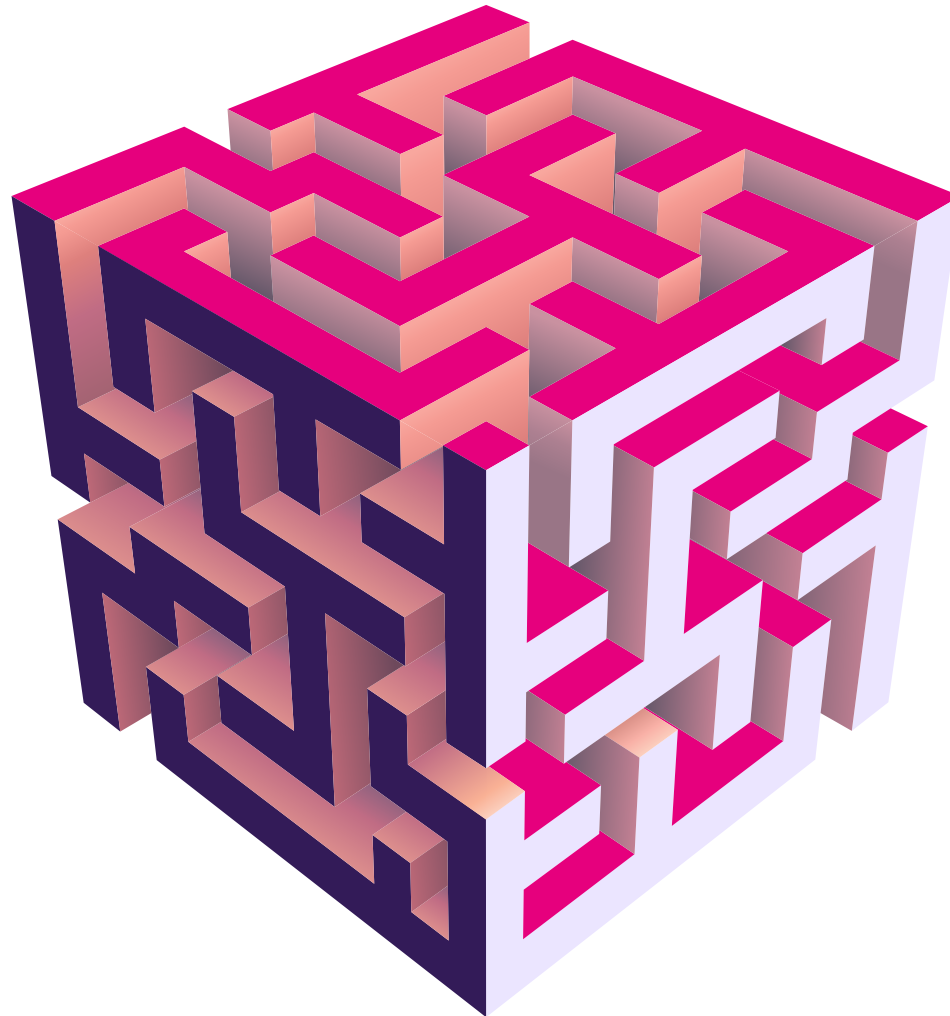




Regulatory update

September 2023



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

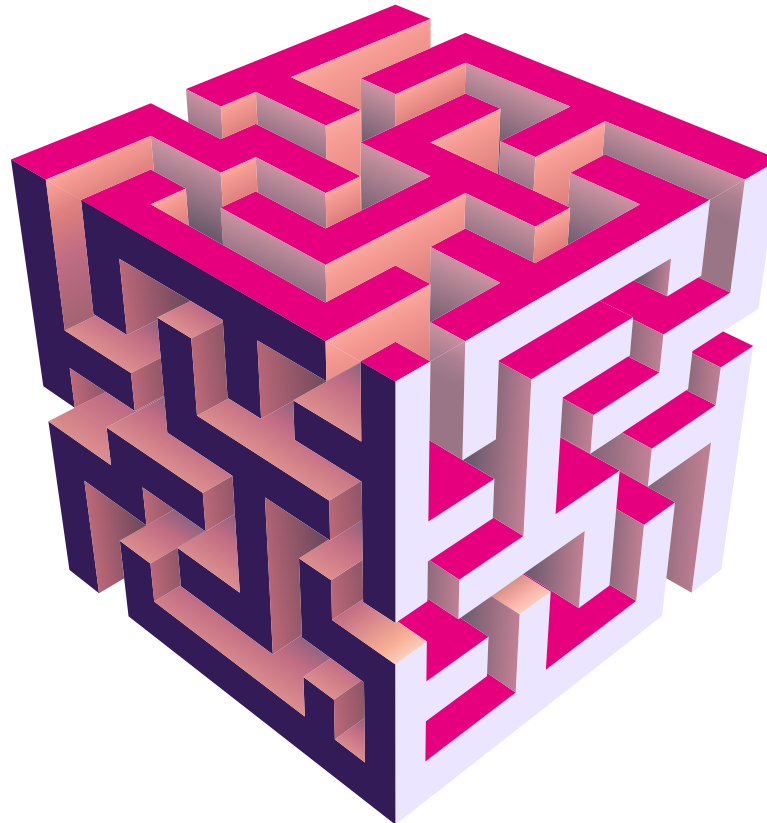
In this September edition we include, amongst many other things, an update on Consumer Duty, the amendments made to the Economic Crime and Corporate Transparency Bill, the new guidance issued for glycerol in slush-ice drinks, ethics in the age of AI and we look at how law firms can protect themselves against cybercrimes.

Please do not hesitate to contact me, or your normal RPC contact, if you would like to discuss any of the topics highlighted or have any suggestions for areas you would like to see in future updates.



