

This week at the UK regulators

Thirty second guide: The week in overview

Last week saw two significant enforcement outcomes, with the FCA taking action against one bank for financial crime risk failings, and the PRA doing likewise against another payment for shortcomings in its outsourcing arrangements.

Away from the enforcement arena, the FCA has focused on Payment Protection Insurance ("PPI"), releasing research looking at consumer behaviour in relation to redress and publishing new rules and guidance including a proposed longstop deadline for PPI redress claims. It has also issued the latest edition of its Primary Market Bulletin providing guidance to market participants on various issues and has published an occasional paper seeking to spark debate on mortgage lending and several calls for inputs seeking views on the use of big data in the retail general insurance sector and, separately, how best it may use new technologies to help firms comply with their regulatory obligations.

Further afield, a co-operating bank has entered into the first deferred prosecution agreement to be concluded in the UK, whilst the European and Hong Kong securities regulators have unveiled new arrangements for information sharing in relation to derivatives contracts.

FCA takes action for financial crime risk failings

The FCA has (on 26 November) imposed a financial penalty of £72,069,400 on Barclays Bank plc ("**Barclays**") for breaching Principle 2 (due skill, care and diligence) of the Principles for Businesses. The FCA found shortcomings in the levels of due diligence and monitoring applied to a £1.88 billion transaction arranged and executed in 2011 and 2012 for a number of ultra-high net worth clients, who satisfied the definition of "Politically Exposed Persons" and therefore should have been subject to enhanced levels of due diligence and monitoring. The fine imposed comprises a requirement to disgorge £52.3 million, the amount of revenue generated by the transaction, and a penalty element of £19,769,400. The latter was reduced by 30 per cent as Barclays agreed to settle at an early stage of the FCA's investigation. The FCA has made clear that it has not made any finding that financial crime was facilitated by the transaction and that it does not make any criticisms of the clients involved.

<http://www.fca.org.uk/your-fca/documents/final-notices/2015/barclays-bank-plc-nov-2015>

PRA takes action for outsourcing failings

The PRA has (on 27 November) published a Final Notice dated 12 November imposing a financial penalty of £1,278,165 on R. Raphael & Sons plc ("Raphaels"). It took

action in respect of breaches of Principle 3 (management and control) of the Principles for Businesses between December 2006 and April 2014 in relation to shortcomings in the outsourcing arrangements relating to its ATM finance function, which, it found, led to inadequate oversight and control by Raphaels of its regulatory capital position.

<http://www.bankofengland.co.uk/pradocuments/supervision/enforcementnotices/en271115.pdf>

Other enforcement notices

The FCA has (on 26 November) cancelled the registration granted to Oaklands Courier Limited as a small payments institution, applying Regulation 10(1)(h) (as applied by Regulation 14) of the Payment Services Regulations 2009, for failure to co-operate with the Authority in that it failed to notify the Authority of a change in the address of its principal place of business.

<http://www.fca.org.uk/your-fca/documents/final-notices/2015/oaklands-courier-limited>

The FCA has (on 24 November) imposed a prohibition order against Phillip Harold Boakes following findings that he is not a fit and proper person based on findings of a clear and serious lack of honesty, integrity and reputation. This order was given following the Court of Appeal's decision on 23 November 2015 not to reduce Mr Boakes' sentence of 10 years' imprisonment. Mr Boakes was convicted of accepting deposits without authorisation or exemption, fraudulent trading, carrying on the business of a

company with intent to defraud creditors or other fraudulent purpose, and using a false instrument.

<http://www.fca.org.uk/your-fca/documents/final-notices/2015/phillip-boakes>

In a Final Notice published on 23 November 2015, the FCA has refused the application of Linda Carole Stuart to carry on regulated activities (Ms Stuart previously been granted an interim permission) as it is not satisfied that she has the appropriate non-financial resources in relation to the regulated activities that she seeks to carry on.

<http://www.fca.org.uk/your-fca/documents/final-notices/2015/linda-carole-stuart>

Upper Tribunal fines and bans insurance broker for client money breaches

The Upper Tribunal has (on 26 November) dismissed a reference pursued by Mr Terence Andrew Joint and found that his conduct amounted to a serious breach of Principles 6 (failure to act with skill, care and diligence) and 7 (failure to take reasonable steps to ensure that the firm complies with the relevant requirements and standards of the regulatory system) of the Statements of Principle and Code of Practice for Approved Persons ("APER"). It found that client insurance premiums paid to Joint Aviation Services Limited, the firm of which he was a director, were misapplied and mixed with the funds of another entity, in breach of rules relating to client assets. The Upper Tribunal also dismissed Mr Joint's reference against a partial prohibition but did reduce the original financial penalty to £10,000 (from £20,000).

