



Compliance Briefing Updates
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Regulatory Sanctions

FCA bans and fines two individuals for market abuse

On 7 April 2017 the FCA announced that it has banned and imposed financial penalties of two former Worldspreads Limited (WSL) employees. WSL, which operated a spread betting business, collapsed in March 2012. The FCA has fined WSL's former Chief Financial Officer, Niall O'Kelly, £11,900 and former Financial Controller, Lukhvir Thind, £105,000, for engaging in market abuse and permanently banned them both from performing any function related to regulated activity.

You can read the final notices here:

<https://www.fca.org.uk/publication/final-notices/niall-okelly.pdf>

<https://www.fca.org.uk/publication/final-notices/lukhvir-thind.pdf>

Regulatory Developments

GC17/2: Guidance on the treatment of politically exposed persons under the Money Laundering, Terrorist Financing and Transfer of Funds Regulations 2017

On 15 September 2016, HM Treasury published a consultation paper on transposing the Fourth Money Laundering Directive (MLD4), which outlined how the Government intended to implement the directive. On 15th March 2017 HM Treasury published a consultation paper on the Money Laundering Regulations 2017, which gives an outline of the responses to the consultation and the Government's policy provisions, together with a draft version of the Regulations.

A number of key decisions emerged from the consultation, including:

- A requirement for HMRC to act as the registry authority for all trust and company service providers, who are not registered by HMRC themselves or the FCA
- An extension of the fit and proper test to agents of money service businesses, which will be carried out by HMRC.
- Retaining letting agents within the scope of the new regulations where they carry out estate agency work within section 1 of the Estate Agents Act 1979.
- The exemption of all gambling service providers from the requirements of MLD4, except remote and non-remote casinos.
- A decision not to allow pooled client accounts to be automatically subject to simplified due diligence but instead for this to be applied on a risk based approach

The Government's final policy decisions will be implemented through legislation to come into force by 26 June 2017.

You can read the consultation paper here:

<https://www.gov.uk/government/consultations/money-laundering-regulations-2017/money-laundering-regulations-2017>

GC17/2: Guidance on the treatment of politically exposed persons under the Money Launder, Terrorist Financing and Transfer of Funds Regulations 2017

On 16 March 2017, the Financial Conduct Authority (FCA) published a guidance consultation on how financial services firms should handle customers who are politically exposed persons (PEPs) when meeting their anti-money laundering obligations. The guidance follows HM Treasury's publication of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017.

Under the current regime, firms must apply extra measures, called 'enhanced due diligence' when dealing with individuals who are PEPs in a state other than the UK, as well as family members or close associated of those PEPs. The UK must update its anti-money laundering regime by 26 June 2017 by transposing the Fourth Money Laundering Directive, including expanding the definition of a PEP to include those holding a politically exposed position in the UK.

The FCA's proposed guidance is issued under Section 333U of the Financial Services and Markets Act 2000 (requiring the FCA to publish guidance to the firms it supervises and clarifies who should be considered a PEP, a family member of a PEP or known close associate and the steps that should be taken when dealing with higher or lower risk PEPs. The guidance also sets out how firms can take a proportionate, risk based approach to meeting their obligations under the Regulations and covers, among others, banks, building societies, wealth management firms and investment managers.

The FCA says that the guidance should be read in conjunction with the guidance on PEPs produced by the Joint Money Laundering Steering Group and guidelines issued by the joint European Supervisory Authorities. The FCA will keep the final guidance under review, including taking into account complaints to the Financial Ombudsman Service (FOS) and feedback from consumers and regulated firms. The FCA will issue a response to feedback received on the consultation before the law requires it to be in place by 26 June 2017.

You can read the guidance consultation here:

<https://www.fca.org.uk/publication/guidance-consultation/gc17-02.pdf>

JMLSG proposes revisions to Part I, II and III of its guidance

On 21 March 2017 the Joint Money Laundering Steering Group (JMLSG) published proposed revisions for Part I of its guidance on the prevention of money laundering and the financing of terrorism for the UK financial services industry. The proposed revisions reflect the provisions of the proposed new Money Laundering Regulations published by HM Treasury on 15 March 2017.

While amending text to align with the draft Regulations, the JMLSG has also made relatively extensive changes to the material on electronic verification in chapter 5, in order to address concerns that the present text is not balanced enough and does not reflect modern practices in the electronic/digital world.

