



Welcome to the latest edition of Gem Compliance's monthly regulation newsletter. The aim of the newsletter is to tailor industry news in an easily digestible format. As such, not all sources of industry information and FCA publications (and no PRA publications unless specified) will be covered. Therefore clients and associates of Gem Compliance should periodically check the FCA's website for other developments.

After mixed messages were received by the industry from the FCA last month regarding insistent clients, this month the FCA published a [factsheet](#) clarifying its requirements and giving firms the green light to deal with insistent clients. The FCA has also published final rates for 2015/16 fees and levies along with its fee calculator.

In other news, the Government has decided to delay the ban on corporate directors until 2016.

The FCA's monthly Regulation Round-up was issued, which you can access [here](#). The FCA's latest Policy Development Update (Issue 23), which provides a list of recent and upcoming publications, was also released and can be accessed [here](#).

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

- * CP15/17: Capital resources requirements for Personal Investment Firms (PIFs)
- * TR15/7: Delegated authority: Outsourcing in the general insurance market
- * PS15/11: Buy-to-let mortgages – implementing the Mortgage Credit Directive Order 2015, feedback on CP15/3 and final rules
- * PS15/12: Proposed changes to our pension transfer rules, feedback on CP15/7 and final rules
- * DP15/4: Developing General Insurance Add-ons Market Study – Remedies: Value Measures
- * PS15/15: FCA regulated fees and levies
- * DP15/5: Smarter Consumer Communications
- * FCA Speeches
- * Industry News
- * Enforcement Actions and Prosecutions
- * Other FCA News and Publications

Industry News

Industry body requests common sense approach from regulator on call recording under MiFID II.

[Click here for article.](#)

FTAdviser reports that the FCA is planning a formal review of the FSCS funding model by the end of 2016.

[Click here for article.](#)

In a pensions liberation complaint concerning the transfer of a pension worth almost £40k from Aviva to Capita Oak Pension Scheme, Tony King, Pensions Ombudsman, is reported to have said "I cannot apply current levels of knowledge and understanding of pension liberation/scams or present standards of practice to a past situation."

[Click here for article.](#)

ABI has joined calls for the FCA to re-examine the distinctions between advice and provision of information to enable providers to create innovative solutions to help address the advice gap.

[Click here for article.](#)

FCA confirms disclosure of adviser charging structures on website is "good practice" but not mandatory.

[Click here for article.](#)

The Pensions Ombudsman rules against Axa and St James' Place in relation to a complaint concerning pension drawdown delays.

[Click here for article.](#)

After announcing a consultation on pension exit charges, which is to begin next month, the Government has published letters it sent to the FCA urging them to consider whether unnecessary and unfair charges levied against those seeking to access pensions freedoms could be a breach of TCF.

[Click here for article.](#)

Andrew Tyrie is re-elected as chairman of the Treasury Select Committee.

[Click here for article.](#)

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CP15/17: Capital resources requirements for Personal Investment Firms (PIFs)

This CP covers the delayed prudential rules from PS09/19 of the RDR for Personal Investment Firms (PIFs). The proposals for the majority of PIFs are to have capital resources requirements that are the higher of:

- * A new minimum capital resources requirement of £20,000, replacing the current £10,000 minimum.
- * The introduction of a new income based requirement - PIFs must hold capital resources that are at least equal to a percentage of the relevant annual income earned in the previous year. This will be set at 5% for most PIFs. This calculation replaces the current EBR (Expenditure Based Requirement) for PIFs with more than 25 advisers.

No changes are proposed to existing PII requirements.

The consultation period closes on 7/9/15 and the FCA has released an online calculator for firms to determine what capital resources would be required under the proposals. The FCA means for the proposals contained in CP15/17 to supersede the previously made rules.

The new requirements will not commence until 30 June 2016 and there will be a 12-month transitional period where the minimum requirement will be £15,000 (6 months later than originally planned). However, the £20,000 level will come into force 6 months earlier than originally planned in June 2017.

