

# REGULATION NEWS

## ISSUE 35

August 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.

The FCA continues to work towards implementation of MiFID II/MiFIR and issued a [second statement](#) to firms regarding contingency planning if MiFID II permissions are not in place by 3/1/18. It has also announced the opening of its [passporting gateway](#). In addition, the FCA published a [Q&A](#) on MiFID II commodity derivatives, updated its [MiFID II applications and notifications webpage](#), and also provided an [LEI \(Legal Entity Identifier\) update](#).

The August edition of the [FCA's Regulation Round](#) was issued, which provided information from the FCA's Threshold Conditions Team (TCT), which takes enforcement action against regulated firms that fail to comply with basic regulatory requirements (such as the requirements to submit FCA returns and to pay FCA fees). Such action often results in the FCA cancelling the statuses of those firms, which means that they cease to be able to conduct regulated business and may have to cease trading altogether. Following referral to the TCT, some firms are still able to retain their authorisation. In the year ending 30 June 2017, 207 firms had their authorisations cancelled by the TCT. In the same period the TCT accepted 1,387 referrals of firms who had failed to satisfy the minimum standards. 824 of those firms still managed to retain their authorisation by submitting their outstanding returns or paying their overdue fees and 122 firms applied to cancel their FCA authorisation altogether. Where firms are repeatedly referred to Enforcement for failing to comply with basic requirements, Enforcement will recommend that their permissions are cancelled even if the firms comply late.

The FCA launched a UK mortgage survey to gauge how people are managing their mortgages and engaging with lenders and it updated its [Policy Development Update page](#) (on 04/08/17).

The Financial Ombudsman Service issued its monthly newsletter ([issue no 141](#)) and the Information Commissioner published its [Annual Report](#) and its [monthly newsletter](#).

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

- \* CP17/23 Insurance Distribution Directive Implementation – Consultation Paper 2
- \* CP17/25: Individual accountability - extending the Senior Managers and Certification Regime to all FCA firms
- \* CP17/28: Financial Advice Market Review (FAMR): implementation Part II and insistent clients
- \* FCA's new technologies and anti-money laundering compliance report
- \* Enforcement Actions and Prosecutions
- \* Industry News
- \* FCA Press Releases
- \* FCA Speeches
- \* Other FCA Publications

### Industry News

Findings from undercover research conducted by Which? on SJP advisers indicate disclosure issues, particularly in relation to charges. [Click here for research.](#)

Barclays announces cost of access to its research under MiFID II. [Click here for article.](#)

Client confidentiality and cyber security concerns connected to new-generation CRM systems highlighted, and with reference to requirements under the GDPR. [Click here for article.](#)

FOS upholds complaint against HSBC for inheritance tax advice to settlors of a discretionary gift trust where three of the trustees are the children of the settlors while the fourth trustee was the surviving settlor. The children of the settlors were also confirmed as the only beneficiaries of the trust. [Click here of article.](#)

The FCA has made changes to its Register Extract Service – a service that enables companies to buy data from its register – after a complaint to the Complaints Commissioner from a woman whose late husband's insurance policy was invalidated because an adviser on the register had not forwarded information to the woman's insurance provider. The insurance provider that had bought information from the register accepted the business from the advisory firm on the understanding that the firm was FCA authorised. However, at the time neither the firm nor the individual adviser at the firm were authorised. [Click here for article.](#)

Pensions and Lifetime Savings Association (PLSA) has announced acting CEO, Julian Mudd, will take on the role permanently from 1/8/17. [Click here for article.](#)

Upper Tribunal Judge dismisses a request from John and Colette Chiesa, formerly partners of Westwood Independent Financial Planners, for disclosure of documents relating to the FCA's investigation into their firm, which resulted in a fine of £100k for mis-selling geared traded endowment policies. The couple claim the FCA acted in bad faith and sought to "trap" them however the judge said the couple had no evidence of this on which to base their request for disclosure. [Click here for article.](#)

Jersey CISI student studying for the Chartered Wealth Manager qualification wins the Hoare Nairne Scholarship 2017 for an essay analysing the advantages and disadvantages between using a robo-advisor and a human-advisor, from the customer's perspective. [Click here for press release.](#)

An employee of Barclays has emailed a file containing a confidential list of client names and trading details to the German Finance Agency by mistake. The Agency, which oversees the country's borrowing and debt management, confirmed the breach and that it had deleted the information. [Click here for article.](#)

EBA issues final guidelines on major incident reporting under PSD2. [Click here for final guidelines.](#)

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This CP follows on from [CP17/7](#) (See Gem Briefing Note [17/1](#)) further explaining how the FCA proposes to implement the Insurance Distribution Directive (IDD) in the UK, effective from 23/02/18. The IDD extends the application of EU insurance regulatory requirements to all distributors of insurance products, with the objective of enhancing undistorted competition, consumer protection and market integration. This CP covers implementation of most outstanding Level 1 matters and the IPID (Insurance Product Information Document) disclosure requirements.

