



**Welcome** to the third edition of Gem Compliance's monthly regulation newsletter and **Happy New Year**. 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.

The hot topic for December has been the Government's Autumn statement, which included a number of relevant tax changes, such as plans to crack down on income tax avoidance by some investment managers who are disguising fee income as capital gains, and the announcement that business rates will be reviewed for the first time in 400 years.

The FCA has also been very busy this month issuing publications and making speeches. A number of these have been summarised below. From 2014, the key messages from the FCA seem to be in relation to firm culture, individual accountability and proper engagement of boards in conduct issues.

The FCA's monthly Regulation Round-up was issued, which you can access [here](#), along with the FCA's latest Policy Development Update, which provides a list of recent and upcoming publications, and can also be accessed [here](#).

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

- \* FCA new strategy and organisational structure
- \* CP 14/30 Improving Complaints Handling
- \* TR 14/19 Wealth management firms and private banks - Conflicts of interest: in-house investment products
- \* CP 14/32 Bringing additional benchmarks into the regulatory and supervisory regime
- \* PS 14/17: Retirement Reforms and the Guidance Guarantee, including feedback on CP14/11
- \* CP 14/26 Regulatory fees and levies: policy proposals for 2015/16
- \* CP 14/31 Strengthening accountability in banking: forms, consequential and transitional aspects
- \* TR14/20 Annuities sales practice
- \* TR14/21 Retail investment advice: adviser charging and services
- \* Enforcement actions and prosecutions during December 2014
- \* FCA speeches
- \* Other FCA publications / announcements

## Industry news

FSCS issues latest Outlook showing that commercial agreements (such as the court settlements with Financial Advisers for advice given on failed Keydata life settlements) is achieving recoveries in excess of the costs incurred.  
[Click here for full article.](#)

FCA data shows number of advisers has not significantly reduced since implementation of RDR at the beginning of 2013, however the number at banks and building societies has dropped a further 11% since the start of this year.  
[Click here for full article.](#)

In order to close a loophole that would allow savers to claim tax relief on tax-free cash taken from their pension fund, HMRC has confirmed that taking a protected lump sum could trigger the new lower annual allowance that applies under pension freedoms.  
[Click here for full article.](#)

HMT defends legislation preventing the FCA being sued stating this protection is in the public's interest. The comments follow claims by Alistair Hinton and his wife who believe they were forced to sell their financial advice company after being libelled by the FCA.  
[Click here for full article.](#)

Chancellor may scrap tax on annuity payments made to widows in order to bring these cases in line with other recent 'death tax' changes. However it is not known whether this will apply to existing joint life annuity plans or those bought after the reforms are implemented.  
[Click here for full article.](#)

Chancellor confirms Government's review into the Money Advice Service, which was due to be published by the end of 2014 will not comment on the future of the organisation.  
[Click here for full article.](#)

HMRC announces seeding relief for specialist property funds will be legislated for in the Finance Bill 2016. This should encourage more conversions to PAIFs.  
[Click here for full article.](#)

The FCA has apologised and made a goodwill payment of £1000 to a customer after the FSA wrongly advised him that an insurance broker firm would protect him if his investment in a US hotel development failed. The investigation by the Complaints Commissioner revealed that the after making the call the customer also received the advice in an email from the FSA. A few months prior to the advice being given the customer contacted the FSA regarding the investment scheme and was told it "had the hallmarks of a scam." The Competition Commission has also instructed the FCA to review the training provided to the Customer Contact Centre staff.  
[Click here for full article.](#)

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## FCA's new strategy and organisational structure

The FCA has announced structural changes to complement its new approach to regulation, which aims to provide a "sharper focus on how firms are regulated and on delivering the right outcome for consumers and the markets." The main changes, which are to commence on 5<sup>th</sup> January and conclude by April are:

