

REGULATION NEWS

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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 February edition of the FCA's [Regulation Round up](#) has been issued and the Policy Development Update [page](#) was last updated on February 15th.

The FCA has issued an [update](#) on the proposed delay on the Insurance Distribution Directive (IDD).

The Financial Ombudsman Service issued their [third quarter statistics](#) and an update following the implementation of [Payment Services Directive 2](#) ('PSD2').

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

- * CP18/3: Consultation on SME access to the Financial Ombudsman Service (FOS) and Feedback to DP15/7: SMEs as Users of Financial Services
- * FCA and ICO publish joint update on GDPR
- * FCA warns of increased risk of online investment fraud, as investors lose £87k a day to binary options scams
- * FCA Other Publications, FCA Speeches and FCA Press Releases
- * Enforcement Actions and Prosecutions
- * Industry News

CP18/3: Consultation on SME access to the Financial Ombudsman Service (FOS) and Feedback to DP15/7: SMEs as Users of Financial Services

Currently, only individual consumers and micro-enterprises have access to FOS in case they cannot settle a dispute with a financial services firm.

Following [the Discussion Paper from 2015](#) and the identification of the struggle to resolve disputes within SMEs, the FCA is now proposing to extend FOS eligibility criteria to all businesses with fewer than 50 employees, annual turnover of under £6.5m and an annual balance sheet total of under £5m. It is estimated that 160,000 more businesses would fall under FOS' reach.

Andrew Bailey, Chief Executive at the FCA, said: "Our evidence suggests some small businesses currently find it hard to achieve a fair outcome in disputes with financial services firms because court action is not a realistic option for them."

Industry News (continued)

An adviser who made a 'goodwill gesture' of offering a complainant £500 but later withdrew the offer has been told to honour it by FOS. This related to previous confirmation that it would be possible to reduce the amount the client wanted to borrow prior to completion which was not then possible.

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The largest investment firms will be as 'systemically important' when it comes to capital requirements under proposals from the European Commission. This would bring firms which perform 'bank-like' functions such as dealing on their own account, or engage in underwriting investments, and have assets of more than £26.6bn, to be classed as systemically important and be required to hold more capital.

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Cold call scammers persuaded a pensioner to hand over nearly £8,000 of his life savings by posing as senior detectives investigating an HSBC fraud. The retired journalist was warned that he could face money laundering charges if he did not hand over large sums of money to a courier sent to his flat.

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The Money Advice Service ('MAS') has allocated £500,000 towards the cost of transitioning to the government's new single guidance body. MAS along with the Pensions Advisory Service and Pension Wise will transition to a new single body, funded through existing levies on pension schemes and the financial services industry in the autumn.

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The FSCS has announced a £24m extra levy will be required as SIPP claims continue to grow.

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The FSCS has placed 12 firms in default including a financial advice firm which didn't pay money it owed the FCA. Park Grove Financial Management had its permissions cancelled after failing to pay the £5,722 it owed the regulator in fees and levies.

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Stargate Capital is taking the FCA to the Upper Tribunal following the FCA's issuance of a 2nd supervisory notice in respect of preventing the firm managing money and taking on new clients following the identification of 'questionable practices' at the firm.

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The Personal Investment Management and Financial Advice Association has labelled Mifid II requirements regarding costs and fees disclosures 'incredibly opaque' and called for a review.

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CP18/3 Continued

An immediate concern is the associated cost to firms, which is addressed in Annex 2 of the Paper.

Comments are due by 22 April 2018, with the Policy Statement expected this summer.

[Click here for the CP](#)

[Click here for press release](#)

FCA and ICO publish joint update on GDPR

With the application of General Data Protection Regulation (GDPR) from 25 May 2018, the FCA has been addressed by some firms with concerns on the application of GDPR alongside its rules.

The FCA [has stated](#) that it does not believe that there are discrepancies between GDPR and FCA requirements, and that GDPR compliance is a board level responsibility. The Regulator however recognises that there are elements which are not fully clear in terms of regulatory integration and will continue to work with the Information Commissioner's Office (ICO).

FCA warns of increased risk of online investment fraud, as investors lose £87k a day to binary options scams

The FCA is urging the public to be extra cautious when it comes to online investment advertising via platforms such as Facebook, Instagram and Twitter. Fraudsters target social media users with offerings for investments into binary options, contracts for difference (CFDs), forex and cryptocurrencies.

