

Cookie Crunch: Time to Comply



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Introduction

- Overview of the “Cookie Law”
- Practical steps to compliance
- Potential consequences of non-compliance
- Summary of next steps for defining your own strategy for compliance
- US perspective

Overview of the “Cookie Law”

- **The law**
 - Originates from Article 5.3 of the E-Privacy Directive 2002/58/EC (as amended by the Citizen’s Rights Directive 2009/136/EC)
 - UK implementation Regulation 6 of the Privacy and Electronic Communications Regulations 2003 (as amended in 2011)
- **In essence the law requires that you:**
 - tell users about the cookies used on your website;
 - explain what the cookies are doing; and
 - obtain consent to store cookies on their device.

Overview of the “Cookie Law”

- **Limited exemption**
 - “strictly necessary” (essential) cookies to provide the service
- **Applicable to other technologies that store and access information on a user’s device.**
 - Local Shared Objects (“Flash Cookies”)
 - Mobile Apps
 - Email
 - “Device” covers personal computers, laptops, mobile phones, iPads and other mobile devices

Practical Steps to Compliance

- **Compliance steps consist of four key elements:**
 - Audit – understanding your existing cookie landscape
 - Transparency – what information do you need to provide
 - Consent Models – how to gain consent/changes to your technology
 - Ongoing Compliance – internal processes to ensure continued compliance
- **Underpinning all of this is an ongoing evaluation of what legal compliance looks like**

Practical Steps to Compliance – Audit

- **Audit**
 - determine the types of cookies/similar technologies in use
 - determine what cookies are used for e.g. “strictly necessary”, analytics, website functionality, targeted marketing
 - determine the privacy impact of cookies/similar technologies
 - ensure you have engaged the appropriate individuals, teams, suppliers, etc
 - influence your decision on the appropriate solution for your organisation
 - “clean up” websites and remove unnecessary cookies
- **Categorisation**
 - ICC UK Cookie Guide – includes useful descriptions of common cookie uses

Practical Steps to Compliance – Transparency

- **Update/add a cookie policy**
 - Make the cookie policy prominent
 - Inform users:
 - what cookies are and the way they operate
 - the types/categories of cookies used on the website, the purpose for which they are used, the length of time they are stored on a user's device
 - the effect of accepting or declining cookies
 - how to control and delete cookies using the user's browser; and
 - “strictly necessary” cookies can not be declined
 - Layered notice approach
 - Audit results will aid the production of your cookie policy

Practical Steps to Compliance – Transparency

- **Consider other communications to users**
 - Emails
 - Educational videos
 - Interactive tutorials
- **Use communications with users to positively present cookies and the benefits of them**

Practical Steps to Compliance – Consent Models

- **Consent model should be based on an organisation’s risk appetite and the privacy intrusiveness of cookies**
- **Live examples are showing a sliding scale of consent model development**
 - Update cookie policy only
 - Provide notice about cookie use (e.g. pop-up, header bar) with opt-out action required from the user – implied consent
 - Provide notice with opt-in action required from the user – explicit consent

Practical Steps to Compliance – Consent Models

Update cookie policy only

The screenshot shows the DCMS website homepage. At the top right, there are links for 'contact us', 'help', 'accessibility', and 'privacy and cookies'. The main navigation bar includes 'culture', 'media', 'sport', and 'London 2012'. Below this is a secondary menu with 'what we do', 'about us', 'news', 'consultations', 'publications', and 'blog'. A search bar is located on the right side of the navigation bar.

The main content area features a large video player titled 'Olympic Flame lit for London' with the subtitle 'Ceremony held in Ancient Olympia'. To the right of the video player is a promotional banner for the 'London 2012 PARALYMPIC GAMES' starting on '29 AUGUST 2012', with a 'DAYS TO GO: 9 8' counter and a link to 'beyond 2012 – explore the legacy of the London games >'. Below the banner is a 'hot topics' section with links for 'Re-transmission fees', 'E-petitions', and 'News Corporation's proposed acquisition of BSkyB'.

Below the video player is a 'latest news' section with a 'News Feed' icon. The featured article is 'Three quarters of councils have completed their broadband plans, Jeremy Hunt announced today', accompanied by a landscape image. To the left of the news section is a sidebar with navigation buttons for 'culture', 'media', 'sport', and 'London 2012', and links for 'DCMS transparency' and '2012 olympic games & paralympic games'.

On the right side, there is a 'sign up for our newsletter' section with the text 'Our latest news direct to your inbox every fortnight.' and an 'email address' input field with a 'Sign up >' button. Below this is a 'find out more' link. At the bottom right, there is a 'twitter updates' section.

