

# ADVICE MATTERS

The CPD Solution For Financial Professionals

2020 | Vol 01 | Edition 01

## In this issue

- 02 Welcome
- 03 **Staying on Track:** Other Regulatory Bodies
- 09 **Tech Check:** SIPP v SSAS a tale of two pensions
- 14 **Skills & Expertise :** Ethical v Compliant – are they equal opponents?
- 18 Links to FCA documents
- 20 Learning outcomes
- 21 Apex Standards

1HR <sup>of structured</sup> CPD  
Accredited by

The London Institute  
of Banking & Finance

Industry  
updates

Key factors for  
your business

Better Interviews  
with your clients

Technical  
know how

**fstep** financial  
services  
training  
partners

  
**unicorn**  
an access company

  
**ComplianceServe**

# Welcome to the first edition of Advice Matters for 2020.

**To start this new decade off we have three articles on very diverse topics.**

The first one takes a look at the other regulatory bodies that have an impact on the financial services sector and which you may well come across, hopefully not in a negatively impactful way.

The second article covers the key elements of a SIPP and a SSAS for pension planning and contains a useful table outlining the similarities and differences between the two.

Our third article, Ethical v Compliant is very timely considering the FCA's focus on culture and the evidencing of right behaviours within your business – . It begs the question – should Ethics and Compliance share equal billing?

Enjoy your CPD and may 2020 be a healthy and prosperous one for you all.

Happy reading!

**The Advice Matters Team**  
at FSTP

## ApEx Standards

The learning outcomes and the ApEx Standards can be found at the end of this edition of Advice Matters

---

Recognised CPD programme

**The London Institute  
of Banking & Finance**

# Staying on Track

This section will keep you up to date with the changes in market, product, legislation & regulation.

## Other Regulatory Bodies

**In the interests of relevance, the following article is limited to the banking and financial services sector.**

The UK's approach to financial regulation involves several bodies, each with its own responsibilities and objectives. The main bodies include **Financial Conduct Authority (FCA), Prudential Regulation Authority (PRA), Bank of England, Financial Policy Committee (FPC)** and **HM Treasury**.

Normally when people – be they industry worker or consumer – talk about the regulator in this sector they are usually referring to either the Financial Conduct Authority or the Prudential Regulation Authority. Some recent articles have referred to the regulator as the “Big Bad Wolf” advising both firms and boards to build their houses of brick accordingly. But, as we shall see later, there are other bodies that do equally vital work.

The FCA has also recently been in the business news and trade press headlines, for sadly all the wrong reasons. Namely, the failure of its incumbent master and chief, Andrew Bailey, to address the losses of 11,600 investors who ploughed £237 million into the now collapsed London Capital Finance and its unregulated mini-bond.

Aggrieved customers are yet to receive compensation and feel that Bailey's ineffectual handling of the LCF situation – along with similar scandals in the peer-to-peer sector [the reported losses at Lendy of £152 million and those faced by Collateral (Source: The Daily Telegraph:

21/12/2019)] – should have ruled him out of the move to the Bank of England – taking over from Mark Carney as its new Governor from 16 March 2020.

The PRA has also received uncomplimentary press in recent years likening its output and activities to the “laborious, occasionally clonking, process of love-making Galapagos tortoises” – and referring to Andrew Bailey (again), when he ran the PRA, as its “sexy turtle in chief” [Source: The Daily Telegraph: 21/12/2019].

Criticisms and witticisms aside, the PRA and FCA carry out the lion's share of regulatory, supervisory and enforcement leg-work. FCA fines for 2019 total £392.3 million and the number of open FCA enforcement cases stands at just fewer than 600 – a record high. Following the post-financial crisis shake-up of the UK regulatory system, new regulators were also set up and are accountable to either the Treasury or Parliament directly.

### Other bodies include:

**The payment Systems Regulator (PSR)**  
**Office for professional Body Anti-Money Laundering Supervision (OPBAS)**  
**The Pensions Regulator (TPR)**  
**Information Commissioners Office (ICO)**  
**The Competition and Markets Authority (CMA)**

As well as those found at <https://www.fca.org.uk/about/uk-regulators-government-other-bodies>.



So, let's look a little more closely at the importance and work of the other main regulatory bodies:

### The Payment Systems Regulator (PSR)

Following HM Treasury's consultation 'Opening Up UK Payments' in March 2013, the PSR was officially created under the Financial Services (Banking Reform) Act 2013. In April 2014 the PSR started work, engaging with the payments systems industry and became fully operational a year later on 1 April 2015. The PSR is accountable to Parliament and is a subsidiary of the FCA.

The PSR is the independent and economic regulator for the £75 trillion payment systems industry in the UK. It is a subsidiary of the FCA and funded by the industry and represented at the **UK Regulators' Network**.

On 20 July 2018, the PSR issued a protocol setting out a specific framework for cooperation between the PSR and FCA in exercising their powers to monitor and enforce compliance with Regulation 105 ("Access to Bank Accounts") of the Payment Services Regulations 2017. It also collaborates with the Bank of England, PRA, Competition and Markets Authority as well as HM Treasury.

There are currently 8 payment systems designated by HM Treasury:

- BACS
- C&C (Cheque & Credit)
- CHAPS
- Faster Payments Scheme (FPS)
- LINK
- Northern Ireland Cheque Clearing (NICC)
- MasterCard
- Visa Europe (Visa)



The PSR's objectives are:

- to ensure that payment systems are operated and developed in a way that considers and promotes the interests of all the businesses and consumers that use them,
- to promote effective competition in the markets for payment systems and services – between operators, payment system providers (PSPs) and infrastructure providers,
- to promote the development of and innovation in payment systems, in particular the infrastructure used to operate those systems.

The PSR's vision is to encourage greater competition and innovation and ensure payment systems are accessible, reliable, secure and value for money;

“  
**The interests of the people and businesses that use payment systems must be front and centre.**

Hannah Nixon  
**PSR managing director**

”

The PSR's vision and objectives are not just of interest to consumers of the services provided by the designated payment systems but also, **the challenger banks** who are looking to revolutionise the way in which people bank. The PSR is becoming more and more influential.

