

# Stop Press

**August 2023**

**In August, the FCA published details of a number of minor Handbook updates, invited Politically Exposed Persons (PEPs) to share their experiences of dealing with financial services firms, and reminded firms about the Information Commissioner's Office guidance about direct marketing.**

**As well as other key items, this edition also includes updates in relation to Ombudsman News issue 183, Advertising Standards Authority guidance, and an update about the Employee Relations (Flexible Working) Act 2023.**

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### FCA secures Confiscation Order against convicted money launderer – FCA 28<sup>th</sup> July 2023

On Friday 28 July 2023, Southwark Crown Court imposed a Confiscation Order of £562,636 against Richard Faithfull following his conviction in September 2021. The Court determined that Faithfull's criminal benefit was £4,130,936, with the Confiscation Order amount being lower based on the Court's findings as to his available assets. The confiscated funds will be used to compensate the victims of Mr Faithfull's crimes.

If Faithfull does not satisfy the terms of the Confiscation Order within 3 months, he will serve a further term of 4 years imprisonment in addition to the 5 years 10 months he is already serving.

For more information, [click here](#).

### FCA publishes Handbook Notice 111 – FCA 28<sup>th</sup> July 2023

Handbook Notice 111 has been published, confirming a number of updates to the Handbook.

- SUP 16.30, and SUP 16 Annex 54G, have been updated to come into force on 1<sup>st</sup> January 2024, introducing the new FIN073 financial resilience return, in particular confirming that all full permission consumer credit firms will be in scope (as consulted on in [CP23/9](#)). The Handbook Notice includes the FCA's response (so in effect its Policy Statement) in relation to CP23/9.
- The FEES annexes have been updated following the confirmation by the FCA of the 2023/24 fees and levies.
- Following consultation in [CP23/1](#), the FCA has made changes to introduce a new section of Guidance at [ICOBS 2.7](#), which came into force alongside the Consumer Duty on 31<sup>st</sup> July 2023. In summary, this guidance to firms is designed to reduce the impact of financial difficulties on customers, enable customers to maintain an appropriate level of insurance that they can afford, and reduce the risk of customers losing appropriate insurance cover that is important to them. Feedback was published in a separate [policy statement](#).

For more information, [click here](#).

### FCA publishes a customer-facing Consumer Duty page – FCA 31<sup>st</sup> July 2023

The FCA has published a brief web page, aimed at the public rather than authorised firms, announcing the new Consumer Duty.

Alongside the new page, the FCA has also updated its customer-facing:

- [‘Your rights with financial services’](#) web page; and its
- [‘How to complain’](#) web page.

For more information, [click here](#).

### FCA reminds firms about ICO guidance in relation to direct marketing and regulatory communications – FCA 28<sup>th</sup> July 2023

The FCA has updated its [‘Consumer Duty – information for firms’](#) page to remind firms about data protection law and customer communications. Under the Consumer Understanding outcome, the FCA expects consumers to be given the information they need, at the right time, and presented in a way they can understand.

The Information Commissioner's Office (ICO) [guidance on direct marketing and regulatory communications](#) explains how to draft regulatory communications, and includes illustrative examples.

- Administrative or customer service messages aren't considered to be direct marketing, so there are no restrictions on communicating this type of information.
- Firms can also provide regulatory communications to all customers that provide neutral, factual information. For example, information about the product they hold, terms of other available products, and what their options are for moving to another product.

For more information, [click here](#).

### FCA publishes retail intermediary market data 2022 – FCA 3<sup>rd</sup> August 2023

Each year (since 2016) the FCA publishes the information firms have provided about their activities on their RMAR. This information is used to help supervise the activities of those firms and to inform the FCA's other regulatory functions.

This year's [analysis](#) gives an update on firms in the retail intermediary sector based on [data](#) which reflects returns submitted to the FCA by firms for periods ending within 2022.

- Revenue from insurance distribution rose by 10% to £21.2 billion.
- For insurance distribution, commission remains the primary source of revenue, accounting for 84% (unchanged since 2021).

For more information, [click here](#).

### FCA invites Politically Exposed Persons to share their experiences – FCA 15<sup>th</sup> August 2023

The FCA is currently reviewing how financial services firms have applied the PEPs regime and whether changes to its guidance are required. This follows feedback it has received and is in line with the requirements of the Financial Services and Markets Act 2023.

