

# This week at the UK regulators

## Thirty second guide: The week in overview

In a busy week of enforcement activity and public pronouncements, the FCA has imposed a financial penalty on a bank for historic breaches in relation to the standards of advice provided to customers, and has concluded the latest prosecution to arise from Operation Tabernula, its largest ever insider dealing inquiry, leading to the imposition of a suspended sentence on the individual concerned. It has also issued its latest warning notice statements giving details of action being taken against two individuals in respect of alleged bench mark rate manipulation. These statements come in the week when the Serious Fraud Office has announced the latest criminal charges against individuals – three former brokers who are already the subject of action by US prosecutors.

The FCA has also released its business plan and risk outlook setting out its proposed areas of focus and funding requirements for the year ahead, although headlines have been made more by its pre-release of details of one aspect of these plans relating to the examination of the treatment of long standing life insurance customers. The concern caused to the market by that statement and the press reaction to it has led the FCA to commence a board investigation.

Elsewhere, the FCA has been involved in a difference of opinion with the independent Complaints Commissioner relating to a decision by the FSA to publish a final notice. Although it has made some concessions in relation to minor irregularities concerning the documentation of its decision making process regarding publication of the notice in question, it has mounted a vigorous defence of its right to publish final notices at the conclusion of regulatory proceedings.

As it approaches its first birthday, the FCA has issued its third occasional paper giving effect to its favoured behavioural economics approach, and Martin Wheatley has advocated the approach to other overseas regulators in a speech given in Australia. His speech is not the only evidence of overlap between the approaches employed by the FCA and other regulators worldwide, with the Hong Kong Monetary Authority issuing a statement resonant of those which have previously been published by the FSA and FCA reminding firms of their obligations to treat customers fairly and giving examples of behaviour amounting to doing so.

## FCA takes action for advice breaches

The FCA has (on 26 March) imposed a financial penalty of £12,377,800 on **Santander UK PLC** ("Santander") for breaches of Principles 7 (communications with clients) and 9 (customers: relationships of trust) of its Principles for Businesses. The FCA based its action on findings arising from its mystery shopping review of retail investment advice and phase two of its thematic review into wealth management, which concluded in 2013. In summary, the FCA found problems with the extent to which systems ensured that advisers fully assessed customers' personal circumstances prior to making recommendations, information provided to customers, training and monitoring of the suitability of investments against customers' needs and standards of investment advice.

The penalty imposed was reduced by 30 per cent as Santander agreed to settle at an early stage of the investigation.

A contact exercise will now follow and affected customers will be offered the opportunity to withdraw from their investment or have their sale reviewed. Redress will be paid in appropriate circumstances. However, as the stock market has risen since many investments were made, any amounts to be paid are not expected to be significant.

<http://www.fca.org.uk/static/documents/final-notices/santander-uk-plc.pdf>

[http://www.fsa.gov.uk/static/pubs/other/thematic\\_assessing\\_retail\\_banking.pdf](http://www.fsa.gov.uk/static/pubs/other/thematic_assessing_retail_banking.pdf)

## Suspended sentence in insider dealing prosecution

Press reports indicate that **Graeme Shelley**, a former broker, has (on 27 March) received a two year suspended sentence for insider dealing, making him the second person to be sentenced in connection with Operation Tabernula, the largest ever insider dealing investigation pursued by the FSA and FCA. A confiscation order of £588,000 is also reported to have been imposed.

His co-conspirator Paul Milsom was sentenced to two years' imprisonment and made subject to a confiscation order of £245,000 earlier this month.

Details of the latest sentence imposed have not yet been released by the FCA. However, it appears that it may have used its powers under section 73 of the Serious Organised Crime and Police Act 2005. These provisions enable the FCA to recommend to the court that it impose a more lenient sentence where defendants plead guilty and enter into a written agreement to provide assistance in proceedings pursued against others.

<http://www.fca.org.uk/news/press-releases/equities-trader-sentenced-for-insider-dealing>

## Other enforcement notices

The FCA has (on 27 March) withdrawn the approval granted to **Philip Eley** and imposed a financial penalty of £7,200 and a prohibition order on him for breaching Principle 1 (integrity) of the Code of Practice and Statements of Principle for Approved Persons ("APER") by falsifying a number of letters and submitting them to an insurer. The financial penalty imposed was reduced by 30 per cent as Mr Eley settle at an early stage of the investigation.