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

FCA sets out expectations of debt management firms on data transfers

The FCA has (on 26 November) published a Dear CEO letter setting out its expectations of debt management firms when customers or customer information are being transferred. The letter deals in particular with circumstances where debt management firms are buying or selling customer contracts or customer contact details.

<http://www.fca.org.uk/your-fca/documents/dear-ceo-letters/dear-ceo-letter-debt-management>

FCA examines consumer behaviour on PPI redress

The FCA has (on 26 November) published a research

report regarding the redress-seeking behaviours of recent PPI complainants who have made a PPI complaint in the past 12 months and non-complainants who are potentially eligible to make a complaint. The report, published alongside proposed new rules and guidance in relation to PPI redress (see details of Consultation Paper 15/36 in the "Policy Developments" table below) places particular emphasis on barriers to action, future trends and potential mechanisms for influencing consumer behaviour in this area.

The report found that respondents knew the acronym "PPI", and that it was related to mis-selling, but had a limited understanding about how such mis-selling occurred in practice. It also found that the main motivation for making a PPI complaint was often new information supplied by a trusted source, such as a close friend or family member, or prompting by Claims Management Companies ("CMCs"). It concluded that recent complainants who had made a complaint directly to their provider often found the process simpler and more straightforward than they were expecting and generally benefited from the support provided by CMCs. It identified the most common barriers to pursuing a claim as understanding of eligibility, the perceived effort needed to make a complaint, limited understanding of the process and mistrust of firms.

The FCA has also published a research report setting out the results of a quantitative study into PPI. The FCA commissioned the research in February 2015, which similarly looks at PPI from a consumer perspective, the trends in PPI complaints, and (from July 2015) explores consumers' attitudes towards the PPI-related *Plevin* case (see This week at the UK regulators, 2 June 2015).

<http://www.fca.org.uk/your-fca/documents/consultation-papers/understanding-ppi-redress>

<http://www.fca.org.uk/your-fca/documents/consultation-papers/ppi-research-report>

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbFgNhlNomwBI%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZeyYivuzjBM0ACNZU8kajKy%2Fp%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=10578>

FCA calls for debate on mortgage lending

The FCA has (on 24 November) has published an Occasional Paper (designed to encourage debate among academics, practitioners and policymakers in all aspects of financial regulation) regarding the Mortgage Market Review recommendations, also known as the responsible lending rules, which were published in 2012 and aimed to ensure

that borrowers would in future only be able to take out 'affordable' mortgages. The paper report sets out the theoretical and practical advantages and limitations of approaches into three potential mortgage affordability metrics based on: the debt service ratio ("DSR"), an expenditure-adjusted DSR and a quality of underwriting ("QoU") score. The DSR measures evaluated affordability by looking at causal factors (household income, expenditure and mortgage characteristics), whereas the QoU score focused on mortgage outcomes (whether the borrower subsequently went into arrears or the home was repossessed).

<http://www.fca.org.uk/your-fca/documents/occasional-papers/occasional-paper-11>

FCA seeks views on the effect of Big Data on the retail general insurance sector

The FCA has (on 24 November) published a call for inputs requesting views (including examples and evidence) of how Big Data is affecting and is likely to affect consumer

outcomes and competition in the retail general insurance) sector; and whether the regulatory framework affects developments in Big Data or unduly constrains innovation in the interest of consumers.

<http://www.fca.org.uk/your-fca/documents/call-for-inputs-big-data>

FCA seeking views about how to best to use new technologies

The FCA has (also on 24 November) published a separate call for input requesting views on how the FCA can best utilise new technologies to help firms comply with their regulatory requirements. The paper singles out areas including reporting requirements and interaction with regulators as those in which it may be possible to apply technology to greater effect. The paper has been issued in response to a request made by the Government of regulators in the March 2015 budget.

