

The logo for Hogan Lovells, consisting of the words "Hogan" and "Lovells" stacked vertically in a black serif font, set against a light green square background.

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The background of the cover features a close-up, shallow depth-of-field photograph of a person's hand holding a silver smartphone. The phone's screen is lit up, showing a blurred interface with various icons and text. The background is a bokeh of warm, golden light spots, suggesting an indoor setting with ambient lighting. A large, light green triangular graphic element is positioned in the top right corner, partially overlapping the background image.

# UK Payments and Retail Banking Regulation

The Year Ahead 2019



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# UK payments and retail banking regulation in 2019

2018 was dominated by preparations, or talk about preparations, for Brexit and 2019 started out in the same vein, with many firms planning for the worst while hoping for the best. At least for incoming firms, the UK has an “open for business” approach, with a Temporary Permissions Regime (TPR) in place and new regimes under consultation to allow for contractual continuity where the TPR doesn’t apply. For firms based in the UK, the position is much more uncertain. Some European states will provide similar regimes to the UK TPR but, where no equivalent is in place, it is vital to identify which regulated activities are taking place and what can be continued in the event of a hard Brexit for financial services.

2018 also saw huge changes for banks and payment institutions with the implementation of PSD2 and GDPR in particular. There doesn’t seem to be much of a slowdown for 2019. The changes on the horizon have potentially significant impacts for traditional business models in banking and payments. These are covered in detail in the following pages but include the prospect of new retail banking models which, for some banks, may require overdraft products to be redesigned. In addition, there is a whole new architecture planned for payments in the UK to allow for the layering of tech and services by multiple providers to promote competition and innovation. All of this will have implications for legacy systems and planned IT investments during an intense period of digitisation for incumbents.

Fair treatment of customers is now embedded in the culture of the industry, but there’s no let up on developments with the TCF regime being extended to payments and e-money activity by non-banks and the FCA’s new guidance on variation terms. The proposals for dealing with authorised push payment scams shows that the FCA still thinks it’s appropriate for banks to take measures that can protect customers from themselves. Increased consumer protection is evident in other areas too, especially on affordability and treatment of vulnerable customers and those in payment difficulties and we’re expecting to see more mis-selling pressure on firms in the higher cost and short term credit sector.

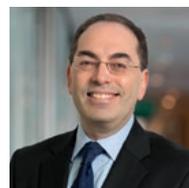
More transitional or preparation periods are coming to an end in 2019, with the results due of the review of Consumer Credit Act retained provisions, replacement of the mortgage KFI by the ESIS, implementation of the RTS on secure communication and strong customer authentication and the deadline for implementation of ring-fencing structures, to name but a few.

To sum up, disruption continues to be the norm for the sector. So, tin hats on and enjoy the ride!



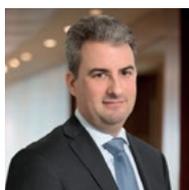
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A close-up photograph showing a hand holding a white smartphone over a grey payment terminal. The terminal has a screen and a keypad with several buttons, including a red one, a yellow one, and a green one. The background is dark and out of focus. A blue triangular graphic is in the top right corner.

# Payments and banking

## Tackling APP fraud: A year of development

### *What's happening?*

2019 looks to be a year of development for measures tackling authorised push payment (APP) fraud. The FCA has extended FOS jurisdiction to cover bank transfer fraud. This followed a super-complaint from Which? in 2016, which related to concerns it had around consumer safeguards in the push payments market. The Payment Systems Regulator (PSR) outlined a new proposal for a “contingent reimbursement model” to protect customers who are tricked into transferring money to fraudsters via an APP, and in late 2018 consulted on the implementation of Confirmation of Payee (CoP) proposals.

### *What does it mean?*

On 14 December 2018, the FCA published a [policy statement on extending the jurisdiction of FOS](#). The most notable policy change is that, from 31 January 2019 onwards, FOS can consider complaints by payers who are victims of alleged APP fraud against the payee’s payment service providers (PSPs) who receive the funds in the relevant transaction. FOS is also now able to consider complaints about acts or omissions from 13 January 2018 concerning a payee’s PSP’s cooperation with the payer’s PSP to recover funds from a payment transaction where incorrect details had been provided. On receiving a complaint, the payer’s PSP should decide if it can respond or if the complaint needs to be forwarded to the payee’s PSP. The payee’s PSP is required to handle complaints concerning alleged APP fraud in line with the FCA’s Dispute resolution: Complaints sourcebook (DISP), as if the complaint was made directly to that firm. The FCA also confirmed that subsequent payments from the fraudster’s account would not meet the definition of APP fraud, meaning they fall outside the scope of the policy changes. PSPs should be reviewing their account opening and push payment request procedures to

ensure that they are sufficiently robust to reduce the risk of APP fraud, taking into account the new ability of payers to complain to payees’ PSPs.

CoP ensures that the account name and details of recipients are checked before payment is sent, to ensure there is a match. Payers are alerted where there isn’t a match, to enable corrections to be made. The PSR opened its [consultation on CoP](#) on 23 November 2018, which considered whether regulatory intervention is required to ensure banks and PSPs implement CoP. The PSR also proposed that PSPs should be capable of:

- responding to CoP requests from other PSPs by 1 April 2019; and
- sending CoP requests and presenting responses to customers by 1 July 2019.

The PSR’s consultation followed the release of [CoP technical standards](#) by Pay. UK on 18 October 2018.

The APP Scams Steering Group published its [draft contingent reimbursement model voluntary code](#) for consultation on 28 September 2018. The essential element for the code to apply is that the payment involved must be authorised (as outlined in the Payment Services Regulations 2017). Under the draft code, each bank and PSP would take measures to tackle APP scams, such as:

- detection: including analytics and employee training;
- prevention: (1) taking steps to provide customers with effective warnings that they are at risk, and (2) confirmation of payee; and
- response: e.g. delaying a payment while an investigation is conducted and, if necessary, carrying out timely reimbursement.

The draft code states that where a consumer has met their requisite level of care, they should be reimbursed. The steering group is continuing to work on a solution for funding the cost of reimbursement where all parties have met their expected levels of care.

The FCA set out its proposals to tackle contactless payment fraud [in a letter to Andrew Tyrie](#), Chairman of the House of Commons Treasury Committee, dated 30 March 2017. In particular, throughout 2019 and beyond the FCA is aiming to:

- remove any onus on the customer to identify fraudulent transactions;
- improve technology to deal with post-cancellation payments; and
- improve communications with customers around contactless payments.

### *What's the timeline?*

From 31 January, FOS can consider complaints by payers who are victims of alleged APP fraud against the payee's PSPs who receive the funds in the relevant transaction. The PSR's CoP consultation closed for feedback on 4 January, and the PSR is now considering next steps. The APP Scams Steering Group's voluntary contingent reimbursement model code should be finalised and implemented early this year



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## Strategic review of retail banking business models

### *What's happening?*

The FCA [published its final report](#) in December 2018. The FCA [launched the strategic review](#) back in May 2017, describing it as a “programme of discovery work” aimed at evaluating the impact of economic, technological, social and regulatory changes on competition and conduct in the retail banking sector. Later that year, the FCA published a [purpose and scope paper](#) setting out in more detail the issues they wanted to focus on when considering the factors that have helped incumbent banks obtain competitive advantage and high market shares in the personal

current account (PCA) market. In particular, it wanted to look at:

- the potential impact of technological change, increased digitalisation, and regulatory developments (such as Open Banking and the second EU Payment Services Directive (PSD2)) on retail banking business models;
- how free-if-in-credit PCAs are paid for; and
- how return on equity in retail banking can be attributed to different types of consumers or different products.

The FCA promised to publish a progress update in Q2 2018, which it duly delivered in June 2018. The [update](#) stated that the FCA believed that major players enjoy several spin-off advantages from larger PCA offerings and branch networks, bringing with it four main benefits:

- funding cost advantages;
- significant additional non-interest income;
- benefits of cross-selling other products to PCA customers; and
- benefits of cross-selling business current accounts and associated business savings balances.

The FCA followed this up with its final report in December 2018 alongside its proposals to radically transform the [consumer overdraft market](#). The report confirmed that the PCA is an important source of competitive advantage for major banks. PCAs bring cheap funding from customer deposits and additional revenues from overdraft fees and other charges:

- many customers have been with their PCA provider for many years despite better deals being available. Many customers including those with so-called ‘free-if-in-credit’ accounts receive little or no interest on balances and pay high overdraft charges;
- many PCA customers also hold instant access savings with their PCA provider, paying very low rates of interest; and
- major banks with large branch networks have a net advantage even when the costs of providing the PCA and branch network are taken into account.

The FCA also found that major banks also benefit from advantages in lending activities, where they generate higher yields and enjoy relatively low capital requirements. The overall result is that major banks earn higher underlying returns on equity than small retail banks and building societies.

As a result, the FCA believes that this competitive imbalance has contributed to outcomes for many consumers and small businesses in the form of little or no interest on credit balances in current and savings accounts, high overdraft charges, high transactional charges and pricing models that can work against loyal customers.

### *What does it mean?*

As a result of the work undertaken, the FCA will now initiate work in 3 areas:

- understanding the value chain in new payments business models;
- undertaking exploratory work to better understand SME banking, including whether customers are being well served and the potential impact of the declining role of branches on these customers; and
- monitoring of retail banking business models on an ongoing basis using the approach developed in the strategic review.

This is in addition to the proposed changes to consumer overdrafts. Alongside this the FCA also identified three overarching issues - access to financial services, use of data, and system resilience – which could result in less favourable consumer outcomes in the future as the retail banking landscape evolves. The FCA believes these issues may require coordinated action with industry, government, other regulators, charities, and consumer bodies to achieve the good outcomes it seeks for consumers in the future. It seems likely that there will be further intervention although many in the industry may well want a period of stability whilst the changes introduced in recent years bed down.

### *What's the timeline?*

The FCA is seeking submissions in response to its final report by mid-February 2019. At the same time it will be seeking to engage directly this year with a wide range of firms and consumer organisations

to discuss some of the issues raised in the report. In relation to monitoring of retail banking business models, the FCA will seek updated data in 2019 from firms to help it understand how these are changing and evolving against the data it previously collected.



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## Open banking: Taking it to the next level

### *What's happening?*

The New Year has started (perhaps inevitably) with an avalanche of articles and opinion pieces on how little impact Open Banking has had on the market since launch. Nobody ever expected a 'big bang' though – the agreed 'roadmap' shows that launch was just the start of it, with a steady rollout of further functionality. That approach was both sensible and necessary, since there was little to be gained by pre-empting the detailed requirements of the [second EU Payment Services Directive \(PSD2\)](#).