Much of the material in chapter 4 (risk based approach) has also been reordered to present the separate text on risk assessment and the risk based approach more clearly, in response to the new Regulations formally requiring organisations to carry out a risk assessment. The JMLSG also says that the proposed revisions are consistent with the risk factor guidelines to be issued by the European Supervisory Authorities.

You can read the proposed revisions to the Part I guidance here:

<http://www.jmlsq.org.uk/download/9981>

Further to the above, on 9 May 2017 the JMLSG announced the publication of proposed revisions to Part II (sectoral guidance) and Part III (specialist guidance) of its guidance.

You can read the proposed revisions to Parts II and III here:

<http://www.jmlsq.org.uk/download/9988>

<http://www.jmlsq.org.uk/download/9989>

Limitations on debt permissions

On 20 March 2017 the FCA published a new webpage for consumer credit firms on limitations on debt permissions. The regulator says that a full permission firm with the permission of debt adjusting or debt counselling with a “no debt management” limitation will need to review the limitations it holds to ensure they are appropriate for its business.

The “no debt management” limitation is not appropriate for certain debt activities, so it is important to check and, if necessary, vary permissions. In order to help determine whether or not the limitation is correct a firm will need to review the FCA’s glossary definition of a “debt management activity”.

Based on the definition of a “debt management activity” the FCA believes that some firms carrying the limitation may be inappropriately carrying out debt management activities; For example, if a firm settles or refinances a customer’s existing debts then it is likely to be providing a debt solution. An example of this might be re-financing involving the part-exchange or a car or consolidating a customer’s multiple existing loan repayments into once single repayment.

Full definitions of debt adjusting and debt counselling can be found in chapter 2.7 of the FCA’s Perimeter Guidance Manual (PERG), specifically sections 2.7.8B and 2.7.8C. Chapter 17 of PERG provides guidance on what constitutes debt advice, in particular PERG 17.5. The webpage also lists six new standard limitations that may be relevant to a firm.

If you need to change your firm’s limitations you should email VOPLimitations@fca.org.uk. There will be no charge for these changes, though debt management firms who request a change to the limitation held will have certain requirements placed on them, for example, there must be someone at the firm who holds the compliance oversight function (CF10). Debt management firms must also meet minimum capital requirements, as per CONC 10.

You can view the FCA’s webpage on limitations on debt permissions here:

<https://www.fca.org.uk/firms/limitations-debt-permissions>

Standards of Lending Practice for business customers published

On 28 March 2017 the Lending Standards Board (LSB) announced the publication of new Standards of Lending Practice for business customers, which take effect from 1 July 2017. The protections of the standards apply to businesses/organisations which, at the point of lending:

Have an annual turnover of no more than £6.5 million in their last financial year.

Do not have a complex ownership structure (for example, businesses with overseas, multiple, or layered ownership structures).

This means that, where firms are lending to partnerships or limited liability companies with turnovers of less than the £6.5m threshold, the Business Standards will apply even if most of the legal and regulatory rules governing consumer credit do not. The Business Standards cover loans, credit cards, overdrafts and charge cards. They set out standards of good practice in relation to lending to business customers, across the lifecycle from the product design phase to the initial offering of the product through to dealing with customers who find themselves in financial difficulty.

Under the draft of the new protocol, claimants will no longer need to send an original agreement at Letter Before Action stage, while the reply form and information sheet have been improved and made simpler. Additionally, the protocol will facilitate the use of the new Standard Financial Statement (see separate briefing note on this below). The latest draft is with the Master of the Rolls, who will make the final decisions on adoption and timings.

You can read the new standards here:

<https://www.lendingstandardsboard.org.uk/wp-content/uploads/2017/03/standards-of-lending-practice-business.pdf>

CP17/10: Credit card market study: consultation on persistent debt

On 3 April 2017 the FCA published a consultation paper which sets out proposals for new rules and guidance to address persistent credit card debt and to require firms to assess whether customers are at risk of developing financial difficulties, and intervene appropriately. The consultation also sets out the FCA's intentions regarding control over credit limit increases.

These interventions form part of the overall package of remedies announced in July 2016 in the credit market study final findings report. The overall objective of the package as a whole is to reduce the number of customers with problem credit card debt. In particular, the FCA is setting out proposed new rules about the treatment of customers whose debt persists over 18 to 36 months.

Under the new rules, firms will have to take a series of steps to help customers who have been in persistent debt for 18 months' firms will be required to prompt them to make faster repayments if they can afford to do so and, if a customer is still in persistent debt after a further consecutive 18 months, firms must take additional steps, such as proposing a repayment plan to help them to repay their outstanding balances more quickly.

