

“What I know for sure is that speaking your truth is the most powerful tool we all have.”

Oprah Winfrey

Last week the women of Hollywood, coordinated in black and wearing Time’s Up pins, displayed a show of solidarity to raise awareness of gender inequality at the 75th Golden Globe Awards. As we applaud these women for standing up for what’s right, we also see a case on the other side of the spectrum as the FCA has banned a former adviser over a £3 million fraud.

GDPR – what is it?

A new data protection framework which puts individuals back in control of their personal data.

On the 14th April 2016, the EU approved a new legal framework known as the General Data Protection Regulation or GDPR which aims to allow individuals to take back control of personal data. Scaremongering is in full swing about the potentially enormous fines that could be levied for incorrect handling of personal data, up to 4% of annual global turnover or €20 million. GDPR does make both Data Processors and Data Controllers liable for incorrect handling of personal data. However don’t panic, your business should already be complying with the existing data protection law so you are already part way there.

GDPR has really come about as a result of social and economic integration across the world, rapid technology developments and globalisation all of which has meant that our personal data is shared much more widely than ever before. And although we already have data protection law which came from a European Directive, it was left to each member state to interpret and implement which resulted in disparate local data protection laws across the EU making it tricky to apply a consistent approach. As a result there was a need to create a strong, more coherent data protection framework backed by robust enforcement.

- The enforcement date is **25th May 2018** and it will replace the current Data Protection Act
- Despite Brexit the UK government has said it will adopt the legislation
- If you want to do business with any EU citizen you need to comply whether we’re in the EU or not.

FCA: if your KID misleads make your KID a bit more KID

On 24 January 2018, the FCA published a statement addressing concerns from firms that the performance scenario information in the PRIIPs KID may appear too optimistic and potentially misleading to investors. In response to these concerns, the FCA has stated that PRIIP manufacturers may provide additional explanatory materials regarding the calculations and firms selling or advising on PRIIPs may also provide additional explanation regarding the calculations as part of their communications with clients, so as not to potentially mislead investors.

We were delighted to read of a bluntly worded letter to Andrew Bailey, Head of the FCA, by Mr Philip Warland, former senior public policy adviser at Fidelity International, suggesting that “heads should roll over rules on performance projections” after the introduction in January of “the worst piece of financial regulation ever in Europe”. We are also delighted to hear of Investment Trust Boards warning investors not to believe the performance calculations included on their own PRIIPs KID. ESMA’s finest hour.

The UK’s financial regulator is to allow investment managers to provide additional “explanatory materials” following the publication of widely misleading performance projections by some product providers that suggested savers could earn massive returns.

The FCA have stated “We understand some firms are concerned that, for a minority of PRIIPs, the ‘performance scenario’ information required in the KID may appear too optimistic and so has the potential to mislead consumers.

There may be a number of reasons for this: the strong past performance of certain markets, the way the calculations in the RTSs must be carried out, or calculation errors.”

PSD 2 –EBA register of PIs and EMIs

The European Banking Authority (“EBA”) has published a new webpage with links to the national registers of authorised or registered payment and electronic money institutions (PIs and EMIs) under the revised Payment Services Directive (“PSD2”) for Member States which have provided the information. The information contained in the register will be updated on a regular basis.

FCA issues list of unauthorised binary options providers

The FCA has published a list of 94 firms without FCA authorisation that it understands to be offering binary options trading to UK consumers.

Since **3rd January 2018**, firms involved in binary options trading in the UK have been required to be authorised by the FCA. Firms that are not authorised by the FCA and continue with binary options activities beyond that date will be acting in breach of section 19 of the Financial Services and Markets Act 2000 (FSMA), which is a criminal offence.

Many of these 94 firms claim to be based in the UK but the FCA believes that most of the addresses they provide are false and that the firms are actually based overseas.

The FCA is examining each of these firms to determine whether any are genuinely operating from within the UK. If they are, the FCA will consider taking enforcement action through the courts to stop their illegal activity.

Any consumers who trade with an unauthorised binary options firm will not have access to the Financial Ombudsman Service or Financial Services Compensation Scheme should things go wrong. Firms that are authorised to offer binary options to UK consumers are listed on the FCA’s register.

WFE best practice guidelines for cyber security compliance

The World Federation of Exchanges (“WFE”) has published a set of best practice guidelines for cyber security compliance for market infrastructures aimed at improving staff culture of cyber security compliance. The guidelines set out some points to be considered when developing a cyber security framework, including:

- behavioural incentives;
- cultural incentives; and
- operational support such as training, transparency and technology.

ESMA call for evidence on measures to protect retail investors

The European Securities and Markets Authority (“ESMA”) has published a call for evidence on measures to protect retail investors from the impact of certain specific potential product intervention measures under article 40 of the Markets in Financial Instruments Regulation (“MiFIR”) relating to the provision of contracts for differences, including rolling spot forex and binary options, to retail investors across the European Union.

This relates to ESMA’s statement at the end of last year that it was considering the use of product intervention powers under Article 40 of MiFIR to address investor protection concerns relating to the marketing, distribution and sale of CFDs and binary options to retail investors.

TRANSPARENCY DIRECTIVE: ESMA publishes a jurisdictional guide to notifications of major holdings

ESMA has published a guide summarising the main rules and practices across the European Economic Area relating to notifications of major holdings under the Transparency Directive.

Part 1 of the guide summarises the rules and practices while Part 2 presents key data on notification thresholds, triggering events, deadlines for learning of triggering events and making a notification, as well as permitted channels and the format for filings and the deadline for publishing a notification.

Who’s driving consumer credit growth?

The FCA has published an article containing its findings following an examination of data from credit reference agencies (“CRAs”) to assess possible risks from recent credit growth.

