

“Systems and controls that are purposeful, efficient and courageous in identifying suspicious activity are vitally important; system and control failures, on the other hand, provide an invisible, illicit cover for criminals and criminal activity that affects the whole community, not only in this country but also beyond, and can erode confidence in the financial system.”

- Mark Steward,
Executive Director of Enforcement and Market Oversight – FCA

FMConsult recently undertook a 4th Money Laundering Directive documentation remediation project for a large asset management firm – we can help you too.

UK Regulatory News

The importance of purposeful anti-money laundering controls – FMConsult are well placed to help you!

Mark Steward, Executive Director of Enforcement and Market Oversight, delivered a speech at the AML & ABC Forum 2021, as quoted above.

He went on to point out that in the last 12 months, two of the biggest sanctions the FCA imposed related to failures to address financial crime and AML risks. Both cases illustrate well how systems and controls failures in London can have consequences outside the UK.

AML systems and controls must be focussed explicitly on the activating purpose and function of those controls, to ensure the system is not just a bureaucratic process and to ensure it cannot be gamed.

The FCA currently have **42 AML investigations** ongoing into firms and individuals involving, for example, systems and controls over politically exposed persons, customers with significant cash intensive operations, correspondent banking and trade finance, and transaction monitoring.

AML investigations are often complex because they are rarely transactional and require a systemic understanding of how a firm operates, its governance controls, its cultural habits, and the nuts and bolts of sometimes opaque systems.

In the last 12 months, the FCA have increased their surveillance of online investment promotions targeting offers from unauthorised firms, potential investment scams and other too good to be true promotions, including lead generation sites.

He advised that: *“AML systems and controls must be focussed explicitly on the activating purpose and function of those controls, to ensure the system is not just a bureaucratic process and to ensure it cannot be gamed.”*

It is clear that the FCA continue to consider AML controls of utmost importance. **FMConsult have recently undertaken a 4th Money Laundering Directive documentation remediation project for a large asset management firm that involved up to eleven employees for ten months in total. We are well placed to assist firms, large or small, who in light of the tough stance being taken by the FCA may want to review their current arrangements and look to remediate some weakness in their customer due diligence (CDD).**

Other Money Laundering News

As we know from the allegations in the FINCEN files, UK financial services are not exempt from being used for Money Laundering purposes.

In the latest news regarding AML, the Financial Conduct Authority (FCA) announced that it has commenced criminal proceedings against National Westminster Bank Plc (NatWest) in respect of offences under the Money Laundering Regulations 2007 (MLR 2007). In particular these offences relate to the regulations requiring firms to determine, conduct and demonstrate risk sensitive customer due diligence (CDD) and ongoing monitoring of its relationships with its customers for the purposes of preventing money laundering. This is the first criminal prosecution under the MLR 2007 by the FCA and the first prosecution under the MLR against a bank. This comes despite NatWest working with the FCA.

FCA's Temporary Permission Regime Update Page

1. Supervising firms in the TPR.

The FCA summarised on the page how it supervises firms in the temporary permissions regime (TPR). In particular, it reminded firms in the TPR that in some cases different rules apply when compared to when they were passporting into the UK – for example, rules in relation to safeguarding client money or custody assets, or status disclosure.

The FCA also noted that there will be different reporting requirements and firms will receive contact from FCA supervisors that they may not have received in the past. Firms are also reminded that they need to contact the FCA proactively, for example because of Principle 11 which requires that a firm deals with its regulators in an open and cooperative way, and must appropriately disclose to the FCA anything relating to the firm for which the FCA would reasonably expect notice.

2. Landing slots for firms in the TPR.

Now that the TPR is in the force, the FCA has started to email formal directions to firms in the TPR confirming their 'landing slot'. This is the period when the firm can apply:

- a. for full (non-temporary) Part 4A permission; and
- b. to vary their Part 4A permission if it has a UK top-up permission.

The notice from the FCA will specify when a firm must submit its application for permission. This can be no earlier than the opening date and no later than the closing date. The page also includes some FAQs including whether it's possible for a firm to change its landing slot.

3. Cancelling a temporary permission.

Firms in the TPR and SRO that no longer have business which requires them to have UK permission can apply to us to cancel their temporary/limited permission and leave UK regulation. However, cancelling a permission will vary depending on the facts that apply to your firm. The FCA have explained what your firm should do depending on its circumstances [here](#).

