Compliance Consulting

Issue 51 - December 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.

Contents:

Gem Update

Gem has a new member of staff, Agie Mackay, who joined us in December as a Compliance Trainee from RBS.

Other Newsletters & Updates

Many more Brexit-related publications were issued during December but no further certainty has been provided on whether a withdrawal agreement, and therefore transition period, will be in place by exit day.

The latest edition of the FCA Regulation Round up was issued on 13th December, and the latest edition of the FCA Policy Development Update on 7th December. In addition, the FCA has published issue 58 of its Market Watch newsletter and released the updated version of its Financial Crime Guide, FG18/5: Guidance on financial crime systems and controls: insider dealing and market manipulation.

The FOS has published its annual plan and budget for 2019/20, and the ICO's December newsletter has been issued.

Main features

1. Cyber and Technology Resilience: Themes from cross-sector survey 2017-2018

During 2017 and 2018 the FCA carried out a survey of 296 large and smaller firms to evaluate their technology and cyber capabilities. Based on the findings from the self-assessment survey, the report highlights firms' strengths as well as the improvements that need to be made. The survey focused on governance, delivery of change management, managing third party risks and effective cyber defences.

Governance is identified as firms' strongest domain; however, some firms reported a lack of understanding of cyber risk at board level. Nevertheless, the technology knowledge at a senior level is seen as crucial for effective operational resilience. In terms of cyber resilience, firms declared having effective cyber controls. However, these firms identified key assets, services and people, sharing information and cyber-attack detection as areas needing the most improvement.

The majority of firms are aware of what information they hold and what their critical business functions are. However, they do not review and update them regularly. Moreover, their end-of-life hardware or software assets are not updated within a reasonable time frame which poses a substantial risk.

Bigger firms share their information more willingly and are more likely to be a part of information sharing forums such as NCSC's Cyber Information-Sharing Platform (CiSP) than smaller firms. There is still a number of smaller firms who only subscribe to networks but do not contribute to them hence the FCA's call for a more open approach to data sharing.

The survey responses show that the majority of firms operate a cyber awareness programme but only 47% of them offer additional training to their high-risk staff. The findings indicate that only the biggest firms use automated systems for cyber-attack detection, whereas the smaller firms either use a manual process or do not have a process in place at all.

There is some irregularity between firms' responses in terms of change management where they assessed themselves as having strong capabilities while the FCA's findings show that change management was in fact responsible for 20% of reported incidents between October 2017 and September 2018.

In terms of managing third party provider risk, only 80% of firms reported doing so. However, half of these firms said they were not doing so comprehensively. Although most firms discussed cyber risk with their third parties, only 59% of smaller firms understood the response and recovery plans provided by their third parties.

The FCA encourages all firms to consider the relevance of the findings to their business as the survey helps to identify opportunities to strengthen and improve relevant controls. In addition, the FCA confirms that third party management and change management will be key areas of focus in the FCA's supervisory plans for 2019. The paper also reminds firms that under Principle 11, the FCA expects firms to report any material technology incidents and cyber-attacks.

Quarterly Consultation Paper 23

This quarterly CP is split into three chapters:

1. Candidates for Code Recognition – the FCA is seeking views on whether the FX Global Code (August 2018) and the UK Money Markets Code (April 2017) meet its Codes Recognition Criteria.
2. Changes to Firm Details reporting form under SUP 16.10 – the FCA is proposing changes to this form to ensure compliance and increase accuracy of firm details reporting. The FCA states that Firm Details (e.g. details of primary compliance contact) are essential to the effective delivery of a wide range of FCA functions yet is aware that it holds inaccurate and incomplete information for a significant number of firms, which indicates non-compliance with rules and principles. The FCA is therefore proposing the following changes to SUP 16.10 and to the annexes for SUP 15 and 16:
    a. strengthening the current requirement for firms to carry out an annual 'accuracy check', by requiring firms whose Firm Details are accurate to provide confirmation of this;
    b. requiring all firms to submit updated Firm Details using one of the FCA's online systems (currently other options exist for some firms);
    c. reducing the amount of information requested in the Firm Details report form; and
    d. making expectations clearer through additional guidance.
3. Changes to the Consumer Credit Sourcebook (CONC) – the FCA is proposing the addition of the Association of Accounting Technicians (AAT) to the list of bodies whose members can provide a statement of high net worth to individuals in order for certain credit and consumer hire agreements with them to be exempt from regulation.