On 24 October 2019 and in response to the PSR, Barclays confirmed that its customers will continue to be able to access the full range of banking services at Post Offices from the renewal date in early 2020, including the cash withdrawal facility using debit cards.

On 6 December 2019, the PSR issued a warning about a scam where fraudsters had sent members of the public emails posing as PSR staff and asking for money.



## The Office for Professional Body Anti-Money Laundering Supervision (OPBAS)

As part of a wider package of reforms, the Government established The Office for Professional Body Anti-Money Laundering Supervision (OPBAS) as a new regulator to strengthen the UK's AML supervisory regime. The OPBAS Regulations 2018, which came into effect on 18 January 2018, give OPBAS duties and powers to ensure the professional body AML supervisors (PBSs) meet the standards required by the Money Laundering Regulations 2017 and ensure the PBSs provide consistently high standards of AML supervision. The list of PBSs overseen by OPBAS are found in Schedule 1 of the Money Laundering Regulations 2017 (MLR 2017).

OPBAS is housed within the FCA and facilitates collaborative information sharing between PBSs, statutory supervisors and law enforcement agencies. Its aim is to improve consistency of professional body AML supervision in the accountancy and legal sectors. However, controversially, OPBAS does not directly supervise legal and accountancy firms, despite findings in a recent report.

In March 2019, an FCA report revealed that 23% of professional body supervisors (PBSs) undertook no AML supervision of its members; 80% lacked appropriate governance arrangements; 91% were not fully applying a risk-based approach. 40% of employees in professional bodies were unsure of their reporting obligations for suspicious activity; 80% of professional bodies lacked appropriate training; 36% lacked proper record-keeping policies and 91% had yet to start or were in the process of gathering information required for money laundering (ML) / terrorist financing (TF) risk profiling. For more information on OPBAS, see the link below:

<https://www.fca.org.uk/publication/opbas/themes-2018-opbas-anti-money-laundering-supervisory-assessments.pdf>

## The Pensions Regulator (TPR)

A non-departmental public body financed by levies on pension schemes which holds the position of the regulator of work-based pension schemes in the UK, TPR took over from the Occupational Pensions Regulatory Authority (OPRA) from 6 April 2005. It was given wider powers and a new proactive and risk-based approach to regulation. In recent years, it's been at the centre of some high-profile cases and investigations and on the receiving end of stern criticism.

Following the collapse of Carillion in January 2018 with sizeable and extensive pension liabilities, the parliamentary inquiry and "excoriating" final report [Source: Guardian, 16/05/2018] described TPR as "feeble" and called for its replacement with a more powerful body. This marked a watershed for TPR and the organisation's approach and culture have since become clearer and tougher in its dealings with employers and pensions trustees [Source: FT, 21/06/2018]; using its powers with greater frequency and testing those which it had not previously used.

Between 2017 and 2019, TPR brought prosecutions against 23 individuals and organisations for failure to provide information, wilful non-compliance with automatic enrolment duties, recklessly providing false or misleading information to TPR, fraud and computer misuse. And following concerns over the risk of contagion after Carillion's collapse, TPR made use of available intelligence to target schemes covering liabilities of £85.5 billion and more than 800,000 members.



Where TPR has issued warning notices (i.e. anti-avoidance action), it has recovered more than £1 billion often via the use of settlement and in doing so, also avoided costly litigation. In February 2017, TPR agreed a £363 million settlement with Sir Philip Green in relation to the BHS pension scheme. Welcome news for the trustees of the two BHS pension schemes as it provided funding for a new independent pension scheme and higher benefits than they would have received from the Pension Protection Fund (PPF).

In June 2017, TPR agreed a £74 million settlement for a third defined benefit (DB) pension scheme as part its anti-avoidance investigation into Coats Group plc. And in December 2018, following an investigation by TPR into what it felt was an imbalance between funds put into the Southern Water Pension Scheme and dividends paid out to shareholders in 2016-17, it was announced that Southern Water would pay more money into its pension scheme over a shorter recovery period.

Since Carillion, TPR has implemented a new regulatory model to drive up standards and tackle risk by being more proactive with a larger proportion of the schemes and employers it regulates. More details on this can be found at **Making workplace pensions work**.

TPR's priorities for 2019 to 2022 include extending regulatory reach; more proactive and targeted regulatory interventions; enforcing high standards of trusteeship, governance and administration; intervention where necessary so that defined benefit (DB) schemes are properly funded to meet their liabilities as they fall due; enabling workplace pensions' schemes to deliver their benefits through significant change (e.g. Brexit) and ensuring staff save into a qualifying workplace pension. For more information, visit the link below: Corporate Plan 2019-2022. The TPR's powers have been further bolstered under new legislation, passed on 24 October 2019. The Pensions Bill introduces new criminal offences, including a civil penalty of up to £1m. See [www.ipe.com/uk-government-due-to-present-long-awaited-pensions-legislation/10033813.article](http://www.ipe.com/uk-government-due-to-present-long-awaited-pensions-legislation/10033813.article).

## The Information Commissioner's Office (ICO)

ICO was founded in 1984. It is a non-departmental public body which reports directly to Parliament and is sponsored by the Department for Digital, Culture, Media and Sport (DCMS) and the Ministry of Justice. It is also an independent regulatory office set up to maintain information rights in the public interest, promoting openness by public bodies and data privacy for individuals. Data protection, the General Data Protection Regulation (GDPR), electronic communications, freedom of information and environmental regulations are all within ICO's remit.

### A reminder – Important information about personal data.

- Personal data may also include special categories of personal data or criminal conviction and offences data. These are considered to be more sensitive and you may only process them in more limited circumstances.
- Pseudonymised data can help reduce privacy risks by making it more difficult to identify individuals, but it is still personal data.
- If personal data can be truly anonymised, then the anonymised data is not subject to the GDPR. It is important to understand what personal data is in order to understand if the data has been anonymised.
- Information about a deceased person does not constitute personal data and therefore is not subject to the GDPR.
- Information about companies or public authorities is not personal data.
- However, information about individuals acting as sole traders, employees, partners and company directors where they are individually identifiable and the information relates to them as an individual may constitute personal data.