New FCA online fees portal

The FCA has launched a new online invoicing portal on 12 April 2021 for users to access their invoices and arrange payment of their fees. The change is part of their wider data strategy and upgrade aiming to improve efficiency and effectiveness.

The existing portal will no longer be available after 31 March 2021, so there will be no portal available until the new portal launches.

Users will access the online portal using their Connect log in details after launch, their our online system that firms currently submit applications and notifications to the FCA, and for some firms has already become the new home of their FCA regulatory reporting which was previously submitted on Gabriel.

If you have not registered for Connect the FCA says it will give users an account to access the new invoicing portal – further details are to be provided on this.

Users will not be able to view or download invoices paid before 31 March 2021 in the new portal, so are encouraged to download these ahead of April.

Code of Conduct breaches.

On 5 March 2021, the FCA published Consultation Paper 21/5: Quarterly Consultation Paper No. 31 (CP21/5). In this paper one proposed change will require a firm that notifies the FCA of a retail investment adviser's failure to comply with APER or COCON under TC 21.1.31R(3), to also, within the same timeframe, send a similar notification to the accredited body that issued a statement of professional standing in respect of that retail financial adviser.

Speech by Mark Steward, Executive Director of Enforcement and Market Oversight, delivered at the Expert Forum: Market Abuse 2021.

During the speech Mark stated that despite the coronavirus (Covid-19) pandemic and Brexit, the FCA saw an overall increase of 34% in transactions and transaction reports in 2020. This was largely attributable to heavier trading in the first lockdown period between March and June of last year as investors adjusted to the impact of the pandemic.

The speech also highlighted that the FCA have seen a reduction in suspicious transaction and order reports (STORs) during this period. However, this was temporary, and perhaps reflecting a reduction in market abuse opportunities in a pandemic-focussed market as well as new compliance challenges arising from everyone largely working from home.

On the enforcement front, it has been busy and productive for the FCA. Some highlights below:

- The FCA publicly censured an IT Managed Service Provider and secured a compensation agreement for members who were impacted by false and misleading statements about the company's financial position.
- The FCA also issued public censure proceedings against a construction and facilities management services company following its £7billion collapse, alleging market abuse by the company. This investigation is one of the FCA's largest and most significant.

- The FCA completed market abuse proceedings against a former hedge fund manager, and fined him £100,000 for placing large misleading orders for instruments he had no intention of trading whilst at the same time placing smaller genuine orders on the opposite side of the order book.
- The FCA brought proceedings against a HK based hedge fund, and fined it £873,000 for failures to make 155 notifications to the FCA and 155 disclosures to the market, over more than 100 days, of its net short position in an oil and gas company which constituted nearly 17% of the company's issued share capital.
- The FCA have recently commenced insider dealing proceedings against 4 individual defendants in 2 separate proceedings.
- Finally, just before Christmas the FCA won the appeal against conviction and sentence brought by two Individuals. Following this decision, one of the Individuals who was sentenced to 3 years imprisonment, was ordered to pay over the sum of £3.9 million under the Proceeds of Crime Act.

Why diversity and inclusion are regulatory issues.

In a speech by the FCA's CEO, Nikhil Rathi, she drew attention at the launch of the HM Treasury Women in Finance Charter Annual Review to the diversity issues.

She mentioned Harriett Baldwin, then Minister responsible, who had remarked upon the Charter's launch that too little had changed during her 30 years in banking. Whilst attitudes are shifting, women still receive 28% less pay than men and account for only 17% of those approved by the FCA – generally speaking, the most senior people in financial services.

The charter, which challenges the financial services industry to do better, is she said making a difference. That matters to a regulator. Research has suggested that greater gender diversity improves risk management culture and decreased the frequency of European banks' misconduct fines.

He noted that the evidence tells us that there is a strong business case for diversity. According to McKinsey research, the most diverse companies, for example, are 35% more likely to outperform the least diverse.

This lack of diversity at the top, she thought, raises questions about firms' ability to understand the different communities they serve, and their different needs. Fewer than 1 in 10 management roles in financial services are held by black, Asian or minority ethnic people.

The FCA is working with the Prudential Regulation Authority on a joint approach to Diversity and Inclusion for all financial services firms. The FCA will increasingly be asking tough questions firms about representation across grades and whether their culture is open and inclusive and provides a safe space for colleagues at all levels of the organisation.