2019 could be the year that Open Banking starts to make the impact many think it will, however. By September, payment service providers are required to have implemented the [Regulatory Technical Standards \(RTS\) on strong customer authentication and secure communication](#), and this promises to be a game-changer. To meet PSD2 requirements, those providers relying on Open Banking application programming interfaces (APIs) will need to deliver Releases 3 and 4 under the [Open Banking roadmap](#).

In other words, it is only in September that we will finally see something close to the finished article.

### *What does it mean?*

The Open Banking releases will enable account and activity functionality designed to fill the gap between the original scope of the [Competition and Markets Authority \(CMA\) Order](#) and that mandated under PSD2. This includes enabling bulk payments,

future-dated payments and multi-authorisation journeys as well as meeting requirements for authentication and exemptions under the RTS.

All payment account providers will need to implement strong customer authentication (SCA) under the RTS, and should be well on the way to delivering this, and deciding on their approach to applying exemptions from SCA.

At the same time, account providers should be developing their access solutions for third party providers (TPPs), whether they be relying on APIs (such as those designed by Open Banking) or on a screen-scraping based solution. Those opting for a 'dedicated' interface will need to meet additional requirements under the RTS in order to benefit from an exemption, or will have to provide a fall-back mechanism (based on access to the customer interface via screen-scraping) as well.

Whilst there has been a huge amount of discussion around Europe on SCA and dedicated interfaces, concrete guidance has emerged only relatively recently (see the [FCA's Approach Document](#) – updated in December 2018 – and the output of the API Evaluation Group on [authentication methods](#) for dedicated interfaces in May 2018 and on [recommended functionalities](#) in November, for example). These publications give guidance on the key issues identified so far but as ever, the devil will be in the detail and it can be expected that new issues will come out of the woodwork as implementation projects reach delivery stage this year.

### *What's the timeline?*

The major visible impact comes in September 2019, when the RTS applies in full, introducing SCA for all customers as well as the full requirements for TPP interfaces. For many providers, the impact of the RTS will be felt earlier than that, however, as March represents the last date on which dedicated interfaces can be available for testing if an exemption from providing a fall-back mechanism is to be gained in time for September:

- March 2019: technical specifications must be published for dedicated interfaces being launched in September;
- March 2019: testing facility to be made available for dedicated interfaces being launched in September;

- March 2019: Open Banking Release 3; and
- September 2019: RTS applies in full. Exemption needed for dedicated interfaces.

[HL Engage](#), our pioneering LawTech solution for financial institutions and FinTechs, includes a number of PSD2 resources including our [SCA RTS Toolkit](#) and a digital training package, the [Payment Services Academy](#). Want to know more? Please [contact us](#).



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## Card-acquiring: Services and fees in the spotlight

### *What's happening?*

Interchange – and acquiring generally – is under continued pressure from regulators. The UK Payment Systems Regulator's (PSR) [final terms of reference \(ToR\) for a market review into card-acquiring services](#) represent a very broad review of all things acquiring in the UK, whilst the European Commission's review of the effectiveness of the [Interchange Fees Regulation \(\(EU\) 2015/751\) \(IFR\)](#) is also due this year, looking at whether the reforms have lowered the cost of accepting card payments. The review is likely to focus on scheme and merchant fees in particular.

### *What does it mean?*

The PSR review has the potential to be transformative, and to have a significant and lasting impact on acquirers' businesses. By using powers under the Financial Services (Banking Reform) Act 2013, the PSR will have access to a broad 'toolkit' of potential outcomes, from making recommendations for industry initiatives or enhanced industry self-regulation to carrying out an investigation into a potential breach of the Competition Act 1998 or making a market investigation reference to the Competition and Markets Authority. As the

review progresses, continued engagement with the PSR will be essential.

The PSR's main concern is that acquirers have not passed on to smaller merchants (and consequently to consumers) the savings they made from the interchange fee caps introduced by the IFR. Since it was expected that this would be achieved by market forces, the PSR is concerned that competition may not be working effectively in the acquiring market. The PSR is also concerned about a lack of transparency around the fees merchants pay to accept card payments.

At present, the PSR's focus is on the supply of card-acquiring services (ie services provided to merchants by acquirers and payment facilitators) but it leaves open the possibility of carrying out further work to investigate other issues and markets should it find evidence of potential harm that does not relate to this supply. Given that Mastercard and Visa branded cards together accounted for over 98% of all UK debit and credit card payments in 2017, both by volume and value, the PSR is unsurprisingly choosing to focus (albeit non-exclusively) on those schemes.

The PSR is proposing to examine three specific issues of interest within the scope of its work:

- barriers to entry or expansion for providers of card-acquiring services;
- barriers to switching or searching that merchants face; and
- availability of services that facilitate merchant decision-making.

At the same time, the IFR requires the European Commission to report to the European Parliament and Council on its application by June 2019. Acquirers will likely find their income streams under renewed threat. Interchange fee levels and the overall level of fees including merchant service charges are expected to be the main focus, but the Commission will also look at the use and cost of different payment types and at the rate at which new players, new technology and innovative business models are entering the market. Retailers have suggested that any savings resulting from the IFR fee caps have been cancelled out by rises in scheme fees paid by acquirers, which have in turn been passed on through merchant service charges. As a result, retail organisations have called for the scope of interchange fee controls to expand to include other card scheme charges and the merchant service charge.

### What's the timeline?

The PSR's market review was launched with the publication of the final ToR on 24 January 2019. The PSR intends to publish an interim report setting out its initial conclusions in Q4 2019. Its final report is currently planned for Q2 2020 and will contain its confirmed findings and, where appropriate, the action it proposes to take. If further action is necessary, the PSR will set out and consult on proposed actions after publication of the final report.

The European Commission must submit its report on the IFR by 9 June 2019. It is collecting data from banks, card schemes and merchants for the purposes of its review. It will also ask merchants to complete a further e-Questionnaire this year in order to evaluate the development of the market.



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## New payments architecture for the UK

### What's happening?

The central pillar of the Payments Strategy Forum's (PSF) [blueprint for the future of UK payments](#) (December 2017) is a detailed outline for a new payments architecture (NPA) to replace the existing retail payment systems – Bacs, Faster Payments and Cheque and Credit Clearing / the Image Clearing System (ICS). The NPA implementation plan is being overseen by UK.Pay (formerly the New Payment Systems Operator (NPSO)) together with the Bank of England (BoE) and the Payment Systems Regulator (PSR). The NPA represents an ambitious programme for change that will have far reaching implications for the future of the UK payments landscape.

### *What does it mean?*

The NPA will be built around 6 key features which together are intended to introduce more competition and innovation into the payments market:

- layered approach with a ‘thin’ collaborative infrastructure to enable competition and innovation;
- a single set of standards and rules with strong central governance from UK.Pay;
- common international messaging standards to enable access, innovation and interoperability;
- security, resilience and financial stability;
- emphasis on “push” payment structure; and
- flexibility to support new overlay services to work with the ‘thin’ central structure.

The central aim for the NPA is to enhance user experiences and address historic issues with existing payment systems. While the NPA will eventually provide a whole new payment system framework, the approach to implementation will be an evolution and enhancement of the existing UK interbank retail payment schemes and systems with reliance on other initiatives and regulatory developments affecting the payments industry.

In terms of structure, the NPA will have a single Clearing and Settlement capability that will process messages for all types of payments. Existing and new “overlay” services will be provided by the payments industry on a competitive basis based on the platform of the centralised structure. UK.Pay will be responsible for the development, management, rules and standards for these overlay services.

The proposed changes represent a significant change to the status quo and will require considerable effort from payment service operators and other players in the market. It will be key to successful implementation of the NPA that the payments industry and institutions continue to collaborate with Pay.UK, the Bank of England and the PSR and each other to provide the necessary input on the centralised structure and development of overlay services over the next few years.

From a governance and legal perspective, UK.Pay is tasked with drawing up the rules and standards that will govern the use and development of the

NPA, including the overlay services. Given the level of reliance and interaction that the NPA will need to have with other change programmes, the legal structures and relationships put in place will require careful consideration to ensure a joined up approach with the new Payment Services Regulations, GDPR and anti-money laundering changes (amongst others) as well as the implementation of ICS and Open Banking.

The NPA is intended to provide the UK with infrastructure that will allow it to remain at the forefront of payments innovation for the foreseeable future, with the enhancement of consumer experience as a key driver. From a consumer perspective, the plans for Confirmation of Payee and RtP which are included in the NPA are expected to provide an early benefit to consumers by providing greater assurance that payments are going to the intended recipient and more control over payments and bill management. The creation of dedicated push payment rails is also expected to accelerate the integration of alternative payment mechanisms.

For service providers in the payments industry, while there are clear benefits to adopting the NPA, this will come at a significant cost in time, effort and resources. Many banks and other payment service providers are currently making technical infrastructure investment decisions, with strategic significance for their businesses and operations. They will need to have enough confidence in the development of the NPA and enough information on how and when it will be put in place and what is required from them to make it work in order to make informed decisions that they can rely on.

There are also plans to switch to ISO 20022 which will have an upside for users in terms of its compatibility across platforms, enhanced flexibility and increased efficiencies in compliance with law and regulation, it will require significant changes and investment across the payments industry. PSPs may incur costs in relation to core systems changes, process changes, data storage and changes to user facing channels, amongst others.

### *What's the timeline?*

The current intention is for the NPA to be implemented over a 4-5 year period with the introduction of push payment capability being the first priority. Migration from Faster Payments

and Bacs is planned to take place during 2020/21, followed by ICS in 2022/23, with the systems run in parallel for a number of years to ensure continuity of access and to minimise risks.

As well as providing new clearing, settlement and payment mechanisms, the NPA will need to support existing services such as the Current Account Switching Service (CASS) and the Bulk Payment Redirection Service which are seen as vital for a successful transition to the NPA. More detail on how this integration will take place is expected from UK.Pay in due course.

The hope and expectation is that overlay services will be developed in parallel prior to the start of the various transition periods for winding down Faster Payments, Bacs and ICS. By the start of the transition periods, the following will need to be in place:

- All payment service providers (PSPs) being able to receive payments under the NPA;
- Directory services implemented by Open Banking; and
- The Bank of England providing the required settlement functionality.

Assuming this is done, PSPs will be in a position to receive NPA payments when implementation goes live and transaction volumes are migrated.

It will be instructive to see how the Australian equivalent of the NPA – the New Payments Platform – operates in practice. The platform was launched in February 2018 so is still very much in its infancy but is based on the same structure planned for the NPA. This represents a much more significant leap forward for the Australian payments market where functionality was much more limited than the existing systems in the UK but there are likely to be lessons that can be learnt and applied to the NPA in due course.



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# New payments architecture for the UK: ISO 20022

## What's happening?

As part of the development of the new payments architecture (NPA) the Bank of England (BoE) has [consulted on the introduction of ISO 20022](#) as the common global payments messaging standard to align payment messages across the main interbank payment systems in the UK.