The **Leveson Inquiry** into the culture, practices and ethics of the British press – specifically News International’s phone hacking scandal – highlighted that the ICO was unable to challenge the press in relation to allegations of breaches due to the superior powers of the press over the perceived weakness of ICO’s own powers.

The report made recommendations regarding the Data Protection Act, the powers and duties of the **Information Commissioner** and the conduct of relations between the press, the police, and politicians. For more information see **The Information Commissioner’s Response** (7 January 2013).

The GDPR covers most firms’ legal obligations. Whilst it has direct effect across all EU, it offers member states limited opportunities to make provisions for how it applies in their country (see the GDPR and Brexit). One element of the Data Protection Act (DPA) 2018 is the details of these. It is therefore important that both the GDPR and DPA 2018 are considered and consulted in tandem.

Following on from the GDPR coming into force on 25 May 2018, organisations can now be fined up to 4% of their annual worldwide turnover or if greater, €20,000,000 for certain breaches and up to 2% or if greater, €10,000,000 for other specified breaches. Consider Facebook’s position if they were fined under the new regime instead of having to pay a “small, but symbolic” fine of £500,000 which was the maximum under Data Protection Act (DPA) 1998.

### **The Competition and Markets Authority (CMA)**

In April 2014, the FCA was granted permission from HM Government to take over from the Office of Fair Trading as regulator for all consumer credit firms.

The Competition and Markets Authority was set up as an independent non-ministerial department which acquired its powers on 1 April 2014 when it took over many of the functions of the Competition Commission and the Office of Fair Trading.

The CMA works with HM Treasury and the FCA to ensure fair competition for the benefit of consumers, within and outside the UK and to ensure markets work fairly for consumers, businesses and the economy.

The CMA has recently been in the business news headlines following its probe into Google’s advertising arm which is believed to account for 90% of all search advertising revenues in Britain for 2018 and estimated at a value of around £6 billion – three times the value of display adverts for Facebook (£2 billion) in the same period. Both firms’ dominant “strategic market status” is said to be harmfully interfering with consumer choice, damaging publishers and newspapers and hampering competitor technological innovation.

This marks the biggest challenge by a UK regulator and discussions may result in the creation of a new technology regulator to police the big tech firms and prevent harm to consumers. Among the issues the CMA is investigating are how it can make Facebook share its technology with other players and give consumers more options to share its content across multiple social networks – good luck with that one! And with the “divestiture” and “separation of ownership issues” of Google’s operations it would be hard for the UK and the CMA to do that alone. The CMA will publish the final report in July 2020. (source: The Daily Telegraph; 19/12/2019).





**The Department for Business, Energy & Industrial Strategy** – responsible for company law, insolvency matters and for most investigations and prosecutions under the Companies Acts.

**The Department for Work and Pensions** – responsible for public policy on pensions and for sponsoring The Pensions Regulator.

**The Financial Ombudsman Service (FOS)** – set up by Parliament to settle complaints and individual disputes between consumers and businesses that provide financial services fairly and impartially. Those who work in financial services will also be familiar with the close-ties and intelligence-passing that exists between the FCA and Financial Ombudsman Services in terms of root-causes, trends and similarities of the complaints made against financial services firms.

**The Financial Services Compensation Scheme (FSCS)** – set up by Parliament in 2001 and funded by the financial services industry, the FSCS protects customers when authorised financial services firms fail. The FSCS protects UK authorised banks, building societies and credit unions. Again, there are also similar links between the FCA and the Financial Compensation Scheme in cases where firms have become insolvent.

There are also specific networks. **UK Competition Network (UKCN)** is an alliance of the CMA with all the UK sector regulators which have a duty to support, enable and promote competition within their sectors and in the interests of consumers.

**The UK Regulators' Network (UKRN)** was established in 2014 to enhance collaboration on issues of shared relevance across 13 other UK member sectorial regulators. The aim is to find cross-sector regulatory agreement or consistency and consumer empowerment.

### **The GDPR and Brexit**

The General Data Protection Regulation applies to all companies based in the EU and those with EU citizens as customers. It has an extraterritorial reach, so non-EU countries are also affected. UK companies continuing to do business with the EU after Brexit need to comply with the regulation to avoid infringements. International companies across the globe with any EU citizens as customers also need to be aware of their new legal obligations and comply to avoid fines. With the expected high level of international business involving the EU, the GDPR may influence stronger data protection procedures around the world. See <https://www.gdpr.associates/gdpr-brexit/>.

## **Summary**

---

Post-financial crisis, this has been an eventful decade for many of the regulators. It seems that the frequency and sophistication of frauds and scams has been rivalled by the instances of firms' reckless negligence or brazen belief that laws, rules and regulations do not apply to them. In addition, there have been gaps and underlaps in certain rules, regulations and processes (tax evasion, tax avoidance) which have enabled exploitative manipulation and misuse until detection.

As we prepare to leave the EU in 2020, regulatory bodies will need to be even more joined-up and collaborative in their approach to regulation and share available information and data responsibly to achieve collective objectives of market integrity and stability, consumer protection, effective competition and markets that function well.

Thus, by ensuring financial services firms have sound and transparent governance and infrastructures with senior managers and staff who are accountable in the event of their firm's failure (and their winding down is done in an orderly way that does not disrupt the market); that their services and products perform in the manner expected; by monitoring the uses and detecting the misuses of technology, AI and robotics; by monitoring any indicators of anti-competitive or abusive practices; by minimalising consumer harm and ensuring fair compensation when appropriate; and finally, by maintaining the highest standards of consumer trust, there should be a more coordinated and robust regulatory system providing fairer outcomes for all.

# Tech Check

In Tech Check we address aspects of technical knowledge that you need to keep abreast of and that will enable you to have better conversations with your clients.

