



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

January was fairly quiet for regulatory news with no FCA speeches being made so far this month. However the FCA did arrange two financial crime webinars during the month; one covered money laundering and sanctions risk at smaller banks and the other focused on bribery and corruption risk in commercial insurance broking. They are worth reviewing for generic guidance and for CPD. To access the webinars use the link [here](#).

This month the FCA also launched its Consumer Spotlight, which provides access to the FCA's work and its views on retail financial services consumers' attitudes and behaviours. The facility can be accessed [here](#).

The FCA's monthly Regulation Round-up was issued, which you can access [here](#), however the next issue of the FCA's Policy Development Update (Issue 19) has not yet been published.

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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Website – [www.gemcompliance.com/index.html](http://www.gemcompliance.com/index.html)

## Main features

- \* CP15/1 - FCA Competition Concurrency Guidance and Handbook Amendments
- \* CP15/2 - Financial Services Compensation Scheme - Management Expenses Levy Limit 2015/16
- \* FG15/1 - Retail Investment Advice: Clarifying the Boundaries and Exploring the Barriers to Market Development
- \* The Retrospective Application of Rules: Feedback on the Call for Examples
- \* Enforcement Actions and Prosecutions
- \* Other FCA News and Publications

## Industry News

After a meeting with Financial Adviser Phil Castle following a request from the FCA for Mr. Castle to remove a clause in his client agreement, which cites the 15-year long-stop in the FCA, the FCA is now allowing Mr. Castle to retain the clause, subject to the addition of some new headings and wording.

[Click here for article.](#)

FOS Plan and Budget issued this month and proposes that the budget, case fee and number of free cases is to remain the same as last year. The FOS has also taken the opportunity to ask for industry opinion on whether the new pension freedoms due to come in force in April will lead to an increase in complaints.

[Click here for article.](#)

High court decision preventing creditors from accessing a bankrupt's uncrystallised pension fund, which contradicts a previous precedence, has created regulatory uncertainty regarding rights of access to such funds. New pension freedoms could mean that 100% of the fund could become subject to an income order.

[Click here for article.](#)

Andrew Tyrie slams BoE Board in response to publication of the minutes from the Court of the BoE between 2007 and 2009. Tyrie stated that wide-spread conflicts of interest and self-interested back-covering were among the reasons for the inadequate response to the financial crisis, and that during the crisis the BoE did not have a board worthy of the name.

[Click here for full article.](#)

The Mutual Deferred Shares Bill would allow friendly societies and mutual insurers to issue deferred shares to raise capital, subject to restrictions to prevent them surrendering too much control.

[Click here for article.](#)

Pension Ombudsman publishes long-awaited decisions on complaints where providers have blocked people from transferring out of their pensions. It is hoped the decisions, which supported a number of providers who didn't agree to transfer requests, will help resolve uncertainty around provider transfer duties.

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## CP15/1: FCA Competition Concurrency Guidance and Handbook amendments

In this CP the FCA is seeking views on:

- \* draft guidance on its powers under the Competition Act 1998;
- \* draft guidance on market studies and making market investigation references; and
- \* a draft legislative instrument to introduce minor amendments to the FCA Handbook.

The FCA believes its draft procedures will enable it to use its competition powers effectively and efficiently. The consultation period closes on 13<sup>th</sup> March and the FCA gets its new competition powers on 1<sup>st</sup> April.

[Click here to access consultation paper.](#)

## CP15/2: Financial Services Compensation Scheme – Management Expenses Levy Limit 2015/16

In this joint CP the FCA and PRA propose a minimum FSCS Management Expenses levy for 2015/16 of £74.4m, which is a reduction of 7.4% on the levy for 2014/15. The consultation period closes on 16<sup>th</sup> February and the finalised rules will take effect from 1<sup>st</sup> April.