## What does it mean?

'ISO 20022' is a globally developed messaging standard for transmitting data. The intention is for it to create a consistent financial message standard for payments. Currently, payment schemes such as Bacs, Faster Payments and CHAPS in the UK, and other high value payment systems globally, use varying message formats. This means that re-routing payments using a different scheme, or sending and receiving international payments, is difficult.

The Bank of England published a consultation paper on the introduction of ISO 20022 in June 2018 which set out three key proposals:

- a Common UK Credit Message: UK.Pay (as the NPSO) operates Faster Payments and Bacs and has been working with the BoE to develop a "Common UK Credit Message" (CCM). CCM is a standard message which will be used across Faster Payments, Bacs, and CHAPS in the UK and will also be compatible with overseas payment systems that have adopted ISO 20022. It's capable of carrying richer information than the current UK payment systems, for example information on the identity of payment originators and beneficiaries, and the purpose of the payment;
- implementing the CCM in CHAPS: The BoE intends to make several pieces of information mandatory in CHAPS, such as information on the ultimate originators and beneficiaries, structured name and address fields, and Legal Entity Identifiers. This information is not currently transmitted in CHAPS payments messages;

- migrating CHAPS to ISO 20022: The BoE has stated that the above mandatory changes will be introduced as part of the phased migration of CHAPS to ISO 20022, which will start no earlier than 2021. The actual timings will be determined by feedback to the consultation paper. The CHAPS migration is part of the [BoE's May 2017 blueprint for the new RTGS in the UK](#).

UK.Pay will align ISO 20022 and the implementation of the CCM across Bacs and Faster Payments, which will also start no earlier than 2021.

While the switch to ISO 20022 will have an upside for users in terms of its compatibility across platforms, enhanced flexibility and increased efficiencies in compliance with law and regulation, it will require significant changes and investment across the payments industry. PSPs may incur costs in relation to core systems changes, process changes, data storage and changes to user facing channels, amongst others.

## What's the timeline?

The first strand of the NPA to be put in place will be the core Clearing and Settlement layer which will support the overall architecture using ISO 20022.

UK.Pay will align ISO 20022 and the implementation of the CCM across Bacs and Faster Payments, which will also start no earlier than 2021.

Given the complexity and the need for a multi-phase process, the timeline for full implementation stretches to 2024 and beyond.

UK.Pay plans to consult on the specific proposals for implementation of the CCM in the retail payments systems in due course, as the design of the NPA progresses.



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## FCA extension of FOS regime and increase in compensation awards

### *What's happening?*

From 1 April 2019, small and medium sized enterprises (SMEs) will be able to refer complaints relating to acts or omissions that take place after that date to the Financial Ombudsman Service (FOS).

### *What does it mean?*

[In its policy statement](#) the FCA relaxed the original eligibility criteria it proposed for SMEs so that an “eligible complainant” will include a person with an annual turnover of less than £6.5 million and either fewer than 50 staff or an annual balance sheet total of less than £5m (not both, as originally suggested). This means around 210,000 more SMEs should have access to FOS.

The new rules are expected to be reviewed within 2 years of coming into force, which will include an assessment of whether the micro-enterprise test should be amended to only cover payment services complaints and whether additional rules are needed to prevent certain types of special purpose entity from accessing FOS.

Alongside the policy statement, the FCA published a [consultation paper on increasing the award limit of FOS](#) from £150,000 to:

- £350,000 for complaints about acts or omissions by firms after 1 April 2019; and
- £160,000 for complaints about acts or omissions by firms before 1 April 2019, and which are referred to FOS after that date.

Complaints referred to FOS before 1 April 2019 would remain subject to the current limit of £150,000. The £10,000 increase for complaints made after 1 April 2019 about events occurring before that date is intended to reflect general price inflation. This is in keeping with the approach and reasoning the FCA took towards the last increase in 2012, when the limit was raised from £100,000 to £150,000. Since the increase was based solely on general price inflation the award limit will not actually increase in real terms.

However, currently where a claim exceeds the limit, whether or not a firm settles a claim in full (i.e. above the limit) is up to the firm in question. The FCA thinks that this can lead to poor customer outcomes in that:

- whether a firm pays out above the limit as a matter of course is not information available to customers to allow them to choose between service providers; and
- customers could be treated differently by the same firm if the firm values one customer's business above another's and decides to pay over the limit for the former but not the latter.

The FCA considers it unlikely that individuals and businesses who are eligible to complain to FOS would have the means to pursue firms for unpaid compensation through the courts – and so seeks to redress the risk to such complaints by increasing the limit. As a result, the FCA proposes to increase the limit for complaints about acts or omissions by firms after 1 April 2019 to £350,000.

This represents quite a leap, with awards potentially differing by as much as £200,000 depending on whether the event complained about occurs before or after 1 April 2019.

According to the FCA, less than 1% of the claims determined by FOS in a year fall into this “high value” category, so the sudden change on 1 April 2019 is not expected to affect a lot of people. However, for those it does: there's a lot at stake.

### *What's the timeline?*

From 1 April 2019, SMEs will be able to refer complaints relating to acts or omissions that take place after that date to FOS. The FCA is considering the feedback from its consultation on increasing the award limit of FOS and plans to publish its final rules in a policy statement in early March 2019. As currently proposed, the award limit changes would take effect from 1 April 2019.



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## Pricing in cash savings, mortgages and household insurance: CMA tackles the loyalty penalty

### *What's happening?*

The Competition and Markets Authority (CMA) has [published a package of reforms](#) relating to five key markets including cash savings, mortgages and household insurance. This is in response to a [super-complaint from Citizens Advice](#) asking it to investigate excessive prices for disengaged consumers (the so-called “loyalty penalty”).

### *What does it mean?*

The CMA has set out eight cross-cutting recommendations to tackle problems with the loyalty penalty across all five markets identified by Citizens Advice. These include:

- bolder use of existing enforcement and regulatory powers by regulators and the CMA to tackle harmful business practices, possibly with related legislative and/or regulatory change (starting with a review of the case for changing consumer law to address the loyalty penalty); and
- consideration of targeted pricing regulations, particularly to protect vulnerable consumers.

On specific recommendations for the cash savings market, the CMA refers to the FCA’s idea of introducing a “Basic Savings Rate” (BSR), being a variable interest rate applying to all easy access savings accounts and easy access cash ISAs after 12 months (as set out in its July 2018 [discussion paper on price discrimination in the cash savings market](#)). The CMA recommends that if the FCA implements the BSR, it evaluates its effectiveness and, if necessary, considers further pricing interventions such as a targeted absolute price floor in cash savings. The CMA also thinks the FCA should consider whether “collective switching” which offers exclusively tailored deals can be applied.

For mortgages, the CMA acknowledges the FCA’s market study on competition in the mortgage sector and supports its action to help customers who cannot switch (mortgage prisoners) to move onto better tariffs, where possible. However, the CMA points out that there are still 10% of longstanding customers who could switch and make significant savings but don’t do so. It recommends that the FCA finds out more about such customers and what could be done to help or protect them if required.

In a [letter to the Treasury Committee dated 9 January 2019](#) Andrew Bailey, FCA Chief Executive, referred to the FCA’s plan to consult on changes to its responsible lending rules in order to improve mortgage switching options. It intends to move the affordability assessment from an absolute test to a relative test. This means that the test would be whether the new mortgage costs are more affordable than the current mortgage costs. The focus will be on those customers who are looking to move to a cheaper mortgage and are not borrowing more. Mr Bailey mentioned that the FCA is also working with the industry to ensure that there is a willingness to offer re-mortgaging opportunities to these customers once the regulatory barriers are removed.

For household insurance, the CMA states that evidence suggests many longstanding customers are paying considerably more than newer customers. Welcoming the [FCA’s market study on general insurance pricing practices](#) (launched in October 2018), the CMA recommends that it investigate insurance pricing practices and consider pricing interventions that limit price walking. It also recommends that the FCA looks into how intermediaries can continue to benefit the home insurance market, for example where faster introduction of ‘semi-smart’ solutions (while the [government’s Smart Data Review](#) is ongoing) can improve the existing infrastructure of price comparison websites to help customers assess whether they should switch.

### *What's the timeline?*

The CMA will be carrying out further work on the loyalty penalty, in collaboration with regulators, the government, business and organisations like Citizens Advice. It will provide a progress update to the joint government-regulator Consumer Forum (headed by the Minister for Consumer Affairs) in six months, so around June 2019. The CMA has decided not to launch a market study into the loyalty penalty across the five markets for the time being. However, it will reconsider this decision in light of progress made on its recommendations over the next 12 months.

The FCA issued a [press release in response to the CMA's recommendations](#). It states that the issue of longstanding customers being charged more for some financial products than new customers is a priority for it. The FCA refers to its on-going work on pricing practices in cash savings, mortgages and general insurance. It will consider all options to improve outcomes for consumers, including long-standing ones, including price interventions where appropriate. On cash savings, based on the initial feedback to its discussion paper the FCA will decide whether to formally consult further on the BSR in early 2019. On mortgages, the FCA will consult on the changes to its responsible lending rules this spring, alongside publication of its final report on the Mortgages Market Study. On household insurance, the FCA aims to publish an interim report on its general insurance pricing practices market study in Summer 2019 setting out its preliminary conclusions including, where appropriate, potential remedies. It plans to publish its final market study report and, where relevant, a consultation on proposed remedies by the end of 2019.



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## Extending PRIN and BCOBS to payment services and e-money: A question of enforcement?

### *What's happening?*

The FCA is [proposing to bring payment services and e-money within the scope of the Principles for Businesses \(PRIN\) and provisions relating to communication standards under the Banking Conduct of Business sourcebook \(BCOBS\)](#). To do this, it is relying on new rule-making provisions under the Payment Services Regulations 2017 (PSRs) and the Electronic Money Regulations 2011 (EMRs) which extend the scope of its standard rule-making powers under section 137A of the Financial Services and Markets Act 2000 (FSMA).

### *What does it mean?*

While the FCA does not expect the changes to have a significant impact in practice in most cases, this suggests a shift in its supervisory and enforcement approach in this area going forward.

PRIN sets out the high-level standards with which FSMA-authorized firms are expected to comply when carrying out regulated activities. While this will cover the issuance of e-money by a FSMA-authorized firm, it does not cover payment services unless they are ancillary to a regulated activity. To the extent that a firm is not FSMA-authorized, for example payment institutions (PIs), e-money institutions (EMIs) or registered account information services providers (RAISPs), PRIN is not currently applicable.

