](#)

Metlife has announced it is closing its wealth management arm to new business to focus on employee benefits.

[Click here for article](#)

The sale of the Co-op bank has been halted whilst bailout talks with the troubled lender's backers intensify.

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Software developer Waymark Tech has launched a tool to identify regulatory crossovers of different regulations.

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In the meantime, NatWest is conducting a trial of an automatic compliance tool, designed to record and assess compliance of advisory activities.

[Click here for article](#)

Falcon Bank is the first private bank to offer direct exposure to Bitcoin assets.

[Click here for article](#)

It is reported that the European Securities and Markets Authority ('ESMA') is considering a major market intervention into the rules covering contracts for differences.

[Click here for article](#)

Rupert Murdoch's proposed purchase of Sky is to be referred to the competition authorities. In the meantime, Sky's shares spike following that announcement.

[Click here for article](#)

Special administrators for Stand Capital, the collapsed discretionary fund manager, have written to SIPP providers asking them for contributions to assist with extending the firm's insurance cover against possible claims.

[Click here for article](#)

Following the issue of the FCA policy statement on fees, fund managers will see their regulatory fees rise by 5.3% which will include increased compliance costs for the FCA to plan for Brexit. In addition investment advisers will also be required to pay contributions to the costs of the governments Pension Wise service.

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The FCA has confirmed that it is setting aside and reserving a cash surplus to cover the extra costs of Brexit and the costs of moving offices in 2018.

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The Financial Services Complaints Commissioner, the watchdog's watchdog, has criticised the FCA over taking too long to handle complaints made against the FCA. It has also recommended that all of the calls to the FCA's whistleblowing team should be recorded following the dismissal of a complaint against the FCA.

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## Payment Services Directive ('PSD') 2 continued

The FCA expects to issue a policy statement in September and to invite any relevant applications when it opens doors for applications on 13 October, 3 months before implementation. Existing firms will be required to submit applications but transition timescales may apply. Firms should note these are draft applications at present and should not be used although that they may give some guidance as to the type of questions that may be raised during the authorisation process and next steps regarding timing.

## FCA Annual General Meeting

The FCA held its Annual General Meeting on 18 July and a video of the event is linked above. Points of interest include:

- The implementation of the senior managers and certification regime to all other FCA authorised firms. This is likely to feature in Q4 of 2017 (a consultation paper subsequently being issued after the meeting).
- The FCA report elsewhere that the challenge is applying a regime that's appropriate to smaller firms compared to original firms in scope including Banks in 2016. Key FCA challenges include over-indebtedness, the pace of change in technology and cyber security issues, the continued lack of competition in the sector, the advice gap (particularly in the pensions sector) and consumer vulnerability.
- The FCA intend to publish new approach documents on supervision, enforcement authorisation and competition.
- Preparing for Brexit is another major challenge and the FCA has hired additional staff to assist with this.
- The second consultation on the Insurance Distribution Directive was due out imminently (now issued).
- The FCA received roughly the number of applications for authorisation or variation under MiFID II as they expected. Any outstanding applications should be submitted as soon as possible.
- After MiFID II, implementation of the Payment Services Directive is considered to be the next major challenge.
- The FCA is currently scoping the work for taking over the regulation of claims management companies, likely to take place around April 2019.

## Other publications

The Bank of England has issued its [Stability Report](#) and warns that Brexit may cause disruption to financial services provision in the UK including bringing higher costs to both financial services firms and consumers. It has also announced recommendations of changes to the test of affordability for mortgage lending.

Following this, the Prudential Regulatory Authority has issued a [statement](#) on consumer credit including the risk that it perceives that the lending sector may face another 'credit crunch' due to current interest rate levels and increase in financing to consumer. This also follows the recommendation in the Bank of England Stability report that lenders should increase the amount of capital that they hold against loans to manage this risk and for contingency planning.

The Financial Stability Board has issued a [review paper](#) in respect of FinTech. The report included observations both in respect of benefits and risks of this sector, and made certain recommendations regarding future supervision priorities.

The Competition and Markets Authority has published a [report](#) into specified banks' compliance with behavioural undertakings given previously in 2002 following a review.

HM Treasury has issued its [response](#) to comments received following consultation on the proposal of creating one single financial guidance body, taking over the responsibilities of the Money Advice Service and the Pension Advisory Service.

## Industry News continued

Andrew Bailey, Chief Executive of the FCA, has reportedly stated that the FCA has been excluded by ESMA in relation to certain Brexit discussions.

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Dublin is said to be leading the race in relation to financial services firms preferred location in the event of a hard Brexit.

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The FCA has restricted Stargate Capital Management's permissions which has stopped them from taking on new funds under management and managing existing funds.

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The FCA has confirmed that some property investment firms were right in halting or penalising fund redemptions immediately after the outcome of the Brexit vote but has also indicated that such funds should increase liquidity in any case.

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The FCA has informed 14 SIPP firms that they have incorrectly reported capital adequacy data following new requirements being implemented in September 2016.

