

This week at the UK regulators

Thirty second guide: The week in overview

The FCA concluded two enforcement cases involving consumer protection issues last week, fining one firm £4.1 million for failing to deal properly with mortgage customers in arrears and another almost £1.6 million for breaches of rules relating to the payment of commissions.

It has also continued to protect consumers interests in a more proactive way than has historically been the case, issuing a warning setting out its concerns about a scheme involving incentives offered to consumers to invest funds from work pension schemes in self invested personal pension schemes investing in shares in a particular listed company. It has also published plans to make temporary rules used when it first exercised its product intervention powers earlier this year permanent by placing restrictions on the circumstances in which contingent convertible bonds and other particular types of investments may be offered to retail customers.

Away from contentious developments, as part of its "Project Innovate" initiative, the FCA has launched its "Innovation Hub" aimed at helping businesses with genuinely innovative ideas to overcome regulatory hurdles.

FCA takes action for failing to treat mortgage customers in difficulties fairly

The FCA has (on 29 October) imposed a financial penalty of £4,135,600 on Yorkshire Building Society ("YBS") for failing to deal appropriately with mortgage customers experiencing payment difficulties. The FCA found that YBS breached Principles 6 (customers' interests) and 3 (management control) of its Principles for Businesses and various rules contained in the Mortgages and Home Finance: Conduct of Business and Dispute Resolution: Complaints sections of the Handbook between 1 October 2011 and 31 July 2012 by failing to enquire sufficiently into the underlying reasons for customers' financial difficulties or to establish their future financial prospects. It found that this led to delays in putting in place appropriate payment solutions and led to arrears building up in some cases.

The financial penalty imposed was reduced by 30 per cent as YBS agreed to settle at an early stage of the FCA's investigation. The FCA has also acknowledged that YBS voluntarily and proactively agreed to refund all mortgage arrears fees and associated interest charged to customers since January 2009 and has put in place a redress scheme under which approximately 33,900 customers will be repaid a total of approximately £8.4 million.

<http://www.fca.org.uk/static/documents/final-notices/yorkshire-building-society-oct14.pdf>

FCA imposes fine for commission ban breaches

The FCA has (on 29 October) imposed a financial penalty of £1,598,000 on Sesame Limited ("Sesame") for breaches of rules introduced following the Retail Distribution Review in relation to the payment of commissions. The FCA found that Sesame breached Principle 8 (conflicts of interest) of the Principles for Businesses in connection with arrangements maintained by it in relation to restricted advice panels. It also found that payments made by members of those panels were not appropriately disclosed to customers as required by rules contained in the Conduct of Business Sourcebook. The FCA based the action on its statutory consumer protection and integrity objectives, although the Final Notice issued to Sesame does not refer to any instances of consumer detriment as the result of the breaches.

The Final Notice issued to Sesame acknowledges that, during the course of the investigation, the firm instructed an independent third party to undertake a review of the services it offered and voluntarily withdrew some of those services following that review.

The amount of the penalty imposed was reduced by 30 per cent as Sesame agreed to settle at the first opportunity.

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

FCA imposes temporary prohibition on short selling

On 27 October, the FCA issued a statement drawing attention to a temporary prohibition on net short positions in shares in Banca Monte dei Paschi di Siena ("BMPS") and Banca Carige imposed by the Italian regulator, the Commissione Nazionale per le Società e la Borsa ("CONSOB"). The ban, which remains in force until 10 November, replaces a previous prohibition on short selling in shares in BMPS, which was due to lapse at 23.59 on 28 October.

<http://www.fca.org.uk/news/temporary-prohibition-net-short-positions>

<http://www.fca.org.uk/news/temporary-prohibition-of-short-selling-banca-monte-dei-paschi>

FCA discontinues Tesco investigation

As has been widely publicised, the FCA announced on 29 October that it has decided to discontinue its investigation in respect of alleged accounting irregularities at Tesco PLC. Beyond stating that the decision was taken in the light of the decision of the Serious Fraud Office to commence its investigation in respect of the same matters, the FCA has not released any further details.

<http://www.fca.org.uk/news/fca-statement-regarding-tesco>

FCA innovation hub opens for business

In a speech on 28 October, the FCA's CEO Martin Wheatley has launched its "Innovation Hub", designed to provide dedicated support to businesses and to concentrate and gather expertise to encourage future policy development in a way that supports innovation. It has set out its criteria as to what constitutes "innovation" and the circumstances in which it will be prepared to provide support through the Innovation Hub by reference to a set of key questions relating to whether ideas are genuinely ground-breaking, the likely benefits to consumers, the levels of research already undertaken by the business concerned and whether that business has a genuine need for the FCA's support.