Practical Steps to Compliance – Consent Models

Update cookie policy only

The screenshot shows the DCMS website homepage. In the top right corner, the navigation menu includes links for 'contact us', 'help', 'accessibility', and 'privacy and cookies'. The 'privacy and cookies' link is circled in red. Below the navigation is a search bar and a main menu with categories like 'culture', 'media', 'sport', and 'London 2012'. The main content area features a large banner for the 'Olympic Flame lit for London' ceremony. To the right, there is a 'hot topics' section with links to 'Re-transmission fees', 'E-petitions', and 'News Corporation's proposed acquisition of BSkyB'. Below that is a 'sign up for our newsletter' section with an email address input field and a 'Sign up' button. At the bottom right, there is a 'twitter updates' section. The DCMS logo and department name are visible in the top left corner.

Practical Steps to Compliance – Consent Models

Update cookie policy only

The screenshot shows the DCMS website's privacy and cookies page. The page is titled "privacy and cookies" and is part of a breadcrumb trail: "home > terms and conditions > privacy and cookies". The page content includes:

- Privacy and cookies:** A statement that the DCMS website does not capture or store personal information, but merely logs the user's IP address which is automatically recognised by the web server. This is used to record the number of visitors to our site.
- When we provide services:** A paragraph explaining that when services are delivered on the internet, this sometimes involves placing small amounts of information on your device, for example, your computer or mobile phone. These include small files known as cookies. They cannot be used to identify you personally.
- These pieces of information are used to improve services for you through, for example:**
 - enabling a service to recognise your device so you don't have to give the same information several times during one task
 - recognising that you may already have given a username and password so you don't need to do it for every web page requested
 - measuring how many people are using services, so they can be made easier to use and there's enough capacity to ensure they are fast
- Our use of cookies:** A section explaining that Google Analytics sets cookies to help us accurately estimate the number of visitors to the website and volumes of usage. This is to ensure that the service is available when you want it and fast.
- Cookie details:**
 - Name:** _utma
Typical content: randomly generated number
Expires: 2 years
 - Name:** _utmb
Typical content: randomly generated number
Expires: 30 minutes
 - Name:** _utmc
Typical content: randomly generated number
Expires: when user exits browser
 - Name:** _utmz
Typical content: randomly generated number + info on how the site was reached (e.g. directly or via a link, organic search or paid search)
Expires: 6 months

The page also features a navigation menu with links for "culture", "media", "sport", "London 2012", "what we do", "about us", "news", "consultations", "publications", and "blog". A search bar is located in the top right corner, and a footer contains the ORRICK logo.

Practical Steps to Compliance – Consent Models

Update cookie policy only

The screenshot shows the John Lewis website homepage. At the top right, there are links for "Sign in" and "Register". Below these are links for "John Lewis Insurance", "What's new", "Our shops", "Gift List", "Privacy & cookies", and "Customer services". The main navigation bar includes categories: "Home & Garden", "Electricals", "Women", "Men", "Beauty", "Baby & Child", "Toys", "Sport & Leisure", "Gifts", "Special Offers", and "Shop by Brand". A search bar is located in the center with the text "Search Keyword, product code, shop name" and a "Go" button. To the right of the search bar is a shopping basket icon with the text "Your basket 0 items - £0.00" and a "Checkout" button. Below the navigation bar, there are four promotional banners: "FREE STANDARD UK DELIVERY ON ORDERS OVER £30", "FREE CLICK & COLLECT FROM OUR 5HOPS", "INTERNATIONAL SHOPPING", and "NEVER KNOWINGLY UNDERSOLD". The main banner features a photograph of a garden table set for a picnic with the text "SUMMER CELEBRATIONS" and "20% off selected outdoor furniture and barbecues >". Below the main banner are four smaller promotional boxes: "This week's picks" with a list of items, "London 2012 mascots" with an image of the mascots, "Outdoor toys & games" with an image of a child on a slide, and "Sony cameras" with an image of two cameras. At the bottom, there are four more boxes: "Wedding" with an image of a wedding cake, "Features & Videos" with an image of a John Lewis Broadband logo, and "John Lewis Insurance" with an image of a house.

Practical Steps to Compliance – Consent Models

Update cookie policy only

The screenshot shows the John Lewis website homepage. At the top right, there are links for 'Sign in' and 'Register'. Below these, a navigation bar contains links for 'John Lewis Insurance', 'What's new', 'Our shops', 'Gift Lists', 'Privacy & cookies' (circled in red), and 'Customer services'. A search bar is located below the navigation bar, with a 'Go' button and a 'Your basket' indicator showing '0 items - £0.00' and a 'Checkout' button. Below the search bar is a horizontal menu with categories: 'Home & Garden', 'Electricals', 'Women', 'Men', 'Beauty', 'Baby & Child', 'Toys', 'Sport & Leisure', 'Gifts', 'Special Offers', and 'Shop by Brand'. Below the menu, there are four promotional banners: 'FREE STANDARD UK DELIVERY ON ORDERS OVER £30', 'FREE CLICK & COLLECT FROM OUR 5HOPS', 'INTERNATIONAL SHOPPING', and 'NEVER KNOWINGLY UNDERSOLD'. The main banner features a 'SUMMER CELEBRATIONS' promotion with '20% off selected outdoor furniture and barbecues >'. Below the main banner are four promotional tiles: 'This week's picks' with a list of items, 'London 2012 mascots' with an image of Wenlock and Mandeville, 'Outdoor toys & games' with an image of a slide, and 'Sony cameras' with an image of two cameras. At the bottom, there are four more tiles: 'Wedding', 'Features & Videos', 'John Lewis Broadband', and 'John Lewis Insurance'.