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Discretionary investment manager, Organic Investment Management has told IFAs that it is not accepting new funds under management following a visit from the FCA.

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The FCA has asked an IFA firm to stop conducting business for clients introduced by unregulated introducers until a s.166 report has been carried out.

[Click here for article](#)

A pensions specialist firm, Heather Dunne IFA, has suspended carrying out DB transfer business following concerns from the FCA over outsourcing issues by IFAs passing such business to the firm.

[Click here for article](#)

Select a Pension has also stopped providing its DB Pension Transfer advice service of providing TVAS reports to IFAs due to recent FCA concerns on the outsourcing trends in this area.

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WH Ireland has been ordered by the Financial Ombudsman to compensate a client in relation to the sale of shares, and a loss that occurred, despite the firm having taped records of the advice given to the client.

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Bright Financial Partnership has been told to compensate a client for advice following a recommendation to transfer into a SIPP which then resulted in the client's pension pot being invested into a property in St Lucia.

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The Financial Ombudsman has told discretionary investment manager, Beaufort Securities, to pay compensation to a client who lost £71,000 through high risk AIM stock investments in his portfolio.

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## Other FCA Speeches

Andrew Bailey, Chief Executive of the FCA, gave a speech on retail banking in the UK and reflects from the FCA at the BBA Retail Banking Conference.

[Click here for speech](#)

Andrew Bailey, Chief Executive of the FCA, also gave a speech on free trade and open markets at the Reuters Newsmaker event.

[Click here for speech](#)

## FCA Press Releases

The Chairman of the FCA, John Griffith-Jones, has today announced the appointments of new Chairs, Anne Richards and John Trundle, for the FCA's Independent Practitioner Panel and the Markets Practitioner Panel respectively.

[Click here for press release](#)

The FCA has announced the names of the firms which participated in the Advice Unit and also publishes the Financial Advice Market Review ('FAMR') baseline report. This report includes how the FCA will assess how to develop market which consumers can access. It also identifies a poor take up of guidance services and low awareness of guidance services such as the Money Advice Service ('MAS') or the Pensions Advisory Service ('TPAS'). It also confirmed that the Retail Distribution Review will not be reviewed until 2019.

[Click here for press release 1](#)

[Click here for press release 2](#)

The FCA has published interim findings of the Retirement Outcomes Review. This is the first major comprehensive study into how the retirement income market is changing since the pensions freedoms. Findings include that accessing pension pots early has become 'the new norm' and that many consumers are choosing to take lump sums rather than a regular income. The review has identified a number of issues that the FCA is concerned about and is proposing a range of possible measures to address some of the emerging issues.

[Click here for press release](#)

The FCA has issued its Terms of Reference for the forthcoming Investment platforms review (MS 17/1) as referred to in its recent Asset Management Review.

[Click here for press release](#)

## Other FCA Publications

The FCA has issued a [statement](#) on contract for difference products and relating to CP16/40 regarding enhancing conduct of business rules for firms providing contract for difference products to retail clients.

The FCA is consulting ([CP17/17](#)) on proposed changes to the Handbook to accompany the application of the EU Benchmarks Regulation ('BMR') in January 2018.

The FCA has made available the [unredacted version](#) of the disciplinary action against the Bank of Scotland regarding failures in its corporate division during 2006 and 2008. This is also related to events surrounding the 'Reading' incidents which lead to criminal prosecutions against certain BoS staff.

A further MiFID II [Consultation Paper](#) (the 6<sup>th</sup> in total so far) has been published (CP 17/18) at the same time as its main Policy Statement (PS 17/14). This current consultation paper includes details on a number of areas they couldn't consult on until now, mainly relating to new areas in scope of MiFID 2.

## Industry News continued

FOS has ordered an investment firm set up by a former Tottenham Hotspur footballer to repay £60,000 worth of fees to a client.

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FOS has recommended a firm compensate a client in relation to a pension transfer into a SIPP. Despite the SIPP appearing more cost effective, the issue also related to the transfer into a fund also managed by the firm.

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The FOS has dropped a 'spurious' complaint made against a firm, P J Milton, in relation to a historical buy to let matter.

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Advice firm, Total Wealth Solutions, is closing down following a number of FOS complaints which have been upheld against the firm.

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The FSCS has paid out £3m following the failure of an IFA firm, whose adviser, Kevin Neal, had advised former England footballer, Alan Shearer, who also made a previous claim against the firm which was settled out of court.

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The FSCS is preparing for a payout in respect of failed firm Cumulus Investment Management, following the FOS upholding 12 complaints against the firm, relating to conflicts of interest where the firm advised clients to invest in a fund connected to the firm.

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The FSCS has declared wealth manager, Arjent, in default which will in turn open the door for compensation claims.

[Click here for article](#)

Prudential is reviewing 17000 accounts of its new retirement product and will be providing redress after administrative issues have hit clients financially.

