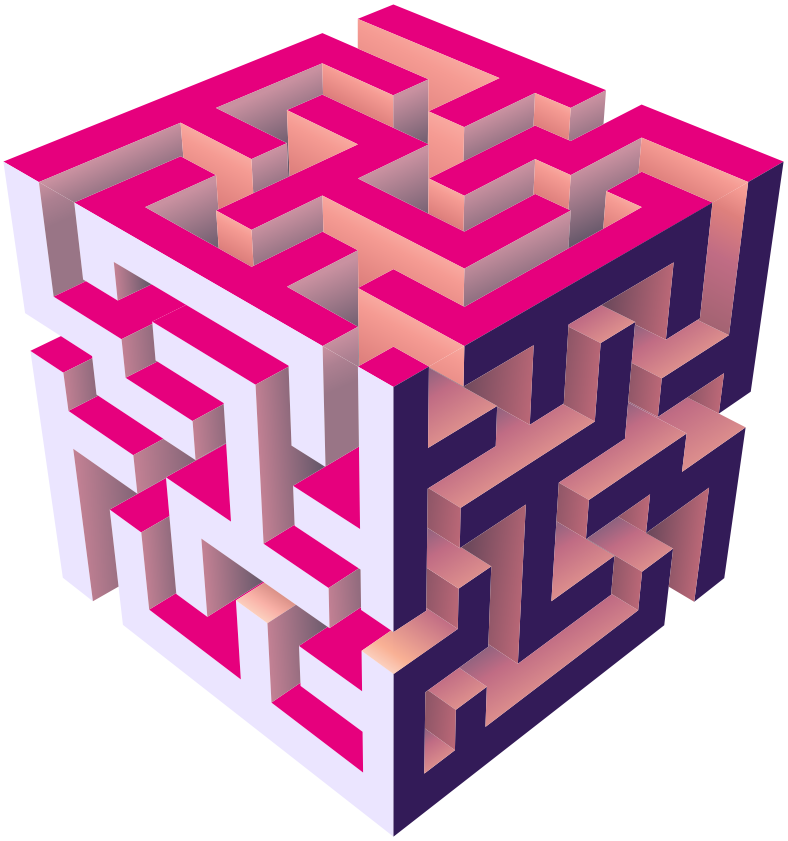
Regulatory update

October 2019

Welcome to the October edition of our monthly Regulatory Update, which aims to pull together key developments from across the various UK regulators – and help you to navigate the regulatory maze.

Following the summer holiday season, there has been a renewed emphasis and output from many of the regulators. From record AML fines and strengthened food labelling rules to the latest Brexit guidance and new tax rules, click on the sections below to read more about the regulatory developments over the past month.

I hope you enjoy reading this latest update. Please do not hesitate to contact me, or your normal RPC contact, if you would like to discuss any of the topics highlighted.



Gavin Reese
Partner, Head of Regulatory

White collar crime	Privacy, security and data protection	Tax
Health, safety and environmental	Advertising & marketing	Insurance and financial services
Professional services	Brexit	Competition and anti-trust

OCTOBER HEADLINES

WHITE COLLAR CRIME

by Sam Tate and Jonathan Cary CONTACT

Business hit with record £7.8 million fine for breaching money laundering regulations

HM Revenue and Customs (HMRC) continues its fight against money laundering with the announcement of a record fine against a west London business. Money Transmitter Touma Foreign Exchange Ltd has been fined £7.8 million for breaching the Money Laundering Regulations between June 2017 and September 2018.

It was found that the company breached several regulations concerning adequate staff training, customer due diligence and risk assessments. Mr Hassanien Touma, who founded the business in 2011, has been banned from any management roles at any business governed by the anti-money laundering regulations.

The fine comes after a separate HMRC crackdown on money services businesses, conducted alongside the Metropolitan Police and Financial Conduct Authority (FCA). The month-long crackdown saw officers execute warrants at twelve addresses across west London. To read more about HMRC's fight against money laundering, click here.

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First person to be charged with destruction of documents offence by FCA

Konstantin Vishnyak has pleaded not guilty to one count of destroying documents, after allegedly deleting communications relevant to an ongoing investigation. Mr Vishnyak is the first person to be charged by the FCA for a destruction of documents offence under the Financial Services and Markets Act 2000.

It is alleged that Mr Vishnyak deleted the WhatsApp application off his mobile phone, after being formally required by the FCA to hand over the communication. The FCA had been investigating Mr Vishnyak for suspected insider dealing offences when the request for disclosure was made.