Customers who do not respond, or who confirm that they can afford to repay faster but decline to do so, would have their ability to use the card suspended. It is expected that firms would normally suspend use of the customer's card during this period. The FCA also proposes that where a customer cannot afford any of the options proposed, firms must take further steps to assist them, for example by reducing, waiving or cancelling any interest or charges.

The FCA is also proposing to require firms to intervene earlier in response to signs that customers are in financial difficulty, building on an existing rule that requires firms to monitor a customer's repayment record for signs of financial difficulties. The consultation paper also sets out measures agreed between the FCA and industry to give customers greater control over increases to their credit limits.

You can read the consultation paper here:

<https://www.fca.org.uk/publication/consultation/cp17-10.pdf>

FCA publishes new webpage on durable medium

The FCA has published a new webpage that aims to clarify the meaning of "durable medium", as well as explaining its origin and intention, in order to help firms to understand their obligations when using non-paper methods of communication.

You can view the webpage here:

<https://www.fca.org.uk/firms/durable-medium>

PS17/9: Guidance on the duty of responsibility

On 3 May 2017 the FCA published policy statement which explains how it will enforce the duty of responsibility under the senior managers regime (SMR). The duty of responsibility was introduced by Bank of England and Financial Services Act 2016 and follows the FCA's consultation on how it would enforce the duty in September 2016. The duty of responsibility will apply to senior managers at all types of firm when the SMR is extended to firms outside the banking sector. The FCA says that almost all responses received to the consultation were supportive and, as a result, it has made no substantive amendments in light of the responses.

You can read the guidance here:

<https://www.fca.org.uk/publication/policy/ps17-09.pdf>

Regulatory Reviews and Industry Publications

Wolfsberg Group guidance on PEPs

On 23 May 2017 the Wolfsberg Group published guidance on how financial institutions should handle the money laundering risks posed by PEPs. This updates the original guidance issued in 2003 and the frequently asked questions issued in 2008.

The updated guidance sets out what the Wolfsberg Group considers to be the most effective way of managing PEP risk, which is to position the PEP control framework as part of the risk based approach to the identification and management of financial crime risk, specifically as part of a holistic customer risk assessment process. The guidance provides guidance on how to achieve that and how to subject customers who may be politically exposed to a more tailored and risk based control framework.

The Wolfsberg Group consists of the following institutions: Banco Santander, Bank of America, Bank of Tokyo Mitsubishi-UFJ Ltd, Barclays, Citigroup, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, JPMorgan Chase, Societe General, Standard Chartered and UBS.

You can read the guidance here:

<http://www.wolfsberg-principles.com/pdf/home/Wolfsberg-Guidance-on-PEPs-May-2017.pdf>

Collections staff regularly dealing with suicidal customers

The Finance and Leasing Association (FLA), the UK Cards Association and the University of Bristol's Personal Finance Research Centre have published a report, Vulnerability; a guide for debt collection. The paper surveyed 1,600 frontline collections and specialist staff from 27 UK lenders and collection firms across a 12 month period. The results show that during this time 657 conversations were held between frontline collections staff and customers believed to be at serious risk of suicide. The findings support that the following number of suicide disclosures will typically be made over a year:

- 2-3 in a collections team of 10
- 13 in a collections department of 50
- 63 in a large call centre of 250 collections staff
- 125 in a multi-site firm of 500 frontline staff

The research has been used to develop 21 practical and commercially realistic steps for the credit industry that can be used to assist customers and have also been adapted for use in sectors such as utilities, telecoms, retail and government. The guide details strategies that can help staff deal with specific vulnerabilities, such as serious or terminal illness, bereavement, addiction and mental health issues.

