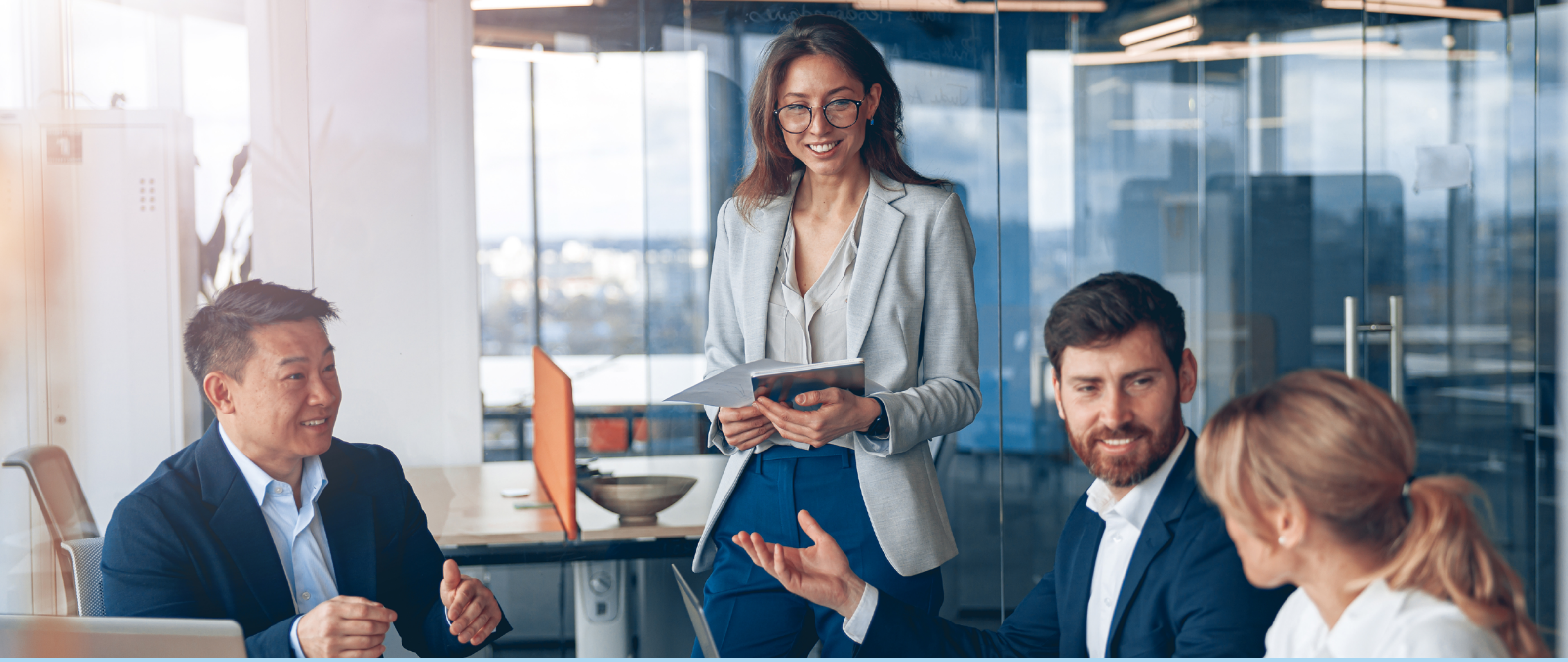

Reg Agenda

July 2023 | BULLETIN

What's inside...

- One month to go for the Consumer Duty
- Chancellor agrees new support measures for mortgage holders
- Financial Services and Markets Bill 2022-23 receives Royal Assent

target
A TECH MAHINDRA COMPANY

Welcome to the first edition of Target's new look Reg Agenda

Foreword by

KATHY GRIFFIN

Target Group
Chief Risk Officer

With only a month to go before the Consumer Duty comes into effect, it is full steam ahead for many firms putting their final touches into projects to ensure compliance by the end of July. That being said, the Financial Conduct Authority (FCA), through a recent survey of firms, has seen a lack of engagement by a minority of firms. So, if you are almost there with your project, keep up the excellent work and keep that relentless focus on. If you still have a way to go, think about how you can prioritise those areas of potential harm.

