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.

Although not a major number of new consultation or policy statements issued this month, there have however been a number of other publications and speeches made by the FCA during the period, including a number on consumer credit. Publications issued also include the minutes from the FCA Board meeting in January which includes a discussion on the FCA's current position on Brexit.

The March edition of the FCA's Regulation Round up has been issued and the Policy Development Update page was last updated on March 2nd.

The ICO has issued its regular newsletter in March, which also refers to guidance on new fee proposals under GDPR.

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

- Transforming Culture in Financial Services
- The FCA's Approach to Supervision and Enforcement
- FCA Other Publications, FCA Speeches and FCA Press Releases
- Enforcement Actions and Prosecutions
- Industry News

Transforming Culture in Financial Services

The FCA has issued a Discussion Paper (DP 18/2) on transforming culture in financial services. The publication combines views from academics and industry thought leaders. The paper is intended to provide a basis for stimulating further debate on transforming culture.

The paper is a set of 28 essays that discuss what a good culture might look like, the role of regulation, how firms might go beyond incentives and how to change behaviour for the better. Culture and governance is a priority for the FCA and culture is widely accepted as a key root cause of the major conduct failings that have occurred within the industry in recent years.

The FCA has considered the role of leaders, incentives and capabilities and governance of decision making. The introduction of the Senior Managers and Certification Regime ('SM&CR') is seen as an example of outlining the approach to culture by both management and staff that the FCA is expecting in the future.

Enforcement Actions and Prosecutions continued

A healthcare company and its managing director have been found guilty of misleading the Pensions Regulator about providing their staff with a workplace pension. Birmingham-based Crest Healthcare and managing director Sheila Aluko admitted recklessly providing false or misleading information to the regulator and wilfully failing to comply with their automatic enrolment duties.
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Two Norwich-based brothers have pleaded guilty to defrauding over 200 clients of £17m through a high-risk investment scheme. Ross and Alan Taylor, who ran Taylor and Taylor Associates and Vantage Investment Group, were accused of designing the scam to 'line their own pockets'.
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A recent prosecution took place and was successful against a firm (Skansen Interiors Limited) for the corporate offence under Section 7 of the UK Bribery Act of failing to prevent bribery. The firm was not able to prove a defence of having adequate procedures. Given the firm was a reasonably small firm, this judgement is considered an interesting test of what is 'adequate' regardless of the size of the firm.
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Industry News

At the ABI conference in late February, the FCA's director of supervision, Megan Butler, has confirmed that the FCA is concerned about data protection and resilience at insurers and will conduct further work in the field.
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Following the recent announcement that it has now concluded its enforcement investigations, the Treasury has announced that there will be an independent review into the prudential supervision of the Co-operative Bank during the period of 2008 to 2013.
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The FCA and the Pensions Regulator ('TPR') have proposed a joint strategy to tackle defined benefit (DB) transfers particularly for vulnerable consumers. In a call for input, the two regulators set out a joint strategy for regulating the pensions and retirement income sector.
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HSBC has been told to repay the costs of an income protection policy to a client after FOS ruled that it had been mis-sold as it duplicated certain existing benefits under her employer's scheme.
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Transforming Culture in Financial Services continued

The paper offers actionable insights for financial services leaders and practitioners to consider how they effect change in their organisations. These include:

- using behavioural science to guide incentives and cultural change;
- looking beyond the role of leadership in effecting change;
- applying strategic focus to the continuous process for adapting culture;
- fostering environments of trust to encourage openness and learning;
- applying a systems perspective in assessing both internal culture; and
- external influencers.

Jonathan Davidson, FCA Executive Director of Supervision – Retail and Authorisations has indicated, as part of the paper's publication "that culture may not be easily measurable but it is manageable. Firms can and should take responsibility for ensuring their culture is healthy…..".

The FCA is not requesting formal feedback on the discussion paper. However, it would like all those with an interest in financial services to consider the issues in the paper and to engage in the debate about what constitutes a healthy culture and how to promote it.

