

- 5.6 As you review your conduct, processes and training, the key thing to bear in mind is that you need to be able to show that you acted appropriately to minimise the risk of something going wrong (due to a mistake, an accident etc). For example, where you rely on information supplied by someone else (such as your client), you must still exercise your own judgement before including it in your marketing.
- 5.7 If you are prosecuted for failing to show professional diligence (which the CPRs prohibit generally) you will not have a due diligence defence available to you – what is listed at 5.5 above will not apply. If you knowingly or recklessly allow your conduct to fall below the standards of professional diligence, and you do something that materially distorts the economic behaviour of the average consumer, you will be committing a criminal offence under the CPRs.
- 5.8 It is therefore important that you review your conduct, processes and training regularly – and make all necessary changes to demonstrate that you are not behaving recklessly and are not knowingly engaging in conduct that is not professionally diligent.
- 5.9 If you are a company officer, you should also note, in relation to any criminal prosecution under the CPRs or BPRs, that you need to exercise proper control and supervision of your staff. You can be personally liable if an offence is committed by your staff, and it can be shown that this was due to your consent or connivance, or to neglect on your part.⁴¹
- 5.10 If someone else commits an offence under the CPRs⁴² or the BPRs, and they can show that the offence was due to your act or default, you will also be guilty of the offence. Alternatively, if the other person is able to avoid liability by relying on due diligence, you may still be guilty of an offence if it is shown that it was your act or default that led to the

⁴¹ CPRs 15(1) and BPRs 8.

⁴² Apart from that of failing to show professional diligence.