With the Bank of England increasing interest rates to 5% in June, there has been a renewed focus on support for mortgage customers. The Government, with support from the FCA and mortgage lenders covering 85% of the retail mortgage market, have signed a Mortgage Charter promising help to those struggling to meet their mortgage payments. For many lenders, this only reaffirms the great support they already give their customers.

At the end of June, the Financial Services and Markets Bill 2022-23 received Royal Assent. This allows the Government to expand the remit of the UK regulators to replace and amend existing EU rules into UK law and further changes are now expected on the horizon. Notably, the Act has also created a secondary objective for regulators moving forwards to consider the UK's international competitiveness when proposing regulatory changes.

Finally, a commodities brokerage firm was fined £17.2 million. This is the highest fine to date linked to cum-ex trading and the fine highlights both the importance of second line functions conducting effective oversight, and how significant an effective risk management system can be for identifying harm.

Happy reading, and please do let us know what you think of the new look!

This month's headlines

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One month to go for the Consumer Duty

On 6th June 2023, the Joint Regulatory Oversight Committee *(FCA, HM Treasury, Payment Systems Regulator (PSR) and Competition and Markets Authority (CMA))* published a press release outlining its roadmap to take forward recommendations for the next phase of open banking in the UK.

The programme involves setting up dedicated workstreams to action the six key themes and priorities that it outlined in April 2023. As part of this, the committee has launched and published terms of reference for two new working groups: the 'Design of the Future Entity Working Group' (Future Entity working group) and the 'Variable Recurring Payments (Non-Sweeping) Working Group' (VRP working group).

The Open Banking Implementation Entity will transition to the Future Entity working group, which will consider the design of the future entity, including its role, structure and funding. It will also set out proposals around how the future entity can be implemented. The working group will report to the committee by the end of September 2023, which will publish its views towards the end of 2023.

The VRP working group will develop a blueprint for the phased roll-out of non-sweeping VRP by the end September 2023. Both working groups will be established by the end of June 2023. The VRP working group will be chaired by the PSR, and the Future Entity working group will be chaired by the FCA.

The committee has also tasked Open Banking Ltd (OBL) to lead and co-ordinate workstreams on four of the other key themes. These relate to:

- Levelling up availability and performance
- Mitigating the risks of financial crime
- Developing proposals for dispute processes
- Improving information flows to third party providers and end users

The committee has sent a letter to OBL setting out specific activities to progress the above themes, which include working with Pay.UK (as the operator of Faster Payments), where necessary. OBL has been asked to provide a monthly update to the committee on its work and the letter sets out a more detailed timetable of delivery.

Further reading

Find the press release here.

FMSB publishes spotlight review on three lines model

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On 8th June 2023, the Financial Markets Standards Board (FMSB) published a Spotlight Review and Risk Register on the Three Lines Model approach to risk management, which is widely deployed in financial services.

Overseen by Boards, the Three Lines comprise of:

- 1st Line
  Management and business generators (CEO, traders, sales and origination, etc.)
- 2nd Line
  Risk and Compliance Teams
- 3rd Line
  Internal Audit

The publication seeks to aid firms in assessing aspects of their holistic risk management frameworks using the Three Lines Model as a lens and help the financial industry understand how the Model can evolve and be implemented most successfully. In particular, it seeks to help the industry reduce incidents of siloed knowledge, fudged accountability, duplication, technical problems and misconduct.

The publication also contains a Risk Register which lists hot spots to help practitioners consider how best to approach the problems.

Further reading

The Spotlight Review can be found here.

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One month to go for the Consumer Duty

On 19th June 2023, the Financial Services and Markets Bill 2022-23 (FSB Bill) completed its report stage and third reading in the House of Lords.

The UK Parliament also published a revised version of the FSM Bill that incorporates amendments that were made to the Bill in the report stage and an explanatory note setting out these changes.

