

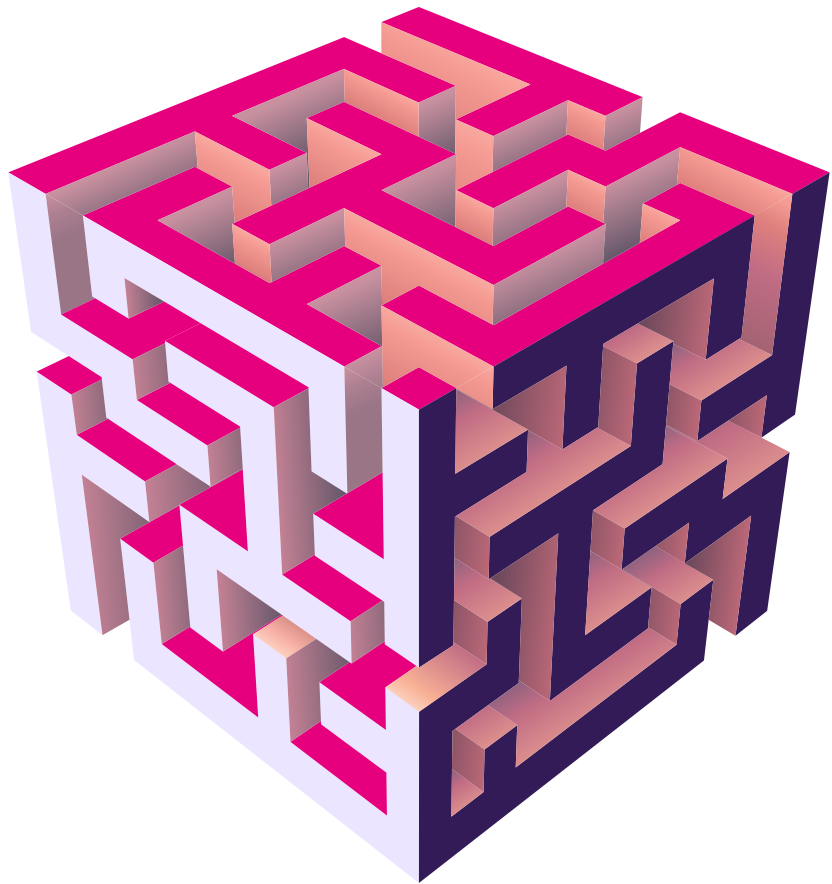
Regulatory update

December 2021

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

Following a month where the world's leaders came together in Glasgow to discuss forging a global response to the climate emergency, the regulators have been making strides too. The Environment Agency has published a report on how regulation is helping protect against climate change, and the Joint Forum on Actuarial Regulation formed a taskforce to encourage greater actuarial engagement on climate change. While in other news, a new regulator for construction products has been introduced, and the much-anticipated 'Natasha's Law' regarding food allergen labelling has come into force.

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'. The signature is fluid and cursive, with a long, sweeping underline that extends to the left.

Gavin Reese
Partner, Head of Regulatory

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WHITE COLLAR CRIME

Sam Tate

Petrofac will pay a record £77 million for bribery offences

After admitting to seven counts of failing to prevent executives from paying £32 million in bribes in relation to the awarding of more than £2.6 billion in contracts to work on oil and gas projects in Iraq, Saudi Arabia, and the United Arab Emirates, Petrofac Limited has been fined £77 million.

Although firms that struck deferred prosecution deals with the Serious Fraud Office (SFO) to avoid conviction have paid bigger sums, this penalty is the highest for a conviction under the Bribery Act 2010.

Southwark Crown Court imposed the penalty, which includes a £47.2 million fine and £22.8 million confiscation order for bribery offences committed between 2011 and 2017, as well as £7 million for the SFO's costs.

Click [here](#) to read more.

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Briefing to Parliament on corporate duty to prevent negative human rights and environmental impacts

The UK's Corporate Justice Coalition (CJC), which includes Anti-Slavery International, Friends of the Earth, and the Business Human Rights Resource Centre, has recently recommended the implementation of a potentially far-reaching corporate "failure to prevent" regime aimed at negative human rights and environmental impacts. Similar EU proposals relating to the

diligence of 'value chains' for ESG shortcomings and misconduct would be followed by such a framework.

Click [here](#) to read more.

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Credit Suisse has been fined by the FCA for serious financial crime due diligence failings

Credit Suisse has been fined £147 million by the Financial Conduct Authority (FCA) for serious financial crime due diligence failures connected to loans worth over \$1.3 billion that the bank arranged for the Republic of Mozambique.