The consultation period for each chapter is two months (from 7th December 2018)

2018).

“Wholesale banks and asset management cyber multi-firm review findings”

The FCA carried out a cyber risk review on 20 asset management and wholesale banking sector firms varying in size and location. The aim of the review was to assess the way those firms manage their cybersecurity and how they recover from cyber-attacks, including understanding and managing cyber risks, effectiveness of second line functions in identifying cyber risks and making connections between cyber and conduct risk.

The findings show that some Board and Management Committee members struggle to explain what cyber threats their firms are facing. This might result from the fact that cybersecurity is purely managed by the IT department. Therefore, having a cyber security strategy that does not purely rely on the IT function may improve cyber security and incident recovery.

The review has also shown that the risk and compliance functions that form the second line of defence have restricted cyber-security knowledge and expertise, which impacts second line’s ability to effectively test and challenge a more technically-sophisticated first line. This was found to result in heavy reliance on the first line IT and cybersecurity functions to ‘translate’ risks and issues into comprehensible terms and to help senior management understand the potential impacts of cyber events. It also resulted in substantial reliance on the third line to identify issues. All the firms met by the FCA revealed the availability of risk and compliance professionals and the shortage of cyber expertise in the market was a significant challenge.

Few firms consider the connection between cyber and conduct risk but all firms identify “insiders” as the root cause of some of their main cyber risks. Firms have tried to address the threats from insiders by: improving logical access controls, employing effective data classification; and providing tailored training on the threat landscape; and increasing awareness of the motives behind cyber threats. According to the FCA, this might not be enough and should be accompanied by training and engaging with high-risk personnel.

With firms outsourcing more activities and establishing more third-party relationships than ever before, the effective management of third-party risk is vital, especially with the increased use of cloud services; effective third-party oversight is even more important. Cloud services are seen to play a key role in the activities of most firms and therefore have the potential to significantly impact businesses, consumers and markets.

Testing was an area where substantial differences in the approaches taken by firms was seen, with some firms having carried out no cyber security testing and others running extensive programmes. Testing was seen to have most value when it formed part of an overall cyber risk management strategy.

The FCA concludes that although most firms understand the importance of cyber security, they do not always understand the impact of weak security on their firm and the market. Therefore, following this review the Board and Management Committee members of firms should ensure:

- Careful and full consideration of cyber risks, taking the nature, scale and complexity of the firm’s activities and risk profile into account, before making any cybersecurity decisions;

making any cybersecurity decisions;
- Centralised arrangements are in line with specific identified risks and that any gaps are addressed;
- Effective second line of defence on cyber issues and make it an organisational-wide priority;
- Consideration of the links between cyber and conduct risks and incorporate findings into conduct risk management programmes;
- Incident management plans are able to effectively deal with the aftermath of a cyber incident;
- Consideration of the likely impacts of a successful cyber-attack on customers, other market participants and markets in general; and
- Continuous development of contingency plans to enable effective dealing of any future cyber incidents and prevention of repeat incidents.

Occasional Paper 47: Blackbird's alarm call or nightingale's lullaby? The effect of tweet risk warnings on attractiveness, search, and understanding

The FCA publishes Occasional Papers to encourage debate on all aspects of financial regulation and to justify its decision-making. However, Occasional Papers may not necessarily reflect the position of the FCA, they simply service as a source of evidence the FCA may refer to when discharging its functions and its forming views.

According to the report, in 2017, 39.4 million (58%) of the UK population used social media. It is apparently being used increasingly by consumers to research and buy products and many firms, including financial services firms, have identified this trend and developed incorporated social media into their marketing strategies. However, the character limits make it difficult to include sufficient crucial information to ensure 'standalone compliance' of financial promotions – meaning each advert must be balanced – and research has shown that consumers make faster decisions based on less information in respect of online advertising.