[Click here for article](#)

The Pensions Regulator has reached a £74m deal in respect of a defined benefit scheme as part of its investigations into firms failing to meet pension scheme liabilities.

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A report by the Pensions Regulator into the collapse of the BHS pension scheme has concluded that the executive pension scheme of senior staff was better funded than the staff pension scheme, leading to less of a deficit in the senior scheme compared to the main scheme.

[Click here for article](#)

The way Rowanmoor Pensions handled the insurance needs of a property under a SSAS plan has been considered 'inadequate' by the Pensions Ombudsman.

[Click here for article](#)

The Pensions Ombudsman has reported an increase in complaints regarding pension transfers but a decrease concerning pensions liberation.

[Click here for article](#)

## Other FCA Publications continued

An [information request](#) has been issued to the majority of firms with with-profits business to help the FCA carry out a multi-firm review of the sector.

The FCA has issued a [Consultation Paper](#) (CP 17/20) on measures to address risks that can arise from the way consumer credit firms may pay or incentivise their staff.

[Consultation Paper \(CP\) 17/21](#) has been issued consulting on a targeted proposal to make the listing regime work better for companies controlled by a shareholder that is a sovereign country.

A [Policy Statement \(PS 17/3\)](#) has been issued setting out the rules to ban contractual clauses that restrict competition without being clearly beneficial to clients.

The FCA has issued its [Policy Statement \(PS 17/15\)](#) regarding FCA regulated fees and levies for the fee year of 2017/2018.

The FCA has issued a summary of its feedback from previous consultation (GC 17/2) and [final guidance](#) (FG 17/6) on the treatment of politically exposed persons ('PEPs'). This follows consultation guidance issued previously and summarised in Gem Compliance's March 17 newsletter. All firms should ensure that they have reviewed this final guidance and identified and implemented any changes required.

The FCA has issued its [Annual Report and Accounts for 2016/2017](#). Other corporate documents issued at the same time included the FCA's [own annual report on Money Laundering regulation](#) and also its [Enforcement Annual Performance account](#).

The [minutes](#) of the May 17 FCA Board meeting have been published.

A new [webpage](#) has been launched regarding firms' obligations of certain notifications under the new Money Laundering Regulations 2017 by specified deadlines. This primarily impacts on Money Service Businesses ('MSBs') and Trust and Company Service providers ('TCSPs').

The FCA has provided [feedback](#) on its review of complaints handling on packaged products.

A thematic review has been issued ([TR 17/1](#)) in relation to customer understanding of transactions delivered by retail banks and building societies.

## Enforcement Actions and Prosecutions

There have been a number of cancellations of firms' permissions under the FCA's Consumer Credit regime in relation to breaches of Principle 11 and being open and co-operative with the FCA. A link to the most recent version of the Final Notices table showing these is shown below.  
[Click here for article](#)

The FCA has cancelled two firms Part IVA permissions in relation to failures of its suitability condition.  
[Click here for article](#)  
[Click here for article](#)

A compliance officer, David Watters, has been fined by the FCA in respect of failings in connection with pension transfer compliance oversight.  
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A serial fraudster has been sentenced to four years in prison following an elaborate £100,000 wine investment scam.  
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## Industry News continued

The CII has launched a new pension transfer advice qualification after the FCA's recent consultation paper on defined benefit advice including transfers.  
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Following an external review by PwC, the Pensions Regulator has set out a five point plan for how it can improve, which will include providing more clarity on how its responsibilities are split with the FCA.  
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The Pensions Ombudsman has upheld a complaint against Curtis Banks from a client who was misinformed about the value of his wife's self investment personal pension.  
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The Pensions Regulator is travelling around the UK speaking to advisers to give guidance on how to avoid pension scams.  
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The Pensions Ombudsman has rejected a complaint against the trustees of the Standard Life Staff Pension Scheme, after a staff member claimed he had lost out on a proposed pension transfer.  
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The FCA's Annual Report confirms that Andrew Bailey, FCA Chief Executive, received £449k remuneration in the first year of being in the role.  
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In its latest report and account, HMRC has indicated that it has collected a record haul of £29bn from its crackdown on financial crime including tax evasion and avoidance.  
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It is reported that tax payers lost around £2bn from the sale of RBS shares two years ago.  
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Rangers Football club has lost its £47m battle with HMRC regarding the use of Employee Benefit Trusts.  
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The FCA is reporting that the number of tip-offs to its whistle-blowing line has decreased for the 2<sup>nd</sup> year in a row despite the FCA investing in training for staff handling such calls.  
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At its Annual General Meeting, the FCA has defended the cost of £60,000 for its recent logo design.  
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The FCA reports that that its s166 reviews has cost firms around £110m in the last 12 months.  
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The value in Defined Benefit transfers since pensions freedom have been introduced are estimated to be around £50bn, according to a study from investment consultants, Mercers.  
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The FCA has made £1m in data sales, from its FCA register, to third parties in one year.  
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