Proposals to implement the IDD requirements for life insurance business, including information provision requirements, and additional requirements related to the distribution of insurance-based investment products (IBIPs) are grouped as follows:

- \* firms' general conduct of business obligations from chapter V of the IDD (Chapter 4),
- \* information disclosure to customers (Chapter 5),
- \* inducements (Chapter 6),
- \* suitability (Chapter 7), and
- \* appropriateness (Chapter 8).

Changes to rules to implement requirements in the IDD that apply to life and non-investment insurance business are:

- \* conflicts of interest (Chapter 9),
- \* product oversight and governance (Chapter 10),
- \* organisational requirements relating to the protection of customers' money (Chapter 11), and
- \* professional requirements relating to the good repute of employees of insurance distributors (Chapter 12).

Changes relating to non-investment insurance business only, including product information, are covered in chapter 13 and consequential Handbook amendments are covered in chapter 14.

The FCA is planning to go beyond the minimum IDD requirements by proposing to:

- \* apply the IDD standards to a wider range of firms than required by the directive, so that it can promote effective competition in the interests of consumers by achieving consistency of regulatory standards and avoiding arbitrage,
- \* maintain standards above the IDD minimum requirements to preserve existing UK regulatory standards, and
- \* introduce standards above the IDD minimum requirements as a result of policy decisions, particularly in relation to alignment with MiFID II.

A directly applicable Commission Implementing Regulation will support the IPID and at the beginning of August EIOPA published a CP ([EIOPA-CP-16/07](#)) on proposed implementing technical standards for the IPID.

Comments on this CP are requested by 20/10/17. The FCA will consult separately on its remaining IDD proposals, including matters concerning draft legislation in the Treasury consultation, in the next few months and it will aim to publish a policy statement in December 2017.

[Click here for consultation paper.](#)

## CP17/25: Individual accountability - extending the Senior Managers and Certification Regime to all FCA firms

After the financial crisis, Parliament recommended the development of a new accountability system that was more focused on senior managers and individual responsibility. In response the FCA (and PRA) created a new Senior Managers and Certification Regime (the 'SM&CR'). The new regime came into force in March 2016 for banks, building societies, credit unions and large investment firms, replacing the existing Approved Persons Regime for these firms. Parliament subsequently amended FSMA to extend the new regime to all FSMA-authorized firms and this consultation paper begins to outline how the FCA proposes to do this.

The FCA proposes applying a baseline of requirements to every firm, known as the 'core regime'. This means that the three main elements of the SM&CR will apply to every firm: the Senior Managers Regime, Certification Regime and Conduct Rules.

The new regime aims to:

- \* encourage staff to take personal responsibility for their actions;
- \* improve conduct at all levels; and
- \* make sure firms and staff clearly understand and can demonstrate who does what.

*Continued left-hand column, page 3*

## Industry News (continued)

Complaints Commissioner agrees with FCA's decision to reject a complaint but recommends a payment of £1,000 for distress and inconvenience for the FCA's poor handling of the complaint. The CC found that:

- \* the complaints team's efforts to fully understand the complainant's concerns and to get to the heart of the issue were inadequate; and
- \* responses to the CC's initial enquiries relating to the complaint were so poor that the Office of the CC had to arrange meetings with senior staff at the FCA and for them to instigate an internal review of the supervisory work.

[Click here for decision.](#)

Press release on the ECB's intended approach to implementing the FX global code.

[Click here for press release.](#)

Legal Entity Identifier Regulatory Oversight Committee (LEIROC) publishes consultation paper on corporate actions and data history in the global legal entity identifier system (GLEIS).

[Click here for consultation paper.](#)

Internal survey of FOS staff indicates a lack of confidence in senior management and other worker concerns.

[Click here for article.](#)

FT Adviser Freedom of Information Request to the FCA reveals more than 100 personal investment firms have notified the FCA that they have not met capital adequacy requirements in the last 12 months and 11 of these firms were now in the process of cancelling their regulatory permissions. Since 30/06/17 these firms have needed to hold the higher of £20k or 5% of their investment business income in order to meet capital adequacy rules. The year before, during the transition phase, it was £15k and before the rules came in, the capital adequacy requirement was £10k for firms with 25 advisers or less and the greater of £10k or an expenditure-based requirement for those with more than 25 advisers.

