

This week at the 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 past few weeks in overview

Far from a gentle transition to the new regulatory structure, the weeks immediately before and after legal cutover saw a crescendo of activity.

Although we have not yet seen any concluded enforcement action by the FCA, in the week before the transfer of its conduct responsibilities, the FSA concluded several important enforcement cases, large and small, across almost all areas of its remit.

The PRA has started life by issuing a raft of new policy announcements on key areas of the way in which it intends to operate, whilst the FCA has begun to translate its much publicised intention to conspicuously protect and assist consumers into action by issuing multiple, prominently placed, warnings about unauthorised firms. In one of the FSA's last announcements, it made clear how both new regulators will seek to achieve their competition objectives by removing barriers for new entrants to the banking sector.

Further afield last week, in highly publicised action taken for misselling in the energy sector, OFGEM showed signs of seeking to replicate the robust enforcement approach to consumer protection historically taken by the FSA, to which the FCA has publicly committed itself.

Meanwhile, away from the UK, the US Securities and Exchange Commission has continued to take action for insider trading against individuals located outside US shores and has sought to move with the times by giving details of how it will approach disclosures of company information given via social media.

FSA imposes penalties for notification issues

The FSA (on 27 March) imposed financial penalties totalling £30 million on **Prudential PLC** ("Prudential") and its wholly owned subsidiary **The Prudential Assurance Company Limited** (together "the Companies").

The penalties related to findings by the FSA that the Companies breached Principle 11 of the Principles for Businesses and Listing Principle 6 by not informing the FSA sufficiently early about Prudential's contemplation of a potential transaction in early 2010, namely the attempt to acquire AIA, the Asian subsidiary of AIG. The Final Notices issued to the Companies acknowledge that the FSA accepted that the failures to notify were not deliberate or reckless.

The FSA also imposed a public censure on Group Chief Executive, **Tidjane Thiam** in respect of the same matters.

<http://www.fca.org.uk/your-fca/documents/final-notices/fsa-pru-plc>

<http://www.fca.org.uk/your-fca/documents/final-notices/fsa-prudential-plc>

<http://www.fca.org.uk/your-fca/documents/final-notices/fsa-mr-cheick-tidjane-thiam>

Tribunal upholds ban on mortgage broker

In a judgment dated 20 March (but released during following week), the Upper Tribunal has upheld the decisions by the FSA to impose a prohibition order on **Mr Abdul Razzaq** and to cancel his permission to trade as **RSA Mortgage Solutions**.

The Tribunal agreed with the FSA that he was not a fit and proper person. It found that he lacked integrity as, in 2008, he fraudulently obtained approximately £10,000 from a bank and subsequently sought to advance false exculpatory explanations to the FSA and the Tribunal. It also found that he lacked integrity, competence and capability as he knowingly failed to report to the FSA that he had obtained credit from the bank concerned which he was unable to repay, used an account belonging to his nephew and his nephew's wife for client money and, for a period of approximately nine days, had no client bank account and as, in 2009 and 2010, he acted as an insurance intermediary knowing that he did not have permission to do so.

<http://www.tribunals.gov.uk/financeandtax/Documents/decisions/abdul-razzaq-v-fsa.pdf>

FSA fines firm for advice failures relating to Keydata products

The FSA (on 27 March) imposed a financial penalty of £56,000 on **Care Asset Management Limited** ("Care") for failings relating to its sales of products provided by Keydata.

The Final Notice makes clear that the findings made relate only to Care's conduct in relation to the sales of the products and that no criticism is made of Keydata or any person other than Care (although statements on the FSA's website suggest that investigations into Keydata and associated individuals remain ongoing).

The FSA found that Care breached Principle 9 (Customers: relationships of trust) of the Principles for Businesses and breaches of the Conduct of Business ("COB") rules and, subsequently, rules set out in the Conduct of Business Sourcebook ("COBS") between September 2005 and April 2009. Specifically, it found that Care failed to take care to ensure the suitability of its advice to invest in Keydata products and failed to have in place appropriate systems and controls to understand the risks its customers were willing to take, provide written documentation to customers which adequately or clearly described risks or monitor the sale of Keydata products.