Standalone compliance of adverts has been shown to prevent harm but the effect of this for social media financial promotions has not be tested with consumers. Therefore, the FCA tested how standalone compliance affects consumers' judgements, as well as several design features of character limited risk warnings, across 10 products.

Key findings:

- Products advertised through standalone compliant tweets are less attractive to potential customers. They are then less likely to be clicked on and have their webpages explored relative to non-compliant tweets.
- Standalone compliance in a character-limited social media environment reduces preference ratings, search activity (such as shopping around), and understanding of risks (as evidenced by the choice of less suitable products).
- Variations in the design and timing of risk warnings can affect preference, information search, and understanding
- The effects of risk warnings can be skewed by otherwise irrelevant presentational choices such as the inclusion of advice service logos, or explicitly referencing that the risk warning is FCA mandated.
- More detailed risk warnings on product webpages were found to be most effective at increasing understanding, and they were significantly

more effective when designed using insights from behavioural science.

In conclusion the FCA believes there is potential to incorporate the findings into policy/rules notes that this must be done with care and include monitoring of any effects.

Other publications

Discussions papers:

DP18/10: Patient Capital and Authorised Funds

Consultation Papers:

CP18/37: Product intervention measures for retail binary options

CP18/38: Restricting contract for difference products sold to retail clients and a discussion of other retail derivative products

Quarterly Consultation Paper 23

CP18/40: Consultation on proposed amendment of COBS 21.3 permitted links rules

CP18/41: FCA and PRA changes to mortgage reporting requirements

CP18/42: High-Cost Credit Review: Overdrafts consultation paper and policy statement

CP18/44 Brexit – Regulatory Technical Standards for Strong Customer Authentication and Common and Secure Open Standards of Communication

CP18/24 Consumer Research: overdrafts and APR. Technical Report

Policy/Feedback Statements:

PS18/22 Authorised push payment fraud – extending the jurisdiction of the Financial Ombudsman Service. Feedback to CP18/16 and final rules

PS18/23: Claims management: how we will regulate claims management companies

PS18/24 Approach to final Regulatory Technical Standards and EBA guidelines under the revised Payment Services Directive (PSD2)

Ex post Impact Evaluation Framework (EPIE) – Feedback Statement

Finalised Guidance:

FG18/6: Helping tenants find alternatives to high-cost credit and what this means for social housing landlords

FG18 / 7: Fairness of variation terms in financial services consumer contracts under the Consumer Rights Act 2015

Thematic Reviews:

TR18/5: Management of long-term mortgage arrears and forbearance

Miscellaneous:

FCA's EU-Withdrawal Impact Assessment

FCA's Approach to Authorisation and Feedback Statement

PPI campaign Response Update

Handbook Notice 61

EP18/3 Evaluation Paper 18/3: An evaluation of reducing barriers to entry into the UK banking sector

FCA Board Minutes: 15th November 2018

Payment Services and Electronic Money – Our Approach

FCA Speeches

FCA Speech: Cyber and technology resilience in UK financial services by Megan Butler, Executive Director of Supervision – Investment, Wholesale and Specialists at the FCA

FCA Speech: Opening up and speaking out: diversity in financial services and the challenge to be met by Christopher Woolard, Executive Director of Strategy and Competition at the FCA, delivered at Ropemaker Place, London.

Other Speeches

Climate change and central banking by Yves Mersch, Member of the Executive Board of the ECB

Developments in Regtech and Suptech by Patrick Armstrong, Senior Expert at ESMA

Enforcement Actions & Prosecutions

Daljit Kaur Dhillon, director of three mortgage support companies, Repossession Management Bureau Ltd, RMB Assets Ltd, and OM Payments Ltd, has been disqualified by the High Court for nine and a half years and ordered to pay £12k in costs. These companies offered financial assistance to people in mortgage arears by taking a charge out on the properties in order to protect the equity. However, these companies were found not to be forthcoming about the amount of fees being levied or for what work, or that the charge would secure the indebtedness of the clients. Furthermore, company representatives would use false names, meaning that clients would not know with whom they were dealing. Insolvency Service deputy official receiver Helen Morten said: "The court's decision shows the seriousness with which this type of cynical financial service activity is viewed."