Mr Vishnyak appeared at Westminster Magistrates' Court where he entered a plea of not guilty. He has been granted bail until his next hearing on 4 October 2019. To read more about the matter click here.

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Investment fraud prevention remains a key priority

The FCA has reiterated its commitment to the success of the Economic Crime Plan in order to beat investment fraud.

Financial crime is a serious epidemic across the UK. The 2018/19 Crime Survey for England and Wales estimates a total of 3.8 million cases of fraud affecting individuals. This figure does not take into account financial crimes against businesses.

In a bid to tackle investment fraud and scams, the FCA is implementing a three-part strategy. The first component involves heightened scrutiny of the firms it authorises and taking appropriate enforcement action in cases of serious misconduct.

The second part involves increasing public awareness of scams, through publishing a list of known, or suspected, scammers on the ScamSmart website.

Lastly, the FCA is taking action to shut down unauthorised investment businesses where possible.

Click here to read more about the FCA's plan to beat investment fraud.

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PRIVACY, SECURITY AND DATA PROTECTION

by Jon Bartley CONTACT

Government calls for views on its proposed approach to cyber security certification

The Government is requesting submissions from interested parties on its approach to cyber security certification as regulated by the EU Cyber Security Act (CSA) and the intended cooperation with the EU, following the UK's departure from the EU.

The CSA came into force on 27th June 2019 and established a framework under which EU-wide cyber security certification schemes will be implemented. It seeks to prevent unnecessary market fragmentation by harmonising certification schemes operating within the EU. The UK was actively involved in the development of the CSA and is committed to ensuring cyber security across Europe.

It is the UK's understanding that the CSA will allow mutual recognition of cyber security certification schemes operating in the UK and the EU. This means that certificates issued in the UK will be treated in EU markets in the same way as EU-issued certificates, and vice versa.

The Government is seeking feedback on its proposed approach. To read more about the CSA, or to submit a response, click here.

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Data controllers legally entitled to refuse excessive requests

Data controllers may refuse to respond to requests that are manifestly unfounded or excessive, in particular because of their repetitive character, under Part 3 of the Data Protection Act 2018 (DPA 2018). Alternatively, they may be able to charge a reasonable fee for dealing with such a request, taking into account the administrative costs of providing the information.

The DPA 2018 confers a range of rights on individuals, including among others access to their personal data, rectification of their data and restriction of processing in certain circumstances. However, data controllers are legally entitled to refuse certain requests from individuals, if they demonstrate that the requests are manifestly unfounded or excessive.

The Information Commissioner's Office (ICO) has issued guidance for determining when a request may be manifestly unfounded or excessive. It recommends that data controllers consider each request on a case-by-case basis, rather than enforcing a blanket policy. The individual must be informed of the reasons why the request has not been complied with, in addition to their right to make a complaint to the ICO.

To read the ICO's official guidance, click here.

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TAX

by Adam Craggs CONTACT

HMRC consults on the requirement to disclose certain cross-border arrangements

HMRC is seeking views on new rules that will require the disclosure to HMRC of certain cross-border arrangements that could be used to avoid or evade tax. The International Tax Enforcement (Disclosable Arrangements) Regulations 2019 will implement European Directive 2018/822, which requires the mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements from 1 July 2020.

Comments on the consultation are required by 23.45 on 11 October 2019.

The consultation document can be viewed here.

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New rules on taxation of hybrid capital instruments amended

The government recently introduced new rules on the taxation of hybrid capital instruments to address uncertainty regarding the taxation of instruments with takeover or change of control clauses. The result of the proposed amendments is that, subject to certain conditions, interest payments on all debt-like interests are deductible.

HMRC sought views on the draft regulations. The consultation ran from 5 July 2019 to 9 August 2019, and responses contributed to an amendment of the regulations. The Taxation of Hybrid Capital Instruments (Amendment of Section 475C of the Corporation Tax Act 2009) Regulations 2019 ensures that any amendments work for hybrid capital instruments, and allows extra time to make an election in certain circumstances.

For more information about the new rules, click here.

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Government response to recommendations on the draft Registration of Overseas Entities Bill

The government has published its response to recommendations made by the Joint Committee regarding the draft Registration of Overseas Entities Bill. The government has welcomed the report of the Committee and has committed to acting in several areas, including, amongst other things:

a) publishing guidance to help overseas entities understand the requirements of the Bill;
b) publishing guidance ahead of the operational regime of the Register of overseas entities; and
c) including an option on the Register to report suspicious or potentially incorrect information.