The Final Notice acknowledges that Care voluntarily and proactively assisted customers to obtain redress when it learned that Keydata had been placed into administration, that, since 2009, Care has taken steps to address the failings in respect of which the action was taken and that Care co-operated with the FSA's investigation.

<http://www.fsa.gov.uk/static/pubs/final/care-asset-management.pdf>

http://www.fsa.gov.uk/consumerinformation/firmnews/2010/keydata_faq.shtml

FSA cancels firm's permission and bans director for UCIS fitness and propriety failings

On 22 March, the FSA issued Final Notices imposing a prohibition order on **Mr Stephen Hocking** and cancelling the permission of the firm of which he was a director, **Pave Financial Management Limited** ("Pave").

The FSA found that Mr Hocking breached Principles 1 (integrity), 2 (due skill, care and diligence) and 7 (compliance by firm with regulatory requirements) of its Statements of Principle and Code of Practice for Approved Persons ("APER"). As such, in addition to prohibiting from involvement with any regulated activities in future, it withdrew his approval to fulfil the CF1 (director) and CF30 (customer) functions, finding that he lacked integrity, competence and capability. The FSA indicated that it would have imposed a financial penalty of £25,000 on Mr Hocking had he not demonstrated that it would cause him serious financial hardship.

The FSA had also issued a Decision Notice to Mr Timothy Pattison, Mr Hocking's co-director, in November 2011. Mr Hocking and Mr Pattison referred these to the Upper Tribunal. However, Mr Pattison died and Mr Hocking decided to withdraw his reference before the scheduled hearing date.

The FSA found that Mr Hocking acted recklessly by advising a vulnerable elderly customer to make a large investment in UCIS funds, and by advising another customer to re-mortgage his home and transfer out of a pension scheme in order to invest in UCIS funds. Whilst acknowledging that Mr Pattison was the dominant influence over Pave's activities, it also found that, whilst a director of Pave between June 2008 and August 2010, Mr Hocking did not adequately question or challenge the business model or processes it adopted, leading to unsuitable recommendations being made to customers and failures by Pave to comply with regulatory requirements.

<http://www.fca.org.uk/your-fca/documents/final-notices/fsa-stephen-hocking>

<http://www.fca.org.uk/your-fca/documents/final-notices/fsa-pave-financial>

Other Final Notices

Further to decisions made by the Upper Tribunal on 2 January (see FSA Update, 7 January), the FSA (on 25 March) issued Final Notices refusing the applications for approvals to undertake particular controlled functions and permission to carry on particular regulated activities made by **Mr Sidney Cordle** and **Scott Briscoe Limited**.

<http://www.fca.org.uk/your-fca/documents/final-notices/fsa-mr-sidney-cordle>

<http://www.fca.org.uk/your-fca/documents/final-notices/fsa-scott-briscoe-limited>

http://www.tribunals.gov.uk/financeandtax/Documents/sidney_cordle_v_FSA.pdf

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbfGnHlNomwBl%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZe%2F6nY0TKkWAJiHEo8IRQKH%2Fp%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XiHbSpJa3xHNE7tFeHpEbaelf&attachmentsize=136524>

FCA publishes list of bench mark rate submitters and administrators

The FCA has (on 2 April) issued a list of the firms authorised to carry out the new regulated activities of providing information in relation to and administering a "specified benchmark".

These new regulated activities were introduced with effect from 2 April by the Financial Services and Markets Act 2000 (Regulated Activities) (Amendment) Order. Accompanying requirements for firms to nominate individuals to occupy the new CF40 (benchmark submission) and CF50 (benchmark administration) controlled functions and other changes to the FCA's Handbook were also introduced on 2 April. These changes were set out in a policy statement (PS13/6) issued by the FSA shortly before legal cutover (see FSA Update – 26 March).