- The FCA is keen to hear directly from UK PEPs and is proactively [contacting parliamentarians, chairs of the political parties and other UK PEPs](#) (including senior civil servants and the senior ranks of the armed forces) at an early stage.
- [Guidance](#) for financial services firms was published by the FCA in 2017 to help firms apply a proportionate and risk-based approach to PEPs.

The full terms of reference for the review will be published in September 2023, with a report expected by June next year, which will inform any subsequent steps.

For more information, [click here](#).

### FCA publishes its financial promotions quarterly data for April to June 2023 – FCA 4<sup>th</sup> August 2023

The FCA has published a summary of data generated between 1 April 2023 and 30 June 2023 from its actions against firms breaching financial promotion rules, and referrals and investigations into unregulated activity. Retail investments and retail lending are the sectors with the highest amend/withdraw outcomes, totalling 70% of interventions with authorised firms.

- 1,507 promotions have been amended or withdrawn by authorised firms.
- 400 alerts were issued on unauthorised firms and individuals; 11% of these were clone scams.
- An [infographic](#) was [released on 6 April 2023](#), in conjunction with the [Advertising Standards Authority](#), to educate 'fin-fluencers' about their obligations when seeking to promote financial services and products. 45,000 people viewed the posts and there were 1,300 engagements.

For more information, [click here](#).

### Helping firms provide more support to customers making investment decisions – FCA 3<sup>rd</sup> August 2023

In 2022, the Government announced plans to fundamentally review how the boundary between advice and guidance on investments is operating. This review will be carried out by the FCA, in conjunction with the Treasury, as part of the Edinburgh Reforms. The FCA has published a [web page](#) highlighting the different ways FCA-authorized firms can support consumers under the existing regulatory framework, drawing from existing rules and guidance, pending any changes that might be implemented following its review.

To assist firms, the FCA sets out examples of where regulated firms can support consumers without inadvertently providing a personal recommendation.

The guidance contains examples of when support given to retail customers will not qualify as a 'personal recommendation' and on how to comply with the Consumer Duty. **Whilst the guidance itself focuses on investments, it is also relevant to regulated non-investment activity such as insurance distribution.**

For more information, [click here](#).

### Verex Insurance Services Limited enters administration – FCA 18<sup>th</sup> August 2023

Verex Insurance Services Limited (Verex) is an insurance broker that sold motor insurance products from a range of insurers. The Directors of the company applied to place the firm in administration. One of Verex's Appointed Representatives, Verex Assistance Limited, also entered administration on 18<sup>th</sup> August 2023.

- Gary Pettit of PBC Business Recovery and Insolvency Ltd has been appointed administrator of the firm and the Appointed Representative.
- Policies purchased through Verex are not affected. Car Care Plan Limited have acquired the assets of Verex Insurance Services Ltd and Verex Assistance Ltd, which means they will take over the services previously provided by Verex.
- The FCA web page appears to be aimed at Verex customers rather than at firms and contains a number of FAQs covering topics such as what happens to the insurance policy, does the customer need to move to another insurer, what happens in the event of a claim or a required mid-term change, and is there FSCS coverage (to which the answer is 'not necessary – the contracts all remain in force and in place').

For more information, [click here](#).

### **FCA publishes new Inside FCA podcast and transcript: Fighting Fraud and Financial Crime – FCA 29<sup>th</sup> August 2023**

In this Inside FCA [podcast](#) interview and [transcript](#), Emad Aladhah (who leads a team at the FCA dedicated to reducing and preventing financial crime and fraud) talks in detail about the tools the FCA uses to help tackle different types of fraud, including the use of data to identify and prevent harm sooner, partnership work with other organisations and taking assertive enforcement and supervision action. He also outlines his expectations of firms to help tackle financial crime and protect consumers from harm.

For more information, [click here](#).

### **Financial Ombudsman Service publishes Ombudsman News 183 – FOS 10<sup>th</sup> August 2023**

FOS has published the latest edition of Ombudsman News.

This edition highlights:

- Its recent blog on Section 75 of the Consumer Credit Act 1974 and chargeback complaints (both in relation to the potential impacts for lenders of customers buying goods using some form of finance, including loans or credit cards).
- Updated guidance for financial businesses on bank account closures.
- A reminder in relation to the Consumer Duty.