Corruption tainted these loans, as well as a bond exchange. Credit Suisse with the FCA have also agreed to cancel the Republic

of Mozambique's debt of US\$200 million as a result of the tainted loans.

Click [here](#) to read more.

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NECC warn businesses and house buyers of payment diversion fraud

A campaign to raise awareness of payment diversion fraud (PDF) has been launched by the National Economic Crime Centre (NECC). The campaign will work with Federation of Small Businesses and the British Chambers of Commerce to promote advice to businesses, and with the Law Society to highlight the risks to conveyancing.

PDF, also known as Business Email Compromise or Mandate Fraud, is where criminals impersonate others, create or change invoices, and then reroute funds to bank accounts under their own control. This is a risk for both businesses and individuals.

Unlike some indiscriminate scams, PDF involves criminals intentionally targeting a single person. As a result, individual losses are often far larger than in other types of fraud.

Click [here](#) to read more.

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TAX

Adam Craggs

HMRC issues 'nudge' letters for remittance basis charge

HMRC has recently issued a new batch of 'nudge' letters to individuals with a non-UK domiciled status who it believes may not have declared the correct income/gains on their tax returns, or failed to pay the remittance basis charge.

The individuals being targeted are those that HMRC believes became liable to pay the remittance basis charge in 2019/20. The remittance basis is an alternative tax treatment available to individuals resident, but not domiciled, in the UK, who have foreign income and gains.

Records that indicate individuals who have claimed to be non-UK domiciled but have lived in the UK for seven out of nine years or twelve out of fourteen years prior to the tax year starting 6 April 2019, are likely to receive a nudge letter. These individuals will be asked to amend their 2019/20 tax return, or explain why no amendment is required. Whilst there is no legal obligation to respond, failure to do so may lead to an HMRC enquiry and appropriate expert advice should therefore be sought.

Click [here](#) to read more.

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HMRC updates its guidance on enabler penalties

HMRC has updated its guidance on penalties under the enablers of defeated abusive tax avoidance schemes regime to incorporate, with only minor changes, the part of the draft technical guidance published on the Spring 2021 Tax Day (23 March 2021) that dealt with the changes to enabler penalties made by the Finance Act 2021.

HMRC will be able to use its information gathering powers contained in Schedule 36, Finance Act 2008, to check penalty liabilities for tax arrangements before it is established that such arrangements are ineffective. Information notices will only be

issued where HMRC considers the arrangements may be abusive tax arrangements and has no reason to suspect the recipient has enabled those arrangements. HMRC will have the power to contact and investigate other potential enablers. The restriction on requiring tax advisers to produce documents or information in response to information notices will also be removed for enquiries into enablers.

Click [here](#) to read more.

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HMRC publishes guidance on joint and several liability notices for directors and other individuals

HMRC has published guidance on Schedule 13, the Finance Act 2020, which enables it to issue joint and several liability notices (JSL notices) to directors, shadow directors and certain other individuals who are involved in tax avoidance, tax evasion or phoenixism.

HMRC may issue JSL notices to individuals for facilitating tax avoidance and tax evasion where there is a serious possibility of a company entering an insolvency procedure (for example, HMRC has good reason to believe an insolvency event is likely and there is clear evidence for this) and a serious possibility of a penalty or tax liability going partially or entirely unpaid (for example, directors stripping a company of its assets, resulting in inadequate assets to pay a penalty).

HMRC may issue JSL notices for phoenixism where an individual has a relevant connection (RC) to the new company which carries on similar or the same trade as the earlier company. Where the character or appearance of the new business resembles the previous business, this will be an indication of similarity. Individuals acting in good faith with no material influence over the actions of the company will not be issued a notice despite an RC. Turnaround specialists are likely to have a RC but will not be issued with a JSL notice where they are genuinely trying to save the company. Companies in genuine members' voluntary liquidation will also not be given a JSL notice if outstanding tax liabilities are settled within one year of the winding up process commencing.

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HEALTH, SAFETY & ENVIRONMENTAL

Gavin Reese

HSE issues safety notice on use of wheeled loading shovels following fatalities

The Health and Safety Executive (HSE) has issued a safety notice following nine fatal vehicle-pedestrian collisions in the past four years involving wheeled loading shovels.

Six of the incidents were in the waste and recycling sector while the remainder involved wood chip.

