

This week at the UK regulators

Thirty second guide: The week in overview

Last week was an active week in terms of concluded enforcement cases. The Upper Tribunal has upheld substantial fines and prohibition orders imposed following action commenced by the FSA in relation to failures by an investments firm and senior individuals within it to maintain appropriate systems and controls to deal with conflicts of interest or to segregate non-public information. In another case resonant of the FCA's focus on firms' and individuals to promote an appropriate culture, financial penalties have been imposed on two individuals for their failures to take steps to address failings relating to the manipulation of the LIBOR bench mark rate. Finally, a firm has been fined for failures to observe rules relating to trading by senior executives.

Away from enforcement developments, the FCA has acknowledged feedback and criticisms from industry representatives provided in response to its call for examples of the retrospective application of rules. It has also released the findings of its market study into the cash savings market, making recommendations aimed at greater transparency and easier switching for consumers, and has published a letter sent to consumer credit firms setting out its expectations of them.

Upper Tribunal upholds FCA action for conflict of interest failings

The Upper Tribunal has (on 19 January) handed down a judgment upholding the decisions of the FSA to impose a public censure on Arch Financial Products LLP and to impose financial penalties of £650,000 and £200,000 and prohibition orders on its Chief Executive Mr Robin Farrell and a former senior partner and compliance officer Mr Robert Addison. The action related to failures to manage conflicts of interest in relation to investments and to segregate and control the use of non-public information.

For full details of the action initiated by the FSA and pursued by the FCA, see FSA Update – 21 December 2012.

The FCA has indicated that, were it not for the firm's financial circumstances, it would have imposed a financial penalty of £9 million.

The firm or either of the individuals may still pursue an appeal against the Tribunal's decision.

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

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbFgNhLNomwBl%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZe4LZU5rrHqc8Db24p%2Bkv1xrp%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJ a3xHNE7tFeHpEbaelf&attachmentsize=155648>

FCA imposes fine for share dealing failings

The FCA has (in a Final Notice issued on 13 January, published on 20 January) imposed a financial penalty of £539,800 on Reckitt Benckiser Group PLC ("RB") for breaches of Listing Principles 1 and 2 and various of the Listing Rules and Disclosure and Transparency Rules. Specifically, the FCA found that RB breached the Model Code by failing to have in place appropriate systems and controls to monitor share dealing by senior executives, leading to late and incomplete disclosures to the market.

The FCA did not allege that the two executives concerned deliberately breached the Model Code or traded on the basis of inside information.

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

<http://www.fca.org.uk/static/documents/final-notice/reckitt-benckiser-group-plc.pdf>

FCA fines and bans individuals for LIBOR failings

The FCA has (on 22 January) imposed financial penalties of £210,000 and £105,000 respectively and prohibition orders on Mr David Caplin and Mr Jeremy Kraft. Mr Caplin was formerly Chief Executive and Mr Kraft the Compliance Officer of Martins Brokers (UK) Limited ("Martins").

The FCA found that Mr Caplin breached Principle 7 of the Statements of Principle for Approved Persons ("APER") and Mr Kraft breached Principles 6 and 7 of APER by failing to recognise risks that systems and controls would not be sufficient to prevent the manipulation of the London Inter Bank Offered Rate ("LIBOR") and for failing to take steps to prevent such manipulation from occurring. The action against the individuals follows the imposition of a financial penalty of £630,000 on Martins (reduced from £3.6 million) for associated failings in May 2014 (see This week at the UK regulators - 19 May 2014).

The FCA's Final Notices and accompanying press releases focus heavily on the individuals' responsibilities to promote an appropriate culture, a theme which it has made clear is high on its enforcement agenda (see, for example, This week at the UK regulators – 8 December 2014).

The financial penalties imposed on both individuals were reduced by 30 percent as they agreed to settle at an early stage of the FCA's investigation.