[Click here for article.](#)

Treasury announces Sir David Ramsden as new Deputy Governor of Markets and Banking at the Bank of England and Joanna Place as its Chief Operating Officer.

[Click here for press release.](#)

Law Society publishes Quick Guide to Money Laundering Regulations 2017.

[Click here for guide.](#)

In three months HMRC has had to pay more than £25m in tax refunds to pension savers who withdrew funds under pension freedoms. The way the system currently works is if a member withdraws £10,000 in month one, the scheme will assume that their annual income will be £120,000 a year and tax them accordingly.

[Click here for article.](#)

House of Lords issues call for evidence on artificial intelligence (AI) to consider the economic, ethical and social implications of advances in AI.

[Click here for call for evidence.](#)

After being told by the FCA to hold an additional £50m of capital because of recent growth in the scale and complexity of the business, Hargreaves Lansdowne has ruled out a special dividend.

[Click here for article.](#)

Government announces Data Protection Bill to implement General Data Protection Regulation (GDPR) (and the Data Protection Law Enforcement Directive) into UK legislation.

[Click here for consultation.](#)

Citywire reports on the increase of FCA penalties against individuals, with 64% of enforcement notices for individuals in 2016. The article also reports that this seems to be a global trend.

[Click here for article.](#)

Thomson Reuters publishes its 2017 report into conduct risk and culture.

[Click here for report.](#)

## CP17/25: Individual accountability - extending the Senior Managers and Certification Regime to all FCA firms (continued)

Key components of the regime are:

- \* Senior Managers Regime – which includes: designated senior manager functions (SMFs) and allocation of prescribed responsibilities, statements of responsibility, duty of responsibility, adherence to Senior Manager Conduct Rules.
- \* Certification Regime – for individuals whose role could cause significant harm to the firm or its customers (known as Certification Functions). These individuals do not need to be FCA approved but firms will need to check and confirm suitability of these people at least once a year and these individuals will need to comply with the Individual Conduct Rules.
- \* Individual Conduct Rules – are basic standards of behaviour that people performing financial services activities in firms are expected to meet. Firms need to train their staff on the conduct rules and how they apply to them. Firms will also need to report breaches of Conduct Rules resulting in disciplinary action to the FCA every year.
- \* Other staff (who are not ancillary staff) will also need to comply with the Individual Conduct Rules.
- \* Fit and Proper Requirements – checked at appointment and at least once a year.
- \* Regulatory References – prescribed information firms need to share with each other when an SMF, NED or Certification function holder moves from one firm to another.

To reflect the different sizes and complexities of firms the FCA proposes:

- \* A Core Regime to apply to all firms other than Limited Scope firms;
- \* An Enhanced Regime of extra requirements for firms whose size, complexity and impact warrant more attention and who meet certain criteria – e.g. AUM of £50bn or more, intermediary regulated business revenue of £35m or more per annum; and
- \* A Limited Scope Regime of reduced requirements for simplest/lowest impact firms – e.g. limited permission consumer credit firms, secondary insurance intermediaries and internally managed AIFs.

The CP contains a firm-checker for firms to see which of the above regimes will apply and a table listing the 'tools' that apply depending on the firm's regime classification.

For example, the following will only apply to the Enhanced Regime:

- \* Handover procedures;
- \* Other overall responsibility function;
- \* Overall responsibility; and
- \* Responsibilities maps.

The FCA's estimated total one-off and ongoing costs of the proposals to firms is on average £550m and £175m, respectively. The FCA believes it will incur costs of around £13.4m over 4 years as the new regime is developed and implemented.

The FCA has stressed that this consultation will be relevant to almost all financial services firms but not existing approved persons for, and other individuals within, ARs – the proposed approach for ARs will be covered in a separate CP. The FCA will also consult separately on operational aspects of the new regime, such as transition arrangements (including of existing approved persons) and changes to forms. These proposals will form the 'technical CP'.

Consultation period for this CP closes on 03/11/17 and final rules are to be published next year along with a date for them to commence.

[Click here for consultation.](#)

## CP17/28: Financial Advice Market Review (FAMR): implementation Part II and insistent clients

This CP suggests changes for the advice sector, of which some look to implement recommendations made by the Financial Advice Market Review (FAMR). The CP also includes new guidance on insistent clients and feedback to questions asked in GC17/4 regarding the definition of a personal recommendation.

The main proposals in this CP are as follows:

- \* Handbook changes to incorporate amendments to the Regulated Activities Order (RAO) regarding the definition of advice –
  - ➔ the definition of advice is to be amended so that it only includes personal recommendations, so authorised firms are to be exempt from the regulated activity of 'advising on investments' specified in Article 53(1) of the RAO unless they are providing personal recommendations. This change comes into force on 03/01/18 and additional guidance is to be added to PERG to provide more clarity on what meets the five tests in the CESR Guidance and amounts to a personal recommendation.

