

September 2018

RETAIL REGULATORY RISK & COMPLIANCE UPDATE

Retail Regulatory Risk and Compliance Monthly Update

Contents

UK	
1. New Consultations	2
2. Regulatory Developments	3
3. Key FCA Messages and Announcements	4
EU	
4. New Consultations	5
5. Regulatory Developments	5
OTHER	
6. Other Compliance and Risk Updates	5

1. New Consultations

[PRA publishes second consultation on SM&CR extension to insurers](#)

The Prudential Regulation Authority (PRA) has launched a [consultation](#) setting out its proposed rules for some consequential changes, and minor administrative amendments, related to the extension of the Senior Managers and Certification Regime (SM&CR) to insurers. The consultation closes on the 17 October 2018. *PRA, 17 September 2018*

[FCA publishes consultation on applying SM&CR to CMCs](#)

The FCA has published a [consultation](#) on how they propose to apply the SM&CR to claims management companies (CMC). The consultation sets out the draft rules and guidance for the CMCs and will apply to those serving customers in, or constituted under the laws of, England & Wales or Scotland. The consultation closes on the 6 December 2018. *FCA, 20 September 2018*

[FCA publishes quarterly consultation no 22](#)

The FCA has published [quarterly consultation paper no 22](#), in which it consults on changes to its supervisory principles and changes to the reporting requirements in the Supervision manual for authorised payment institutions. The deadline for responses is 7 October 2018 and 7 November 2018, respectively. *FCA, 7 September 2018*

[PSR publishes consultation on specific direction regarding protected ATMs \(LINK\)](#)

The Payment Systems Regulator (PSR) has published a [consultation](#) on a draft specific direction requiring the adoption of appropriate policies and measures and reporting obligations regarding protected ATMs. The consultation closes on the 9 October 2018. *PSR, 25 September 2018*

[FCA publishes consultation on PSD2 fraud and security reporting requirements](#)

The FCA has published a [consultation](#) on the approach to final regulatory technical standards and European Banking Authority (EBA) guidelines under the revised Payment Services Directive (PSD2). The FCA is also proposing new complaints reporting rules about authorised push payment (APP) fraud. The consultation closes on the 12 October 2018. The FCA will publish its final position in early 2019. *FCA, 17 September 2018*

[Steering group publishes consultation on APP reimbursement code](#)

The APP Scams Steering Group, which was established by the PSR in March 2018 to lead the development of a voluntary industry code for the reimbursement of victims of APP scams, has published a [draft Code](#) for consultation, which closes on the 15 November 2018. The final Code is expected to be ready for implementation in early 2019. *PSR, 28 September 2018*

[CMA publishes consultation on its provisional decision in limited review of the PPI Order](#)

Following consultation, the Competition and Markets Authority (CMA) has reached a [provisional decision](#) on its limited review of the Payment Protection Insurance Market Investigation Order 2011 (PPI Order), conducted in light of the introduction of the Insurance Distribution Directive (IDD). It has issued a notice of intention to vary the PPI Order by requiring PPI providers to produce an Insurance Product Information Document for customers. It is now conducting a further consultation on its provisional decision and its intention to vary the PPI Order. The consultation closes on the 29 October 2018. *CMA, 27 September 2018*

[HMT publishes consultation on draft Banks and Building Societies \(Priorities on Insolvency\) Order 2018](#)

HM Treasury (HMT) is [seeking views](#) on the government's approach to transposing the Bank Creditor Hierarchy Directive into UK law before the transposition deadline of 29 December 2018. The directive will amend Article 108 of the Bank Recovery and Resolution Directive, establishing a new class of non-preferred senior debt to be inserted in the creditor hierarchy. The consultation closes on 10 October 2018. *HM Treasury, 13 September 2018*

2. Regulatory Developments

HMT updates programme of secondary financial services legislation under the EU (Withdrawal) Act 2018

HM Treasury's (HMT) programme of secondary legislation to ensure that the UK continues to have a functioning financial services regulatory regime in all scenarios, when the UK leaves the EU in March 2019, has been updated with [Draft Payments and electronic money \(Amendment\) \(EU Exit\) Regulations](#) and [The Credit Transfers and Direct Debits in Euro \(Amendment\) \(EU Exit\) Regulations 2018](#). *HM Treasury, 4 September 2018*

Financial Guidance and Claims Act 2018 (Commencement No 1 and Transitional Provision) Regulations 2018 made

A certain [provision](#) of the Financial Guidance and Claims Act 2018 came into force in the UK on 8 September 2018. The commenced provision amends the Privacy and Electronic Communications (EC Directive) Regulations 2003 to create a special class of unsolicited marketing calls relating specifically to claims management services (cold claims calls) among other things.

Legislation.gov, 10 September 2018

Financial Guidance and Claims Act 2018 (Commencement No 2) Regulations 2018 made

[Certain provisions](#) of the Financial Guidance and Claims Act 2018 will come into force in the UK fully on 1 January 2019. The commenced provisions relate to the levy under the Financial Services and Markets Act 2000 for debt advice expenses of devolved authorities, and the information about the availability of guidance. *Legislation.gov, 12 September 2018*

Financial Guidance and Claims Act 2018 (Commencement No 3 and Transitory Provisions (Modification)) Regulations 2018 made

[Specified provisions](#) in Part 1 of the Financial Guidance and Claims Act 2018 came into force in the UK on 1 October 2018.