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

Gavin Reese
Partner, Head of Regulatory



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Financial services

ICO and FCA issue joint letter on data protection and effective communications to savings customers

Information Commissioner's Office (ICO) and the Financial Conduct Authority (FCA) published a joint letter sent to UK Finance and the Building Societies Association clarifying that savings providers can inform their customers of the best rates available to them, even where they have objected to direct marketing.

The FCA and ICO confirm that firms can send regulatory communications to all of their savings customers that provide neutral, factual information about the interest rate and terms of the savings product they hold, the interest rate and terms of other available savings products, and their options for switching to a different product. They point out that data privacy legislation (the UK GDPR and Data Privacy Act 2018) and the Privacy and Electronic Communications Regulations 2003 do not preclude providers from sending regulatory communication messages. Firms must nevertheless guarantee that they follow data protection regulations when using information about people.

Click [here](#) to read more.

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Consumer duty enters into force

On 31 July 2023, new rules known as the Consumer Duty came into force for financial services firms. The rules provide higher protection standards for customers including access to support, clear communications and fair standards in terms of needs and value for products and services. The rules apply to all new and

existing services that are currently being sold by financial services firms. They will apply from 31 July 2024 for products that are no longer on sale.

Click [here](#) to read more.

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Cryptoasset businesses: travel rule expectations set out by the FCA

The Financial Conduct Authority (FCA) published an article for cryptoasset businesses who will need to comply with the "Travel Rule" change to money laundering regulations from 1 September 2023. The Travel Rule is designed to bring more transparency to cryptoasset transfers, making it harder for criminals to use cryptoassets for illicit activity. The legislation requires cryptoassets business in the UK to collect, verify and share information on cryptoassets transfers. The FCA expects firms to comply with the Travel Rule, even when using third-party suppliers. Firms must comply with the Travel Rule when sending or receiving a cryptoasset transfer to a firm that is in the UK, or any jurisdiction that has implemented the Travel Rule. The FCA expects firms to regularly review the implementation status of the Travel Rule in other jurisdictions to ensure compliance.

Click [here](#) to read more.

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Financial services (continued)

FCA issues statement on Advice Guidance Boundary Review

The Financial Conduct Authority (FCA) has issued a statement regarding its joint review of the Advice Guidance Boundary with HM Treasury. The guidance highlights the various ways FCA- authorised firms can support consumers under the existing regulatory framework, drawing on existing rules and guidance, pending any changes that may be implemented as a result of the ongoing Advice Guidance Boundary Review, which is part of the Edinburgh Reforms. Considering the responses to its consultation, “Broadening access to financial advice for mainstream investments,” the FCA has chosen to incorporate the recommendations into the broader review and will provide an update in a policy paper in Autumn 2023.

Click [here](#) to read more.

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Consumer duty: how culture must change to meet expectations

Emily Shepperd, Chief Operating Officer and Executive Director of Authorisations at the Financial Conduct Authority (FCA) gave a speech at the Westminster Business Forum. In her talk, she said the consumer duty puts the onus on financial service firms to design their goods and services with good consumer outcomes in mind from the start. The higher standard of the duty and the shift to focusing on customer outcomes will require a significant change in many firms’ cultures.

Click [here](#) to read more.

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Authorised Fund Managers receive B+ from the FCA: good but could do better

In the wake of the Financial Conduct Authority’s (FCA) new consumer duty requiring firms to deliver good outcomes for consumers that meet their needs and offer fair value, it comes as no surprise that the FCA has ‘followed up’ on its July 2021 review.

The aim of the 2021 review was to identify the processes used by Authorised Fund Managers in carrying out assessments of value for funds they operate, i.e. the FCA wanted to ascertain how well firms had implemented the 2019 Collective Investment Schemes sourcebook (COLL) rules. That review concluded there was “weak demand-side pressure on fund prices, resulting in uncompetitive outcomes for investors in authorised funds”.

Two years on, the FCA has scrutinised the progress firms have made in applying the COLL rules and what action they have taken. Under the COLL rules, firms must justify the fees they are charging investors, what assessments they have undertaken to determine that justification and, what action they are going to take if any assessment means the firm has fallen short and investors have been overcharged.

Click [here](#) to read more.

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Financial services (continued)

Call for evidence: SME finance

A Treasury Committee inquiry seeks views on the key challenges small and medium-sized enterprises (SMEs) face when seeking finance, the regulation of small business lending, and the role the government can play in enhancing lending to small businesses. In the wide-ranging new inquiry, the MPs will investigate the accessibility of finance, the role of financial innovation in business lending, and the role of the Bank of England's Term Funding Scheme, credit reference agencies and government state aid in encouraging small business lending.

Click [here](#) to read more.

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White collar crime

Reform to the attribution of corporate liability for economic crimes

An amendment has been made to the Economic Crime and Corporate Transparency Bill to expand the attribution of corporate liability for economic crimes. Under the amendment, if a “senior manager” commits a specified economic crime, their company can also be held criminally liable and fined for the offence. A “senior manager” is an individual with actual or apparent authority who plays a significant role in either the decision making of an organisation’s activities, or in the management or organisation of the business. Therefore, determining who a senior manager is will consider an individual’s roles and responsibilities in an organisation, instead of solely focussing on their job title. This new tool for prosecutors has a focus on larger organisations with diffuse decision-making structures, where establishing such organisation’s “directing mind and will” under the current doctrine has presented challenges. This amendment along with the Bill’s failure to prevent fraud offence (as reported in RPC’s May 2023 Regulatory Update) are significant developments for the UK’s corporate criminal liability regime. The Bill is now in its final stages, with the House of Lords due to consider the House of Commons amendments on 18 October 2023. The government has published “Factsheet: Identification principle for economic crime offence” and an impact assessment relating to this reform.

Click [here](#) to read more.