<http://www.fca.org.uk/static/documents/final-notices/philip-eley.pdf>

The FCA has (in a Second Supervisory Notice dated 24 February, released on 27 March) decided not to rescind the variation of the permission of **SK8 Financial Services Limited**. The action follows a First Supervisory Notice issued on 10 December 2013 where it removed the firm's permissions based upon concerns about its sole director and majority shareholder (see details in This week at the UK regulators, 17 December 2013).

<http://www.fca.org.uk/static/documents/supervisory-notices/second-sk8-financial-services-limited.pdf>

<http://www.fca.org.uk/static/documents/supervisory-notices/sk8-financial-services-limited.pdf>

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbfqNhLNomwBI%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZe14gf%2F5gyOygabPRkKQK0wnp%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihSpJa3xHNE7tFeHpEbaelf&attachmentsize=167498>

## FCA outlines priorities for the year ahead

The FCA has (on 31 March) released its Business Plan and Risk Outlook for 2014/15.

The Business Plan is a forward-looking summary of the parts of its current remit on which it will place emphasis, the new responsibilities it will inherit and the areas in which it will seek to make new rules and/or influence the course of new legislation relating to the financial services industry.

It points to the expansion of its remit to cover consumer credit (with effect from 1 April) and the continuing work it is doing on designing new rules and frameworks to implement the measures outlined in the Financial Services (Banking Reform) Act 2013 in relation to the new Senior Managers and "Certified Persons" regimes (see our Clifford Chance briefing) and on preparing for the new payments regulator (see This week at the UK regulators – 10 March 2014).

It reaffirms its commitment to the use of market studies and thematic reviews as part of its risk-based approach to supervision and reiterates the emphasis it is currently placing on competition. In addition to its well-publicised review of how customers in closed accounts in the life insurance sector are being treated (details of which were pre-released on 28 March - see below), it names areas including the way in which firms deal with the risk of benchmark rate manipulation and handling of conflicts of interest and confidential information as some of those in which it proposes to undertake further thematic reviews (see also separate speech given by Martin Wheatley). In terms of other ongoing and forthcoming initiatives, it identifies areas as diverse as how well firms analyse data in relation to sales of payment protection insurance and proactively contact customers to whom the cover may have been mis-sold, the effectiveness of the listing regime and the extent to which rule changes brought about by the Retail Distribution Review are being complied with as areas in which it will maintain and increase its focus. It singles out submissions to and administration of benchmarks and anti-money laundering compliance as areas in which it intends to continue to focus enforcement activity, and in which it will

remain active as proposals for new legislation progress at the European level.

The Risk Outlook is more analytical in tone than similar studies in previous years. It delves into detail as to the reasons why the FCA considers particular risks arise and which particular strategies are, in its view, best suited to tackling them. Its wide ranging list of thematic areas of focus is heavily based on its experience of a number of high profile ongoing and recently concluded enforcement investigations and analysis of other indicators of risk. This list includes:

- firms' abilities to maintain appropriately sophisticated technological systems;
- poor culture and controls which, it considers, continue to threaten the integrity of markets;
- risks of conflicts of interest arising from large back-books maintained by firms;
- excessive complexity in customer terms and conditions; and
- risks associated with increases in house prices.

Consumer credit and retirement income products are singled out as particular product areas which, looking forward, may carry higher than average levels of risk.

It has also released its Annual Funding Requirement for the coming year, in which it states that it will require an additional £14.3 million to fund the additional work it is doing in support of its competition objective.

<http://www.fca.org.uk/static/documents/corporate/business-plan-2014-2015.pdf>

<http://www.fca.org.uk/news/risk-outlook-2014>

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbfGnHlNmwBI%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZe%2FesMr9V4PyhBD55T7MDRCvp%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=143582>

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbfGnHlNmwBI%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZe%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=122627>

<http://www.fca.org.uk/news/firms/risk-benchmark-manipulation>

## FCA acknowledges concern on life insurance supervision study statement

On 28 March, ahead of the release of its Business Plan, the FCA issued a statement setting out its intention to look in detail at the treatment of long standing customers in life insurance products. It made clear that it did not propose to evaluate the circumstances in which the products were sold or to apply current standards retrospectively in areas such as exit fees. It also stated that it did not intend for its study, due to commence in summer 2014, to examine the circumstances of all of the estimated 30 million customers falling into this category, but rather to look at a representative sample. It suggested that questions may include whether these customers are receiving the right information, whether they are receiving the right level of service and whether investments remain appropriate may be some of the questions with which the study may be concerned, and indicated that it would be liaising with firms as to how it may conduct the study.