## SIPP v SSAS - a tale of two pensions

A tale of two cities was, in my opinion, one of Charles Dickens' finest works. In many respects its opening lines are as appropriate now as they have ever been:



It was the best of times, it was the worst of times, it was the age of wisdom, it was the age of foolishness, it was the epoch of belief, it was the epoch of incredulity, it was the season of Light, it was the season of Darkness, it was the spring of hope, it was the winter of despair...



In the eyes of some pensioners, the advent of pension's freedom brought them the **best of times**. Whereas once we all had to buy an annuity with our pension pots, now we have so much choice in terms of how to use these funds or indeed whether we use them for ourselves at all and instead pass the pot on to future generations.

However, the introduction and subsequent reduction in the lifetime allowance from £1.8m to £1m (now



increased marginally over two years to £1.055m) presented prospective pensioners simultaneously with **the worst of times**.

Pension's freedom theoretically encouraged us to be responsible for our actions, treating pensioners as adults (for a change), an **age of wisdom** if you like. However, the ability for people to draw down their entire pension pot and spend it as they wish (even on a Lamborghini) may also prove this in time to be an age of abject **foolishness**.

After all, trust needs to be earned and as a nation we have not always proved to be very good at managing our personal finances. According to the TUC, Britain's household debt has reached a new high. UK households now owe an average of £15,385 to credit card firms, banks and other lenders.

Pension simplification, introduced in 2006, was welcomed by many, as the **epoch of belief** if you like, that the pensions landscape would be accessible, easy to understand and attractive to both low and high earners. However, changes in pensions legislation since then has led to more and more of us facing potentially prohibitive tax charges within our pensions and the lack of joined up thinking from successive governments could in time lead to a pensions crisis. This **epoch of incredulity** could lead to many people finding the pensions landscape so uncertain that they may choose historically more stable (albeit not as tax efficient) alternatives to saving their hard-earned money, for example ISAs.

This interesting backdrop presents an ideal opportunity to review the debate around SIPP v SSAS. The purpose of this article is to review some of the similarities and differences of both types of pension vehicle, and to highlight some of the challenges and opportunities that present themselves in the ever-changing pension landscape.

Let us use this **season of light** wisely to shine down on the benefits of good pensions planning so we can look forward to the **spring of hope** into which we can emerge from our winter of **darkness** and **despair**.

## A summary of the key differences

	SSAS (Small Self- Administered Scheme)	SIPP (Self Invested Personal Pension)
<b>Structure</b>	<ul style="list-style-type: none"> <li>Occupational Pension Scheme</li> <li>Individual trust set up for the scheme</li> </ul>	<ul style="list-style-type: none"> <li>Personal Pension Scheme</li> <li>Commonly set up as a Master Trust by providers</li> </ul>
<b>Trustees</b>	<ul style="list-style-type: none"> <li>Members are appointed as trustees</li> </ul>	<ul style="list-style-type: none"> <li>SIPP provider normally acts as the trustee</li> </ul>
<b>Membership</b>	<ul style="list-style-type: none"> <li>Anyone can join a SSAS as long as they meet the scheme's eligibility requirements</li> <li>Usually less than 12 members</li> </ul>	<ul style="list-style-type: none"> <li>Anyone can join a SIPP if they meet the provider's eligibility requirements</li> </ul>
<b>Control</b>	<ul style="list-style-type: none"> <li>Employer has overall control of the scheme, with the Administrator having day- to- day responsibility</li> <li>The trustees make the investment decisions</li> </ul>	<ul style="list-style-type: none"> <li>The SIPP provider has overall control of the scheme, with the Administrator having day- to- day responsibility</li> <li>The member makes the investment decisions</li> </ul>
<b>Investments</b>	<ul style="list-style-type: none"> <li>Investments are registered in the name of the trustees</li> <li>The employer decides which investments are allowable (in the scheme rules)</li> </ul>	<ul style="list-style-type: none"> <li>Investments are registered in the name of the SIPP trustee company (under master trust)</li> <li>The provider decides which investments are allowable (in the SIPP rules)</li> </ul>
<b>Property</b>	<ul style="list-style-type: none"> <li>Investment in commercial property is common</li> </ul>	<ul style="list-style-type: none"> <li>As per SSAS</li> </ul>
<b>Loans</b>	<ul style="list-style-type: none"> <li>The SSAS can lend up to 50% of the scheme's net assets to the sponsoring employer (subject to conditions)</li> <li>Loans are not allowed to members, or anyone related to them.</li> <li>There is no limit for loans to unconnected parties</li> </ul>	<ul style="list-style-type: none"> <li>Loans are not allowed to members or any person or company related to the member</li> <li>There is no limit for loans to unconnected persons</li> </ul>



## A summary of the key differences - continued

	<b>SSAS (Small Self- Administered Scheme)</b>	<b>SIPP (Self Invested Personal Pension)</b>
<b>Borrowing</b>	<ul style="list-style-type: none"> <li>Up to 50% of the net value of the fund can be borrowed</li> </ul>	<ul style="list-style-type: none"> <li>As per SSAS</li> </ul>
<b>Shares</b>	<ul style="list-style-type: none"> <li>Up to 5% of the fund value can be invested in the sponsoring employer's shares</li> </ul>	<ul style="list-style-type: none"> <li>Up to 70% of the fund can be invested in any company, if this is acceptable to the SIPP provider</li> <li>However, if the SIPP invests in a company that is controlled by the member or associated person, tax charges might apply</li> </ul>
<b>Income drawdown</b>	<ul style="list-style-type: none"> <li>Available via flexi-access drawdown and capped drawdown (if elected before 6th April 2015)</li> </ul>	<ul style="list-style-type: none"> <li>As per SSAS</li> </ul>
<b>Uncrystallised Fund Pension Lump Sum (UFPLS)</b>	<ul style="list-style-type: none"> <li>Allows a payment from the pension fund after the age of 55</li> <li>Generally, 25% of the payment is tax free, with the remainder taxed at the member's highest marginal rate</li> </ul>	<ul style="list-style-type: none"> <li>As per SSAS</li> </ul>
<b>Personal contributions</b>	<ul style="list-style-type: none"> <li>Personal tax claims can secure basic and higher rate relief</li> </ul>	<ul style="list-style-type: none"> <li>The Administrator can claim basic tax relief at source</li> <li>A personal tax claim can secure higher rate relief</li> </ul>
<b>Allocation of investment</b>	<ul style="list-style-type: none"> <li>Investments are not allocated to specific members</li> <li>Each member owns a notional share of the non-insured assets</li> </ul>	<ul style="list-style-type: none"> <li>Investments are allocated to specific member</li> <li>Members can combine their funds to purchase assets together</li> <li>If they do so, members will be allocated shares in the assets</li> </ul>
<b>Death Benefit Rules</b>	<ul style="list-style-type: none"> <li>Possible to provide a lump sum or income for dependents or nominated beneficiaries</li> </ul>	<ul style="list-style-type: none"> <li>As per SSAS</li> </ul>
<b>Regulated by</b>	<ul style="list-style-type: none"> <li>The Pensions Regulator</li> </ul>	<ul style="list-style-type: none"> <li>The Financial Conduct Authority</li> </ul>
<b>Complaints can be made to</b>	<ul style="list-style-type: none"> <li>The Pensions Ombudsman Service</li> </ul>	<ul style="list-style-type: none"> <li>The Financial Ombudsman Service</li> </ul>