<http://www.fca.org.uk/your-fca/documents/regtech-cfi>

FCA warnings

Name of firm	Date of warning	Details
Fox Capital	26 November 2015	Not authorised http://www.fca.org.uk/news/warnings/fox-capital
LondonFX	26 November 2015	Clone firm http://www.fca.org.uk/news/warnings/londonfx-clone
AMFX	26 November 2015	Not authorised http://www.fca.org.uk/news/warnings/amfx
AJ Cox Insurance	26 November 2015	Not authorised http://www.fca.org.uk/news/warnings/aj-cox-insurance
Hans Bernauer / HB Trading	25 November 2015	Clone firm http://www.fca.org.uk/news/warnings/hans-bernauer-clone

Amerex Trade Limited	25 November 2015	Not authorised http://www.fca.org.uk/news/warnings/amerex-trade-limited
Assets Investments	25 November 2015	Clone firm http://www.fca.org.uk/news/warnings/assets-investments-clone
Bradford & Peninne Insurance	25 November 2015	Not authorised http://www.fca.org.uk/news/warnings/bradford-peninne-insurance
United Trading Markets	25 November 2015	Not authorised http://www.fca.org.uk/news/warnings/united-trading-markets

Policy developments

FCA		PRA	
Proposed developments			
		Deadline for responses	
Consultation papers	The FCA has (on 26 November) published a consultation paper (CP15/39) setting out proposed rules and guidance on PPI complaints. The most significant proposed rule would be the imposition of a deadline for PPI claims (which would be two years from the commencement date of the rule). Other proposals include an FCA-led communications campaign to inform consumers of the proposed deadline, a fee rule relating to funding of communications campaigns and requirements and guidance on handling arising from the judgment in <i>Plevin v Paragon Personal Finance Ltd.</i>	26 February 2016	

<p>Guidance consultation</p>	<p>The FCA has (on 23 November) published Primary Market Bulletin No. 12 providing general market news and information as we as explaining the latest changes it has made, or are proposing to make, to its Knowledge Base.</p> <p>Specifically, it includes consultations on:</p> <p>Public offer prospectuses - drafting and approval</p> <p>Dealing with the FCA in an open and co-operative manner under Listing Principle 2</p> <p>Equivalence arrangements for third country issuers</p> <p>Exemptions from the periodic reporting requirements</p> <p>Scope and application of vote holder and issuer notification rules</p> <p>Issuers' obligations</p> <p>It also includes technical notes on:</p> <p>Shareholder obligations</p> <p>Third country equivalent obligations</p> <p>Changes in holdings</p> <p>Voting rights disregarded for notification purposes</p> <p>Aggregation of managed holdings</p> <p>Market makers</p> <p>Asset managers</p> <p>Trading book exemptions</p> <p>Block listings</p> <p>Indirect holdings</p> <p>Modified requirements for smaller related party transactions</p> <p>Content of RIS announcements</p> <p>Fund management agreements and independence of the board</p>	<p>N/A</p>		
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	<p>Investment entities with multiple share classes</p> <p>Eligibility of investment companies</p> <p>Master-feeder structures</p> <p>Definition of investment manager</p> <p>Sponsors: conflicts of interest</p> <p>Finally, it includes a re-consultation on UKLA Technical Note 406.1 - Application of related party rules to funds investing in highly illiquid asset classes</p> <p>http://www.fca.org.uk/your-fca/documents/primary-market-bulletin-12</p>			
Discussion papers	<p>The FCA has (on 27 November) published a discussion paper (DP17/7) setting out its approach to SMEs as users of financial services</p>	18 March 2016		

Finalised Policy and guidance

		Implementation/effective date		
Supervisory statements				<p>The PRA has (on 27 November) published a supervisory statement (SS44/15) setting out its approach to supervision of third-country insurance and pure reinsurance branches under Solvency II</p> <p>http://www.bankofengland.co.uk/pradocuments/publications/ss/2015/ss4415.pdf</p>

Further Afield

UK Serious Fraud Office agrees first deferred prosecution agreement

In a landmark development, the UK Serious Fraud Office has (on 30 November), agreed the first deferred prosecution agreement to be concluded in the UK. For full details, see our Clifford Chance briefing.

http://www.cliffordchance.com/briefings/2015/12/double_firs_t_forsfoprovidestemplatefo.html

Hong Kong and European securities regulators set out plans for information sharing on derivatives contracts

On 26 November, the SFC announced it has entered into a Memorandum of Understanding ("**MoU**") with the European Securities and Markets Authority ("**ESMA**") to facilitate information exchange in relation to information on derivative contracts held in trade repositories in Hong Kong and the European Union. The MoU allows the SFC and ESMA to have indirect access to information on derivatives contracts in order to fulfil their respective responsibilities and mandates. The MoU, which came into effect on 19 November 2015, is posted on the SFC website.

<http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=15PR115>

<http://www.sfc.hk/web/TC/files/ER/PDF/ESMA-SFC%20indirect%20access%20to%20TR%20data.PDF>

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