Practical Steps to Compliance – Consent Models

Update cookie policy only

The screenshot shows the John Lewis website's 'Privacy and cookies' page. At the top, there is a navigation bar with links for 'John Lewis Insurance', 'What's new', 'Our shops', 'Gift List', 'Privacy & cookies', and 'Customer services'. The John Lewis logo is prominently displayed on the left. A search bar is located in the center, and a shopping basket icon on the right shows '0 items - £0.00' with a 'Checkout' button. Below the navigation bar is a horizontal menu with categories: Home & Garden, Electricals, Women, Men, Beauty, Baby & Child, Toys, Sport & Leisure, Gifts, Special Offers, and Shop by Brand. The main heading is 'Privacy and cookies', with a breadcrumb trail 'Homepage > Privacy and cookies'. There are social media sharing options for Print page, Share/Bookmark, Tweet, +1, Like, and a comment count of 8. A navigation bar below the heading offers five tabs: 'WHAT ARE COOKIES?' (selected), 'OUR COOKIES POLICY', '3RD PARTY COOKIES', 'MANAGING COOKIES', and 'BANNER ADVERTISING ON OTHER WEBSITES (CRITEO)'. The main content area features a large image of a computer keyboard with the 'W' key highlighted. Below the image, the text reads: 'What are cookies? Cookies are tiny text files stored on your computer when you visit certain web pages. At johnlewis.com we use cookies to keep track of what you have in your basket, and to remember you when you return to our site. To order products on johnlewis.com, you need to have cookies enabled - see the section on Managing cookies. If you don't wish to enable cookies, you'll still be able to browse the site and use it for research purposes. Most web browsers have cookies enabled, but see Managing cookies for help to turn them on should you need to.' On the right side, there are three promotional sections: 'What's new' with a list of categories (Fashion & Beauty, Home & Garden, Elec & Tech, Family & Leisure), 'Made in UK' featuring a Union Jack flag and the text 'We're proud to back British', and 'The John Lewis app' with an image of a smartphone and the text 'Download our free iPhone app now'.

Practical Steps to Compliance – Consent Models

Opt-out notice/IMPLIED consent

The screenshot displays the BT.com website interface. At the top, there is a navigation bar with the BT logo, a 'Business' button, a 'Large business & public sector' button, and a 'More BT sites' dropdown. To the right, there are logos for the London 2012 and Rio 2016 Olympics, with 'official partner' text below them. A search bar is present with the text 'Search BT.com' and a 'Search' button. Below the navigation bar, there is a main content area with a 'Great News!' banner for 'Infinity 2' which states 'Infinity 2 has arrived giving you 8x faster speeds than the UK average.' and a 'See if you can get Infinity' button. To the right of the banner is a 'My BT' login section with fields for 'Username (Forgotten?)' and 'Password (Forgotten?)', and buttons for 'Log in' and 'Sign up now'. Below the banner are four product categories: 'Packages >', 'Phone >', 'Broadband >', and 'TV >'. Each category has a representative image and a price tag: 'from FREE for 6 months', 'from £0 a month', 'from FREE for 6 months', and 'from £4 a month'. At the bottom of the main content area, there is a 'Find a number >' section with a 'Business type' dropdown and a search input field. A 'Cookie consent' notice is overlaid on the bottom right, stating: 'The cookie settings on this website are set to "allow all cookies" to give you the very best experience. If you continue without changing these settings, you consent to this - but if you want, you can change your settings at any time at the bottom of this page.' It includes buttons for 'Change settings' and 'No, thanks', and a link to 'Find out more about Cookies >'. At the very bottom, there is a footer with navigation links: 'At home', 'Business >', 'Large business & public Sector', and 'BT Group >'. The ORRICK logo is visible in the bottom right corner.

Practical Steps to Compliance – Consent Models

Opt-out notice/implied consent

The screenshot displays the BT.com website interface. At the top, there is a navigation bar with the BT logo, a 'Business' button, a 'Large business & public sector' button, and a 'More BT sites' dropdown. To the right, there are logos for the London 2012 and Rio 2016 Olympics, with 'official partner' text below them. Further right, there is a search bar with 'Search BT.com' and a 'Search' button, and a link for 'BT worldwide: Change country/region'.

The main navigation bar includes 'Home', 'Phone, Broadband & TV', 'BT Life', 'Help', and 'My BT'. The 'Home' section features a large banner for 'Great News!' with the text 'Infinity 2 has arrived giving you 8x faster speeds than the UK average.' and a button 'See if you can get Infinity'. Below this, there are four product categories: 'Packages >', 'Phone >', 'Broadband >', and 'TV >'. Each category has a representative image and a price tag: 'from FREE for 6 months', 'from £0 a month', 'from FREE for 6 months', and 'from £4 a month'. A note at the bottom left states 'Line rental from £10.75 a month applies'.