## So what else needs to be considered?

### Costs

A common perception is that SSASs are much more expensive and complex to set up and run than the more straightforward SIPP. Whilst this may be true for single or low number membership, or where assets can be purchased using only one or two funds, once multi membership is desired or required (for example, pooling funds to purchase a commercial property) then a SSAS may prove to be a much cheaper and easier option.

For example, fees for running a pension with commercial property may look like (see table):

	First year fee	Annual fee	Total
1 x SIPP	£2,145	£745	£2,890
4 x SIPP	£8,580	£2,980	£11,560
1 member SSAS	£3,755	£1,365	£5,140
4 member SSAS	£4,580	£1,800	£6,380

The above demonstrates further investigation with regards to cost should take place – purchasing a property within a pension fund, with four or more members involved, could be significantly cheaper via the SSAS route. The same would apply for other asset purchases, not just commercial property.

### Pooling investments

As the above demonstrates, whenever two or more individuals wish to purchase a consolidated investment strategy it becomes far easier and cheaper to use a SSAS – as one product, one fee.

Assets within a SSAS fund can be pooled (each member has a percentage of the total fund) or earmarked (specific assets are notionally allocated to specific members). Restructuring the percentage ownership between the members is a simple paper exercise and does not involve buying out another member's share and changing ownership using costly legal processes.

### Fees and VAT

Another aspect to take into account is how fees are paid in the SSAS v SIPP debate – unlike SIPP's, a contributing employer can pay the fees for the operation of the SSAS. The fees are a deductible expense against Corporation Tax and allow the VAT to be reclaimed. In addition, where the employer pays the fees, there is no consequent reduction in yield on the pension fund, which can produce better performance.



## Contributions and benefits

There are no differences in the legislation regarding contributions and benefits that can be paid from a SSAS or a SIPP.

Although technically either a SSAS or a SIPP may provide a member with a scheme pension, in practice the structure of the majority of SIPP providers do not allow them to offer this option.

The provision of a scheme pension out of the assets of a SSAS can sometimes be seen as advantageous where a member's overall benefits are close to his or her lifetime allowance (LTA) – particularly if no specific LTA protection is in place and in light of the reduction of the LTA from its high of £1.8m to its current £1.055 million.

In most cases where a member crystallises his/her benefits under a SSAS or SIPP it will be the value of those benefits that will be tested against any available lifetime allowance. This is not, however, the case where the member's benefits are being paid as a scheme pension out of scheme funds. In such a case the member's scheme pension is determined by the scheme actuary taking into account the size of the member's fund, the likely investment returns on the assets and the member's expected longevity. The amount assessed against the member's LTA will be 20 times the scheme pension being paid, which will commonly result in a lower value being set against the LTA than the member's fund value and may help avoid any lifetime allowance charge.

## So in conclusion...

Having reviewed some of the similarities and differences between SIPPs and SSASs, taking into account recent changes in legislation, it is clear there is no simple decision as to which pension vehicle is the most advantageous. For simple one member schemes, then a SIPP may appear to be the most appropriate, whereas multi membership may lead towards a possibly more cost effective and flexible SSAS. The ability to self-invest or borrow money from the pension could also be potential drivers. The circumstances, goals and expectations of the client(s) will ultimately drive this decision.





# Skills & Expertise

Personal development is often forgotten or neglected, as it is not seen as important as the other areas of CPD. In reality it can be the aspect that makes the real difference to your clients and your earning capacity. In each edition of Advice Matters we will discuss potential development areas and ensure any regulator focus that aligns to this area is covered in a very timely manner.

## Ethical v Compliant – are they equal opponents?

Many years ago, I attended a training seminar where one of the speakers opened with the line “Do you fear ETERNAL DAMNATION (to the accompanying on-screen image of Dante’s Inferno) or do you have religion?” Momentarily bewildered but nevertheless attentive, we the audience later understood the reference to mean that unless firms were confident that they and their staff were fully compliant, they should fear a visit from the regulator and all its attendant hellish consequences – equivalent I suppose, in a way, to a condemned life, forever damned in the hereinafter.

However, we all filed out of the conference room, went back to our day jobs as normal and at no time, I suspect, could any of us have ever predicted the extent and catastrophic impact of the financial crisis which then hit the sector with such seismic effect. The devastating aftershocks that soon followed further disrupted the markets, eroded public trust and highlighted huge deficiencies in regulation, compliance and the sector in general.

It resulted in a complete over-haul of the regulatory system – barely a decade on from when the FSMA 2000 Act and the then new FSA powers came into force. Reform at a fundamental and individual level was evidently overdue. But did much of the solution lie perhaps in a more subtle, spirit-of-the-law and ethical approach and would this in turn be fully supported and endorsed by senior management?



