

This week at the UK regulators

Thirty second guide: The week in overview

Headlines were dominated last week by publicity in relation to the imposition by the FCA of its largest ever fines against a firm and an individual as a Final Notice was published in the latest action to be concluded against a bank for foreign exchange related failings and Decision Notices were published in connection with long running investigations against individuals in connection with the sale of Keydata products. In other concluded cases, an appeal pursued by the FCA against a decision of the Upper Tribunal in relation to the identification of an individual in a Final Notice issued to a bank has been dismissed. The decision may have important implications for the details about third parties included by the FCA in enforcement notices. In a busy week for enforcement decisions, the Upper Tribunal dismissed an application by the individuals who are the subjects of the Decision Notices in relation to alleged Keydata failings for publication of those notices to be restrained, imposed a fine and ban on one individual and cancelled the permission of his firm and reduced the penalty imposed on another individual for conflict of interest related failings. The FCA has also fined and banned a former adviser for integrity failings and has released details of action taken against three debt management firms several months ago for consumer protection related failings.

In policy developments, the PRA has published a paper on corporate governance and board composition that will be of interest to firms preparing for the introduction of new individual accountability regimes next year. The FCA has published the findings of a thematic review into the way in which insurance claims are handled for SMEs and has released details of the terms of reference for its market study into corporate and investment banking.

FCA takes further action for foreign exchange failings

As has been widely reported, the FCA has (on 20 May) imposed a financial penalty of £284,432,000 on Barclays Bank PLC ("Barclays") for breaches of Principle 3 (management and control) of the Principles for Businesses between 1 January 2008 and 15 October 2013. The FCA found inadequacies in systems and controls relating to Barclays' G10 and Emerging Market foreign exchange trading operations which enabled some traders to engage in inappropriate conduct. Penalties were also imposed simultaneously by a number of US regulators against Barclays and a number of other banks. The penalty imposed by the FCA was reduced by 20 per cent as Barclays settled at stage two of its executive settlement procedures. This settlement follows the conclusion of others in respect of similar conduct with other banks in November 2014 (see This week at the UK regulators, 18 November 2014)

<http://www.fca.org.uk/static/documents/final-notices/barclays-bank-plc-may-15.pdf>

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWibFgNhLNomwBI%2B33QzdFhRQAhp>

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Court of Appeal finds individual improperly identified in Final Notice

In a case developing the test to be applied when deciding whether an individual has been identified in enforcement notices issued in respect of action against another person, the Court of Appeal has, in a judgment handed down on 19 May, dismissed an appeal pursued by the FCA against the Upper Tribunal's decision that a Final Notice issued to a bank in September 2013 identified Mr Achilles Macris without giving him the right to make representations, as he should have been entitled to under section 393 of the Financial Services and Markets Act 2000. Drawing parallels with the law of defamation, the court held that once a notice contains a "key or pointer" to a separate person other than the recipient of the notice, by whatever description, then the test that should be applied is whether the words are such as would reasonably lead persons acquainted with the person to believe that he was the person referred to.

Case reference: *Financial Conduct Authority v Macris* [2015] Civ 490

FCA decides to impose largest ever fine on an individual

The FCA has (on 26 May) published Decision Notices in respect of former senior executives at Keydata Investment Services ("Keydata"). Mr Stewart Ford, Mr Mark Owen and Mr Peter Johnson were CEO, Sales Director and compliance officer respectively at the firm until it was placed into administration in 2009 on the application of the FSA. Keydata was later dissolved in July 2014. In the Decision Notices, which are dated 7 November 2014 but which have only been released this week following an unsuccessful application by the individuals to the Upper Tribunal seeking an order restraining publication (which concluded last week), set out the FCA's decision to impose financial penalties of £75 million, £4 million and £200,000 respectively and prohibition orders on them. The FCA has decided that all three individuals breached Principles 1 (integrity) and 4 (relations with regulators) of the Statements of Principle for Approved Persons ("APER") in connection with the circumstances in which Traded Life Policy Investments, high risk products linked to investments in bonds issued by several Luxembourg special purpose vehicles, were sold to UK consumers and allegations that they provided misleading information to the FSA during its investigation. All three individuals have now referred the substantive action proposed in the Decision Notices to the Upper Tribunal.