On the right side, there is a 'My BT >' section with a login form containing 'Username (Forgotten?)' and 'Password (Forgotten?)' fields, and 'Log in' and 'Sign up now' buttons. Below that is a 'Help' section with a search bar 'Enter search terms' and a 'Go' button, and a link 'Looking for Business help?'. At the bottom right, a 'Find a number >' section is partially visible, showing 'Business type: Busi' and 'Business Type: e.g. Florist'.

A red circle highlights a cookie consent notice in the bottom right corner. The notice text reads: 'The cookie settings on this website are set to "allow all cookies" to give you the very best experience. If you continue without changing these settings, you consent to this - but if you want, you can change your settings at any time **at the bottom of this page.**' Below the text are two buttons: 'Change settings' and 'No, thanks', and a link 'Find out more about Cookies >'.

The footer of the website includes 'At home', 'Business >', 'Large business & public Sector', and 'BT Group >'.

Practical Steps to Compliance – Consent Models

Opt-out notice/IMPLIED consent

Your cookie settings

Cookies are very small text files that are stored on your computer when you visit some websites. We use cookies to make our website easier for you to use. You can remove any cookies already stored on your computer, but these may prevent you from using parts of our website. Use the slider below to see the different types of cookies you can choose to allow.

Drag the slider across to change your cookie settings

Strictly necessary & Performance | Functional | Targeting

This website will:

- ✓ Remember what is in your shopping basket.
- ✓ Remember how far you are through an order.
- ✓ Remember your log-in details.
- ✓ Make sure you're secure when logged in to the website.
- ✓ Make sure the website looks consistent.
- ✓ Offer live chat support.

This website will not:

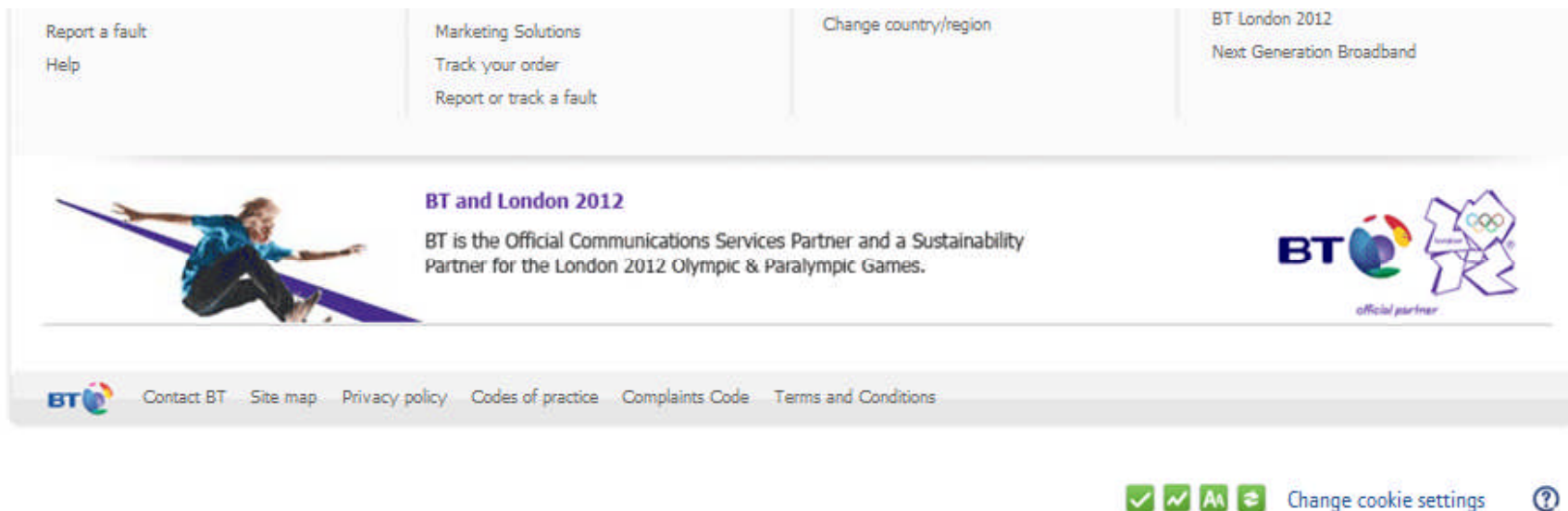
- ✗ Allow you to share pages with social networks like Facebook.
- ✗ Allow you to comment on blogs.
- ✗ Send information to other websites so that advertising is more relevant to you.

[Find out more about Cookies >](#) [Cancel](#) [Save and close](#)

For your new settings to take effect, this page will automatically refresh when you click 'Save and close'.