- \* The current Authorisations and Supervision Divisions will be brought together with a number of specialist functions such as financial crime and client assets. From this, two new divisions will be created from April 2015 providing greater distinction between the regulation of small and large firms.
- \* Tracey McDermott will take responsibility for managing the transition to a combined Authorisations and Supervision Unit and will subsequently lead one of the new divisions.
- \* A new Strategy and Competition Division led by Christopher Woolard will be formed to build on competition competences, and enable better prioritisation and focus across the organisation.
- \* A new Risk Division to provide a strategic approach to the management of internal and external risk will be created with Richard Sutcliffe as the acting Director.
- \* A new Markets Policy and International Division led by David Lawton will also be made focussing on increasing the focus and influence at the European level.
- \* A Market Oversight Division will be established, incorporating the UKLA and Market Monitoring functions, with Marc Teasdale as the acting lead for this division.
- \* Other specialist market supervision functions will be integrated with Supervision.

[Click here for strategy paper.](#)

## CP14/30 Improving Complaints Handling

Following publication of the thematic review on complaints handling the FCA has now published a consultation paper proposing a number of changes to improve handling, reporting and publication of complaints. The main proposed changes are listed below:

- \* Extension of the next business day rule to three business days following receipt of a complaint;
- \* Require firms to notify all clients in writing whose complaints are handled by the end of the third business day that they can refer their complaint to the Financial Ombudsman Service if they remain unsatisfied.
- \* Require firms to report all complaints to the FCA.
- \* Changes to the bi-annual complaints return including: new categories set against product/service groupings; additional metrics e.g. number of sales; alteration on the timeframes resolved complaints are reported against to within 3 business days and 4 days to 8 weeks; simplified reporting for firms with less than 500 complaints; and revision of the complaints publication template.
- \* New rules limiting the cost of calls to firms by complainants;
- \* Changes to implement the Alternative Dispute Resolution Directive, which include:
  - ➔ Allowing FOS to deal with a complaint it receives before it has been investigated by the firm if the firm and consumer consents to this;
  - ➔ Disclosure requirements regarding availability of the FOS;
  - ➔ Broadening the definition of an eligible complainant;
  - ➔ Changes to rules in relation to dismissal of a complaint by the FOS and withdrawal of a complaint.

The consultation period closes on 13 March 2015.

[Click here to access consultation.](#)

## TR14/19 Wealth management firms and private banks - Conflicts of interest: in-house investment products

In this thematic review the FCA reports on the conflicts of interest concerning the use of in-house investment products by wealth management firms and private banking firms in retail discretionary and advisory investment portfolios. The findings were mainly positive therefore further thematic work is not proposed. However there were a number of shortcomings and consistency issues, which firms should consider when reviewing their own arrangements and processes.

[Click here to access review.](#)

## CP14/32 Bringing additional benchmarks into the regulatory and supervisory regime

The FCA were given powers in April 2013 to regulate benchmarks following the misconduct identified in relation to LIBOR. This CP looks at how the FCA's approach to regulating benchmarks could be applied beyond LIBOR to 7 other benchmarks (and benchmark submitters as appropriate). The consultation period closes on 30<sup>th</sup> January and the FCA expects it will start regulating these other benchmarks in April.

[Click here to access consultation.](#)

## Industry news continued...

DWP consultation published proposing changes to auto-enrolment legislation with the aim of simplifying the process for all.

[Click here to access consultation.](#)

In a letter to the Parliamentary Environmental Audit Committee, BoE Governor Mark Carney, has revealed a review is being carried out into the impact of new carbon emission targets on financial stability. Mr Carney believes fossil fuel companies are not properly factoring in risks to their business model and therefore they are fundamentally mis-priced. FTAdviser believes this could cause significant re-pricing of some stocks within the largest equity funds.

[Click here for full article.](#)

Stress testing carried out by the European Insurance and Occupational Pensions Authority ahead of the enactment of Solvency II in January 2016 shows the sector is "generally sufficiently capitalised" with 56% of firms having sufficient capital under the most severe stress scenario.

[Click here for full article.](#)

Software firm Suitable Strategies is working on a new tool that could encourage the use of simplified advice models by removing the risks of complaints later on. The tool involves the customer passing a 3 minute long test, which effectively accredits the customer allowing them to qualify for a simplified advice process and/or to purchase less complicated investments directly.

