

This week at the UK regulators

Thirty second guide: The week in overview

Headlines last week were dominated by the imposition of a prohibition order on a former senior asset manager following admissions that he deliberately evaded rail fares. He becomes only the second individual to be banned by the FCA for integrity breaches committed outside the course of their employment. In other developments, the FCA's finding of integrity breaches in relation to an individuals' conduct in connection with her role as a non executive director was upheld by the Upper Tribunal. The FCA has also shown that it is keeping up the pressure on businesses in the consumer credit sector, announcing an agreement for a debt management firm to pay redress to customers for failures to communicate effectively with them and creditors.

HM Treasury has released the findings of its review conducted earlier this year in relation to the enforcement processes of the FCA and the PRA, making a number of recommendations aimed mainly at increasing levels of transparency throughout the process and sorting those cases suitable for settlement from those which are not at an earlier stage. Both regulators have been invited to review their processes.

The FCA has released details of the post implementation review of the reforms introduced under the Retail Distribution Review, with an independent report prepared by an independent consultant showing significant improvements to adviser charging and competence standards. The FCA is continuing its work in this area, releasing details of the findings of the latest in a series of thematic reviews on these issues.

In policy developments, the FCA and PRA have published a supplementary consultation paper setting out technical details in relation to the new individual accountability regimes for banks and the FCA has issued a consultation paper detailing its proposals to bring seven benchmarks within the regulatory perimeter. Further afield, the EU Fourth Money Laundering Directive has passed a key milestone and will progress to the next stage of its legislative journey in the new year.

FCA bans fare dodging asset manager

The FCA has (on 15 December) issued a prohibition order (effective from 8 December) to Mr Jonathan Burrows, a former senior asset manager. It found that he lacks honesty and integrity and is therefore not fit and proper to conduct any function in relation to any regulated activity. He was previously an approved person holding the CF30 (customer) approval.

The FCA based its action on his admission that he had, over a period of years up to November 2013, deliberately evaded payment of rail fares. The case has attracted widespread publicity and press reports indicate that Mr Burrows entered into a settlement with the train company concerned having admitted deliberate fare evasion during an interview under caution. He was not prosecuted in respect of the admissions he made.

The FCA's Final Notice also refers to the fact that Mr Burrows failed to inform his employer of his behaviour. It confirms that it took this into account in deciding which

action to take, but makes clear that it has not penalised Mr Burrows for his failure to do so.

This is not the first occasion on which an individual has been banned from the financial services industry for a rail related misdemeanour. In 1994, the FCA's distant relative, the Securities and Futures Authority, banned Mr James Cesareo for using a photocopied train ticket for several months. However, this is only the second occasion on which the FCA has imposed a prohibition order on an individual for integrity breaches committed otherwise than in the course of their employment. In January 2014, the FCA imposed a prohibition order on Mr Anthony Verrier based on findings that he lacked integrity arising from a judge's assessment of his credibility and truthfulness as a witness in separate High Court proceedings (see This week at the UK regulators, 3 February 2014 and FSA Update, 21 May 2012).

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

<http://www.fca.org.uk/static/documents/final-notice/anthony-verrier.pdf>

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbfGqNhlNomwBI%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALTlyZe3UsR6KD%2FupoV6LSdcUgNAzp%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=135328>

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbfGqNhlNomwBI%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALTlyZe3UsR6KD%2FupoV6LSdcUgNAzp%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=122277>

Tribunal upholds action on conflict of interests

The Upper Tribunal has (on 15 December) upheld the finding of the FSA (set out in its Decision Notice issued in November 2012) that Ms Angela Burns breached Principle 1 (Integrity) of the Statements of Principle for Approved Persons ("APER") in connection with activities whilst she was a non-executive director of several mutual societies in 2009 and 2010. The Tribunal has deferred consideration of the appropriate sanction to a later date.

<http://www.fca.org.uk/static/documents/decision-notice/angela-burns.pdf>

<http://www.tribunals.gov.uk/financeandtax/Documents/decisions/Burns-v-FCA.pdf>

Other enforcement notices

The FCA has (on 18 December) cancelled the permission of Collingwood Mourton Associates Limited as it has not carried on any regulated activity since August 2012.

<http://www.fca.org.uk/static/documents/final-notice/collingwood-mourton-associates-limited.pdf>

The FCA has (on 12 December) imposed prohibition orders on Ms Leanne Nicholson and Mr Michael Hirst following their convictions for fraud offences in March 2014 and May 2014 respectively.