Practical Steps to Compliance – Consent Models

Opt-out notice/IMPLIED consent



The screenshot displays the footer of the BT website. At the top, there are four columns of navigation links: 'Report a fault', 'Help', 'Marketing Solutions', 'Track your order', 'Report or track a fault', 'Change country/region', 'BT London 2012', and 'Next Generation Broadband'. Below this is a banner for 'BT and London 2012' featuring a photo of a person on a purple ramp, text stating 'BT is the Official Communications Services Partner and a Sustainability Partner for the London 2012 Olympic & Paralympic Games.', and the BT and London 2012 logos. A footer bar contains the BT logo and links for 'Contact BT', 'Site map', 'Privacy policy', 'Codes of practice', 'Complaints Code', and 'Terms and Conditions'. At the bottom right, there are icons for a checkmark, a wavy line, 'Aa', a refresh symbol, and a 'Change cookie settings' button with a question mark icon.

Practical Steps to Compliance – Consent Models

Opt-out notice/IMPLIED consent

The image shows a screenshot of the BT website footer. At the top, there are four columns of links: 'Report a fault', 'Help', 'Marketing Solutions', 'Track your order', 'Report or track a fault', 'Change country/region', 'BT London 2012', and 'Next Generation Broadband'. Below this is a banner for 'BT and London 2012' with a photo of a person on a purple ramp and text stating 'BT is the Official Communications Services Partner and a Sustainability Partner for the London 2012 Olympic & Paralympic Games.' To the right is the BT logo and the London 2012 Olympic logo with 'official partner' text. At the bottom, there is a navigation bar with links: 'Contact BT', 'Site map', 'Privacy policy', 'Codes of practice', 'Complaints Code', and 'Terms and Conditions'. In the bottom right corner, there is a 'Change cookie settings' link with a question mark icon, which is circled in red. To the left of the link are four small icons: a checkmark, a wavy line, 'Aa', and a refresh symbol.

Practical Steps to Compliance – Consent Models

Opt-out notice/IMPLIED consent

The screenshot shows the front page of the Mirror website. At the top left is the 'Mirror' logo in white on a red background, followed by 'FRONT PAGE' in blue. Below this is a navigation bar with tabs for 'FRONT PAGE', 'NEWS', 'SPORT', '3AM', 'LIFESTYLE', 'MONEY', 'PLAY', and 'OPINION'. A 'HOT TOPIC' section lists 'Eurovision 2012 - Cheryl Cole - Robin Gibb - Didier Drogba - The Voice'. The main content area features several article teasers: 'I don't steal husbands... I just borrow them for a bit', 'CHAS'N'RAVE: PRINCE CHARLES SHOWS OFF HIS DJ SKILLS', 'A bit of a boob: Cheryl's wardrobe malfunction', 'Pencil vs camera: Artwork mixing drawing with photos', and 'There's life in the old Drog yet: in-depth interview'. At the bottom, there are sections for 'Bye bye Baines: Man United have opened talks with Everton over £12m move for England full-back' and 'OPINIONS' featuring Tess Daly. A cookie consent notice is overlaid on the bottom right, stating: 'This website uses 'cookies' to give you the best, most relevant experience. Using this website means you're Ok with this. You can change which cookies are set at any time - and find out more about them - by following this link; (or by clicking the cookie link at the top of any page).' The ORRICK logo is visible in the bottom right corner of the page.

Practical Steps to Compliance – Consent Models

Opt-out notice/IMPLIED consent

The screenshot shows the Mirror website's front page. At the top right, a red oval highlights the text "How we use cookies". Below the main navigation bar, a search bar is present. The main content area features several article teasers, including one about a woman who has dated more than 50 married men, and another about Prince Charles showing off his DJ skills. At the bottom right, a red oval highlights a cookie consent notice that reads: "This website uses 'cookies' to give you the best, most relevant experience. Using this website means you're Ok with this. You can change which cookies are set at any time - and find out more about them - by following this [link](#); (or by clicking the cookie link at the top of any page)." The ORRICK logo is visible in the bottom right corner.

Practical Steps to Compliance – Consent Models

Opt-out notice/implied consent

FT Cookie Policy

We have published a new [cookie policy](#). It explains what cookies are and how we use them on our site. To learn more about cookies and their benefits, please view our [cookie policy](#).

If you'd like to disable cookies on this device, please view our information pages on ['How to manage cookies'](#). Please be aware that parts of the site will not function correctly if you disable cookies.

By closing this message, you consent to our use of cookies on this device in accordance with our [cookie policy](#) unless you have disabled them.

