

Key regulatory guidance following COVID-19 pandemic

March 2020



As the world tackles the COVID-19 pandemic, the UK's Regulators have published a host of useful guidance that firms should take good note of during this period of uncertainty. While not an exhaustive list, we hope this summary highlights the key obligations and requirements currently being brought in by the Regulators.

To go directly to a specific area of regulation, please click on the boxes below to find out more.

If you would like to discuss how any of the regulatory developments might affect your business specifically, please contact one of the Regulatory team [here](#).

COMPETITION

The general message from the Competition and Markets Authority (CMA) is that competition law still applies. The CMA has specifically warned against businesses profiteering from the current crisis. Its CEO has reiterated that Covid-19 is their immediate priority and that they “will be monitoring market developments to enable [them] to intervene as quickly as possible, if needed.” Nevertheless, there have also been developments to avoid competition law enforcement considerations impeding on co-operation necessary to ensure security of supplies of essential products and services at this critical time.

The CMA has welcomed the Government’s announcement to temporarily relax certain competition rules for the food sector so that the supermarkets will be able to work together “to feed the nation”, including sharing data on stock levels, sharing distribution depots and pooling staff. The CMA has itself sought to reassure businesses that it has no intention of taking competition law enforcement action against them where their co-operation falls outside this proposed formal competition law exemption, but is necessary to ensure the supply of essential goods and services. However, it has made very clear that it “will not tolerate unscrupulous businesses exploiting the crisis as a ‘cover’ for non-essential collusion”.

The CMA has been warning businesses against exploiting the current crisis by charging excessive prices or making

misleading claims about the efficacy of their products. It has now announced the launch of a task force to scrutinise market developments in order to identify harmful sales and pricing practices and to take enforcement action where necessary.

The CMA has also published an open letter to the pharmaceutical and food and drink industries. It is urging firms “to read and act on this letter to help ensure that the harmful practices by a minority of bad apples are identified and stamped out quickly so that consumers can rely on these vital markets when they need them most”. To this end, it is asking businesses, which face price increases from their wholesalers or suppliers, to provide information in writing so that it can then investigate these issues further up the supply chain

In relation to its work more generally, the CMA has said that it intends to continue “progressing its cases, making decisions and meeting deadlines”. Meetings and hearings are taking place remotely via videoconference or phone. Statutory deadlines apply to a significant proportion of the CMA’s work, particularly in relation to merger investigations, and the CMA will make use of permitted deadline extensions where necessary. Merging parties and their advisors are being asked to engage as early as possible with the CMA and there are reports that parties are sometimes being asked to hold off formally notifying, due to concerns about the CMA’s ability to conduct market testing.

Click [here](#) to read more.

ADVERTISING & MARKETING

Like many Regulators, the Advertising Standards Authority (ASA) has tried to identify areas of its own regulations where regulatory forbearance should be applied during this period. However, while there will be a “lightness of touch” in some areas, the ASA have been very clear that they will have an “uncompromising stance on companies or individuals seeking to use advertising to exploit the circumstances for their own gain.”

As stated above [link back to Competition section], the Competition and Markets Authority (CMA) has issued guidance around harmful sales practices, including misleading COVID-19

protection claims in their marketing. The ASA has added to this by publishing specific guidance on advertising responsibly.

The ASA have stated that businesses should “think twice before making any efficacy claims in relation to preventing, treating or curing the virus unless they are permitted to do so and such claims are supported by robust documentary evidence.” The ASA is unlikely to have any patience for marketers seeking to unfairly exploit the outbreak to sell products or services.

Click [here](#) to read more.

HEALTH & SAFETY

Public Health England and the Department for Business, Energy & Industrial Strategy have published a hub of information for advice on what employers need to do to protect workers against the threat of COVID-19. It is hoped that this guidance will assist employers and businesses in providing the necessary advice to their staff on processes and steps to help prevent spread of COVID-19, what to do if someone has symptoms of COVID-19 and has been in business settings and the rules relating to the eligibility for sick pay.

