

“Growing a culture requires a good storyteller. Changing a culture requires a persuasive editor.”

Ryan Lilly

Andrew Bailey, Chief Executive of the FCA, delivered a speech on ‘The role of regulation in encouraging good culture’ at the Investment Association Culture Conference in London. Andrew argues that an industry which enables the support of patient capital and innovation, and of ethical investment and social responsibility, will be one where the trust will be stronger and deeper, and the culture will prosper.

FCA launches further consultations ahead of the UK’s exit from the EU

The FCA published a further consultation on its approach to the UK’s exit from the EU. Today’s paper sets out additional proposals to prepare for the possibility the UK leaves the European Union on **29 March 2019** without an implementation period.

Earlier this year, the FCA set out their role in preparing for Brexit. This consultation, along with those published in October, is an important part of this work. This paper principally focuses on a range of Handbook and BTS amendments which were not included in the FCA’s earlier consultation papers issued in October. It also consults on:

- further amendments to the Handbook regarding the Temporary Permissions regime
- amendments to the Handbook to reflect the new Credit Rating Agency and Trade Repository regimes
- the FCA’s approach to non-Handbook guidance and their approach to forms that appear in the Handbook

The FCA is not proposing any policy changes unrelated to Brexit in this consultation paper.

An update on the FCA’s approach to authorisation and Brexit preparations

Sarah Rapson, Director, Authorisations conducted a speech at the Association of Professional Compliance Consultants (APCC) Autumn Conference.

Key highlights included:

- The FCA are preparing for all Brexit scenarios, including the possibility of ‘no-deal’
- They are consulting on a temporary permission regime to mitigate cliff-edge risks faced by EEA firms passporting into the UK
- Alongside Brexit preparation, the FCA are continuing to improve their approach to authorisations by instilling a service mind-set

28% rise in people being banned from the financial services sector this last year. Will this increase in 2019 when the Senior Managers and Certification regime comes into force?

The number of individuals banned from working in the financial services sector by regulator the FCA rose 28 per cent last year, research published this month shows.

There were 23 people banned from working in the industry by the FCA in 2017-18, up from 18 the previous year, according to City law firm RPC. The FCA targets individuals as well as firms as it believes that punishment of individuals may have a greater impact on compliance culture than simply fining businesses, RPC said.

Recently the FCA said it spent £300,000 on legal fees in a case aimed at banning one director. It also spent 4,777 man hours on the same case between August 2015 and October 2018, showing it is willing to dedicate resources to pursuing individuals.

The number of prohibition orders could rise further in the coming years following the extension of the Senior Managers and Certification Regime (SMCR) to all financial services companies, which imposes a stricter regime of personal accountability on senior managers than the current system.

The SMCR, which was introduced in 2016, will be expanded to cover senior managers at 47,000 financial services firms by the end of 2019. Previously it predominantly applied to the banking sector, making senior managers personally accountable for wrongdoing that takes place in the areas of the business they are responsible for. It will expand to all insurance firms by the end of December 2018 and all financial services firms by December 2019.

Senior Managers and Certification Regime (SM&CR) – act now!

The FCA is extending the SM&CR to insurance firms on **10 December 2018**. You must submit your documents by midnight on **2 December 2018** - less than a week away. You can check which documents your firm needs to submit by reading the FCA’s Guide to the SM&CR for Insurers or by checking their website. You will need to log into Connect to submit your documents.

By 10 December you also need to have:

- identified your Certification Staff
- trained your Certification Staff and Senior Managers in the relevant Conduct Rules

Retail and Wholesale Banking: FCA review of firms’ whistleblowing arrangements

The FCA has reviewed how firms have implemented their whistleblowing rules and have published their findings.

As reflected in the FCA Business Plan, firms’ culture and governance remains a key priority for the FCA. Recent regulatory actions show the seriousness with which the FCA and the PRA consider whistleblowing failings.

The senior management and Board of firms are responsible for clearly communicating and fostering a culture that welcomes discussion and challenge, so that wrongdoing is identified early and addressed promptly.

The FCA review found:

- The new rules are helping to ensure that firms have implemented whistleblowing arrangements, and manage whistleblowing cases and concerns raised by their employees fairly, consistently and in a way which protects the individual whistleblower.

- Non-executive directors appointed as whistleblowers' champions are providing independent oversight and accountability and helping to raise the profile of whistleblowing.
- There are examples of good practice, such as detailed step by step investigation processes and monitoring arrangements for potential victimisation cases. However, there are areas for improvement, most notably in the provision of whistleblowing training and the annual report to the firm's governing body.
- The FCA also found that firms needed to better document their whistleblowing investigation process and how to protect whistleblowers against victimisation in practice.

Maintaining market confidence: an update on Brexit

Nausicaa Delfas, Executive Director of International delivered a speech at the City and Financial: 3rd UK Financial Services Brexit Summit.

