

# This week at the UK regulators

## Thirty second guide: The week in overview

In two separate well publicised cases, the FCA last week imposed financial penalties of over £20 million in respect of mortgage advice and transaction reporting failures. It also imposed a fine of £350,000 and a ban on an individual for integrity breaches relating to the inappropriate promotion of unregulated collective investment schemes.

Away from enforcement developments, it had relatively positive news to report in relation to progress in the way in which complaints about historic mis-selling of payment protection insurance ("PPI") are being handled, indicating that it has reached agreement with banks, credit card providers and personal loan companies for over 2.5 million complaints to be revisited to check that they were appropriately resolved, and that, if progress continues, it hopes to scale back its work on PPI complaints during 2015. It also issued important clarification in relation to its policy of requiring attestations from firms, providing greater clarity as to its aims and the circumstances in which they are to be used and committing to providing clearer internal guidance to supervisors.

Further afield, in a dissenting statement issued in relation to a case concerning allegations of accounting fraud, a commissioner at the US Securities and Exchange Commission has criticised a settlement reached with an individual and called for the imposition of tougher sanctions in future similar cases.

## FCA imposes penalty for mortgage advice failings

The FCA has (on 27 August) imposed a financial penalty of £14,474,600 on The Royal Bank of Scotland PLC and National Westminster PLC for breaches of Principles 2 (skill, care and diligence) and 9 (customers: relationships of trust) of the Principles for Businesses and rules contained in the Mortgage and Home Finance: Conduct of Business sourcebook ("MCOB"). Specifically, the FCA based the action on findings that the firms failed to ensure that advice given to customers in relation to mortgages between June 2011 and March 2013 was suitable and on delays in taking action to address shortcomings identified as part of a routine review. The FCA has held up the action as an example of the importance of ensuring the suitability of advice, particularly in the light of changes made to regulatory requirements in this area as the result of the Mortgage Market Review.

The penalty imposed was reduced by 30 per cent as the firms agreed to settle at an early stage. The Final Notice issued to the firms acknowledges that significant action has been taken to address the issues identified and that a customer contact exercise in relation to advised mortgage sales has not uncovered any evidence of widespread detriment to customers. The firms have agreed to contact approximately 30,000 customers who received advice

during the period covered by the action to enable them to raise any concerns.

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

## FCA imposes penalty for transaction reporting issues

The FCA has (in a Final Notice dated 21 August, released on 28 August) imposed a financial penalty of £4,718,800 on Deutsche Bank AG London Branch ("Deutsche") for breaches of rules relating to transaction reporting contained in its Supervision manual. The FCA found that misreporting occurred in respect of 29,411,494 transactions between November 2007 and April 2013. The breaches were found to have been caused by a coding error which reversed the buy/sell indicator for all CFD equity swap transactions.

The penalty imposed was reduced by 30 per cent as Deutsche agreed to settle at an early stage of the investigation and the Final Notice acknowledges the co-operation provided during the investigation, timely reporting and steps taken to rectify breaches. Deutsche is the eleventh firm to be fined in connection with transaction reporting failures, in respect of which the FSA and FCA have now imposed total fines of almost £20 million.

<http://www.fca.org.uk/static/documents/final-notices/deutsche-bank-ag.pdf>

### Other enforcement notices

- The FCA has (on 28 August) cancelled the permission of Mr Douglas Carroll trading as City and Chartered Mortgage Services for failing to submit a Retail Mediation Activities Return

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

- The FCA has (on 27 August) refused an application for permission made by GS Cars (UK) Limited based on the conviction of one director for a fraud offence and the failure of another director to disclose the fact of that conviction in an application made to the Office of Fair Trading for a consumer credit licence

<http://www.fca.org.uk/static/documents/final-notices/gs-cars-uk-limited.pdf>

### Director fined and banned for UCIS failings

The FCA has (on 29 August) imposed a financial penalty of £350,000 and a prohibition order on Mr Craig Cameron for breaches of Principle 1 (integrity) of the Statements of Principle and Code of Practice for Approved Persons ("APER"). It found that, whilst a director of Burlington Associates Limited ("Burlington") between May 2003 and January 2009, Mr Cameron helped to set up three new unregulated collective investment schemes ("UCIS") investing in new property developments in Croatia, Bulgaria and Montenegro and promoted them to retail investors. The FCA found that this promotion occurred through a structure established after Burlington's principal prohibited these activities and led to a risk of the UCIS being sold to investors for whom it was not suitable.