This has sparked an interesting debate over the years and is currently highly topical as ethics and integrity in conjunction with notions of fairness, openness, honesty and transparency have come increasingly under closer regulatory scrutiny, in terms of tone from the top, firms’ culture and conduct, the behaviour of customer-facing staff and treatment of customers. Put simply, are we now more likely as individuals to conform to laws and regulations out of fear of the consequences of breaking them? Or would our decision-making, actions and behaviours be more strongly influenced and moderated by our own individual moral compass – thereby avoiding fines and sanctions?

Firms – despite being referred to as “legal persons” [as per Threshold Conditions] – are expected to comply with laws, rules and regulations rather than risk a fine, reputational damage and either restriction or withdrawal of permissions, whereas individuals are supposedly more likely to behave ethically and honestly to reduce the risk of a demotion in status and individual standing, potential loss of livelihood, the stigma and consequences of stern disciplinary action or even summary dismissal.

That said, the world’s biggest banks have accrued around \$321 billion in fines since the financial crisis (data from the Boston Consulting Group, March 2017;) and according to EY’s Global Fraud Survey of 2018, senior managers are failing to set the right tone from the top with the percentage of respondents who would justify fraud to meet financial targets increasing on a global level since 2016; 12% would justify extending the monthly reporting period, 7% would backdate a contract and 7% would book revenues earlier than they should to meet financial targets. (see [https://www.ey.com/en\\_gl/assurance/the-global-fraud-survey-how-compliance-can-be-more-effective](https://www.ey.com/en_gl/assurance/the-global-fraud-survey-how-compliance-can-be-more-effective)).

Once on-boarded, it is widely assumed that in the workplace, all of us would fundamentally know the difference(s) between right and wrong. And yet, our “inner wiring”, based on an eclectic melange of past personal factors and previous experiences (all of which differentiate us from colleagues), determines the choices we make and the rationale for doing so in most situations. Motivation and

opportunity are the additional core components in this decision-making process and these same three are also present in the contemplation of any rule-bending and wrong-doing. Following a behavioural economics study, the FCA concluded that people do not always make choices in a calculated way. According to the study, most decision-making is intuitive and automatic rather than deliberative and controlled ([www.fca.org.uk/publication/occasional-papers/occasional-paper-1.pdf](http://www.fca.org.uk/publication/occasional-papers/occasional-paper-1.pdf)).

So when faced with an ethical dilemma at work, which is more likely to tip the scales in the battle of ethical versus compliant? Compliance with the law (or regulation) or the heavy weight and burden of individual conscience and compromised integrity? Which is the more likely to govern our conduct, guide our behaviour towards stakeholders (i.e., client, firm, self, colleagues – market participant, industry, regulator) as well as our choices and decision-making? If we knew we could get away with something unpunished and achieve a personal gain, would we actually cross that line and thus potentially risk incurring a breach with firm-wide ramifications as well as personal consequences?

Some believe that if we were to breach a code of conduct, we may not always get caught. But if we fail to make the numbers or fall short of targets over, say, 2 consecutive quarters, it is certain we would lose our jobs. So it is easy to see, in a way, how ‘bad culture’ red flags have often been missed or ignored in environments that put profits before anything else and often look the other way when it comes to unethical and ‘bad’ behaviour.







Consider the financial adviser who with just two working days left to the end of the quarter is only one deal away from achieving his bonus. Encouraged by his line-manager to 'go for it', he contemplates selling a high-end product which he knows will be completely unsuitable to an elderly couple, despite their keen readiness to invest. Given their status, risk appetite, knowledge of investments, their aims and objectives in terms of returns and gains, he knows he should really pass their details onto a colleague who markets and sells products more suited to the couple's needs, status and objectives. But, with eyes on the prize, he's thinking only of the rewards and recognition for exceeding his target and then banking his bonus.

What's more likely to stop him from mis-selling and, conscience aside, what's more likely to prevent this?

On the one hand, we have the ethical approach. Whether our adviser does the right thing and declines to act for the couple – thereby missing out on his bonus – is perhaps more likely to be dependent on a firm's culture and attitude to fairness than his individual moral compass setting. Many firms will reinforce their stance on what is both acceptable and unacceptable behaviour by having a periodically-updated Code of Conduct (or similar) in place, often referring to a zero-tolerance policy as regards

to bribery and corruption. This may also refer to and complement firms' mission or conduct risk statements and perhaps also their Whistle-blowing and Speaking Up policy.

Some employees – as a result of their 'adviser' qualifications – may also be members or affiliates of the Chartered Institute of Securities and Investments (CISI) and as such, are required to adhere to the CISI's Code of Conduct which is stakeholder-based, comprises 8 Principles and requires its members to meet standards and obligations that exceed basic compliance and overarch the core values of the institute they work for.

- Principle 1 & 5 cover honesty and fairness and conflicts of interest respectively (stakeholder: client);
- Principle 2 – integrity (stakeholders: firm and industry);
- Principles 3 & 4 cover the observation of applicable law, regulation and professional conduct and standards of market integrity respectively (stakeholders: the regulator and market participants);
- Principles 6 & 7 relate to an individual's learning, professional competence and expertise (stakeholders: self, client and colleagues [6]) and finally;
- Principle 8 applies to efforts to maintain the highest personal and professional standards (stakeholders: self and industry).





And then on the other hand, we have compliance. Namely, the high-level principles (PRIN 1- Integrity) and specifically PRIN 6 which is the foundation of treating customers fairly, and also the conduct regulations. A breach of any of these by an individual is more likely as not to lead to further disciplinary consequences for the firm's senior management (i.e. breach of PRIN 3 – Management and control) that could result in the disqualification of that individual, exemplary fines and reputational damage for both the individual and the firm and finally, either restriction or removal of the firm's permissions.