<http://www.fca.org.uk/static/documents/final-notice/leanne-marie-nicholson.pdf>

<http://www.fca.org.uk/static/documents/final-notice/michael-stanley-hirst.pdf>

HM Treasury releases findings of enforcement review

HM Treasury has (on 18 December) published the findings

of its review of enforcement decision making at the FCA and PRA. The review does not propose radical changes to existing decision making frameworks, but rather sets out recommendations aimed at making the process more transparent. Specific areas the FCA and PRA have been invited to reconsider include their criteria for referrals to enforcement and the commencement of investigations, regular update meetings during investigations and the co-ordination of joint investigations and requests for information. The report also recommends, in the interests of more clearly demarcating those cases where settlement is an option earlier in the process, that the graduated discount scheme under stages 2 and 3 of the regulators' executive settlement process be removed and that senior regulators engage more fully in all settlement discussions. It has also identified a need for greater clarity in the enforcement processes to be used by the PRA and has suggested that the regulators consider a route whereby subjects of enforcement action may refer matters directly to the Upper Tribunal without making representations to the appropriate decision making bodies of the FCA or PRA. The regulators have been invited to undertake reviews in the light of the recommendations made. They have not yet issued their responses to the review.

<https://www.gov.uk/government/consultations/review-of-enforcement-decision-making-at-the-financial-services-regulators-call-for-evidence>

Debt management firm agrees to pay redress to 4,500 customers

The FCA has (on 18 December) announced that Harrington Brooks, a debt management firm, has agreed to pay approximately £185,000 to around 4,500 customers after it failed to communicate with creditors and customers in a timely way, leading to delays in debts being frozen and customers being left with the inaccurate impression that they did not have to continue to repay debts and paying additional interest and charges. The FCA noted the cooperation it has received from Harrington Brooks and confirmed that the firm will write to affected customers over the coming weeks.

<http://www.fca.org.uk/news/debt-management-firm-harrington-brooks-redress>

FCA reports success of financial advice reforms

Two years on from the introduction of new rules aimed at raising the standards of advice provided to retail customers and the transparency of charging arrangements under the

Retail Distribution Review ("RDR"), the FCA has (on 16 December) published a post implementation review commissioned from an independent economics consultancy. Although the FCA has emphasised that it is too early to draw definitive conclusions, it has pointed to early indications of reductions in product bias and an increased number of advisers in the sector obtaining further qualifications. A further review will take place in 2017. In the meantime, the FCA has stated that it is seeking to encourage new advice models to develop to enable hitherto untapped customer bases to receive advice, and has reaffirmed its commitment to the use of tools such as behavioural economics to better understand customers' understanding and experiences in key areas.

It has (also on 16 December) published a report setting out the findings of a thematic review on adviser charging and services. It reports significant progress in how advisers are reporting costs, scope of service and the nature of services to clients but also points to some areas where improvement is required, particularly in relation to how the cost of ongoing services are explained to customers on an ongoing basis. The FCA has reported that, whilst most firms subject to this thematic review (and two previous reviews on disclosure of adviser charges and services and RDR implementation, the results of which were published in April 2014 and June 2013 respectively) have engaged with the process, one firm has been referred to enforcement for failing to do so.

<http://www.fca.org.uk/static/documents/post-implementation-review-rdr-phase-1.pdf>

<http://www.fca.org.uk/static/documents/research/rdr-post-implementation-review-europe-economics.pdf>

<http://www.fca.org.uk/static/documents/thematic-reviews/tr14-21.pdf>

<http://www.fca.org.uk/your-fca/documents/thematic-reviews/tr14-06>

<http://www.fca.org.uk/static/documents/thematic-reviews/tr13-05.pdf>

FCA sets out timetable for Recovery and Resolution Directive transposition

Further to its consultation paper published in August, the

FCA has (on 15 December), announced that it expects to receive the new powers required in order to make final rules implementing the EU Recovery and Resolution Directive in early January. It has not indicated a precise date yet, but has stated that it plans to use these powers to make rules as soon as it received the powers from Parliament.

<http://www.fca.org.uk/news/firms/rdr-transposition>

<http://www.fca.org.uk/static/documents/consultation-papers/cp14-15.pdf>

Results of defined contribution pension charges and benefits audit released

The Independent Project Board responsible for overseeing the audit of charges and benefits in legacy defined contribution workplace pension schemes has (on 17 December) issued its final report. The board, composed of representations of the FCA, Department of Work and Pensions, advisory bodies and trade associations, has collated data enabling the most at risk savers to be identified. It has indicated that it will write to providers of schemes where savers will be exposed to high charges and recommending how they can work with governance bodies to prevent new members joining and minimise potential detriment. The board has recommended that the FCA and the Department for Work and Pensions should jointly review industry wide progress once schemes have had an opportunity to do so.

<http://www.fca.org.uk/your-fca/documents/defined-contribution-workplace-pensions>

FCA imposes temporary prohibition on short selling

The FCA (on 18 December) imposed a temporary prohibition on short selling in shares in Banco BPI, S.A. following action taken by another EU competent authority. The prohibition lapsed at midnight on 18 December.

