



Issue 44 - May 2018

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. 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.

Highlights

[The Data Protection Bill](#) has received Royal Assent to become Data Protection Act 2018 (DPA '18), implementing the GDPR in the UK from 25/05/18, repealing and replacing the DPA '98, and ensuring alignment of the UK and EU data protection regimes post-Brexit to enable the UK to freely exchange personal data with the EU.

[The FCA](#) will be moving offices to Stratford from 1 July 2018, which means that any references in internal documents to the FCA's address need to be changed by 30 June.

Other Newsletters and Updates

[FCA Regulation Round up](#)

[FCA Policy Development Update](#)

[ICO Newsletter](#)

Main Features

GC18/2: Fairness of variation terms in financial services consumer contracts under the Consumer Rights Act 2015 (CRA)

The regulator is consulting on new guidance on variation terms under unfair terms legislation with the aim to clarify its views on the appropriate way to assess the fairness of variation terms. The draft guidance is based on recent case law and legislation and focuses on the validity of the reasons for varying a term, the transparency of the variation term and the provision for notice in the variation term.

Firms should also consider the provision for freedom to exit the contract should the contracted party not agree to the variation.

Comments are due by 7 September and finalised guidance is expected towards the end of the year.

FCA calls for more innovation to help consumers find the best mortgage deal

The FCA has published its [interim report into the mortgage market](#). The regulator found that competition in the mortgage market is working well, with high rates of switches after initial lock-in periods and good customer outcomes.

The FCA also identified that certain areas are in need of improvement, including:

- Simplification of early stage identification of products consumers qualify for;
- Barriers to innovation in mortgage sales, including those imposed by FCA advice, rules and guidance;
- Difficulties in broker comparison; and
- Helping longstanding borrowers who cannot switch products.

The FCA is consulting on its interim findings, proposed solutions and intends to publish a final report around the end of the year. The FCA has already been [challenged](#) on the publication.

CP18/11: Reviewing the funding of the Financial Services Compensation

Scheme (FSCS)

Following CP17/36, the FCA now confirms that, from 1 April 2019, it will:

- merge the Life and Pensions and Investment Intermediation funding classes
- require product providers to contribute around 25% of the compensation costs which fall to the intermediation classes
- move pure protection intermediation from the Life and Pensions funding class to the General Insurance Distribution class

The FCA is further consulting on their proposed approach to ensure that Personal Investment Firm (PIFs) have PII policies that do not limit claims, where the policyholder or a third party is insolvent, or where a person other than the PIF is entitled to make a claim on the policy. Comments are due by 1 August 2018.

FCA Speeches

[Brexit: what does it mean for financial markets to be open?](#) by Andrew Bailey, Chief Executive of the FCA

[Asset management: A regulatory perspective](#) by Andrew Bailey, Chief Executive of the FCA

[Blockchain: considering the risks to consumers and competition](#) by Mary Starks, Director of Competition, FCA

[High-cost credit: what next?](#) by Andrew Bailey, Chief Executive of the FCA

Other publications

[PS18/9](#): Recovering the costs of the Office for Professional Body Anti-Money Laundering Supervision (OPBAS)

[Payment Accounts Regulations](#): Final Linked Services List

[To-do-list tension](#): UK households face an average of 33 tasks a week

Enforcement Actions and Prosecutions

[A former](#) City worker has been jailed for 16 weeks after uploading pictures of a

female colleague to pornographic websites. Davide Bucherri was also ordered to pay £5,000 compensation to the victim and £1,000 in court fees.

[RBS](#) has agreed to a \$4.9 billion (£3.6 billion) settlement with the US Department of Justice over its sale of mortgage-backed securities ahead of the financial crisis. Barclays also reached a settlement for the sum of £1.4 billion.

[Two men](#) have been jailed for an elaborate pensions scam. Anthony Lock and Ray King set up a company called Successful Pensions which claimed to offer pension liberation and offered its applicants a payment of half of their accumulated pension pot and the other half would be invested in fake eco-friendly companies. The Dorset based scammers accumulated almost £1m from the scheme.

[Phones4U](#) founder John Caudwell has been ordered by a judge to pay £500000 to wealth manager and chief executive Nathalie Dauriac of Signia Wealth, following a High Court case in which Ms Dauriac alleged that Mr Caudwell managed a campaign to oust her from her employer.

Industry News

[HMRC](#) has increased its demands for personal information from professional services firms to aid them in investigations in tax crimes. The number of requests jumped by almost 20% in 2016-17 in comparison to 2015-16.

[The FCA](#) has warned about an increase in loan fraud with more than 4700 cases reported in 2017. Fraudsters contact those looking for loans online to offer them a loan provided they pay a fee upfront for a loan that is never made available.

[HM Treasury](#) has decided that claims management companies will be regulated by the FCA and they will have to demonstrate “suitable competency”.