Traditionally, regulators have relied on aggregated data from larger lenders to monitor which lenders and products are driving credit growth. However, this data does not reveal all sources of consumer credit and its publication is often delayed. In contrast, CRAs hold monthly data on most types of borrowing, including consumer credit, mortgages, and utilities.

The FCA found that:

- credit growth has not been driven by subprime borrowers;
- people without mortgages have mainly driven credit growth; and

- consumers remain indebted for longer than product-level data implies as, although a consumer may clear their debt on one credit product, it is not uncommon for them to transfer balances, take out new credit products or draw down on existing credit lines.

Consumer ODR Regulation – Commission report on functioning of ODR platform

The European Commission has published a report on the functioning of the online dispute resolution (“ODR”) platform. The ODR platform’s aim is to enable consumers to easily access efficient out-of-court redress for consumer disputes.

The report, among other things:

- sets out an overview of the ODR platform’s aims and characteristics;
- explains the legal framework for the operation of the ODR;
- provides a summary of complaints lodged on the ODR platform in its first year of implementation; and
- sets out the achievements of the ODR platform as part of an overall review of the ODR platform’s performance in its first year.

FCA consults on widening access to the Financial Ombudsman Service for small businesses

The FCA has launched a consultation on plans to give more small businesses access to the Financial Ombudsman Service. This follows a review of the protections available to small and medium sized enterprises (“SMEs”) as users of financial services.

Under the changes proposed by the FCA, approximately 160,000 additional SMEs, charities and trusts would be able to refer complaints to the Ombudsman. This would be done by changing the eligibility criteria to access the Ombudsman, so businesses with fewer than 50 employees, annual turnover below £6.5 million and an annual balance sheet (i.e. gross assets) below £5 million would become eligible.

The FCA also proposes to extend eligibility to personal guarantors of corporate loans, provided the borrowing business also meets the eligibility criteria.

FCA Enforcement cases

FCA fines Brokers firm £1,049,412 for poor market abuse controls and failure to report suspicious client transactions

An online broker based in London which arranges and executes transactions in certain financial instruments such as CFD delegated its post-trade monitoring to a team based at another company in the US.

The brokers failed to adequately input into the design and calibration of the post-trade monitoring systems, or test their operation, to ensure that potential market abuse by its clients would be captured, and it failed to provide effective oversight of the US team’s conduct of the reviews of the reports produced. In particular, it carried out no quality assurance or monitoring of the review of the reports, and it failed to ensure that the staff conducting the reviews were adequately trained.

This heightened the risk of the firm failing to submit suspicious transaction reports (“STRs”) to the FCA. Prior to being notified of the FCA’s concerns, the broker failed to submit any STRs in relation to insider dealing and the FCA identified three occasions on which they failed to report suspicious trading by clients.

The FCA considers that the breach revealed serious and systemic weaknesses within its procedures. The FCA has therefore fined them **£1,049,412**.

FCA fines and bans former trader

The FCA has imposed a financial penalty of **£250,000** on a former bank interest rate derivatives trader, and prohibited him from performing any function in relation to any regulated financial activity.

The defendant formerly worked at the bank trading products referenced to Japanese Yen (JPY) LIBOR. In addition, he made the bank’s JPY LIBOR submissions to the British Bankers Association (“BBA”) when their primary submitters were not available. On two other occasions, he obtained a broker’s assistance to attempt to manipulate the JPY LIBOR submissions of other banks.

The FCA found that the defendant was knowingly concerned in the bank’s failure to observe proper standards of market conduct and has determined that he is not a fit and proper person because he acted recklessly and lacks integrity.

Mark Steward, Executive Director of Enforcement and Market Oversight at the FCA said:

“Market participants cannot turn a blind eye to what the community, through its laws and regulations, expects nor apply their own, lower standards. This substantial fine and ban should reinforce that message.”

FCA bans former adviser over £3 million fraud

A former adviser who was convicted of 37 counts of fraud has been banned by the FCA.

He was convicted, upon his own confession, in 2014 and was sentenced to 68 months’ imprisonment for promising to invest over 40 clients’ funds into property in India.

The final notice published on the FCA website last week, says the offender told clients that he would invest money transferred to him in property in India but used the money on his own luxuries.

In the final notice the regulator has prohibited the former adviser from “performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt firm”.

The offender decided not to appeal the matter to the Upper Tribunal within the 28 day time limit, and told the regulator that he did not dispute any of the allegations or matters in its warning notice.

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- Company authorisation services
- Fund authorisation services
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- Outsourced compliance solutions
- Regulatory project assistance (e.g. Investment Restrictions, Money Laundering, Client Money, ICAAPs)
- Compliance ‘Health’ checks
- Policy and procedures
- Systems and Controls
- GDPR assistance
- SMCR assistance

UK and Ireland

- Consumer Credit Authorisation, whether you have an interim authorisation or not
- Investment & Operational Risk management services
- Fund restructuring services
- ICAAP review and development
- ACD / Management Company structuring and governance review
- Fund and firm re-domiciliation advice
- AIFM Authorisation
- AIFM monitoring (including risk services)
- Dublin also provides Fund UCITS IV Reporting, MLRO and Company Secretarial Services.

FMConsult Contacts

Dallas J. McGillivray

Group Managing Director & Authorisation Services
Tel: 020 7220 9073
dmcgillivray@fmconsult.co.uk

Andrew (Andy) Hicks

Director, Head of Monitoring Services
Tel: 020 7220 9074
ahicks@fmconsult.co.uk

Ross Revell

Director
Tel: 020 7220 9078
revell@fmconsult.co.uk

Colette Panebianco

Director, FMConsult USA
cpanebianco@fmconsult.us

John Clare

General Manager, FMConsult Ireland
Tel: +353 87 2599510
jclare@fmconsult.ie

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