These provisions establish a single financial body, and make associated and consequential provision. *Legislation.gov, 26 September 2018*

FCA publishes regulation round-up for September 2018

The FCA has published its [regulation round up](#) for September 2018. Hot topics include the consultation on extending the SM&CR to CMCs and draft BBA guidance under the revised PSD2. *FCA, 20 September 2018*

PRA issues regulatory digest for August 2018

The PRA has issued its [regulatory digest](#) for August 2018. The digest highlights key regulatory news and publications delivered for the month. *PRA, 3 September 2018*

3. Key FCA Messages and Announcements

FCA publishes thematic review on impact of credit broking remuneration models at the point of sale

The FCA has published its [thematic review](#) on the impact of credit broking remuneration models at the point of sale. The review considers whether inter-firm commission affects how consumers are sold credit and whether commission arrangements are resulting in consumer harm. Overall, the FCA did not find evidence that inter-firm commissions are generally resulting in significant harm to consumers. *FCA, 27 September 2018*

FCA obtains High Court order appointing provisional liquidator for Total Debt Relief Limited

The FCA has obtained an [urgent High Court order](#) appointing a provisional liquidator in respect of Total Debt Relief Limited (TDR), to protect its customers' money. The FCA is also petitioning for TDR to be wound-up, the petition for which will be heard at a later date. *FCA, 13 September 2018*

FCA bans Christian Bittar and publishes decision notice

The FCA has published a [final notice](#) with respect to Christian Bittar, a former Deutsche Bank derivatives trader, and banned him from performing any function in relation to any regulated financial activity. The FCA has found that Mr Bittar lacks integrity and therefore fitness and propriety to carry out such a role. *FCA, 14 September 2018*

Michael Nascimento sentenced to 11 years for role in boiler room share fraud

Michael Nascimento has been [sentenced](#) to 11 years' imprisonment at Southwark Crown Court for his role in a share fraud carried out through a series of boiler room companies which led to the loss of more than £2.8m of investors' money. The FCA and the Court considered that Mr Nascimento was the controlling mind, instigator and the main beneficiary of the fraud. *FCA, 17 September 2018*

FCA publishes information for customers of Premier FX Limited

The FCA has published a [press release](#) stating that on 13 August 2018, on the FCA's application, the High Court appointed administrators in respect of Premier FX Limited. *FCA, 5 September 2018*

FCA publishes decision notice concerning Linear Investments Limited

The FCA has published a [decision notice](#) concerning brokerage firm Linear Investments Limited (Linear). The FCA found that Linear breached Principle 3 of the FCA's Principles for Businesses by failing to take reasonable care to organise and control its affairs responsibly and effectively to ensure potential instances of market abuse could be detected and reported. The FCA views the failings as serious and has fined Linear £409,300. This is the first case to be completed under the FCA's process introduced for partly contested cases in March 2017. *FCA, 27 September 2018*

FCA publishes Handbook Notice No. 58

The FCA has published [Handbook Notice No. 58](#), which includes changes to the FCA Handbook made by the FCA board on 26 July and 27 September 2018, together with feedback on consultation that will not have a separate policy statement. The instruments include final rules on the assessment of creditworthiness in consumer credit. *FCA, 28 September 2018*

FCA publishes policy development update for September 2018

The FCA has published the [latest version](#) of its policy development update, which provides information on its recent and upcoming publications. Future publications include a policy statement on its fees proposals for CMCs, which is expected in December 2018. *FCA, 7 September 2018*

FCA publishes regional programme of events for 2018/19

The FCA's 2018/2019 regional programme of events, '[FCA: Live and Local](#)', starts up again in September 2018 with events taking place across the UK. The programme, traditionally aimed at general insurance, retail investment and mortgage firms, will now include events for non-bank payment services providers and compliance consultants. *FCA, 13 September 2018*

Complaints Commissioner issues final report

The Complaints Commissioner has issued a [final report](#), which relates to correspondence with the FCA on the actions of FCA staff following the publication in March 2017 of the FCA's policy statement payment protection insurance complaints and specifically the potential effect of distributing pin badges to FCA staff bearing the motto 'Bring it on!'. The Commissioner considered that the FCA's responses to the complaint did not address the complainant's key concern, that the FCA had acted

unprofessionally and recommended that the FCA write to the complainant again with an explanation addressing this and other concerns of the complainant. *FCA, 4 September 2018*

Complaints Commissioner upholds complaint against FCA for failure to pursue investigation

The Complaints Commissioner has [upheld a complaint](#) against the FCA for not responding adequately to information a complainant had provided, and failing to rectify the matter despite the complainant's attempts to pursue it. The Commissioner acknowledged that it was not its role to second-guess the FCA's reasonable exercise of its discretion. *FCA, 19 September 2018*

EU

4. New Consultations

No new EU consultations this month.