*Continued left-hand column, page 4*

## Industry News (continued)

As part of its review into patient capital the Treasury proposes a national investment fund to help cutting-edge British start-ups valued at over \$1 billion (£760 million) become world-leading unicorns. The UK is said to lead Europe in the creation of high value 'unicorns' but it significantly lags behind the US which accounts for 54% of the highest-valued start-ups.

[Click here for article.](#)

HMRC launches Small Business Online Forum and webchat service to provide information to small businesses and self-employed workers about, inter alia, starting/growing a business and completing tax returns.

[Click here for article.](#)

Research reveals the more consumers have to invest the more they are willing to pay for advice with those investing £200k happy to pay two-thirds more for advice than those investing £20k.

[Click here for article.](#)

Citywire's latest "Secret CIO" column explains what it looks for in a fund manager and provides readers with a short checklist of 5 key questions investors may wish to ask before parting with their money.

[Click here for article.](#)

Advisers have until 31/08/17 to comply with a HMRC direction before they risk incurring a £3k penalty. In September 2016 HMRC directed financial advisers, accountants and solicitors with UK resident clients who have an account with offshore money or assets in it, to send a letter provided by HM Revenue & Customs to those clients.

[Click here for article.](#)

Government announces launch of International Sanctions Bill to ensure the UK has the necessary legal powers to implement sanctions after Brexit, as well as greater flexibility in choosing when and how to introduce new measures.

[Click here for article.](#)

Point72, a family office which currently manages money for US billionaire, Steven Cohen, whose fund Sac Capital was banned by the SEC from managing clients' money after instances of insider trading were discovered, has reportedly been told by the FCA that it would not grant it regulatory approval for managing external money.

[Click here for article.](#)

TCC has published a blog that outlines the crossover between the call recording requirements under MiFID II and the GDPR.

[Click here for blog.](#)

Average time for firms to obtain FCA authorisation continues to fall with the latest figures showing the maximum time to determine a retail application is 65 weeks. In 2016 the maximum processing time for retail applications had increased to 74 weeks and then 90 weeks.

[Click here for article.](#)

Citywire publishes Criminal Finances Act checklist for wealth managers. The Act is due to come into force in September 2017 and introduces, inter alia, the criminal offence of failure to prevent the facilitation of tax evasion. Similar to the Bribery Act 2010, the Criminal Finances Act also includes a statutory defence if firms can demonstrate they have reasonable policies and procedures in place that are appropriate to the nature, scale and complexity of their businesses, show that they are adhered to, and that firms operate a zero-tolerance culture that is fully supported and enforced by senior management.

[Click here for checklist.](#)

The GAAR (General Anti-Abuse Rule) Panel rules tax scheme that saw directors' salaries paid using a process involving the purchase and immediate sale of gold "abnormal and contrived".

[Click here for article.](#)

It is reported that online mortgage broker Trussle is in early talks with the FCA regarding standardisation of the mortgage application process.

[Click here for article.](#)

It is reported that the government will be introducing a ban on pensions cold calling. A date has not yet been set but the ban will also include emails and text messages and it will be enforced by the ICO.

[Click here for article.](#)