For more information, [click here](#).

### **The Information Commissioner's Office and the Competition and Markets Authority – time to end damaging website design practices – ICO and CMA 9<sup>th</sup> August 2023**

The ICO and CMA have published a joint position [paper](#) which is targeted at firms that deploy design practices in digital markets (such as on websites or other online services), as well as product and user experience designers that create online interfaces for firms. The position paper also provides further clarity to firms and those who design with online choice architecture about how data protection law applies to design practices.

For more information, [click here](#).

### **Information Commissioner's Office consultation on the draft biometric data guidance – ICO 18<sup>th</sup> August 2023**

The ICO is producing guidance on biometric data and biometric technologies. The draft biometric data guidance explains how data protection law applies when you use biometric data in biometric recognition systems, and will be completed in two phases:

- The first phase ([draft biometric data guidance](#)) is now published for public consultation.
- The second phase (biometric classification and data protection) will include a call for evidence early next year.

The consultation will run from 18<sup>th</sup> August to 20<sup>th</sup> October 2023.

For more information, [click here](#).

### **Sustained cost pressures on insurers push the average price of motor insurance to a record high – ABI 11<sup>th</sup> August 2023**

The Association of British Insurers has gathered data which analysed 28 million motor insurance policies. This produced the most accurate picture of what UK motorists are paying for their cover.

The FCA rules on the pricing of motor and home insurance introduced on 1<sup>st</sup> January 2022 do not set or cap the level of premium paid by new or existing customers.

The ABI data tracker / index covers over 7 million policies sold during the second quarter, and 28 million policies sold over the last 12 months.

- Unlike other motor insurance price indices, the ABI measured the average price *paid*, not prices advertised.
- Unlike some other trackers, it covers both new and renewing customers.

Higher premiums reflect continued rising costs for insurers. In total, insurers paid out £2.4 billion in all motor insurance claims – theft, vehicle repairs, and personal injury – in the first quarter of this year. This was up 14% on Q1 2022.

For more information, [click here](#).

### **Association of British Insurers highlights crackdown on insurance cheats – ABI 23<sup>rd</sup> August 2023**

The ABI is warning that there can be no let-up in cracking-down on insurance fraud. Key findings from the ABI's latest figures from 2022 detail that motor insurance continues to make up the largest volume of fraud cases at 42,500, representing 59% of total insurance claims fraud.

- The total number of fraudulent insurance claims detected fell by 19% from 2021, to 72,600 cases.
- Despite the drop in the number of fraudulent claims, the value of the average scam increased to £15,000, up 20% from 2021.
- The volume of fraudulent personal injury claims has dropped by 20%, largely as a result of the Official Injury Claim (OIC) portal reducing the overall number of small personal injury claims being made.

For more information, [click here](#).

### **Advertising Standards Authority provides information on its remit: “what we cover and what we don't” – ASA 1<sup>st</sup> August 2023**

The ASA is the first port of call whenever you see an ad that you think might break the rules. It only takes one complaint for the ASA to investigate, and it will always carefully assess complaints before coming to a decision. Whilst its rules apply to the majority of ads across UK media, there are some key exceptions.

Whether the product advertised is regulated by the FCA or not, the ASA works closely together with the FCA, sharing expertise to ensure that ads are honest and not misleading consumers. And when the ASA receives complaints about financial ads, where the issue falls outside of its remit, it refers the ad to the FCA to ensure that it's being addressed.

For more information, [click here](#).

### **A picture says a thousand words: avoiding misleading imagery in ads – ASA / CAP 10<sup>th</sup> August 2023**

The Committee of Advertising Practice (CAP) has published a [web page](#) about how the ASA will assess whether an ad is likely to mislead. The ASA will consider the entire ad, and the overall impression given in the ad. As well as any direct claims made, this includes the imagery used and the impression that imagery gives. Images which give an inaccurate impression about the product consumers will receive, for example, by featuring the wrong product, including extras, or by exaggerating the quality or size of the product, are likely to mislead.

Firms should not be misleading about the items or services customers will actually receive and should not exaggerate a product's efficacy.

For more information, [click here](#).