[Click here for full article.](#)

The Association of Professional Advisers has announced that advisers will be told at the beginning of 2015 how much cash they will need to hold to meet new capital adequacy requirements. The FCA is expected to publish the outcome of its review into whether the previously proposed capital adequacy requirements should go ahead following concerns they are at odds with the its competition objective.

[Click here for full article.](#)

OECD publishes its Pensions Outlook 2014 and reports that new pensions flexibilities could be "detrimental" with people at risk of outliving their savings.

[Click here for full article.](#)

ESMA publishes technical advice on the implementation of MiFID II and states "the practice by which asset managers receive research from broker firms in exchange for using those brokers to execute trades should be seen as an inducement." ESMA believes it would only not be an inducement if the research was paid for directly by the asset manager and suggests that asset managers and brokers should sign commission-sharing agreements whereby the cost of research and execution are unbundled.

[Click here to access advice.](#)

Government proposes to restrict the use of corporate directors of UK companies to those with shares listed on the stock exchange as it believes corporate directors impair transparency and help mask illegal activity. The Small Business, Enterprise and Employment Bill is currently before Parliament and the Department for Business Innovation and Skills has opened a consultation on the types of business that the exception should be applied to.

[Click here to access consultation.](#)

Regulation on key information documents for packaged retail and insurance-based investment products' (PRIIPs) has been published in the EU's Official Journal and it is understood that PRIIPs regulation will apply from 31<sup>st</sup> December 2016.

[Click here to access journal.](#)

On 17<sup>th</sup> December the FCA and PRA activated 317 new CRD IV reporting validations.

[Click here for full article.](#)

Chairman of the TSC, Andrew Tyrie, writes to leading banks after hearing evidence that fraud figures published by banks were understating the actual level of fraud.

[Click here for full article.](#)

## PS14/17: Retirement Reforms and the Guidance Guarantee, including feedback on CP14/11

The FCA has confirmed its final rules are largely in line with its original proposals, however it has made changes regarding its professional standards, and has also made slight amendments and provided additional clarity in relation to its proposals regarding:

- \* Timing of information before April 2015;
- \* Content of information to be provided to those approaching retirement;
- \* Pensions guidance service references;
- \* Technical aspects of drawdown; and
- \* Rejection of guidance.

[Click here to access policy statement.](#)

## CP14/26 Regulatory fees and levies: policy proposals for 2015/16

The FCA has set out proposals in the following areas:

- \* fees to recover the 2015/16 funding needed by PSR to regulate the payments systems expected to be designated by the Treasury (chapter 2);
- \* pensions guidance levy (chapter 3 and 4);
- \* recovery of costs from applicants for authorisation (chapter 5);
- \* the introduction of an annual fee for ARMs (approved reporting mechanisms) and other entities providing transaction reports directly to the FCA (chapter 7); and
- \* the FCA's definitions of income to bring the charging policy for newly recognised investment exchanges into line with other firms (chapter 11).

The consultation period closes on 2<sup>nd</sup> February 2015 and feedback and final rules will be published in March.

[Click here to access consultation.](#)

## CP 14/31 Strengthening accountability in banking: forms, consequential and transitional aspects

This is a technical consultation paper that builds on the proposed changes to the way individuals working for UK banks, building societies, credit unions and PRA-designated investment firms are assessed and held accountable for the roles they perform (CP14/13). However, there are a number of consequential changes that will affect authorised firms, but these are mainly minor, technical amendments as a consequence of the Banking Reform Act, such as replacing APER with Rules of Conduct for all authorised firms. In summary the FCA proposes to:

- \* keep the names APER, Code and Principles;
- \* keep the content aligned with the existing APER;
- \* clarifying its application to all controlled functions except Senior Management Functions;
- \* changing the status of all the existing principles to rules;
- \* changing the status of the existing evidential provisions to guidance; and
- \* retain existing guidance.

[Click here to access consultation.](#)

## TR14/20 Annuities sales practice

The FCA's review looked at the non-advised sales practices and literature of pension providers offering annuities to their existing customers. The FCA found that consumers are not shopping around and switching, which could result in consumers buying the wrong type of annuity or not purchasing an enhanced annuity where they are eligible for one and therefore missing out on high income in retirement. Some of the firms involved in the TR are being asked to determine whether the findings are indicative of more widespread problems.