<http://www.fca.org.uk/your-fca/documents/providing-information-in-relation-to-specified-benchmarks-libor>

<http://www.fca.org.uk/your-fca/documents/administrator-of-specified-benchmarks-libor>

<http://www.fsa.gov.uk/static/pubs/policy/ps13-06.pdf>

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbfGnHlNomwBl%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZe7NckjrpigUoZzHywghNSLT>

<p%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=161628>

FCA issues first warnings to consumers about firms

In its first week, the FCA has put into action its stated intention to actively assist consumers and prevent detriment from occurring by issuing a number of warnings about firms carrying on business without authorisation. This continues the efforts of the FSA to issue similar warnings. However, warnings are now much more prominently displayed on the FCA's website. Specifically, the FCA has issued warnings about the following firms:

Firm	Date of warning	Details
Green and Banks Advisors	5 April	Unauthorised firm
Blackbird Europe Limited	3 April	Clone of FCA authorised firm
Gilbert Webb Estates Limited	3 April	Unauthorised firm
Eco Asian Carbon Consulting	2 April	Unauthorised firm
AG Group Advisers	28 March	Unauthorised firm
Global Financial Services	28 March	Clone of FSA EEA authorised firm
Goldcrest International Limited (trading as Goldcrest Holdings Limited)	28 March	Unauthorised firm
AGF Europe Advisors	26 March	Clone of FSA EEA authorised firm

<http://www.fca.org.uk/news/warnings/green-and-banks-advisors>

<http://www.fca.org.uk/your-fca/documents/blackbird-europe>

<http://www.fca.org.uk/news/warnings/gilbert-webb-estates>

<http://www.fca.org.uk/news/warnings/eco-asian-carbon>

<http://www.fca.org.uk/your-fca/documents/ag-group-advisors>

<http://www.fca.org.uk/your-fca/documents/global-financial-services>

<http://www.fca.org.uk/your-fca/documents/goldcrest-international>

<http://www.fca.org.uk/your-fca/documents/agf-europe-advisors>

FCA Board members confirmed

On 28 March, HM Treasury named the members of the FCA's Board. The Board comprises some directors who sat on the FSA's Board, together with some new additions. A full list and biographies for non-executive directors are available at the link below.

<http://www.fsa.gov.uk/library/communication/pr/2013/032.shtml>

Barriers to entry for new banks relaxed

On 26 March, the FSA published the results of its and the Bank of England's review into barriers to new entrants to the banking sector.

The report sets out steps which have already been taken,

and those which will be taken by the FCA and PRA. Changes to the prudential regime including the cessation of application of additional capital requirements and the reduction of liquidity requirements for new banks. Changes to the mechanics of the authorisation process include proposals for increases in the levels of "up front" support to be provided to new applicants and the streamlining of information requirements. A summary of the changes and the full report are available at the links below.

<http://www.fsa.gov.uk/library/communication/pr/2013/030.shtml>

<http://www.fsa.gov.uk/static/pubs/other/barriers-to-entry.pdf>

FSA issues methodology note on calculating capital pressures

On 27 March, further to a recommendation made by the Financial Policy Committee in November 2012, the FSA issued details of the methodologies it has used to assess capital requirements.

<http://www.fsa.gov.uk/library/communication/statements/2013/methodology-note-on-calculating-capital-pressure>

Contacting the new regulators

E-mail addresses for staff who have transferred to the new regulators will remain live for the time being. However, their new addresses may also be used for ongoing correspondence.