In terms of communication standards, while FSMA sets out restrictions on financial promotions, payment services and e-money are not covered by that regime. For FSMA-authorized firms carrying out the activity of accepting deposits from banking customers from a UK establishment, these restrictions are supplemented by specific rules covering the content of communications under BCOBS 2.

Under the FCA's proposals, PRIN would be extended to apply to PIs, EMIs and RAISPs (as well as FSMA-authorized firms) and to

cover payment services, e-money issuance (where not already a regulated activity) and connected activities.

This means that Principle 6, which requires a firm to pay due regard to the interests of its customers and treat them fairly (the principle underpinning the FCA's Treating Customers Fairly (TCF) Regime) would apply to PIs, EMIs and RAISPs.

Principle 7 (which requires a firm to pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading) would also apply. This is also reflected in the extension of the BCOBS 2 communication rules to PIs, EMIs and RAISPs and to cover communications with payment service and e-money customers.

Additionally, the FCA proposes some new specific guidance which would apply to communications about currency transfer services (where those services are part of a wider payment service or e-money service).

The FCA's rationale behind these proposals is as follows:

- drive for a more consistent regulatory approach: The FCA is concerned about the uneven playing field for the regulation of payment services and e-money. By ensuring a more consistent approach across the board, the FCA believes that it can better address harm and protect the interests of customers.
- particular concerns about exchange rate and currency transfer communications: It has very specific concerns about communication standards, driven by complaints which it has seen in this area. Examples of behaviour which the FCA has observed, and which fall below the standards that it would expect, include presenting exchange rates which are not likely to be available to customers in respect of a typical transaction. The FCA had already formalised its concerns on this point in a July 2017 statement, noting that the rate actually available to customers might in some cases be materially inferior but not disclosed until a late stage in the process (leaving customers with little room for manoeuvre). The FCA's proposals specifically address communications about exchange rates and currency transfer services. In particular, under proposed

guidance, it is likely to be misleading to give the impression that a rate is available if it is unlikely to actually be obtained. A disclaimer to the effect that the exchange rate shown is not available to particular customers would not necessarily go far enough to prevent this.

The FCA acknowledges that it could have relied on a number of existing rules and powers to fill the gaps between the two regimes instead. For example, it notes that there is overlap between some of PRIN and existing conditions for authorisation under the PSRs and EMRs. However, it concludes that “application of these Principles gives us the ability to better supervise to existing standards.” This suggests that its choice of approach comes down to a question of enforcement. While the FCA can cancel, vary or place requirements on a PI, RAISP or EMI’s authorisation or registration, the application of PRIN opens up the possibility of disciplinary sanctions. Providers will be wary that this may signal an intention to increase enforcement activity in this area.

Similarly, from a communications perspective, the Directive on Unfair Commercial Practices 2005, as implemented in the UK by the Consumer Protection from Unfair Trading Regulations 2008, prohibits misleading actions or omissions which impact or may impact transactional decisions taken by customers. The FCA could have chosen to continue to rely on the ability to obtain enforcement orders where a communication does not meet these standards. However, it has taken the view that this change will facilitate a consistent approach and also seems to draw a distinction between what it refers to as the “not unfair or misleading” standard under existing legislation and the “clear, fair and not misleading” principle under the FCA Handbook. Again, it is unclear how that distinction might be applied in practice from an enforcement perspective.

### What’s the timeline?

On 1 February 2019, the FCA [published a policy statement](#) confirming that it is introducing the changes as consulted on. The new rules and guidance will come into effect on 1 August 2019. While these changes should not have a significant impact on day-to-day operations for many providers, the extent of any knock-on effect on the FCA’s overall supervisory approach in this area is not yet known. This may also just be the beginning of wider changes for the market: the FCA has made it clear that while it does not currently have sufficient evidence to justify extending other parts of the Handbook, it will keep this under review.



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# Consumer finance



## Debt respite scheme for problem debt

### *What's happening?*

HM Treasury (HMT) has published a [consultation on the implementation of a breathing space scheme for debtors and a statutory debt repayment plan](#) operating in England and Wales. This follows a call for evidence on the scheme in October 2017. As currently proposed in the consultation, it appears that the scheme would be broad enough to encompass credit card and other unsecured debt. It also includes proposals relating to mortgage payments and arrears.

### *What does it mean?*

Breathing space is a period of time during which an individual in problem debt is provided with respite from creditor action in order to fully engage with debt advice and seek a sustainable solution to their debts. HMT proposes broad protections for individuals in breathing space. It is proposed that:

- a wide range of an individual's personal debts would be in scope of the protections: Certain debts are excluded such as social fund loans, child maintenance payments and debts that arise after an order made in family proceedings and student loans. However, the scope of the breathing space is still subject to further stakeholder feedback. As part of the consultation, HMT is asking whether there are other debts, such as those in regulated credit agreements, or certain types of benefits, that should be excluded;
- business debts incurred by small sole traders are in scope: HMT proposes that the protections of breathing space apply to business debts for sole traders who do not meet the threshold for VAT registration (currently a turnover of £85,000);
- interest payments, as well as fees and charges relating to a debtor defaulting on payments, would be prevented from accruing: It is proposed that all interest (both contractual and default) as well as any fees and charges associated with default on payments would be prevented from accruing on the debts included in breathing space during the period of protection. It's proposed that creditors should not be able to retrospectively charge interest, or default fees and charges on the

debts included in breathing space if an individual leaves the protections without entering a debt solution. Instead, the charging of interest and any default fees and charges would just restart.

- creditors would be able to continue to charge all interest, fees and charges on debts excluded from breathing space and on any ongoing liabilities: for example mortgage providers should expect to receive both the principal and interest on ongoing mortgage payments, but not interest and fees and charges relating to arrears as these would be included in breathing space; and
- most enforcement action would be paused: All contact with a debtor in relation to requesting the repayment of a debt during breathing space would be prevented. A creditor could not start the pre-action protocol, make a new money claim, apply to the court to take enforcement action, or, if required, could not commence any enforcement action already approved and a creditor would not be able to apply to the court to enforce a judgement or order.

HMT intends to introduce three broad criteria that an individual would have to fulfil to enter breathing space. An individual would have to:

- access debt advice;
- be assessed as being in problem debt by a debt adviser; and
- not have been in breathing space in the previous 12 months.

HMT proposes that breathing space period should last for 60 days. This extended period of time will ensure that debtors have the time and space to be able to engage with debt advice and enter a sustainable debt solution.

There is also intended to be an alternative access mechanism in place for those suffering a mental health crisis, on the basis that those in such circumstances may have difficulty in effectively engaging with debt advice.

To supplement the protections introduced by the breathing space scheme, HMT intends to launch a statutory debt repayment plan that would enable an individual in problem debt to enter into a formal agreement with their creditors to repay all of their debts over a manageable time period. The plan would be a significant intervention, changing the profile of a debtor's repayments over time,

ceasing all enforcement action by creditors against a debtor during that period, and preventing the charging of interest, and default fees and charges on all debts included in the plan.

An individual would have to meet three criteria to be eligible for a plan:

- they must access debt advice;
- they must be assessed as able to repay their debts in full over a reasonable timeframe: An individual would only be eligible for a plan if they had a realistic chance of repaying all of their debts over a period of no more than ten years; and
- creditors must have agreed to the terms of the plan, or the Insolvency Service must rule that the plan proposed by their debt adviser was fair and reasonable, so that creditors are obliged to comply with it.
- Once subject to the plan, the treatment would be consistent with those in breathing space (e.g. no enforcement action, cannot charge interest, etc). The repayment of some debts would be prioritised within the plan:
- housing debts (e.g. rent and mortgage arrears);
- certain tax and benefit debts (owed to both central and local government);
- arrears on gas and electricity; and
- hire purchase debt.

All other debts (including, as currently proposed, credit card and other non-secured debt) would be treated as non-priority debt within the plan.

### *What's the timeline?*

The consultation closed on 29 January 2019. HMT will analyse responses to the consultation, and respond in due course, setting out next steps on the scheme's implementation in that response, including on the laying of regulations to establish the scheme.

Our forthcoming Consumer Credit Academy digital training covers everything you need to know about the UK consumer credit regime. Want to know more? Please [contact us](#).



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## High cost credit review

### *What's happening?*

As an early Christmas present the FCA [published final rules and a further consultation paper](#) setting out reforms to the UK overdraft market on 18 December 2018. In May 2018 the [FCA had clearly indicated its concerns](#) with how the overdraft market currently operates and the new consultation proposes a range of measures which not only will impact the business models of major retail banks but also demonstrate that the FCA will step in to control product charging structures where it thinks there is significant harm to consumers.

### *What does it mean?*

Andrew Bailey has said that the changes are the most significant intervention in the overdraft market for a generation – given the nature of the changes proposed by the FCA it is difficult to disagree with that statement.

The proposals cover 3 key areas:

- pricing intervention – the FCA is consulting on proposals to:
  - ensure only a single interest rate is applied to an arranged overdraft and unarranged overdraft on a current account – different rates can be applied to different current account products but for each account there must be a single rate;

- require banks to quote a representative annual percentage rate (APR) for arranged overdrafts in financial promotions together with explanatory wording as to why the APR is included – there is also additional guidance on when an account fee should be included in the APR calculation; and
- issue new guidance on the level of fees charged for refused payments which will restrict banks from including costs associated with the general operation of their business when calculating the costs associated with the refusal.
- repeat overdraft use – the FCA is also concerned with the level of repeat use by a relatively small number of customers, many of whom it considers to be vulnerable, and is therefore proposing to introduce rules similar to those recently introduced in the credit card sector to deal with persistent debt. Under the proposals banks will need to:
  - have a strategy to reduce repeat use which must be shared with the FCA and monitored closely; and
  - report to the FCA on their monitoring after 6 and 12 months.
- competition improvements – these implement [the proposals consulted on in May 2018](#) and expand on the remedies already in place following the Competition and Markets Authority (CMA) review into Retail Banking. The FCA is proposing that these final rules will come into force in December 2019 at the same time as the new pricing rules take effect. Banks will be required to:
  - provide tools to assess eligibility for overdrafts to reduce barriers for consumers who are considering switching and searching for a personal current account (PCA) with an overdraft;
  - include an online calculator so that customers can check the costs of overdrafts against different patterns of use;
  - send text messages or push notifications alerts to address unexpected overdraft use; and

- ensure they do not include any authorised overdraft when displaying the amount of “available funds”.

The impact of the competition changes is likely to pale into insignificance when compared to the proposals on pricing intervention and repeat overdraft use. These proposals will require some banks to fundamentally change their overdraft charging models and will potentially lead to the end of “free if in credit” banking – although the FCA believes that the overdraft proposals alone will not lead to this change.