The government has also said that it is considering changes to the Bill but will undertake further work to consider the implications of the recommendations of the Committee before committing to such changes.

The response can be viewed here.

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HEALTH, SAFETY AND ENVIRONMENTAL

by Gavin Reese CONTACT

Natasha's Law to provide much-needed protection to allergy sufferers

The government has strengthened laws surrounding food and allergen labelling, following the death of teenager Natasha Ednan-Laperouse from an allergic reaction to a Pret a Manger product.

'Natasha's Law' will become operational in October 2021, requiring food businesses across the country to list full ingredients on their labelling on pre-packed for direct sale (PPDS) foods.

Current laws do not require allergen information to be displayed on PPDS foods, making it difficult for allergen sufferers to purchase food whilst they are out. It is hoped that the new laws will give allergy sufferers confidence in purchasing and consuming these types of foods.

The Food Standards Agency (FSA) will publish information to assist the industry in becoming compliant. The new laws will apply to all food businesses across England, with similar provisions expected to be implemented throughout the UK.

The FSA Board has also announced a series of actions designed to protect those with allergies, including updating its highly-regarded 'Safer Food Better Business' guide and launching an awareness campaign. The announcement comes after the death of teenager Owen Carey, who tragically died after an allergic reaction to milk at a London restaurant.

To read more about the new laws and regulations, click here.

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New statistics on food law enforcement released

The FSA has released official statistics on food law enforcement for the year ending March 2019. The new data gives a detailed breakdown of enforcement activities across England, Wales and Northern Ireland.

There has been a slight increase in the percentage of food establishments that are 'broadly compliant' with food hygiene regulations, meaning they score a hygiene rating of 3, 4 or 5. This figure increased to 90.7%, from 90.2% in the previous year.

The percentage of planned food hygiene interventions undertaken by local authorities also marginally increased from 85.1% to 86.3%. However, the percentage of planned interventions undertaken for food standard controls, which covers food fraud, dropped to 40.8%, from 42.3% in the previous year.

Overall, England has seen some small but positive trends in food hygiene, however these were not reflected in the data collected from Wales and Northern Ireland. The FSA is working with local authorities to develop a new model for food standards interventions, which will incorporate a mix of inspections and better surveillance.

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ADVERTISING AND MARKETING

by Oliver Bray CONTACT

The ASA ruling on identifying ads – Brooks Brothers and Matthew Zorpas

The Advertising Standards Authority (ASA) ruled that influencer Matthew Zorpas breached the CAP Code rules 2.1, 2.3 and 2.4 (recognition of marketing communications) for failing to properly identify an Instagram post as marketing material.

The ASA and the Competition and Markets Authority (CMA) recommend that influencers make upfront disclosures on their paid posts, such as '#ad' at all times. Click here to read the full report on why #ad is essential.

Matthew Zorpas had a contractual agreement with Brooks Brothers to post a minimum number of social media posts and stories, and was found to have failed to properly disclose this on an Instagram post.

The ASA is committed to achieving transparency in this area, and warns that any influencers who breach regulations run the risk of investigation and enforcement action.

If you are engaging anyone to promote a product, service or article on social media, care must be taken in checking whether it will be classed as an ad by the ASA. If so, it will need to be clearly labelled as such. Given the energy that the ASA (and indeed the CMA) are currently putting into pursuing influencer advertising, the message is clear – if in doubt, safest to use #ad.

Click here to read the ASA adjudication.

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An organic Halloween: ASA issues advice on seasonal promotion

As we enter autumn there is an expected spike in advertising material for two events, Organic September and Halloween. While these events are distinct from one another, they are both subject to strict regulations enforced by the Advertising Standards Authority (ASA).

HALLOWEEN

With Halloween fast approaching, the ASA receives a rise in complaints about scary imagery and inappropriate advertising. Advertisers are warned not to cause undue fear and distress to the audience, and to ensure that any Halloween-themed ads are targeted appropriately.

For more guidance on creating Halloween themed ads, click here.

ORGANIC SEPTEMBER

The term "organic" seems to be thrown around more and more in food advertising, and the ASA has issued a warning to advertisers that use the term to describe its products. Any advertiser that wishes to claim a product is "organic" must be able to provide documentary evidence that the product comes from farmers, importers or processors that:

- follow the standards prescribed in Council Regulation (EC) 834/2007
- are subject to regular inspections, and
- are registered with an official certification body.