This shift in medium used by fraudsters also means a change in the demographic targeted by fraudsters. Whereas over 55s were previously the group which was the most at risk, now it's the under 25s.

Mark Steward, Director of Enforcement, FCA suggested that investors should always check the register to ensure that the company advertising is regulated. The FCA also warns not to trust online reviews as these can easily be forged.

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Other publications

[CP18/2](#) - Client money and unbreakable deposits

[CP18/5](#) - EU Benchmarks Regulation Implementation (DEPP and EG)

[CP18/4](#) - The European Money Market Funds (MMF) Regulation

[Report on Algorithmic Trading Compliance in Wholesale Markets](#) covering the following areas: Defining algorithmic trading: Development and testing, Risk controls, Governance and oversight and Market conduct.

Dear CEO letter: [Quality of Prudential Regulatory Returns](#)

FCA Speeches

[Building cyber resilience](#), by Robin Jones, Head of Technology, Resilience & Cyber at the FCA

[The Future of the City](#), by Andrew Bailey, Chief Executive of the FCA

FCA Press Releases

FCA launches [call for input](#) on the use of technology to achieve smarter regulatory reporting

FCA and US CFTC sign [Arrangement to collaborate on FinTech innovation](#)

FCA [fines](#) Interactive Brokers (UK) Limited £1,049,412 for poor market abuse controls and failure to report suspicious client transactions

FCA [seeks feedback](#) on non-workplace pensions

[Statement](#) on communications in relation to PRIIPs

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Industry News (continued)

FOS has upheld three separate complaints against Coutts regarding compensation to clients following the private bank's suitability review. Although Coutts completed the review in 2016 that it started in 2014, a number of cases have been taken to FOS since then.

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As a consequence of new rules under MiFID II, UK fund managers have started to unsubscribe from and to keep audit trails on emails from analysts over concerns that the receipt of these could be in breach of new rules on inducements.

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The FCA has appointed Nausciaa Delfas as its head of Brexit policy. Ms Delfas' role includes leading on "the delivery of the FCA's response throughout the process of withdrawal from the European Union, providing technical support to HM government, and continuing to work closely with EU27, international regulators and the financial services industry, to ensure a smooth transition".

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A study by online mortgage broker Trussle has found that borrowers are often being misled by mortgage rates, with the lowest headline rate on the market costing up to £1000 more over two years than the cheapest possible mortgage.

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Social network Facebook has banned advertising and promotions for often misleading products such as binary options, initial coin offerings and cryptocurrencies. The ban will also be rolled out on their other platforms including Audience Network and Instagram and will remain broad while the company improves its ability to better detect deceptive adverts.

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The Pensions Regulator (TPR) has admitted that it's impossible to identify the true scale of pension scams, as they are constantly evolving. TPR's chief executive said that the official figure of £43m lost since April 2014 presented by the government is too low, with the chair of the Pensions Administration Standards Association putting the figure close to £1bn.

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Meanwhile, the chief executive of The Pensions Advisory Service said that scammers are using platforms like LinkedIn to source their victims by studying their workplace and identifying companies going through difficulties.

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Research by Scope Analysis has shown that last year, only 53 per cent out of 2100 equity funds beat their benchmark.

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MPs had ordered the FCA to either publish or send its report on RBS' global restructuring group to the Treasury select committee. The FCA has missed the publication deadline, which means that the report has been sent to the Committee and next steps will be decided shortly. Nicky Morgan, the Chairman of the Committee, will be calling for the report to be published as soon as possible.

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[Click here for follow-up](#)

Andrew Bailey, chief executive of the FCA has urged political leaders to agree a post-Brexit deal for financial services by the end of March.

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FCA Press Releases continued

Operation of the MoU with the Bank of England for market infrastructure - 2017 [performance statement](#)

The FCA and Practitioner Panel launch joint [survey](#) for 2018

FCA publishes [update](#) on high-cost credit work

Rent-to-own – [update](#)

TPR and FCA: Our [strategy](#) for pensions

Enforcement Actions and Prosecutions

Samrat Bhandari has been sentenced in an FCA prosecution over a £1.4m investment scheme.