The FCA has also published a [consultation paper on introducing new restrictions on Buy Now Pay Later \(BNPL\) products](#) – this was included with the final rules which apply to home collected credit, store cards and catalogue credit. The restrictions will apply to any credit product with a BNPL offer and will stop lenders back-dating interest on the whole of the original loan if the borrower has repaid part of the capital balance before the end of the BNPL period.

### *What’s the timeline?*

The FCA has indicated that the new arrangements will be in place by December 2019. Banks have until 18 March 2019 to respond to the new proposals. Anyone wanting to challenge the key proposals will need to bring forward substantive evidence that consumers prefer the certainty of fixed pricing structures and that these structures do not penalise the more vulnerable customers.



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## The FCA's approach to mortgage lending in 2019

### *What's happening?*

The FCA is expected to publish the final report on [its Mortgages Market Study](#) in Q1 2019. The study, launched in December 2016, focused on the first charge residential mortgage market and looked at two of the FCA's key concerns:

- can mortgage consumers make effective decisions given the tools available?
- do commercial arrangements between lenders, intermediaries and other players lead to conflicts of interest?

Whilst the [interim report published in May 2018](#) painted a generally positive picture of the industry, the FCA identified areas where work is needed. It also signalled a potential rowing back from the changes introduced by the FCA under the 2014 Mortgage Market Review (MMR).

### *What does it mean?*

In its interim report, the FCA noted that its findings were generally reassuring but identified a number of areas where the market could work better. Consumers, for example, find it difficult to navigate the market and struggle to identify what products they qualify for, missing out on potentially significant savings. Barriers to switching also exist – whilst many consumers switch to a new introductory rate within 6 months of reverting to a Standard Variable Rate, some are unable to, despite being up-to-date with payments.

Much of the FCA's analysis focused on pricing – how to find a “cheaper deal”. In practice, price is just one factor in choosing a mortgage and there are a variety of reasons why consumers don't choose the cheapest deal, for example, their attitude to the risk of future rate rises may mean they prefer a longer fixed rate product.

Interestingly, lenders and intermediaries identified regulation as one of the key barriers to providing effective information and tools to consumers. Firms noted that they don't develop

interactive tools in case they inadvertently trigger the requirement to comply with advice rules. They also fear that providing more balanced information on the merits of advice versus execution-only services could breach the rule about not steering consumers to execution-only.

The interim report suggested that the FCA is open to amending its rules and guidance (much of which was introduced under the MMR) to facilitate the development of a wider range of tools. This may signal a potential softening of the FCA's approach to advised mortgage sales and a steer away from the MMR.

Maintaining an ever-watchful eye on the mortgage market, in December 2018 the FCA also [published the findings of its review into the management of long-term mortgage arrears](#). The report echoed the FCA's message from the Mortgages Market Study. Whilst firms were generally found to treat customers appropriately, there was room for improvement. The FCA found there were some inconsistencies in firms' arrears management practices that could result in a poor customer experience and have the potential to cause harm.

### *What's the timeline?*

Whilst the final position on the Mortgages Market Study isn't yet clear, based on the interim report we can expect remedies in the following areas:

- making it easier for consumers to find the right mortgage e.g. through tools allowing consumers to understand upfront if they qualify for a product and providing more ways to apply for a mortgage;
- encouraging a wider range of tools giving consumers a choice about the support (including advice) they receive – possibly through amending FCA rules and guidance;
- helping consumers choose an intermediary on an informed basis e.g. through tools allowing consumers to compare fees, markets and products covered, the number of complaints received etc; and
- allowing consumers to switch between new mortgage deals without unnecessary barriers e.g. by asking lenders to contact consumers a year after moving onto a reversion rate telling them how to move to a cheaper mortgage.

On this last point, in a [letter to the Treasury Committee dated 9 January 2019](#) Andrew Bailey, FCA Chief Executive, referred to the FCA's plan to consult on changes to its responsible lending rules in order to improve mortgage switching options. The consultation is due this spring, alongside publication of the final report on the Mortgages Market Study.

Regarding management of long-term mortgage arrears, the FCA expects firms to review their practices in line with guidance on good and poor practice and make necessary changes where appropriate to meet its expectations in minimising harm to customers.



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## Consumer credit: Reviewing the CCA retained provisions

### *What's happening?*

The FCA has a statutory obligation to review and report on the Consumer Credit Act 1974 (CCA) retained provisions which currently form part of the UK consumer credit regime. Its [interim report on the review](#) (published in summer 2018) appears to demonstrate a general reluctance to make many changes. However, one glimmer of hope for consumer credit firms is a possible change to limit the sanctions for breach of information requirements to cases where the breach has caused material harm.

### *What does it mean?*

The FCA recognises that there has been an issue with the proportionality of the sanctions in relation to breaches of the CCA information requirements. Feedback from industry emphasised that they can apply where a breach is relatively technical and minor, resulting in costs that are disproportionate to the intended deterrent effect.

The FCA is considering transferring the retained information requirements to FCA rules to ease the process of amendment and updating, but keeping the sanctions in the CCA (or other legislation). Its thinking is that, if this is done, firms may have greater clarity over the meaning of relevant requirements and what is needed to comply, and the risk of inadvertent non-compliance should be reduced. Nonetheless, there may still be cases where breaches of the information obligations take place due to misunderstanding of the relevant provisions, or uncertainties over how they apply in a particular situation. The FCA suggests that if a breach is substantive but unlikely to cause consumer harm, the sanctions should perhaps be disapplied; it should be sufficient to rely on FCA disciplinary powers and the FSMA private right of action. It is also open to the idea of narrowing the scope of application of the sanctions to apply only to breaches that are likely to cause material harm. However, its final position is very much up in the air.

### *What's the timeline?*

The FCA plans to publish its final report on the retained CCA provisions before the statutory deadline on 1 April 2019. But with Brexit looming on the horizon, consumer credit firms shouldn't hold their breath for the FCA to implement any of its proposed changes any time soon.

Our forthcoming Consumer Credit Academy digital training covers everything you need to know about the UK consumer credit regime. Want to know more? Please [contact us](#).



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## FCA changes to the regulatory framework for P2P platforms

### *What's happening?*

The FCA will publish new rules for loan-based peer-to-peer (P2P) platforms this year. In its [P2P consultation paper](#) published in July 2018, the FCA explained that it believes loan based P2P platforms have evolved with more complex business models than investment based P2P platforms and there is a risk that loan based P2P platforms could cause harm to investors. The new rules and guidance will be aimed at enhancing the regulatory framework applying to loan based P2P platforms to protect investors while still allowing for further innovation.

### *What does it mean?*

The new rules are expected to be focused on the following key changes:

- new marketing restrictions: The proposal likely to have the biggest impact on P2P platforms is for direct financial promotions to be limited to investors who:
  - are certified or self-certify as sophisticated investors (in accordance with COBS 4.7.9 R);
  - are certified as high net worth investors (in accordance with COB 4.7.9 R);
  - confirm before receiving a specific promotion that they will receive regulated investment advice or investment management services from an authorised person; or
  - certify that they will not invest more than 10% of their net investible portfolio in P2P agreements.
- disclosure requirements: There will be granular rules on minimum standards of disclosure. The FCA proposes that P2P platforms provide:
  - a description of the P2P platform's role containing particular prescribed information;
  - an explanation of certain risks that would arise in the event of the P2P platform's failure;

- more detail about what the P2P agreement will cover before the investor selects individual P2P agreements or the platform allocates P2P agreements to investors; and
  - certain ongoing disclosures at any point in time once an investor has entered into a P2P agreement.
- better systems and controls: The FCA is proposing new rules on credit risk assessment to make sure that P2P platforms can meet the expectations they set in respect of their offerings. As a minimum under the new rules, all P2P platforms will need to:
    - gather sufficient information about the borrower to be able to competently assess the borrower's credit risk (ie the probability of default and loss given default);
    - categorise borrowers by their credit risk in a systematic and structured way; and
    - price the loan so it adequately and fairly reflects the credit risk determined.
  - wind down manual: Although there are already existing rules requiring P2P platforms to put in place arrangements to ensure that P2P agreements will continue to be administered and managed in the event of wind down, the FCA found that some arrangements were inadequate. The proposals therefore include clarifying the existing rules and introducing a new rule that P2P platforms should develop an up-to-date manual (referred to as a "P2P resolution manual") containing information about their operations that would assist in the event of a platform's insolvency.

### *What's the timeline?*

The FCA is aiming to publish final rules in a policy statement in Q2 2019. It is currently proposing that the new rules should come into force six months from publication. This is a relatively short implementation period but the FCA's view is that the majority of the proposals build on existing requirements and firms should already have some of what is required in place.

Loan based P2P platforms should review their practices alongside the key changes proposed in the consultation now to be in the best position to inform implementation projects once the new rules and guidance are published.



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## Mortgages: Approaching the end of transitional MCD provisions

### *What's happening?*

Although most of the [EU Mortgage Credit Directive \(MCD\)](#) was implemented on 21 March 2016, there are a number of transitional provisions which will shortly expire on 21 March 2019.

### *What does it mean?*

In particular:

- firms are currently permitted to continue to use Key Facts Illustrations (KFIs) except in relation to second charge lending, provided that customers are provided with certain 'top-up' information (widely known as the 'KFI+'). From 22 March 2019, any firms using the KFI+ will be required to use a European Standardised Information Sheet (ESIS); and
- any MCD lender or intermediary can currently assess the knowledge and competency of a relevant employee solely on the basis of their professional experience. From 22 March 2019, firms cannot make an assessment based on professional experience alone (e.g. lenders may wish also to assess professional qualifications or via competency tests and training).

### *What's the timeline?*

Any firms continuing to rely on the MCD transitional provisions must adapt processes, documentation and systems, as required, before the transitional provisions expire on 21 March 2019. Given the short time now remaining firms will be well-advanced with introducing the required changes.



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A woman wearing a grey knit hat and a dark coat is shown in profile, looking towards a display of food. The background is blurred, showing what appears to be a retail environment with shelves and products. A blue triangular graphic is overlaid on the right side of the image.

Retail  
consumers

## Vulnerable customers: A fresh look

### *What's happening?*

During 2018, the FCA, the Treasury Select Committee and the Competition and Markets Authority (CMA) each highlighted the potential challenges of dealing with vulnerable customers and emphasised the importance of finding solutions to prevent these customers from being financially excluded. Although no new rules or legislation were introduced during 2018 and the FCA does not anticipate making any Handbook changes ahead of the UK's exit from the EU in March, it is clear that the FCA and the CMA expect action from firms now.

### *What does it mean?*

The FCA has always been vocal about the importance of protecting vulnerable customers at all stages during their relationship with their bank. However, in 2018 the FCA further highlighted the issue by releasing [its final Approach to Consumers](#) and holding a follow-up industry workshop on the subject.