E-mail addresses will now be in the following formats:

FCA staff: `firstname.lastname@fca.org.uk`

or

PRA staff: `firstname.lastname@bankofengland.co.uk`

For details of addresses and telephone contact details, please see information at the following links:

FCA: <http://www.fca.org.uk/site-info/contact>

PRA: <http://www.bankofengland.co.uk/pr/Pages/contactpra/Default.aspx#1>

Policy developments			
	FCA	PRA	
Proposed developments			
		Deadline for responses	
Consultation papers		29 April	<p>Credit risk: internal ratings based approaches (CP4/13)</p> <p>On 28 March, the PRA set out proposed guidance to supplement the rules set out at chapter 4 of its Prudential sourcebook for Banks, Building Societies and Investment Firms ("BIPRU") and guidance included in other policy statements in relation to the use by firms of internal models for calculating its regulatory capital requirements.</p> <p>http://www.bankofengland.co.uk/publications/Documents/other/pracreditriskirbapproachcp4-13.pdf</p>
Finalised policy and guidance			
		Implementation/ effective date	
Policy statements		1 April	<p>PRA's approaches to banking and insurance supervision</p> <p>On 1 April, further to various statements throughout late 2012 and early 2013, the PRA issued the finalised versions of documents setting out its approaches to banking and insurance supervision.</p> <p>The policy statements consolidate details of its approaches to advancing</p>

				<p>its statutory objectives and set out, taking account of comments made and concerns raised in relation to areas such as co-ordination with the FCA, how it will exercise its supervisory and enforcement responsibilities in the areas for which it is responsible.</p> <p>http://www.bankofengland.co.uk/publications/Documents/praproach/bankin_gappr1304.pdf</p> <p>http://www.bankofengland.co.uk/publications/Documents/praproach/insuran_ceappr1304.pdf</p>
			1 April	<p>PRA's approach to enforcement</p> <p>In a separate document, also issued on 1 April, the PRA has published its statutory statements of policy and procedure relating to the exercise of its enforcement powers. The document gives details on how it intends to exercise its powers in areas including the issuing of statutory notices, the calculation and imposition of penalties, suspensions and restrictions, settlement of enforcement cases, publication of details of disciplinary and enforcement action and the conduct of interviews at the request of overseas authorities.</p> <p>The document introduces, largely unchanged, the proposals set out in the FSA's consultation paper CP12/39 issued on 20 December 2012 (see FSA Update, 21 December 2012). It acknowledges respondents' concerns in relation to the fairness of proposals such as the decision not to replicate structures incorporating the Regulatory Decisions Committee (as the FCA has), but concludes that the new arrangements are fair and proportionate.</p> <p>http://www.bankofengland.co.uk/publications/Documents/other/praproache</p>

				nforcement.pdf http://www.bankofengland.co.uk/publications/Documents/other/pr/20dec12.pdf https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbFgNhLNomwBI%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZe4LZU5rrHqc8Db24p%2Bkv1xrp%0D%0A5mt12P8Wnx03DzsaBGwslB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=155648
			1 April	<p>Power of direction over qualifying parent undertakings</p> <p>On 1 April, further to the FSA/Bank of England joint consultation paper issued on 21 December 2012, the PRA issued a statement of its policy in relation to the use of its power of direction over qualifying parent undertakings. It clarifies the meaning of "qualifying parent undertaking" and other key definitions, the circumstances in which the power may be used and the matters which the PRA must consider when deciding whether to do so and the rights of firms to make representations if the power is exercised. The policy statement also includes a non-exhaustive list of scenarios in which the PRA may consider using the power.</p> <p>http://www.bankofengland.co.uk/publications/Documents/other/pr/powerdirection.pdf</p> <p>http://www.bankofengland.co.uk/publications/Documents/other/pr/21dec12.pdf</p>
			25 March	<p>Amendments to PRA Handbook</p> <p>On 25 March, further to FSA consultation papers in late 2012 and early 2013 (CP12/24, CP12/26,</p>