Whistleblowing: Speaking to the FCA

It is important to follow your firm's procedures. However if that is not working and if you think a firm or individual is involved in wrongdoing within an area the FCA regulates, and you want to report it confidentially, contact their Whistleblowing team.

Protecting the identity of whistleblowers is very important to the FCA, providing your details is up to you – the FCA will accept and process your information if you want to remain anonymous as well.

Whistleblowing reports are handled by a dedicated team. Your details, if you choose to provide them, are held on a secure database that is only accessed by the Whistleblowing team.

The Whistleblowing team create and record a report of your concerns – it focuses on the concerns, not the person who reported them. Whistleblowing information gives an insight into what's happening in the markets the FCA regulates. They can only act on what they know – so any information that you provide allows them to consider any potential risks.

ESMA Guidelines on disclosure requirements under the Prospectus Regulation – Changes afoot to Prospectuses

On 4 March 2021, the European Securities and Markets Authority (ESMA) published guidelines relating to the Prospectus Regulation. These changes will likely become law in EU member states with 2 months and will therefore affect EU based funds. Because this is realised post Brexit, the FCA has confirmed that the Guidelines will not apply and therefore that issuers and their advisors should continue to have regard to the CESR Recommendations.

Some of the key changes in the new ESMA Guidelines can be found [here](#):

Working capital statements

- where an issuer finds it necessary to include assumptions, it should provide a qualified working capital statement – this may impact the FCA's position on COVID-19 related assumptions under its 8 April 2020 statement of policy and related technical supplement.
- proceeds from an offer should only be counted for working capital purposes to the extent they are underwritten on a firm commitment basis (i.e. underwritten at a fixed or minimum price) or covered by irrevocable undertakings, and that issuers should also consider the credit risk associated with the parties providing such commitments.

Capitalisation and indebtedness

- contents of the statement of indebtedness and notes thereto have been amended to align with IFRS

Pro forma financial information

- To provide additional investor protection disclosure of aggregated pro forma information for multiple transactions that individually do not, but collectively do, meet the 25% threshold is now required unless the issuer can explain why such disclosure would be unduly burdensome.

Profit forecasts and estimates

- There is now more extensive guidance for issuers on making profit forecasts and estimates easily comparable with historical financial information in the prospectus, including where forecasts are based on pro forma information, where subsequent events have arisen and where changes have occurred in the issuer's accounting policies.

Google UK & Ireland's letter to the FCA - 26 February 2021

Google UK & Ireland's Managing Director, wrote a letter on 26 February 2021 to the FCA Chairman and CEO about the work Google has been doing to tackle scam advertisements on their platform.

The letter highlighted how Google have made significant changes to their policies and verification processes to ensure they better know their customers and are meeting the needs of Google Search users.

- In July 2020, following engagement with their teams, Google announced an update to their Financial Services policy, which made financial services advertisers subject to a requirement to complete their Business Operations Verification process.
- Google have spoken to the FCA about their plans to verify & identify all of their advertisers on their platform, a process they call Advertiser Identity Verification.
- Last year Google updated their unreliable claims policy to restrict the rates of return a firm can advertise and ban the use of terms that make unrealistic claims.

A forward look at regulation of the UK's wholesale financial markets

In a Keynote speech by Edwin Schooling Latter, Director of Markets and Wholesale Policy at the FCA, the following key points were noted as upcoming topics:

- Decisions to tailor securities financing transaction reporting and settlement buy-in rules to achieve the desired outcomes in the way that best fits UK-based markets.
- The FCA welcomes recommendations to look at aligning prospectus documentation requirements with the type of capital raise being undertaken.
- There is scope to simplify and remove costs from some parts of the MiFIDII regime without material loss of benefits.
- The FCA will be exploring whether they should make diversity requirements part of their premium listing rules.
- SFTR reporting finally came into application in the EU and in the UK in July 2020 for credit institutions, investment firms, CCPs and CSDs.
- As with SFTR, the Central Securities Depositories Regulation regime was onshored into UK legislation as it stood at the end of the transition period.

FCA launches criminal proceedings against a major retail and commercial bank over AML failures.

The FCA alleges that the bank failed to adhere to the requirements of the regulations between November 2011 and October 2016.

The bank allegedly allowed increasingly large cash deposits to be lodged in a customer's account that should have alerted suspicions - around £365 million was paid into the customer's accounts, of which £264 million was in cash.