Mark Barry Starling sentenced to five years' imprisonment following FCA prosecution for operating unauthorised investment schemes, which defrauded investors of just under £3m. Sometimes money was paid back to investors, on request, to sustain the illusion of running a successful investment business. However, these payments were in fact funded from other investors' investment monies. Mr Starling forged documents and correspondence purporting to be from brokerages, and bank statements to prolong the fraud. Mr Starling was never authorised to carry out any regulated activity and the FCA commenced criminal proceedings in August 2018.

FCA cancels permissions of insurance broker after it failed to pay compensation to a complainant (under a FOS ruling in 2014) following repeated requests to do so from the FOS and the FCA. In its Final Notice the FCA acknowledged that the firm refuted the award but stated that the firm had not sought judicial review, so the FOS award remains binding under 228(5) of the Financial Services & Markets Act.

Celebrities, Floyd Mayweather Jr and music producer DJ Khaled, have agreed settlements with the SEC for failing to disclose payments they received for touting initial coin offerings (ICOs). Mayweather and Khaled's promotions came after the SEC issued its DAO Report in 2017 warning that coins sold in ICOs may be securities and that those who offer and sell securities in the U.S. must comply with federal securities laws. Each celebrity will pay thousands of dollars under the settlement agreements.

Current scientific adviser to the Prime Minister and former chief executive of software firm Autonomy, Mike Lynch OBE, has been charged with fraud in the US in relation to the sale of Autonomy to Hewlett-Packard in 2011. It is alleged that between 2009 and 2011, Mr Lynch and Stephen Chamberlain, vice president of finance, along with other co-conspirators, artificially inflated Autonomy's revenues by overstating them. They are also accused of making misleading statements to regulators and market analysts covering the company. In 2010, about 68% of Autonomy's reported revenues came from the US and elsewhere in the Americas. In 2012, a year after the takeover, HP wrote off three-quarters of the value of Autonomy. Mr Lynch's lawyers report that he will vigorously defend the charges.

The headquarters of Germany's biggest bank, Deutsche Bank, have been raided by prosecutors for money laundering. It is alleged that employees of the bank have helped criminals launder money from criminal activity. The investigation, which was sparked by revelations from the Panama Papers, began in August and focuses on activities between 2013 and the start of 2018. Five other Deutsche offices in the city were searched in the operation. Deutsche has also been connected with another huge money laundering scandal at Denmark's Danske Bank. Deutsche has previously been sanctioned for money laundering issues including in 2017 when it was fined £504m by US and UK regulators for its involvement with a Russian money laundering scheme.

FCA publishes decision notice against Mohammad Ataur Rahman Prodhan, former CEO of Sonali Bank UK) Ltd ("SBUK"), for AML failings and has fined him £76k. The FCA's press release covering the decision notice states that Mr Prodhan "failed to take reasonable steps to assess and mitigate the AML risks arising from a culture of non-compliance among SBUK's staff. The FCA considers that he failed to ensure that sufficient focus was given to AML systems and controls within SBUK or that there was a clear allocation of responsibilities to oversee SBUK's branches. It is reported that he also failed to appropriately oversee, manage and adequately resource SBUK's Money Laundering Reporting Officer (MLRO) function."

ICO issues first fines to firms that have not paid the data protection fee. All organisations, companies and sole traders that process personal data must pay an annual fee to the ICO unless they are exempt. Fines for not paying can range from £400 up to a maximum of £4,350. As at 28/11/18, greater than 900 notices of intent to fine had been issued since September and more than 100 penalty notices were issued in this first round.

Uber fined £385k for failing to protect customers' and drivers' data during a cyber-attack. The fine also reflects the fact that customers and drivers affected were not told about the incident for more than a year. Instead, Uber paid the attackers responsible $100,000 to destroy the data they had downloaded.