[Click here to access this consultation paper.](#)

## FG15/1: Retail Investment Advice: Clarifying the Boundaries and Exploring the Barriers to Market Development

The FCA's finalised guidance:

- \* Clarifies the regulatory framework in respect of different types of investment sales models.
- \* Provides detailed examples and its view on whether they amount to a personal recommendation or not. (Interestingly, in some circumstances where an automated system is used, such as an online decision tree, it could be seen as a personal recommendation. The FCA also suggested that if personal information, such as marital status and plans for the future, were collected this is likely to amount to investment advice and be subject to the full suitability rules.); and
- \* Explores specific issues in the investment advice area that stakeholders have raised with the FCA.

Despite industry calls for a relaxation of standards regarding qualifications and suitability for 'simplified' services the FCA has confirmed it does not "believe that relaxing the requirements for individuals who give simplified advice is in the best interests of the customer." The FCA also reiterated that only restricted advisers can offer 'simplified' advice.

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

## The Retrospective Application of Rules: Feedback on the Call for Examples

The FCA has published feedback on the call for examples it issued in August 2014 regarding retrospective application of rules, and has confirmed it did not find any examples of where regulation had been applied retrospectively. However many of the 36 responses raised general concerns regarding the nature of FCA regulation, which has led to the FCA confirming that improvements could be made to a number of regulatory practices, such as:

- \* Firm communication and the clarity of guidance;
- \* Ensuring rules keep pace with technological advancements; and
- \* Early intervention to avoid development of problems over a long period of time.

[Click here for article.](#)

## Industry news continued.....

Channel 4 Dispatches documentary (aired 12/1/15) indicated that up to £2m people – the number in a survey who said they would seek to take advantage of the new pension reforms - could be targeted by unregulated firms.

[Click here for article.](#)

New FCA Change in Control form for intra-group transactions (e.g. insertion of a new holding company) is issued.

[Click here for more information.](#)

The FCA has published a webpage regarding the ICE/FCA transaction feed for the reporting of derivatives traded on ICE Futures Europe. The FCA requests that firms inform the TMU whether or not they wish to rely on this feed for the reporting of these trades.

[Click here to access webpage.](#)

Transparency International publishes latest corruption league table with Denmark ranked the cleanest.

[Click here to access league table.](#)

The Payment Services Regulator appoints three heads of department: head of legal; head of regulatory policy and strategy; and head of stakeholder engagement and communications.

[Click here for article.](#)

US Regulator issues letter setting out challenges for 2015. In its letter SEC confirmed that business practices had improved but stated a number of problems have arisen because of firm culture and not putting customers first.

[Click here for full article.](#)

FSCS publishes plan and budget for 2015/16 and expects claims in relation to investment advice to halve but has set the combined levy for the investment life and intermediation sub-class at £182m, 25% more than the amount for 2014/15. It also stated that general insurance brokers will probably not be due a levy next year because of a high opening fund balance and the expected fall in claims throughout the year.

[Click here to access publication.](#)

Treasury confirms complaints concerning Pension Wise will be referred to the Parliamentary and Health Service Ombudsman rather than a financial regulator. Other issues associated with the complaints process in relation to Pension Wise appear to remain undecided.

[Click here for article.](#)

Scottish Parliament amends bands and rates that are to apply to Scotland's new Land and Buildings Transaction Tax (LBTT) from 1<sup>st</sup> April.

[Click here to access amended bands and rates.](#)

## Enforcement Actions and Prosecutions

Director disqualified by the Insolvency Service for running a landbanking scam through three companies, which duped customers into paying at least £1.7m for significantly over-priced land that had little if any development value.

[Click here for article.](#)

FCA imposes first fine on a sponsor firm (Execution Noble and Company Limited) for breaching listing rules in relation to sponsors.

[Click here for article.](#)

Forex investment fraudster, Alex Hope, convicted at Southwark Crown Court for operating a collective investment scheme without authorisation and for using over £2m of client money for personal expenditure. He will be sentenced on 16<sup>th</sup> January 2015 along with his co-defendant, Raj Von Badlo.