Key highlights included:

- If there is a no-deal Brexit, the FCA is working to ensure a robust regulatory framework and a smooth and orderly transition for firms and their customers.
- The FCA welcome commitments from the EU to resolve remaining issues – now is the time to resolve those issues and provide certainty to markets.
- We may be leaving the EU but our financial markets will remain heavily interconnected, and we remain committed to close cooperation with our counterparts in EU and rest of the world.

Cyber and technology resilience in UK financial services

Megan Butler, Executive Director of Supervision – Investment, Wholesale and Specialists at the FCA, delivered a speech at Bloomberg, London.

Key highlights included:

- Firms have reported significantly more outages and cyber attacks over the last year
- Cyber security is not just a technology risk, it is a human risk
- According to the FCA's survey, nearly half of firms do not upgrade or retire old IT systems in time
- Only 56% of firms say they can measure the effectiveness of their information asset controls.

FCA proposes introduction of price cap on rent-to-own firms to protect vulnerable consumers from high costs

The FCA has proposed to introduce a price cap on the rent-to-own (RTO) sector. The cap, subject to consultation, will come into force on **1 April 2019** providing protection for some of the most financially vulnerable people in the UK. Once in force, the changes are expected to save consumers up to £22.7m per year.

RTO customers are some of the most financially vulnerable in our society. Only one third are in work, most are on low incomes (between £12,000 and £18,000) and are likely to have missed a bill payment in the last 6 months.

Despite this, firms often charge these customers more than other retailers for essential household goods such as a washing machine or a cooker, and with add-on insurance and warranties in some cases RTO customers can pay up to 4 times the average retail price.

To protect consumers, the FCA has designed a bespoke price cap to fit the RTO market, limiting both the cost of the product and the charge for credit. Under the proposed cap, credit charges cannot be more than the cost of the product. In addition, RTO firms will need to benchmark the cost of products against the prices charged by 3 other retailers.

In addition, the FCA is introducing a 2-day cooling off period for the sale of extended warranties. This will effectively ban firms from selling these warranties at the point of purchase. This will come into force on **22 February 2019**.

New Settlement Internalisation reporting requirement

From July 2019, firms will be obliged to report settlement internalisation to the Bank of England under Article 9 of the EU Central Securities Depositories Regulation (CSDR).

Under the CSDR, an institution is considered to be a settlement internaliser if it settles transfer orders on behalf of clients on its own account rather than through a Central Securities Depository (CSD).

This will apply to firms that have the regulatory permissions necessary to carry out the following activity:

- arranging safeguarding and administration of assets
- safeguarding and administration of assets (without arranging)

Reports are required to be sent to the Bank of England, as the designated competent authority under the Central Securities Depositories Regulations 2014. The first reports are due by **12 July 2019**, covering the period from April 2019 until the end of June 2019.

Enforcement cases

Upper Tribunal upholds the FCA decision to fine and ban former CEO and sales director of Investment Company

The Tribunal ruled that both had acted without integrity and had failed to deal with the FCA's predecessor the Financial Services Authority in an open and cooperative way. The Tribunal has directed the FCA to fine the previous CEO £76 million and the sales director £3,240,787 and agreed that both should be prohibited from performing any role in regulated financial services.

The company produced and distributed structured products designed for retail consumers. In 2005, they began marketing products based on bonds issued by a Luxembourg-based company and underpinned by US life settlement policies. However, it did so without conducting adequate due diligence and using misleading brochures. In 2006, the former CEO replicated the Luxembourg structure using a company, beneficially owned by him.

As a result, over the following 3 years, he was able to extract fees from the structure totalling some £73.3 million.

The Tribunal found that these payments were received either for 'no services whatsoever' and 'could not be justified commercially'.

The Tribunal found that the sales director received £2,540,787 in undisclosed commissions from the CEO. Although both claimed these payments to have been unrelated loans, the Tribunal concluded that this was a 'fabrication' and 'displays' a lack of integrity'.

Con artist sentenced to 5 years' imprisonment in FCA prosecution of £3m investment fraud

The individual, aged 57 of Farnham, Surrey, was today sentenced at Southwark Crown Court to 5 years' imprisonment for defrauding investors of just under £3 million in relation to unauthorised investment schemes he operated between 2008 and 2017.

Over a period of 9 years between 2008 and 2017, the fraudster purported to run investment funds and obtained investment monies from his friends and acquaintances. They entrusted him with just under £3 million of their money.

He claimed to be running three funds, and described himself as a 'proprietary futures trader'. It seems he did have an interest in these markets, but little more than that. He traded just £8,000 of the £3 million invested with him, on which he made a loss of £2,450, yet managed to spend over £1 million maintaining his own lifestyle.

In order to cover up his deception and prolong the fraud, he resorted to forging documents and correspondence purporting to be from brokerages, and bank statements. He also registered web domain names and created email addresses in names similar to a legitimate brokerage, and for an entirely fictitious brokerage. The Judge said that the forgeries were 'sophisticated' and the whole scheme demonstrated the way that he had 'abused a position of trust'.

He was never authorised by the FCA to carry out any regulated activity.

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- SMCR assistance
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UK and Ireland

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- Dublin also provides Fund UCITS IV Reporting, MLRO and Company Secretarial Services.
- Related Training

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