Included in its guidance to employers and businesses, a [poster](#) has been produced to highlight the key points including:

1. Businesses should encourage employees to work from home if possible
2. Those who follow advice to stay at home will be eligible for statutory sick pay, and
3. If an employee becomes starts to have a new, continuous cough or a high temperature, they should be sent home.

There is also guidance on the financial support available to businesses facing the costs associated with the above, including a Coronavirus Job Retention Scheme and statutory sick pay relief package for small and medium-sized enterprises. Click [here](#) to read more.

The Health and Safety Executive has built a COVID-19 hub that contains its advice on protecting home workers, driver welfare and guidance for health professionals. This can be accessed [here](#).

TAX

HMRC has focused on the challenge set by the Chancellor to identify opportunities to support businesses through the COVID-19 crisis and the business interruption it is causing. This has led to HMRC postponing IR35 reforms and deferring VAT payments, among other measures.

The Chief Secretary to the Treasury, Steve Barclay, has announced that the IR35 tax reforms will be postponed until April 2021. This is in direct response to the ongoing spread of COVID-19 and is response to the growing business uncertainty surrounding the coronavirus pandemic.

UK businesses will also welcome the announcement that VAT and Income Tax payments will also get a three-month deferral until the end of June 2020. Businesses do not need to apply for this, it will be automatically implemented. Businesses will not need to make a VAT payment during this period and will be given until the end of the 2020/21 tax year to pay any liabilities that have accumulated during the deferral period.

Click [here](#) to read more.

DATA PRIVACY

As with the rest of the UK regulatory bodies, the Information Commissioner's Office (ICO) has stated a "proportionate" relaxation of its rules in recognition of the unprecedented challenges facing businesses.

Firms might worry that the need to prioritise certain areas of the business might mean resources from finance or compliance have to be diverted, and so data protection practices might not meet the usual standard. However, the ICO have confirmed that they will not seek to "penalise organisations that we know need to prioritise other areas or adapt their usual approach during this extraordinary period."

Given the increase in the number of employees working from home, the ICO have asked businesses to properly consider the security measures they have in place, particularly for personal devices or communications equipment. The security measures for homeworking should be the same kind that would be used in normal circumstances.

Click [here](#) to read more.

WHITE COLLAR CRIME

There is a risk that financial crime and fraud may be perpetrated through the UK government's £330billion aid package and £2,500 per month grants for UK businesses. Furthermore, there are a growing number of instances where criminals have sought to exploit. The National Cyber Security Centre (NCSC) has published guidance for businesses on how to deal with suspicious emails and defend against malware. NCSC is also taking measures to automatically discover and remove malicious sites which serve phishing and malware.

Click [here](#) to read more.

The Coronavirus Bill introduces temporary measures to ensure the process for obtaining investigation warrants, including those conducted by the NCA, continues to function. Given the very real possibility that there will not be enough available Judicial Commissioners to sign such a warrant, the Investigatory Powers Commissioner will be able to directly appoint temporary Judicial Commissioners.

The Bill also extends the current maximum period for an urgent warrant, from three working days to five before it needs to be renewed. The Bill will also allow the Home Secretary to vary the time periods (for up to 12 working days) of an urgent warrant at the request of the Investigatory Powers Commissioner.

Click [here](#) to read more.

While many hearings will continue to be heard remotely using telephone, video and other technology, jury trials will be paused. Existing jury trials are to be brought to a conclusion and, if necessary, adjourned.

Click [here](#) to read more.

INSURANCE & FINANCIAL SERVICES

Financial Conduct Authority

The Financial Conduct Authority (FCA) has started to publish information setting out its expectations for firms during the COVID-19 crisis. The FCA's focus is on ensuring that consumers remain protected and markets continue to function well.

In addition, to publishing guidance for firms, the FCA is keen to maintain contact with consumers. It wants to ensure consumers are being protected and is providing regular advice on the steps that consumers can take to stay aware of any potential impact on their finances. The key areas of focus for the include insurance, mortgages and scams.