The HSE has highlighted poor visibility concerns caused by the bucket and load, the back engine, and the cab pillars, all of which considerably reduce the drivers' ability to see pedestrians and, to a lesser extent, other vehicles. The use of bigger capacity buckets, which has become standard practice when moving low-density material, drastically reduces forward visibility.

Regulation 4 of The Provision and Use of Work Equipment Regulations 1998 (PUWER) requires machinery to be suitable for the purpose it is used for. This also applies if the equipment is adapted, e.g. by fitting a larger bucket.

The purpose of the safety notice is to remind dutyholders who operate these machines of the importance of doing a thorough risk assessment and actively managing the risk of vehicle-pedestrian incidents.

Click [here](#) to read more.

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HSE crackdown on dust on site

During a month-long inspection exercise that began on 4 October 2021, HSE inspectors targeted construction enterprises across the UK to ensure that their health standards are up to scratch.

This year's inspections focused on respiratory hazards and occupational lung illness, with inspectors looking at the controls in place to protect employees' lungs from construction dust, such as silica, asbestos, and wood dust. This is part of the HSE's long-term health and work strategy to promote construction worker health.

Inspectors searched for proof that employers and employees are aware of the risks, that they are planning their work, and that they are implementing the appropriate controls. The HSE will utilise enforcement whenever required to ensure that people are safe.

Click [here](#) to read more.

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Environment Agency report shows that regulation is helping protect against climate change

The high rate of regulatory performance in England is helping to mitigate the effects of climate change, but more must be done to ensure a healthy environment, according to an Environment Agency (EA) report.

The information is contained in the EA's Regulating for People, Environment, and Growth (RPEG) annual report, which reveals positive trends in environmental compliance, pollution events, crime, and emissions.

Based on a five-year moving average, 97% of industrial sites inspected by the Environment Agency comply with environmental standards, protecting nature and communities in the face of rising climate change concerns.

Since 2010, greenhouse gas emissions from locations subject to the Environmental Permitting Regulations have fallen by 50%. During this time, methane emissions from regulated sites fell by 45%.

The EA also achieved a compliance rate of over 98% in the five major energy efficiency and emissions trading systems it oversees. These cover over 40% of the UK's carbon emissions from industry, business and the public sector.

Click [here](#) to read more.

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PRODUCT REGULATION

Gavin Reese

Factsheet published on the role of the National Regulator for Construction Products

The Department for Levelling Up, Housing and Communities has published a new Building Safety Bill Factsheet on the National Regulator for Construction Products. The Regulator is being established to oversee a more effective construction products regulatory regime and to lead and co-ordinate market surveillance and enforcement.

The Factsheet provides the background on the Regulators role, what it will do and how it will do this.

The Regulator will bring leadership to the regulatory regime, undertaking proportionate, consistent and effective action. It will:

- provide vital market surveillance and oversight, including maintaining a national complaints system and supporting local Trading Standards so that safety concerns can be spotted and dealt with quickly

- lead and co-ordinate the enforcement of the strengthened construction product regulations, including removing products that pose a safety risk from the market
- provide advice and support to the industry to improve compliance as well as providing technical advice to the government
- carry out or commission its own product-testing to investigate non-compliance
- establish a robust and coherent approach with the Building Safety Regulator and Trading Standards to drive change across the sector

Click [here](#) to read more.

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New allergen labelling law came into effect in October

The Food Standards Agency welcomed the new food allergen law which came into force on 1 October 2021.

The regulations, also known as Natasha's Law, requires that all prepacked food for direct sale be labelled with a complete list of ingredients, with the 14 significant allergies highlighted.

Local authorities are responsible for enforcing the law and are instructed to take a reasonable and risk-based approach to breaches of the law, unless circumstances necessitate immediate action. Minor errors should be addressed through further instruction and support with the changes, according to the FSA,

especially in the early months.

The FSA has been assisting businesses in their preparation for the changes, with tools to help them identify which products are affected by the new rules, labelling guidelines, and sector-specific information available on their online [PPDS Hub](#).

Click [here](#) to read more.

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The FSA's Chief Scientific Adviser has called for urgent progress on eco-labelling for food

In a recent blog post, Professor Robin May from the Food Standards Agency (FSA) outlines the benefits of eco-labelling in the quest for a more sustainable food system but emphasises the need for a uniform approach to avoid consumer confusion.

There are no currently agreed international standards for eco-labelling or what data should be measured. Professor May suggests that issue urgently has to be addressed by partnership between business, academia, and government in order to put the food system on a sustainable path.

