

CORONAVIRUS

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June 2, 2020

COVID-19 and UK enforcement authorities

Uncertainty is the new normal. UK criminal and regulatory enforcement authorities, like the rest of us, are adjusting to unprecedented levels of business disruption. This alert provides signposts to the guidance given by key authorities so far about immediate steps they are taking in response to the outbreak and the difficulties it causes. We will update this information with key developments as they happen.

We recognise that the current situation will bring many difficult and highly specific scenarios, many of which will not be covered by the guidance issued by authorities. We are ready to help businesses and individual decision-makers to work through these.

Attorneys

[Judith Seddon](#)
[Amanda N. Raad](#)
[Rosemarie Paul](#)
[Sean Seelinger](#)
[Paige Berges](#)
[Chris Stott](#)
[Matthew Burn](#)

[Competition and Markets Authority](#)

On 25 March, the Competition and Markets Authority (CMA) issued guidance on how it will enforce antitrust laws without impeding necessary cooperation between businesses in light of COVID-19. The guidance details under which circumstances the CMA will not take antitrust enforcement action and also gives practical examples for businesses.

The CMA has indicated that it will not take enforcement action in respect of temporary coordination between firms, provided such coordination is undertaken solely to address a critical issue arising from COVID-19 and:

- is appropriate and necessary in order to avoid a shortage, or ensure security, of supply;
- is clearly in the public interest;
- contributes to the benefit or wellbeing of consumers; and
- lasts no longer than is necessary to deal with these critical issues.

The guidance provides that this approach to enforcement priorities will be reflected with the CMA's interpretation of section 9 of the Competition Act 1998, which provides that coordination is exempt from competition law if sufficiently beneficial to the public.

That said, the CMA has emphasised that it will not give a 'free pass' to businesses and will not tolerate businesses exploiting the crisis as a 'cover' for non-essential collusion, foreclosure or excessive pricing. The CMA has made clear that the following will remain enforcement priorities:

- businesses exchanging with their competitors commercially sensitive information on future pricing or business strategies, where this is not necessary to meet the needs of the current situation;
- retailers excluding smaller rivals from any efforts to cooperate or collaborate in order to achieve security of supply, or denying rivals access to supplies or services;
- a business abusing its dominant position in a market (which might be a dominant position conferred by the particular circumstances of this crisis) to raise prices significantly above normal competitive level;

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- collusion between businesses that seeks to mitigate the commercial consequences of a fall in demand by artificially keeping prices high to the detriment of consumers; or
- coordination between businesses that is wider in scope than what is actually needed to address the crisis.

Taking this together, and in light of the UK government's recent statements against profiteering, the CMA will be particularly focused on price increases over the coming months, particularly those of pharmaceuticals and essentials.

Overall, the guidance indicates that antitrust enforcement action in the UK is very unlikely if it can be demonstrated that the behaviour in question is necessary to address an issue that relates to the COVID-19 crisis. It is therefore critical for businesses to ensure they meet the CMA's criteria prior to engaging in cooperation discussions with competitors and to seek advice from their legal teams. Whilst the CMA cannot reassure businesses that their behaviour may be exempted and encourages businesses to self-assess, the CMA has indicated that it is open to providing informal guidance on a case-by-case basis if the matter is of critical importance.

This guidance followed an [open letter](#) sent by the CMA to businesses in the pharmaceutical and food and drink industries on 20 March warning that they should not capitalise on the current situation by charging unjustifiably high prices for essential goods or making misleading statements about their efficacy.

On 4 April, the CMA added a [page](#) to its website through which anyone concerned about a business behaving unfairly during the outbreak to file a report with the CMA. The CMA confirms that it may share information provided to it through this page with "other law enforcement, consumer or regulatory bodies (nationally and internationally)".

On 22 April, the CMA issued guidance on the impact of COVID-19 on merger investigations. The CMA states that statutory deadlines applicable to the CMA have not been altered and that the CMA is not currently asking merging parties to delay their notifications (unless the merger is not particularly well-advanced). The CMA also noted that, although its approach to assessing the circumstances in which a merger causes competition concerns remains unchanged and the CMA will continue to assess deals and take action where it considers it is appropriate to do so, it will "*carefully consider the available evidence in relation to the possible impact of Coronavirus on competition in each case*".

Press reports indicate that the CMA has temporarily paused antitrust probes concerning the pharmaceutical industry to reallocate resources to focus on urgent work during the COVID-19 crisis.

On 24 April, the CMA published an [update](#) on the work of its Coronavirus taskforce. It confirmed that as of 19 April, it had received just under 21,000 COVID-19 related complaints and that it had written to 187 firms in respect of over 2,500 complaints relating to large price rises for personal hygiene and food products in high demand during the pandemic. It also confirmed that complaints relating to cancellations and refunds now account for four out of every five complaints. It also identified key themes including unsafe working conditions, non-key workers still at work, non-

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	<p>essential businesses still open, companies not allowing staff to work from home and staff not having appropriate personal protective equipment.</p> <p>It stated that it continues to collect evidence, including in relation to unjustifiable price rises further up supply chains, and that it will set out further information concerning its expectations about refunds and cancellations. It indicated that it would do so during the week commencing 27 April.</p>
Crown Prosecution Service	<p>On 31 March, the Crown Prosecution Service (CPS) and National Police Chiefs' Council (NPCC) issued an interim protocol on how police will manage charging during the outbreak.</p> <p>The protocol notes that UK courts are unable to start any new jury or summary trials (see guidance issued by HM Courts and Tribunals Service in full here), and that there are not currently working digital solutions to enable consistent operation of virtual courts. It therefore directs police and CPS prosecutors carefully to consider which charges to bring based on whether the case falls into one of three categories:</p> <ul style="list-style-type: none"> • (A) Immediate – in cases where prosecutors are seeking remand in custody following a charging decision (which, according to the protocol, may include those involving serious violence and homicide, terrorism offences and Covid-19 related offending such as fraud or assaults on emergency workers), the defendant will be placed before the next available court.; • (B) High Priority Cases– in cases where it is not considered necessary for the defendant to be remanded in custody, but which are still regarded as high priority (such as less serious assaults) the protocol directs that police should charge with a long court bail date which will “hopefully allow the current crisis to have passed” to enable future hearings.– ; • (C) Other Cases – the protocol directs that large and complex investigations should be progressed and, in cases involving alleged complex fraud, transferred directly to the Crown Court. The protocol further states that it may be appropriate to set up a “virtual specialist fraud court” to deal with these cases in due course (although how these arrangements would work in practice is not yet clear). The protocol sets out that less serious cases (for instance road traffic offences and summary only offences) should be listed either through postal requisition or summons 84 days after the issue of the proceedings. On 14 April, the CPS issued Interim Case Review Guidance clarifying prosecutors' obligations to keep under review whether ongoing or contemplated prosecutions meet the tests set out in the Code for Crown Prosecutors. It notes the impact of the COVID-19 outbreak on the criminal justice system, and in particular on case progression and directs prosecutors carefully to consider whether prosecuting is a proportionate course of action. It reminds them that alternatives such as out of court disposals, acceptance of guilty pleas to lesser charges or some charges on an indictment or, in some cases, discontinuation of proceedings or offering no evidence may be appropriate in some cases. <p>On 15 May 2020, the CPS issued a statement on its use of remote technology to continue prosecutions, citing the example of a trial in which witnesses gave evidence, and CCTV was</p>