[The vice-president](#) of the European Commission has said in a speech that, in order for the UK to maintain access to the European market, it would have to rely on the system of equivalence and thus mirror its regulatory system. Currently, the US and Singapore benefit from this measure.

[The FCA](#) has been urged to provide more clarity on calculations of fund transaction costs, as currently the methodologies under Packaged Retail and Insurance-based Investment Products (PRIIPs) and MiFID II diverge.

[Fos](#) has seen a steady decline in complaints against financial advisers, since financial service firms have been given more time to resolve complaints themselves.

[A KPMG](#) partner has expressed his concerns at wealth managers and discretionary fund managers not setting enough capital aside in case the company would have to cease trading.

[Former technical](#) specialist at the FCA, Rory Percival, has said in an interview that the regulator is increasing its scrutiny of financial advisors' cash flow planning.

[Financial advisors](#) involved in pension calculations are being urged to check the last six months of calculations after an HMRC pension calculator glitch was spotted by Royal London.

[Chancellor Philip Hammond](#) has said that he is “determined to maintain” the UK's world-leading position post-Brexit. The Chancellor also announced the appointment of fintech envoys for Wales and Northern Ireland, who will be championing and supporting fintech growth in the regions.

[Grid](#), the industry body for the group risk protection sector has been raising awareness to counter the misconception that suicide would not be covered under group life assurance.

[The Pensions Ombudsman](#) has admitted that errors were made in a case concerning a claim. In the last year, the Ombudsman has received 58 complaints, mostly about its processes and delays.

[Following queries](#) into inducement rules, the FCA has clarified that although it scrapped its guidance on inducements and conflicts of interest in retail investment advice, it has made a change to its “restrictions on the payments which can be received by firms providing investment advice to retail clients in the UK to apply in connection with firms' business of advising”, which includes organisation and attendance of conferences.

[The Pensions Regulator's](#) chairman has stated that the body will become tougher on employers who dodge pension duties. The regulator has also had a budget increase of £4.3m and aims to expand its workforce by 12 per cent and launch a new anti-scams campaign.

[An MP](#) has labelled the HMRC's crackdown on contractors who used tax schemes 'immoral'. Stephen Lloyd, Liberal Democrat MP for Eastbourne, said that HMRC should go after the promoters of the schemes instead.

[Andrew Bailey](#), chief executive of the FCA, has warned that consumers may not understand the impact of sharing their data post GDPR implementation. Citing research carried out for Financial Services Consumer Panel, Mr Bailey noted that most people do not read terms and conditions in detail and instead redirect the responsibility to regulator or the ICO.

[Fiona McBain](#), chair of the £7.3bn Scottish Mortgage investment trust, has warned of volatility in its London Stock Exchange portfolio. Ms McBain quoted political instability as the reason for the volatility, but that investors should focus on long-term trends.

[Royal London](#) has published figures showing how pensioners are withdrawing money by analysing data from 17,000 of its own customers. The firm's director of policy Steve Webb, said that the majority of the withdrawal figures were low single figures which showed 'little reason for concern'. [Meanwhile](#), data from the Pension Regulator shows that £14.3bn has been transferred between March 2017 and 2018 and the body is [issuing warnings](#) to members who are transferring out assets.

[An FT Adviser](#) interview with Rob Walton, chief operating officer at data processor Intelliflo, highlights the issues financial advisors may come across under GDPR.

[HMRC](#) has warned over a new wave of phishing scams which address recipients via phone or email advising them of a tax refund, with nearly 85,000 phishing attempt reports in March alone. The tax authority's only official communication channels are letters or through the employer.

[In a letter](#) to the Work & Pensions select committee, the chief executive of the FCA admitted that the FCA needs to overhaul its register. Changes will start to be made this summer and will include a better search facility and simpler

presentation, amongst others.

[Financial service](#) firms are reminded that FCA rules override requests under GDPR. Even if a client asks for their data to be deleted, firms have a right to refuse if a regulator, or other legal body, requires them to keep that data.

[Pension insecurity](#) post-Brexit is affecting around 900,000 Brits living in the EU. Spain, France and Ireland are all popular destinations for British pensioners and current treaties allow for receipt of British pensions in the EU.

[HMRC](#) is investigating almost 200 football players for tax avoidance under personal images licensing schemes.

[HMRC](#) has published '[Disclosure of Tax Avoidance Schemes \(DOTAS\): Inheritance Tax](#)', which contains guidance on the disclosure of tax avoidance schemes with regards to inheritance tax and examples of arrangements that need to be disclosed.

[The FCA](#) has come under fire after failing to stop a phoenixing adviser from practising. An MP requested a debate in parliament on the matter after one of his constituents lost money after receiving advice from an approved person who remained on the register despite being complained against to the FCA.

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