For more information about "organic" advertising standards, click here.

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INSURANCE AND FINANCIAL SERVICES

by Matthew Griffith and Jonathan Cary CONTACT

Liquidity risk management for insurers

The Bank of England Prudential Regulation Authority (PRA) has released feedback to responses to Consultation Paper (CP) 4/19 'Liquidity risk management for insurers', which sought industry perspectives on a draft Supervisory Statement (SS) that outlined the PRA's expectations on insurers' approaches to managing liquidity risk.

The PRA received a total of thirteen responses to CP4/19. It's proposals were generally welcomed by respondents, with a number of observations and requests for clarification made. The PRA has considered these responses and has made some changes to its draft policy.

Among other changes, the PRA's expectations surrounding the definition of risk limits within an insurer's liquidity risk appetite framework have been further clarified, in addition to the role of the board in managing liquidity risk. The function and characteristics of the liquidity buffer have also been clarified, in response to industry feedback received.

To access the full policy statement, click here.

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Prudential hit with £23,875,000 fine for failures relating to non-advised annuities sales

The FCA has fined The Prudential Assurance Company Limited (Prudential) £23,875,000 for breaching Principle 3 (Management and Controls) and Principle 6 (Treating Customers Fairly) of the FCA's Principles for Businesses in relation to the non-advised sale of annuities to its customers between 2008 and 2017.

The FCA found that Prudential failed to put in place adequate systems and controls to ensure that appropriate and timely information was provided to customers about their retirement options, in particular failing to inform customers that they may be entitled to an enhanced annuity or may have been eligible for a better rate on the open market. The FCA found that these weaknesses in Prudential's systems and controls coupled with the complex nature of annuities and the potential vulnerability of customers led to some customers being treated unfairly.

The fine imposed by the FCA was calculated principally on the basis of a percentage of the revenue generated by Prudential between 2008 and 2017 from this area of the business, but took into account the fact that Prudential has, to date, offered £110 million in redress to approximately 17,000 customers. Prudential did not dispute the FCA's findings, resulting in a 30 per cent discount on the fine. Were it not for this discount, Prudential would have been fined a total of £34,107,200.

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Payments regulator explores opening up access to data

The Payment Systems Regulator (PSR) has released its response to its Data in the Payments Industry discussion paper published in June 2018. The response highlights a number of issues in payments data that need to be addressed by industry.

Data is generated every time a person makes an electronic payment, both online and in-store. Last year, the PSR welcomed industry feedback to ascertain whether there was a need for it to have a regulatory role.

PSR is exploring the possibility of opening up access to data in the UK's new payments architecture (NPA), which could result in the development of new products and services, such as new anti-fraud and anti-money laundering tools. The importance of opening up data in ways that respects the confidentiality of individuals' data, such as the use of 'synthetic data' was recognised.

The full response is available here.

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PROFESSIONAL SERVICES

by Rob Morris and Graham Reid CONTACT

FRC Annual Report

The Financial Reporting Council (FRC) has released its annual report for 2018/19, reaffirming its commitment to improving the quality of reporting. The report outlines the FRC's progress in boosting enforcement resourcing and tackling low-quality audit work.

Work undertaken in 2018/19 includes consulting on an overhaul of the UK Stewardship Code and revising the Corporate Governance Code. The FRC has also successfully increased enforcement resourcing by 25 per cent.

This comes as the FRC prepares for its eventual transition into a new regulatory body. To read more or to access the full report, click here.

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Joint whistleblowing disclosures report released for healthcare profession

Since 2017, prescribed bodies are legally required to publish an annual report on the whistleblowing disclosures made by workers. This year, the UK healthcare professional regulators compiled a joint report highlighting a collaborative approach to addressing issues raised.

The purpose of the report is to raise confidence among whistleblowers that their disclosures are treated seriously and confidentially. It is also designed to increase transparency across the sector regarding the way in which disclosures are dealt with.

The report details the number of disclosures received by each regulator, and the specific action taken in relation to each one.

For more information about the report and the regulators' obligations, click here.

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BSB introduces new rules to showcase diversity at the Bar

The Bar Standards Board (BSB) has introduced new rules that will remove restrictions on the reporting of diversity characteristics at the Bar. Previously, every member had to give their consent before anonymised data was published.