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New SFO Director announced

The Attorney General has announced that Nick Ephgrave QPM will be the new Director of the Serious Fraud Office (SFO). Mr Ephgrave will take up the appointment at the end of September for an initial term of five years. He will replace the outgoing Director, Lisa Osofsky. Mr Ephgrave has held positions on the Criminal Procedure Rules Committee and the Sentencing Council, most recently serving as chair of the National Police Chiefs’ Council Criminal Justice Coordination Committee.

Click [here](#) to read more.

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Compliance handbook update: bribery and corruption

The bribery and corruption chapter in the compliance handbook provides guidance to regulated firms on how they can ensure that they have adequate systems and controls in place to respond to the particular issues posed by the Bribery Act 2010. The chapter has been updated to provide more detail on recent corporate prosecutions; for example, SFO v Glencore Energy UK Ltd. Glencore was ordered to pay £280,965,092.95 (over \$400m) after a Serious Fraud Office (SFO) investigation revealed it had paid \$29m in bribes to maximise its oil trading profits in five African countries. The SFO estimated Glencore’s bribery to have created a financial benefit of approximately £93.5m for the company. The chapter is written and maintained for Regulatory Intelligence by Sam Tate, Kate Langley, and Alexandra Prato of RPC.

Click [here](#) to read more.

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Data protection

ICO submits data protection and journalism code of practice

On 6 July 2023 the Information Commissioner's Office (ICO) submitted the data protection and journalism code of practice to the Department of Science, Innovation and Technology. The purpose of the code is to provide help to apply data protection within journalism practices, following guidance arising from the Leveson enquiry.

Click [here](#) to read more.

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UK achieves Associate status in the Global Cross Border Privacy Rules Forum

The UK is the first country to gain Associate status in the Global Cross Border Privacy Rules (CBPR) Forum, which allows the country to be better placed to drive collaboration on international data flows with other member nations, including United States, Canada, Mexico, Japan, the Republic of Korea, the Philippines, Singapore, Chinese Taipei, and Australia.

Click [here](#) to read more

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Health, safety and environmental

Unlimited civil penalties unveiled

The government has announced new legislation that will see the limit of £250,000 on civil penalties for polluters scrapped. Regulators will also be able to broaden their scope in relation to environmental offences across several sectors including energy, waste and water companies. The draft regulations have been published, which will need to be approved by both Houses of Parliament, before coming into force on 1 December 2023.

Click [here](#) to read more.

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Wales adopts new rules for waste data collection and reporting

The Welsh government has adopted new regulations on requiring data collection and reporting from packaging producers, which came into force on 17 July 2023. Similar reporting requirements are due to commence in England on 1 October 2023. These Regulations impose requirements on producers who are established in Wales to collect data on the packaging they supply to others, and, in some cases, to report some of that information to Natural Resources Wales.

Click [here](#) to read more.

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Issue of IFRS S1 and IFRS S2

The International Sustainability Standards Board (ISSB) has issued their first standards, IFRS S1 and IFRS S2. IFRS S1 sets out disclosures requirements for companies to inform investors on sustainability-related risks, while IFRS S2 provides climate-related disclosures.

Click [here](#) to read more.

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Consultation on investigatory powers for the NFCU

The Food Standards Agency (FSA) has launched a consultation on additional investigatory powers for the National Food Crime Unit (NFCU) in order to allow their officers to be on premises and assist with searches following a police arrest. This consultation follows from another consultation carried out last year aimed at enhancing the unit's investigatory powers, which the agency deems necessary to better investigate food crimes.

Click [here](#) to read more.

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Health, safety and environmental (continued)

Marketing standards for food products directives set to be reviewed

On 21 April 2023, the European Commission brought forward proposals to update marketing standards provided by the so-called “breakfast directives”, to make rules on food products more up to speed with the changes in consumer demand. Proposed changes include the definition of marmalade, reducing the amount of sugar in fruit juice and stricter and clearer origin labelling for honey. In July 2023, European Parliament published an ‘EU Legislation in Progress’ briefing on the status of the review.

Click [here](#) to read more.

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Age-related guidance for glycerol in slush-ice drinks

The Food Standards Agency (FSA) has issued new voluntary guidance on slush-ice drinks containing glycerol, saying that they are not suitable for consumption under 4 years of age. The guidance also advises manufacturers not to offer free refills promotions to children under 10 years. Children below this age may suffer from headaches and sickness caused by excess glycerol, according to a risk assessment study carried out by the FSA.

Click [here](#) to read more.

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High-risk consumers advised to avoid ready-to-eat cold-smoked or cured fish

A risk assessment study has prompted the Food Standards Agency (FSA) and Food Standards Scotland (FSS) to publish advice aimed at pregnant women and those with a weakened immune system to avoid eating ready-to-eat cold-smoked or cured fish. The risk assessment found that those categories are subject to a higher risk of severe illness from listeriosis when consuming these food products. This also extends to older people as the risk of severe illness from listeriosis increases with age.

Click [here](#) to read more.

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Danger of magnetic reusable water balloons

The Office for Product Safety and Standards (OPSS) has published a warning to consumers in relation to magnetic reusable water balloons, which were found to present risks of serious injury or death if more than one magnet is ingested as they have a higher magnetic force than is allowed. The OPSS is advising consumers to stop using the products with immediate effect and has contacted the sellers to take them off sale.

Click [here](#) to read more.

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Health, safety and environmental (continued)

Health and Safety Executive publishes work-related fatalities figures

The Health and Safety Executive (HSE) has published their figures for work-related fatalities in the last year, which amount to 135, up from 123 in the previous year but in line with the figures recorded prior to the pandemic. Most of the fatalities occurred in the construction, agriculture, forestry, fishing, manufacturing and transport, with falls from heights accounting for 40 of the deaths, followed by deaths caused by moving objects and vehicles. Figures on deaths from mesothelioma, caused by exposure to asbestos, show a fall from 2,570 in 2020 to 2,268 in 2021.