[Click here to access CP.](#)

TR15/7: Delegated authority: Outsourcing in the general insurance market

This review looked at firms' oversight of outsourced arrangements in relation to general insurance and the potential impact of failings in this area. The FCA found:

- * Insurers don't always treat delegated arrangements as outsourcing;
- * Scope for improvements to due diligence and the way they manage such arrangements;
- * Insufficient focus and consideration of how the interests of customers might be impacted by outsourcing;
- * Some intermediaries undertaking product design activities don't recognise the extent of their responsibilities as product providers; and
- * Insufficient oversight of the performance of products and delivery of services.

Firms are advised to review their activities in the context of this thematic review because FCA supervisory work will touch on this.

[Click here to access TR.](#)

PS15/11: Buy-to-let mortgages – implementing the Mortgage Credit Directive Order 2015, feedback on CP15/3 and final rules

The FCA has issued its final rules, which transpose the requirements of the Mortgage Credit Directive into UK regulation. By 21/3/16 all firms wishing to lend, administer, intermediate, arrange or provide Consumer Buy to Let (CBTL) mortgages will need to be registered with the FCA. BTL customers acting wholly or predominantly for the purpose of business will not fall within the scope of the new rules.

Alongside the policy statement (PS) the FCA has also published a specimen application form to assist firms in planning their applications, which the FCA will start accepting later this summer. Further information regarding registration has also been set out in the PS in response to question 1. The FCA urges firms to apply as soon as possible after registration opens.

[Click here to access PS.](#)

Industry News Continued.....

FOS rejects time-bar defence in a complaint concerning advice given in 2005 in relation to an unregulated investment scheme.

[Click here for article.](#)

FOS reports increase in complaints concerning unregulated collective investment schemes (UCIS) following new rules introduced in Jan '14 by the FCA, which restrict the promotion of UCIS to only sophisticated and high net worth investors. The new rules have caused some investors to question the advice they originally received.

The schemes are unregulated, however the associated advice is often regulated and therefore falls within the FOS's jurisdiction. If the FOS finds the advice unsuitable, the firm will be required to put the customer back into the position they would be in had they not received the advice. The FOS also reminds firms that experienced investors may not always be eligible to receive UCIS promotions.

[Click here for article.](#)

After being formally adopted earlier this year the Regulation of European Long-term Investment Funds (ELTIFs) is now in force.

[Click here to access the Regulation.](#)

JMLSG updates its guidance notes for private equity firms and activity – chapter 13 of part II. The guidance focuses on money-laundering issues in relation to fundraising activities (marketing and raising funds) and transactions (investing capital, syndicating equity; portfolio management; acquisition/sale of debt instruments/derivatives activities; investment realisation and related transactions).

[Click here to access updated guidance.](#)

Government announces delay to the implementation of restrictions on corporate directors until 2016.

[Click here to access update.](#)

Enforcement Actions and Prosecutions

The Pensions Regulator has issued a £382k contribution notice against Richard Williams who purchased DB firm, Carrington Wire Defined Benefit Pension Scheme, before the regulator or scheme trustees knew of the sale.

[Click here for article.](#)

In a case brought by the FCA, eight individuals have been convicted and imprisoned for their involvement in operating an unauthorised collective investment scheme, which caused 110 investors to lose £4.3m.

[Click here for press release.](#)

PS15/12: Proposed changes to our pension transfer rules, feedback on CP15/7 and final rules

The consultation paper (CP) in March proposed rule changes to reflect amendments to the Regulated Activities Order 2001, which makes advising on the conversion or transfer of safeguarded pension benefits into flexible benefits a regulated activity. The amendments also ensure COBS requirements apply to all pension transfers.

The Policy Statement (PS) confirms:

- * Removal of the crystallisation exemption;
- * A full review on the way transfer value analysis calculations are conducted;
- * What is meant by 'independence';
- * Dealing with insistent clients is OK - this month the FCA also published a factsheet regarding insistent clients, which can be accessed [here](#);
- * Further work on definition of 'safeguarded benefit';
- * Potential advice requirements for ex-pats – may need to get advice twice; and
- * The likely one-off costs and resources needed for advice on pension transfers.

[Click here to access PS.](#)

DP15/4: Developing General Insurance Add-ons Market Study – Remedies: Value Measures

The discussion paper (DP) proposes a number of measures that could be used to improve transparency and increase value across the entire general insurance market. Three potential options to measure value are suggested for discussion:

- * claims ratio as a stand-alone value measure;
- * a package of claims frequencies, claims acceptance rates and average claims pay-outs;
- * claims ratios and claims acceptance rates.