The Lords have amended multiple clauses within the Bill including the need to:

- Implement sustainability disclosure requirements
- Increase the scope of the Financial Ombudsman Service's (FOS) fee charges
- Make HM Treasury, rather than the FCA, the PRA and the Bank of England responsible for the appointment (and dismissal) of the Complaints Commissioner
- Introduce a legislative requirement for HM Treasury to amend Part 3 of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 to explicitly distinguish between domestic and nondomestic politically exposed persons
- Ensure that the provision in Schedule 2 of the Bill giving the Bank of England the power to extend the maximum run-off period for non-UK central counterparties (CCPs) from one year to three years and six months, comes into effect on Royal Assent rather than by commencement regulations

Following this, on 26th June 2023, the Commons reviewed the amendments made by the House of Lords. The majority of the changes proposed by the House of Lords were accepted, however amendments were rejected relating to:

- Imposing the requirement for the FCA and PRA to have regard for the natural environment
- Requiring the FCA to consider 'financial inclusion' in respect of the consumer protection objective
- Restrictions on financial institutions' activities relating to forest risk commodities

The Bill has now been granted Royal Assent as of the 29th June 2023.

Further reading

The Act and all amendments can be found here.

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On 26th June, Emily Shepperd, the Chief Operating Officer and Executive Director of Authorisations at the FCA delivered a speech on the importance of culture.

The speech emphasised the interdependence between a healthy culture, financial conduct, business performance and regulatory confidence. Senior individuals within firms are expected to demonstrate a positive culture through the fitness and propriety assessments set by the FCA, and those who fail to meet such standards are fined and/or banned for life.

The Consumer Duty which comes in to force at the end of July was also mentioned.

The FCA took the opportunity through the Consumer Duty to change from a prescriptive rules-based regulation and towards an outcomes-driven approach. The higher standard of the Duty to focus on outcomes will require a meaningful change in culture for many firms and this culture should be set from the top by firms' boards and senior management.

The speech also explained how the FCA has needed to change its own culture in the previous years, taking into account criticism about the time taken for authorisations to be processed; the FCA are currently piloting an approach to application forms and other data-driven tools using 'user experience' as an influence. The FCA hopes that this will speed up the process whilst not diminishing the thoroughness of the checks.

A key area of focus for the Authorisations arm of the FCA is to put a stop to 'rolling bad apples', these are individuals who have been involved in misconduct who move from firm to firm, with few questions asked at the new firm.

The FCA wants firms to take regulatory referencing more seriously, including extending probationary periods, add extra monitoring or restrict activity.

Further reading

A transcript of the speech can be found here.

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On 27th June 2023, the UK and EU signed a memorandum of understanding (MoU). The MoU will establish a Forum for HM Treasury and the European Commission to discuss regulatory matters of mutual interest.

The purpose of the Forum is to improve communications between the UK and the EU around regulatory developments, including the development of regulatory frameworks. There will also be the opportunity to discuss compatibility between the two areas including where one side has decided to adopt, suspend or withdraw equivalence.

The forum will meet every six months and there may be a joint statement released after each Forum meeting to show visibility to its outcomes, although this is not mandatory. These statements may provide an early indication of potential regulatory change.

The MoU has timed itself with the implementation of the Financial Services and Markets Act on 29th June 2023 and this will be the primary driver of discussions in the early Forum meetings, as this Act allows the UK to amend or revoke retained EU law.

Further reading

A link to the government webpage hosting the MoU can be found here.

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Consumer Duty firm survey - Spring 2023

On 28th June 2023, the FCA published key findings from a survey of 1,230 firms in scope of the Consumer Duty to understand how prepared firms were in meeting the implementation deadline of 31st July 2023.

The survey was aimed at sectors and sub-sectors where firms may have been less engaged, either because the firm is smaller and had less contact with the FCA or where financial services is not their primary purpose. The key findings from the survey were as follows:

- There were very high levels of engagement and understanding of the Duty, including in sectors where historically regulatory change had seen lower levels of engagement
- 64% of firms surveyed said they would be fully compliant by the deadline and a further 23% said they would comply with most requirements but would still have some work to do. 7% of firms said they would have significant work to do after the deadline or had not yet started work on the Duty
- Two groups of firms – retail finance and debt advice firms scored consistently lower than other types of firms. The FCA will be issuing further direct communications to those firms and working with relevant industry bodies to amplify the messages
- Firms had made use of the support provided by the FCA and had found it helpful. The two areas that firms wanted help with the most were outcomes monitoring and the price and value outcome.

