CLIFFORD

CHANCE

Briefing note 29 September 2014

This week at the UK regulators

Thirty second guide: The week in overview

This week the FCA imposed a fine on Barclays Bank Plc of £37.7 million for failing properly to protect clients' custody assets, and the SEC awarded its largest ever whistleblower award of more than $30 million in respect of information leading to a successful enforcement action.

The FCA also published its aggregate data on complaints received by financial services firms for the first half of 2014, showing a 5% decrease in complaints on the previous six month period. Whilst it is no surprise that PPI remains the most complained about product, the number of PPI complaints has actually decreased by 11%, while other product complaints have risen by 2%.

The FCA reminded financial advisers to examine their sales of traded life policy investments (TLPIs) and to provide redress to customers where appropriate. The FCA specifically highlighted investments in the EEA Life Settlements Fund in this context.

Finally, the FCA published two consultation papers, in respect of the implementation of the Mortgage Credit Directive and the collection of data on high earners' remuneration respectively.

FCA imposes largest ever penalty on Barclays for failing to protect client custody assets

The FCA has (on 23 September) imposed a fine of £37,745,000 on Barclays Bank Plc (Barclays) for failing properly to protect clients' custody assets worth £16.5 billion. The FCA identified breaches of the Client Asset (CASS) Rules, as well as Principle 3 (requiring adequate management, systems and controls) and Principle 10 (requiring proper safeguarding of client assets) of the Principles for Businesses.

The FCA highlighted the symbolic importance of safeguarding client assets in maintaining market confidence in the event that firms fail and noted the lessons from Lehman Brothers' collapse, previous enforcement actions, and numerous industry-wide warnings in explaining the size of the fine.

The Final Notice emphasised certain mitigating factors: no losses were caused; Barclays had promptly reported the breaches and failings to the FCA; and it committed significant resources to investigating the extent of the failings and weaknesses before remediating them. The penalty was reduced by 30% as Barclays agreed to settle at an early stage.

http://www.fca.org.uk/static/documents/final-notices/barclays-bank-plc-sept-2014.pdf

FCA publishes bi-annual data on complaints

The FCA has (on 25 September) published its latest aggregate data on complaints received by financial services firms for the first half of 2014 (1H2014). The data paints a positive picture and revealed a 5% decrease in overall complaints as against the second half of 2013 (2H2013).

PPI remains the most complained about product (followed by current accounts and other general insurance) and accounts for 52% of all complaints. The new data shows that the number of PPI complaints has actually decreased by 11% against 2H2013, while the number of other product complaints has risen by 2%.

The FCA noted that the total amount of redress paid has fallen by 12% (from £2.65bn in 2H2013 to £2.34bn in 1H2014), but considers that the decrease is largely explained by a 17% fall in the number of complaints that have been closed in respect of general insurance and pure protection products (including PPI), which collectively made up 89% of all redress payments in the first half of 2014.

http://www.fca.org.uk/static/documents/aggregate-complaints-data-2014-h1.pdf

http://www.fca.org.uk/news/complaints-fall-by-5-per-cent

FCA addresses debt management firms

The FCA has (on 22 September) announced that it plans to scrutinise debt management firms when assessments for consumer credit authorisation start in October 2014. Victoria Raffe, director of authorisations at the FCA, said that many debt management firms fall short of the FCA's expectations and would have to improve their standards if they wanted to keep their licenses.

The process of authorisation, which will be implemented next month, is expected to be more rigorous than the previous Office of Fair Trading licensing regime. The FCA explained that it has conducted targeted firm visits and found that many debt management firms are failing to adequately follow the consumer credit rules brought in to provide additional protection for consumers in April 2014. Debt management firms are thus being warned that they will be required to demonstrate that they provide appropriate advice, do not charge unfair fees, and have adequate processes for handling client money.

The announcement also summarises the FCA's responses to breaches of the consumer credit rules since April 2014 (including issuing Final Notices, freezing client bank accounts, directing skilled persons reports and conducting its own investigations).

http://www.fca.org.uk/news/debt-management-firms-must-raise-their-game

FCA alerts financial advisers to re-examine TLPI sales

The FCA has (on 24 September) published a reminder to financial services firms to ensure that they have followed the FCA's April 2012 guidance in relation to traded life policy investments (TLPIs), which asked financial services providers re-examine their sales of TLPIs to ensure compliance with the FCA's rules and principles.