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Michael Cowan, a film producer, has been banned by the Insolvency Service from acting as a company director for 13 years after raising more than £5m from the public for a film which was never made.

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The FCA has issued its first serious crime prevention order against Dharam Prakash Gopee, who was sentenced to 3.5 years in prison for illegal money lending.

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[Click here for FCA press release](#)

Ross Peters, who was convicted of running an unauthorised investment scheme in 2015, has been sentenced to an additional 400 days in jail for failing to comply with a £136,200 confiscation order.

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A man has been sentenced to two years in prison, suspended for two years, and given a curfew for three months from 9pm to 6am for conspiring to defraud a funeral plan company of more than £120,000. Tomasz Josef Borowski, and two others, had been under investigation for 5 years, and also committed fraud against solicitors' firms and insurers between 2011 and 2014.

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Industry News

Transparency International published the [Corruption Perceptions Index 2017](#). New Zealand and Denmark have taken the highest places, UK is a shared 8th and Syria, South Sudan and Somalia are at the bottom of the list.

FOS' report shows that complaints about SIPPS have increased substantially, with the 2017-2018 year already receiving more complaints than all of 2016-2017.

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A Freedom of Information request (FOI) by Royal London has revealed that not all Support for Mortgage Interest recipients have been contacted ahead of the end of the programme in April, when the payments will switch to loans.

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The FCA has warned that interest-only mortgage lenders are still struggling to engage with customers whose mortgages are coming to an end. The regulator is concerned that nearly 70 per cent of borrowers have not contacted their lenders while they represent nearly 18 per cent of all outstanding mortgages in the UK.

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[Click here for FCA press release](#)

Aegon's analysis has shown that women aged 50 only have half the pensions savings of men of the same age, and the gap progresses with age.

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The FCA has been urged to investigate the collapse in the share price of Blancco Technology Group, a company listed on the Alternative Investment Market ('AIM'). ShareSoc, a lobbying society for individual shareholders, wants the FCA to investigate the restatement of the company's financial accounts which increased reported losses during a period when new shares were issued.

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Industry News (continued)

Research has shown that only 40 per cent of sampled investment firms disclosed all their charges on their website, as required under MiFID II rules. Moreover, none of the examined robo-advisers or online wealth managers displayed any of their charges prior to account opening.

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HMRC has warned of a scam which has already resulted in predominantly elderly people losing an average of £1,150 each. The individuals have been targeted by scammers who pretend to be from HMRC and tell them that they have outstanding tax amounts to pay which can only be covered by iTunes vouchers.

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Since the introduction of Packaged Retail and Insurance-based Investment Products regulations at the start of this year, investment trusts have had to provide investors with a key information document (Kid). Concerns have since been raised to the FCA about advisers now steering clients towards more simple products which do not require this information and may not be the most suitable ones.

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Cryptocurrency investors are being warned that income generated from investments would be taxable by HMRC, whereas losses would not be offset.

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A financial planning advert, which claimed that contractors could take home up to 92 per cent of their pay, has been pulled by the Advertising Standards Agency (ASA) after complaints from the tax office.

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The incoming chairman of the FCA has called his investment in the Ingenious Film partnership an 'error of judgement'. Despite the admission, MPs approved the appointment of Charles Randell.

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HMRC is expecting to receive £100m of extra tax income from Panama Papers cases. Although the data was illegally obtained in a leak from an offshore law firm, so far four arrests have been made.

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Boring Money's analysis has showed that the higher-risk robo-advice market, on average, outperformed the FTSE 100 during 2017. Advisers such as evestor, Netwealth, Nutmeg and Scalable Capital also saw less volatility in their portfolios. It was estimated that about £1.8bn has been invested through such providers at the end of last year.

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Research has revealed that more than 70% of pension savers believe that there should be stricter rules for providers of pensions schemes. The study, conducted by the Pensions and Lifetime Savings Association (PLSA) surveyed 2000 UK adults and also found that 10 per cent has been contacted multiple times to discuss pension transfers.

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With the arrival of GDPR, advisers have been warned that prospect lists will have to be eliminated, unless the individuals explicitly consented to their data being held for this purpose.

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A Treasury select committee has been appointed to look into cryptocurrencies.

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