## CP17/28: Financial Advice Market Review (FAMR): implementation Part II and insistent clients (continued)

- ➔ The Principles for Businesses, client's best interest and clear, fair and not misleading rules will apply to guidance to the same extent as they apply to provision of information. This would provide eligible complainants with access to FOS in some cases but clarity on the application of these rules is also contained in the CP.
  - ➔ For the avoidance of doubt the FCA has confirmed that where a customer does not receive a personal recommendation, firms would not be subject to the regulatory standards that apply when offering such advice.
  - ➔ The scope of the compulsory FOS jurisdiction is to be amended to enable FOS to consider complaints about guidance provided by a MiFID firm to the extent that it constitutes the MiFID ancillary service of investment research and financial analysis or other forms of general recommendations relating to transactions in financial instruments.
  - ➔ FSCS should be accessible for claims relating to guidance given by a firm using the RAO amendment and that also carries out designated investment business or protected non-investment insurance business.
  - ➔ TC will only apply to staff providing personal recommendations on relevant investments and not to those who only provide guidance, however for many firms client-facing staff will be giving both guidance and advice and will therefore remain in scope of TC.
  - ➔ On the issue of implicit personal recommendations, where a reasonable observer would view the adviser as presenting a recommendation as suitable for the customer or based on a consideration of their circumstances, then this should be treated as a personal recommendation.
- \* The FCA has proposed guidance to firms on some areas of uncertainty that its Advice Unit has discovered when speaking to firms developing automated advice models. The proposed Guidance is based on questions submitted to the Advice Unit so far and includes case studies in the following areas:
- ➔ Clients with uncertain investment needs
  - ➔ Assisting a client with the automated advice service
  - ➔ Firm's regulatory approach when providing a personal recommendation
  - ➔ Timing of disclosure of advice charges
  - ➔ Timing of suitability reports
  - ➔ Timing of disclosure of a KFD/KIID
  - ➔ Identification of clients who are unwilling to take any risk with their capital
- \* New Handbook Guidance on the treatment of insistent clients is proposed, as previously set out in the FCA's factsheet. Although the factsheet used the example of pension transfers the proposed Handbook Guidance would apply wherever a personal recommendation is given, not just for the transfer and conversion of safeguarded benefits. The Guidance will make it clear to advisers that where they facilitate a request that conflicts with the personal recommendation they should ensure:
- ➔ The original advice given complies with the requirements for giving a personal recommendation.
  - ➔ They have communicated clearly what their recommendation is and the reasons for their recommendation.
  - ➔ They have clearly communicated the risks of the alternative course of action proposed by the client and why they have not recommended it.
  - ➔ There is a clear distinction between the advice that is being acted against and any subsequent or concurrent advice - this might be achieved through distinct suitability reports.
  - ➔ They keep a record of the process followed and the communications between the firm and client, which make it clear the proposed action is against the personal recommendation and at the client's request.
  - ➔ Best practice would be for a record of the client's intention to proceed against advice to be in the client's own words.

The FCA has also taken the opportunity to highlight three sets of key regulatory changes effective in early 2018: PRIIPs (Packaged Retail Investment and Insurance Product) Regulation and MiFID II (03/01/18), and the IDD (23/02/18).

Responses to this CP are requested by 02/10/17. In September the FCA expects to publish its finalised guidance, incorporating GC17/4, [FG12/10](#) and [FG15/1](#), and in December the FCA plans to publish a Policy Statement.

The FCA and the Treasury have developed indicators that will serve as a benchmark against which the FAMR outcomes can be compared in future years against the success factors outlined in the FAMR final report. The assessment of the outcomes of FAMR will take place in 2019.

[Click here for consultation.](#)

## Industry News (continued)

High Court rules introducing broker did owe fiduciary duty of care in secret commission case. Medsted Associates Ltd (Medsted) (acting as broker) entered into an introducing broker's agreement with Collins Stewart (now Canaccord Genuity Wealth (International) Ltd) (Canaccord) (acting as a finance house). The purpose of the agreement was to enable wealthy individuals (the clients) to buy contracts for difference from first tier providers. Canaccord agreed to pay Medsted a share of the commission it would receive from the first tier provider. Medsted and Canaccord agreed that the clients would be told of the charges but not the split. Medsted issued proceedings against Canaccord for loss of commission from clients that Canaccord said had discovered the commission and funding rebate being paid and had decided to go direct.

The court tackled 11 issues in total, of which one was whether it was an implied term of the agreement between Medsted and Canaccord that Medsted would not mislead the clients on the split of commission. The judge ruled that:

- \* Medsted did owe the clients a fiduciary duty because:
  - ➔ a fiduciary duty can arise even where an agent has no authority to affect the principal's relations with third parties; and
  - ➔ the clients placed trust and confidence in Medsted because:
    - (a) the clients could not deal with first tier providers directly,
    - (b) Medsted implied to clients the terms offered were competitive,
    - (c) the clients were vulnerable to any disloyalty by Medsted and reliant on its good faith, and
    - (d) Medsted appeared to accept in cross-examination that it had a duty to act with good faith and not to mislead, be fair and transparent and act in the best interests of the clients.
- \* Medsted had breached the fiduciary duty by not disclosing the commission because it was in a position of conflict with the clients by failing to state the split.
- \* Canaccord's actions (in dealing directly with the clients) did amount to a breach of contract with Medsted, which caused Medsted to suffer loss. However, since the root of damage was Medsted's own breach of fiduciary duty, Medsted was only entitled to nominal damages.

[Click here for decision.](#)

Freedom of Information Request reveals the FCA has almost tripled its cyber security budget for 2017/18 from a spending level of £3.8m in 2016/17 to a budget of £9.8m for 2017/18.