Click [here](#) to read more.

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Calls for more safety in agriculture

Agriculture ranks as one of the sectors with the highest related fatalities, with 27 people killed in 2022/2023, including 6 members of the public. The figures show that while the number of fatalities has decreased since the 1980s, the rate of fatalities is still quite high. Similarly, the most common causes of death in the sector have remained the same for years, including being killed by an animal or cattle, falling from heights and being hit by moving vehicles.

Click [here](#) to read more.

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HSE Board announces appointment of new non-executive director

Ken Rivers will join the Health and Safety Executive Board (HSE) as a non-executive director, following the departure of Ken Robertson in July 2023. Ken Rivers has years of experience in the oil and chemicals sectors, including as CEO of Refining NZ and several senior positions at Shell. He is also a member of Industry Safety Steering Group, which monitors the implementation of the Building Regulation and Fire Safety review.

Click [here](#) to read more.

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Health and Safety Bulletin – August 2023

In the latest edition of our health and safety bulletin, Gavin Reese, Head of Regulatory at RPC, Mamata Dutta, Health, Safety and Environmental Partner at RPC and Rashna Vaswani, General Liability Associate round up some of the key cases from the last few months including a concrete manufacturer being fined £1 million after an ‘avoidable’ death of worker, a farmer jailed for 10 months for destruction of River Lugg and more.

Click [here](#) for more details.

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Health, safety and environmental (continued)

FSA publishes updates to best practice guidance on food allergen labelling

The FSA has updated its guidance on Precautionary Allergen Labelling (PAL). The dreaded “may contain...”. More and more products seem to use PAL, making it difficult for those with allergies to know how real the risk is. The guidance states that PAL should only be used if there is an unavoidable risk of allergen cross-contamination which cannot be sufficiently controlled by segregation and cleaning.

As Kate Halliwell, Chief Scientific Officer at the Food and Drink Federation says: “Bringing consistency to how ‘may contain’ statements are used will help businesses and, importantly, ensure allergenic consumers are not unnecessarily restricted in the food choices they have”.

To read more, click [here](#).

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Pensions

Mansion House: pension reforms

Chancellor Jeremy Hunt unveiled the government's plans to overhaul the UK's financial services sector in his Mansion House speech on 10 July 2023. The statement was followed the next day by a raft of consultation documents from the Department for Work and Pensions (DWP) addressing a variety of pension reforms targeted at improving results for pension savings while also helping overall economic growth. These included:

- an industry led compact committing many of the UK's largest Defined Contribution (DC) pension providers to the objective of allocating at least 5% of their default funds to unlisted equities by 2030
- exploring demand for government to play a greater role in establishing investment vehicles, building on the skills and expertise of the British Business Bank
- publishing a joint consultation response with The Pensions Regulator and the FCA on a new Value for Money Framework for DC schemes
- publishing consultation responses on small pots and decumulation, applying additional requirements to DC schemes to support further consolidation
- publishing a consultation response setting out the intention to consult on draft regulations for whole-life multi-employer Collective Defined Contribution (CDC) schemes
- publishing a consultation response on a permanent superfunds regulatory regime for Defined Benefit (DB) schemes
- issuing a call for evidence on the role of the Pension Protection Fund and the part DB schemes play in productive finance
- launching a consultation on accelerating the consolidation of Local government Pensions Scheme assets in England and Wales

Click [here](#) to read more.

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Tax

Transfer Pricing Records Regulations published

The Transfer Pricing Records Regulations 2023 came into force on 9 August 2023 and introduce new requirements around record keeping for transfer pricing purposes. The Regulations apply for corporation tax purposes to accounting periods beginning on or after 1 April 2023, and will require the maintenance of a Local File and Master File containing certain specified information. Implementation of the Regulations may require:

- consideration of whether existing transfer pricing documentation remains fit for purpose
- ascertaining whether any functional analysis previously undertaken is still accurate and
- where appropriate, ensuring a fresh analysis is undertaken consistent with the OECD transfer pricing guidelines in terms of analysis undertaken and format.

Click [here](#) to read more.

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Pillar Two – OECD publishes new guidance on global anti-base erosion model rules

The OECD has published further [guidance](#) on the global anti-base erosion model rules (GloBE Rules) which will establish a global minimum corporation tax rate. The guidance expands on requirements for domestic minimum taxes to be qualified domestic minimum top-up taxes (QDMTT) as well as providing additional rules for currency conversion and applying the GloBE Rules to qualifying refundable tax credits.

The guidance addresses an important issue which had been criticised in the initial guidance. The QDMTT is calculated in a slightly different way to the top-up tax provided for in the GloBE Rules. For example, under the QDMTT, it is possible to apply a local accounting standard rather than the accounting standard applicable to the ultimate parent company. This means that there are particular fact patterns where the QDMTT produces a lower amount than would have been due under the GloBE Rules. Whilst there are mechanisms in place to bring the amounts in line, the issue remains that two calculations are required in respect of the same jurisdiction. As a remedy, the new guidance introduces the concept of a QDMTT ‘Safe Harbour’ which provides that a Multinational Enterprise Group can, if it meets certain conditions (such as in relation to accounting standards), only use the QDMTT calculation, with the top-up tax payable under the GloBE Rules deemed to be zero.

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Tax (continued)

New regulations introduced which require digital platforms to conduct due diligence

The [Platform Operators \(Due Diligence and Reporting Requirements\) Regulations 2023 \(SI 2023/817\)](#) have been enacted and come into force on 1 January 2024. The Regulations require due diligence and reporting by operators of digital platforms that facilitate the sale of goods and services. In particular, digital platforms will need to establish and maintain procedures that are designed to collect information about sellers, verify that information and provide a report to HMRC. These regulations implement the OECD's model tax reporting rules for digital platforms in the UK.