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	<p>viewed, over videolink resulting in the conviction of an individual who had attempted to deliberately infect police officers with COVID-19.</p> <p>Also on 15 May, the CPS announced the findings of a review of the first finalised prosecutions pursued under the Coronavirus Act 2020 and the Health Protection (Coronavirus) Regulations 2020. The review covered over 200 prosecutions pursued up until the end of April. It found that 175 of 187 cases pursued under the Health Protection (Coronavirus) Regulations 2020 were correctly charged, with a small number being discontinued or returned to Court to be re-opened and withdrawn (mainly based on the misapplication of Welsh regulations in England and vice versa). All 44 cases pursued up to that date under the Coronavirus Act 2020 were found to be incorrectly charged because there was no evidence that they covered potentially infectious people (a requirement of the legislation). They were similarly discontinued or returned to Court.</p> <p>On 21 May, the CPS confirmed that there had been 313 completed prosecutions for assaults on emergency workers during the first month of lockdown. These followed a pattern of members of the public purporting to have coronavirus coughing or spitting on emergency workers. Separately, there were also 62 common assault prosecutions relating to assaults against shop workers during the same period. The statement did not clarify how many prosecutions resulted in convictions.</p> <p>The CPS has introduced a specific ‘COVID-19 monitoring flag’ on its internal database so it can capture this element of the offending on existing crimes not necessarily covered by the new Coronavirus Act and Health Protection Regulations.</p> <p>The ‘coronavirus element’, which will be flagged as an aggravating feature of a case, may include:</p> <ul style="list-style-type: none"> • Coughing or spitting on an emergency worker to ‘infect’ them • An assault in a supermarket over perceived stockpiling • Scams selling non-existent hand sanitiser or masks, or falsely informing individuals that they have been fined for leaving their homes <p>Abuse directed at an individual or group based on the presumption that their country of origin is responsible for the spread of COVID-19.</p>
Financial Conduct Authority	<p>The Financial Conduct Authority (FCA) has issued and is maintaining separate information pages for firms and consumers. See our separate publication on the guidance for firms (as at 17 March) here.</p> <p>On 19 March, the FCA added a specific information page for general insurance firms, setting out its expectations about how firms should treat consumers in relation to issues connected with the outbreak. It followed this up with a Dear CEO letter on 15 April focusing on business interruption insurance. The letter confirmed its understanding based on discussions with the industry to date that most business interruption policies providing basic cover do not cover pandemics, meaning that insurers are not obliged to pay out. It indicated that the FCA does not consider that there are</p>

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reasonable grounds for it to intervene in those circumstances. The letter goes on to state that there are other policies under which insurers have clear obligations to pay out, and that the FCA expects that claims under such policies should be paid as soon as possible (including by way of interim payment where insurers do not consider that they are obliged to pay claims in full). The FCA invited firms which disagree with the approach of making interim payments to provide details of the reasons for that approach and how they consider that represents a fair outcome for consumers. It indicated that firms' decisions on this point will assist with assessments of culture. The letter also refers to avenues which may be open to insureds to seek redress, including via the Financial Ombudsman Service and announced the creation of a new small business unit to coordinate the FCA's activities in relation to issues affecting small businesses and to gather intelligence about how such customers are treated during the crisis. For further details of the Dear CEO letter, see our 15 April publication [here](#).

On 20 March, the FCA released a separate [page](#) (last updated on 24 April) aimed at helping firms to identify which of their staff are "key workers" for the purposes of the restrictions imposed by the UK government on educational provision. The page does not contain prescriptive or binding guidance, but states that the FCA expects that numbers of "key workers" will be limited. It sets out examples of the types of roles it considers essential for the functioning of the financial system. The list set out by the FCA as types of roles which may fall within the definition includes individuals essential to the running of the firm, including those covered by the Senior Managers Regime, together with individuals essential to the provision of a range of customer facing and support functions. The page also recommends that CEOs of financial services firms should ensure that an appropriate system is put in place to identify "key workers" and suggests that "key workers" should be issued with a letter (signed by an individual of appropriate seniority) confirming their status as such.

On 27 March, the FCA issued a further separate [statement](#) on work-related travel and the responsibilities of individuals in respect of this issue under the Senior Managers and Certification Regime (SMCR). It makes clear the FCA's expectation that the number of individuals physically present in firms' offices or business continuity sites will be far lower than the number required to ensure that all of a firm's business activities continue to function on a business as usual basis. In particular, it makes clear that the FCA does not expect that financial advisers, staff who can safely and securely trade shares and financial instruments from home, business support staff such as IT staff (unless they are looking after specific equipment or technology) or claims management companies and those selling non-essential goods and credit should go to work or meet face to face. On 10 May, following the Prime Minister's statement about the ways in which restrictions may be eased in due course, the FCA issued a release confirming that its position in relation to homeworking, identification of key workers and responsibilities of Senior Managers had not changed.

On 21 March, the FCA [wrote](#) to all companies it is aware are due to publish preliminary financial statements imminently to request that they delay doing so for at least two weeks. Further to this, on 26 March, it released a [Statement of Policy](#) allowing listed companies requiring additional time to complete their audited financial statements an extra two months to do so. The statement also urges market participants not to draw adverse inferences in relation to decisions by companies to use the additional time now afforded to them.

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The statement was published as part of a package of measures brought forward jointly by the FCA, Prudential Regulation Authority and Financial Reporting Council. For further details, see the sections of this table below relating to those agencies. See also our separate publication (26 March) [here](#).

The European Securities and Markets Authority (ESMA) has also published its own [webpage](#) on COVID-19 related issues, making specific recommendations in relation to business continuity, market disclosure, financial reporting and fund management. Please see our separate publication [here](#). It has also issued a public statement for fund managers on deadlines for the publication of annual reports (see our 10 April publication [here](#)). On 22 April, it issued a further [release](#) confirming that it is giving firms extra time to produce annual and half-yearly reports and accounts. On 14 May, ESMA expressed its support for steps taken and recommendations made by the European Systemic Risk Board in relation to liquidity risks in investment funds. See our separate publication [here](#).

On 23 March, the FCA added new sections to its previously published information pages for firms dealing with how firms should treat consumers in persistent debt, together with other practical measures aimed at facilitating access to cash for consumers. It followed this up on 2 April with proposed [guidance](#) proposing temporary relief for customers impacted by Coronavirus. The measures proposed relate to freezes on loan and credit card repayments, interest free overdrafts and requirements to ensure credit ratings are not affected by use of temporary measures. The measures came into force on 9 April.

It followed this up on 17 April with a separate package of proposed measures designed to assist customers in respect of motor finance and high-cost credit agreements (including high-cost short term credit agreements (payday loans), buy-now pay-later, rent-to-own and pawnbroking). The measures proposed included a three month payment freeze for motor finance customers and customers on certain other high-cost credit agreements having temporary difficulties, a one month payment freeze for high-cost short-term credit customers who need it and a range of other forbearance measures. The measures came into force on 27 April.

On 25 March, the FCA has now released brief information (as part of its [information page for firms](#)) about the operation of the SMCR during this time. It has confirmed that it does not require firms to have a single Senior Manager responsible for the coronavirus response and that firms should allocate responsibilities in the way which best enables them to tackle the risks they face. It has identified individuals holding the SMF 2 and SMF 24 functions as amongst those likely to have particular responsibilities relevant to the response to the outbreak (in these cases in relation to financial resilience and operational resilience respectively). It also reminded firms that it considers that their approach to identifying “key workers” should be overseen by the SMF 1 (CEO) within firms (see further details above).