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caution of sensible Keynesians
valuation is last option to save the euro
ros are more equal than others

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From COMPANIES 12:25am

Morgan Stanley subpoenaed over IPO

Scrutiny intensifies as Facebook shares close 18% below listing price

- Nasdaq investors still support Greifeld
- Nasdaq 'embarrassed' over Facebook IPO
- Quick View 'Raindrops' raise questions after Facebook IPO

GLOBAL MARKET OVERVIEW from MARKETS 12:00pm

Stocks slide as EU summit hopes fade

Markets remain unsettled amid uncertain Greek euro future

- US 'fiscal cliff' looms into view
- BoJ holds fire on further easing

From WORLD 1:34pm

Russian stocks fall on privatisation U-turn

Cancellation of energy stake sales indicates elite infighting

From UK 12:20pm

Retail sales data add to economic gloom

CBI reports slowing momentum in manufacturing

- MPC voted 8-1 against more QE
- Money Supply MPC minutes hard to call
- UK inflation falls to lowest in two years

From MARKETS 11:35am

Germany borrows at record low rates

Two-year debt yields 0.07% as investors pay for safety

Markets data

INDICES	COMMODITIES	CURRENCIES	BONDS
FTSE 100	5,311.97	-1.69%	5.450
S&P 500	1,316.63	+0.05%	5.400
Eurofirst 300	978.83	-1.49%	5.350
Nikkei 225	8,558.6	-1.98%	5.300
Shanghai Comp	2,383.44	-0.42%	

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Practical Steps to Compliance – Consent Models

Opt-out notice/implied consent

The screenshot displays the Financial Times website with a central 'FT Cookie Policy' notice. The notice states: 'We have published a new cookie policy. It explains what cookies are and how we use them on our site. To learn more about cookies and their benefits, please view our cookie policy. If you'd like to disable cookies on this device, please view our information pages on 'How to manage cookies'. Please be aware that parts of the site will not function correctly if you disable cookies. By closing this message, you consent to our use of cookies on this device in accordance with our cookie policy unless you have disabled them.' A 'Close' button is visible at the bottom right of the notice.

Other elements on the page include:

- Top navigation: Home, UK, World, Companies, Markets, Global Economy, Lex, Comment, Management, Personal Finance, Life & Arts.
- Market data table:

INDICES	COMMODITIES	CURRENCIES	BONDS
FTSE 100	5,311.97	-1.69%	5.450
S&P 500	1,316.63	+0.05%	5.400
Eurofirst 300	978.83	-1.49%	5.360

Footer links: Help • Contact us • About us • Sitemap • Advertise with the FT • Terms & conditions • Privacy policy • Copyright • **NEW** Cookie policy

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ORRICK

Practical Steps to Compliance – Consent Models

Opt-out notice/IMPLIED Consent

The screenshot displays the Financial Times website with a central pop-up window titled "FT Cookie Policy". The notice states: "We have published a new cookie policy. It explains what cookies are and how we use them on our site. To learn more about cookies and their benefits, please view our cookie policy." It further explains that users can disable cookies but that some site functions may not work correctly. A "Close" button is located at the bottom right of the notice.

Below the notice, the main content area features a headline: "Morgan Stanley subpoenaed over IPO" with a sub-headline "Scrutiny intensifies as Facebook shares close 18% below listing price". To the right, there is a "Markets data" section with a table:

INDICES	COMMODITIES	CURRENCIES	BONDS
FTSE 100	5,311.97	-1.69%	5.450
S&P 500	1,316.63	+0.05%	5.400
Eurofirst 300	978.83	-1.49%	5.350

At the bottom of the page, a footer contains navigation links: "Help • Contact us • About us • Sitemap • Advertise with the FT • Terms & conditions • Privacy policy • Copyright • **NEW** Cookie policy". The "NEW Cookie policy" link is circled in red.

Practical Steps to Compliance – Consent Models

Opt-in notice/explicit consent

The screenshot displays the top section of the Information Commissioner's Office (ICO) website. At the top, a grey banner contains a cookie consent notice: "The ICO would like to place cookies on your computer to help us make this website better. To find out more about the cookies, see our [privacy notice](#)." Below this notice is a checkbox labeled "I accept cookies from this site." and a "Continue" button. The main header area features the "ico." logo on the left, with "Information Commissioner's Office" written below it. To the right of the logo are language selection options: "Français", "Español", and "Cymraeg". Further right are links for "Accessibility | Help | FAQs | Contact us". Below the language options is a "Quick links" section with a dropdown menu labeled "[select a destination]" and a "Go" button. To the right of the quick links is a search bar with a "Search" button and a link to "Advanced Search". On the left side of the page, there is a vertical navigation menu with three items: "Home >>", "For the public >>", and "For organisations >>". To the right of this menu, the main content area begins with the text: "The Information Commissioner's Office is the UK's independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals."

Practical Steps to Compliance – Consent Models

Opt-in notice/explicit consent

The screenshot displays the Barclays website with a prominent cookie policy notice. The notice is titled "Updated cookie policy" and states, "You will only see this message once". It explains that cookies are used to store information on the user's device to enhance the browsing experience. The notice includes a link to the "Cookie Policy" and provides two options: "Change cookie settings" and "Accept and continue".