Readers should also review the speech provided by Andrew Bailey (CEO of the FCA) which is also relevant to the publication of this paper (see below at Speeches).

The FCA's Approach to Supervision and Enforcement

The FCA has recently published two corporate papers entitled 'Approach to Supervision' and 'Approach to Enforcement'. These documents are intended to explain in more depth its overall approach to regulation and to provide transparency on its decision making.

The Approach to Supervision shows how the FCA aims to be more forward-looking and pre-emptive in its supervision of firms. It considers that firms' strategies are at the root cause of most major failings. The FCA considers that to supervise effectively, it needs a thorough understanding of the business models, culture and drivers of behaviour within the firms that it regulates.

The FCA defines supervision as the continuing oversight of firms and individuals controlling firms to reduce actual and potential harm to consumers and markets. Supervision will prioritise its activities according to the greatest risk of harm. The document also explains how the FCA has an intelligence driven and data-led approach that enables it to take prompt and incisive action if harm is identified.

The Approach to Enforcement outlines how the FCA conducts investigations and its powers. It also shows how enforcement sets out to achieve fair and just outcomes in response to misconduct and to ensure that FCA rules and requirements are met. Through its enforcement activities, it aims to identify and drive out behaviours that fail to meet its standards, or are dishonest or unlawful.

The FCA decides whether to take enforcement action based on whether it believes there has been serious misconduct, considering factors such as intent to do wrong, failure to act on feedback or negligence or recklessness. In many cases, harm has already been caused but early detection of an issue and intervention can prevent it from getting worse.

Andrew Bailey, FCA CEO, has indicated that the most visible parts of the FCA's work, supervision and enforcement, are critical to helping the regulator achieve its objectives. He hopes that the approach documents outline clearly and in a transparent way, exactly how the FCA fulfils its objectives through supervision and enforcement and why the regulator makes the decisions in the manner it does.

Both documents ask whether firms consider that they set out the FCA's respective approaches to supervision and enforcement clearly and whether there are other issues that could benefit from further clarification. Firms are encouraged to read both documents in any case and also evidence this review. The documents are open for consultation until 21 June with final documents being issued later in 2018.

Industry News continued

A female FCA supervisor was referred to as 'little lady' by a senior leader from one of the UK's biggest banks. This was revealed by FCA executive director of supervisor Megan Butler during a speech which argued that firms with more diverse teams would make more money and do better at avoiding regulatory risk.
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The FCA has named Deb Jones and Debbie Gupta as the new co-directors of life insurance and financial advice supervision. The appointments are replacements for Linda Woodall who retired from her position as head of advice and life insurance at the end of 2017.
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The FCA and Bank of England will begin the process of automating regulatory compliance, Chancellor Philip Hammond has announced. The work set to be undertaken is aimed at 'reducing costs for financial services firms and removing a key barrier for fintechs as they enter financial services markets'.
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An employment tribunal has found that portfolio manager, Robert Sutton, was unfairly dismissed by wealth firm Creechurch Capital which had allegedly falsified records in its dealings with two clients. The Isle of Man employment tribunal ruled in favour of Mr Sutton saying he was 'automatically unfairly dismissed because of protected disclosures he had made'. The ruling was published this month relating to action in May 2017.
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Hargreaves Lansdown ('HL') has won an appeal against a HMRC ruling that the refunds HL offered its investors are not taxable. The firm introduced refunds of the annual management charge (AMC) as loyalty bonuses 15 years ago. But despite assurances at the time, HMRC changed its mind a decade later and decided they should be taxed as income. Now a judge in the Tax Tribunal has agreed with HL and ruled that the refunds are not taxable. HL is therefore looking to return these funds to the underlying investors.
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Fidelity has changed its mind in relation to its previous decision announced in 2017 to pass on the cost of external investment research to its clients. In common with many firms in the funds industry, the firm has now said it will meet research costs from its own balance sheet. According to a survey conducted by the FT, only two major global fund houses, Carmignac and Deka, now intend to pass on costs to clients.
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RBS has issued an apology after admitting it forged a pensioner's signature to sign her up for payment protection insurance ('PPI'). Ms Jean Mackay became aware that she was paying PPI on an RBS credit card despite ticking a box saying she did not require it. Having contacted the bank, they showed her a document with her signature authorising the product, but Ms Mackay insisted that this had been forged. RBS refunded the funds taken but did not admit any wrongdoing. Ms Mackay subsequently contacted FOS to complain in 2013, however it was not until recently that RBS confirmed that the signature was a fake.
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Ms Emma Mercer, also a former finance director of Carillion, tried to expose accounting irregularities almost three months before the full scale of its problems became public.
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Other publications