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HMRC updates its guidance on plastic packaging tax

HMRC has updated its [guidance](#) on checking which packaging is subject to plastic packaging tax. The guidance amends the description of 'recycled plastic' to clarify that recycled plastic comes from plastic that has been reprocessed from pre-consumer plastic or post-consumer plastic by using a chemical or mechanical manufacturing process. To be classified as recycled plastic, the plastic must have been reprocessed so that it can be used as a raw material in manufacturing another plastic packaging component.

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Cyber security

How can law firms protect themselves against cyber crimes

The National Cyber Security Centre (NCSC) published its Cyber Threat Report: UK Legal Sector with the aim to provide guidance to law firms on protection against cyber threats. The report highlights that law firms are an attractive target due to the confidential and sensitive information they store to carry out their work. It also includes information on actors who might carry out cyber attacks against law firms and the most common types of threats and attacks, as well as measure towards the prevention and reporting of crimes.

Click [here](#) to read more.

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AI regulation

AI and ChatGPT in law firms

Patrick Brodie, Head of Employment, Engagement and Equality at RPC, discusses with Katherine Apps KC the issues raised by the use of large language models (LLMs) such as ChatGPT in a law firm environment. Katherine and Patrick discuss what LLMs are, what firms need to think about when drafting AI policies, what LLMs could do in a law firm context, how AI will impact on the training of solicitors in the future as well as wider reflections on the nature of being a lawyer, how we deal with fears, worries and opportunities posed by AI, working life generally, and what makes humans different from computers.

Click [here](#) to read more.

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Ethics in the age of AI: new Institute of Directors checklist

The Institute of Directors' (IoD) Checklist for Boards sets out several points to keep in mind during board meetings in respect of ethical AI considerations, including that Directors must understand and effectively mitigate AI-related risks. The checklist highlights the importance of monitoring and audit measures, as well as board

accountability and other oversight mechanisms. Additionally, compliance with data and privacy requirements is vital to meet these objectives. It will be imperative to conduct regular reviews and identify where corrective actions are necessary.

Click [here](#) to read more.

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Large language models subject to inquiry

The Communications and Digital Committee has undertaken an inquiry into large language models to prepare the UK to respond to the risks and opportunities brought on by the technology in the next 1 to 3 years. The speed of development and lack of understanding about large language models' capabilities have led some experts to warn of a wider risk of harm. Large models can generate contradictory or fictitious answers, for example. Submissions closed on 5 September 2023 and the inquiry will examine how the work being carried out by the government and regulators is addressing the current and future technologic capabilities.

Click [here](#) to read more.

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AI regulation (continued)

The November 2023 AI safety summit and the UK's direction of travel

The government has confirmed that the UK AI safety summit will be held at Bletchley Park on 1 and 2 November 2023. At the summit, companies leading in AI research and in producing AI systems together with AI experts will be considering the risks of AI and how they can be mitigated. The UK is expecting an international presence and internationally coordinated action to follow.

This follows the government's AI White Paper published in March and Sir Patrick Vallance's Pro-Innovation Regulation of Technologies Review (PIRT). The CMA has also launched an initial review into AI foundation models and its report setting out its findings is expected in September, while the Communications and Digital Committee's, as mentioned above, inquiry into large language models' submissions closed this month.

Click [here](#) to read more.

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Digital advertising and marketing

Government responds to the Online Advertising Programme consultation

Following a consultation on governance for the advertising industry, the government will be actioning legislative reforms to regulate the industry. The government plans to regulate online advertising, in particular in relation to illegal advertising and to protect minors online. The legislative efforts will also be complemented by a ministerial task force.

Click [here](#) to read more.

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Digital Markets, Competition and Consumers Bill opens door for stricter regulation of news platforms

The proposed Digital Markets, Competition and Consumers Bill has the potential to affect news reporting by digital platforms. The new rules present an avenue for the UK government to designate large scale tech companies as having a “strategic market status”, and thus create tailored rules for them to pay for news services on their platform. This would arguably allow the Competition and Markets Authority’s Digital Market Unit (DMU) the power to create rules as they see fit.

Click [here](#) to read more.

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Guidance for advertisements on misleading environmental claims and social responsibility

The Committee of Advertising Practice (CAP) published guidance on rules in relation to environment advertising issues, mainly misleading environmental claims and social responsibility. Marketers and agencies are reminded to make environmental claims clear, with information available to consumers in order to understand them. The guidance also touches on the importance for marketers to apply social responsibility rules to the creative content of ads, avoiding messages that could encourage behaviours detrimental to the environment.

Click [here](#) to read more.

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ASA’s Active Ad Monitoring system

The Advertising Standards Authority (ASA) uses an AI powered system, called Active Ad Monitoring, in order to identify online ads that are in breach of advertising rules. The system has been built to search through social media, public sources, internal monitoring tools and proprietary datasets, allowing experts to then review those ads that are being spotted by the machine learning models to be non-compliant.

Click [here](#) to read more.

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Digital advertising and marketing (continued)

Updated wordings for lottery advertising rules

The CAP and ASA have published revised wordings to update the rules on lotteries advertising and the appearance in them of people who are under 25 or look under that age. The two bodies have made updates to the wording following recent cases where the rules were misinterpreted, whereby it was unclear that the rules apply to both individuals who are below 25 years of age and those who look under 25.

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Online Safety Bill update

Consideration of Commons reasons to disagree with Lords amendments to the bill took place in the House of Lords on 19 September, and outstanding issues were resolved.

What happens next?

As both Houses have now agreed on the text of the bill, it now awaits the final stage of Royal Assent when it will become an Act of Parliament (law). A date for Royal Assent is yet to be scheduled.