The lengthy investigation pursued by the FSA/FCA has been marked by successive sets of ancillary litigation. In addition to the recent challenges to the publication of the Decision Notices, Mr Ford in particular has previously challenged the reliance by the FSA on material obtained pursuant to a waiver of privilege by Keydata's administrators of privileged material. That challenge, pursued to the Court of Appeal, was decided in Mr Ford's favour in 2012 and required the FSA to amend its Preliminary Investigation Report to remove references to material subject to joint interest privilege.

<http://www.fca.org.uk/static/documents/decision-notices/stewart-owen-ford.pdf>

<http://www.fca.org.uk/static/documents/decision-notices/mark-john-owen.pdf>

<http://www.fca.org.uk/static/documents/decision-notices/peter-francis-johnson.pdf>

Tribunal reduces penalty imposed on former non-executive director for conflict of interest failings

Further to its decision in December 2014 in which it partially agreed with the FCA's case that Ms Angela Burns breached Principle 1 of APER in connection with conduct whilst a non-executive director, the Upper Tribunal has, in a judgment dated 15 May released last week, reduced the penalty imposed from £154,200 to £20,000.

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

Tribunal takes action on UCIS failings

The Upper Tribunal has, in a judgment dated 21 May, imposed a financial penalty of £10,000 and a partial prohibition order on Mr Clive Rosier and cancelled the permission of Bayliss & Co (Financial Services) Limited, the firm of which he is a director and at which he fulfilled the CF1 (director), CF10 (compliance oversight) and CF11 (money laundering reporting) controlled functions. The Tribunal agreed with the FCA that Mr Rosier breached Principles 2 (due care, skill and diligence) and 7 (compliance by firm with regulatory standards) in connection with the sale of unregulated collective investment scheme ("UCIS") products. In particular, the FCA found, and the Tribunal agreed, that Mr Rosier failed to ensure that appropriate steps were taken to ensure the suitability of the products, to ensure that customer information was properly recorded or to ensure that customer complaints were properly handled. It also found failures to notify the FSA of the fact that a previous past business review had not been completed and to take reasonable steps to respond to issues identified by the FSA.

<http://www.tribunals.gov.uk/financeandtax/Documents/decisions/Bayliss-Co-Financial-Services-Ltd-Clive-Rosier-v-FCA.pdf>

FCA fines and bans adviser for integrity failing

The FCA has (on 19 May) imposed a financial penalty of £290,344 and a prohibition order on Mr Paul Reynolds, a former significant influence function holder at a small advisory firm that has now been dissolved. It found that he breached Principle 1 of APER in connection with the sale of unsuitable UCIS and Geared Traded Endowment Policy products to clients. It also found that he was involved in the falsification of some documents and inclusion of inaccurate

information in connection with some applications submitted on behalf of customers and that he provided inaccurate information to the FSA/FCA during the course of its investigation. Mr Reynolds had referred the FCA's decisions to impose a financial penalty and prohibition order to the Upper Tribunal, but withdrew his reference on 30 April 2015.

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

Other enforcement notices

The FCA has (on 22 May) published an application for a requirement to be imposed on the Part 4A permission of Plus500UK Limited prohibiting it from engaging in any further account activity or from taking on any new clients until compliance with specified conditions has been verified by a skilled person. The action relates to concerns in relation to compliance with particular provisions of rules set out in the Conduct of Business Sourcebook and the Money Laundering Regulations 2007.

<http://www.fca.org.uk/static/documents/requirement-notices/plus500uk-limited.pdf>

The FCA has (on 21 May) published separate First Supervisory Notices issued to Clear View Finance Limited, Haydon Associates Debt Management Consultants Limited and Sterling Financial Security Limited on 19 March 2015 requiring them to provide information to its customers in relation to outstanding balances of loans and how monies will be returned to them in circumstances where it no longer provides debt plans and to provide various information to the FCA. The action was based on failures to comply with written requirements imposed by the FCA in previous correspondence.

<http://www.fca.org.uk/static/documents/supervisory-notices/clear-view-finance-limited.pdf>

PRA sets out its expectations of boards

The PRA has (on 21 May) issued a consultation paper and draft supervisory statement on corporate governance and board composition.