ICO secures its first criminal prosecution under the Data Protection Act 2018 against motor industry employee, Mustafa Kasim, who worked for accident repair firm Nationwide Accident Repair Services (NARS). Mr Kasim accessed thousands of customer records containing personal data without permission, using his colleague's log-in details and continued to do this after he started a new job at a different car repair organisation, which used the same software system. The records contained customers' names, phone numbers, vehicle and accident information. NARS contacted the ICO when they saw an increase in customer complaints about nuisance calls and assisted the ICO with their investigation. Mr Kasim pleaded guilty to a charge of securing unauthorised access to personal data and was sentenced to 6 months in prison. Confiscation proceedings under the Proceeds of Crime Act, to recover any benefit obtained as a result of the offending, have commenced and are ongoing.

Manraj Virdee, sole director of Dynamic UK Trades Ltd (Dynamic Trades), who was arrested by the City of London Police in November 2017 after an investigation by the FCA, has pleaded guilty to four charges relating to the illegal operation of an unauthorised investment scheme, misleading consumers, and to two related counts of fraud. Mr Virdee, through his company Dynamic UK Trades Ltd, promoted a deposit taking scheme, marketed as an 'investment package' without authorisation. The FCA alleges he received approximately £600,000 in investment funds and misled investors. Mr Virdee will be sentenced in due course.

The FCA has issued a statement on its website confirming its intention to seek a re-trial of Fabiana Abdel-Malek and Walid Anis Choucair on five counts of insider dealing after a verdict for each in the trial brought by the FCA could not be reached. The pair were each accused of five counts of insider dealing last year but both pleaded not guilty and the jury was split on its verdict.

FCA bans and fines non-executive director, Angela Burns, £20k for "failing to act with integrity." Between January 2009 and May 2011, Ms Burns was a non-executive director of Marine and General Life Assurance Society and Teachers Provident Society, and served as chairman of their investment committees. Both mutuals were engaged in discussions regarding investment management services from Vanguard but it later emerged that at the same time Ms Burns was soliciting work from Vanguard. Ms Burns did not disclose this to either mutual while providing them with advice. Mark Steward, executive director of enforcement and market oversight of the FCA, said: "Ms Burns placed herself in a position where her duty as a non-executive director may have conflicted with concurrent opportunities she was pursuing. This was neither disclosed nor, as a consequence, could it be addressed by the board. This was inappropriate and inconsistent with the standards of integrity expected from senior managers." Ms Burns referred her decision to the Upper Tribunal, which found in favour of the FCA. The Court of Appeal also ruled against Ms Burns and permission by the Supreme Court to appeal the Court of Appeal's decision has been refused.

Appeal's decision has been refused.

London Capital & Finance PLC, a provider of fixed-rate investment bonds and ISAs, revealed that it has been the subject of an FCA review. The FCA has now confirmed the same but has added that the firm has now been referred to its enforcement division for further investigation. The firm has been told by the FCA that it:

- may not (without the prior consent of the FCA) deal in any way with its assets, including the money held in its bank accounts;
- must cease conducting all regulated activity; and
- must withdraw all its existing marketing materials in relation to its Fixed Rate ISA or Bond.

The FCA clarifies on its website that issuing mini-bonds is not normally a regulated activity but issuing promotions relating to mini bonds is a regulated activity. No further information is known at this time.

Following an appeal against an earlier conviction and sentence, former BHS boss Dominic Chappell has now been ordered to pay more than £124,000 for three offences of neglecting or refusing to provide information and documents to The Pensions Regulator (TPR) without a reasonable excuse. Judge Christine Henson said his appeal was "completely without merit" and said he had shown a "complete lack of remorse" for his behaviour.

It is reported that discretionary fund manager, Organic Investment Management, has been told it must not carry out any regulated activity without the prior written consent of the FCA. The firm has also been told not to dispose of, deal with or diminish the value of any of its assets, other than in the ordinary course of business, and to inform clients and financial advisers of these restrictions. It is not currently known why the FCA has taken this action.

On the judge's direction, a former Lloyds Bank adviser accused of defrauding £31k from an elderly customer of the bank with vascular dementia, has been found not guilty on 24 charges under the Computer Misuse Act 1990. The trial into the alleged fraud continues.

