



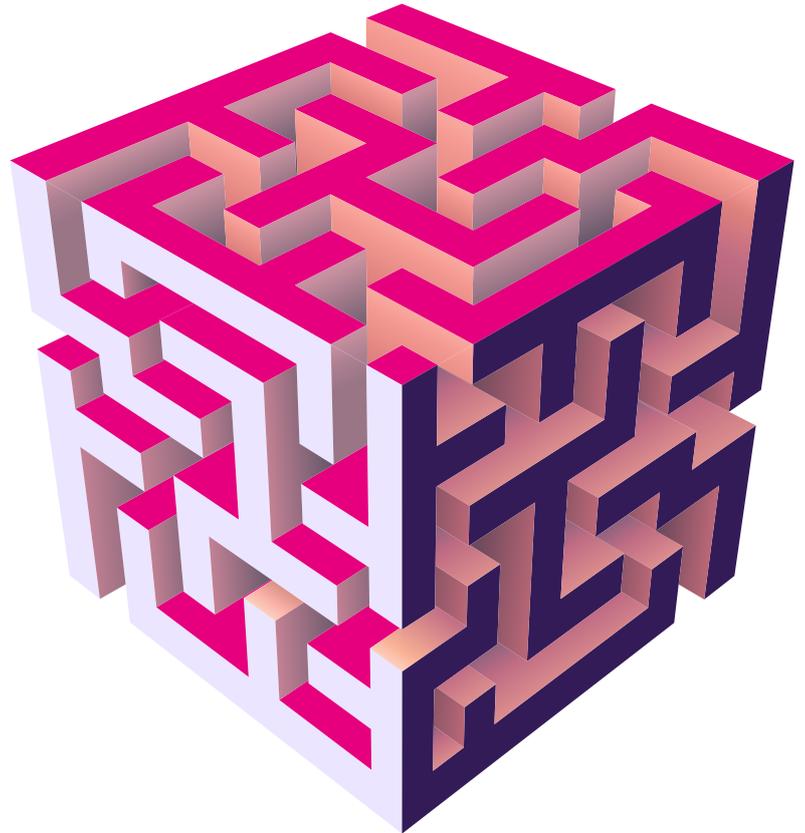
Regulatory update

June 2020

Welcome to the June edition of our monthly **Regulatory update**, which pulls together recent developments from across the UK's regulators – to help you navigate the regulatory maze.

Now that we have all adapted to the 'new normal' and the impact of the COVID-19 crisis, so to have the UK's regulators. The FCA, CMA and ICO have published their annual business plans and priorities taking the implications of the pandemic into account. The ICO has published guidance on use of video technology which has become the backbone of corporate communication. While HMRC has introduced temporary changes to customs authorisations.

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 or have any suggestions for areas you would like to see in future updates.



A handwritten signature in black ink, appearing to read 'Gavin Reese'.

Gavin Reese
Partner, Head of Regulatory

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GOVERNANCE AND CORPORATE CRIME

by Sam Tate and Davina Given

COVID-19: Modern slavery reporting

The Government has published guidance regarding modern slavery reporting during the COVID-19 pandemic. Businesses which are required by law to publish an annual modern slavery statement must continue to do so despite the current circumstances, and must set out the steps they have taken to identify and address their modern slavery risks. Businesses must also consider how fluctuations in demand may increase risks of labour exploitation.

Due to challenges presented by COVID-19, some businesses may be unable to publish their statement within the required

timeframe. Businesses may delay publication of their statements by up to 6 months without penalty. Businesses should explicitly state the reason for the delay, in order to avoid being penalised.

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

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Temporary removal of personal liability for wrongful trading

The government has introduced the Corporate Insolvency and Governance Bill in Parliament, which will put in place a series of measures. This includes temporarily removing the threat of personal liability for wrongful trading from directors trying to keep their companies afloat through the emergency.

This will be for any period of trading between 1 March to 30 June. Directors can be assured that they can use their best endeavours to trade through during the coronavirus period without the threat of personal liability for wrongful trading should the company ultimately become insolvent. However, all the other checks and duties on directors remain in place.