- [Sitting 19 September 2023 – Lords Hansard 19 September 2023 – Lords Hansard](#)
- [Sitting 19 September 2023 – Minutes of Proceedings 19 September 2023 – Lords Hansard](#)

A summary of above proceedings is detailed below.

Online Safety Bill The Commons Amendments and Reasons were considered.

- Motion A Commons amendments 17A and 17B were agreed to.
- Motion B Lords amendment 20 was not insisted on.
- Motion C Lords amendment 22 was not insisted on.
- Motion D Commons amendments 81A to 81C were agreed to.
- Motion E Commons amendment 148A was agreed to.
- Motion F Commons amendment 182A was agreed to.
- Motion G Commons amendments 349A and 349B were agreed to.
- Motion H Commons amendments 391A and 391B were agreed to.

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Professional services

SRA fining powers – putting the SDT out of business?

A little over 12 months ago, the SRA's power to fine traditional law firms, and individuals working at them, was limited to £2,000. Any greater financial penalty would require a referral to the SDT, which may levy an unlimited fine. In July 2022, the cap for traditional law firms was increased to £25,000. The SRA's principal rationale for seeking that increase was to allow it to resolve "less serious matters resulting in relatively low fines" without referring them to the SDT.

The Legal Services Board appears to support a radical increase to the SRA's powers with a review of the regulator's enforcement powers announced in August. The Legal Services Board will consult on any proposed changes to the SRA's powers. Both the Law Society and the SDT have already signalled their intention firmly to oppose the SRA's proposals.

Click [here](#) to read more.

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Government to omit audit reform from legislative agenda

It seems that the government is likely to again delay legislation to implement its planned overhaul of the audit and corporate governance regimes.

Following a series of scandals surrounding high profile corporate collapses such as BHS and Carillion, in June 2022 the government confirmed its plans for audit reform, which included replacing the Financial Reporting Council (FRC) with the Audit, Reporting and Governance Authority (ARGA). In addition to providing the

new regulator with greater powers, including new powers to hold directors of public interest entities (PIEs) to account if they do not fulfil their statutory duties in relation to corporate and financial reporting, the government also planned to widen the definition of PIEs, bringing the audit of around 600 more companies under the regulator's remit. In addition, new reporting requirements were proposed, covering resilience issues, audit and assurance policies, internal fraud prevention controls, and dividends and distributable reserves. It was also planned that audits of FTSE 350 companies would need to be shared between audit firms, at least in part.

Many of these proposals require legislative changes, and whilst the government originally stated that they expected to find time to implement these changes last year, it now seems they will be omitted from the King's Speech once again. Commentators are now saying that the full package of reform, and especially FRC's replacement by ARGA, is unlikely to occur until 2026 or 2027.

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New portal for Suspicious Activity Reports (SAR)

The National Crime Agency has launched a new SAR portal to allow organisations to make free online reports at any given time. The NCA points out that reports made online will be processed quicker than manual reports and it is recommending organisations to register as soon as possible as the current SARs Online System will no longer be in use starting later in the year.

Click [here](#) to read more.

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Sanctions

OFSI to return incomplete licensing applications

The Office of Financial Sanctions Implementation (OFSI) has published an update in relation to applications for new licenses and amendments to existing ones, asking applicants to provide the necessary evidence to support the applications. Given the high demand due to the sanctions against Russia and in effort to speed up the process, OFSI will return incomplete application and applicants are invited to submit a new application.

Click [here](#) to read more.

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Competition law

CMA calls for inputs as part of its concurrency review

The CMA and the various sector regulators share certain competition enforcement powers. The framework in which promotion of competition in the regulated sectors is shared between the CMA and the sector regulators is referred to as ‘concurrency’. Both the CMA and the sector regulators (in the relevant sector for which they are responsible) can:

- apply the prohibitions under Chapters I and II of the Competition Act 1998 (CA98); and
- conduct market studies under Part 4 of the Enterprise Act 2002 and, if appropriate, make a market investigation reference (MIR) requiring the CMA to carry out an in-depth investigation into whether any feature, or combination of features, of a market in the UK for goods or services prevents, restricts or distorts competition.

While concurrency has been a longstanding feature of the UK’s competition regime, the Enterprise and Regulatory Reform Act 2013 introduced various enhancements to the concurrency arrangements. These included rules of case allocation and consultation between the sector regulators and the CMA. The so-called ‘primacy obligation’ was also imposed on all sector regulators: sector regulators must consider whether it would be more appropriate to proceed using CA98 enforcement powers before they can take certain regulatory actions. Alongside those legislative reforms, several changes were made to the cooperation arrangements in practice, including various memoranda of understanding and the establishment of the UK Competition Network (UKCN) as a forum for multilateral engagement between the CMA and the various sector regulators (such as the FCA, Ofwat, Ofcom, Ofgem and the PSR).

Ten years on, the CMA is now reviewing how effective these arrangements have been in practice. The CMA has recently launched a call for inputs seeking views on the effectiveness of the arrangements. It is considering:

- how concurrency improves the effectiveness of the sector regulators in promoting competition in their respective sectors; and
- how concurrency improves the effectiveness of the UK’s competition regime.

Considering concurrency arrangements against those two broad objectives, the CMA has invited views from stakeholders on a series of specific questions. The deadline for consultation responses is 20 October 2023. The CMA intends to report on its conclusions in spring 2024.

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Microsoft/Activision – parties restructure deal following CMA’s prohibition decision

We previously reported on the CMA’s decision in April 2023 to block Microsoft’s proposed \$68.7bn deal to acquire Activision Blizzard, one of the most popular video games publishers in the world.