### **Affiliate yourself with the CAP Code this month – ASA / CAP 10<sup>th</sup> August 2023**

CAP has published a [web page](#) referring to [Rule 2.1](#) of the CAP Code. This rule requires that marketing communications are obviously identifiable as such. The Code also states that marketing communications must make clear their commercial intent if that is not obvious from the content or context. CAP indicates that it's never been more important for consumers to know that what they're looking at is advertising – and for marketers, that means making sure it's clear before consumers engage with it.

Online affiliate marketing is a type of performance-based marketing where an 'affiliate' places ads, promotional codes, or links which direct consumers towards a company website. Firms using such ads should make sure they are obviously identifiable as ads, and take care with the content.

For more information, [click here](#).

### **Employment Relations (Flexible Working) Act 2023 given Royal Assent – UK Parliament 26<sup>th</sup> July 2023**

The Flexible Working Bill [has been granted Royal Assent](#), and has been set in Statute as the [Employment Relations \(Flexible Working\) Act 2023](#). The Act makes provision in relation to the right of employees and other workers to request variations to particular terms and conditions of employment, including working hours, times and locations ('flexible working').

Employees are now able to make two flexible working requests in any 12-month period (rather than one). Employers must respond to flexible working requests within two months of receipt rather than three months and cannot refuse the request unless they have first 'consulted' with the employee. There is no definition of what is meant by a 'requirement to consult employees', which creates some uncertainty for employers.

Employees no longer need to explain the effect of any flexible working request and how to mitigate that effect, but a 'day-one' right to request flexible working (i.e., from the day they start working for the employer) is not included in the Act. Therefore, employees currently still need 26 weeks' service before they can make a flexible working request.

The Act does not provide a right of appeal if a flexible working request is rejected. An employer may choose to allow an appeal and the [ACAS Code of Practice](#) on flexible working (which is the subject of a Consultation to update certain elements as a result of the new Act) recommends that an appeal is offered.

Our [Group Insurance HR Consultancy, IHRS](#), can assist firms who may need advice and guidance in relation to HR issues.

For more information, [click here](#).

### HM Treasury issues an open Consultation on banning cold calling for financial services and products – HM Treasury 2<sup>nd</sup> August 2023

As announced in the Fraud Strategy in May 2023, the government will extend the pensions cold calling ban to cover cold calling for all consumer financial services and products.

- This [consultation paper](#) explores how best to design and implement this ban to prevent scam calls from reaching the public, whilst allowing legitimate and beneficial communications from businesses to continue.
- The consultation also includes a call for evidence to collect information and data that will allow a more rigorous assessment of the impacts on businesses.
- A specialist team which provides support to victims of fraud, known as the National Economic Crime Victim Care Unit, [has also been rolled out](#) to all 43 police forces across England and Wales since the Fraud Strategy was announced.
- The consultation is open for responses until 9.30am on 27<sup>th</sup> September 2023

For more information, [click here](#).

### HMRC publishes an updated 'VAT-Insurance' page in the internal HMRC Manual – comments on defining insurance – HMRC 22<sup>nd</sup> August 2023

HMRC has updated a page in its internal guidance Manual in relation to the definition (or lack thereof) of insurance. The page adds details of two court decisions relating to the characteristic of insurance.

The updated page states that there is no statutory definition of insurance for VAT purposes, although guidance can be gained from previous legal decisions in which the essential nature of insurance has been considered.

The essence of the court decisions is that “...the essentials of an insurance transaction are... that the insurer undertakes, in return for prior payment of a premium, to provide the insured, in the event of materialisation of the risk covered, with the service agreed when the contract was concluded.”

This mirrors the key elements of a contract of insurance as described at [PERG 6.3.4 G](#), as set out in the case of Prudential v. Commissioners of Inland Revenue [1904] 2 KB 658.

For more information, [click here](#).

### National Cyber Security Centre reveals most common cyber vulnerabilities exploited in 2022 – NCSC 1<sup>st</sup> August 2023

[In a new joint advisory](#), the National Cyber Security Centre – a part of GCHQ – and agencies in the US, Australia, Canada and New Zealand have revealed a list of the top 12 vulnerabilities that were routinely exploited last year.

UK organisations are also encouraged to sign up for the [NCSC's Early Warning service](#) to receive alerts about potential issues, including vulnerabilities, affecting their networks.

For more information, [click here](#).



This information is a summary of matters which will affect the majority of firms involved in insurance distribution. However, each firm's requirements are individual and it is important to seek specific advice from ICS before acting on anything contained in this publication .

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