As has been widely reported, the statement and associated press coverage caused substantial concern in the markets, leading the FCA to issue a supplementary statement later on 28 March indicating that its board is undertaking an investigation involving an external law firm, and will share the outcomes in due course.

<http://www.fca.org.uk/news/fca-statement-fair-treatment-life-insurance>

<http://www.fca.org.uk/news/statements/fca-statement-supervisory-work-fair-treatment-life-insurance>

## FCA defends publication of details of enforcement action

In a response to a determination made by the Complaints Commissioner, released on 27 March, the FCA has defended its policy of publishing final notices at the conclusion of enforcement proceedings. The complainant is not identified in either the Complaints Commissioner's determination or the FCA's response. However, his identity may be ascertained from the details included in those documents.

The Complaints Commissioner upheld the complaint that it was unfair for the FSA to have published details of the action following the determination of the case by the Upper Tribunal. His underlying findings included determinations that the FSA failed to ascertain the complainant's personal position before publishing the Final Notice, failed to give

him an adequate opportunity to object to its publication, sought *ex post facto* to find a suitable justification for the decision to publish and failed to appreciate that, under section 391 of the Financial Services and Markets Act 2000 ("FSMA"), it is not obliged to publish final notices (but rather to publish "*such information about the matter to which the notice relates as it thinks appropriate*"). He also found that the FSA failed to adequately document compliance with the provisions of the Enforcement Guide dealing with publication of notices.

The FCA has accepted the Complaints Commissioner's recommendation that it reduce the amount of the financial penalty imposed by £500 to reflect delays in the initial handling of the complainant's complaint, and has inserted an addendum containing clarification into the Final Notice and stated that it has amended its procedures to ensure that consideration of the relevant provisions of the Enforcement Guide is adequately documented in future cases. However, it has rejected the Complaints Commissioner's other recommendations, including that the Final Notice should be taken down from its website, indicating that it disagrees with his interpretation of section 391 of FSMA.

In a separate determination, the Complaints Commissioner rejected complaints lodged in relation to the handling of the investigation and proceedings pursued against the complainant, the Complaints Commissioner, although he did show some sympathy with those complaints in places and cast doubt upon the FCA's interpretations of other key sections of FSMA (specifically section 348 of FSMA in relation to confidentiality of material obtained in the course of investigations).

<http://www.fca.org.uk/static/documents/response-complaints-commissioner-report-fsa01600.pdf>

<http://www.fsc.gov.uk/documents/final/FSA01600.pdf>

<http://www.fsc.gov.uk/documents/final/FSA01597.pdf>

## FCA publishes two warning notice statements

The FCA has (on 27 March) released two warning notice statements in relation to action taken against individuals in connection with their alleged role in benchmark rate manipulation.

Both were originally issued on 26 February. One alleges knowing concern by an individual in breaches of Principle 5 (market conduct) of the Principles by a bank. The other alleges knowing concern by an individual in Principles 3 (management and control) and 5 (market conduct) of the Principles by a bank.

<http://www.fca.org.uk/static/documents/warning-notice-statements/warning-notice-statement-14-6-individual.pdf>

<http://www.fca.org.uk/static/documents/warning-notice-statements/warning-notice-statement-14-7-individual.pdf>

## Occasional paper on add-on insurance

Further to its previous papers issued soon after its launch last year, the FCA has (on 25 March) published its third occasional paper, setting out the results of a behavioural experiment in relation to add-on insurance. The study looked at the types of factors which influenced decisions as to whether purchase add-on insurance, finding that variables such as the time at which the cost of the insurance was revealed had a significant effect on the numbers of those surveyed able to correctly identify the cheapest deal (see its separate key results document for a pictorial illustration of this finding).

Other findings included lower incidences of shopping around where costs were presented in monthly terms rather than as the total costs for the year. The paper is evidence of the FCA's continued commitment to the use of detailed behavioural analysis to understand the way in which consumers operate, what drives their decisions and how rules and approaches to regulation could be changed to take account of these factors. The study concludes by suggesting that the techniques used to analyse consumers' behaviour here in relation to add-on insurance will be applicable to other products and situations. Although we are yet to see a direct effect on rulemaking activity, it appears that this is unlikely to be the last study of this type.