The FCA's Approach to Consumers sets out the FCA's vision for well-functioning markets and explains how the FCA will use its resources to protect consumers. The final document confirms the core principles supporting the FCA's approach, the key outcomes that it expects to see and the three key themes for delivery of these outcomes. One of these themes is regulating for vulnerable and excluded customers. At the same time, it leaves some open questions for further consideration by the FCA which it intends to consult on in early 2019.

Notably, the FCA originally consulted on changing the definition of consumer vulnerability in its Handbook but rowed back on this idea following the mixed consultation responses. The FCA has also toyed with the idea of introducing a new duty of care on banks to act with a degree of skill and care in relation to their customers. As responses were divided on this issue, the FCA published a separate standalone [discussion paper setting out how it considers a new duty of care could improve conduct standards](#).

As well as the FCA's Approach to Consumers, in July 2018 the CMA held a symposium on the challenges facing vulnerable consumers and the potential solutions. A [summary of the symposium](#) explained that, as part of a re-examination of the CMA's legislative framework under the [government green paper on modernising consumer markets](#) (April 2018), the CMA has asked for further work on how the regime could be strengthened to better protect the vulnerable. In particular, the CMA is concerned about the issue of price discrimination (experienced by long-standing customers and vulnerable customers) and is focussing on challenges and opportunities for consumers presented by digital technology. The CMA concluded that its mandate could be adjusted to take account of vulnerable consumers specifically.

The CMA symposium was followed by the FCA's September industry-wide workshop on vulnerability (see [our blog on this](#)). This reiterated the importance of effectively implementing FCA guidance and rules on the treatment of vulnerable customers in a way which produces measurable outcomes. It also announced that it was planning to introduce "minimum standards" with which all firms should be aligned – these will be consulted on in April 2019 when the FCA is also planning on looking more closely at how non-bank lenders deal with vulnerable customers. In the meantime, the FCA made various suggestions of how firms could improve their practices before any rule changes are made. These include analysing data more thoroughly to better understand consumer behaviour, designing products and processes which specifically support vulnerable customers and establishing more inclusive access to products.

Finally, in late 2018 the Treasury Select Committee launched an [inquiry into consumers' access to financial services](#), focussing on the interaction between vulnerable customers and financial services firms and whether certain groups of consumers are excluded from obtaining a basic level of service from financial services providers. As part of this inquiry, the Committee intends to examine the FCA's definition of 'vulnerability' and consider whether financial services providers should increase efforts to prevent financial exclusion. The deadline for submissions of evidence was 14 December 2018, and the practical impact of the inquiry remains to be seen.

### What's the timeline?

The renewed focus on vulnerability by three different UK regulators should lead to large financial institutions reviewing their policies and procedures in relation to certain customer groups and considering whether changes are needed. In particular, the Treasury Select Committee inquiry could lead to new requirements on firms interacting with vulnerable customers and is likely to result in firms re-examining which groups of customer are considered 'vulnerable'.



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## FCA duty of care: Still on the table

### What's happening?

The FCA's July 2018 [discussion paper on a duty of care and potential alternative approaches](#) was designed to support its understanding of how a new duty on firms obliging them to exercise skill and care in the provision of services to consumers could help to improve conduct standards. This is not a new concern for the FCA and feedback received on the point as part of its work to produce its final [Approach to Consumers](#) (also published in July 2018) had shown once again that stakeholders are divided on the issue.

### What does it mean?

In its discussion paper, the FCA wasn't specific on the legal form that such a duty might take: it didn't distinguish between the concept of a duty to take care and a fiduciary duty for example. The aim for the time being is to explore more generally how consumer protection could be improved by introducing a duty of this nature.

The FCA is particularly interested in looking at where (if at all) the current framework falls short, both in theory and in practice. The paper highlighted, for example, the potential impact of the Senior Managers and Certification Regime and whether the need for a duty of care will still exist if this new framework delivers

the improvements in culture and governance that are anticipated. It also asked whether a new duty could do more to help address conflicts of interest or could give consumers better access to redress.

The FCA also invited views on the most appropriate method for implementing this type of duty, for example through a new rule, through statutory intervention or through the extension of "best interests" principles.

### What's the timeline?

While the deadline for responses to the discussion paper was 2 November 2018, the FCA is not anticipating making any changes to its Handbook ahead of the UK's exit from the EU in 2019. Firms must therefore await further thinking from the FCA on a duty of care.



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## Fairness of variation terms in financial services consumer contracts: The devil's in the detail

### What's happening?

Variation terms are likely to be very much a live issue this year, given recent press reports of potential challenges to standard variable rate mortgage charges by claims management companies. The FCA published its [finalised guidance on the fairness of variation terms](#) in financial services consumer contracts under the Consumer Rights Act 2015 in December 2018. Unfair terms are also on the government's radar following publication of its [green paper on modernising consumer markets](#) in April 2018.

### What does it mean?

While there weren't many substantial changes from the FCA's draft guidance (see [our blog post](#) for more detail on this), a number of helpful clarifications were made in December's final form, including:

- a new emphasis throughout the guidance on balancing the legitimate interests of both supplier and consumer when considering whether a variation term is fair;
- the finalised guidance now states that firms should consider whether it is practicable to give a simple explanation, which the average consumer could understand, of the firm's likely approach to changing prices - the draft guidance had only made references to "the consumer" and whether it would be "practical in the circumstances";
- when including price variations there's no need to provide customers with the detail of policies for changing interest rates due to changes in costs of funding, as had previously been suggested; and
- the FCA has explained that whether the consumer would be able to exercise the right to terminate the contract in practice should be judged at the time the contract is concluded.

Importantly, the FCA has emphasised that the responsibility for ensuring that consumer contracts are fair lies with senior managers.

Although the FCA's clarification that firms with longer term contracts of determinate duration may be entitled to vary those contracts "for any reason" is helpful, the FCA's approach generally doesn't go far enough to accurately reflect the derogations from the grey list (in Schedule 2, part 2, paragraphs 21 and 22).

In terms of what firms will need to give further thought to, the devil's in the detail:

- Although the fairness of a term must be judged as at the date when the contract is made, account may also be taken of the likely effect of the term when the contract is put into effect.
- The FCA has stated that the reason "to remain competitive" would generally be unlikely to be valid, given that it is not part of the cost of providing the product. They've noted that firms should carefully consider whether a right to vary for this reason would strike a balance between the legitimate interests of the firm and those of the consumer.

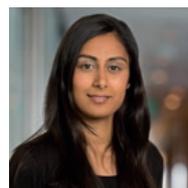
- The finalised guidance notes that firms may want to include a term in the contract that requires them to explain to the consumer, during the life of the contract, the reason for any proposed variation and its consequences for the consumer.
- The focus on transparency and relevant EU case law has remained.

Issues considered in the government's green paper include reviewing competition and consumer regulatory frameworks to ensure they are (digitally) future-proofed, including whether terms and conditions in some sectors should be required to reach a given level of comprehension (such as measured by online testing). There are also plans for new legislation to give civil courts the power to impose financial penalties (subject to a total cap of 10% of a firm's worldwide turnover) on companies for breaches of consumer law (eg in relation to unfair terms).

### *What's the timeline?*

In the coming months, firms will want to review their variation clauses in the light of the final FCA guidance to ensure they reflect best practice. Care will need to be taken if challenges are received from customers – with the potential for systemic issues if there is a successful challenge all firms will need to ensure the right level of engagement when dealing with complaints in this area.

Feedback on the government's consultation on its green paper (which closed in July 2018) is awaited. Fining powers were scheduled to be incorporated in the Better Markets Bill which did not proceed after the 2016 machinery of government changes, but the green paper confirms that the government still intends to introduce them when legislative business permits.



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Financial  
crime and  
enforcement

## MLD5 and beyond: Strengthening the fight against money laundering and terrorist financing

### *What's happening?*

The [fifth EU Money Laundering Directive](#) (MLD5) entered into force on 9 July 2018. This means member states will have to bring into force national law and regulation implementing MLD5 by 10 January 2020 at the latest. For the UK, this is subject to the UK's withdrawal terms from the EU. MLD5 contains a series of amendments to the fourth Money Laundering Directive (MLD4), which strengthen the fight against terrorist financing and increase the transparency of financial transactions. [The "sixth" EU Money Laundering Directive](#) – the Directive on combating money laundering by criminal law (MLD6) - entered into force on 2 December 2018 and has to be implemented by member states by 3 December 2020 (again, subject to the UK's withdrawal terms from the EU). [The European Commission adopted a legislative proposal](#) for a new Directive (the Proposed Directive) laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences in April 2018.

### *What does it mean?*

Key amendments introduced by MLD5 are:

- improvement of safeguards for financial transactions to and from high-risk third countries: Previously under MLD4, member states could determine their own enhanced due diligence (EDD) measures to be taken towards high-risk countries. MLD5 aims to standardise treatment of business relationships or transactions involving high-risk third countries by setting out a minimum set of EDD requirements to be applied by all member states. These requirements include obtaining additional information on: the customer and on the beneficial owners, the intended nature

of the business relationship, and the source of funds – amongst others;

- preventing risks associated with the use of virtual currencies for terrorist financing and limiting the use of prepaid cards: There is a risk that virtual currencies may be used by terrorist organisations to conceal financial transactions, because virtual currency transfers can be carried out anonymously. To reduce this risk, MLD5 brings virtual currency exchange platforms and custodial wallet providers within the scope of MLD4. This means providers will have the responsibility to monitor transactions and verify customer's identities. MLD5 also reduces the threshold for the application of the exemption from customer due diligence in respect of prepaid cards and electronic money products from €250 to €150; and
- centralised national banks and payment account registers, and ensuring that financial intelligence units (FIUs) have access to information: Member states are required to establish automated centralised mechanisms, such as central registries or central electronic data retrieval systems, of bank and payment accounts. Member states must grant access to such registries to FIUs and national competent authorities to enable the prevention of money laundering and terrorist financing. The minimum data contained in the registries would include information on the identification of the account holder, of any person acting on their behalf, of the beneficial owners, the IBAN account number (which would also identify the bank), the account opening date and, where applicable, the closing date.

MLD6 sets out minimum rules to harmonise the definition of money laundering offences and sanctions. There are also provisions aimed at improving the investigation of money laundering offences and co-operation between authorities involved in combatting money laundering.

The Proposed Directive was adopted by the European Commission on 17 April 2018. The Commission had previously consulted on the possibility of a self-standing legislative instrument to allow for broader access to the registries for other law enforcement investigations and by other authorities (e.g. tax authorities) to

help prevent organised crime and other serious offences. The Proposed Directive is the result of that consultation, and comes from a need to find quicker and more effective ways to access and exchange information on bank accounts, financial information and financial analysis.