The FCA is asking for feedback on the discussion paper by 24/9/15.

[Click here to access DP.](#)

PS15/15: FCA regulated fees and levies

The FCA has confirmed final rates for annual regulated fees and levies for 2015/16 and authorised firms will receive invoices for fees from June 2015 onwards.

The final rates fee calculator is now available and firms subject to the Life and Pensions Intermediation sub-class should note the calculator doesn't include the additional FSCS interim levy. Therefore, this will need to be calculated separately using the guidance on the fee calculator webpage.

[Click here to access the PS.](#)

[Click here to access the FCA's online calculator.](#)

DP15/5: Smarter Consumer Communications

Communications are one of the fundamental elements of the industry and are a significant contributor to the customer journey/experience, therefore it's important that communications are effective.

The purpose of this discussion paper (DP) is to encourage firms to think about alternative and innovative ways of engaging with their customers. The FCA has identified seven areas of focus: terms and conditions, general insurance terminology; fees and charges; options at retirement; investment advice; and the Ombudsman and Financial Services Compensation Scheme.

[Click here to access DP.](#)

Enforcement Actions and Prosecutions Continued.....

All three Keydata individuals who were fined by the FCA last month have referred their cases to the Upper Tribunal. Stewart Ford, the Founder of Keydata, has said he will file a claim against the FCA and PwC (the administrator) for £650m.

[Click here for article.](#)

Lloyds Banking Group has been fined £117m (with early settlement discount) by the FCA for failing to treat PPI complainants fairly. This is the largest retail fine ever imposed by the FCA. In March 2012 Lloyds issued an overriding principle to complaint handlers stating "its sales processes were compliant and robust unless told otherwise." It also didn't inform complaint handlers of failings it had identified in its sales during the relevant period. This led to a significant number of customers having their complaints unfairly rejected.

[Click here to access press release.](#)

FCA has banned Kevin Allen of NMB (a mortgage intermediary), who also held controlled functions at New Life (equity release firm), from conducting any regulated activity for failing to act with honesty and integrity. Allen made illegitimate transfers between the two firms totalling £1m. Allen was also found to have fabricated evidence approving one transaction and provided a falsified bank statement to New Life's auditors. Allen would have been fined just under £250k if it weren't for financial hardship.

[Click here to access press release.](#)

FCA announces investigation into Quindell PLC in relation to public statements concerning the firm's financial accounts for 2013 and 2014.

[Click here to access press release.](#)

FCA fines Asia Resource Minerals plc over £4.5m (with early settlement discount) for various breaches of the Listing Rules.

[Click here to access press release.](#)

Court of Appeal rejects appeal by Raj Von Badlo and upholds his two-year prison sentence for recklessly making false representations to investors and promoting a collective investment scheme without authorisation.

[Click here to access press release.](#)

Adam Hawkins, salesman and involved in the management of three land banking companies, has been sentenced to 6 years and 9 months imprisonment for his involvement in operating an unauthorised collective investment scheme, which resulted in over 110 investors losing at least £4.3m.

[Click here to access press release.](#)

Police investigate FCA-authorized firm, Cornerstone Friendly Society, for alleged fraud and money laundering offences concerning pension investments.

[Click here for article.](#)

FCA Speeches

“Debating trust and confidence in banking,” by Martin Wheatley, FCA Chief Executive

Wheatley confirms: governance and structure; individual accountability; and the importance of middle management are issues at the heart of the trust debate. Firms are encouraged to look beyond whether something is within a firm’s risk appetite and focus on the principle behind it.

The FCA is aware of studies that have concluded culture in banking is able to impact the ‘honesty norm’ of a workforce, therefore the FCA sees itself as responsible for setting the bar for the industry. It believes “heightened accountability should reduce the need for individual pursuits by regulators” and the certification aspect of the new Senior Manager’s Regime will remove the ‘blind spots’ in middle management associated with the existing regime. Where poor conduct results, the regulator will be able to take action along side the firm, where this is needed.