The new rule means data regarding religion and sexual orientation of members will be available. However data will not be published if there is a risk of any individuals being identified. Members are not required to disclose their diversity characteristics if they do not want to.

It is hoped that the publication of data will showcase a more accurate picture of the Bar's diversity. To read more about the new initiative, click here.

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BREXIT

ICO: Businesses warned to "prepare for all scenarios" in event of no-deal Brexit

The Information Commissioner's Office (ICO) has issued guidance to small and medium sized organisations to prepare for all possible outcomes in the event of a no-deal Brexit. The advice focuses on ways to maintain data flows between the UK and EU member states, should the UK depart without a deal.

Currently, there are no restrictions on personal data flow, as the UK is an EU member state. However, In the event of a no-deal Brexit, additional measures will need to be implemented so that data flows from the European Economic Area (EEA) to the UK remain lawful.

The sharing of personal data between the UK and the EU is critical both for the proper functioning of business supply chains and for the effective delivery of public services by public authorities.

The ICO's guidance provides strategies to maintain data flows, such as using pre-approved contractual terms, which are already in use as a way of legitimising transfers of data outside of the EEA. To read the full advice, click here.

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DEFRA: New laws for organic food trade between UK and EU

Organic food producers, processors, traders and suppliers must prepare for a new set of laws and regulations, should the possibility of a no-deal Brexit eventuate. The government has published advice to industry to prepare for a raft of changes to the certification of organic food products.

The UK will have its own set of laws governing the trading, processing, production and labelling of organic food, following its departure from the EU. Standards will remain similar to the EU's and any food registered as organic in the EU will be recognised as organic in the UK. However, it is up to the EU to decide whether to continue accepting food registered as organic in the UK.

Following Brexit, UK exporters will be unable to export organic food to the EU, unless

- The UK and the EU agree to recognise each other's organic food standards; or
- The UK control body is authorised by the EU to certify UK products for export to the EU.

For more information about the new laws and regulations, click here.

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FRC: Five critical actions to take ahead of Brexit

The Financial Reporting Council (FRC) has issued advice to businesses across the UK in the lead up to Brexit. The guidance provides five critical generic actions that companies should take prior to the UK's departure from Europe.

1. Urge employees to check whether they need to apply to the EU Settlement Scheme;
2. Ensure customers and suppliers have made their own preparations for Brexit;
3. Attend a Brexit Business Readiness event;
4. Identify any additional legal or regulatory barriers that may result from a no-deal Brexit; and
5. Consider corporate reporting of risks associated with Brexit.

To find out more, and access the full report, click here.

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COMPETITION AND ANTI-TRUST

by Lambros Kilaniotis CONTACT

UK merger regime: failure to comply with hold-separate order

Increasingly, competition authorities are taking a more pro-active stance against gun-jumping and fining companies for engaging in integration activities prior to merger clearances being obtained.

Although the UK operates a voluntary merger regime so that completion can take place without notifying and seeking prior clearance from the Competition and Markets Authority (the "CMA"), the CMA can impose, and does so as a matter of course in relation to completed mergers, an Initial Enforcement or 'Hold Separate' Order (an "IEO"), until its investigation completes. The purpose of such an order is to ensure that no (further) integration takes place which might prejudice any Phase II merger reference or might impede any action which the CMA ultimately considers justified, including the unravelling of a completed transaction.

The CMA has recently fined PayPal £250,000 for its failure without 'reasonable excuse' to comply with an IEO imposed in connection with its completed acquisition of iZettle; a transaction which was ultimately cleared by the CMA at Phase II.

The CMA had granted a derogation from the IEO so that PayPal was permitted to engage in international integration activities, including cross-selling pilot campaigns involving its non-UK businesses, provided that these activities did not affect the UK and were confined to non-UK jurisdictions. However, these pilot campaigns resulted in UK customers being contacted in breach of the IEO.

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Competition investigation by Ofcom

On 19 September, Ofcom announced its provisional findings that the customer-sharing agreement between Royal Mail's Parcelforce division and an online reseller of its business parcel delivery services, the SaleGroup trading as Despatch Bay, infringed UK and EU competition law.

In May 2018, Royal Mail had reported to the CMA under the latter's leniency policy a customer-sharing arrangement between Parcelforce and Despatch Bay, whereby they had agreed not to offer parcel delivery services to each other's business customers. Despatch Bay arranges deliveries for SME businesses by sourcing multiple parcel operators, rather than carrying out parcel deliveries itself.