You can read the guide here:

http://www.theukcardsassociation.org.uk/wm_documents/21%20steps%20-%20vulnerability%20and%20debt%20collection%20%28web%29.pdf

Financial exclusion: House of Lords Select Committee report

On 25 March 2017 the House of Lords Select Committee on Financial Exclusion published a report on tackling financial exclusion. The Select Committee makes a number of recommendations in the report, which include:

- The Government should appoint a clearly designated Minister for Financial Inclusion.
- The Government should set out a clear strategy for improving financial inclusion in the UK.
- The Government should expand the remit of the FCA in order to include a statutory duty to promote financial inclusion.
- The Financial Services and Markets Act 2000 should be amended in order to introduce a requirement for the FCA to make rules setting out a reasonable duty of care for financial services providers to exercise towards their customers
- The Government and regulatory should work together to develop an approach to promote further innovations in the provision of online and mobile banking services to older people
- The Government should work with the industry and the FCA to develop and introduce a wider range of “control options” for those customers experiencing mental health problems
- The Government should require banks to promote their basic bank accounts appropriately and effectively, both in store and in advertising.
- Regulations to limit and manage the negative impact of unarranged overdraft charges should be introduced. The potential for such regulations should be assessed as part of the ongoing FCA review into high cost credit

- The Government should provide all necessary assistance, including legislation where needed, to further combat financial exclusion caused or exacerbated by high-cost credit. The Select Committee believes that the FCA's review of the wider high-cost credit sector should seriously consider the potential value of further regulatory action and that regulations should be put in place in order parts of the high cost credit sector.

You can read the report here:

<https://www.publications.parliament.uk/pa/ld201617/ldselect/ldfinexcl/132/132.pdf>

National Audit Office report on vulnerable consumers

On 31 March 2017 the National Audit Office published a report on vulnerable consumers in regulated industries. The report finds that regulators in the water, energy, telecommunications and financial services sectors could do more to support the increasing number of vulnerable consumers. It makes a number of recommendations for both regulators and government, which are summarised on page 11 of the report.

You can read the report here:

<https://www.nao.org.uk/wp-content/uploads/2017/03/Vulnerable-consumers-in-regulated-industries.pdf>

FCA publishes business plan 2017/18 and sector views

On 18 April 2017 the FCA published its 2017/18 business plan, which gives details of the specific areas of work it is prioritising for the next year. Page 4 of the business plan summarises the FCA's cross-sector priorities and page 5 summarises the FCA's sector priorities. Key focuses identified in the business plan include:

- Supporting the UK Government to prepare for the UK's withdrawal from the EU
- Launching a campaign to encourage consumers to make a decision about payment protection insurance ahead of the August 2019 deadline
- Examining the issue of vulnerable consumers
- Continuing to work on high-cost credit
- Considering the issue of long term savings and retirement outcomes.

The FCA's sector views are being published for the first time and describe the sector, the need it seeks to fulfill, the issues and developments the FCA is seeing and the impact of change. Each sector view helps the FCA to determine its priorities for a sector, its resourcing decisions and its operational plans.

You can read the business plan here:

<https://www.fca.org.uk/publication/business-plans/business-plan-2017-18.pdf>

FCA published first set of data under new complaints rules

On 26 April 2017 the FCA published data on the number of complaints reported by firms under new rules which came into force on 30 June 2016. The total number of complaints reported by firms in the second half of 2016 was 3.04 million. This is higher than previous reporting periods because under the FCA's new rules all complaints are now captured in the data. Payment Protection Insurance (PPI) is the most complained about product, at 895,000 complaints. Current accounts were the next most complained about product with around 514,000 complaints. The total redress paid to consumers in the period was £1.9 billion. When all PPI redress payments are excluded, the redress figure is approximately £0.3 billion.

The FCA believes the new data set is more informative because it shows the number of complaints against the size of the business. It also provides greater insight about the products that consumers complain about. The FCA says that this information will provide a better understanding of the areas where consumers are struggling to gain satisfaction.

You can read the complaints data publication here:

<https://www.fca.org.uk/firms/complaints-data/firm-level>

FCA launches new features for searching the Handbook website

On 11 May 2017 the FCA launched new features on the Handbook website that will allow searching by key topics within the Conduct of Business sourcebook. It says that this will help people to find what they are looking for quickly and easily, and make it easier for them to identify related material. The FCA requests feedback on the changes as it would like to extend them to the whole of the Handbook.

Consumer Rights Directive review: European Commission Report

On 23 May 2017 the European Commission published a report on the results of its evaluation of the Consumer Rights Directive. Among other things, the evaluation covered the Directive's:

- Effectiveness
- Efficiency
- Coherence
- Relevance
- Rules on digital content

The Commission's evaluation concludes that the Directive has positively contributed to the functioning of the business-to-consumer internal market and ensures a high level of consumer protection. Nevertheless, follow up actions that could be taken include further awareness-raising activities and additional guidance. Targeted legislative interventions could also help streamline and clarify the application of the Directive.

The report can be read here:

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017DC0259&from=EN>

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