[Click here for article.](#)

Victims of former TenetConnect AR, Alok Dhanda, who was jailed for 5 years and 8 months in December on 37 counts of fraud, are looking into taking legal action against the network.

[Click here for article.](#)

The Upper Tribunal upholds FCA's decision to issue a public censure against Arch Financial Products LLP, and to fine and prohibit its CEO, Robin Farrell, and senior partner and compliance officer, Robert Addison, from performing any role in financial services. The Upper Tribunal also agreed with the fine of £9m, which would have been levied against the firm had it not been for the firm's financial hardship.

[Click here for article.](#)

FCA fines Reckitt Benckiser Group Plc £539,800 (with 30% early settlement discount) for inadequate systems and controls in relation to monitoring of share dealing by its own executives in its own shares, following late and incomplete notification of share dealings by two of its senior executives.

[Click here for article.](#)

Two former senior executives of Martin Brokers (UK) Ltd, David Caplin and Jeremy Kraft, have been fined £210k and £105k respectively, as well as being banned from performing SIFs at any financial services firm. The action was taken for compliance and cultural failings at the firm that permitted the manipulation of LIBOR.

[Click here for article.](#)

## Other FCA News and Publications

FCA has written to the CEOs of pension providers outlining plans to introduce additional protection for those DC holders reviewing their pensions from April. Additional protection rules include the provision of relevant risk warnings and obtaining details of the key aspects relating to decisions concerning pension pots.

[Click here for article.](#)

Agreement has been reached between the FCA and Affinion International Limited, and 11 high street banks and credit card issuers, on the nature of a proposed compensation scheme regarding the way certain card security products were sold to consumers. However, the scheme still needs to be voted on by eligible customers and formally approved by the High Court.

[Click here for article.](#)

FCA updates its AIFMD webpage with a Q&A document to help firms with AIFMD Annex IV transparency reporting on Gabriel.

[Click here to access webpage.](#)

PS15/1: Early implementation of the Transparency Directive's requirements for reports on payments to governments, including feedback on CP14/17 and final rules - [Click here to access policy statement.](#)

PS15/2: Recovery and Resolution Directive, including feedback on CP14/15 and final rules - [Click here to access policy statement.](#)

Occasional Paper No. 7: Stimulating Interest: Reminding savers to act when rates decrease - [Click here to access occasional paper.](#)

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## Industry News Continued.....

FSCS delays decisions on claims in relation to three Stirling Mortimer property funds, which are being investigated by the SFO until the investigation concludes.

[Click here for article.](#)

The Pensions Ombudsman is criticised by an adviser for taking 3 years to deal with a client's complaint - that her membership in a pension scheme had not been backdated after she won the right to be included in it in August 1997 - before dismissing it because the client failed to make her complaint within three years and therefore missed her deadline.

[Click here for article.](#)

An adviser has said he is looking to move the majority of his clients away from AJ Bell after changes to its system resulted in a number of errors on accounts. The adviser in question said at least 80% of his clients had encountered errors. AJ Bell admitted there have been "teething problems" with the migration of data from Sippcentre to Investcentre but was not aware of incorrect information being sent to HMRC, which was one of the issues reported by the adviser.

[Click here for article.](#)

The Department for Business, Innovation and Skills has published an update to its cyber security guidance for businesses.

[Click here to access publication.](#)

HMT publishes guidance update regarding April's at-retirement reforms. As well as confirming that the guidance will "complement professional regulated advice, point consumers to reliable sources of further help, and help consumers recognise the value of specialist help and advice," it confirmed the cost of the guidance guarantee to advisers would be £4.2m.

[Click here for article.](#)

More than 1.5m small and micro businesses are to receive letters from the Pensions Regulator in the coming months containing information on auto-enrolment.

[Click here for article.](#)

Pinsent Masons publishes presentation on regulatory hot topics for the insurance sector in 2014.

[Click here to access presentation.](#)

Pinsent Masons publishes guide entitled Financial Services Enforcement 2015, which provides top tips in relation to enforcement action for all FCA regulated firms.

[Click here to access guide.](#)