The action follows bans imposed on two other individuals, Mr John Leslie and Mr Jeffrey Bennett (in July 2013) for failures to oversee the roles of their firms in the sales of UCIS under the structure established by Mr Cameron.

<http://www.fca.org.uk/static/documents/final-notices/craig-stuart-cameron.pdf>

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

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

### FCA reports progress on PPI complaints

The FCA has (on 29 August) published an update on the work it is undertaking in relation to complaints about mis-sold payment protection insurance. In the report summarising the findings of its ongoing thematic review, it paints a positive picture, stating that firms have improved the way in which they handle complaints. Specific indicators of improvements include a fall in the number of complaints being upheld and in the proportion of banks' determinations of consumers' complaints overturned by the Financial Ombudsman Service (from 88 per cent in the second half of 2011 to 56 per cent in the second half of 2013).

The FCA has also announced that banks, credit card providers and personal loan companies have agreed to reassess more than 2.5 million complaints from 2012 and 2013 to check whether they were unfairly rejected and that the appropriate amount of redress was paid. The FCA has indicated that, if the trend of falling numbers of PPI complaints continues, it hopes to be able to scale down its intensive PPI work during 2015.

<http://www.fca.org.uk/static/documents/thematic-reviews/tr14-14.pdf>

### FCA clarifies position on attestations

The FCA has (on 26 August) published an exchange of letters between the Graham Beale, Chairman of the FCA Practitioner Panel and Clive Adamson, the FCA's Director of Supervision in relation to the FCA's use of attestations as a supervisory tool.

In his letter dated April 2014, Mr Beale confirmed concerns previously raised with the FCA that the use of attestations may have the effect of "skewing prioritisation of risk at firms" and that there may be excessive focus on the terms of attestations. In his response dated 22 August, Mr Adamson has set out details of the circumstances in which the FCA uses attestations and its aims in doing so. His letter sets out four broad categories of scenarios in which attestations will be used, namely to require monitoring for and notification of risks, to require a specific action to be taken within a particular timescale, to obtain confirmation that named risks have been mitigated or resolved or to verify that they have been. It also states that the FCA will issue revised internal guidance to supervisors and strengthen governance processes in relation to attestations, including ensuring that they are authorised at Head of Department level.

<http://www.fca.org.uk/news/fca-use-of-attestations>

## FCA warnings

Name of firm	Date of warning	Details
Goldman Shaks (PVT) Ltd	28 August 2014	Not authorised <a href="http://www.fca.org.uk/news/warnings/goldman-shaks-pvt-ltd">http://www.fca.org.uk/news/warnings/goldman-shaks-pvt-ltd</a>
BYQ Insurance Limited / Beat Your Quote Insurance Ltd / BISL Limited	28 August 2014	Clone firm <a href="http://www.fca.org.uk/news/warnings/byq-insurance-limited">http://www.fca.org.uk/news/warnings/byq-insurance-limited</a>
Beaturcover Ltd	28 August 2014	Not authorised <a href="http://www.fca.org.uk/news/warnings/beaturcover-ltd">http://www.fca.org.uk/news/warnings/beaturcover-ltd</a>
Mitsubishi UFJ Financial Group Inc	28 August 2014	Clone firm <a href="http://www.fca.org.uk/news/warnings/mitsubishi-ufj-financial-group-inc-clone">http://www.fca.org.uk/news/warnings/mitsubishi-ufj-financial-group-inc-clone</a>
City Equities Ltd	27 August 2014	Clone firm <a href="http://www.fca.org.uk/news/warnings/city-equities-ltd-clone">http://www.fca.org.uk/news/warnings/city-equities-ltd-clone</a>
Walters Capital Group	27 August 2014	Not authorised <a href="http://www.fca.org.uk/news/warnings/walters-capital-group">http://www.fca.org.uk/news/warnings/walters-capital-group</a>
London Capital Group Asia (clone) / LCGA Fxplatform / LCG Asia / LCG Forex	27 August 2014	Clone firm <a href="http://www.fca.org.uk/news/warnings/london-capital-group-asia-clone">http://www.fca.org.uk/news/warnings/london-capital-group-asia-clone</a>
Capital Mergers and Acquisitions	26 August 2014	Not authorised <a href="http://www.fca.org.uk/news/warnings/capital-mergers-and-acquisitions">http://www.fca.org.uk/news/warnings/capital-mergers-and-acquisitions</a>