Overall, the FCA is pleased that most firms had taken substantial efforts to implement the Duty but remain concerned that a small number of firms had not prioritised the Duty and made use of the support available.

The FCA has reiterated the need to make the most of the time remaining before the 31st July deadline and has issued advice regarding the next steps for firms:

Firms confident in meeting the deadline need to maintain oversight of their implementation plans to ensure that they remain on track. Boards and management bodies should ensure that their firm has fully engaged with the requirements, and shift the focus on consumer outcomes.

Firms who have made good progress but are struggling to complete all the work required need to make the maximum use of the time available, prioritising action that improves customer outcomes and reduces the risk of harm. Boards and management bodies must ensure that they have identified any potential gaps or weaknesses and any actions needed to remedy this.

Firms that still have a long way to go in order to meet the requirements of the Duty need to make strenuous efforts in the next month to accelerate the implementation work, prioritising the work that is likely to have the greatest impact on customers.

Firms must alert the FCA if they believe they will be in significant breach of the Duty when it comes into force and should be prepared for the FCA to take action when they see firms' failure to implement the Duty causing actual or potential harm. This could include holding senior managers to account.

Further reading

The survey can be found here.

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Consumer Duty firm survey – Spring 2023

One month to go for the Consumer Duty

On 28th June 2023, the FCA published a news article reminding firms of the Consumer Duty deadline which impacts firms issuing new and existing products and services on 31st July 2023.

As part of the news article, the FCA published ten key questions for firms to consider:

1. Are you satisfied your products and services are well designed to meet the needs of consumers in the target market, and perform as expected? What testing has been conducted?
2. Do your products or services have features that could risk harm for groups of customers with characteristics of vulnerability? If so, what changes to the design of your products and services are you making?
3. What action have you taken as a result of your fair value assessments, and how are you ensuring this action is effective in improving consumer outcomes?
4. What data, management information and other intelligence are you using to monitor the fair value of your products and services on an ongoing basis?
5. How are you testing the effectiveness of your communications? How are you acting on these results?
6. How do you adapt your communications to meet the needs of customers with characteristics of vulnerability, and how do you know these adaptions are effective?
7. What assessment have you made about whether your customer support is meeting the needs of customers with characteristics of vulnerability? What data, MI and customer feedback is being used to support this assessment?
8. How have you satisfied yourself that the quality and availability of any post-sale support you have is as good as your pre-sale support?
9. Do individuals throughout your firm – including those in control and support functions – understand their role and responsibility in delivering the Duty?
10. Have you identified the key risks to your ability to deliver good outcomes to customers and put appropriate mitigants in place?

The FCA finished the article by re-emphasising that they will prioritise the most serious breaches once the Consumer Duty comes into force and act swiftly and decisively against firms where they find evidence of harm to consumers.

Call to action

- Project teams should review these ten questions and ensure either gaps are filled, or robust plans of action are in place for the July deadline.

Further reading

The news article from the FCA can be read here.

Data protection

UK and US commit in principle to establish a 'data bridge' for the UK extension to the EU-US Data Privacy Framework

ICO reviewing key businesses' use of generated AI - e.g., Apps like Chat GPT

ICO publishes guidance on privacy enhancing technologies (PETs)

UK and EU commit in principle to establish a 'data bridge' for the UK extension to the EU-US Data Privacy Framework

On 8th June 2023, the UK and US governments announced in a joint statement that the two countries have committed in principle to establish a 'UK-US data bridge' for the UK Extension to the EU-US Data Privacy Framework.

This is subject to the UK finalising its assessment of US data protection laws and practices, further technical work and dependent on the US designating the UK as a qualifying state under Executive Order 14086.

A press release explains that the government will continue to finalise its assessment taking into account the protection provided for personal data, the rule of law, respect for human rights and fundamental freedoms, and the existence and effective functioning of a regulator in the US. It will formally consult the Information Commissioner, as per the Data Protection Act 2018, and as set out in a memorandum of understanding.