The Money Laundering Regulations require firms to determine, conduct and demonstrate risk sensitive due diligence and ongoing monitoring of its relationships with its customers for the purposes of preventing money laundering. It is alleged that the bank's systems and controls failed to adequately monitor and scrutinise this activity.

The bank is scheduled to appear at Westminster Magistrates' Court on 14th April 2021. This is the first criminal prosecution under the MLR 2007 by the FCA and the first prosecution under the MLR against a bank. No individuals are being charged as part of these proceedings.

Jonathan Fisher QC, barrister at Bright Line Law, commented: *"It is one thing for a bank to be fined for anti-money laundering failures, it is another thing for a bank to be criminally charged. In terms of reputation it is potentially very damaging and given that anti-money laundering procedures have been around for a long time, if [the bank] has fallen short, it leaves the bank with a lot of explaining to do. This is a 62.4% State owned bank, and so we have the irony of the government prosecuting itself!"*.

"If convicted, the Bank faces an unlimited fine and other regulatory consequences may flow. A conviction for breach of money laundering regulations is something which may be taken into account when deciding whether to renew authorisations, and the awarding of public contracts".

Where AML is concerned it would appear that the FCA are using all the powers in their armoury. It is of course better to be compliant ahead of any regulatory action. **FMConsult have recently undertaken a 4th Money Laundering Directive documentation remediation project for a large asset management firm – we stand ready to assist other firms who look to ensure that they have records that can withstand the scrutiny of regulatory supervision.**

Irish Regulatory News

"Firms are responsible for selling their customers products that meet their needs both now and into the future." – Derville Rowland, Director General, Financial Conduct

Director General, Financial Conduct, Derville Rowland spoke at an online event for the Banking and Payments Federation of Ireland Membership Forum, on the Central Bank of Ireland's (CBI) priorities for consumer and investor protection for 2021.

The speech detailed the priorities including:

- the review of the Consumer Protection Code;
- insurance issues focused on differential pricing and business interruption;
- distressed debt;
- managing liquidity risk in funds during periods of market volatility;
- strengthening policy in capital markets union and sustainable finance; and
- enforcement and anti-money laundering priorities.

"Distressed debt remains a key priority for the Central Bank, and our focus is to ensure lenders have suitable supports in place to help borrowers in arrears. We are supervising lenders to ensure they have appropriate strategies, the necessary financial and operational resources, and a suite of appropriate and sustainable solutions to resolve distressed debt. Central to our approach on distressed debt is working with and listening closely to borrower representatives to ensure that our supervisory and policy responses continue to evolve".

Director General Rowland also launched a consultation on the Standard Financial Statement (SFS), as part its wider work to assist borrowers in arrears.

Finally, on enforcement, Ms Rowland said the CBI is currently progressing cases against both firms and individuals under the Administrative Sanctions Procedure and the Fitness and Probity regime.

Directive amending the MiFID II Directive (2014/65/EU)

On 26 February 2021, the Directive amending the MiFID II Directive (2014/65/EU) (the "Directive") was published in the Official Journal of the EU and therefore entered into force on 27 February 2021. Member states will be required to transpose the Directive into national law within nine months of that date. The measures will become applicable 12 months after the entry into force of the Directive.

The major changes are the following:

- All client communications should be provided in electronic form (retail clients can still request that the communication be provided on paper).
- Product governance requirements for simple corporate bonds with "make-whole clauses" are removed.
- The obligation to produce best-execution under RTS 27 is suspended.
- The requirement for cost-benefit analysis is relaxed when switching in relation to services provided to professional clients (but professional clients retain the possibility to opt in).

"Lack of progress in gender diversity at senior levels of regulated firms is disappointing with much more needed to be done" - Ed Sibley, Deputy Governor, Prudential Regulation

The CBI published a Demographic Analysis Report of over 3,600 applications for approval to occupy senior roles within regulated firms in Ireland, received under the Fitness and Probity regime in 2020.

The Report shows continued risks arising from the low levels of gender diversity in senior roles in financial services firms. The lack of progress in improving gender diversity is indicative of similar issues with other aspects of diversity and inclusion. More needs to be done to increase the diversity of experience, thought, background and attributes at senior levels to improve decision-making and risk management in regulated firms in Ireland.

As diversity is interconnected with risk, resilience and financial performance in firms, the CBI will continue to prioritise driving improvements in diversity and inclusion in firms through its supervisory activities.