[Click here for article.](#)

From 8<sup>th</sup> August the Government extended powers to act against those who don't report information required under financial sanctions legislation. The Government's new powers mean enforcement could now be taken against certain business areas outside of regulated financial services, including but not limited to, dealers in precious metals/stones, estate agents, independent legal professionals and trust or company service providers.

[Click here for legislation.](#)

Updated guidance from OFSI – Office of Financial Sanctions Implementation – available.

[Click here for updated guidance.](#)

It is reported that the PRA has received Brexit contingency plans from 401 firms and is now analysing them individually and collectively "to identify whether there are broader financial stability risks, which could arise from the collective execution of the contingency plans." A view on firms' submissions is expected in Autumn 2017.

[Click here for article.](#)

HMT report on implementation of Insurance Fraud Taskforce's recommendations published. Progress to date has involved work by the FCA, the Association of British Insurers (ABI), the British Insurance Brokers' Association (BIBA), the Chartered Insurance Institute (CII), the Insurance Fraud Bureau (IFB), and the Information Commissioner's Office (ICO), among others.

[Click here for report.](#)

ESMA updates guidelines on transaction reporting under MiFID II and MiFIR.

[Click here for updated guidelines.](#)

## FCA's new technologies and anti-money laundering compliance report

Earlier this year the FCA asked PA Consulting Group to survey and report on emerging technologies with the potential for enhancing financial firms' work to detect and prevent money laundering, and for helping make the UK a hostile environment for criminals' money. The report details findings of 3 months of research, including over 40 interviews with regulated firms, technology providers, and other bodies.

The FCA states that the report, which was written by PA, represents guidance. However, the FCA is working with the government to consider what lessons can be learnt from the report's findings, including in relation to the Regulatory Sandbox facility, and an update on this work will be published in due course.

Key findings from the report:

- \* For onboarding and maintenance, many firms had considered or trialed new technologies, with utility technologies perceived as the most popular.
- \* For client screening, firms were particularly focused on using analytics techniques and machine learning to increase the accuracy of their screening rates to diminish the impact of false positives.
- \* Transaction monitoring was the area where new technologies were broadly considered to have the most potential – particularly in using data analytics, machine learning and natural language processing (NLP) to enable firms to spot suspicious transactions and assess their risk in real time.
- \* New technologies were also considered to have the potential to make a positive impact on reporting and management information (MI) – particularly through the use of data visualisation techniques to allow firms to gain insights into their customer base and better manage their AML operations.
- \* Of the various technologies considered during the review across the AML lifecycle, the most highly regarded by respondents were those related to data analytics, machine learning and NLP all of which were considered to have potential for transforming almost every part of the AML compliance lifecycle.
- \* Many respondents in the technology sector felt that they had technologies that were proven, robust and able to significantly improve the way in which regulated firms approach AML compliance. However, they face a range of obstacles to wider adoption.
- \* Views on the FCA were generally positive. However, respondents also highlighted a number of areas where they would prefer to see greater action taken by the regulator, including updating regulations/guidance to reflect the emergence of new technologies.

In conclusion, the study finds it is clear that new and emerging technologies have genuine potential to have a transformative impact on AML compliance, both in helping to prevent money laundering and in reducing the cost of compliance. However, it is equally clear that substantial barriers to widespread adoption exist, which may well continue to limit the progress of ongoing innovation in AML compliance.

[Click here for report.](#)

## Enforcement Actions and Prosecutions

Court grants confiscation order for £350k against convicted insider dealer, Damian Clarke, who pleaded guilty to nine counts of insider dealing and was given two years in prison in June 2016. The order must be paid within three months or Clarke faces an additional three years in prison.

[Click here for press release.](#)

Former UBC Compliance Officer, Fabiana Abdel-Malek, has pleaded not guilty to five charges of insider dealing. The FCA alleges Abdel-Malek passed on inside information about the proposed takeovers of five different companies to her associate Walid Anis Choucair, who is thought to have made £1.4m profit by trading on the information between June 2013 and June 2014. At the time of the trades Abdel-Malek was part of the firm's corporate lending, private equity and structured and leveraged finance team.

[Click here for article.](#)

It is reported that, following voluntary agreements with a further 5 firms in the first half of 2017, in the last 18 months the FCA has stopped 21 firms carrying out pension transfers.

[Click here for article.](#)

Mortgage brokerage firm, Mortgage Matters has agreed to conduct a customer contact and redress programme with debt consolidation customers that may have received unsuitable advice from the firm between January 2007 and July 2014. The firm will need to appoint an appropriately skilled third party, agreed in advance with the FCA, to run the communication and redress programme on the firm's behalf. The action follows the firm's admission that it might not have fully considered other options such as debt management or insolvency arrangements.