Setting it apart from the approach taken in other jurisdictions, the CMA blocked the acquisition due to concerns of a substantial lessening of competition (SLC) in cloud gaming services in the UK (including reduced innovation and less choice for gamers). The CMA had concluded that the remedies offered by Microsoft did not resolve its SLC concerns. For its part, the European Commission

Competition law (continued)

also carried out an in-depth merger investigation. However, it decided to conditionally approve the acquisition, subject to certain commitments including 10-year royalty-free licensing obligations to streaming services to stream eligible games.

In August 2023, the CMA finalised its decision to block the merger after rejecting Microsoft's submissions to revisit the original prohibition decision. The CMA has imposed its Final Order prohibiting the original deal on a worldwide basis.

However, in rather novel developments, Microsoft and Activision have recently agreed a new, restructured deal which has now been submitted to the CMA for review. The CMA has launched a new Phase I investigation into the restructured deal which excludes certain cloud streaming rights. The deadline for the Phase 1 decision is currently 18 October 2023.

In the meantime, the hearing of the appeal against the CMA's original prohibition decision, currently before the Competition Appeal Tribunal (CAT), has been adjourned. The CAT has ordered the hearing be re-listed for October 2023.

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The Digital Markets, Competition and Consumers Bill

The Digital Markets, Competition and Consumers Bill (the DMCC Bill) continues to make its way through Parliament following its introduction in the spring. Once the current report stage is completed, the DMCC Bill will then have its third reading in the House of Commons before the draft legislation is debated in the House of Lords.

The DMCC Bill will introduce major landscape reforms to the UK's consumer protection regime and bolsters the existing UK competition law regime. It also ushers in a brand new regime for regulating digital markets. Affecting the largest tech companies, the CMA's Digital Markets Unit (the DMU) currently only in shadow form, will be granted its formal statutory powers once the DMCC Bill is enacted. The DMU will then be able to designate tech firms as having Strategic Market Status, enabling it to devise bespoke and targeted codes of conduct and impose pro-competition interventions. Separate merger notification obligations will apply to SMS designated firms.

Given the sweeping reforms to be brought in across the CMA's competition, consumer and digital regime toolkit, progress of the DMCC Bill is certainly one to watch. As we previously reported, further details on anticipated changes affecting each of the regimes can be accessed here:

- [Digital Markets](#)
- [Consumer](#)
- [Competition](#)

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Product regulation

Government announces indefinite extension of CE mark recognition

On 1 August 2023, the UK government announced that the recognition of the EU's Conformité Européene (CE) mark would be extended indefinitely for businesses placing products on to the market in Great Britain, marking a significant U-turn in product safety regulation. The UK Conformity Assessment (UKCA) marking requirements came into effect on 1 January 2021 with the intention that in certain industries, only products with a UKCA logo would be accepted in Great Britain after a certain date. This would ensure that products placed onto the market met the relevant designated standards, environmental and health and safety requirements post-Brexit.

The announcement of the extension follows ongoing engagement with industry, which raised concerns that the introduction of the UKCA requirements could place additional burdens on businesses. The government believes that the move will “ensure businesses no longer face uncertainty over the regulations and can cut back on unnecessary costs, freeing them up to focus on innovation and growth”. Prior to the recent announcement, businesses needed to place any products displaying a CE mark onto the market in Great Britain by 31 December 2024; after this date, the CE mark would no longer be recognised. However, the CE mark will now continue to be recognised indefinitely, arguably making the UKCA mark redundant.

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OPSS launches Product Safety Review and consultation on fire safety of domestic upholstered furniture

The Office for Product Safety and Standards (OPSS) has launched two new product safety consultations – the Product Safety Review and a consultation on new fire safety regulations for domestic upholstered furniture. The consultations aim to strike the correct balance between encouraging innovation and growth for businesses whilst also protecting consumers who are facing new risks and safety issues in the modern world.

The Product Safety Review covers regulations for the majority of consumer products in addition to products such as machinery, lifts, equipment used in explosive atmospheres and pressure equipment. However, it will not cover food, chemicals, medical or healthcare products, construction products or vehicles, which are regulated separately. The review proposes to place specific responsibilities on online marketplaces, considering the rapid change in the ways consumers purchase products and addressing safety concerns with shopping online. The review also aims to make the regulatory framework more agile so that obligations on businesses are proportionate to the level of risk posed by a product.

The consultation on domestic upholstered furniture considers how we can improve fire safety standards for consumers to address domestic safety risks. It is envisioned that the new measures will replace the Furniture and Furnishings (Fire Safety) Regulations 1988, with a focus on reducing chemical flame retardants and implementing practices to prevent or delay ignition in the event of a fire.

Product regulation (continued)

Stakeholders and other interested parties are invited to provide their views on the consultations until midnight on 24 October 2023. Once the consultation is closed, all responses will be considered before publication of the government response.

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Electrical Safety First publishes report and recommendations on e-bike and e-scooter lithium-ion batteries

Electrical Safety First (ESF) have published a new report on fires caused by e-bike and e-scooter batteries. The report, entitled “Battery Breakdown – why are e-scooter and e-bike batteries exploding in people’s homes and what can be done about it?”, assesses the current landscape of e-scooter and e-bike safety and provides industry recommendations to address the rise in fires caused by lithium-ion batteries contained in the products. Whilst there is still a limited amount of data around the number of UK fires, the London Fire Brigade reported attending 87 e-bike and 29 e-scooter fires in Greater London in 2022 alone and describes fires caused by lithium-ion batteries as the “capital’s fastest emerging and growing fire risk”. In the first three months of 2023, the report notes that fires from batteries used to power e-bikes and e-scooters tragically led to four deaths, in addition to hospitalisation, injury or damage for others.