On finalised, this will allow personal data to be transferred securely and more freely from UK organisations to certified organisations in the US and remove the need to rely on alternative data transfer mechanisms such as standard contractual clauses, which the government views as too costly and time consuming.

Reaching this significant milestone builds on the goal set in January 2023 at the inaugural meeting of the UK-US Comprehensive Dialogue on Technology and Data, to finalise a data bridge for UK-US data flows in 2023. The data bridge would make it easier for around 55,000 UK businesses to transfer personal data freely to certified US organisations without cumbersome red tape – translating into an estimated £92.4 million in direct savings per year.

The announcement coincided with Prime Minister, Rishi Sunak's visit to the US, and formed part of wider discussions with President Joe Biden on partnering on an inclusive and responsible digital transformation package.

The UK and US will continue working together to facilitate trusted cross-border data flows, including on multilateral initiatives, such as the Global Cross-Border Privacy Rules Forum, and through international fora, such as the OECD.

Further reading

The press release from the Department of Science, Innovation and Technology can be found here.

Data protection

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ICO publishes guidance on privacy enhancing technologies (PETs)

On 15th June 2023, the ICO published a blog calling for businesses to address the privacy risks generative AI can bring, before rushing to adopt the technology, with tougher checks on whether organisations are compliant with data protection laws.

Generative AI creates content after collecting or querying huge volumes of information from publicly accessible sources online, including people's personal information. Laws already exist to protect rights, included privacy, and they apply to generative AI as an emerging technology.

The blog states the ICO is 'committed to supporting UK businesses to develop and innovate with new technologies that respect people's privacy'.

The ICO has published updated guidance on AI and Data Protection, which includes a roadmap to data protection compliance for developers and users of generative AI.

Further reading

Read the ICO blog here, which has links to guidance and a risk toolkit.

Data protection

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ICO reviewing key businesses' use of generated AI - e.g., Apps like Chat GPT

ICO publishes guidance on privacy enhancing technologies (PETs)

On 20th June 2023, the ICO launched new privacy enhancing technologies (PETs) guidance aimed at data protection officers and others who are using large personal data sets in finance, healthcare, research and central and local government.

The guidance follows on from the ICO's draft guidance on PETs as part of its anonymisation, pseudonymisation and PETs guidance. Although the guidance was originally intended to form a chapter of the anonymisation and pseudonymisation guidance, it will now be standalone guidance.

The ICO notes that PETs can be used to share anonymised personal information to detect and prevent financial crimes and related harms such as fraud, money laundering and cybercrimes, and recommends that organisations that share large volumes of data, particularly special category data, should start considering using PETs over the next five years.

The ICO also notes that it is continuing to support organisations looking to develop or adopt PETs by collaborating on a PETs cost-benefit tool, in partnership with the Centre for Data Ethics and Innovation (CDEI).

On 20th and 21st June 2023, John Edwards, the Information Commissioner, was at the G7 data protection and privacy authority's roundtable meeting in Tokyo, Japan. The participants highlighted achievements since the previous roundtable in Bonn, Germany in September 2022, which included the significant PETs work the ICO has delivered. The G7 regulators were also due to consider data free flow with trust, enforcement co-operation and other emerging technologies, specifically the recent developments and risks of generative AI technologies from a data protection and privacy perspective.

Further reading

You can find the PETs guidance [here].

Consumer credit

FCA publishes policy statement and final rules banning referral fees for debt packages

On 2nd June 2023, the FCA published a policy statement setting out new rules banning debt packagers from receiving referral fees and other forms of commission or remuneration paid by debt solution providers.

The FCA consulted on these changes in CP23/5. The statement also includes feedback to CP23/5 and its responses.

Existing debt packager firms will need to ensure they comply with the following changes from 2nd October 2023 onwards:

- Where CONC 8.3.11R applies, firms must ensure they do not receive any commission, fee or any other financial consideration from a debt solution provider for any referral or related service
- Firms who act as principal to appointed representatives, who would fall under the scope of the ban if they were an authorised person, must take all reasonable steps to ensure that these appointed representatives also comply with the ban, as required under CONC 8.3.16R (subject to CONC 8.3.11R (2))

Firms who start, or restart, conducting debt packager business from 2nd June 2023 will be subject to the ban and will not benefit from the implementation period.