				<p>CP12/28 and CP 13/3), the PRA has set out details of changes made to its Handbook.</p> <p>The changes, principally to the Supervision section of the PRA's Handbook ("SUP"), include those relating to:</p> <ul style="list-style-type: none"> ■ the PRA's approved persons regime; ■ reports by skilled persons; ■ applications to cancel or vary permissions; ■ notifications to the FCA and PRA <p>http://www.bankofengland.co.uk/publications/Documents/other/praregulatoryreformamendmentsps1-13.pdf</p> <p>http://www.fsa.gov.uk/static/pubs/cp/cp12-24.pdf</p> <p>http://www.fsa.gov.uk/static/pubs/cp/cp12-26.pdf</p> <p>http://www.fsa.gov.uk/static/pubs/cp/cp12-28.pdf</p> <p>http://www.fsa.gov.uk/static/pubs/cp/cp13-03.pdf</p>
			1 April	<p>Financial Services Compensation Scheme: Management expenses levy limit 2013/14</p> <p>On 26 March, further to FSA consultation paper 13/4 (issued on 25 January), the PRA has published details of the management expenses levy limit for the Financial Services Compensation Scheme for 2013/14, which has been set at £94.4 million.</p> <p>http://www.bankofengland.co.uk/publications/Documents/other/prafscsmgmtexpenseslevy2-13.pdf</p> <p>http://www.bankofengland.co.uk/publications/Documents/other/prafscsmgmtexpenseslevycp13-04.pdf</p>

			<p>1 April</p>	<p>Designation of investment firms for prudential regulation by the PRA</p> <p>On 25 March, further to a FSA consultation paper in October 2012 and a background paper issued in May 2012, the PRA published its final statement of policy on the factors to which it will have regard when deciding whether to designate an investment firm, the procedural arrangements for making such decisions and how the PRA will communicate such decisions to firms.</p> <p>http://www.bankofengland.co.uk/publications/Documents/other/pradesignationofinvestmentfirms.pdf</p> <p>http://www.bankofengland.co.uk/publications/Documents/other/praboepolicy1210.pdf</p> <p>http://www.bankofengland.co.uk/publications/Documents/other/financialstability/investmentfirms.pdf</p>
--	--	--	----------------	---

Further afield

OFGEM misselling fine resonates with financial services enforcement action

On 3 April, OFGEM published its intention to impose a financial penalty of £10.5 million on **SSE** for failures relating to its telephone, doorstep and in-store sales of energy. A misselling fund of £5 million has also been established to compensate affected customers. OFGEM has stated that other investigations continue in respect of other energy companies.

The action taken by OFGEM, and the approach it is taking to misselling in the energy sector, resonates in many ways with that previously taken by the FSA, and to which the FCA remains strongly committed.

This fine closely follows an announcement by OFGEM (on 28 March) on the latest stage of an ongoing review of the way in which it takes disciplinary action against companies it regulates. It has committed to consumer protection as a priority and has proposed the introduction of a specialist

decision-making panel (akin to the Regulatory Decisions Committee, which has been retained by the FCA as the mechanism by which it seeks to ensure independence and transparency in its enforcement process). OFGEM has invited responses to its proposals by 23 May.

Differences remain between the way in which action is taken and penalties are calculated for energy and financial services providers. However, it is clearly OFGEM's intention, perhaps having seen the succession of penalties and redress packages imposed on banks in recent years, to align its approach in this area more closely with that historically taken by the FSA.

Key phrases commonly used by the FSA and now by the FCA, including "treating customers fairly", "credible deterrence" and "placing consumer obligations at the heart of business" feature prominently in OFGEM's statements accompanying the imposition of the latest financial penalty and its proposals for changes to its enforcement processes.

OFGEM has indicated that further phases of its review will examine how it uses consumer redress powers. The FSA and legislators have previously undertaken similar reviews

of the effectiveness of its disciplinary processes. These have led to changes including the introduction of new methodologies for the calculation of penalties under its Decision Procedure and Penalties Manual ("DEPP") aimed at increasing the levels of penalties imposed, and, most recently, to the adoption of a much more proactive approach to the prevention of consumer detriment, buttressed by new product intervention powers. As OFGEM's review continues, those regulated by it will be watching carefully whether continuing convergence between the approaches taken in the energy and financial services sectors leads to a similar fortification of the regulatory environment within which they operate.