Barclays has been subject to further enforcement action in respect of Jes Staley's attempts to identify a whistleblower in 2016, with US regulators imposing a fine of $15m (£11.8m) for shortcomings in the bank's governance, controls and corporate culture.

FCA fines Santander £38.2m for failing to effectively process the accounts and investments of deceased customers, resulting in over £183m of funds belonging to more than 40k customers not being transferred to beneficiaries. Santander also failed to disclose information relating to the issues with the probate and bereavement process to the FCA after it became aware of them.

FCA bans Darren Lee Newton after it was discovered that he used customers' money for the purchase of a debt management firm.

FCA to investigate Yu Group, the AIM-listed energy supplier, over the accuracy of its financial statements after its share price dropped nearly 90% following the release of an unscheduled trading statement on 24/10/18.

Six directors of Absolute Living Developments Ltd banned by Insolvency Services after an investigation revealed more than 300 people had been misled into investing £12m in residential property developments.

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Industry News

Regulation

The FCA has tweeted that Netflix is reportedly turning Michael Lewis' bestselling book, Flash Boys: A Wall Street Revolt, into a film.

FSCS plans £69m interim levy against the retail pool to cover the cost of pension transfer claims.

The FCA has confirmed in its Approach to Authorisations document that it is training its staff to spot phoenixing – when firms or individuals seek to avoid liabilities by liquidating and transferring their assets to a new or different firm where they will continue to trade.

FCA to delay launch of Credit Information Market Study until June 2019.

Research from law firm Clyde and Co. reveals the value of FCA fines has decreased by 88% year on year but the average fine for an individual has almost trebled year on year to an average of £186k per person.

Senior Managers and Certification Regime comes into force for insurers.

FCA publishes response to the Competition and Markets Authority's (CMA's) final report and remedies for market investigation of investment consultancy and fiduciary management services. The FCA welcomes and supports the package of remedies proposed and confirms that it will "continue to work closely with the CMA, HM Treasury and The Pensions Regulator to implement the CMA's remedy package and take forward the recommendations in its report".

FCA and PSR Boards appoint new members to decision-making committees.

Sir John Kingman, chairman of Legal & General and former second permanent secretary to HM Treasury, who led an independent review into the Financial Reporting Council (FRC), which has now been published, has said the body should be replaced by a new Audit, Reporting and Governance Authority, to be accountable to Parliament and with new leadership and powers.

FCA and PRA issue joint statement regarding The Securitisation Regulations 2018, in which they set out how they propose to direct the manner in which firms must make information regarding 'private' securitisations available to their UK competent authorities.

FCA issues statement regarding the treatment of Gibraltar in its Handbook after Brexit alongside its draft instrument.

ESMA publishes consultation paper onintegrating sustainability risks and factors in the UCITS and AIFM Directives.

Former FCA technical specialist, Rory Percival, warns advisers that alongside the RDR review, which is due in 2019, 6 years after it came into force, the FCA is likely to also look at compliance with the product governance element of MiFID II. Mr Percival reports that during an adviser roadshow he has been involved with, he asked audiences whether they had heard of the product governance rules. Apparently "less than 10 people in a room of 100" had.

Percival went on to say that "almost nobody has done anything about it. If the FCA was to look into this today it would be extremely disappointed with what it found."

Brexit

On 25th November the European Council endorsed the draft UK-EU withdrawal agreement and approved the draft political declaration on the framework for the future UK-EU relationship. The next steps are for the European Parliament and the Council to approve the agreement, and the UK must also ratify the agreement.

Department for Exiting the European Union has published a collection of documents that have been laid before Parliament to support its assessment of the UK-EU Brexit deal.

HMT publishes policy note on the Financial Services (Implementation of Legislation) Bill 2017-19, which will give the government a mechanism to implement and make changes to "in-flight" files of financial services legislation for two years after the UK withdraws from the EU in a no-deal scenario.

Full legal advice on the legal effect of the withdrawal agreement published.