The FCA has issued its Quarterly Consultation Paper no. 20 (CP18/6) covering a number of areas including prudential supervision rule changes for firms covered by IFPRU and also changes following the implementation of the 2017 Payment Services Regulations. This also includes the proposal to delete the requirement for Principal firms to submit an annual return on their appointed representatives. Feedback is requested by 3 April for Chapters 2 and 4, 13 April for Chapter 5 and 3 May 2018 for Chapter 3.

The FCA has issued a Policy Statement (PS 18/4) on its Credit Card market study relating to persistent debt and earlier intervention. This includes feedback to CP 17/43 on this subject. The PS includes final rules which are in place from 1 March and relevant firms have until 1 September 2018 to comply.

The FCA has issued a Policy Statement (PS 18/5) regarding its powers in relation to compelling LIBOR data contributions from banks. The PS sets out the approach, criteria and methodology that the FCA would apply if use of the powers were to become necessary.

The Competition and Markets Authority ('CMA') has issued a progress update report on its market investigation into Investment Consultants. This had arisen following the earlier Asset Management Market Study.

The FCA has issued a Dear CEO letter to second charge lenders requesting them to review their mortgage processes and to confirm to the FCA by 1 May that the firm considers it is lending responsibly and that the firm's processes, systems and controls ensure this.

The Joint Money Laundering Steering Group ('JMLSG') has confirmed that ministerial approval of Parts I, II, and III of its Guidance published on 21 December 2017 has been received on 5 March. The website attaches this final, ministerial approved guidance for access.

HM Treasury has issued its supervision report into Anti-Money Laundering and Counter-Terrorist Financing covering the period of 2015 to 2017.

The FCA has issued a Call for Input relating to the regulation of the pensions and retirement income sector. The FCA is working with the Pensions Regulator ("TPR") on a strategic approach to this sector and has requested views on the biggest current and potential risks in the sector and how these should be tackled. Feedback is requested by 19th June, three events are being held before that to hear directly from stakeholders and the FCA intends to publish information on its final strategic approach in Autumn 2018.

The FCA has issued an update on its review of the motor finance sector, setting out findings so far and areas of concern that the FCA will focus on for the remainder of the review which will be completed in September 2018.

The Association of British Insurers ('ABI') has written a letter to Andrew Bailey, CEO of the FCA, to outline its views on three current issues for the UK insurance market arising from the UK leaving the EU. This includes: authorisation of EEA branches; communications for contracts of insurance and renewals that may be in place by the time of Brexit; and the sale of new insurance contracts and renewals sold currently to EEA customers.

The FCA has issued a survey relevant for firms which may need a temporary EEA passporting permission post Brexit if this is permitted under Brexit negotiations as part of transition. The survey is asking for feedback on certain issues which would assist the FCA in the overall design of a scheme should that be permitted. Feedback is requested by 11 May 2018.

The FCA has issued a letter to Nicky Morgan, Chair of the Treasury Committee, following a hearing on 7 February regarding further information on a number of areas discussed including the role of the Financial Ombudsman Service and the ability to re-open cases following, for example, FOS scheme rules changes. The letter also covered such issues as de-risking and current views on access to insurance for consumers with disabilities.