Addressing some of the practical issues faced by firms and individuals within them as the lockdown imposed in the UK entered its third week, on 3 April the FCA issued more specific separate information pages for [solo regulated](#) and [dual regulated firms](#) on issues arising in connection with the SMCR.

The key points from these information pages are set out below.

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		Solo-regulated firms	Dual-regulated firms (published jointly with the PRA)
	Notifications about changes to Senior Manager responsibilities	<ul style="list-style-type: none"> Confirmation that the FCA does not intend to enforce requirement on firms to submit updated Statements of Responsibilities (SoRs) if the change is (1) made to cover multiple absences due to illness or other temporary changes in direct response to the outbreak and (2) is temporary and the firm expects to revert to its previous arrangements. Reallocations of responsibilities must be clearly documented internally and documents retained so that they can be made available to the FCA in future if requested. Firms should keep SoRs, role profiles and Responsibilities Maps (if applicable) up to date but there is no need to notify the FCA of temporary arrangements using Form D. 	<ul style="list-style-type: none"> Confirmation that there is no fixed statutory deadline for firms to submit revised Statements of Responsibilities (SoRs) in the event of a “significant change” (whether as the result of the outbreak or any other reason). The FCA and PRA expect firms to resubmit relevant SoRs “as soon as reasonably practicable taking into account the current circumstances” and understand that it may take longer than usual for firms to do so.
	Temporary arrangements for Senior Management Functions (SMFs)	<ul style="list-style-type: none"> The FCA intends to modify the 12 week rule by consent to allow temporary arrangements to be extended to up to 36 weeks. This would allow firms to allocate the responsibilities of absent SMFs to an individual standing in for him or her. This should be 	<ul style="list-style-type: none"> The FCA and PRA are reviewing whether the 12 week rule provides firms with sufficient flexibility for firms to deal with temporary or unexpected SMF absences. Additional measures will follow if deemed necessary.

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		<p>an individuals already approved as a Senior Manager if possible (as is the current rule) but may be an individual who is currently not so approved if necessary, provided that firms allocate to the most senior person responsible for a particular area, the individual has sufficient authority and an appropriate level of knowledge and competence and has access to the governance forums required to exercise their responsibilities.</p>	
	<p>Notifications about temporary arrangements (including allocating Prescribed Responsibilities (PRs) to unapproved individuals acting up as SMFs under the 12 week rule)</p>	<ul style="list-style-type: none"> • No requirement for updated SoRs to be submitted in respect of absent Senior Managers or of Senior Managers taking on responsibilities of absent Senior Managers. • However, allocations (however temporary) should be clearly documented internally and Management Responsibilities Maps (if applicable) should reflect allocations of responsibilities to individuals who have hitherto not been approved as Senior Managers. 	<ul style="list-style-type: none"> • If firms cannot reallocate an absent SMF's PRs among remaining SMFs for reasons relating to Coronavirus, they may temporarily allocate them to individuals who are acting up as interim SMFs under the 12 week rule (even if those individuals are at the time unapproved as an SMF). • Unapproved individuals acting up as SMFs will not have SoRs (unless they are applying to be permanently approved in respect of the SMF in question). • Changes of this nature should be recorded in other documents, such as Responsibilities Maps and role profiles to ensure that firms have a running record of temporary

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			<p>allocations to unapproved individuals.</p> <ul style="list-style-type: none"> Firms should update PRA and/or FCA supervisors (by telephone or email) in relation to temporary allocations.
	Allocating responsibility for coordinating firms' responses to Coronavirus among SMFs	<ul style="list-style-type: none"> As indicated in previous guidance, FCA and PRA do not expect or require firms to designate a single SMF to be responsible for firms' response to the outbreak (except for in relation to the identification of "key workers" – see above). 	
			<ul style="list-style-type: none"> As also previously indicated, many aspects of the response to the outbreak are likely to fall most naturally to individuals occupying the SMF24 function, but there are others which will fall elsewhere (for example managing liquidity, which will fall to Chief Financial Officers) The PRA encourages firms to make plans relating to "contingencies on contingencies" given the likelihood of individuals becoming temporarily and unexpectedly absent.
	Furloughing SMFs	<ul style="list-style-type: none"> Firms should update FCA supervisors by telephone or email if one or more SMFs are furloughed. Firms do not need to complete or file forms in respect of furloughed SMFs (unless they permanently step down or leave the firm) but firms must ensure that individuals remain fit and proper upon their return, reallocate the responsibilities of furloughed SMFs (including PRs) and clearly record such reallocations as outlined above. 	

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	<ul style="list-style-type: none">Individuals performing required functions should only be furloughed as a last resort. Where required functions apply, the individual should be replaced until their return, or the 12 week rule should be used if the replacement is temporary.Other SMFs are not mandatory, so individuals occupying these functions may be furloughed.	<ul style="list-style-type: none">Firms must have individuals performing certain combinations of SMFs at all times: <table><tr><td>CRR firms and Solvency II insurers</td><td>CEO (SMF1) CFO (SMF2) Chair of governing body</td></tr><tr><td>UK branches of third country banks and insurers</td><td>Head of Overseas Branch (SMF19)</td></tr><tr><td>Small non-Solvency II insurers</td><td>Small Insurer SMF (SMF25)</td></tr><tr><td>Small run-off insurance firms</td><td>Head of Small Run-Off Firms (SMF26)</td></tr></table> <ul style="list-style-type: none">Other SMFs are not mandatory, so individuals occupying these functions may be furloughed (but firms should consider the risks and potential unintended consequences of doing so).	CRR firms and Solvency II insurers	CEO (SMF1) CFO (SMF2) Chair of governing body	UK branches of third country banks and insurers	Head of Overseas Branch (SMF19)	Small non-Solvency II insurers	Small Insurer SMF (SMF25)	Small run-off insurance firms	Head of Small Run-Off Firms (SMF26)
CRR firms and Solvency II insurers	CEO (SMF1) CFO (SMF2) Chair of governing body									
UK branches of third country banks and insurers	Head of Overseas Branch (SMF19)									
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Certification requirements		<ul style="list-style-type: none">Acknowledgment that standard certification processes may need to be adjusted, but reminder that certification requirements remain in place.Certified staff who are not fit and proper should not be re-certified.								

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Practical issues not addressed by any information yet published by the FCA (or PRA), and which firms and individuals will need to consider on an ongoing basis based on their own circumstances include how Senior Managers may demonstrate that they have taken “reasonable steps” in relation to decisions taken in connection with the current situation and how best to seek to ensure that Conduct Rules training processes continue if possible.

Also on 25 March, the FCA [added](#) to a pre-existing information page to confirm that the date for publication of the directory of certified and assessed persons has been delayed by at least one month from the previous end of March date. The page states that the timing of the launch of the directory is under review and that further updates will follow.

The FCA has not as yet followed some other European markets regulators (for example those in Italy and Spain) in imposing restrictions on short selling. On 23 March, it published an additional [information page](#) on short selling suggesting that it has no plans to impose such restrictions at present.

On 25 March, the FCA issued a [statement](#) that firms must still meet the end of 2021 deadline to transition from LIBOR, but recognised that this may difficult for firms. For full details of the statement, issued jointly with the Bank of England and members of the Working Group on Sterling Risk-Free Reference Rates, see our 26 March publication [here](#).