### *What's the timeline?*

The MLD5 and MLD6 implementation clocks are now running. Member states will have to bring into force national law and regulation implementing MLD5 by 10 January 2020 and MLD6 by 3 December 2020 (in the UK's case, subject to its withdrawal terms from the EU).

The Proposed Directive falls under the EU's ordinary legislative procedure, which means that the European Parliament and the Council of the EU will need to adopt the same final version of the text before the Directive can be published in the Official Journal and enter into force. As it's a criminal law measure, it is subject to the UK's Title V (justice and home affairs) opt-in; [the government informed the European Scrutiny Committee](#) that it had decided to opt-in on 20 September 2018. The final position will be subject to the outcome of the UK's exit negotiations with the EU.



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## Investigations and enforcement: What to expect from the FCA in 2019

### *What's happening?*

The FCA ended 2018 with total fines of just over £60 million. Generally, total levels of fines have been falling since 2014/15, when they reached record highs of just over £1 billion (2014) and £900 million (2015). The number of financial penalties imposed has also fallen over the years (15 fines in 2018 compared to 40 in 2014, and 30 in

2015) demonstrating that the average value of the FCA's financial penalties has also fallen. Why the decline? Is the FCA losing its bite?

### *What does it mean?*

The record fines of 2014 and 2015 were in relation to benchmark manipulation and the fall-out of the financial crisis, explaining their unprecedented size. As legacy cases arising from the financial crisis have been concluded, the FCA has tried to revert to "business as usual", and has started numerous new investigations, many of which have a significant lead time before results are seen. The smaller average value of financial penalties can in part be explained by the fact that, of the 15 financial penalties imposed in 2018, eight were against individuals, in respect of whom fines are naturally much lower. The FCA's increasing focus on senior management accountability means that we are likely to see more fines against individuals, in particular under the Senior Managers and Certification Regime, which was rolled out to banks in 2016, and will cover all FSMA-authorised firms by December 2019.

While the number and value of fines have gone down, the number of FCA investigations has gone up. The number of regulatory investigations has doubled over the last three year period (from 88 in 2015/16 to 162 in 2017/18) and criminal investigations have increased almost sevenfold (from 21 in 2015/16 to 140 in 2017/18), underlining the FCA's increased willingness to deploy its criminal powers. The data suggests that, despite opening more cases, the FCA is not taking as many cases to enforcement. And, if it does, it is taking longer to do so: the average length of regulatory and civil cases concluded as a result of settlement is up from 25.2 months in 2015/16 to 32.3 months in 2017/18.

These statistics reflect the cultural changes implemented by Mark Steward as Head of Enforcement in late 2015. Investigation is no longer simply a precursor to enforcement action in cases which were selected to provide "credible deterrence" for the industry. Instead, investigation is now regarded as a neutral "diagnostic tool" to be used in each suitable case where there are regulatory concerns - simply as a means of gathering facts in order to take a decision about whether or not to proceed to

enforcement. The bar for investigation is therefore now lower, but equally with the intention that cases should be rapidly discontinued where the investigation shows nothing of interest. The FCA has introduced much greater rigour and discipline over its case management processes: a much more formal process is in place to ensure consistency of approach in respect of the opening of investigations and a formal process is in place to review all cases on a regular basis to take case management decisions on next steps or discontinuance. The FCA has become less accepting of firms undertaking their own investigations, with concerns about the quality of evidence gathering and worries about claims to privilege. This latter concern has been exacerbated by the recent Court of Appeal decision in *Director of the Serious Fraud Office v Eurasian Natural Resources Corporation Limited* (with Hogan Lovells successfully acting for ENRC) which established that documents prepared during an internal investigation can be protected by litigation privilege. As a result of this new approach, matters that had hitherto been dealt with by alternative means such as firm-led investigations, section 166 notices, thematic review or consumer redress, are now going to Enforcement for investigation, if they meet the test. The FCA is also reluctant to engage in early settlement discussions with firms until such time as the facts are fully understood.

### *What's the forecast?*

The FCA is keen to stress that fewer fines does not mean less enforcement or that it is a less effective regulator but, rather, that its approach to enforcement is more rigorous, thorough and consistent. The FCA has been quoted in the press as saying “We remain committed to investigating and holding firms and individuals to account for misconduct and ensuring wrongdoers pay for the costs of remediation”, adding that it was “doing more enforcement, not less”.

We are expecting therefore to see a continued high level of investigatory activity. There will be a continued focus on the responsibility of individuals generally and the accountability of senior management more specifically. We expect to see a continued focus in traditional areas of interest such as anti-money laundering and

financial crime, market integrity (including market manipulation and compliance with the market transparency rules), and on consumer protection and redress, as well as on the systems and controls and cultural approach of the firms where such problems in these areas are found to exist.



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## Financial crime: What to expect in 2019

### *What's happening?*

The prevention and detection of financial crime continues to be one of the UK government's and FCA's top priorities (as outlined in the FCA's [Business Plan for 2018/19](#)) for 2019. A number of recent initiatives, and initiatives planned for the coming year, are geared towards this aim.

### *What can firms do now?*

Firms should take heed of any recently published findings and guidance and ensure their requisite systems and controls measure up. For example, in October 2018 the FCA published its findings from a [thematic review](#) into money laundering in the e-money sector, and in November 2018 it published its findings from a [survey](#) into cyber and technology resilience. In December 2018, following a consultation, the FCA published [finalised guidance](#) on financial crime systems and controls for insider dealing and market manipulation, which forms a new chapter in its [Financial Crime Guide](#).

### *What to expect this year?*

The FCA referred to a “new financial crime strategy” focusing on anti-money laundering (AML), anti-bribery and corruption and fraud in its September 2018 [board minutes](#), with a view to improving its effectiveness and efficiency in combatting financial crime. As a step in this direction, a discussion paper on the role and responsibility of the industry in tackling financial crime is expected by the end of Q2 2019, which may lead to recommendations.

October 2018 saw the establishment of the new [National Economic Crime Centre](#). It will promote the use of new Proceeds of Crime Act powers such as Unexplained Wealth Orders and Account Freezing and Forfeiture Orders, so expect to see more of these in 2019.

Following its [consultation](#), the Law Commission’s recommendations to improve the regime which governs the reporting of suspicious activity (SARs regime) will be published this year. The UK government has indicated it will undertake an “ambitious reform” of this area, so this is something to look out for. The SARs regime, amongst other things, was highlighted as an area requiring improvement by the FATF in its [evaluation](#) of the UK’s AML and counter terrorism financing regime published in 2018. The UK government is considering the evaluation and will be publishing a response detailing any necessary action, likely to also be this year.

We may see changes to the Bribery Act 2010 following the [House of Lords Select Committee’s](#) review of the legislation, due by the end of March 2019. We may also see changes to the AML and sanctions legislative and regulatory landscape, following an inquiry into economic crime by the [House of Commons Treasury Committee](#). (See the separate piece on MLD5 above)

The year ahead looks set to be a busy one. Firms should make note of the upcoming publications, ready to action any recommendations or guidance as soon as it is issued.



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# Data protection

```
mirror_mod = modifier_ob.modifiers.new("mirror_mod")
mirror_ob.object to mirror_ob
mirror_mod.mirror_object = mirror_ob

operation == "MIRROR_X":
    mirror_mod.use_x = True
    mirror_mod.use_y = False
    mirror_mod.use_z = False
operation == "MIRROR_Y":
    mirror_mod.use_x = False
    mirror_mod.use_y = True
    mirror_mod.use_z = False
operation == "MIRROR_Z":
    mirror_mod.use_x = False
    mirror_mod.use_y = False
    mirror_mod.use_z = True
```

```
selection at the end -add back the deselected
mirror_ob.select= 1
modifier_ob.select=1
context.scene.objects.active = modifier_ob
print "selected" + str(modifier_ob) # modifier
mirror_ob.select = 0
context.scene.objects[0]
context.scene.objects[one.name].select = 1

print("please select exactly two objects,")
```

## OPERATOR CLASSES -----

```
class MirrorOperator(bpy.types.Operator):
    """Add a mirror to the selected object"""
    bl_idname = "mirror_mirror_x"
    bl_label = "Mirror X"
```

```
def execute(self, context):
    context.active_object is not None
```

## Data protection after GDPR and preparing for Brexit

### *What's happening?*

2019 is likely to be an eventful year in data protection. The EU General Data Protection Regulation (GDPR) has now been in effect throughout the EU since 25 May 2018 and data protection authorities have been reporting numerous data breach notifications and general awareness of data protection issues. This year is likely to see the first substantial fines being levied, giving an indication of how enforcement will proceed under the new legislation. 2019 will also see judgment being given in some cases before the Court of Justice of the EU concerning data protection and privacy, including cases on the meaning of consent and the scope of the “right to be forgotten”. Further guidance is likely to be given about the interpretation of GDPR by the [European Data Protection Board](#) (EDPB).

Another big event on the horizon for data protection is the UK's scheduled exit from the EU on 29 March 2019. While the proposed [Withdrawal Agreement](#) would have preserved the status quo in data protection terms, at least until the end of the transition period in December 2020, if the UK leaves the EU without a deal, cross-border data flows between the UK and the EU will be disrupted. The outcome of the current political crisis in the UK and its dealings with the EU will therefore have an important effect on privacy and data protection.

### *What does it mean?*

There has been a lot of media speculation about the potential for fines of up to €20m or 4% of global turnover to be levied under the new legislation, but 2019 is likely to show the true direction of travel of the European regulators. In a similar way, a number of investigations are currently underway following complaints by organisations such as [Privacy International](#) and [NOYB](#). The progress and perhaps conclusion of these investigations will give businesses some clues as to the activities where non-compliance with the law will not be tolerated.

In any event, some key issues have already emerged as immediate areas for attention. One of the greatest achievements of the GDPR has been its ability to bring privacy and data protection into the mainstream. That has in part led to an unexpectedly high uptake in the exercise of data subjects' rights. Dealing with data subjects' rights is not easy because most of these rights are not absolute rights. They cannot be ignored but they often involve careful thinking about the limits to be applied, the rights of others and the practicalities of honouring those rights. As with many other European data protection matters, having a process in place is key and following it is essential.

On another important front – international data transfers – Binding Corporate Rules (BCR) have emerged as the go-to solution for any organisation seeking a robust yet flexible approach to legitimising global data flows. BCR top the list of options available in the GDPR for this purpose, and regulators appear sensitive to this situation. As a result, with the coming into effect of the GDPR, the EU regulators are clearly endorsing the role of BCR as the main enabling tool for lawful data transfers worldwide.

On the matter of Brexit, if the UK leaves the EU with a deal, the UK will continue to be treated as part of the EU during the transition period, which would probably last until the end of December 2020. An adequacy decision would be carried out during this time, and would hopefully be made in the UK's favour, resulting in a preservation of the status quo as far as data protection is concerned. However, if the UK leaves the EU without a deal on 29 March, the situation will be very different, as the UK will become a third country for the EU's purposes.