<http://www.ofgem.gov.uk/media/pressrel/Documents1/SSE%20Press%20Release.pdf>

<http://www.ofgem.gov.uk/Media/PressRel/Documents1/Enforcement%20Review%202013.pdf>

<http://www.ofgem.gov.uk/Pages/MoreInformation.aspx?docid=41&refer>Aboutus/enforcement>

SEC moves with the times...and continues to reach across boundaries

Several announcements from the US Securities and Exchange Commission ("SEC") in the past few weeks illustrate the proactive and progressive approaches which it continues to adopt.

On 29 March, it announced settlements with several individuals located in China in relation to insider trading charges. These settlements, which, if approved, will require the individuals concerned to pay \$3.3 million, follow an emergency injunction obtained last July by the SEC which froze the assets of these and other individuals and firms located in Hong Kong and Singapore. The SEC has already (in October last year) entered into a connected settlement with Well Advantage, a firm based in Hong Kong (see FSA Update, 23 October 2012).

In a separate announcement on 2 April, the SEC has confirmed that social media may be used to disclose information provided investors have been informed of which channels will be used. However, its announcement is careful to emphasise that US issuers should exercise caution as some communications through social media channels, particularly the personal social media sites of individual corporate officers, may still amount to selective disclosures and form the basis for enforcement action.

The SEC's statement stems from an investigation prompted by announcements made by the CEO of Netflix Inc in July 2012 on his personal Facebook page which stated that the company had streamed 1 billion hours of content during the preceding month. No enforcement action was taken against Netflix or its CEO in respect of the announcement, although the SEC has taken the opportunity to clarify its policy in this area.

<http://www.sec.gov/news/press/2013/2013-50.htm>

<http://www.sec.gov/news/press/2013/2013-51.htm>

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbFqNhLNomwBI%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZe2c6Jjh2hRNszWol67krlQ3p%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=137242>

Authors



Roger Best
Partner

T: +44 20 7006 1640
E: roger.best
@cliffordchance.com



Matthew Newick
Partner

T: +44 20 7006 8942
E: matthew.newick
@cliffordchance.com



Martin Saunders
Partner

T: +44 20 7006 8630
E: martin.saunders
@cliffordchance.com



Carlos Conceicao
Partner

T: +44 20 7006 8281
E: carlos.conceicao
@cliffordchance.com



Luke Tolaini
Partner

T: +44 20 7006 4666
E: luke.tolaini
@cliffordchance.com



Chris Stott
Lawyer

T: +44 20 7006 4231
E: chris.stott
@cliffordchance.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

Clifford Chance, 10 Upper Bank Street, London, E14 5JJ
© Clifford Chance 2013

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571

Registered office: 10 Upper Bank Street, London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications

If you do not wish to receive further information from Clifford Chance about events or legal developments which we believe may be of interest to you, please either send an email to nomorecontact@cliffordchance.com or by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ

Abu Dhabi ■ Amsterdam ■ Bangkok ■ Barcelona ■ Beijing ■ Brussels ■ Bucharest ■ Casablanca ■ Doha ■ Dubai ■ Düsseldorf ■ Frankfurt ■ Hong Kong ■ Istanbul ■ Kyiv ■ London ■ Luxembourg ■ Madrid ■ Milan ■ Moscow ■ Munich ■ New York ■ Paris ■ Perth ■ Prague ■ Riyadh* ■ Rome ■ São Paulo ■ Seoul ■ Shanghai ■ Singapore ■ Sydney ■ Tokyo ■ Warsaw ■ Washington, D.C.

*Clifford Chance has a co-operation agreement with Al-Jadaan & Partners Law Firm in Riyadh.