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

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TAX

by Adam Craggs

Temporary changes to customs authorisations during the coronavirus outbreak

HMRC has published guidance regarding temporary changes to customs policy authorisations during the coronavirus outbreak.

Border Force, or a trader's supervising HMRC office, can grant permission to temporarily vary the conditions of an authorisation should a trader find that, due to COVID-19, they are no longer able to comply with the conditions of an authorisation.

Conditions that may be varied include the following:

- changes to site opening hours
- how to process goods held in temporary storage for over 90 days, and

- the specific areas within an approved location in which customs controls must be conducted.

Applications will be considered on a case by case basis and can be made by emailing the supervising HMRC office with the subject heading: "COVID-19 customs easement request".

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

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Covid-19 and corporate tax residence

HMRC has published updated guidance on both (1) company residence for tax purposes, and (2) risk of creating a UK permanent establishment (PE) in each case in light of the Covid-19 pandemic.

On company residence HMRC state they are "very sympathetic" to the significant disruption caused by Covid-19 to the location of directors, employees and other individuals. Whilst HMRC express the view that existing legislation and guidance provide flexibility to deal with issues raised by Covid-19 the new guidance helpfully confirms HMRC's view that occasional UK board meetings, or participation in such meetings from the UK, would not necessarily result in the central management and control (CMC) of a non-UK company becoming located in the UK. The new guidance also (in the specific context of the current health crisis) points out that even if CMC were to become located in the UK, the 'tie-breaker' article of any applicable double tax treaty may well have the effect that the company remains non-UK resident.

On UK permanent establishment risk, the new HMRC guidance also adds that (1) whether contracts are "habitually" concluded in the UK will remain a question of fact and degree, and (2) for a PE to arise in the UK as a result of a non-UK company having a fixed place of business here would require that place of business to have a degree of permanence (with, again and in each case, existing legislation and guidance being deemed by HMRC as providing sufficient flexibility to deal with the problems posed by the Covid-19 pandemic in this area).

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

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HEALTH, SAFETY AND ENVIRONMENTAL

by Gavin Reese

Guidance launched on the safe return of employees to the workplace

Following Prime Minister Boris Johnson's announcement on the limited easing of lockdown restrictions, the government published guidance documents to assist with the process of returning to work.

Subsequently, eight sector specific documents have been published. Whilst there are certain nuances between each sector, much of what is said applies across them all:

- COVID-19 risk assessment: Businesses should have risk assessments, that is not new. However, to reflect the COVID-19 situation, if this has not already been done, these should be revised to identify risks to staff and others of contracting and/or spreading the disease and methods by which the risk can be reduced to the lowest reasonably practicable level.
- Communication: Consultation with staff (and unions) should continue as the situation develops. Configuration of a workplace

may be adapted to include appropriate signage to remind staff and others of measures being taken, and/or other markings to assist social distancing. The guidance recommends display of a notice confirming five steps taken towards compliance.

- Implementation: The risk of contracting or spreading of infection is controllable in several ways, but essentially, they relate to avoiding or limiting personal contact and/or minimising infection risk where people are working in proximity to each other.

Spot checks on businesses are likely to be carried out. While the HSE will take a proportionate approach, it will issue enforcement notices if appropriate standards are not maintained.

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

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HSE inspections to recommence on high-risk industries

Proactive inspections of high-risk industries, including construction sites, are set to be resumed by the HSE to help ensure building is carried out safely and in line with public health guidance on coronavirus.

This comes after Prime Minister Boris Johnson promised that the HSE would carry out 'spot inspections' of workplaces to support the

safe return to work as the UK enters a new phase of lockdown. The regulator has received a £14m funding boost from the Government.

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

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Company fined £1.1m after worker injured in fall from height

A London-based construction company has been fined after a worker was seriously injured when he fell from height.

An engineer was testing a sprinkler system for leaks when the ladder slipped away from him and he fell three metres. The worker suffered severe blood loss and sustained a fractured vertebrae and suffered soft tissue damage.

An HSE investigation found that reasonably practicable measures had not been taken to prevent a fall, and the principal contractor had failed to discharge its health & safety duties.

The company was fined £1.1 million and ordered to pay costs of £68,116.18.