The main safety risk of lithium-ion batteries is that they can become thermally unstable and lead to uncontrollable fires and explosions. These can be caused by the use of poor quality components, design flaws, physical or electrical abuse, improper charging and/or extreme temperatures. The report suggests, amongst other

recommendations, that batteries for e-bikes and e-scooters should be regulated in a similar way to fireworks or heavy machinery. This would involve mandatory third-party certification and approval processes before the products can be placed onto the UK market, mirroring measures implemented in New York City. Currently, e-scooters, e-bikes and their batteries only require a self-declaration of conformity to safety standards undertaken by the manufacturer to comply with safety regulations. The report also calls for consumer education on the risks associated with e-bike and e-scooter storage and charging, DIY modifications to e-bikes and purchasing from third-party sellers on online marketplaces.

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The FSA advises that glycerol in ice slushies is “not suitable for under-4’s”

The Food Standards Agency (FSA) has advised that ice slushies containing glycerol should not be sold to children aged four and under and that retailers should not offer free refill promotions to under 10s. This follows an FSA risk assessment which considered the potential impact of a child consuming a 350ml ice slushie drink with the highest level of glycerol used (namely 50,000 mg/L) compared to a threshold above which adverse effects such as headaches and sickness could occur. The risk assessment found that children aged 4 and under would exceed this threshold due to the connection between the effects of glycerol and weight. Whilst a child over 4 is unlikely to suffer from adverse effects after drinking one ice slushie drink, they could experience symptoms of glycerol intoxication if they consume an excessive amount of glycerol. The FSA pointed to two cases in Scotland where children were hospitalised following an excessive exposure to glycerol.

Product regulation (continued)

The FSA’s Head of Additives, Adam Hardgrave, stated that “while the symptoms of glycerol intoxication are usually mild, it is important that parents are aware of the risks – particularly at high levels of consumption. It is likely that there is under-reporting of glycerol intoxication, as parents may attribute nausea and headaches to other factors. We are grateful to those manufacturers who have already taken steps to reduce levels of glycerol, and to those who have already told us they will be adopting our new guidelines.”

Some businesses use glycerol in their ice slushie products as an alternative to sugar as it can create a similar slush effect. As compared to its use in other foods, glycerol is added at significantly higher quantities to ice slushie products and, when consumed by a child in a relatively short space of time, can lead to glycerol intoxication. Glycerol intoxication can result in shock, hypoglycaemia and loss of consciousness. The FSA’s recent guidance now suggests that businesses should only add the minimum quantity of glycerol technically necessary to achieve the same slush effect.

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OPSS warns of the dangers posed by magnetic reusable water balloons

Following an investigation into the safety of using certain magnetic reusable water balloons, the OPSS has warned consumers of the risk of death and/or serious injury if the products are ingested. The investigation demonstrated that the magnets in some magnetic balloons sold via online marketplaces had a higher magnetic force (or “flux”) than is permitted, which could result in serious or fatal internal injuries if swallowed. The OPSS has urged consumers who may have purchased the products to stop using them immediately, to keep them away from children and to seek immediate medical attention if there are any signs that a child has accidentally swallowed a magnet (for example, stomach pain or vomiting). The OPSS also requires businesses who sell the products to remove them from sale. Businesses are reminded that they should not sell reusable water balloons with a magnetic flux that is higher than the index set in Standard EN71 or which breaches requirements of the Toys (Safety) Regulations 2011. Any products containing magnets should clearly outline the risks and dangers on its labelling and product information where this is a risk of ingestion.

Further information on the potential dangers of magnetic reusable water balloons is available on the OPSS website [here](#).

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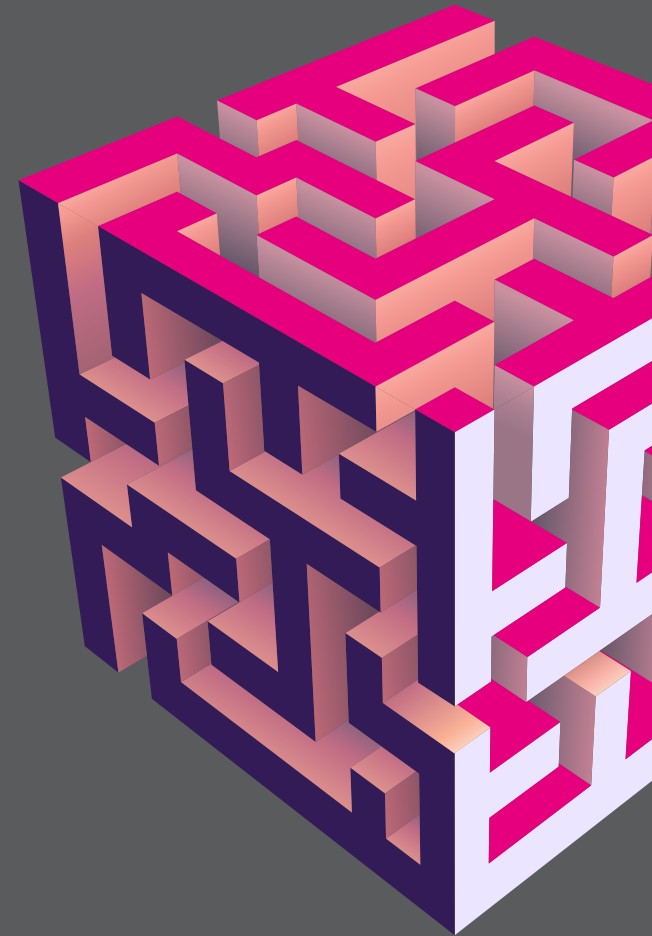
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Navigating the maze

From the world's largest financial, corporate and professional services firms, to highly successful entrepreneurs and individuals, many turn to our specialist Regulatory team to navigate the maze. They do this because they know we don't sit on the fence, we work with our clients to ask the tough questions and challenge conventions; ensuring they continue to thrive in a rapidly evolving regulatory world.

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