5. Regulatory Developments

MEPs approve new AML/CTF laws

Members of the European Parliament have [approved](#) new measures to combat terrorist financing (CTF), by preventing money laundering (AML) and tightening cash flow checks. Two laws will make it harder for terrorists and criminals to finance their activities, by closing the loopholes in the current money laundering rules and by making it easier for the authorities to detect and stop suspicious financial flows. *European Parliament, 12 September 2018*

OTHER

6. Other Compliance and Risk Updates

ASA bans sunny.co.uk ad for breach of RAPR prominence rules

The Advertising Standards Authority (ASA) has [concluded](#) that a TV advert for Elevate Credit International Ltd t/a sunny.co.uk breached rule 14.11 of the British Code of Advertising Practice because the representative annual percentage rate (RAPR) was given less prominence than the incentive to apply for credit. *ASA, 13 September 2018*

LSB publishes Access to Banking Standard summary report

The Lending Standards Board (LSB) has published its [first summary report](#) on banks' application of the Access to Banking Standard, which came into effect on 1 May 2017 following an independent review commissioned by the industry. *LSB, 18 September 2018*

CMA publishes letter on Danske Bank's breaches of account-switching rules

The CMA has published a [letter](#) it sent Northern Bank Limited t/a Danske Bank about its non-compliance with the Northern Ireland Personal Current Account Banking Market Investigation Order 2008. The CMA says Danske Bank has breached the Order on two occasions, by failing to supply over 43,000 of its customers with information on switching accounts between January 2017 and August 2018. *CMA, 19 September 2018*

PSR responds to first LINK ATM footprint report

The PSR has published its [response](#) to the first 'footprint report' of the UK's largest cash machine network, LINK, on access to cash points. The PSR is concerned about closures of free-to-use ATMs, particularly 'protected' ones. The PSR has asked LINK to review the closures and consider whether they can be replaced where needed, with a view to replacing them as quickly as possible. Nicky Morgan, chair of the Treasury Committee, has also [expressed concern](#) over the figures published by LINK. *PSR, 12 September 2018 and HM Treasury, 13 September 2018*

PSPs and billers asked to review the 'Request to Pay' draft specifications

Payment service providers (PSPs) and billers are being [invited to register](#) to play their part in developing 'Request to Pay'- a new way to improve the control, flexibility and transparency of bill payments. It has been launched by the New Payment System Operator (NPSO), which has responsibility to develop best in class payment infrastructure and standards. *Faster Payments, 10 September 2018*

PSR gives details of information notices issued to MasterCard and Visa

The PSR has published [details](#) of the information notices which it issued to MasterCard Europe SA and Visa Europe Ltd in July 2018. The information notices are intended to help the PSR monitor compliance with the caps on interchange fees on payment card transactions imposed by the Interchange Fee Regulation. *PSR, 18 September 2018*

PSR publishes annual monitoring 2018 on CASS's compliance with the Payment Account Regulations 2015

The PSR has published its [annual monitoring for 2018](#) on the Current Account Switch Service (CASS)'s compliance with the Payment Account Regulations 2015. The PSR says that, following a review of information and evidence submitted by Bacs on behalf of CASS for the annual assessment, it is satisfied that CASS continues to meet the criteria for designation as an alternative switching scheme. *PSR, 18 September 2018*

FCA publishes statement on super-complaint from Citizens Advice to CMA on excessive prices

Citizens Advice have submitted a [super-complaint](#) to the CMA to identify remedies and recommendations to put an end to the penalty paid by loyal and disengaged consumers. The super-complaint covers several markets, including insurance, cash savings and mortgages. *FCA, 28 September 2018*

PRA publishes article stating SM&CR's success is a model for overseas regulators

The PRA has published an [article](#) on the SM&CR as part of its Quarterly Bulletin for Q3 2018. According to the article, experience suggests that the regime is providing a positive discipline on firms and their key decision-makers, and some overseas jurisdictions are looking at the SM&CR as a model for similar reforms. *PRA, 21 September 2018*

NPSO widens scope of procurement for New Payments Architecture

The NPSO has announced [initial details](#) of a new procurement process for the clearing and settlement layer that will form the backbone of the New Payments Architecture (NPA). The NPA is a new conceptual model for payments in the UK, which will take over the processing of more than £6.7 trillion of Bacs, Faster Payments and potentially cheque payments every year, from 2021. *NPSO, 25 September 2018*

NPSO seeks members for its specialist advisory groups

The NPSO is [seeking applicants](#) to join specialist advisory groups that will influence the design and delivery of the New Payments Architecture (NPA), the conceptual model for the future development of the UK's shared retail payment infrastructure. The advisory groups will offer expert opinion to the NPA programme in relation to their area of focus. *NPSO, 13 September 2018*

PSR responds to UK Finance's latest fraud data

The PSR has published a [press release](#) in response to UK Finance's latest fraud data, which shows the need for consumers to be better protected from APP fraud, where a fraudster tricks you into sending them money. *PSR, 25 September 2018*

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