[Click here to access review.](#)

## TR14/21 Retail investment advice: adviser charging and services

The FCA has now completed its third cycle of review work following introduction of the RDR, which looked at:

- \* Adviser charging and service disclosure; and
- \* The development of firms' business models in response to the RDR, i.e. what services are being provided to clients for an ongoing charge and how firms are delivering these services.

Overall the FCA believes its findings "provide further evidence of the increasing professionalism of the financial advice sector." However concerns were noted in relation to disclosure of total cost and explanations of ongoing services.

[Click here to access review.](#)

## Industry news continued...

JMLSG publishes amendments to Parts I and II of its Guidance and submits it for ministerial approval.

[Click here to access the proposed amended Guidance.](#)

## Enforcement Actions and Prosecutions

The Pensions Regulator shut down 5 pension liberation schemes that had made £14.7m from 11% transfer fees from 1,400 customers. The regulator commenced high court proceedings against the firms because it was concerned the schemes were to make a cash payment to the member rather than providing retirement benefits, which was considered to be a misuse/misappropriation of schemes monies under the Pensions Act 2004.

[Click here for article.](#)

Property investment fraudster who was initially sentenced to 5 years imprisonment has been given an additional 6 years for failing to pay a £1.5m confiscation order.

[Click here for article.](#)

Former Financial adviser, Alok Dhanda, of Dhanda Financial until August 2013 and Truly Independent until November 2013, has pleaded guilty to 24 counts of fraud, which allowed him to obtain £2.6m from 37 victims to fund his gambling habit. Sentencing is due on 19<sup>th</sup> December.

[Click here for article.](#)

Three directors (2 of SGG, a subsidiary of Sustainable AgroEnergy plc, and one of SJ Stone Ltd) have been convicted of fraud and bribery offences relating to the selling and promoting of investment products on "green biofuel" Jatropha plantations in Cambodia. The convictions were part of the SFO's investigation into the £23m SGG fraud between April 2011 and February 2012. The offences secured against two of the directors under the Bribery Act 2010 are the first since it came into law in July 2011.

[Click here for article.](#)

Former Blackrock Asset Management MD has been banned from performing any function in relation to any regulated activities for deliberately failing to buy a valid ticket to cover his entire journey between Stonegate in East Sussex to Cannon Street in London.

[Click here for FCA statement](#)

Debt management firm, Harrington Brooks to pay over £185k in redress to 4,500 customers for delays in relation to communications to consumers' creditors, which resulted in some consumers owing more in interest and charges than if the creditors had been contacted sooner.

[Click here for FCA statement.](#)

Upper Tribunal upholds FCA decision to fine and ban former Non-executive Director, Angela Burns for failing to disclose her conflicts of interest in working for two mutuals.

[Click here for article.](#)

### **The FCA's new competition powers: what do they mean for the financial services industry? - by Deb Jones, FCA's Director of Competition.**

The FCA's Director of Competition provided an insight into how the FCA will use its competition powers when they come into force on 1<sup>st</sup> April 2015. Jones mentioned work done so far by the new Competition Department, such as the GI add-ons market study, and how the Department will interact with other FCA teams in relation to supervision, enforcement action, etc. Jones also spoke about how concurrent powers with the Competition and Markets Authority will work in practice.

[Click here for full speech.](#)

**Conduct Risk Briefing – Speech by Robert Taylor, The FCA's Head of Wealth Management and Private Banking.** Taylor spoke about three areas of conduct risk, which boards should look at in more detail: Politically Exposed Persons and sanctions; anti-money laundering; and sustainability. Taylor also said the FCA wishes to see businesses concentrating on consumer outcomes in all aspects of their business.

[Click here for full speech.](#)

**The commercial importance of culture to industry – by FCA Chief Executive, Martin Wheatley –** Wheatley states that the appetite for conduct risk should be zero but this is unlikely to be achieved, which is why it's important that firm culture aims for the right consumer outcomes and that individuals take responsibility for their actions. The FCA believes it would be inappropriate for them to provide prescription on the limits of acceptable and unacceptable behaviour but firms shouldn't "need a rule book to determine right from wrong."