If there is no deal, the government has put in place [various measures](#) to ensure that data protection standards will remain the same after exit day (bringing GDPR into UK law via secondary legislation) and that data transfers out of the UK will be able to continue. However, if adequate safeguards are not put in place for data transfers into the UK, these transfers are likely to be disrupted. No-deal preparations for businesses should therefore include examining cross-border EU-UK data flows and putting in place alternative safeguards such as Standard Contractual Clauses or BCR.

### *What's the timeline?*

The UK is scheduled to leave the EU by automatic operation of law on 29 March 2019. In order to prepare effectively for a no deal exit, businesses should assess their cross-border data flows and identify suitable mechanisms to legitimise data transfers into and out of the UK in every situation as soon as possible. However, the possibility that current political developments may result in a different timeline, either because of an extension of Article 50 or because some version of the Withdrawal Agreement is approved, cannot be excluded.



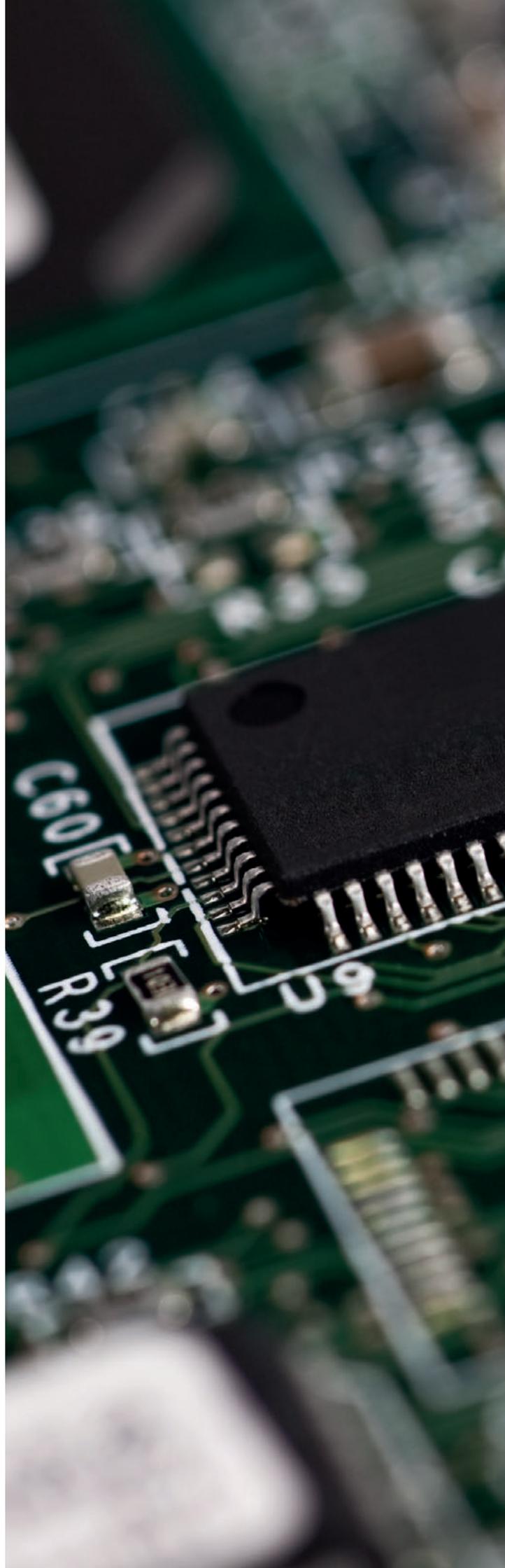
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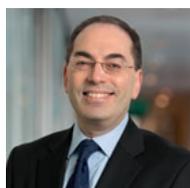
# Key contacts

## Payments and Retail Banking



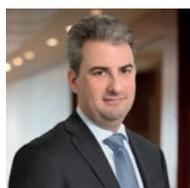
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# Resources

The Financial Institutions sector group at Hogan Lovells has produced a range of resources to help you navigate the market developments and legal and regulatory issues which may impact your business. Access them via [hoganlovells.com](https://hoganlovells.com) and subscribe to receive your regular updates straight into your inbox.

## Hogan Lovells Engage

Hogan Lovells Engage is a pioneering LawTech solution for financial institutions and FinTechs. It is a bespoke digital service that gives you better information, better analysis, and helps you make better decisions. By registering - for free - on the site you can tailor your experience and sign up for bespoke alerts, so you only ever see what you need. In addition, our cutting-edge interactive tools can also be found on the site, helping to guide you through complex legislation and keep you up-to date with the latest developments. Take a look and register at [hengage.com](https://hengage.com).

## PSD2 Toolkit

Our PSD2 tool, found on HL Engage, provides a comprehensive, interactive platform through which you can identify your PSD2 obligations. It offers easy access to all the key documents which need to be looked at to ensure compliance, together with latest news and insight from the Hogan Lovells team. Take a tour of the tool and then contact the HL Engage team for subscription information at [hengage.com/resources/psd2](https://hengage.com/resources/psd2).

## SCA RTS Toolkit

The SCA RTS Toolkit provides a comprehensive guide to the Regulatory Technical Standards (RTS) for Strong Customer Authentication (SCA) and the tool includes all of the RTS Articles; commentary from our industry-leading payments lawyers; a detailed video tutorial on SCA; and free access to our comprehensive digital PSD2 reference guide. Take a tour of the toolkit and subscribe at [hengage.com/sca-rts](https://hengage.com/sca-rts).

## Payment Services Academy

Created by our industry-leading payments lawyers, our training academy helps you and your teams comply with the new payment services regulations, using engaging and interactive content to explain and simplify complex legislation. Take a tour of the Academy and select the right package for you at [hengage.com/academy](https://hengage.com/academy).

## Consumer Credit Academy

Any business in the UK that offers credit or goods on hire to consumers (or small businesses that are treated as consumers) or carries on a range of activities in relation to credit and hire has to comply with complicated and extensive legislation and regulation. Our forthcoming interactive digital consumer credit training will cover everything you need to know in detail. Please [contact us](#) for more information.

## FIsion Blog

As the remit and reach of regulators continue to expand and change continues on a daily basis, Financial Institutions need to stay on top of developments. Our new FIsion blog will provide you with regular content from our market-leading regulatory team across financial services, commercial & retail banking and payments. To get a feed of useful financial services regulation updates and news in your inbox you can subscribe at [hoganlovells.com/fision](https://hoganlovells.com/fision).

## Financial Investigations Roadmap

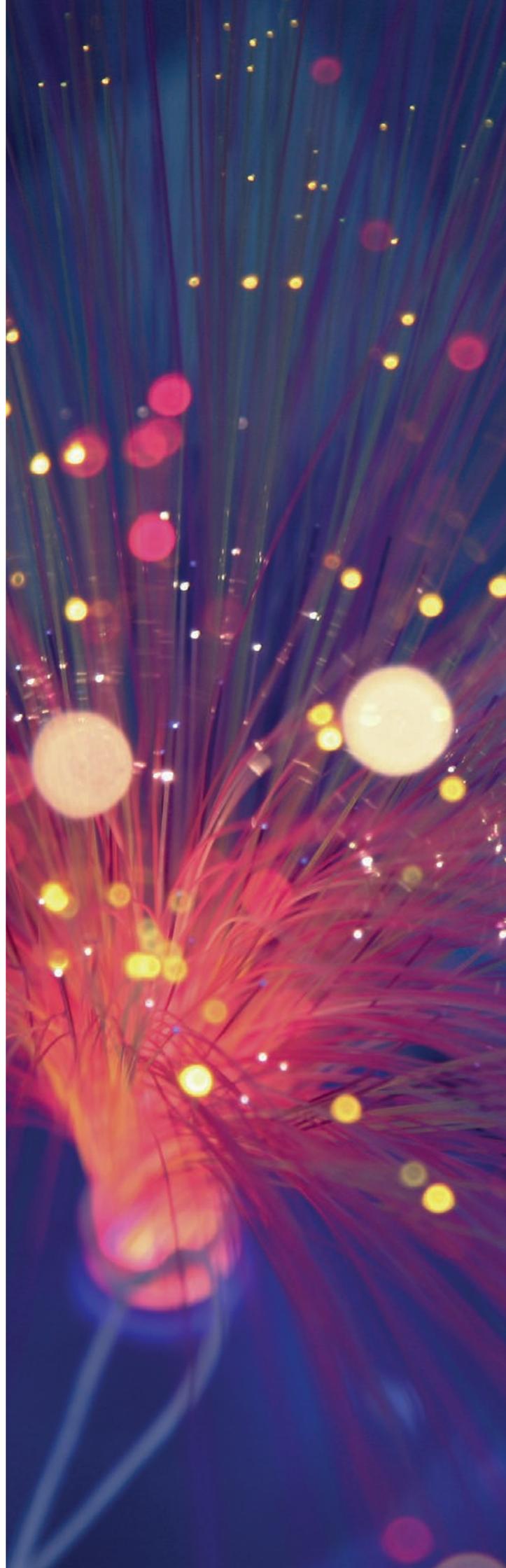
We have created a roadmap to guide you through the practical pitfalls and strategic considerations in internal and regulator-led investigations. The roadmap includes checklists and practical tips for investigations of all shapes and sizes, from internal investigations to global investigations involving multiple authorities and law enforcement agencies. As fines escalate and regulators get tougher, it is more important than ever to get an investigation on the right track from the start [hoganlovellsinvestigationroadmap.com](https://hoganlovellsinvestigationroadmap.com).

## Brexit Hub

The impact of Brexit on Financial Institutions is significant. The likely loss of passporting gives rise to serious implications for the sector. We are providing a range of guidance to the market on whether the existing alternatives to passporting, such as the third country regime, provide a solution. You can access our latest thinking on potential solutions which could be established by financial institutions, the merits of various jurisdictions if relocation is required and applying the potential impacts to different business lines via our Brexit Hub at [hoganlovells.com/Brexit](https://hoganlovells.com/Brexit).

## Financial Services Regulatory Consulting

Financial institutions face an increasingly complex array of regulatory requirements. These demands, combined with significant operational challenges, mean that firms often feel the need to turn to multiple advisers for help. Our Financial Services Regulatory Consulting team works alongside our financial services lawyers to help you address legacy issues while remaining responsive to regulatory change and exploring exciting new business growth opportunities. Overlaying decades of Hogan Lovells legal and regulatory expertise with our varied consulting experience provides you with a seamless service from a single advisor. Find out more about the services we can provide to support you in resolving past issues, responding to lessons learnt and securing future compliance from any of the Hogan Lovells team above.



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