On 26 March, the FCA published an [information page](#) similar to that issued by the National Crime Agency (see further details below) aimed at giving consumers details of the types of scams which may become prevalent during the Coronavirus outbreak. See our 30 March publication [here](#).

On 31 March, the FCA issued a Dear CEO letter to firms providing services to retail investors. The letter provides clarification on the approach it has taken to requests for adaptations to its regulatory approaches by firms and trade associations. It makes clear that it has adopted a three-pronged approach involving (1) working with firms and trade associations to make changes to help firms or consumers in order of harm or urgency where it has the power to do so, (2) responding to changes requested which would help firms of consumers but which require some coordination with the UK Government or European authorities (which, it notes, may take more time) and (3) refusing requests which it considers are not in the interests of consumers or which would hamper the response to the crisis situation. In respect of the latter category, the FCA notes that it will reflect on whether requests are opportunistic or designed to undermine consumer protection and “will reflect on what this tells us about the firms involved or conduct in the sector”.

The letter also sets out details of its approach to the following specific issues:

- Anti-money laundering: client identity verification – the FCA has confirmed that this process must still take place, but that it may take place remotely using additional technology based checks as appropriate whilst restrictions on travel remain in place. The letter makes clear that additional verification should be undertaken once restrictions on travel are lifted for the relevant client group;
- Best execution – the FCA has been working with ESMA in relation to concerns raised by firms about whether they should be fulfilling their best execution obligations. It refers to

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separate [information](#) published by ESMA on best execution reports under MiFID II and confirms that whilst firms are expected to consider how they are managing risk, it does not intend to take enforcement action where a firm does not publish RTS 27 by 1 April 2020 (provided it does so by no later than 30 June 2020) or does not publish RTS 28 and Article 65(6) reports (provided it does so by no later than 30 June 2020).

- Depreciation notifications – the FCA has clarified that it has no intention of taking enforcement action where firms have (1) issued at least one notification to retail clients within a current reporting period indicating that their portfolio has decreased in value by at least 10 per cent (as required under relevant provisions in the Conduct of Business Sourcebook) and subsequently provides general updates through its website, other public channels and/or generic non-personalised client communications or (2) chooses to cease providing 10 per cent depreciation reports for any professional clients.
- Pause on implementation of investment pathways and platform switching provisions – work with firms providing defined benefit transfer advice will continue and the policy statement on pension transfer advice has been delayed to Spring 2020.
- Financial resilience – the FCA has supplemented [guidance](#) issued on 26 March to clarify that government schemes to help firms deal with the impact of the outbreak can be used to help firms to plan for how they will meet debts as they fall due and remain solvent, but may not be used to meet capital adequacy requirements. On this point, on 17 April, the FCA issued a [statement update](#) on financial resilience for solo-regulated firms. This contained an indication mirroring that given by the PRA to firms prudentially regulated by it that capital and liquidity buffers may be used (but that firms intending to use set buffers should contact the FCA before doing so) and set out the steps the FCA considers firms anticipating immediate difficulties meeting debts as they fall due should take to work with it.

Also on 31 March, the FCA added briefly to the section of its information page for firms to emphasise its expectation that it expects firms to provide support to consumers and businesses. It has not yet provided detailed additional information responding to concerns raised in the media relating to the terms on which government-backed funding is being made available to businesses (although a [letter](#) was sent to the CEOs of UK banks by HM Treasury, the FCA and the PRA on 25 March setting out their collective expectations in this area). It followed this up with a [Dear CEO](#) letter on 15 April dealing with issues relating to lending to small businesses. It acknowledged that lending to SMEs is in the main not an activity regulated by the FCA but set out the FCA's expectations that every bank lending to SMEs should have a Senior Manager or Senior Managers responsible for this activity and that it expects CEOs to ensure that these individuals are discharging their responsibilities suitably, including by reference to the Lending Standards Board's Standards of Lending for Business Customers (recently recognised by the FCA as an industry code).

On 6 April, the FCA released a separate [page](#) setting out its expectations regarding funds during the outbreak. The page deals specifically with delays to annual and half-yearly fund reports, virtual general meetings, ensuring compliance with limits on value at risk and electronic signatures. Further details are included in our 7 April [publication](#). It updated this information on

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15 April to remind fund managers to consider whether alternatives to dealing by paper based means may be possible (making clear that they must ensure that all unitholders in the fund are treated fairly).

On 8 April, the FCA, [announced](#) a series of measures directed towards helping companies raise money in the UK capital markets whilst preserving an appropriate degree of investor protection. Specific matters covered include its expectations on due diligence supporting “working capital statements”, a reminder that firms may apply to the FCA for waivers in respect of requirements for general meetings to obtain shareholder approval, support for work by industry bodies in relation to pre-emption rights and suggestions that companies should use the simplified prospectus introduced by the Prospectus Regulation last year.

On 14 April, amid its programme of COVID-19 related initiatives, the FCA published its annual business plan. It indicated that it may amend the business plan in the light of further developments relating to the pandemic but for the time being has maintained its longstanding focus on culture and financial crime. See our Ropes & Gray alert [here](#).

On 16 April, the FCA added a section to its [information page](#) dealing with cross-border payments, responding to a statement made by the EU Commission on 9 April. The additional section and the statement remind firms of the 19 April application date for currency conversion transparency requirements, but acknowledge that implementation may be challenging for firms and confirm that a flexible approach will be taken to enforcement.

On 20 April, the FCA issued a [statement](#) confirming its expectations in relation to ‘wet ink’ signatures. It reminded firms that its rules do not require wet-ink signatures and do not prevent firms from using electronic signatures. It added that validity is a matter of law and that firms should take their own advice, and drew attention to relevant provisions of the Handbook in relation to ensuring that the potential risks and harms of using electronic signatures are properly considered, as are the provisions relating to customers’ understanding of the agreement in question.

On 20 April, the FCA issued a revised version of [Primary Market Bulletin 27](#) taking into account guidance and information released by it and other authorities on issues including delays in corporate reporting (see entry below in Financial Reporting Council section in respect of publication released on 26 March) and shareholder meetings.

On 21 April, the FCA released [information](#) about its position on professional indemnity insurance for financial advisers.

Also on 21 April, it confirmed that whilst it will still require firms to ensure that employees have the required skills, knowledge and expertise to discharge their responsibilities, it has no intention of taking action against firms or accountable individuals who are not able to ensure that employees have attained appropriate qualifications within the required 48 month timeframe because of the cancellation or postponement of examinations. It has decided to allow an extra 12 months to firms and employees if needed (including if needed as the result of the employee in question having to take on additional duties during the crisis). The FCA has indicated that it will adopt this approach for 6 months (and therefore that firms may apply a time limit of up to 60 months) up to 31 October.

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On 22 April, the FCA introduced some [temporary measures](#) for firms submitting regulatory returns up to 30 June. Specifically, deadlines for a raft of regular returns required under Chapter 16 of the Supervision section of the FCA Handbook and various other Handbook returns have been extended by either one or two months. In one case (employers' liability register compliance return), the FCA has confirmed that firms will not be required to submit a return at all. The FCA has also confirmed that administrative fee for late returns will be waived for small or medium sized businesses (those paying less than GBP 10,000 in fees and levies in 2020/21) until 30 June, but has reminded firms that they should still make every effort to file returns within the amended deadlines.