The FCA is also introducing new guidance in PERG, making it clear that referring customers to debt solution providers who only offer one solution could fall under the regulated activity of debt counselling.

Further reading

Find the full policy statement here.

FOS: Data and Insight: Annual complaints data and insight 2022/23

On 14th June 2023, the Financial Ombudsman Service (FOS) published its annual complaints data and insight for 2022/23.

The data shows the volume of complaints the FOS received and resolved, and the proportion of complaints it upheld in consumers' favour between April 2022 and March 2023.

Points of interest include the following:

- The FOS received 165,146 new complaints (compared to 164,560 in 2021/22)
- The five most complained about products were:
  - current accounts (26,039)
  - credit cards (14,504)
  - motor insurance (11,851)
  - hire purchase (motor) (11,446)
  - building insurance (6,497)
- The FOS' overall uphold rate was 35%, with the lowest rate of 7% for packaged back accounts and highest uphold rate of 86% for mini-bonds. Running account credit has an uphold rate of 68%
- Approximately half of the complaints about current accounts were from victims of fraud and scams

The FOS also published the full annual complaints data set, additional data sets relating to complaints involving financial advisers and annual data for claims management companies (CMCs).

Further reading

The annual data set can be found here.

Mortgages

Chancellor agrees new support measures for mortgage holders and The Mortgage Charter

On 23rd June, the Chancellor met with key UK mortgage lenders to agree what support could be given to borrowers struggling to meet mortgage repayments as the cost-of-living crisis continues.

This was followed up on 26th June by HM Treasury publishing the Mortgage Charter, a formal agreement signed by lenders covering 85% of the mortgage market.

Analysis conducted by both the FCA and UK Finance paints the market in a stronger position than prior to the 2008 financial crisis, for example during the first quarter of 2023 0.86% of residential mortgage balances were in arrears, compared with 3.32% in 2009. Furthermore, the proportion of disposable income spent on mortgage payments is currently 5.4%, compared to 10% prior to the financial crisis.

The mortgage lenders, which cover 75% of the market agreed to a new mortgage charter included the following principles:

- Customers will not be forced to have their home repossessed within 12 months of missing their first payment
- A new agreement to permit customers to switch to an interest-only mortgage for six months, or extend their term to reduce the monthly payments and to switch back to their original term within the first six months. Both options can be taken without new affordability checks or impacting their credit score

Other terms of the charter included guidance already set by the FCA, including the ability to gain information or support on forbearance options without impact on the customer's credit score, providing information in due time before fixed-term arrangement comes to an end and ensuring a range of different forbearance options are available to customers, with the most suitable option being agreed depending on the customer's circumstances.

The FCA committed to moving quickly to make changes to support the commitments made.

Call to action

- Mortgages firms should consider whether they can and should sign up to the Charter.

Further reading

The announcement from the government can be found here and the Mortgage Charter can be found here.

Investments

HMRC Tax-free savings newsletter 8th June 2023

On 8th June 2023, HMRC published its latest tax-free savings newsletter.

The newsletter covered four topics:

- Help to Save consultation
- Audits of ISA managers
- Lifetime ISA
- Recognised Stock Exchanges

The Help to Save consultation, Lifetime ISA updates and recognised stock exchange update will be of interest to firms with a focus on these areas, whereas the summary of findings from the recent ISA manager audits will be relevant to a wider audience.

Firms should consider reviewing the HMRC audit findings to assess whether any of the gaps are relevant to the service they provide today.

Call to action

- ISA managers and providers should review the audit findings to assess gaps in their own process.

Further reading

The latest newsletter can be found here.

Financial crime

Gov.uk: More action to fight fraud, bribery and other economic crime

On 15th June 2023, the government published a press release detailing that plans have been submitted to modernise the identification doctrine, a legal principle which can hold corporations criminally liable for an offence.