Key developments outlined in the 2020 report include:

- Progress remains slow in terms of improvements in the levels of gender diversity in applications. From a low base, female representation in applications for pre-approved control functions (PCF) roles across the financial services sector has continued to increase since 2012, the first year that data is available. Approximately one in six applications received in 2012 were for women, compared to just over one in four in 2020, although there is little overall change in 2020 relative to 2019.
- Within the largest ("high") impact regulated firms, men hold 85% of current PCF positions in the asset management sector, 78% in the banking sector and 74% in the insurance sector.
- There continues to be a pronounced gender imbalance at board level across all sectors. Female applications for these positions fell from 24% in 2019 to 22% in 2020.

- In 2020, less than one sixth of applicants for roles where the holders are responsible for driving strategy and / or business revenue were female.
- The number of applications fell by nearly 1/5th compared to 2019, due to a reduction in Brexit related applications.

Enforcement Action Notice: Leading Investment Firm fined €4,130,000 & reprimanded for regulatory breaches arising from personal account dealing.

On 1 March 2021, the CBI reprimanded and fined a leading investment firm (the firm) €4,130,000 in respect of four breaches of the European Communities (Markets in Financial Instruments) Regulations 2007 (the MiFID Regulations) that occurred over different intervals between July 2014 and May 2016.

The CBI's investigation arose from a transaction a group of 16 of the firm's employees (including Senior Executives) undertook in a personal capacity with one of the firm's clients (the Client) in November 2014 (the Transaction). In permitting the Transaction, the firm prioritised facilitating an opportunity for the employees to make a personal financial gain over ensuring that it was complying with its regulatory obligations.

Following details about the Transaction becoming public four months after it occurred, the firm contacted the CBI to provide an explanation. At that stage, the firm failed to disclose the full extent of the wrongdoing. This lack of candour was treated as an aggravating factor in this case.

The board of the firm oversaw two independent reviews of the issues arising from the Transaction. Following on from this, the firm introduced a revised conflicts of interest policy and revised personal account dealing rules in May 2016.

Enforcement Action Notice: Licensed bank reprimanded and fined €37,774,520 by the CBI for regulatory breaches affecting tracker customers.

On 23 March 2021 the CBI reprimanded and fined a licensed bank €37,774,520 pursuant to its Administrative Sanctions Procedure in respect of the bank's serious failings in the treatment of its tracker customers holding 5,940 mortgage accounts between August 2004 and April 2020.

The CBI's investigation found that the bank breached its regulatory obligations towards its impacted tracker customers, most notably those under the Consumer Protection Codes 2006 and 2012. The bank has admitted in full to 49 separate regulatory breaches. The fine and reprimand imposed is in addition to the more than €128,000,000 that the bank has been required to pay to date in redress, compensation and account balance adjustments to all impacted customers.

The bank caused unacceptable and avoidable harm to its impacted tracker customers; from extended periods of significant overcharging to the loss of 43 properties, 29 of which were family homes. In particular, the bank:

- Failed to disclose to impacted tracker customers all the consequences of fixing their interest rates
- Devised and implemented a deliberate strategy not to provide certain customers with their correct tracker mortgage entitlement unless they complained
- Failed to adequately implement the TME's Stop the Harm principles to protect all potentially impacted tracker customers from further detriment
- Failed to ensure that its operational systems and controls were sufficient to ensure that its customers were provided with their correct tracker mortgage entitlements

The CBI determined that the appropriate fine was €53,963,600, which was reduced by 30% to €37,774,520.

FMConsult Services

UK Office

- AML Customer Due Diligence documentation remediation projects.

All offices

- Compliance monitoring services
- Company authorisation services
- Fund authorisation services
- Outsourced MLRO services
- 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
- Related training
- Financial Crime

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.
- Related Training

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FMConsult 2020 Awards:



ACQ5 Global Awards 2020 - UK - Best Practise Operator of the Year (Compliance Solutions)

Global Advisory Experts Annual Awards 2020 Compliance & Operational Risk Consultancy Firm of the Year UK



Global 100 Awards 2020 Best in Specialist Compliance, Collective Investment Schemes, Operational Risk & Investment Risk Management Consultancy UK



Lawyers Worldwide Awards Super Lawyers 2020 Compliance Consulting Firm of the Year - UK

Golden Globe Awards 2020 Compliance Consultancy of the Year UK

M&A Today Global Awards 2020 - UK - Compliance Consulting Firm of the Year

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