On 27 April, following amendments to the UK government's Coronavirus Business Interruption Loan Scheme and announcement of its new Bounce Back loan scheme, the FCA published a [page](#) providing further information on the relationship between its rules and these schemes and steps firms should be taking to manage financial crime risk in relation to applications for loans under these schemes.

On 29 April, the FCA issued a further [statement](#) on its expectation that firms should not rely on LIBOR being published after the end of 2021. It had previously made a statement on this issue on 25 March (see above). It stated that, although it acknowledges the challenges presented by the current situation, it nonetheless has observed continued progress on LIBOR transition, including the first syndicated loan that will link to SONIA and SOFR, the first bilateral loan referencing SONIA in the social housing sector, and another successful consent solicitation to convert a legacy LIBOR referencing bond. This further statement was updated on 13 May to note that, although it and the PRA suspended transition data reporting at the end of Q1 for dual regulated firms, subsequent developments such as the publication of a statement on LIBOR by the Bank of England in its [Interim Financial Stability Report](#) on 7 May have led the FCA and the PRA to resume full supervisory engagement with firms on LIBOR transition progress from 1 June (including data reporting at the end of Q2).

On 30 April, the FCA issued a [statement](#) confirming that, in order to minimise potential disruption to consumers and merchants, it is giving the industry an additional six months to implement strong customer authentication (SCA) for e-commerce. The new deadline of 14 September 2021 replaces the original 14 March 2021 date.

On 1 May, the FCA [announced](#) that it intends to obtain a court declaration to resolve contractual uncertainty in business interruption insurance cover. As previously discussed in its 15 April "Dear CEO" letter, the FCA reiterated its view that most SME insurance policies are focused on property damage and only cover business interruption (if at all) to a limited extent. Where such insurance policies do cover business interruption, however, the FCA has found that the range of wordings and types of coverage are sufficiently broad that it is difficult to determine the degree to which any individual customer may be able to claim.

To resolve this uncertainty, the FCA intends to: (1) bring relevant cases to court as soon as possible for an authoritative declaratory judgment regarding the meaning and effect of certain BI insurance policy wordings; and (2) discuss with a number of relevant firms, and the Association of British Insurers, its proposals for seeking a timely, transparent and authoritative judgment. In that regard, the FCA also wrote to relevant firms requiring them to clarify by no later than 15 May whether they

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believe that their policy wordings for BI losses arising other than from property damage provide cover for claims relating to Coronavirus. On 15 May, the FCA published a further statement on BI insurance and invited any policyholders and insurance intermediaries who are aware of unresolved disputes with insurers over the terms of BI policies to engage with it so that their concerns can be taken into account as part of the test case. The FCA has established a designated email address for responses, which are required by 20 May. Per the FCA's statement, it will treat all information it receives as being subject to the FCA's litigation privilege.

Also on 1 May, the FCA published an updated web page stating that it is delaying or postponing certain activities to allow firms to focus on supporting their customers during the current pandemic. As part of these efforts, the FCA has delayed the closure dates for various consultation papers and calls for input to 1 October 2020.

On 4 May, the FCA announced its intention to bring forward a digital sandbox focused on the challenges caused by COVID-19. It currently is encouraging initial expressions of interest as it develops the pilot, and plans to open applications later in the summer.

On 6 May, further to its indication on 25 March (see above), the FCA [extended](#) the maximum period firms can arrange cover for a Senior Manager without being approved, from 12 weeks to 36 weeks, in a consecutive 12-month period. The modification by consent to rule SUP10.3.13.R is available to all solo regulated firms. It aims to provide flexibility to firms managing their governance arrangements during the Coronavirus pandemic. The modification by consent will take effect from the date the firm applies for it, and will end on 30 April 2021.

On 6 May, the FCA released a [statement](#) setting out its expectations for firms to combat and prevent financial crime during the COVID-19 pandemic (see our update [here](#)). In its statement, the FCA recognises that the current climate may give rise to operational challenges, but emphasises that firms should not seek to address those challenges by changing their risk appetite. For example, firms should not "change or switch-off" any screening or monitoring controls to reduce operational burdens. The FCA stated that it will consider some delays in monitoring or review work such as ongoing customer due diligence reviews, or reviews of transaction monitoring alerts to be reasonable if: (1) done on a risk basis; and (2) there is a clear plan to return to business as usual as soon as possible. The FCA also outlined its expectation that firms will continue to comply with their obligations on client identity verification, but that there is "flexibility within existing requirements". For that purpose, the FCA provided a list of potential alternative means of verification, whilst cautioning that "these do not represent a relaxation of requirements".

On 13 May, the FCA released a [statement](#) setting out guidance on how firms should handle post and paper documents during the COVID-19 pandemic. The FCA stated that, while it continues to expect firms to comply with the requirements for post and paper-based processes (both incoming and outgoing), it also understands that in the current circumstances some firms may not be able to comply fully with them. Such firms are invited to notify the FCA as soon as possible. The FCA also stated that firms should try to ensure that all customers are not disadvantaged because of delays and make particular efforts to contact customers who do not use online services.

On 14 May, the FCA [announced](#) a series of temporary measures designed to help customers who hold insurance and premium finance products and who may be in financial difficulty because of COVID-19. The measures require firms to consider what options they can provide to customers

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	<p>experiencing financial difficulty due to the current pandemic, including: (1) reassessing the risk profile of customers; (2) considering whether there are other products that would better meet the customer's needs, and revising cover accordingly; and (3) waiving cancellation and other fees associated with adjusting customers' policies. Where such measures do not alleviate payment difficulties for customers paying their premium in instalments, the FCA expects firms to grant payment deferrals of between one and three months. The measures come into force on 18 May and will be reviewed and, if necessary, revised in the next three months.</p> <p>On 21 May, the FCA issued an update reminding firms of their MiFID II and conduct of business obligations. The updated section of the information page referred to a statement issued by ESMA about the risks posed to retail investors, and asking retail firms experiencing unusual increases in new client onboarding to read the statement.</p> <p>On 22 May, the FCA announced proposals which would continue to provide support to customers struggling to pay their mortgage due to COVID-19. The proposals outline the options firms will be required to provide to customers who are coming to the end of a mortgage payment holiday. For customers who have yet to apply for a payment holiday, the deadline to do so has been extended until 31 October 2020. Firms will be expected to "work with customers on the best options available to them, paying particular attention to the needs of their vulnerable customers". The current ban on repossessions of homes has been extended until 31 October 2020. On 1 June 2020, this guidance was updated to confirm that firms should communicate with customers regarding what happens when their payment holiday ends, and that customers should be offered a range of options on how missed payments can be repaid. Payment holidays offered pursuant to this guidance will not have a negative impact on credit files.</p>
Financial Reporting Council	<p>The Financial Reporting Council (FRC) has issued guidance in relation to audit issues (16 March), separate guidance for auditors (16 March) and a further publication containing practical points in relation to how to hold annual general meetings (18 March). It has also drawn attention to Companies House guidance on extensions for filing deadlines (19 March).</p> <p>On 23 March, the FRC confirmed its support for the FCA's request for companies due to publish preliminary financial statements to impose a moratorium of at least two weeks (see above).</p> <p>On 26 March, the FRC (as part of a coordinated series of measures produced with the FCA (see above) and the Prudential Regulation Authority (see below)) published further specific information on:</p> <ul style="list-style-type: none"> • Corporate governance; • Management information; • Risk management and internal controls systems; • Dividends and capital maintenance; • Corporate reporting; • Strategic reports and viability statements; and

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- Financial statements (with particular emphasis on assessments in relation to (1) going concern and material uncertainties, (2) significant judgements and estimation uncertainty and (3) events after reporting dates.