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

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DATA PROTECTION AND PRIVACY

by Jon Bartley

Information Commissioner establishes new priorities for data protection

Elizabeth Denham, the Information Commissioner, has set out the office's new priorities for UK data protection, during the COVID-19 pandemic and beyond. The ICO has been closely monitoring the current trends, including recent complaints and requests for support, to assess where and how it should narrow its focus to protect public interest, while supporting economic growth.

Over the coming months, the ICO's work will be aligned to the following priorities:

- Protecting vulnerable citizens
- Supporting economic growth and digitalisation, including for small businesses

- Shaping proportionate surveillance
- Enabling good practice in AI
- Enabling transparency
- Maintaining business continuity

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

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ICO publishes its COVID-19 regulatory approach

The ICO has released a document outlining its regulatory approach, and what can be expected of the office in the coming months. It acknowledges its responsibility to take into account the exceptional circumstances and to be flexible in its approach.

Information Commissioner Elizabeth Denham states that the ICO understands the financial pressures many organisations are currently facing and will utilise as much flexibility as the law allows.

She goes on to state: "We must reflect these exceptional times. We will continue to recognise the continuing importance of privacy protections, and the value of transparency provided by freedom of information."

Click [here](#) to read the full document.

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Guidance on the use of video conferencing technology

Ian Hulme, the ICO's Director of Assurance, has provided advice on how to safely utilise the latest video conferencing technology. The guidance provides practical tips for rolling out this technology during the COVID-19 crisis.

Businesses are increasingly turning to video technology as a means of holding meetings and communicating with colleagues and clients. Users can minimise risks associated with this technology by:

- Checking the privacy and security settings
- Restricting access to meetings by using passwords
- Ensuring all software is up to date
- Remaining vigilant to the risks of phishing

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

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COMPETITION

by Lambros Kilaniotis

The CMA's Annual Plan

The CMA has now published its 2020/2021 [Plan](#). In addition to striving “to keep pace with fast-moving global events that are likely to impact markets and consumers in the UK and globally, not least the rapidly escalating concerns around the spread of Coronavirus”, its strategic objectives are:

- protecting consumers, including those in vulnerable circumstances in particular;
- improving trust in markets;
- tackling concerns in digital markets;
- enhancing productivity and economic growth;
- climate change - supporting the transition to a low carbon economy; and

- taking on new responsibilities as a result of the UK leaving the EU.

The CMA further aims to:

- be an increasingly visible and robust champion for competition and consumers;
- improve how it chooses which problems to take on, and do more to explain these decisions, making its case selection more transparent; and also
- be ready to intervene “more actively, decisively and speedily” than in the past.

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Change of priorities for the CMA and other competition regulators

Inevitably, dealing with developments arising from the coronavirus pandemic has become the major focus for the Competition and Markets Authority (“the CMA”) and the European Commission, as well as other competition regulators. The CMA has also made clear its intention to continue to progress its cases, make decisions and meet its statutory deadlines (the latter particularly impact on merger investigations).

The CMA has acknowledged that concerns about competition law enforcement could impede co-operation between competitors which is necessary to deal with the current crisis and to ensure security of supplies of essential products and services. The message from the CMA (with similar approaches being taken by other competition regulators) is that it will not take action against businesses for co-ordinating their activities, provided that this co-operation is “undertaken solely to address concerns arising from the current crisis and does not go further or last longer than what is necessary”. At the same time, the message is also clear that the CMA (and others) will not tolerate any harmful behaviour exploiting the crisis.

Recent developments include:

- the CMA launching a task force to scrutinise market developments in order to identify and take action against harmful sales and pricing practices, following warnings against exploiting the crisis;
- the CMA writing an [open letter](#) to the pharmaceutical and food and drink industries about profiteering and encouraging businesses to report price hikes implemented by their suppliers;
- the UK Government introducing specific, temporary legislative exemptions from the application of the Chapter I prohibition on anti-competitive agreements and arrangements for certain co-operation within the [groceries](#), healthcare services in [England](#) and also in [Wales](#), [Solent ferry services](#) and the [dairy](#) sectors (the European Commission has similarly [announced](#) an intention to grant a derogation from certain EU competition law rules for the milk, flowers and potatoes sectors);
- the CMA issuing [guidance](#) for other arrangements, which do not fall within these specific exemptions, but which are necessary in order to deal with the current situation;
- the FCA and PSR [supporting](#) the CMA’s guidance and confirming a consistent approach to their own enforcement activity within the financial services sector;
- the European Competition Network (i.e. the European Commission, the EFTA Surveillance Authority and Member States) issuing a [joint statement](#) confirming that “they will not actively intervene against necessary and temporary measures put in place in order to avoid a shortage of supply”;
- the European Commission publishing guidance for businesses conducting their competition law self-assessment of potential co-operation during the pandemic (with the possibility of the European Commission issuing comfort letters in exceptional circumstances);
- in relation to its merger work, the CMA publishing guidance on its approach to merger assessment during the pandemic covering both procedural and substantive issues (including the potential difficulties in market testing and also the likely increase

- in the use of the failing firm defence by notifying parties); and
- the European Commission confirming its [special measures](#) for merger work during the pandemic.

Click [here](#) for further details of these developments and click [here](#) for more details of the CMA's guidance.

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Competition investigations: more fines and provisional infringement findings

Supply of nortriptyline

The CMA has [announced](#) infringement decisions in relation to the supply of the antidepressant, nortriptyline, and the imposition of fines totalling over £3.4 million. In addition, one of the participants and the new owner of the relevant business have agreed to make a payment of £1 million directly to the NHS; this is the second time such a payment has been secured by the CMA. The two competition law infringements related to: (i) market sharing, where two competitors agreed to each supply a different dosage of the drug to a large pharmaceutical wholesaler, whilst also colluding on fixing prices and quantities; and (ii) the exchange of commercially sensitive information amongst three entities, including prices, volumes and one party's plans to enter the market, in order to keep prices high when the cost of the drug was falling. One individual is now disqualified from acting as a director for seven years, having signed a legally binding undertaking rather than the CMA seeking a disqualification order in the High Court. The CMA has not ruled out the possibility of further director disqualifications.

Musical instruments

The CMA has announced that it has [issued](#) two Statements of Objections (the "SO") against Roland (UK) Limited and Korg UK Limited, suppliers of electronic drum kits and synthesisers/DJ production tools respectively. It has provisionally found that these businesses have infringed competition law by requiring their retailers to sell their products online at, or above, a minimum price, i.e. Resale Price Maintenance. The CMA noted the use of monitoring software by these companies in order to track online sales prices. Previously, the CMA has fined Casio and Fender for illegal RPM in relation to digital pianos/keyboards and guitars respectively. The CMA has adopted the same approach in terms of addressing the SO to the supplier and not the retailers, who have agreed to adhere to this pricing policy.

Merger Investigations

The CMA has continued to be very active and to meet its statutory deadlines. In [announcing](#) its decision to clear the completed acquisition of Just Eat plc by Takeaway.com BV, the CMA emphasised that it was "trying to complete investigations

efficiently at this time, wherever possible, to provide businesses with certainty" and that it had published its decision some 26 days before the statutory deadline. The CMA was satisfied that there was no material likelihood that, absent the merger, Takeaway.com, which had exited the UK in 2016, would have re-entered the market for the provision of online food platforms.

In another merger investigation in this market, the pandemic has had a more significant impact on the CMA's substantive assessment. The CMA has been conducting an in-depth Phase II investigation into Amazon's proposed substantial investment and acquisition of certain rights and a minority shareholding in Deliveroo and has [announced](#) its provisional decision to clear this investment. At Phase I, the CMA had considered that, absent the investment, there was a material likelihood that Amazon would have re-entered the online restaurant food market in the UK, which would have "significantly increased" competition (Amazon's own internal documents had revealed a "strong, continued interest in this sector") and also that the transaction would have had a damaging effect on competition in the emerging market for online convenience grocery delivery.

At a later stage of the Phase II, Deliveroo had submitted to the CMA, that absent Amazon's investment, it would fail financially and, thus, exit the market due to the impact of the coronavirus pandemic. Deliveroo's financial advisors provided evidence to support this submission. The CMA duly considered this "failing firm defence" and has provisionally concluded that, without access to "significant additional funding", Deliveroo's exit from the market would be "inevitable" and that, as a result of the pandemic, only Amazon was willing and able to provide this funding. The CMA's view is that "the imminent exit of Deliveroo would be worse for competition than allowing the Amazon investment to proceed", but some third parties have disagreed strongly with these provisional findings. The CMA has until 11 June 2020 to issue its final decision.