<http://www.fca.org.uk/news/temporary-prohibition-of-short-selling-banco-bpi-sa>

FCA warnings

Name of firm	Date of warning	Details
NetCFD / Centaure Capital Partners	19 December 2014	Not authorised http://www.fca.org.uk/news/warnings/netcfd
FXNTrade	19 December 2014	Not authorised http://www.fca.org.uk/news/warnings/fxntrade
Canary Wharf Group	19 December 2014	Not authorised http://www.fca.org.uk/news/warnings/canary-wharf-group
Charlton Fitzgerald	19 December 2014	Not authorised http://www.fca.org.uk/news/warnings/charlton-fitzgerald
Parkbrook Incorporated	19 December 2014	Clone firm http://www.fca.org.uk/news/warnings/parkbrook-incorporated
Cash Finance Direct	17 December 2014	Not authorised http://www.fca.org.uk/news/warnings/cash-finance-direct The FCA (on 19 December) subsequently clarified that this entity is in no way connected to a company named Cash Finance Direct (Holdings) Limited, which has FCA interim permission to carry on consumer credit business.
Keystone Corporate Group	16 December 2014	Not authorised http://www.fca.org.uk/news/warnings/keystone-corporate-group
Artemis Fund Managers	15 December 2014	Clone firm http://www.fca.org.uk/news/warnings/artemis-fund-managers-clone

Policy developments

FCA		PRA	
Proposed developments			
		Deadline for responses	
Consultation papers	<p>Further to their joint consultation paper in July on new individual accountability regimes, the FCA and PRA have (on 19 December) published a further technical consultation paper (CP 14/31 / CP 28/14) containing details of forms to be used, transitional provisions and consequential changes.</p> <p>For full details of the new individual accountability regimes, see our Practical Guide to the Senior Managers and Certification Regimes and our Clifford Chance briefing on the proposed extension to cover UK branches of overseas banks.</p> <p>http://www.fca.org.uk/static/documents/consultation-papers/cp14-31.pdf</p> <p>https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbFgNhLNomwBI%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZe7YsaJfAqY7dHpxvSAvxk%2BHp%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=416740</p> <p>https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbFgNhLNomwBI%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZexJiHhO7AaNFRpg</p>	27 February 2015	

	Of3Zttz7p%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=89809			
	<p>The FCA has (on 22 December) published a consultation paper (CP 14/32) setting out its plans to bring the Sterling Overnight Index Average (SONIA), Repurchase Overnight Index Average (RONIA), ISDAFIX, WM/Reuters (WMR) London 4pm Closing Spot Rate, London Gold Fixing (soon to be replaced by the LBMA Gold Price), LBMA Silver Price and ICE Brent Index within its regulatory remit in line with the recommendations of the Government's Fair and Effective Markets Review published in August 2014.</p> <p>Under the proposals, the FCA will regulate these in addition to LIBOR, which was the first benchmark rate to become subject to regulation following the passage of legislation by HM Treasury in April 2013 in line with the recommendations of the Wheatley Review, published in September 2012.</p> <p>http://www.fca.org.uk/static/documents/consultation-papers/cp14-32.pdf</p> <p>http://www.bankofengland.co.uk/markets/Documents/femraug2014.pdf</p> <p>https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/191762/wheatley_review_libor_finalreport_280912.pdf</p>	30 January 2015		
Finalised policy and guidance				
		Implementation date		

Supervisory statements			19 December 2014	<p>Further to a consultation paper (CP 18/14) published in September 2014, the PRA has (on 19 December) published a supervisory statement (SS 11/14) setting out its expectations in relation to firms' compliance with the European Banking Authority's guidelines on encumbered and unencumbered assets, published in June 2014.</p> <p>http://www.bankofengland.co.uk/pr/Documents/publications/ss/2014/ss1114.pdf</p> <p>http://www.bankofengland.co.uk/pr/Documents/publications/cp/2014/cp1814.pdf</p>
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Further Afield

Political agreement reached on EU Fourth Money Laundering Directive

The European Parliament and European Council have (on 16 December) reached political agreement on the text of the EU Fourth Money Laundering Directive. If enacted in its current form, the key development of the new proposed legislation would be the introduction of a requirement for beneficial owners of companies to be listed in central registers in EU countries, which will be accessible to certain categories of persons with a "legitimate interest". The new legislation will also tighten due diligence requirements on banks and other businesses when gathering information about customers at the commencement of and throughout business relationships. The legislation still requires endorsement by EU member states' ambassadors and final approval from the EU Parliament next year.

http://www.europarl.europa.eu/pdfs/news/expert/infopress/20141216IPR02043/20141216IPR02043_en.pdf

This week at the UK regulators will return on 12 January 2015. We wish all our readers a Merry Christmas and a Happy New Year.

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