On 1 April, the FRC issued a [statement](#) on behalf of the Pre-Emption Group making clear its recommendation that investors consider supporting issuances of up to 20 per cent on a case by case basis.

On 9 April, the FRC issued an [update](#) on various aspects of its operations. It confirmed that most of its teams are continuing to work on their respective remits, with some adjustments both to accommodate remote working and in some cases to reduce the regulatory demands imposed on particular groups during the crisis. The update also confirmed that the FRC continues to progress investigations and enforcement action (indeed one significant case came to a conclusion on 2 April) and that it is taking the current situation into account when considering requests for extensions to deadlines. Finally, it confirmed that it continues to make progress on the recommendations of CMA, Kingman and Brydon reviews on the future of the FRC (and its transition to the Audit Reporting and Governance Authority) and audit reform and regulation.

It issued a further [update](#) on 14 April which did not add substantively to the 9 April update, but which did emphasise that accounting and auditing standards on going concern have not changed. It added that the FRC has not increased pressure on auditors to be tough and stated that auditors should “challenge management appropriately on their judgements, and given the current uncertainty ensure they have sufficient appropriate evidence to support the judgements they make”. See our previous alert on the audit standard relating to going concern (published on in October 2019) [here](#). On 21 April, it supplemented this guidance and that issued on 16 March (see above) with further [guidance](#) on the modification of audit opinions during the COVID-19 crisis. These themes were further explored in a [podcast](#) with Mark Babington, Acting Director of Regulatory Standards, released on 24 April

On 17 April, the FRC issued a [Q & A document](#) to assist companies with planning their activities over the coming months, when many companies will be due to hold annual general meetings, whilst legislation easing requirements to hold meetings and file documents with Companies House is brought forward.

On 7 May, the FRC issued a further [update](#) on various aspects of its operations. It confirmed that it is maintaining business as usual as much as possible during the current crisis. The update also confirmed that the FRC has decided it is appropriate and necessary to resume its supervisory demands on audit firms, professional bodies and companies, and that, accordingly, the FRC’s Audit Quality Review, Corporate Reporting and Professional Oversight teams will resume their full programme of supervisory work from 11 May. This work will include correspondence from the FRC’s Corporate Reporting team to companies in relation to their financial statements. The FRC will also resume its inspection and supervisory work with audit firms.

Although the FRC will be resuming these activities, it has confirmed that it recognises the challenges imposed by the current crisis and that it will, where necessary, relax its expectations regarding the deadlines for responses from audit firms, companies and professional bodies. The FRC also states in its update that it will continue to issue only new material that is essential at this

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	<p>stage. This is likely to include two consultations on UK GAAP and publication of an updated Risk Perspectives by the Joint Forum for Actuarial Regulation.</p> <p>Finally, the update confirms that the FRC continues to progress investigations and enforcement actions, but that it also takes the current situation into account when requesting information and documents, and in responding to requests for timing extensions.</p> <p>On 12 May, the FRC released updated guidance for companies on corporate governance and financial reporting (including interim reports). In the guidance, the FRC encourages firms to take advantage of the extension announced by the FCA to the deadline for publishing audited annual financial reports from four to six months from the end of the financial year. With respect to corporate governance, the FRC encourages company boards to reconsider whether existing reporting and other controls continue to prove effective in the current circumstances, consider how secure, reliable and relevant information can continue to be obtained in order to manage future operations, and pay particular attention to capital maintenance, particularly around payment of dividends. With respect to financial statements, the FRC encourages boards to describe clearly any “material uncertainties” to going concern in the current circumstances and disclose any possible events or scenarios (other than those with a remote possibility of occurring) that could lead to corporate failure. The FRC also stresses the need to disclose underlying assumptions applied when preparing a viability statement, and any significant judgements made when assessing whether there are material uncertainties to disclose.</p> <p>The corporate governance and financial reporting guidance was further updated on 20 May. The FRC re-emphasised its key messages to boards on corporate governance, namely: i) to develop and integrate mitigating actions and processes to ensure continued operation of an effective control environment, ii) to consider how to secure reliable and relevant information, on an ongoing basis, in order to manage future operations and iii) to pay attention to capital maintenance.</p>
HM Revenue & Customs	<p>HM Revenue & Customs (HMRC) has not yet issued any specific guidance relating to enforcement or supervision.</p> <p>However, press reports on 14 April indicate that it has sent letters to subjects of compliance investigations indicating that those investigations have been paused to enable it to redeploy resources to administer the emergency schemes announced by the UK government. As we note in our 15 April publication, this pause is likely to be temporary and it is likely that enforcement activity will be resumed (and probably increased) once the immediate pressure placed on resources by the crisis subsides.</p> <p>On 2 June 2020, HMRC released statistics on the Coronavirus Job Retention Scheme. The scheme was launched on 20 April. As of 31 May, 8.7 million jobs had been furloughed, with 1.1 million employers using the furlough scheme. The total value of claims at this date was £17.5 billion. By the same date, there had been 2.5 million claims made pursuant to the Self-employment Income Support Scheme, with a total value of £7.2 billion.</p>

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[Information Commissioner's Office](#)

On 12 March, the Information Commissioner's Office (ICO) issued a [statement](#) for health and care practitioners in respect of data protection and coronavirus which emphasised the fact that data protection and electronic communications laws do not stop the Government, the NHS and other health professionals from doing various things designed to protect against serious threats to public health and confirming that the ICO will take into account the compelling public interest in the current health emergency regarding data protection compliance.

On 16 March, the ICO issued a [question and answer document](#) giving general data protection advice for data controllers. See our separate publication (17 March) [here](#).

On 18 March, the ICO published a short [document](#) aimed at data subjects about particular commonly occurring data-related issues including those relating to the provision of health information and the likelihood of delays to responses to data subject access requests.

On 24 March, the ICO issued an [announcement](#) stating that its offices will be closed from 24 March and providing alternative contact details.

On 26 March the ICO published a [blog post](#) entitled "Community groups and COVID-19: what you need to know about data protection", which includes data protection advice for community groups assisting the vulnerable in communities during the COVID-19 pandemic.

On 26 March the ICO also launched a new data protection and coronavirus [information hub](#) to help individuals and organisations navigate data protection during the COVID-19 pandemic. This hub includes links to the resources outlined above and certain additional [information](#) (e.g. information on Freedom of Information (FOI) and coronavirus).

On 28 March the ICO published a [statement](#) in response to the use of mobile phone tracking data to help during the coronavirus crisis. This confirmed that, where generalised location data is used to analyse trends to help tackle the coronavirus crisis, this does not fall under data protection law provided the data is properly anonymised and aggregated, because no individual is identified. Privacy laws will not be breached provided that appropriate safeguards are implemented.

On 8 April the ICO published a [statement](#) on investigating coronavirus scams, confirming that the ICO will investigate businesses taking advantage of the COVID-19 pandemic and setting out details of possible penalties that the ICO may issue. The statement also confirms that the ICO is also working with relevant agencies to tackle fraud during this challenging period.

On 15 April the ICO published a [document](#) setting out its regulatory approach during the coronavirus pandemic and a related statement, acknowledging the ICO's responsibility to take account of the exceptional circumstances and confirming that the ICO will take a flexible and pragmatic approach and focus on the greatest threats. On 15 April, the ICO published a [blog post](#) entitled "Video conferencing: what to watch out for" giving guidance to business owners, employers and managers about how safely to roll out video conferencing technology.