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

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

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbFgNhlNomwBl%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZe%2FS0pshHCVKtiHEo8lRQKH%2Fp%0D%0A5mt12P8Wnx03DzsaBGwslB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=137830>

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

FX firm enters special administration regime

The FCA has (on 19 January) confirmed that Alpari (UK) Limited has entered the special administration regime insolvency regime and has published a list of questions for customers affected by the firm's insolvency.

<http://www.fca.org.uk/news/news-for-customers-of-alpari-uk-limited>

FCA sets out expectations of high-cost short-term lenders

The FCA has (on 21 January) published a Dear CEO letter from Tracey McDermott, the FCA's Director of Supervision and Authorisations to firms holding interim permissions in relation to consumer credit activities. The letter makes clear the FCA's expectations on issues including lead generation in credit broking, affordability of loans offered, treatment of customers in financial difficulties and governance and monitoring of systems and controls. It also sets out the steps firms need to take to finalise their applications for authorisation and the implications of failing to do so, which include unenforceability of credit agreements and potential regulatory and criminal liability.

<http://www.fca.org.uk/static/documents/dear-ceo-letters/dear-ceo-letter-hcstc-firms.pdf>

Mind the gap: FCA responds to industry views on retrospective application of rules

The FCA has (on 22 January) published a summary of responses to its call for examples of instances where firms consider it has applied rules retrospectively. The request for firms' views, made in August 2014, arose from the "Expectations Gap" exercise commenced in 2013 and is part of the FCA's wider efforts to become more transparent and forward looking in the way it regulates firms. Although the call for examples asked for comments on the relatively specific area of the retrospective application of rules, responses received addressed a wider range of aspects of the way in which the FCA supervises and takes enforcement action against them.

Responses submitted by firms pointed to instances where previous inaction by the FSA and FCA suggested indifference to or approval of particular conduct and products, and where firms perceived that focus on issues by the regulators had led to a change in their approach. By reference to a range of different areas of the FCA's remit, including market abuse, consumer protection and anti-money laundering compliance, responses also identified areas where firms have seen the approach to supervision taken by the FSA and FCA as inappropriate. Many responses focused on the regulatory approach to Traded Life Policy Investments, with particular criticism of the branding of these products as "toxic". Other areas identified by firms included the use of past business reviews including section 166 "skilled person" reviews and the approach taken to the calculation of redress for misselling of interest rate hedging products.

In response to the industry criticism and observations about its methods of regulation and supervision, the FCA has defended its approach of intervening early in circumstances where it considers consumer detriment may otherwise occur and has pointed to its efforts to become more transparent, but has acknowledged the value of the feedback it has received and has indicated that it expects that, in future, there will be fewer instances of delayed and reactive enforcement action.

<http://www.fca.org.uk/news/the-retrospective-application-of-rules-feedback-on-the-call-for-examples>

<http://www.fca.org.uk/news/retrospective-application-of-regulatory-rules-call-for-examples>

FCA publishes findings of cash savings market survey

The FCA has (on 20 January) published the findings of its cash savings markets study. It found that providers hold significant balances in accounts opened more than five years ago, but that these accounts pay lower rates of interest than those opened more recently, that providers need to improve levels of transparency in relation to

alternative products and that perceptions that switching is not worthwhile have led to inertia. It has also found that large providers are at a considerable advantage in terms of attracting customers. The FCA has proposed a number of steps aimed at easing the switching process and increasing transparency for customers, in addition to promoting competition by making it easier to compare products.

The FCA has also published accompanying reports commissioned as part of the market study. One sets out a comparison of the cash savings market in the UK, Germany, the Netherlands, the USA and Australia and the other sets out technical data gathered during the study.