In addition, and as of 9 December 2019, there's the full might of the Senior Managers Regime, right across the whole of the financial services sector, formalising firms' need for a robust governance framework to be in place. This now applies to all solo-regulated firms and places significant focus on individual accountability and personal behaviour via its conduct rules (e.g. ICR 1 covers integrity). The regulatory reasoning here is that prosecuting the misconduct of individuals helps to deter fraud, bribery and corruption. Senior executives/managers are very much open to penalties up to and including jail terms for any (egregious) misconduct that happens in their teams and on their watch. The FCA's website bears testament to the naming and shaming of both firms and individuals, and has details of individual fines and even study material on 'how not to behave'.

Ethics and compliance are commonly regarded as being essentially different sides of the same coin (see below). Compliance follows the law, rules or regulations laid down whilst ethics is all about the individual(s) doing the right thing, regardless of the law or even whether anyone is even looking. It is the choice of doing something for the greater good of others as well as doing unto others as we would have done unto ourselves.

The CISI (see Integrity and Ethics in Professional Practice) describes the principal features of ethics versus compliance as follows:

ETHICS	COMPLIANCE
Prevention	Detection
Principles-based	Law/rules based
Values-driven	Fear-driven
Implicit	Explicit
Spirit of the law	Letter of the law
Discretionary	Mandatory

But for 'ethical' to be a truly equal opponent of 'compliance', the individual must feel sufficiently safe and secure in the workplace to come forward and speak-up, as well as being appropriately well-intentioned, duty-bound and compelled to raise a hand that is also guided by strong ethical principle.

Our actions should be governed by the choices we make, not just by the rules; a sense of ought to, rather than having to do something. Ethical behaviour should underpin and enhance legislative and regulatory frameworks and firms must create the right environments of trust so that doing the right thing comes more naturally than avoiding or concealing what you have to do or have not done.

This is the challenge that all firms irrespective of size and stature now face.

# Links to FCA documents

Relevant consultation papers (CP), policy statements (PS), guidance consultations, finalised guidance, press releases, speeches, statements, news stories, and discussion papers

## February 2020

Reference	Title	Link
Press Release	22 years pension gone in 24 hours	<a href="https://www.fca.org.uk/news/press-releases/22-years-pension-savings-gone-24-hours">https://www.fca.org.uk/news/press-releases/22-years-pension-savings-gone-24-hours</a>
Statement	Conduct risk during LIBOR transition	<a href="https://www.fca.org.uk/news/statements/conduct-risk-during-libor-transition-questions-and-answers">https://www.fca.org.uk/news/statements/conduct-risk-during-libor-transition-questions-and-answers</a>
Press Release	Former CEO who paid excessive remuneration to his wife	<a href="https://www.fca.org.uk/news/press-releases/fca-and-pra-publish-decision-notice-given-former-ceo-who-paid-excessive-remuneration-his-wife">https://www.fca.org.uk/news/press-releases/fca-and-pra-publish-decision-notice-given-former-ceo-who-paid-excessive-remuneration-his-wife</a>
Speech	Open finance opportunity in financial services	<a href="https://www.fca.org.uk/news/speeches/open-finance-opportunity-financial-services">https://www.fca.org.uk/news/speeches/open-finance-opportunity-financial-services</a>
Speech	Next steps for transition with LIBOR	<a href="https://www.fca.org.uk/news/speeches/next-steps-transition-libor">https://www.fca.org.uk/news/speeches/next-steps-transition-libor</a>
Press Release	FCA fines Henderson £19M	<a href="https://www.fca.org.uk/news/press-releases/fca-fines-henderson-19m-fund-failings">https://www.fca.org.uk/news/press-releases/fca-fines-henderson-19m-fund-failings</a>
Press Release	FCA bans promotion on speculative mini bonds	<a href="https://www.fca.org.uk/news/press-releases/fca-ban-promotion-speculative-mini-bonds-retail-consumers">https://www.fca.org.uk/news/press-releases/fca-ban-promotion-speculative-mini-bonds-retail-consumers</a>
Press Release	FCA secures confiscation order against convicted fraudster	<a href="https://www.fca.org.uk/news/press-releases/fca-secures-confiscation-order-totalling-291070-against-convicted-fraudster">https://www.fca.org.uk/news/press-releases/fca-secures-confiscation-order-totalling-291070-against-convicted-fraudster</a>
News	Investment firms will need to use new form for notifying the FCA re non SMF director change	<a href="https://www.fca.org.uk/news/news-stories/mifid-investment-firms-will-need-use-new-form-notify-fca-management-body-changes-non-smf-directors">https://www.fca.org.uk/news/news-stories/mifid-investment-firms-will-need-use-new-form-notify-fca-management-body-changes-non-smf-directors</a>