[Click here for notice.](#)

## Industry News (continued)

Government launches Consultation on the Security of Network and Information Systems Directive, which is separate to the GDPR but is due to come into force the same day (25/05/18). Businesses that are identified by Member States as "operators of essential services" will have to take appropriate and proportionate security measures to manage risks to their network and information systems. Operators of essential services will also be required to notify serious incidents to the relevant authority. Key digital service providers (search engines, cloud computing services and online marketplaces) will also have to comply with the security and incident notification requirements established under the Directive. In the Directive the 'operator of an essential service' is defined as a public or private entity that meets the following criteria:

- \* provides a service which is essential for the maintenance of critical societal and/or economic activities;
- \* the provision of that service depends on network and information systems; and
- \* an incident affecting those systems would have significant disruptive effects on the provision of that service.

Annex 1 of the consultation contains a table of the proposed sectors, essential services, and identification thresholds to be used to determine these operators.

[Click here for consultation.](#)

The Joint Committee of the European Supervisory Authorities (ESAs) issues updated Q&A and flow document on the PRIIPs KID.

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

The Pensions Regulator (TPR) has published a revised description of a professional trustee and its monetary penalties policy. Anthony Raymond, TPR's Acting Executive Director for Regulatory Policy, said: "It is vital that trustees have the right skills to ensure that their pension scheme is managed effectively but it is also right that they are held to account if they fail to provide proper governance."

[Click here for press release.](#)

FOS upholds complaint against firm for failing to fully consider and explain the risks of income drawdown compared to an annuity and because the firm's suitability report to the complainant made little reference to the risks associated with drawdown. The firm was also criticised for trying to use hindsight to justify the advice provided in 2010. The firm has been ordered to return the complainant to the position he would be in now but for the unsuitable advice, plus £200 for the trouble and upset caused.

[Click here for article.](#)

EC publishes draft text of a Delegated Regulation supplementing MiFIR with regard to the treatment of package orders.

[Click here for draft text.](#)

It is reported that one of the stars of Channel 4's "Child Genius", would like to use his love of mathematics to help others by becoming a financial adviser "or something".

[Click here for article.](#)

ICO holds a request for information and messages from the Cabinet Office's (CO) cloud communications system (Slack) as vexatious under the Freedom of Information Act 2000 (FOIA) because of the burden involved in complying with the request. Although mainly used for internal communications the CO acknowledged that at least some messages sent through Slack would concern official business and be held for the purposes of the FOIA. This case highlights similar issues under the Data Protection Act 1998 in respect of subject access requests.

[Click here for decision.](#)

ICO blog clarifies consent under the GDPR saying, "you've got to make sure the consent you've already got meets the standards of the GDPR. If not, you'll have to refresh it!". However, the blog also refers to other ways to lawfully process personal data under the GDPR, for example, the legitimate interests condition.

[Click here for blog.](#)

L&G is considering using a selfie-based life quote app, which allows the user to take a selfie with their device, and based on the picture it estimates one's age, BMI and provides an indicative price for term assurance.

[Click here for article.](#)

## Enforcement Actions and Prosecutions (continued)

The four former Lloyds employees that used wealthy client money to fund their luxury lifestyles have been given custodial prison sentences along with three others. One victim is reported to have lost over £700k in three days.

[Click here for article.](#)

Former adviser for Noisnep, Darren Say, has been found guilty on two counts of fraud following a retrial. In January 2016 police charged Say with "fraud while occupying a position in which he was expected to safeguard, or not to act against, the financial interests of Noisnep Sipp members between January 1, 2009 and January 20, 2016".

[Click here for article.](#)

An adviser that was fined (£117k) and banned by the FCA in June 2012 for forging investment documents and investing his clients' money in a high-risk unregulated collective scheme, has finally been convicted of 16 counts of forgery. Martin Rigney, of now bankrupt Topps Rogers Financial Management, will be remanded in custody and sentenced on 1/9/17.

[Click here for article.](#)

Lloyds agrees redress scheme with the FCA to compensate approximately 59k customers a total of £283m for fees incurred after the customers fell into mortgage arrears. Payments will be offered for potential distress and inconvenience, and consequential loss, which customers may have experienced as a result of not being able to keep up with unsustainable repayment plans.