The CMA then passed the matter to Ofcom, as a concurrent competition regulator and the regulator for postal services.

Evidence showed that the companies had 'implemented, monitored and enforced' the customer-sharing agreement between August 2013 and May 2018 when Royal Mail approached the CMA for leniency.

Ofcom has confirmed that Royal Mail has been granted immunity under the CMA's leniency policy (provided that it continues to co-operate fully throughout the investigation) and that Despatch Bay has agreed to settle the case and to accept a fine of £40,000.

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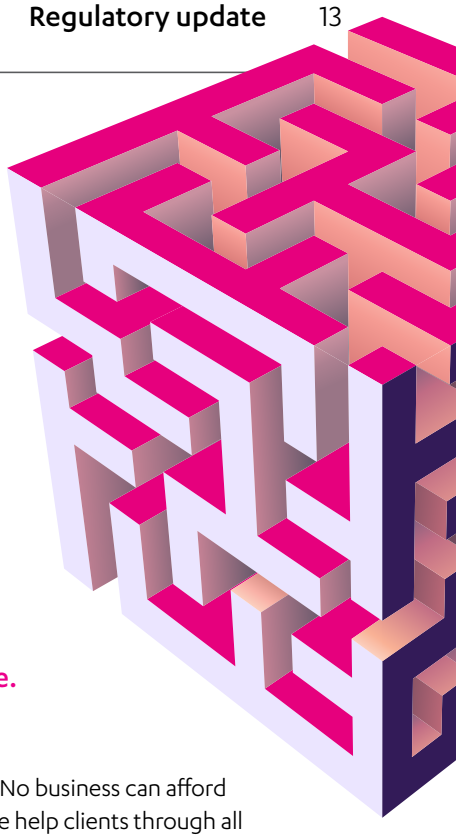

NAVIGATING THE MAZE

From the world's largest financial, corporate and professional services firms, to highly successful entrepreneurs and individuals, many turn to our specialist Regulatory team to navigate the maze. They do this because they know we don't sit on the fence, we work with our clients to ask the tough questions and challenge conventions; ensuring they continue to thrive in a rapidly evolving regulatory world.

From helping to implement robust compliance strategies to conducting investigations and defending against enforcement proceedings, our multidisciplinary team can be relied on to add value, provide ideas and deliver a complete regulatory service whatever challenges you face, now and in the future.

- **White collar crime and investigations**: The burden of facing a regulatory or criminal investigation can be significant. We defend clients under investigation for regulatory breaches, corruption including; breaches of financial sanctions, false accounting, insider dealing and market misconduct.
- **Anti-bribery and corruption:** Our team works closely with clients to implement robust, cost effective anti-bribery programmes in line with international standards, and to manage risks and responses when things go wrong.
- **Anti-money laundering**: AML continues to be one of the most significant regulatory risks to firms. We help clients from implementing effective AML processes and controls to defending clients under investigation of breaches.
- **Data protection**: Protecting the data you hold has never before been so essential to your business. We regularly advise on data regulations, including GDPR, relating to subject access requests, data handling, sharing and processing, breaches, and training strategies.
- **Product liability and compliance**: Our Products team have the expertise you needed if you are faced with product recall or class actions.
- **Health, safety and environmental**: our expert team can support you whether you are shoring up your health, safety and environmental protocols, or facing an investigation in respect of an incident.
- **Tax investigations and dispute resolution**: Our dedicated tax dispute lawyers provide a comprehensive service covering pre-emptive advice on a wide range of risk issues, tax investigations and litigation before the tax tribunals and higher courts.
- **Insurance and financial services**: Our specialist lawyers advise on regulation, business and financial crime and compliance, including both contentious and non-contentious matters to ensure our clients avoid the pitfalls.
- **Competition and anti-trust**: No business can afford to ignore competition law. We help clients through all issues including; compliance, investigations, merger control, cartels and litigation.
- **Dawn raids**: A dawn raid situation can be extremely stressful – and if you get it wrong, the repercussions can be severe. Our experienced team can provide an immediate response to help you on the ground, as well as in the all-important preparation for the possibility of a dawn raid.
- **Professional practices**: Our team combines sector knowledge with regulatory expertise to provide comprehensive support and advice for professional services firms, covering all aspects of their regulated business.
- **Advertising and marketing**: Some of the world's largest corporates rely on us to keep their brand communications above board, from advertising standards to consumer regulation we help clients to simplify the complex.

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