Updated cookie policy
You will only see this message once

We use cookies on this website to store information on your computer or mobile device. Cookies are small text files which help us understand how this website is being used, let you navigate between pages efficiently, remember your preferences, and generally improve your browsing experience. Cookies can also help ensure marketing you see online is more relevant to you. More information about cookies can be found in our [Cookie Policy](#)

To give you the very best browsing experience, the cookie settings on this website are set to allow all cookies. If you continue without changing these settings you consent to this but if you want to change your settings at any time, click the Cookie Settings link at the bottom of the webpage.

[Change cookie settings](#) [Accept and continue](#)

The background content of the website includes the Barclays logo, navigation links for "About Barclays", "Individuals", and "Corporates and Institutions", a "Citizenship Report" section, and a "Barclays news" section with a headline for "Barclays Citizenship Awards 2012: The People's Vote".

Practical Steps to Compliance – Consent Models

Opt-in notice/explicit consent

The screenshot shows the Barclays website's cookie settings page. At the top, the Barclays logo is on the left, and navigation links for 'About Barclays', 'Individuals', and 'Corporates and Institutions' are on the right. Below the navigation is a search icon. The main content area is titled 'Cookiesettings' and contains the following text:

Cookies are small text files which help us understand how this website is being used, let you navigate between pages efficiently, remember your preferences, and generally improve your browsing experience. Cookies can also help ensure marketing you see online is more relevant to you.

Using this Cookies Setting tool you can enable and disable certain categories of cookies but doing so may stop part of this website from working. We recommend that for the best browsing experience all cookie categories are enabled.

You can learn more about each of the categories of cookies from the link at the bottom of this page.

	Enabled	Disabled
Strictly Necessary Cookies These cookies enable services you have specifically asked for, they allow you to move around the website and use its features, such as accessing secure areas. As this category of cookie is essential for the Barclays.com to work it cannot be disabled.	<input checked="" type="checkbox"/>	N/A
Performance Cookies These cookies collect information about how you use a website, for example which pages you go to and if you experience error messages. These cookies don't gather information that identifies you. All information these cookies collect is anonymous and is only used to improve how a website works.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Functionality Cookies These cookies allow a website to remember choices you make (such as your user name, language or the region you're in), tailor the website to provide enhanced features and content for you.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Targeting Cookies These cookies are used to tailor marketing to you and your interests. They are also used to limit the number of times you see an advertisement as well as help measure the effectiveness of the advertising campaign.	<input checked="" type="checkbox"/>	<input type="checkbox"/>

[Learn more about how we use cookies](#)

At the bottom of the page, there are two banners: 'Barclays Citizenship Awards 2012: The' and an image of a person.

Practical Steps to Compliance – Consent Models

- **Gaining consent shouldn't necessarily be considered a negative experience**
 - One time message
 - Users will start to expect this – issues of trust with websites that do not comply
 - User control could reflect positively e.g. make part of a privacy centre

Practical Steps to Compliance – Ongoing Compliance

- **Compliance is an ongoing process**
 - Inform and educate staff internally
 - Procedures to ensure new cookies are assessed before being added to your website
 - Update cookie policy
 - Adapt the consent model
 - Consider how your compliance strategy will work with third parties e.g. partnership sites, suppliers, etc.

Potential Consequences of Non-Compliance

- Monetary penalties
 - Up to £500,000
 - However, requires serious contravention likely to lead to substantial damage or distress.
 - Analytics cookies unlikely to meet threshold
- Investigation
- Public undertakings
- Enforcement notices
- Damage to brand and reputation - trust

Next steps for defining your compliance strategy

Easy and quick wins

- Start defining your compliance strategy now!
- Some quick steps can be taken to show the ICO that you aren't ignoring the law
 1. Create a time lined project plan
 2. Audit
 3. Remove cookies that you do not need
 4. Amend/add your cookie policy
 5. Make the cookie policy prominent
 6. Include instructions in the cookie policy about how the user can disable cookies for him/herself

Longer term planning

1. Decide on the consent model for your business
2. Implement technical and procedural change

US Perspective – Consumer perspective?

- **2001 Harris Interactive Survey:**
 - 3% reported carefully reading privacy policies
 - 60%+ reported “little or no time” looking at privacy policies
- **2007 Golden Bear Study by Samuelson Clinic:**
 - 1.4% reported reading EULAs
 - 66.2% admit to rarely reading EULAs
- **2009 UK Information Commissioner Survey:**
 - 71% did not read, or understand, privacy policies

US Perspective – Government perspective?

- “We all agree that consumers don’t read privacy policies – or EULAs, for that matter.”

U.S. Federal Trade Commission Chairman Lebowitz (2009)

- “In reality, we have learned that many consumers do not read, let alone understand privacy notices, limiting their ability to make informed choices.”