The FCA has also set out its expectations of insurers during this period. Given the likely need for many customers to adapt their behaviour due to the pandemic, the regulator wants insurers to be flexible and does not want to see customers' ability to claim impacted by circumstances over which they have little control. General insurance firms are expected to have plans in place to manage and mitigate the operational impact of COVID 19. This includes having a Senior Manager responsible for business continuity and for managing the impact of COVID 19 and where firms identify gaps left by staff absences that could cause customer harm, they should notify the FCA.

The FCA has also stressed that they are currently reviewing their work plans so firms can delay, or postpone, activity which is not critical to protecting customers and market integrity. Publications and other planned work, due before the end of June, have also been delayed including, among other items, the General Insurance Pricing Final report (and Consultation Paper on remedies), the Vulnerability Guidance and Research and the Consumer Credit Act review.

Click [here](#) to read more.

European Insurance and Occupational Pensions Authority and Prudential Regulation Authority

The European Insurance and Occupational Pensions Authority (EIOPA) recently issued a [statement](#) on actions to mitigate the impact of COVID-19 on the European insurance sector and the tools available to it and National Competent Authorities (NCAs) under the Solvency II regime, including the possibility of extending the recovery period for insurers in the event of non-compliance with the Solvency Capital Requirement (under Article 138 of the Solvency II Directive). EIOPA also issued [Recommendations](#) (20 March 2020) addressed to NCAs regarding delaying insurers' regulatory filings and public disclosures, with the aim of reducing the operational burden on insurers during the current situation. The Recommendations include delays to:

- filing of solo and group regulatory returns referring to, for annual reporting, year ends occurring on or after 31 December 2019 but before 1 April 2020 and, for quarterly reporting, Q12020-end occurring on or after 31 March 2020 but before 30 June 2020, and
- publication of the Solvency and Financial Condition Report (SFCR) referring to year-end occurring on or after 31 December 2019 but before 1 April 2020.

EIOPA considers the current situation to be a "major development" for the purposes of Article 54(1) of the Solvency II Directive, which means that insurers should publish appropriate information on the nature and effects of COVID-19 for the SFCR referring to year-ends occurring on or after 31 December 2019.

NCA's have started to respond to EIOPA's Recommendations, including the UK's Prudential Regulation Authority (PRA), which issued a [Statement](#) on 23 March 2020 setting out its approach to regulatory reporting for UK insurers in response to COVID-19.

Lloyd's

In an effort to understand the type and scale of potential losses facing the Lloyd's insurance market as a result of COVID-19, Lloyd's has requested that managing agents of syndicates complete a return providing information on their potential exposures and operational resilience.

PROFESSIONAL PRACTICES

Until recently, there is a notable lack of detailed COVID-19 guidance from the Solicitors Regulatory Authority (SRA), particularly as the courts remain open. However, the SRA website now hosts a COVID-19 “Common Queries” page and has a link to the Law Society’s very comprehensive advice. The SRA restates the normal rules around the absence of a COLP, COFA and MRLO, in that backup plans should already be in place for a loss of key role holder and, if this is likely to be for an extended period, the SRA should be informed.

Click [here](#) to read more.

MONEY LAUNDERING

Given the increase in remote working, and the increase in attempted fraud, businesses subject to the Money Laundering Regulations will need to take particular care that their anti-money laundering procedures, and in particular for customer on-boarding, are sufficient to meet the increased risk. This has been flagged as a particular risk area by money laundering regulators such as the SRA (click [here](#)) and the ICAEW (click [here](#)).

CORPORATE REPORTING

In a joint statement by the Financial Conduct Authority (FCA), Financial Reporting Council (FRC) and Prudential Regulation Authority (PRA), a series of measures have been announced to ensure information continues to flow to investors and support the continued functioning of the UK’s capital markets.

These measures include allowing listed companies an extra two months to publish their audited annual financial reports. The FRC has prepared guidance for companies and their auditors preparing financial statements during this period. The PRA has released guidance on the approach that should be taken by banks, building societies and PRA-designated investment firms in assessing expected loss provisions under IFRS9.

Listed companies will, however, still need to be mindful of their general obligations to report developments to the market promptly, although the FCA has said that it recognises that the pandemic may cause some delays.

Click [here](#) to read more.

KEY CONTACTS

For further information on any regulatory matter, please contact our team below:

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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.
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