

This week at the UK regulators

On 1 April, the long awaited separation of the FSA into the new Financial Conduct Authority ("FCA") and Prudential Regulation Authority ("PRA") took place.

This new Clifford Chance publication provides a weekly update on key developments at both new regulators and reports on stories of interest from further afield

Thirty second guide: The week in overview

Last week saw the FCA's highly publicised commitment to consumer protection in action. In addition to concluding enforcement action against a director of a SIPP operator, it charged eight individuals with conspiracy to defraud and other offences in relation to land banking schemes, announced one new customer redress exercise and reminded customers of their rights to receive compensation under another.

It continued to seek to prevent as well as respond to potential consumer detriment, publishing a string of further warnings about (smaller) unauthorised firms and data setting out the numbers and types of complaints made against the largest firms in the second half of 2012. Although publication of both of these types of information is nothing new, the FCA, in line with its wish for greater transparency, continues to display them much more prominently.

Both the FCA and the PRA have issued policy statements setting out when and how they would investigate large scale regulatory failures. Clearly, both will hope never to have recourse to these particular areas of their policies, However, the papers serve as a barometer of their priorities and of their wish to differentiate their approaches to regulation from that of the FSA.

Further afield, IOSCO has released several documents which resonate with changes which are already underway and some of the challenges faced by the FCA in the UK. In addition to publishing a proposed set of standards in relation to the setting and administration of bench mark rates which draw upon the changes which came into force earlier this month in the UK, it has released a consultation paper on how best to regulate the sale of structured products to retail investors and has published a summary of the challenges facing enforcement authorities investigating and prosecuting market manipulation.

Eight charged in land banking investigation

The FCA has (on 17 April) charged eight individuals with conspiracy to defraud in connection with land banking schemes. Several of these individuals, who have all been bailed to appear in Court on 10 May, have also been charged with other offences relating to money laundering and providing false information to the FSA.

The action, against individuals associated with **Plott UK Limited** and **European Property Investments (UK)**

Limited, follows action taken by the FSA in the High Court in 2011 against the companies. The FCA has stated that its investigations into a third firm, **Stirling Alexander**, continue.

Although it has inherited a number of criminal prosecutions from the FSA, these are the first cases in which the FCA has charged individuals with criminal offences. The charges more than double the number of publicised cases in which the FCA is prosecuting individuals and underline the FCA's powers to prosecute criminal offences other than those specifically set out in the Financial Services and Markets Act 2000.

<http://www.fca.org.uk/news/press-releases/fca-charges-eight-men-in-relation-to-land-banking>

FCA bans and censures SIPP firm director

The FCA has (on 18 April) publicly censured **Mr Kevin Wells** and banned him from performing any significant influence function in future.

The FCA found that, whilst he occupied the CF1 (director) and CF10 (compliance oversight) functions at Montpelier Pension Administration Services Limited ("MPAS") between July 2009 and January 2011, he breached Principles 6 (due skill, care and diligence in management of firm) and 7 (compliance by firm with regulatory requirements) of the Statements of Principle and Code of Conduct for Approved Persons ("APER").

Specifically, it found that he failed to adequately inform himself in relation to relevant regulatory requirements and expanded and operated the business of MPAS without due regard for the risks associated with that expansion. It also found that he failed to ensure that MPAS had in place adequate systems and controls to enable compliance with rules including those set out in the Client Assets Sourcebook ("CASS") and those relating to due diligence on third parties. The FCA found that this, and in particular failures to properly assess risks when accepting esoteric investments, led to potential detriment for MPAS' customers.

The Final Notice issued to Mr Wells states that the FCA would have imposed a financial penalty of £58,500 on him had he not demonstrated that it would cause him serious financial hardship.

<http://www.fca.org.uk/your-fca/documents/final-notices/kevin-peter-wells>

Other Final Notices

On 16 April, the FCA cancelled the permission of **Castlehill Wealth Management Limited** for failing to submit Retail Mediation Activities Returns.

<http://www.fca.org.uk/your-fca/documents/final-notices/castlehill-wealth-management-limited>

FCA agrees one new customer contact scheme...