[Click here for speech.](#)

“Regulation – supporting vibrant markets,” by Martin Wheatley, FCA CEO

Wheatley describes pre and post-crisis regulation and highlights one of the lessons learnt from the decade; “positive consumer outcomes support long-run, sustainable prosperity.” Wheatley discusses competition and financial innovation against a backdrop of 80% of customers banking with one of four providers and, statistically speaking, an individual is more likely to divorce their spouse than leave their current account provider.

The FCA doesn’t want the UK to be seen as “an unhelpful place to conduct business” but the right balance needs to be struck between innovation/competition and protection. Consumers need the power to drive markets otherwise another PPI-style issue will arise. Wheatley comments that it was a lack of consumer control that allowed PPI to do so well when it “should not have been as successful as it was: generating £45bn of premiums or a 490% return on equity.”

Wheatley concludes by saying, in relation to the pursuit of sustainable growth, regulation “can, and should, be friend to both business and consumer.”

[Click here for speech.](#)

“Putting the customer at the centre of the business: is it a long road ahead for the FCA?” by Christopher Woolard, Director of Strategy & Competition at the FCA

The FCA expects firms to treat its customers fairly and put customers at the centres of their business models. Woolard states there are three key components to achieving this: culture in firms; accountability; and competition and innovation.

On culture, Woolard said, “firms are starting to take a more proactive and forward-looking approach to risk, and senior management and boards are much more engaged with the conduct agenda.” However, it is acknowledged that changing culture is a “long-haul process.” When speaking about accountability, Woolard referred to the new Senior Manager’s Regime and the final report and recommendations in the Fair and Effective Markets Review. In relation to competition, the FCA believes the protection of consumers and market integrity are helped by competition, therefore the FCA wants to encourage new entrants.

[Click here for speech.](#)

Other Speeches

“Capital Markets Union – a regulator’s perspective” - [click here for speech.](#)

“Confidence to crisis and back” - [click here for speech.](#)

“New priorities for banking reform” - [click here for speech.](#)

Enforcement Actions and Prosecutions Continued.....

Insolvency Service orders the liquidation of two companies, KJK Investments Ltd and G Loans Ltd, which operated a mis-leading pension liberation scheme involving pension-backed loans provided by G Loans on the condition that customers bought shares in KJK.

[Click here for article.](#)

Judge rejects Openwork appeal and upholds £6k award for damages in a breach of duty case concerning the provision of unsuitable investment advice.

[Click here for article.](#)

Other FCA News and Publications

CP15/18: Fair, reasonable and non-discriminatory access to regulated benchmarks - consults on additional fair, reasonable and non-discriminatory (FRAND) rules under MAR 8 for benchmark administrators. [Click here to access CP.](#)

Market Watch 48 – Newsletter on market conduct and transaction reporting issues. This issue covers trade volume advertising; STR observations; and pre-trade controls for direct electronic access. [Click here for issue 48.](#)

PS15/14: Restrictions on the retail distribution of regulatory capital instruments - contingent convertible securities (CoCos) and mutual society shares. [Click here for PS.](#)

CP15/20: Investing in authorised funds through nominees – This CP proposes to revoke rules and guidance designed by the FSA and effective from 31/12/15 because of other planned work in relation to: firms’ communications with customers; and a market study on asset management. [Click here for CP.](#)

CP15/19: Quarterly Consultation Paper No. 9 – includes proposals for the transposition of the updated UK Corporate Governance Code and suggested technical changes to the regulatory capital framework for SIPP operators. [Click here for CP.](#)

FCA issues statement regarding the regulation of binary options in the UK. [Click here for press release.](#)

FCA issues statement on the impact of Plevin v Paragon Personal Finance Ltd on PPI complaints, in which a judge deemed the relationship between the lender and borrower unfair because the lender failed to disclose to the borrower the large commission payment due for a single-premium PPI policy. [Click here for press release.](#)

FCA appoints new Director of Enforcement and Market Oversight and new Director of Risk. [Click here for press release.](#)

FCA announces two further PSR Board appointments. [Click here for press release.](#)

FCA issues call for input regarding specific rules and policies that are restricting innovation or that should be introduced to facilitate innovation in digital and mobile solutions. [Click here for press release.](#)