Industry News continued

JP Morgan chairman and CEO, Jamie Dimon has branded its annual shareholder meeting as a 'joke' and a 'complete waste of time'. The meetings have traditionally been small investors' only means of communicating with company management but Mr Dimon feels that in recent years, they have increasingly been hijacked by protestors and others with agendas.
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The FCA has refused permissions for a firm seeking to offer investment advice due to concerns on the firm being able to meet the FCA's threshold conditions. VIP Wealth, based in Birmingham, was refused permission because the FCA had concerns on the threshold conditions such as suitability of the firm and the availability of appropriate resources. Among the FCA concerns was the ability of the person the firm was proposing to carry out the compliance oversight and money laundering reporting functions, and the FCA found that the employee had limited past experience or relevant qualifications for either of these roles.
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According to a Freedom of Information ('FOI') request, as at December 2017, one SIPP provider is still failing to meet revised capital adequacy requirements following the strengthening of the rules for such firms from September 2016. This has reduced from four firms following an FOI request made in March 2017.
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In a recent industry survey, it is reported that only a quarter of employers offer financial advice to their employees. In addition, it is considered that a third of employers are only matching their employees pension contributions up to the legal minimum of 1%, which implies that in some cases, companies are not doing enough for their employees.
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Richard Adam, a former financial director of collapsed Carillion has been criticised by MPs for selling all of his shares just a couple of months after leaving the company. Mr Adams was giving evidence in Parliament regarding the collapse of the firm and was accused of ignoring concerns about the firm's pension arrangements for at least six years.
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Speaking at a hearing in Parliament, The Pensions Regulator chief has admitted that the watchdog should have acted quicker in the negotiations with collapsed Carillion back in 2013 when the pension scheme trustees asked for regulatory intervention.
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The FCA placed asset sale restrictions on eight advice firms last year in an effort to clampdown on 'phoenixing' of previous firms in liquidation.
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Minutes from the most recent FCA board meeting in January showed that the regulator's management discussed how regulation would be affected by the process of Britain leaving the EU. This included that the FCA has agreed to limit the number of rule changes it will make in the run-up to Brexit because of the risks this would involve.
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The FCA is meeting with other global regulators to discuss plans for a global regulatory 'sandbox' where companies can test out new ideas safely before providing these to consumers.
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FCA Speeches

Delivered at the Social Market Foundation lecture, speech by Mary Starks, Director of Competition and Chief Economist at the FCA, regarding what can be learnt from successful and unsuccessful price regulation.

Speech by Andrew Bailey, Chief Executive of the FCA, at the Finance & Leasing Association regarding the current landscape in the Consumer Credit sector.

Speech by Andrew Bailey, Chief Executive of the FCA, at the AFME, ICMA and ISDA briefing regarding recent developments in financial markets.

Speech by Sarah Rapson, Director, Authorisations at the recent Association of Professional Compliance Consultants ('APCC') Conference regarding the FCA's current approach to authorisation applications and following their recent consultations on this approach.

Speech by John Griffith-Jones, outgoing Chairman of the FCA delivered at an event hosted by TheCityUK, regarding accomplishments of the regulator of the last five years.

Speech by Jonathan Davidson, Director of Supervision – Retail and Authorisations at the FCA, at the Credit Summit, regarding getting affordability right in consumer credit.

Speech by Christopher Woolard, Executive Director of Strategy and Competition at the FCA, delivered at the Responsible Finance Conference, regarding thinking beyond regulation and consumer credit.

Speech by Andrew Bailey, Chief Executive of the FCA, at the Transforming Culture in Financial Services conference relating to culture and also linked with the recent Discussion Paper (see main feature).

Speech by Christopher Woolard, Executive Director of Strategy and Competition at the FCA, delivered at Innovate Finance conference regarding global regulatory innovation.

Speech by Megan Butler, Director of Supervision – Investment, Wholesale and Specialists at the FCA delivered to the Women in Finance Summit, including on diversity in the financial services industry.