The FCA announced on 19 April that it has agreed a scheme under which **Santander UK** ("Santander") will contact approximately 270,000 mortgage customers to provide information in relation to an increase in the cap

margin (i.e. the amount by which a rate exceeds the Bank of England base rate) in its standard variable rate in 2008.

The FCA's press release states that information previously sent to customers when the cap margin was increased in December 2008 may not have been sufficiently clear. Santander has agreed to make contact with affected customers, of which only a minority of which are likely to have suffered financial loss, by the end of autumn 2013.

<http://www.fca.org.uk/news/santander-uk-contact-borrowers-svr>

...and announces the results of another

Following the action taken by the FSA against **Card Protection Plan Limited** ("CPP") last November (see FSA Update, 19 November 2012), which led to the imposition of a financial penalty of £10.5 million, the FCA has (on 18 April), announced the outcome of the first phase of a customer contact and redress exercise.

The FCA has confirmed that CPP has now written to a total of approximately 69,000 customers and paid approximately £3 million to date in connection with an unfair contract term used to take renewal payments.

The FCA's announcement states that it is now finalising a further scheme to compensate customers to whom products may have been mis-sold.

<http://www.fca.org.uk/news/compensation-for-card-and-identity-protection-policyholders>

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBW/bFgNhlNomwBI%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZeytUa0UITjX2wHBQc9zqbsHp%0D%0A5mt12P8Wnx03DzsaBGwslB3E/VF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=119263>

Regulators set out plans for investigating future regulatory failures

The FCA and PRA have (on 18 April) published details of the circumstances in which they would carry out investigations into large scale regulatory failures.

Sections 73 to 83 of the Financial Services Act 2012 require them to carry out an investigation and produce a report where events have occurred indicating "significant failures" to meet their objectives have occurred, or where they have had or could have had a "significant adverse effect" on those objectives.

Their respective policy statements set out the circumstances in which they would consider such circumstances to have arisen.

The FCA's approach focuses on when it will consider "detriment" to consumers have occurred, setting out quantitative thresholds of between £30 million and £150 million (total level of detriment to consumers). Whether these thresholds have been crossed will dictate how likely the FCA is to decide to carry out an investigation and produce a report. The FCA's paper also states that it will take into account qualitative factors to preserve some flexibility in this decision making process.

The paper also sets out specific instances in which it will consider failures of the regulatory system to have occurred and lists some hypothetical examples, heavily based on previous episodes of large scale regulatory breaches, to illustrate when it may investigate.

The PRA's paper places significant emphasis on whether public funds have been required or whether there have been "significant adverse effects on safety and soundness" or a "significant failure to secure an adequate degree of policyholder protection".

Both papers make clear that these types of investigations will be reserved for large scale failures. Both regulators make clear that they are not seeking or expecting to oversee a zero failure regime. Indeed, the FCA and/or PRA may never need to commence investigations or prepare reports under these provisions. However, for now, they provide further early indications, if they were needed, of the regulators' respective priorities and approaches towards their new remits.

<http://www.fca.org.uk/your-fca/documents/how-fca-will-investigate-and-report-on-regulatory-failure>

<http://www.bankofengland.co.uk/publications/Documents/ot>

[her/pra/conductstatinvestigations.pdf](http://www.fca.org.uk/pra/conductstatinvestigations.pdf)

FCA publishes complaints data

The FCA has (on 15 April) published details of the numbers and types of complaints made by consumers between July and December 2012.

The figures show that payment protection insurance continued to account for the majority (63 per cent) of the total number of complaints, whilst those about banking and credit cards decreased.

Although the publication of this data is not a new innovation, the FCA, as part of its drive for greater transparency, has given it much greater prominence, including by releasing detailed information on the numbers and types of complaints made against individual firms.

<http://www.fca.org.uk/firms/systems-reporting/complaints-data/aggregate-complaints-data>

FCA plans timetable for CRD IV implementation

Following the adoption of the EU Capital Requirements Directive and other associated legislation by the European Parliament on 16 April, the FCA announced that it is aiming to implement its provisions in the UK by 1 January 2014. Two consultations on the necessary changes to the capital requirements provisions in its Handbook are planned this summer.