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INSURANCE AND FINANCIAL SERVICES

by Matthew Griffith and Jonathan Cary

FCA sets out its 2020/21 business priorities

The Financial Conduct Authority (FCA) has set out its priorities for the year ahead, specifically with regards to COVID-19 and the challenges presented by the pandemic. The FCA will focus on ensuring financial services businesses give people the support needed during this time by:

- Protecting the most vulnerable - ensuring they can access the help they need
- Tackling scams
- Mitigating firm failures
- Ensuring that markets remain orderly

The FCA is working alongside HM Treasury and the Bank of England to make interventions at an unprecedented speed to protect firms, consumers and the market. An important step has been ensuring customers retain access to essential banking services during this time.

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

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Programme launched to help financial firms with regulatory change planning

The Financial Services Regulatory Initiatives Forum is launching a new initiative to assist firms in preparing for upcoming regulatory work. The [Regulatory Initiatives Grid](#) has been brought forward by the Forum in a bid to help financial firms impacted by the COVID-19 pandemic.

The Forum consists of the Bank of England, Prudential Regulation Authority, Financial Conduct Authority, Payment Systems Regulator and Competition and Markets Authority. HM Treasury attends as an observer member.

The Grid provides a timetable for major programmes and initiatives, such as the transition from LIBOR and introduction of legislation to prepare for the final stages of Brexit. It is hoped that providing firms with adequate notice of such initiatives will allow sufficient time for careful planning and preparation.

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

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FCA releases statement on business interruption insurance cover

The FCA has announced its intention to obtain a court declaration to resolve contractual uncertainty in business interruption (BI) insurance cover. It has taken this action in the public interest in order to advance consumer protection and market integrity objectives.

The uncertainty stems from a lack of clarity and guidance for some customers making business interruption claims, particularly the basis on which firms make decisions in relation to claims. The FCA

believes the circumstances of the current COVID-19 emergency mean that any uncertainty or ambiguity must be resolved as soon as possible.

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

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PROFESSIONAL PRACTICES

by Rob Morris and Graham Reid

FRC calls for use of early warning systems of poor-quality audits

A study conducted by the Financial Reporting Council (FRC) found that tools for identifying poor-quality audits should be utilised more effectively, so corrective action can be taken sooner. The study looked at Audit Quality Indicators (AQIs), tools which help firms detect audits at risk of not meeting necessary standards.

The FRC is encouraged that these indicators are being utilised by audit firms, however has found that most monitoring of AQIs

occurs after audits are completed, instead of before or during the process. Firms are urged to focus on forward-looking AQIs to ensure early intervention and prevention of deficiencies.

Access the FRC's report [here](#).

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SRA issues cyber crime warning for law firms during lockdown

The Solicitors Regulation Authority (SRA) is urging law firms to be extra vigilant due to the ongoing lockdown due to COVID-19. The warning comes amid increased reports of cyber attacks against firms and businesses whose staff are working remotely.

There are currently unprecedented numbers of law firm staff working remotely, potentially for many more months. Cyber criminals will take advantage of comprised security standards

caused by increased remote working, strained IT systems and lower levels of vigilance people may have when working from home.

The SRA has published information for firms advising on key cyber security issues during lockdown. Access this guidance [here](#).

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BSB publishes key priorities for 2020/21

The Bar Standards Board (BSB) has released its annual Business Plan for 2020/21, setting out its key priorities for the year. The document has been amended having regard to the COVID-19 pandemic and may be subject to further review over the coming months.

The BSB will continue its day-to-day work regulating barristers in England and Wales, overseeing education and training requirements and monitoring the standards of conduct expected. It will also:

- Conduct a review of the BSB Handbook to ensure it remains fit for purpose
- Review the regulatory approach to barristers' conduct

- Enable students affected by the cancellation of the April 2020 sitting of the Bar Professional Training Course examinations have the chance to gain the qualifications as soon as practicable.

Click [here](#) to read more about the strategy.

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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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