Consumer attitudes toward sustainable food production are evolving, according to recent research from the FSA, which supports the agency's goal of achieving unified eco-labelling and developing a fully sustainable food system.

Click [here](#) to read more.

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MHRA publishes guidance to support bringing e-cigarettes to market as licensed therapies

Health leaders, clinicians, and tobacco specialists have welcomed the Medicines and Healthcare Products Regulatory Agency's (MHRA) amended guidance for e-cigarette companies seeking a medicinal licence for their products.

The updated guidance covers how to licence electronic cigarettes and other inhaled nicotine-containing products (NCPs) as medicines in the UK.

The key changes concern recommendations on dose uniformity quality standards, non-clinical toxicity data requirements, and clinical pharmacokinetic study design. The modifications also consider the post-Brexit regulatory environment.

Click [here](#) to read more.

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DATA & PRIVACY

Jon Bartley

The Supreme Court hands down judgment in Lloyd v Google

The Supreme Court has overturned the Court of Appeal's decision in Lloyd v Google and restored the original order made by the High Court, refusing the claimant's application for permission to serve proceedings on Google outside the jurisdiction.

The key points arising out of the judgment are as follows:

- In order to recover compensation against a data controller for breach of data protection legislation, it is not enough to merely prove a breach by a data controller of its statutory duty – it is necessary for a data subject to prove that they suffered “damage” or “distress”.
- A representative action remains an appropriate mechanism for seeking a declaration that each member of class has suffered damage and could also be used where each member of the class has suffered the same damage.

- The position asserted by the claimant in each individual claim was not sufficient to surmount the threshold of seriousness to bring a claim.

The judgment has firmly rejected the basis of this class action and many others that were waiting in the wings (some of which had been stayed pending handing down of the judgment). It is likely to have a very significant impact on UK industry across many different sectors that handle customer data, as well as the UK legal market, including claimant firms, litigation funders and ATE insurers.

Click [here](#) to read more.

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DCMS gathers feedback on proposed reforms to UK data protection laws

The UK government's Department for Culture, Media and Sport (DCMS) has conducted a public consultation on its proposal for reforms to UK data protection law following Brexit, entitled “Data: a new direction”.

DCMS intends for the proposed reforms to create a “pro-growth and innovation-friendly” data protection regime. Data protection laws in the UK are presently based primarily around the UK GDPR (the EU GDPR as incorporated into retained EU law). The UK's adequacy decision from the European Commission, which permits the free flow of personal data from the EEA to the UK without the use of additional safeguards, is primarily based on this continued alignment between EU and UK data protection laws.

The consultation proposes a number of areas in which the UK may consider diverging in future from its present data protection regime, including:

- the removal of certain accountability obligations that it may be challenging for smaller and less well-resourced businesses

to comply with, such as the appointment of a Data Protection Officer and maintaining an inventory of data processing;

- the introduction of specific provisions around personal data processing in the context of scientific research and the development of AI systems; and
- adopting a more flexible approach to adequacy decisions granted to third countries by the UK, aiming to facilitate international data flows to and from the UK following Brexit.

The proposals attracted responses from a wide range of commercial, legal and technical organisations in the UK prior to the 19 November 2021 deadline. These include the UK data protection regulator, the Information Commissioner's Office, whose response is published online [here](#). DCMS is currently compiling and reviewing public feedback to the consultation.

Click [here](#) to read more.

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ADVERTISING

Oliver Bray

ASA collaborates with online social media platforms to reveal the truth on alcohol ad targeting in social media

In a world first, the Advertising Standards Authority (ASA) collaborated with five social media platforms popular with children to review alcohol brands' ad targeting data in order to better understand how alcohol marketers are using the ad targeting tools at their disposal to target their ads away from children who may be falsely registered or incorrectly inferred to be over 18 on social media.

While the ASA has highlighted some good practise, the study found that alcohol companies should do more to fine-tune their

targeting to reduce the possibility of children who have been falsely registered or wrongly assumed to be beyond the age of 18 viewing their advertisements.

The ASA will bring the report's conclusions to the attention of the alcohol industry.

Click [here](#) to read more.

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ASA welcomes call for evidence on body image

The Committee of Advertising Practice (CAP) and the Broadcast Committee of Advertising Practice (BCAP) are launching an open call for evidence to help the ASA regulate advertising that may cause harm to people's body image.

A call for views seeks an up-to-date understanding of the current evidence base surrounding potential body image related harms from advertising and the potential detrimental impact of those harms on consumers in order to assist in the regulation of advertising that gives rise to potential harms relating to body image concerns.