The FCA has specifically highlighted advice and sales to clients who invested in the EEA Life Settlements Fund, an unregulated collective investment scheme made up of TLPIs, based in Guernsey and previously listed on the Channel Islands Securities Exchange.

In January 2014, the FCA banned the promotion of TLPIs to most retail investors on the basis that TLPIs are complicated products that are generally unsuitable for the mass retail market and because its 2012 review of the TLPI market had revealed high levels of unsuitable advice.

The FCA has highlighted Principle 6 and warned that failing to follow guidance and pay due regard to the interests of their customers or to treat them fairly, could lead to regulatory action.

http://www.fca.org.uk/news/traded-life-policy-investments-alert-for-financial-advisers

FCA warnings

Name of firm	Date of warning	Details
Quick Quid	26 September 2014	Clone firm http://www.fca.org.uk/news/warnings/quick-quid-clone-cc
SMS Fast Cash	26 September 2014	Not authorised http://www.fca.org.uk/news/warnings/sms-fast-cash-cc
Elephant Loan	26 September 2014	Clone firm http://www.fca.org.uk/news/warnings/elephant-loan-clone-cc

Vantage Point LLC	25 September 2014	Not authorised http://www.fca.org.uk/news/warnings/vantage-point-llc
Short Term Reinsurance	24 September 2014	Not authorised http://www.fca.org.uk/news/warnings/short-term-reinsurance
Loan Machine Limited	23 September 2014	Clone firm http://www.fca.org.uk/news/warnings/loan-machine-limited-clone-cc
InvestPoint (UK) Ltd	22 September 2014	Not authorised http://www.fca.org.uk/news/warnings/investpoint-uk-ltd
RT Owens & Associates LLC	22 September 2014	Not authorised http://www.fca.org.uk/news/warnings/rt-owens-associates-llc

Policy developments

FCA				PRA
Proposed developments				
		Deadline for responses		
Consultation papers	The FCA has (on 25 September 2014) issued a consultation paper (CP 14/20) on the implementation of the Mortgage Credit Directive and the new regime for second charge mortgages. http://www.fca.org.uk/static/documents/consultation-papers/cp14-20.pdf	7 October		

	The FCA and PRA have (on 22 September 2014) issued a joint consultation paper (CP 14/19) on remuneration reporting requirements for high earners. http://www.fca.org.uk/static/documents/consultation-papers/cp14-19.pdf	29 December		

Further Afield

SEC Announces Largest Ever Whistleblower Award

The SEC (on 22 September) announced the largest ever whistleblower award since its inception in July 2010. More than $30 million will be awarded to an individual living in outside the US who provided information which assisted the SEC in bringing a successful enforcement action. The whistleblower programme rewards persons who provide information about possible violations of federal securities laws, which leads to SEC enforcement actions. Whistleblower awards are paid where the resulting enforcement sanction ultimately exceeds $1 million and whistleblowers receive between 10 and 30 percent of the sum collected in the case.

This award will be only the fourth award paid to an individual living in a foreign country and exceeds the previous highest payment by more than $16 million. The SEC's Office of the Whistleblower has presented the award as evidence of the international breadth of the program and its increased effectiveness, as well as being a striking incentive for those with information on potential violations. By law, the identity of the whistleblower will be kept confidential.

http://www.sec.gov/News/PressRelease/Detail/PressRelease/1370543011290

ASIC's review of "low doc" home loans finds that lenders tightened their practices

The Australian Securities & Investments Commission (ASIC) has announced (on 23 September) that its review of 'low doc' home loans following the introduction of responsible lending practices in 2010 has determined that lenders have tightened their lending standards and now provide fewer 'low doc' home loans to a narrower range of borrowers. Whereas prior to 2010 some lenders did not verify borrowers' financial situations for 'low doc' loans and simply relied on statements from the borrowers regarding their ability to repay, the review found that lenders now ask for more customer information and impose more stringent criteria prior to approval.

While ASIC is optimistic that this will reduce the level of defaults and foreclosures, the review also identified a number of concerns and compliance risks (including poor record-keeping practices, over-reliance on benchmark living expense figures and limited verification in respect of borrowers' other loans). In this regard, ASIC used the announcement as a warning that it will initiate enforcement actions where the new responsible lending practices standards are not upheld.

http://www.asic.gov.au/asic/pdflib.nsf/LookupByFileName/rep411-published-25-September-2014.pdf/$file/rep411-published-25-September-2014.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