On 17 April, the ICO published a further [blog post](#) by the Information Commissioner setting out its views on some of the privacy considerations when formulating data based ways to tackle COVID-19.

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	<p>Also on 17 April, the ICO published a formal opinion on the proposed contact tracing framework put forward jointly by Apple and Google to seek to use Bluetooth technology to help governments and public health authorities reduce the spread of COVID-19.</p> <p>See a discussion of the tensions between the desire to track data and data protection laws in our 8 April publication here.</p> <p>On 5 May, the ICO published a blog post on its priorities for data protection during COVID-19 and beyond. In the blog post, the Information Commissioner outlined three primary areas of focus: (1) protecting the public interest; (2) enabling responsible data sharing; and (3) monitoring intrusive and disruptive technology. The Information Commissioner further explained that the ICO is actively identifying and taking action against those seeking to use or obtain personal data unlawfully during COVID-19, a time at which many will be especially vulnerable to financial or other loss.</p> <p>The Information Commissioner also noted that the ICO is maintaining a high level of awareness and insight into the medium-term privacy and information rights impact of COVID-19, including the impact of contact tracing, testing and other emerging surveillance issues, as well as development and use of AI technologies in response to the current crisis. By way of an operational update, the ICO's blog post reports that, while some ICO projects are being paused, it is still maintaining its statutory functions, including dealing with complaints and investigating data breach reports.</p>
National Crime Agency	<p>Unlike its US counterparts, FinCEN (see our 17 March publications here and here), the National Crime Agency (NCA) has not yet published specific guidance on delays or expectations for reporting, including of anti-money laundering and counter terrorist financing suspicious activity reporting (SAR).</p> <p>The NCA has however issued guidance to individuals and businesses on the ways criminals are exploiting the crisis to commit fraud. See our separate publication (26 March) here. The US Department of Justice has issued similar anti-fraud guidance. See our separate publication (26 March) here. The NCA is dedicating resources to investigating crime relating to or using opportunities presented by the outbreak. In its Annual Plan, published on 3 April, it acknowledged the COVID-19 outbreak and the need for it to maintain flexibility to tackle threats arising from it. On 15 April, it announced that two individuals had been arrested in connection with investigations concerning the alleged illegal sale of COVID-19 testing kits. The cases are the first publicised examples of concrete action taken by it to tackle COVID-19 related fraud.</p> <p>Neither the NCA nor any other authority has yet issued any guidance on whether it is experiencing particular difficulties in processing SARs submitted to it within statutory deadlines or on the extent to which the current situation may amount to a "reasonable excuse" for not filing a SAR.</p> <p>For the time being, these processes appear to be running as normal. There has not been any suggestion of amendments to the duration of the "notice period" following the filing of SARs (seven working days). There has similarly not yet been any indication of whether practical difficulties encountered by the NCA in progressing investigations may form the basis of successful applications for extensions to the moratorium period (i.e. the period following</p>

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	<p>confirmation from the NCA that consent to taking particular actions is denied) or of whether the NCA or the courts will show forbearance in respect of delays by parties complying with orders such as unexplained wealth orders in complying with stringent time limits.</p> <p>It appears that the NCA, like the territorial police forces around the UK, is still operationally active and intends to remain so. In addition to frequent publications of outcomes of operations and investigations on its website, it has made clear (on 8 April) that it intends to pursue an appeal in one important case in which the High Court has ordered the discharge of three unexplained wealth orders. See our 9 April publication here. On 25 April, the Director General of the NCA, Lynne Owens, appeared at the daily COVID-19 press conference at 10 Downing Street to underline the work it is doing to tackle various types of organised criminality during the pandemic.</p> <p>In April, the NCA issued updated guidance on filing suspicious activity reports to include three new SAR glossary codes for reporters as a result of the increased threat posed by organized crime groups seeking to exploit the COVID-19 situation by means of fraud. The additional glossary codes relate to the HMRC Self-Assessment Tax Refund system, government priority schemes, and a general code for any other suspicious activity connected to COVID-19.</p> <p>On 19 May, OFSI issued guidance on business practice during the Covid-19 crisis. OFSI confirmed that enforcement work will continue, but that timescales for responses to information requests would be extended as appropriate in recognition the challenging working practices and resource implications of the pandemic. Respondents are invited to contact OFSI if their ability to respond is impacted. Additionally, OFSI confirmed that all correspondence will be conducted via email, and that wet signatures would not be required.</p>
Office of Financial Sanctions Implementation	<p>The Office of Financial Sanctions Implementation (OFSI) has recommended that queries are sent to the OFSI mailbox (OFSI@hmtreasury.gov.uk) with clear explanations of urgency. It has indicated that it will continue to operate as close to normal during the outbreak, although it has indicated that timescales will be longer (but that it will prioritise urgent and humanitarian cases). It is issuing lists detailing designations as normal and is progressing ongoing enforcement cases.</p> <p>The US Office of Foreign Assets Control (OFAC) has stated that it will consider COVID-19-related challenges in determining the appropriate response to any breaches. See our separate guidance (20 April) here. OFAC has also issued guidance on humanitarian aid in response to COVID-19. See our separate publications (18 March) here and (17 April) here.</p> <p>On 19 May, OFSI issued guidance on business practice during the Covid-19 crisis. OFSI confirmed that enforcement work will continue, but that timescales for responses to information requests would be extended as appropriate in recognition the challenging working practices and resource implications of the pandemic. Respondents are invited to contact OFSI if their ability to respond is impacted. Additionally, OFSI confirmed that all correspondence will be conducted via email, and that wet signatures would not be required.</p>
Prudential Regulation Authority	<p>On 23 March, the Prudential Regulation Authority (PRA) issued its first specific information in relation to COVID-19, publishing an information page setting out delays it will be prepared to</p>

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accept in relation to Solvency II harmonised reporting (which mirrors statements made by the European Insurance and Occupational Pensions Authority).

On 24 March, the PRA released an [information page](#) for banks, building societies and credit unions setting out its current guidance that branches and contact centres should remain open where possible.

On 26 March, as part of a coordinated package of measures released jointly with the FCA and FRC (see above), the PRA published [information](#) on the approach to be taken by banks, building societies and PRA-designated investment firms on the assessment of expected loss provisions under IFRS9.

On 30 March, the PRA issued a [statement](#) on its approach to VAR back-testing in the light of market volatility resulting from the COVID-19 outbreak.

On 31 March, the PRA published [letters](#) sent to the seven largest UK systemically important deposit takers on dividend payments, share buybacks and cash bonuses. The letters included requests for the cancellation of any outstanding 2019 dividends, set out the PRA's expectation that cash bonuses should not be paid to senior staff and indicated that the PRA was ready to use its supervisory powers if the banks concerned did not agree to the requests made. The letters were followed by a [statement](#) by the PRA later on 31 March reiterating the PRA's expectations as set out in the letters and making clear that the Bank of England considers that banks have strong capital positions and that it is not expected that they will need to use the capital preserved in order to maintain adequate capital positions, but that the extra headroom provided by taking a sensible precautionary approach at this stage should help the banks support the economy. This was followed up on 23 April by a [follow-up note](#) to insurers responding to questions about internal assessments of loan creditworthiness and treatment of unrated assets.