<http://www.fca.org.uk/static/documents/market-studies/cash-savings-market-study-final-findings.pdf>

<http://www.fca.org.uk/static/documents/research/pwc-cash-savings-international-comparison-study.pdf>

FCA warnings

Name of firm	Date of warning	Details
Harper & Reed Consultants	23 January 2015	Not authorised http://www.fca.org.uk/news/warnings/harper-reed-consultants
Quick Loan Finance	22 January 2015	Not authorised http://www.fca.org.uk/news/warnings/quick-loan-finance
Avante Corp LLC	22 January 2015	Not authorised http://www.fca.org.uk/news/warnings/avante-corp-llc
Loans Direct	21 January 2015	Clone firm http://www.fca.org.uk/news/warnings/loans-direct-clone-cc
Easy Loans Limited	21 January 2015	Clone firm

		http://www.fca.org.uk/news/warnings/easy-loans-limited-clone-cc
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Policy developments

FCA		PRA		
Proposed developments				
		Deadline for responses		
Consultation papers	The FCA and PRA have (on 19 January) published a consultation paper (FCA CP 15/2 / PRA CP 2/15) on the Management Expenses Levy Limit for the Financial Services Compensation Scheme for 2015/16. http://www.fca.org.uk/static/documents/consultation-papers/cp15-02.pdf	16 February 2015	16 February 2015	The FCA and PRA have (on 19 January) published a consultation paper (FCA CP 15/2 / PRA CP 2/15) on the Management Expenses Levy Limit for the Financial Services Compensation Scheme for 2015/16. http://www.fca.org.uk/static/documents/consultation-papers/cp15-02.pdf
			17 April 2015	The PRA has (on 19 January) published a consultation paper (CP 1/15) on assessing capital adequacy under Pillar 2. http://www.bankofengland.co.uk/pradocuments/publications/cp/2015/pillar2/cp115.pdf
			20 February 2015	The PRA has (on 23 January) published a consultation paper (CP 3/15) setting out provisions in relation to risk-free rates and transitional measures under Solvency II. http://www.bankofengland.co.uk/pradocuments/publications/cp/2015/cp315.pdf

Finalised policy and guidance				
		Implementation/effective date		
Finalised guidance	<p>Further to its guidance consultation paper (GC 14/3) published in July last year, the FCA has (on 22 January) published finalised guidance (FG 15/1) clarifying the boundaries between different types of retail investment sales models. See details in This week at the UK regulators, 14 July 2014.</p> <p>http://www.fca.org.uk/static/documents/finalised-guidance/fg15-01.pdf</p> <p>http://www.fca.org.uk/static/documents/guidance-consultations/gc14-03.pdf</p> <p>https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbfqNHLN0mwBI%2B33QzdFhRQAhp8D%2BxrIGRel2crGqLnALtlyZezQt%2Fq0rsfMBrixTitRBj7p%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHN E7tFeHpEbaelf&attachmentsize=160946</p>	22 January 2015		
Supervisory statement			23 January 2015	<p>The PRA has (on 23 January) issued an update to the part of supervisory statement SS 20/13 dealing with third country equivalence aspects of the credit risk provisions of the Capital Requirements Regulation.</p> <p>http://www.bankofengland.co.uk/pradocuments/publications/ss/2015/ss2013update.pdf</p>

Further Afield

Former hedge fund chief jailed for fraud

On 19 January, a jury at Southwark Crown Court convicted Magnus Peterson, former director of the Weaving Capital

hedge fund, of various fraud related offences (although he was acquitted of some others). On 23 January, he was sentenced to 13 years' imprisonment. The SFO's action followed the re-opening of an investigation by its director, David Green QC CB after criticism of Mr Peterson in separate civil proceedings in May 2012 (see FSA Update –

21 May 2012). The SFO had previously discontinued its investigation into his conduct. Mr Peterson has not been the subject of any action by the FSA or FCA and continued to be an approved person until May 2012.

<http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2015/city-hedge-fund-manager-convicted-of-multi-million-pound-fraud.aspx>

<http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2015/magnus-peterson-sentenced-to-13-years-in-prison.aspx>

http://www.cliffordchance.com/briefings/2012/05/fsa_update_-_21_may2012.html

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