Under new Home Office plans, businesses who commit fraud, money laundering and bribery will be subject to stricter scrutiny. The government has collaborated with prosecutors, the Law Commission, and the private sector to introduce the biggest reform of the identification doctrine, legislation used to hold companies criminally liable for offences, in more than 50 years.

The proposal, added to the Economic Crime and Corporate Transparency Bill, will see senior managers being brought within scope of who can be considered the 'directing mind and will' of a business. It means if they commit an economic crime, the company can also be held criminally liable and fined for the offence.

This tool is another part in the government's plan to fight fraud, which includes the recent publication of the Fraud Strategy. It also builds on recommendations made by the Law Commission and feedback received from prosecutors and business groups.

The consensus from these engagements was the current regime does not effectively cover the way modern businesses are structured.

In practice, it will work in the following way:

- A test will be applied to consider the decision-making power of the senior manager who has committed an economic crime, rather than just by using their job title
- The corporation may then be liable in its own right
- It will reduce the ability for corporation to use complect management structures to conceal who decision makers are
- It will level the playing field for businesses of all sizes

Further reading

The press release can be found here.

Enforcement

FCA fines firm for cum-ex trading oversight failings

On 5th June 2023, the FCA published the final notice it has issued to ED&F Man Capital Markets Ltd (MCM), a commodities brokerage firm, fining it £17,219,300.00 for serious failings in its oversight of cum-ex trading.

The FCA found that, between February 2012 (when MCM acquired a new equity finance business) and March 2015, MCM breached Principle 2 (skill, care and diligence) and Principle 3 (Management and control) of the FCA's Principles for Business. The breaches enabled significant volumes of dividend arbitrage trading on behalf of clients, allowing clients to make withholding tax reclaims.

It has been established that £20 million of the withholding tax reclaims made by MCM's clients to the Danish tax authority (SKAT) were illegitimate. MCM benefitted by charging £5 million in fees.

The FCA notes in an accompanying press release that the financial penalty imposed on MCM is the largest of the four cases brought by it relating to cum-ex trading. This reflects the elements of seriousness, the nature of the breaches and the significant revenue it generated for the firm.

The FCA's findings included the following:

- MCM did not conduct its business with due skill, care and diligence because its compliance function failed to provide any meaningful oversight to the trading activities of the equity finance desk. It failed to take any steps to understand the trading activities. It also failed to properly consider possible risks and what monitoring, or review or other systems and controls would be appropriate from a compliant perspective in relation to the dividend arbitrage trading
- MCM did not take reasonable care to organise and control its affairs responsibly and effectively with adequate risk management systems. This is because although its dividend arbitrage trading business was underpinned by the requirement for legal and tax opinions, it had inadequate systems and controls to ensure the existence of those opinions and to check that trading was carried out in line with them. In addition, there were no systems and controls to monitor or review the trading activities of the equity finance desk, which allowed its trading activities to proceed unchecked

Further reading

The press release from the FCA can be found here.

Dates for the diary

2023	Oversight of Critical Third Parties
2023	FCA and PRA Consultation Paper on Diversity, Equity and Inclusion
H1 2023	Review of the UK's AML/CTF regulatory and supervisory regime
H1 2023	Regulation of Buy Now Pay Later (BNPL)
2022-23	The EU's Draft Digital Operational Resilience Act (DORA)
2022-23	Continuous FCA evaluation of how firms treat Vulnerable Customers
H1 2023	Transforming data collection building on Digital Regulatory Reporting
30 June 2023	Deadline for ending reliance on US dollar LIBOR
July 2023	Proposed Consumer Duty implementation period ends, and rules and guidance come into force for existing and open products
13 July 2023	Consultation closes on CP23/13 - Strengthening protections for borrowers in financial difficulty
Q3 2023	Final findings of Credit Information Market Study
End 2023	Remaining UK Green Taxonomy Technical Screening Criteria to be finalised
Q4 2023	Deadline for principals to prepare and approve the first self-assessment of compliance with the new appointed representatives' rules
March 2024	Synthetic sterling 3-month LIBOR rate cease
July 2024	Proposed Consumer Duty implementation period ends, and rules and guidance come into force for closed products

Stay ahead of the risk curve

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