Press Release	FCA consults on how to extend the Senior Managers Regime for benchmark administrators	<a href="https://www.fca.org.uk/news/press-releases/fca-consults-how-extend-senior-managers-regime-benchmark-administrators">https://www.fca.org.uk/news/press-releases/fca-consults-how-extend-senior-managers-regime-benchmark-administrators</a>
Speech	Regulator's speech on operational resilience	<a href="https://www.fca.org.uk/news/speeches/view-regulator-operational-resilience">https://www.fca.org.uk/news/speeches/view-regulator-operational-resilience</a>
News	FCA meets firms to discuss feedback on Gabriel and improvements to the new data collection platform	<a href="https://www.fca.org.uk/news/news-stories/fca-meets-firms-discuss-feedback-gabriel-and-improvements-new-data-collection-platform">https://www.fca.org.uk/news/news-stories/fca-meets-firms-discuss-feedback-gabriel-and-improvements-new-data-collection-platform</a>
Press Release	Building operational resilience and impacting tolerances on important business services	<a href="https://www.fca.org.uk/news/press-releases/building-operational-resilience-impact-tolerances-important-business-services">https://www.fca.org.uk/news/press-releases/building-operational-resilience-impact-tolerances-important-business-services</a>
News	FCA extends SM&CR to 47000 firms	<a href="https://www.fca.org.uk/news/news-stories/fca-extends-senior-managers-and-certification-regime-47000-firms">https://www.fca.org.uk/news/news-stories/fca-extends-senior-managers-and-certification-regime-47000-firms</a>
Press Release	FCA asks for proposals on how open finance could transform financial services	<a href="https://www.fca.org.uk/news/press-releases/fca-asks-proposals-how-open-finance-could-transform-financial-services">https://www.fca.org.uk/news/press-releases/fca-asks-proposals-how-open-finance-could-transform-financial-services</a>
Press Release	FCA fines PPC for misleading consumers	<a href="https://www.fca.org.uk/news/press-releases/fca-fines-ppc-misleading-consumers-banks-first-cmc-case-closed-regulator">https://www.fca.org.uk/news/press-releases/fca-fines-ppc-misleading-consumers-banks-first-cmc-case-closed-regulator</a>
Press Release	FCA secures confiscation order totalling £5M against illegal money lender	<a href="https://www.fca.org.uk/news/press-releases/fca-secures-confiscation-order-totalling-5-million-against-illegal-money-lender">https://www.fca.org.uk/news/press-releases/fca-secures-confiscation-order-totalling-5-million-against-illegal-money-lender</a>
Statement	FCA and Bank of England – joint review on open ended funds	<a href="https://www.fca.org.uk/news/statements/fca-boe-statement-joint-review-open-ended-funds">https://www.fca.org.uk/news/statements/fca-boe-statement-joint-review-open-ended-funds</a>
Press Release	John Swift QC invites submissions from interested parties	<a href="https://www.fca.org.uk/news/press-releases/announcement-john-swift-qc-inviting-submissions-interested-parties">https://www.fca.org.uk/news/press-releases/announcement-john-swift-qc-inviting-submissions-interested-parties</a>
Press Release	Tribunal upholds decision re fine for Hall and Hanley data breaches	<a href="https://www.fca.org.uk/news/press-releases/first-tier-tribunal-upholds-decision-fine-hall-and-hanley-limited-data-breaches-and-unauthorised">https://www.fca.org.uk/news/press-releases/first-tier-tribunal-upholds-decision-fine-hall-and-hanley-limited-data-breaches-and-unauthorised</a>
News	Financial services regulatory partners Phoenixing Group	<a href="https://www.fca.org.uk/news/news-stories/financial-services-regulatory-partners-phoenixing-group">https://www.fca.org.uk/news/news-stories/financial-services-regulatory-partners-phoenixing-group</a>
Press Release	FCA fines former managing director £45000 for failure to notify personal trades	<a href="https://www.fca.org.uk/news/press-releases/fca-fines-former-managing-director-45000-failure-notify-personal-trades">https://www.fca.org.uk/news/press-releases/fca-fines-former-managing-director-45000-failure-notify-personal-trades</a>



# Learning outcomes

By reading this edition of Advice Matters and applying the learning you will be able to:

State who the other regulatory bodies are relevant to financial services

Clarify what the other regulatory bodies are authorised to do

Be aware of what functions the new regulators have taken on board

Confirm important information regarding personal data

Explain the changing remit of the pensions landscape

Compare the similarities and differences between a SIPP and a SSAS

Discuss the difference between ethical and compliant

Consider people's rationale regarding decision-making

Be aware of the alignment between compliance, ethics and culture

# The ApEx standards

The ApEx standards addressed in this edition of Advice Matters are:

Core or specialist subject	Learning outcome	Indicative content
FSRE	The UK financial services industry, in its European and global context	<ul style="list-style-type: none"> <li>• Role and structure of the UK and international markets</li> <li>• Role of Government</li> <li>• The function and operation of financial services within the wider economy</li> <li>• Impact of the EU on UK regulation</li> </ul>
FSRE	How the retail consumer is served by the financial services industry	<ul style="list-style-type: none"> <li>• Industry obligations towards consumers</li> </ul>
FSRE	Regulation of financial services	<ul style="list-style-type: none"> <li>• The role of the FCA, HM Treasury and the Bank of England</li> <li>• The role of other regulating bodies</li> <li>• The Financial Services and Market Act (FSMA) and other relevant legislation</li> <li>• The role of EU regulations and directives</li> </ul>
FSRE	Principles and rules as set out in the regulatory framework	<ul style="list-style-type: none"> <li>• FCA Conduct of Business Sourcebook principles and rules</li> <li>• Rules and practices of anti-money laundering and proceeds of crime obligations principles and rules of GDPR</li> <li>• Analyse the roles of the FOS and FSCS</li> <li>• FCA principles and rules relating to client relationships and adviser responsibilities</li> </ul>

Retirement Planning	The political, economic and social environmental factors which provide the context for pensions planning	<ul style="list-style-type: none"> <li>• Role of Government in the context of pension planning</li> <li>• Corporate responsibilities, challenges and impact on pension provision</li> </ul>
Retirement Planning	Pensions law and regulation to pensions planning	<ul style="list-style-type: none"> <li>• Role of the Pensions Regulator and the compliance requirements</li> </ul>
Retirement Planning	Range of Defined Contribution (DC) scheme options as they apply to an individual's pension planning	<ul style="list-style-type: none"> <li>• Contributions – methods and issues</li> <li>• Scheme options, limitations and restrictions</li> </ul>
FSRE	The FCA's principles-based approach to promote ethical behaviour	<ul style="list-style-type: none"> <li>• The Principles for Businesses</li> <li>• Corporate culture and leadership</li> <li>• The role of approved persons</li> <li>• The need for integrity, competence and fair outcomes for clients</li> </ul>
FSRE	Code of Conduct and professional standards	<ul style="list-style-type: none"> <li>• The over-arching Code of Conduct</li> <li>• Professional principles and values</li> </ul>
FSRE	Differences between ethical and unethical behaviour	<ul style="list-style-type: none"> <li>• Typical behavioural indicators – positive and negative</li> <li>• Outcomes of ethical and unethical behaviour for the industry, the firm, individual advisers and consumers</li> </ul>





# fstp

financial  
services  
training  
partners

t: 0203 178 4230 e: [info@fstp.co.uk](mailto:info@fstp.co.uk)

If you have any queries with this edition of Advice Matters, please contact your in-house administrator or FSTP on 01908 395243.

| Training Courses

| Training Consultancy

| Board Services

| CPD Programmes

| E Learning

| Coaching Services