The hub is part of the FCA's wider "Project Innovate" initiative, which it continues to promote in support of its statutory competition objective. In its feedback statement reporting on the comments made by interested parties in response to its call for input issued in July 2014 (see This week at the UK regulators, 14 July 2014), it also sets out that the next steps will be to add content to the new "Innovation" section of the FCA's website, engage with innovators through a series of events to be held nationwide and to review, and adapt as necessary, the Innovation Hub.

<http://www.fca.org.uk/news/innovation-the-regulatory-opportunity>

<http://www.fca.org.uk/static/documents/project-innovate-call-for-input.pdf>

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbfqNhLNomwBI%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZezQt%2Fq0rsofMBrlxTitRBj7p%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=160946>

<http://www.fca.org.uk/firms/firm-types/project-innovate>

FCA warns investors on pension transfer scheme

The FCA has (on 31 October) issued a statement setting out its concerns about a scheme whereby it states that individuals are being offered incentives to transfer sums from their work pension schemes to self invested personal pension schemes ("SIPPs") invested in a company listed on the London Stock Exchange's AIM market called Emmitt PLC. The FCA has taken the relatively unusual step of issuing a statement during an ongoing investigation as it is concerned that those running the scheme may be targeting inexperienced investors and may in some cases be investing high proportions of their total pension assets. The FCA has stated that it does not currently have any information indicating any involvement on the part of Emmitt PLC.

<http://www.fca.org.uk/news/statement-re-promotion-of-shares-in-emmit-plc>

FCA warnings

Name of firm	Date of warning	Details
Pritchards Stockbrokers	31 October 2014	Clone firm http://www.fca.org.uk/news/warnings/pritchards-stockbrokers-clone
Sapien Capital Limited	30 October 2014	Clone firm http://www.fca.org.uk/news/warnings/sapien-capital-limited-clone
PMG Forex	30 October 2014	Clone firm http://www.fca.org.uk/news/warnings/pmg-forex-clone
Max Forex	30 October 2014	Clone firm http://www.fca.org.uk/news/warnings/max-forex-clone
Asian Direct Capital Management	27 October 2014	Not authorised http://www.fca.org.uk/news/warnings/asian-direct-capital-management

Policy developments

FCA		PRA	
Proposed developments			
		Deadline for responses	
Consultation papers	The FCA has (on 30 October) issued a consultation paper (CP14/24) setting out proposed changes in relation to workplace personal pension schemes http://www.fca.org.uk/static/documents/consultation-	31 December 2014	

	papers/cp14-24.pdf			
	<p>The FCA has (on 29 October) issued a consultation paper (CP14/23) setting out proposed restrictions on the retail distribution of regulatory capital instruments. The proposed changes would have the effect of limiting the circumstances in which mutual society shares could be promoted to ordinary retail investors and would make previously imposed temporary restrictions on the promotion of contingent convertible securities ("CoCos") introduced in August 2014 permanent. The imposition of those restrictions on CoCos was the first occasion on which the FCA used new product intervention powers granted to it under the Financial Services Act 2012 (see This week at the UK regulators, 11 August 2014).</p> <p>http://www.fca.org.uk/static/documents/consultation-papers/cp14-23.pdf</p> <p>http://www.fca.org.uk/news/fca-restricts-distribution-of-cocos-to-retail-investors</p> <p>https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbFgNhLNomwBl%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZe80s8dU0b76LFGIGwcv3Hbp%0D%0A5mt12P8Wnx03DzsaBGwslB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=160796</p>	29 January 2015		

Feed back statements	The FCA has (on 28 October) issued a feed back statement (FS14/2) on Project Innovate (see above for further details). http://www.fca.org.uk/static/documents/feedback-statements/fs-14-2.pdf			
Finalised policy and guidance				
		Implementation/effective date		
Policy statement			27 October 2014	Further to consultation in June 2014, the PRA has (on 27 October) issued a policy statement (PS10/14) setting out feedback, final rules and updated versions of supervisory statements (SS13/13 and SS 17/13) to implement proposals associated with CRD IV in relation to credit risk mitigation, credit risk and governance and market risk. http://www.bankofengland.co.uk/pradocuments/publications/ps/2014/ps1014.pdf http://www.bankofengland.co.uk/pradocuments/publications/ss/2013/ss1313.pdf http://www.bankofengland.co.uk/pradocuments/publications/ss/2013/ss1713.pdf http://www.bankofengland.co.uk/pradocuments/publications/cp/2014/cp1214.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

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.