Although the statement is relatively brief, it will be of considerable interest to firms preparing for and implementing the new individual accountability regimes due to come into force in March 2016. The PRA has been careful to state that it is not intended to be comprehensive, and refers firms to the UK Corporate Governance Code for more detailed indications of what amounts to good or

effective corporate governance. Nonetheless, the paper provides important confirmation of its views in certain key areas.

The paper emphasises the role of the board in actively embedding and maintaining positive culture. It states that this involves the use of appropriate incentives, which the PRA construes more widely than remuneration arrangements. It lists risk awareness and ethical behaviour across the entire organisation as markers of positive culture and confirms in the introduction to this supervisory statement that it requires the Chairman to lead the development of the firm's culture. For more details and discussion of regulators' views on what amounts to "good culture", see our Clifford Chance briefing.

In the draft supervisory statement, the PRA places significant emphasis on the inclusion of NEDs in decision making processes, and in particular on the role of the Chairman in facilitating contributions and challenges from NEDs. It sets out the PRA's expectations that challenges to executive directors by NEDs should be "effective and prompt" and that, where they include NEDs with particular specialisms, boards should not simply delegate responsibility for particular decisions to those considered expert in the area.

The paper also includes some general comments about succession planning, strategy setting, remuneration, board composition, responsibility for setting risk appetite and risk management, subsidiary boards and board committees. These do not substantively develop existing guidance in these areas as to regulatory expectations.

The PRA has invited responses to the consultation paper by 14 September 2015.

<http://www.bankofengland.co.uk/pradocuments/publications/cp/2015/cp1815.pdf>

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbfqNhlNomwBI%2B33QzdFhRQAhp8D%2BxrlIGRel2crGqLnALtlyZe9EiGsFdqcb%2FzIRI3kBcRMrp%0D%0A5mt12P8Wnx03DzsaBGwslB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=129245>

FCA sets out terms of reference for corporate and investment banking market study

Further to the launch of its market study on corporate and investment banking earlier this month, the FCA has (on 22 May) published the terms of reference for the study. The

study will focus on the key issues of choice of banks and advisers for clients, limited transparency in the provision of services and practices of bundling and cross-subsidisation of services.

The FCA has invited submissions by 22 June 2015 and has indicated that it expects to publish an interim report around the turn of the year and a final report in Spring 2016.

<http://www.fca.org.uk/static/documents/market-studies/ms15-1-1.pdf>

FCA reports on claims handling for SMEs

The FCA has (on 22 May) published the findings of its thematic review into the handling of insurance claims for

small and medium sized enterprises ("SMEs"). The review found an overall poor perception of the claims experience amongst SMEs, most commonly based on dissatisfaction at a lack of clarity as to who was driving claims outcomes and poor communications with claimants. The study also found a significant number of instances where sums insured were inadequate to cover losses, but did not find evidence of firms seeking to unduly delay the admission of liability. The FCA has indicated that it will engage with firms and senior figures in the insurance industry to seek to improve outcomes and the claims experience for SMEs.

<http://www.fca.org.uk/static/documents/thematic-reviews/tr15-06.pdf>

Policy developments

FCA		PRA	
Proposed developments			
		Deadline for responses	
Consultation papers		14 September 2015	As outlined above, the PRA has (on 21 May) issued a consultation paper (CP 18/15) including a draft supervisory statement on corporate governance and board composition. http://www.bankofengland.co.uk/pr/Docuents/publications/cp/2015/cp1815.pdf
Finalised policy and guidance			
		Implementation /effective date	
Policy statement		3 July 2015	Further to consultation in April, the PRA has (on 20 May) published a policy statement (PS 9/15) setting out further amendments to rules and an updated supervisory statement (SS 18/15) relating to dormant account and depositor protection.

				<a href="http://www.bankofengland.co.uk/pr/Docum
ents/publications/ps/2015/ps915.pdf">http://www.bankofengland.co.uk/pr/Docum ents/publications/ps/2015/ps915.pdf <a href="http://www.bankofengland.co.uk/pr/Docum
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ents/publications/ss/2015/ss1815update.pdf">http://www.bankofengland.co.uk/pr/Docum ents/publications/ss/2015/ss1815update.pdf
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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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www.cliffordchance.com

Clifford Chance, 10 Upper Bank Street, London, E14 5JJ

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