FCA Press Releases

The FCA has published the second set of data in its general insurance value measures pilot. The publication of such data was one of the remedies from the FCA's market study into general insurance add-ons, which found poor value in both add-on and some stand-alone products. The FCA also found that consumers, firms and other organisations found it difficult to assess value due to the lack of a commonly available measure of value.
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The FCA has issued a statement regarding its intentions and feedback received arising from the proposals to changes on the FCA public register which could arise from the extension of the Senior Managers and Certification Regime ('SM&CR').
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PerfectHome has agreed with the FCA a package of consumer redress totalling over £2.1m, which will be made up of cash payments and balance write-offs. The firm is a rent-to-own firm which provides household goods to customers on hire purchase agreements. Responsibility for regulating the rent-to-own sector transferred from the OFT to the FCA in April 2014. Following this, the FCA identified that the firm's affordability assessments did not adequately take into account customer circumstances which led to customers being issued with loans they could not afford.
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Industry News continued

A businessman who promised cash-strapped pension holders he could release their savings early blew £1m of their cash on gambling, holidays and cars, a court was told. Anthony Locke set up a website called Successful Pensions to attract people looking to liberate their pensions funds.
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Equitable Life has been told it won't have to compensate a client whose pension was transferred to a fraudulent scheme and who has now been left without any funds. Tudor Capital, acting as administrator to a scheme, had written to Equitable Life confirming that the member wished to transfer. By the date of transfer, the Pensions Regulator had suspended Tudor Capital from acting as a trustee and alleged the entity was being investigated by the Financial Services Authority (at that time) and HMRC. However the regulators had not published the decision to suspend Tudor Capital by the time that the request to transfer was made.
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A number of fund firms have been forced to compensate investors to the level of around £34m for overcharging fees after a FCA investigation into 'closet trackers'. The FCA declined to name any of the firms involved but found the marketing material of a number of the funds was misleading. The FCA considered that the funds were passive-like in their behaviour and so funds could not justify the higher fees charged for 'active' funds.
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River and Mercantile has set aside £1m for the FCA competition probe into the firm and three other companies. It has also provided additional feedback on the sacking of star manager Philip Rodrigs. The competition probe related to FCA findings regarding a breach of competition law around the placing of shares in an IPO although at present these findings are provisional.
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The FCA is attending a High Court hearing in March which is being brought against SIPP provider Carey Pensions. The case relates to due diligence on unregulated investments that the firm accepted following the involvement of unregulated introducers.
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SIPP provider Berkeley Burke has written to clients requesting a fee on assets valued to be worthless by lawyers acting for investors. In a letter to investors, the company asked for a payment to be made in regard to storage pod investments, which was levied separately to the SIPP administration fee. However, it was not clear what the fee was for. The firm is facing the prospect of legal action over mis-selling of storage pods and other assets through SIPPs.
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Gary Minkin, from Consolidated Financial Management, a Hertfordshire - based financial adviser is being forced by a FOS judgement to pay redress to a customer for a glitch that he attributes to a pension company's computer system. The client's pension was mistakenly left in a cash fund after transfer instead of being invested as agreed. However, Mr Minkin contended that the issue was instead with the platform being used for the transfer, provided by Zurich.
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Enforcement Actions and Prosecutions