Also on 31 March, the PRA published a [Dear CEO letter](#) sent to UK insurers making clear that it expects boards considering distributions to shareholders or the level of variable remuneration awards to pay close attention to the need to protect policyholders and maintain safety and soundness. On 8 April, it published a [statement](#) welcoming the some insurance companies' decisions to pause dividends.

On 6 April, the PRA (jointly with the FCA) issued detailed guidance in relation to the operation of aspects of the SMCR for dual-regulated firms. See full details above.

On 8 April, the PRA published a [letter](#) sent by the Credit Union Supervision Team to directors, staff members and volunteers of PRA-regulated credit unions setting out details of rule modifications available until 1 January 2021 in response to the outbreak, explaining the PRA's supervisory priorities and priorities for credit unions and reiterating messages on regulatory reporting.

On 20 April, the PRA published a [Q & A document](#) providing guidance on the use of liquidity and capital buffers. It confirmed that these buffers exist to be used and provided guidance on technical aspects of when and how they may be used.

On 7 May, the PRA published a [statement](#) on prioritisation in light of COVID-19. The PRA noted in particular: (1) its joint decision with the FPC to postpone the launch of the Climate Biennial

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	<p>Exploratory Scenario until at least mid-2021; (2) its intention to resume full supervisory engagement on LIBOR from 1 June 2020, including data reporting at the end of Q2; (3) its intention to pause further work on the Insurance Stress Test and postpone the next Insurance Stress Test until 2022; and (4) its expectation that firms should not be required to update their Stressed VAR 12-month period during the current period of financial stress, other than if a firm's current period no longer represents a significant period of stress for the firm's portfolio. In the current circumstances, the PRA will permit firms to delay this review until December 2020.</p> <p>On 22 May 2020, the PRA issued a statement providing guidance on the application of regulatory capital and International Financial Reporting Standards 9 (IFRS 9) requirements to payment holidays granted or extended to address the challenges of COVID-19. The statement, in line with the FCA guidance on payment holidays linked to COVID-19, focused on mortgage repayments, but the PRA notes that it expects the guidance to be broadly relevant to similar government-endorsed regimes, and similar measures by lenders, to respond to the adverse economic impact of the pandemic. The statement confirmed the PRA's view that eligibility for, and use of, COVID-19 related payment deferrals, or extensions granted to such deferrals, would not automatically result in a loan being: (a) regarded as having suffered a significant increase in credit risk or being credit impaired for expected credit loss accounting purposes, or (b) triggering a default under the Capital Requirements Legislation.</p> <p>On 2 June 2020, the PRA published a statement confirming that, in light of the restrictions imposed as a result of COVID-19, in the absence of any specific legal provisions to the contrary, firms may use electronic rather than wet signatures when submitting forms and other regulatory documents.</p>
Serious Fraud Office	<p>The Serious Fraud Office (SFO) has not yet published any specific guidance on aspects of how it proposes to conduct investigations or prosecutions during the outbreak. It has indicated that it is currently not able to deal with paper correspondence in a timely fashion and has invited correspondence by email (although it has issued a reminder that email is not entirely secure).</p> <p>One high profile ongoing trial adjourned because of the outbreak resumed on 13 May (at the Central Criminal Court rather than Southwark Crown Court, where it had been proceeding previously, and with new measures to comply with social distancing guidelines). However, proceedings have only been restarted at a very limited number of courts, and it is likely that there will be significant delays to other trials currently scheduled.</p> <p>As with the NCA, the SFO has not yet indicated the circumstances in which subjects of orders requiring information to be provided or documents produced may claim that they have a "reasonable excuse" for not doing so in the current situation.</p> <p>On 7 May, the SFO issued an update confirming that it continues to investigate suspected fraud, bribery and corruption, and that it has been able to continue to follow active lines of inquiry in open investigations, as well as looking into allegations and referrals at the "pre-investigation" stage. The SFO's update states that case teams will contact legal representatives with relevant</p>

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	information relating to adapted ways of working and that any questions about the particulars of a client's situation should be referred to the case team directly.
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Other developments

On 20 March, the UK Government issued a [list](#) of “key workers” for the purposes of continuing school provision. Those listed should not be prevented from working due to childcare issues, although clearly operational effectiveness may still be reduced by other factors during the outbreak. The list includes police and NCA staff and individuals “essential to the running of the justice system”. Staff from other agencies named above are not explicitly included, although they may be deemed to fall within some of the widely drawn categories in some circumstances. See above for details of specific guidance issued by the FCA in relation to the identification of “key workers” within the financial services sector, and steps it considers financial services firms should be taking in relation to this.

On 23 March, the UK Government imposed “lockdown” restricting movement of all individuals for an as yet undefined period (subject to review after three weeks), with only very limited exceptions. For full details, see our separate alert [here](#). On 11 May, the UK Government released [guidance](#) on the UK's recovery strategy and “roadmap” for lifting the restrictions imposed in response to COVID-19. The UK Government's strategy broadly comprises a phased approach by which restrictions will be eased in stages, beginning on 13 May. Depending on the UK's progress in continuing to suppress the virus, the Government's exit plan envisages restrictions will be further eased in additional stages taking place no earlier than 1 June (including a phased return of children to schools, opening non-essential retail, and permitting closed-doors cultural and sporting events) and 4 July (including opening hospitality, places of worship and leisure facilities).

On 28 March, the UK Government announced the temporary suspension of insolvency rules relating to wrongful trading. See our 30 March [alert](#) [here](#) and our separate 31 March publication providing some details of the enforcement context and relevant insolvency related provisions which remain in force [here](#).

Legislative developments – emergency powers

The [Coronavirus Act](#) received royal assent on 25 March, and has now passed into law. It contains a range of practical measures aimed at countering the effects of the outbreak. It proceeded quickly through Parliament and was not substantively amended or supplemented during its passage. On 25 March, it was [announced](#) that the UK Parliament would rise for the Easter vacation (earlier than planned) once this legislation has completed its passage. Parliamentary business resumed on 21 April, involving a combination of debates in the Houses of Parliament and the use of technology to enable remote participation by MPs. The passage of non-COVID-19 related legislation will be delayed as Parliament is sitting to a reduced timetable, but debates, urgent questions and other proceedings (including Select Committee hearings) are taking place, principally to pass necessary measures and consider various aspects of the UK government's response to the crisis.

On 26 March, [regulations](#) were passed putting the UK government's “lockdown” instruction on a statutory footing and giving police powers to fine those not complying. Further powers may be introduced in the same way (i.e. by way of statutory instrument) as necessary in due course. As required by the regulations, the UK government reviewed the “lockdown” during the week commencing 13 April and decided that it was necessary for restrictions to remain in place for at least a further three week period.

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Reviews of responses to the COVID-19 outbreak

The attention of the UK government and specific enforcement authorities continues to be focused on dealing with the immediate impact of the outbreak and putting in place measures to seek to deal with pressing public health and economic issues and to ensure that particular sectors continue to function as effectively as possible. There are not yet any proposals for any reviews of how the UK government or any specific agencies, authorities, sectors or businesses have handled aspects of the crisis, although it is likely that pressure for such reviews may follow. A [petition](#) on the UK Parliament website seeking a public inquiry in relation to the national response to the outbreak has now passed the threshold of 10,000 signatures at which the requirement for the government to issue a response is triggered. That response is awaited. There are 399 other specific petitions on particular aspects of the government response, some of which have secured the 100,000 signatories required to trigger a debate in Parliament). See our separate publication [here](#).