[Click here for full speech.](#)

**Learning the lessons of the past as an industry – by Tracey McDermott, Director of Enforcement and Financial Crime at the FCA –** Commenting on the recent FOREX fines, McDermott said the challenge (as Lyndon Johnson said) is to "learn lessons from the past but not live in it." Repeat offences are supporting the growing theory that issues within firms are deeper and wider than a few errant individuals. McDermott believes "they did it because they operated in a culture in which they believed, at best, that poor behaviour would be excused by the results for the firm and for them individually and, at worst, would be rewarded by the firm and their peers in terms of both financial reward and status." McDermott said the cultural change the FCA is looking for is a shift analogous to the change in attitudes towards drink driving by different generations. The deterring factor shouldn't be the fear of a fine but the impact it could have on other colleagues, the firm and the wider industry. Individuals should act in the right way because "they believe this is what is valued by their peers, colleagues, and firms and that they will be ostracised if they don't."

[Click here for full speech.](#)

**CASS compliance – the bigger picture – by David Lawton, the FCA's Director of Markets –** Lawton confirms CASS Compliance remains very high on the FCA's agenda and speaks about the new CASS rules that have recently been introduced and are soon to be introduced, and clarifies the importance of the CF10a role.

[Click here for full speech.](#)

**Payment systems: the regulatory challenge – by Hannah Dixon MD of the PSR –** Dixon speaks about the challenge of ensuring payments systems and therefore regulation, keeps pace with the constant changes to the way money is spent, moved and managed.

[Click here for full speech.](#)

**Creating a fair and competitive environment for retail banking in the interests of consumers – by Karina McTeague, Director of Retail Banking.**

[Click here for full speech.](#)

**Davis Review and FCA Response -** The Davis Review into the events concerning the announcement of a review into the treatment of customers of long-standing life insurance products, which caused a significant drop in the share price of a number of companies has been published along with the FCA's Response. The FCA has accepted all the recommendations and has started work to implement them.

[Click here to access review.](#)

**Post-implementation reviews of the Retail Distribution Review -** the FCA instructed external consultants, Europe Economics, to conduct phase one of the post-implementation review and the report concludes that the reforms are working. Product bias has been reduced - sales of lower/no commission products have increased and there has been a decrease in sales of higher commission products – and a number of financial advisers have gained further qualifications. Impact on price has been mixed but there is little evidence that availability of advice has significantly reduced.

The RDR also required firms to label themselves as "restricted" or "independent." Review work has found that these labels are not resulting in improved consumer understanding and the FCA will therefore consult on better ways of presenting information to customers in early 2015. Phase 2 of the review will be published in 2017.

[Click here to access review.](#)

**The Independent Project Board (IPB) issues final report** covering its audit of charges and benefits in DC workplace pension legacy schemes.

[Click here for full article.](#)

**PSR starts work on developing Payments Strategy Forum –** as this was the FCA's preferred option they have decided to start work on this ahead of receiving comments back to the consultation paper where it was initially proposed.

[Click here for full article.](#)

**FCA confirms new Disclosure and Transparency Rules –** new rules to report on payments to governments have now come into force.

[Click here for full article.](#)

**FCA publishes new web pages on fund authorisation –** the new pages relate to authorisation and supervision of investment funds and highlight the "cradle to grave" approach of Fund Authorisation and Supervision (FAS).

[Click here for full article.](#)

**FG14/9 – Primary Market Bulletin No. 7**

[Click here to access bulletin.](#)

**GC14/8 – Primary Market Bulletin No. 9**

[Click here to access bulletin.](#)

**PSR Issues Annual Plan.**

[Click here to access Plan.](#)

**MS14/3 - Retirement Income Market Study: Interim Report**

[Click here to access report.](#)

**CP14/25 - Changes to the Approved Persons Regime for Solvency II Firms.**

[Click here to access consultation.](#)

**CP14/27 - Quarterly Consultation Paper No. 7**

[Click here to access consultation.](#)