## Policy developments

FCA		PRA	
Proposed developments			
		Deadline for responses	
<b>Consultation papers</b>	<p>The FCA has (on 26 August) issued a consultation paper (CP 14/17) on early implementation of requirements for reports on payments to governments under the Transparency Directive.</p> <p><a href="http://www.fca.org.uk/static/documents/consultation-papers/cp14-17.pdf">http://www.fca.org.uk/static/documents/consultation-papers/cp14-17.pdf</a></p>		7 October 2014

## Further Afield

<http://rbidocs.rbi.org.in/rdocs/content/pdfs/EXPLANATORY220814.pdf>

### SEC commissioner speaks out against "weak" settlements

In a statement illustrating that concern about individual accountability is not a peculiarly British phenomenon, the US Securities and Exchange Commission ("SEC") has (on 28 August) issued a dissenting statement by Luis A. Aguilar in relation to a settlement reached with Mr Kevin R. Kyser, the former Chief Financial Officer of Affiliated Computer Services, Inc.

Mr Aguilar criticised the decision to accede to an offer to settle allegations of accounting infringements leading to the improper reporting of US\$125 million on the basis of non-fraud books and records, internal controls, reporting and certification provisions of federal securities laws and not to insist on the imposition of a suspension as a "weak" and "behind the curtain" solution and urged the SEC to revisit its charging policy in cases involving allegations of serious fraudulent conduct by individuals in future.

<http://www.sec.gov/News/PublicStmt/Detail/PublicStmt/1370542787855>

### Indian regulator sets consumer protection standards

Further to its announcement in May 2014 setting out its intention to drive up standards of consumer protection (see This week at the UK regulators, 28 May 2014), the Reserve Bank of India has published a Draft Charter of Human Rights.

The draft charter and accompanying explanatory notes set out high level standards in relation to fair treatment, transparency and fair and honest dealing, suitability, privacy and rights to raise grievances and receive redress.

Firms regulated by the RBI have been invited to comment by 22 September.

[http://rbi.org.in/scripts/BS\\_PressReleaseDisplay.aspx?prid=31919](http://rbi.org.in/scripts/BS_PressReleaseDisplay.aspx?prid=31919)

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbfGnhLNomwBI%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZewNWp3T0bqeSM20r2Uix6gPp%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=129673>

<http://rbidocs.rbi.org.in/rdocs/content/pdfs/DCHARTER220814.pdf>

## Contacts

**Roger Best**  
Partner

E: roger.best  
@cliffordchance.com

**Helen Carty**  
Partner

E: helen.carty  
@cliffordchance.com

**Carlos Conceicao**  
Partner

E: carlos.conceicao  
@cliffordchance.com

**Dorian Drew**  
Partner

E: dorian.drew  
@cliffordchance.com

**Jeremy Kosky**  
Partner

E: jeremy.kosky  
@cliffordchance.com

**Rae Lindsay**  
Partner

E: rae.lindsay  
@cliffordchance.com

**Kelwin Nicholls**  
Partner

E: kelwin.nicholls  
@cliffordchance.com

**Martin Saunders**  
Partner

E: martin.saunders  
@cliffordchance.com

**Judith Seddon**  
Partner

E: judith.seddon  
@cliffordchance.com

**Luke Tolaini**  
Partner

E: luke.tolaini  
@cliffordchance.com

## Editor

**Chris Stott**  
Lawyer

E: chris.stott  
@cliffordchance.com

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