U.S. Federal Trade Commission Report, Dept. of Commerce (2010)

- Privacy policies are in “the smallest type you can imagine . . . [p]roviding too much information defeats the purpose of disclosure, since no one reads it”

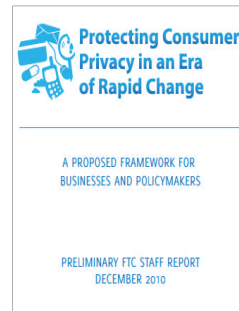
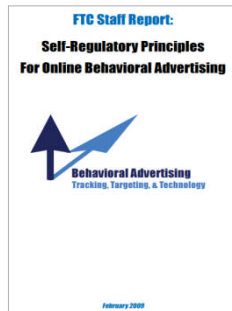
U.S. Supreme Court Chief Justice Roberts (2010)

US Legal Regime – Federal Trade Commission (FTC)

- **FTC’s broad mandate:**
 - section 5 of the FTC Act grants very broad authority to investigate and protect consumers from “**unfair**” or “**deceptive**” acts or practices
 - ➔ *say what you do ... and do what you say*
 - can rely on finding that act or practice *reasonably tends* to cause consumer harm, as opposed to having to prove *actual* consumer harm
 - with respect to tracking tools like cookies, FTC is particularly concerned that consumers do not understand the technology at issue and might have their information used in unexpected and intrusive ways
- **What are the rules?**
 - Guidance, reports, speeches
 - Enforcement actions, consent decrees

US Legal Regime – Interpreting the FTC’s requirements

- Guidance Reports



Low risk



High risk

Expected uses of data	<u>vs.</u>	Unexpected uses of data
First-party uses (eg analytics)	<u>vs.</u>	Third-party uses (eg profiling)
Contextual Ads	<u>vs.</u>	Targeted Ads

- Tracking practices still largely subject to *notice/disclosure + opt-out/implied consent*
- Opt-in/explicit consent for “material” retroactive changes to collection or use practices
- Specific practices (e.g., opt-out/implied consent) left to self-regulatory orgs and Congress

US Legal Regime – Interpreting the FTC’s requirements

- **FTC has left the form and method of opt-out largely to self-regulation**
 - Do-Not-Track
 - Network Advertising Initiative (NAI) & Digital Advertising Alliance (DAA)
 - Opt-out/IMPLIED consent tools for behavioral advertising
 - Companies instructing users in privacy policies to disable cookies and other tracking tools through the browser settings if desired, or refrain from using website or app
 - Mobile presents some unique tracking issues...
- **There has been some proposed legislation, but none passed**

US Legal Regime – FTC Enforcement Actions

- **Despite lack of specifically enumerated rules and regulations, FTC has commenced dozens of investigations**
- **And, FTC has secured public consent decrees – many quite onerous – that are specifically focused on misrepresentations and deception around tracking technologies and cookies**

US Legal Regime – FTC Enforcement Actions

- **Sears (2009)** – disclosure of “research” software that tracked online behavior was not only insufficient, but buried at end of “lengthy user agreement” filled with legalese.
 - decree required Sears to destroy all data collected through software
- **Chitika (2011)** – privacy policy included “opt-out” button, which when clicked stated “You are currently opted out.” Opt-out/implied consent cookie functioned properly. . . for 10 days.
 - decree required in-ad hyperlink to 5-year opt-out; website opt-out mechanism; and homepage notice and mea culpa
- **Scan Scout (2011)** – privacy policy said “You can opt out of receiving a cookie by changing your browser settings to prevent the receipt of cookies,” but company used Flash Cookies which were neither blocked nor deleted by such settings
 - decree required fixes, 5-year opt-out, homepage notice, and in-ad notices.

US Legal Regime – FTC Enforcement Actions

- **MySpace (May 8, 2012)** – privacy policy promised personally identifiable information and non-anonymized browsing activity would not be shared with third-party advertisers, but company gave “Friend ID” to advertisers who could then link cookie-based browsing data to specific individuals. (FTC also found deceptive the privacy policy statement that MySpace complies with EU Safe Harbor provisions.)
 - decree requires fixes, comprehensive privacy program and 20-year of audits
- **??? Google (2012) ???** – allegation that Google circumvented Apple Safari browser’s settings to permits cookies to be dropped on users contrary to their choices, and which permit third-party ad networks to track users for advertising purposes; Google publicly states that this loophole was “unexpected”
 - existing consent decree (re: Google Buzz, 2011) requires fixes, comprehensive privacy program and 20-year audits
 - potential violation of existing consent decree for misrepresenting its practices could subject company to \$16,000/day fines, which could total \$10 million+

US Legal Regime – Consequences for non-compliance

- **Consequences of FTC enforcement action:**
 - Extended disruption to business (documents, discovery, depositions)
 - Significant legal fees and costs
 - Injunctive remedy (fix policies & practices, go-forward restrictions)
 - Consumer redress (could be forced to pay money if ill-gotten profits)
 - Public consent decree; harm to reputation
 - Violation of consent decree = up to \$16,000 *per day* penalty
 - Possible tag along violations for COPPA, CAN-SPAM, etc., which carry monetary fines of up to \$16,000 *per violation*
 - Publicity leads to consumer class actions by plaintiffs' lawyers

Questions?

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