<http://www.fca.org.uk/static/documents/occasional-papers/occasional-paper-3-graphic.pdf>

<http://www.fca.org.uk/static/documents/occasional-papers/occasional-paper-3.pdf>

## FCA warnings

Name of firm	Date of warning	Details
RBC Wealth Management/ Royal Bank of Canada Wealth Management	28 March 2014	Clone firm <a href="http://www.fca.org.uk/news/warnings/rbc-wealth-management-clone">http://www.fca.org.uk/news/warnings/rbc-wealth-management-clone</a>
Traders Trust Capital Markets Ltd	26 March 2014	Clone firm <a href="http://www.fca.org.uk/news/warnings/traders-trust-capital-markets-ltd-clone">http://www.fca.org.uk/news/warnings/traders-trust-capital-markets-ltd-clone</a>
Everest Markets (UK) Limited / Everest Capital Limited	26 March 2014	Not authorised <a href="http://www.fca.org.uk/news/warnings/everest-markets-uk-limited">http://www.fca.org.uk/news/warnings/everest-markets-uk-limited</a>

## Policy developments

FCA		PRA	
Proposed developments			
		Deadline for responses	
<b>Consultation papers</b>	The FCA has (on 31 March) issued a consultation paper (CP 14/06) setting out its proposed regulatory fees and levies for 2014/15 covering itself, the Financial Ombudsman Service and the Money Advice Service. <a href="http://www.fca.org.uk/static/documents/consultation-papers/cp14-6.pdf">http://www.fca.org.uk/static/documents/consultation-papers/cp14-6.pdf</a>	30 May 2014	

Finalised policy and guidance			
		Implementation/effective date	
<b>Proposed developments</b>	<p>Further to a consultation paper issued in December 2012 (CP12/38), the FCA has (on 28 March issued a policy statement (PS 14/05 ) response and final rules in relation to mutuality and with profits funds.</p> <p><a href="http://www.fca.org.uk/static/documents/policy-statements/ps14-05.pdf">http://www.fca.org.uk/static/documents/policy-statements/ps14-05.pdf</a></p> <p><a href="http://www.fca.org.uk/your-fca/documents/consultation-papers/fsa-cp1238">http://www.fca.org.uk/your-fca/documents/consultation-papers/fsa-cp1238</a></p>	28 March 2014	

## Further Afield

### Three more charged by Serious Fraud Office in bench mark rates investigation

In a statement released on 28 March, the Serious Fraud Office ("SFO") has indicated that it will charge former brokers Messrs Darrell Read, Daniel Wilkinson and Colin Goodman with conspiracy to defraud in connection with its investigation into alleged involvement in the manipulation of the London Interbank Offered Rate ("LIBOR"). They have already been charged with offences by US prosecutors. These charges bring the total number of people charged in connection with the SFO's investigation to nine.

<http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2014/libor-three-former-icap-brokers-to-be-charged-.aspx>

### FCA nudges other authorities towards behavioural economics

In the week when the FCA released its most recent behavioural study (see above), Martin Wheatley and others have been extolling the virtues of the approach it is taking to consumer protection to other regulators. In a speech given on 25 March at a seminar for financial services regulators organised by the Australian Securities and

Investments Commission ("ASIC"), he reviewed the background to the FCA's approach of using behavioural economics, sometimes also known as "nudge theory", citing payment protection insurance as the paradigm example of irrational behaviour on the part of consumers. He looked ahead to some of the potential remedies which may, in time be used to direct consumers towards more rational behaviours, on which the FCA has invited views following the completion of its first market study (see This week at the UK regulators – 17 March 2014 ) including a possible ban on pre-ticked boxes HKMA reminds firms of importance of TCF

<http://www.fca.org.uk/news/making-competition-king>  
<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlBfgNhLNomwBI%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZe8jnT1yoVtP8Dk33tUw9C0Dp%0D%0A5mt12P8Wnx03DzsaBGwslB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=131954>

### Hong Kong regulator reminds firms of obligations to treat customers fairly

In a circular issued on 31 March, the Hong Kong Monetary Authority has issued a non-exhaustive list of examples of indicative behaviours amounting to treating customers fairly. The guidance, issued in relation to the equivalent of Principle 6 of the Principles under the UK regulatory

framework, and designed in consultation with representatives of banks follows a previous circular setting out high level principles contained in the HKMA's "Treat Customers Fairly Charter", released in October last year.

<http://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2014/20140328e1.pdf>

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