Treasury Committee publishes report on the Government and BoE's withdrawal agreement analyses. The committee considers work carried out by HM Treasury, the Bank of England (BoE) and the FCA to analyse the economic effects of the withdrawal agreement and political declaration for the future EU-UK relationship, as well as the consequences of leaving the EU without a withdrawal agreement.

European Court of Justice confirms that a member state can revoke its withdrawal notice unilaterally, in an unequivocal and unconditional manner and without the consent of the other member states.

City of London Law Society (CLLS) publishes its response to the FCA's consultation on the temporary permissions regime for inbound firms and funds (C18/29).

Government publishes draft legislation for the Financial Services Contracts Regime (FSCR) to enable relevant firms and funds that don't enter the temporary permissions regime to wind down their businesses in an orderly fashion.

European Union (EU) has agreed to grant temporary permissions to UK financial services firms that act as counterparties or provide central depository services to financial markets. This will mean they are treated in the same way as firms in the EU, from a regulatory standpoint for at least the first year after Brexit, in the event of a no-deal scenario.

Scams, Fraud & Warnings

The claimants that took Sense network to court over an alleged Ponzi scheme run by one of its ARs have been granted leave on two points to appeal the decision that Sense was not liable for the claimants' losses. The first point to be appealed is whether Sense have to take responsibility for its AR's actions, and the second ground is vicarious liability: does Sense have to take responsibility for what the AR's people did because they were agents of Sense in common law. This case follows a case against the principal firm Tenet, which was found liable for the unregulated activities of one of its ARs.

Minutes of the FCA's October 18 board meeting reveal how the FCA will address concerns about areas of potential consumer harm should there be a disorderly exit next March including from Brexit-related scams. The FCA will implement a phased consumer communication strategy about the impacts of EU withdrawal and steps consumers can take to protect themselves from fraud.

The Pensions Regulator and Essex Police are looking into a suspected pensions fraud in which approximately 370 people have been persuaded to transfer £18m into eight pension schemes at the centre of the case. The regulator opened its case after a number of legitimate schemes had received requests from members to transfer their savings into suspicious schemes and reported these instances to TPR.

In the run up to the online tax return deadline it seems a number of people have received calls from an automated caller claiming to be from HM Revenue & Customs (HMRC), threatening legal action if they don't pay what they allegedly owe. Comparitech, a comparison website of technological services, has published a recording of one of these calls, in which a female automated voice, claiming to be from HMRC says: "The issue at hand is extremely time sensitive. If you do not call us back, or we do not hear from your solicitors either, then get ready to face the legal consequences."

HMRC & Tax

In a House of Lords Economic Affairs committee report titled: 'The Powers of HMRC: Treating Taxpayers Fairly' the committee called for the "disproportionate" powers of the government department to be subject to greater scrutiny by Parliament. The report found the "careful balance" between clamping down and treating taxpayers fairly had now been tipped in favour of HMRC.

HMRC decision in the Eclipse film case means individual investors faced being charged more tax than they have received as income, which may result in a number being made bankrupt.

HMRC has published its 2018 prosecutions list, which includes a variety of profiles, from tax consultants and church leaders to organised criminals. HMRC reports that it was typically successful in about 90% of criminal cases.

Financial Crime

Following an announcement by ministers that the investor visa scheme, which enables foreign investors to obtain citizenship more quickly if they invest £2m or more in the UK, would be suspended for fears the scheme was being used to launder money, the Home Office has now confirmed the scheme remains open. However, commitment to reforming the scheme remains and from next year it is reported that "independent, regulated auditors will assess applicants' financial and business interests and also check they have had control of the funds for at least two years."

The Government has published its response to its April consultation in which it outlined reform of limited partnership law. In its response the Government confirms, amongst other things, that presenters of applications to register LPs will be required to show their registration with an anti-money laundering (AML) supervisory body. The government is considering how it can ensure applications from overseas are subject to equivalent standards.

FATF's Mutual Evaluation Report (MER) of the UK's measures to combat money laundering and terrorist financing has been published and notes that the UK is a global leader in a number of financial crime related counter-measures.

UK Government publishes a one-year update of its Anti-Corruption Strategy for 2017-2022.