The FCA imposed a fine of £1,976,000 on credit card lender, Vanquis, for failing to disclose the full price of an add-on product, called Repayment Option Plan ('ROP'). The firm will also repay an estimated £168,781,000 in compensation which constitutes the amount of the charges not disclosed to customers when they bought the ROP.
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The FCA is assisting the United States Department of Justice ("DoJ') with a probe into alleged securities fraud at collapsed wealth firm Beaufort. This relates to an investigation into trading in the stock of a number of US companies and international money laundering. This also follows earlier actions by the FCA from December 2016 including restrictions in the firm's discretionary powers and more recently, the firm being declared insolvent by the FCA at the start of March 18.
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The FCA has fined Guillaume Adolph £180,000 and banned him from performing any function in relation to any regulated financial activity. Mr Adolph formerly worked at Deutsche Bank as a short-term interest rate derivatives trader. The FCA said that Mr Adolph improperly influenced several of Deutsche's LIBOR submissions and that his misconduct threatened the integrity of important benchmarks.
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The FCA has banned the former Chair of the Co-operative Bank, Paul Flowers. The FCA found that Mr Flowers' conduct demonstrated a lack of fitness and propriety required to work in financial services. The FCA considers that the Chair is pivotal in setting expectations of a company's culture, values and behaviours and considered that Mr Flowers failed in his duty to lead by example and to meet the high standards of integrity and probity demanded by the role.
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Alex Hope pleaded guilty to a charge of perverting the course of justice and was sentenced to 16 months imprisonment at Southwark Crown Court. This followed a sentence of seven years imprisonment for fraud and operating a collective investment scheme without authorisation, and also the non-payment of a confiscation order.
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Tenet has lost a High Court case after a judge ruled the network was liable for the unregulated activities of one of its appointment representatives. Mr Justice Ouseley ruled in favour of the Financial Ombudsman Service after Tenet sought to overturn a decision where it had ruled against the network and held them liable.
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Five people who participated in a mortgage application scam for a potential £9m have been sentenced at Cardiff Crown Court. Peter Gay, Kenneth Bacon, Malcolm Pow, Michael Bishop and Supriya Misra were involved in submitting at least 80 fraudulent applications to several high street lenders from January 2009 to September 2013.
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A financial adviser, Simon Haydock, has appeared in court where he denied conning his elderly mother out of almost £140,000. Mr Haydock's mother claims that she thought she was making investments whereas Mr Haydock claimed that the money from his mother was a gift.
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A former trader at Deutche Bank, Christian Bittar, has pleaded guilty to fixing the European Inter Bank Offered Rate ('Euribor'). Six others will also be tried for the offence in April.
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Dominic Chappell, former owner of BHS, has been ordered to pay more than £87,000 for failing to hand over information to the Pensions Regulator ('TPR'). Chappell failed to provide information that the watchdog had required him to supply as part of its investigation into the sale and then collapse of BHS.
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Industry News continued

The FSCS's Chief Executive, Mark Neale, has defended the decision to declare three SIPP firms in default saying that it is not encouraging claims against SIPP operators for due diligence.
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The FSCS has paid out £16m in claims against the collapsed advice firm, Cherish Wealth Management. The claims arose as the firm was advising a large number of clients to invest in unregulated schemes, some of which were created by the firm's founder.
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The FSCS has paid out a total of £4.9m for claims against a Norwich firm run by two brothers, who recently pleaded guilty to fraud. Ross and Alan Taylor, who ran Taylor and Taylor Associates alongside a connected investment scheme, Vantage Investment Group, pleaded guilty to defrauding over 200 clients of £17m (see Enforcement Section).
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Fund managers will receive a £11.7m refund from the FSCS for the costs of Keydata claims. This is in addition to the £50m refund from December 2014. The refunds are being made because of the 'significant recoveries' that the FSCS has made in connection with Keydata's failure which amount to more than £100m.
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A firm which was liquidated with outstanding claims, including the loss of a couple's £650,000 in pension transfers money, now operates as part of the Intrinsic network. Adviser Terence Trimble liquidated Knightbridge Financial Management in December 2016 as the firm started receiving complaints. In the meantime, he had set up a new firm, Knightsbridge Personal and Corporate Solutions in June 2016 as part of Intrinsic.
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At a conference on GDPR organised by the Personal Investment Management and Financial Advice Association, attendees were warned to not assume that the biggest penalties under the forthcoming GDPR will be for massive data breaches, as top level fines may be handed out for simply emailing people who haven't consented.
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The UK Parliament's Treasury Committee has announced that it will launch an enquiry into digital currencies and blockchain technology. This will also include reviewing the role that crypto currencies such as bitcoin and ethereum play in the UK economy.
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Bank of England governor Mark Carney has joined a chorus of central banking crypto critics, warning that bitcoin and others are failing as currencies.
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Structured finance boutique Marex Solutions has created a structured product it claims is the first to be registered, transacted and settled using blockchain technology. This is believed to be the first blockchain-based structured product that has emerged from the FCA's regulatory 'sandbox'.
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The FCA is meeting with other global regulators to discuss plans for a global regulatory 'sandbox' where companies can test out new ideas safely before providing these to consumers.
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