[Click here for press release.](#)

Upper Tribunal upholds FCA decision from September 2015 to fine and ban Charles Palmer, majority shareholder and CEO of Standard Financial Group, which comprised three subsidiaries, of which one was an adviser network called Financial Limited, for failing to act with due skill, care and diligence in carrying out his role as a director of, and CF1 holder for, the subsidiary firms. In 2015, the FCA said that Palmer had failed to take reasonable steps to make sure that its appointed representatives (ARs) and registered individuals (RIs) provided suitable advice - the network had 397 ARs and 516 RIs at its peak in March '11. Mark Steward, the FCA's executive director of enforcement and market oversight, said "his [Palmer's] conduct was made worse by the fact that he did not learn lessons from, and address the failings highlighted to him in, 2010". The FSA's 2010 Final Notice said Palmer had "failed to take reasonable steps to ensure that Financial Limited's business was organised in such a way that it could be controlled effectively, both in relation to oversight and monitoring of its ARs and RIs and during a period of repaid expansion". The Upper Tribunal Decision states "the essence of the Authority's case against Mr Palmer is that he failed to take adequate steps to ensure that customer risk was being effectively managed. In particular, the Authority is concerned that the risk of customers not being treated fairly was not being adequately addressed."

[Click here for press release](#) and [decision](#).

ASA upholds complaints regarding American Express's Platinum Cashback Everyday Credit Card 5% cashback card advert for being misleading, lacking appropriate qualification of associated limitations/conditions and for exaggeration under the Broadcasting Advertising Code (BCAP).

[Click here for ruling.](#)

FCA cancelled Samsara Nepal Financial Services Ltd's registration as a small payment institution (SPI) for failing to pay outstanding regulatory fees and for failing to respond adequately to the FCA's requests for the balance to be paid. The final notice states the firm "failed to demonstrate a readiness and willingness to comply with its ongoing regulatory obligations which include dealing with the Authority in an open and co-operative way."

[Click here for final notice.](#)

FCA issues warning notice to Interactive Brokers (UK) Ltd for breach of Principle 3 concerning its poor market abuse systems and controls, which resulted in the firm failing to identify and report to the FCA, on three separate occasions, transactions which it had reasonable grounds to suspect amounted to insider dealing. The firm now has the right to make representations to the Regulatory Decisions Committee, which, in the light of those representations, will decide on the appropriate action and whether to issue a decision notice.

[Click here for warning notice.](#)

The Pensions Regulator is prosecuting former BHS owner Dominic Chappell for failing to comply with three notices issued during an investigation into the store's sale. Under Section 72 of the Pensions Act 2004, TPR has the power to require pension schemes, employers and third parties to provide information and documents relevant to its functions and failure to provide such information without a reasonable excuse is a criminal offence, which can result in an unlimited fine.

[Click here for press release.](#)

## Industry News (continued)

MoJ issues guidance to help claims management firms in particular understand the rules and expectations in handling cases relating to Plevin v Paragon Personal Finance, in which a failure to disclose to a client a large commission payment for a single premium PPI policy was found to make the relationship between the lender and borrower unfair under s140A of the Consumer Credit Act 1974.

[Click here for guidance.](#)

## FCA Press Releases

FCA announces appointment of Maggie Craig as head of department in Scotland.

[Click here for press release.](#)

FCA publishes details of the number of skilled persons reports commissioned in Q1 of 2017/18.

[Click here for press release.](#)

As part of its supervisory work FCA announces a two-year PPI campaign, which is to run up to the complaint deadline (29/08/19). The campaign is being funded by 18 firms that together receive more than 90% of complaints about the sale of PPI.

[Click here for press release.](#)

## FCA Speeches

**The Future of LIBOR** by FCA CEO, Andrew Bailey

[Click here for speech.](#)

**Overview of competition at the FCA** by Mary Starks, Director of Competition and Economics at the FCA

[Click here for speech.](#)

## Other FCA Publications

[Occasional Paper 28](#) - Preventing financial distress by predicting unaffordable consumer credit agreements: An applied framework

[CP17/27](#) - Assessing creditworthiness in consumer credit: Proposed changes to our rules and guidance

[FCA and the FCA Practitioner Panel joint survey findings](#) on industry views of the FCA's performance

[CP17/24](#) - Information about current account services

[MS15/2.3](#): Asset management market study remedies – timeline

[Catching a falling knife](#): an analysis of circuit breakers in UK equity markets

[FCA Board Minutes](#) from 21 and 22 June 2017

[FCA Gifts Log](#) for Q2 2017

[Allowances and expenses](#) for Andrew Baily, John Griffith-Jones and Christopher Woolard published.

[Occasional Paper No. 30](#): Best buys and own brands: investment platforms' recommendations of funds

ScamSmart [poster](#), [leaflet](#) and [infographic](#).

[CP17/31](#): Market infrastructure providers - 2017/18 fee rates

[CP17/30](#): PSR regulatory fees 2018/19 and onwards

[Impact assessment](#): Changes to Supervision Model

[History of PPI Regulation](#)