Data Protection

ICO blog by Deputy Commissioner (Policy) Steve Wood does some seasonal 'sleigh-ing' of GDPR myths, including "suggestions that Father Christmas should be reported to the IC Ho Ho Ho".

The Privacy and Electronic Communications (Amendment) (No. 2) Regulations 2018 ("PECR"), which includes a ban on pensions cold calling, was approved in the House of Commons and came into force on 19thDecember '18. The intention of the updated PECR are to increase the powers of the ICO enabling it to impose penalties on officers (which includes directors of companies, partners in general partnerships and partners in limited liability partnerships) for breaching the PECR in respect of using automated calling systems and unsolicited direct marketing.

The ICO has updated its PECR guidance to incorporate the 2018 amendments.

Pensions & Sipps

The Royal Courts of Justice have granted 'Backto60', a group supporting women affected by an increase in the state pension age, permission to file a judicial review at an oral hearing after previously refusing the group's written request. The group is requesting the state pension age should be returned to 60 for women born in the 1950s, but such a decision would cost £77bn and has previously been dismissed by the government.

FCA press release states"the number of people seeking information about pension scams has soared since the launch of the first joint campaign by the FCA and The Pensions Regulator (TPR) this summer."

Teresa May says she will ensure the Treasury acts against Treasury rogue advisers that encourage people to arrange transfers out of their defined benefit pensions when it is not in their best interests.

The Pensions Regulator (TPR) has made a request for an amendment to the Investigatory Powers Act that would allow the regulator to require phone providers to disclose billing data for individuals or organisations it suspects are involved in criminal activity. In addition, TPR would be able to apply to internet service providers for details of emails sent between parties.

IFA claims the FCA's requirement for producing negative suitability reports is causing a rise in complaint numbers.

FOS gives preliminary ruling that Sipp provider, Liberty, failed to carry out due diligence on unregulated investments in its Sipps and therefore breached its duty of care to clients in three cases. A total of £36,200 was invested by three individuals into the Ethical Forestry Scheme on the advice of introducer Avacade. FOS found that “there was a high chance that a lot, if not all, of the business introduced by Avacade, would contain a high risk of significant consumer detriment”. Therefore, it was not "fair or reasonable for Liberty to have accepted [the clients’] applications on the basis and in the manner proposed". Liberty is able to appeal the preliminary decisions made by the FOS adjudicator.

The Pensions Regulator is warning pensions schemes to check whether they fall within the scope of the new master trust legislation to avoid breaking the law by failing to comply with the new rules.

Court ruling may result in some individuals with defined benefit pensions with contracted out benefits facing an additional tax bill. Between 1978 and 1997, employers sponsoring DB pension schemes could contract their employees out of the additional state pension, as long as the scheme paid a comparable guaranteed minimum pension (GMP). Both employer and employee benefited from reduced NI contributions. However, similar to state pensions, GMPs were calculated using different retirement ages for men and women. In 1990, the European Court of Justice had said occupational schemes are considered a form of deferred pay and differences in benefits for men and women were unlawful. However, the government and industry have not been able to reach a conclusion on how to correct this discrepancy. The ruling in October 2018 established the method pension schemes should use to equalise benefits.

Industry reacts to FCA’s decision to apply a stricter test to defined benefit pension transfer triage guidance services than to broader investment guidance from January 2019.

The CEO of the Money Advice Service has been appointed Chief Executive of the Pensions Regulator from April 2019.

Business Conduct

BCAP (Broadcast Committee of Advertising Practice) publishes revised guidance on superimposed text (‘supers’) or "small print" in TV ads. The new guidance sets a higher bar in areas such as: emphasis, colour contrast, font type, position and length of text, viewing time, and numbers/calculations. The guidance takes effect from 01/03/2019 but the ASA will not formally consider the guidance in cases until 01/09/19.

Technology

Former Black Rock analyst teams up with former Moneyfarm pair to launch an app, called Genuine Impact, for clients to check if their wealth manager is making the right decisions.

Amazon has announced the launch of a blockchain service to help clients develop blockchain networks cost-effectively by minimising/eliminating the overheads required to set up a network.