The ASA welcomes the CAP and BCAP's Call for Evidence and looks forward to the results of their investigation in 2022. In the meanwhile, the ASA continue to review and respond to advertisements that may have a negative impact on body image.

The deadline for submitting evidence is Thursday 13 January 2022, at 5pm.

Click [here](#) to read more.

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PROFESSIONAL PRACTICES REGULATION

Graham Reid and Robert Morris

SRA releases new professional supervisors anti-money laundering report

The Solicitors Regulation Authority (SRA) has released its first professional supervisor report, which is a new requirement imposed on all supervisors by the Money Laundering Regulations, as well as guidance from the Office for Professional Body Anti-Money Laundering Supervision (OPBAS) and HM Treasury. The report summarises work done over the last 12 months to assist firms in ensuring that their processes are effective and followed correctly. The report includes actions taken against companies that have failed to meet their duties.

A total of 85 firm visits and 168 desk-based reviews were conducted. The lack of a sufficient risk assessment was the most common reason for non-compliance with anti-money laundering rules.

The SRA urges all firms and solicitors to take the steps needed to meet their obligations.

Click [here](#) to find out more.

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JFAR has set up climate taskforce to help actuaries

The executive of the Joint Forum on Actuarial Regulation (JFAR) has approved the formation of a taskforce to “investigate, report and publish a deep dive on the science of climate change”, which it hopes will lead to “greater actuarial engagement on climate change in all aspects of actuarial work”.

Established in 2013, JFAR includes the Financial Reporting Council, the Institute and Faculty of Actuaries, the Financial Conduct Authority, The Pensions Regulator, and the Prudential Regulation Authority.

It is anticipated that producing a report in an appropriate format on the specifics of the science of climate change should lead to greater actuarial engagement on climate change.

Publication of the report is planned for the second quarter of 2022.

Click [here](#) to read more.

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INSURANCE & FINANCIAL SERVICES REGULATION

Jonathon Cary and Matthew Griffith

UK Authorities publish fourth edition of Regulatory Initiatives Grid

The Financial Services Regulatory Initiatives Forum has published the fourth edition of the Regulatory Initiatives Grid.

The Grid attempts to give businesses a clear picture of forthcoming regulatory work. The first edition was published in April 2020.

New climate-related initiatives, such as the introduction of a Sustainable Finance Disclosure framework, Net Zero Transition Plans, and work on environmental, social, and governance (ESG) challenges in capital markets, are among the activities included in the Grid.

The Bank of England (including the Prudential Regulation Authority), Financial Conduct Authority, the Payment Systems Regulator, Competition and Markets Authority, Financial Reporting Council, the Pensions Regulator, and Information Commissioner's Office are all members of the Forum, with HM Treasury as an observer member.

Click [here](#) to read more.

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FCA CEO speech at COP26

FCA CEO Nikhil Rathi gave a speech at COP26 when he outlined the FCA's new positive change approach.

Building trust in ESG products, guaranteeing transparency throughout the value chain, and striving to enable a market-led transition to a more sustainable economy are all critical parts of this strategy. To assist this action, the FCA has created a new ESG division.

The FCA has also emphasised the significance of international cooperation on such matters, including its support for the International Sustainability Standards Board of the IFRS Foundation (the ISSB).

Click [here](#) to read more.

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The Governor of the Bank of England outlines their work on climate change

Andrew Bailey set out the work that the Bank of England is doing on climate change in a speech to COP26.

The Bank of England will step up its efforts to ensure that financial institutions are prepared for the effects of climate change on their operations and balance sheets.

This includes:

- ensuring firms identify and address climate related financial risks
- considering climate change when they make decisions on the economy
- using the power of disclosure to incentivise change

Click [here](#) to read more.

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CA finalises Prudential Rulebook for Investment Firms

The Financial Conduct Authority (FCA) has published the final rules from its first and second policy statements on the Investment Firms Prudential Regime (IFPR), which will come into force on 1 January 2022.

These final rules aim to streamline and simplify prudential requirements for solo-regulated UK firms authorised under the Markets in Financial Instruments Directive (MiFID).

The final rules are in the legal instruments – [FCA 2021/38](#) and [FCA 2021/39](#).

The IFPR will apply to the following:

- MiFID investment firms authorised and regulated by the FCA
- Collective Portfolio Management Investment Firms (CPMIs)
- regulated and unregulated holding companies of groups that contain either of the above

The FCA will publish a third policy statement by the end of 2021.

Click [here](#) to read more.

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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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