<http://www.fca.org.uk/news/firms/fca-statement-on-crd-iv>

FCA warnings

Firm	Date of warning	Details
Global Endowment LLC	18 April	Not authorised http://www.fca.org.uk/news/warnings/global-endowment
Walton Johnson & Co	18 April	Not authorised http://www.fca.org.uk/news/warnings/walton-johnson

Firm	Date of warning	Details
Platinum First Bank/First Platinum Bank of London	18 April	Not authorised http://www.fca.org.uk/news/warnings/platinum-first-bank
Foreign Exchange Clearing House (or "FXCH")	18 April	Not authorised http://www.fca.org.uk/news/warnings/foreign-exchange-clearing-house
Smart Stuff Limited	17 April	Clone of FCA authorised firm http://www.fca.org.uk/news/warnings/smart-stuff-ltd
Charles Schwab	15 April	Clone of FCA authorised firm http://www.fca.org.uk/your-fca/documents/charles-schwab-clone-of-fca-authorized-firm
Liberty Alternative Investments Limited	15 April	Not authorised http://www.fca.org.uk/news/warnings/liberty-alternative-investments-ltd
Karl Johan Fonds ASA	15 April	Clone of former FCA EEA authorised firm http://www.fca.org.uk/your-fca/documents/karl-johan-fonds
Professional Finance Centre (East Midlands)	15 April	Not authorised http://www.fca.org.uk/your-fca/documents/professional-finance-centre
The Pensions Club LLP trading as "The Pensions Club"	15 April	Not authorised http://www.fca.org.uk/your-fca/documents/pensions-club
Woodlake Commodity Solutions	15 April	Not authorised http://www.fca.org.uk/your-fca/documents/woodlake-commodity-solutions

Policy developments

FCA		PRA	
Finalised policy and guidance			
		Implementation/ effective date	
Policy statements	<p>On 18 April, the FCA released details of the circumstances in which it will conduct statutory investigations in relation to regulatory failures (see above)</p> <p>http://www.fca.org.uk/your-fca/documents/how-fca-will-investigate-and-report-on-regulatory-failure</p>	<p>18 April</p> <p>18 April</p>	<p>On 18 April, the PRA released details of the circumstances in which it will conduct statutory investigations in relation to regulatory failures (see above)</p> <p>http://www.bankofengland.co.uk/publications/Documents/other/pract/conductstatinvestigations.pdf</p>

Further afield

IOSCO reflects on challenges facing regulators worldwide

The International Organization of Securities Commissions ("IOSCO") has released a series of documents which resonate strongly with changes which have been made or are underway in the UK, and with some of the challenges facing the FCA and other financial services regulatory enforcement authorities worldwide.

On 16 April, it released a consultation paper proposing a set of principles in relation to submissions to and the administration of benchmark rates and other indices used in financial markets worldwide. The paper follows, and suggests the wider application of many of, the changes made in the UK (see This week at the regulators, 8 April 2013). IOSCO has invited responses to the proposals by 16 May 2013.

On 18 April, it published a separate consultation paper on the regulation of retail structured products.

The paper examines trends in levels of complaints in relation to structured products in numerous jurisdictions and regulators' responses to them and proposes a "regulatory toolkit". It has invited responses to this paper by 13 June 2013.

On 19 April, it released an addendum to its report on investigating and prosecuting market manipulation, published in May 2000. This paper looks at the types of manipulative activity which have emerged since then, the tools which have been used to date to detect and tackle it, and the challenges which remain.

<http://www.iosco.org/library/pubdocs/pdf/IOSCOPD409.pdf>

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbFgNhLNomwBl%2B33QzdFhRQAhp8D%2BxrlGReI2crGqLnALtlyZe1JJZh6KRd%2F2WabPRkKQK0wnp%0D%0A5mt12P8Wnx03DzsaBGwslB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=219797>

<http://www.iosco.org/news/pdf/IOSCONEWS278.pdf>

<http://www.iosco.org/library/pubdocs/pdf/IOSCOPD411.pdf>

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