

FSA Update

Last week at the FSA:-

Jury fail to return a verdict in trial of former iSoft directors

On 8 August, the jury in the trial of three former directors of iSoft Group plc was discharged. After a trial lasting over three months and deliberations taking almost two weeks, it was unable to return verdicts in respect of **Stephen Graham**, **John Whelan** and **Timothy Whiston**.

The FSA prosecuted the three individuals under section 397 of the Financial Services and Markets Act 2000 ("FSMA") for allegedly conspiring to mislead the market through revenue recognition policies connected with a contract for the provision of software to the Irish health service.

The FSA has stated that it will consider its position ahead of a hearing on 7 September, where it will be decided whether a re-trial is to take place.

It commenced its investigation into the alleged conduct of the three individuals and others in 2006. Separate proceedings against a fourth former director, **Patrick Cryne**, are due to commence later this year.

<http://www.fsa.gov.uk/library/communication/statements/2012/isoft>

[https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbFgNhLNomwBI%2B33QzdFhRQAhp8D%2BxrlGRl2crGqLnALTlyZe8BL7P1VUonskjgzwLHV5np%0D%](https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbFgNhLNomwBI%2B33QzdFhRQAhp8D%2BxrlGRl2crGqLnALTlyZe8BL7P1VUonskjgzwLHV5np%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=164770)

[0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=164770](https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbFgNhLNomwBI%2B33QzdFhRQAhp8D%2BxrlGRl2crGqLnALTlyZe8BL7P1VUonskjgzwLHV5np%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=164770)

FSA imposes censures and ban for financial promotion and compliance oversight failings

The FSA has (on 6 August) issued a public censure to **City Gate Money Managers Limited** ("**City Gate**") and its former director **Stewart Domke**. It has also withdrawn Mr Domke's approval to occupy the CF1 (director) and CF10 (compliance oversight) controlled functions and has banned him from occupying any significant influence function in future.

The FSA found that City Gate breached section 20 of FSMA (acting without permission), Principles 2 (skill, care and diligence) and 3 (management and control) of its Principles for Businesses ("the Principles") and rules set out in its Conduct of Business Sourcebook ("COBS"). The breaches related to failures to monitor its advisers and appointed representatives and the sales practices employed by them, leading to it arranging and/or advising on pension transfer and income drawdown business for which it no longer had permission, and to failing to give a balanced picture of the risks associated with a financial promotion on behalf of an issuing company.

The censure now imposed follows previous action taken against City Gate in 2009, when the FSA imposed a financial penalty of £42,000. During the course of that previous

investigation, City Gate voluntarily varied its Part IV permission. It is this varied permission which it has now been disciplined for breaching.

City Gate entered into voluntary liquidation in November 2010. The FSA has indicated that, but for its insolvency, it would have imposed a fine of £180,000.

Similarly, the FSA has indicated that it would have imposed a financial penalty of £70,000 on Mr Domke, who occupied the CF10 role at City Gate during the period when the breaches occurred, were it not for his financial circumstances. The FSA found that he breached Principles 6 (significant influence function: due skill care and diligence) and 7 (significant influence function: compliance by firm) of its Statements of Principle and Code of Practice for Approved Persons ("APER") by failing to ensure that City Gate had adequate systems and

Key issues

- Jury fail to return a verdict in trial of former iSoft directors
- FSA imposes censures and ban for financial promotion and compliance oversight failings
- Tracey McDermott confirmed as FSA Director of Enforcement
- Independent review into LIBOR publishes discussion paper
- Claims management regulator emphasises focus on rogue PPI claims handling firms

controls in place to avoid committing breaches as described above.

Comment

Following a similar theme to the case reported in last week's FSA Update, this case is the latest in which the FSA has attributed responsibility for a firm's failings to an individual responsible for compliance oversight.

The firms with which individuals pursued by the FSA have been connected are typically (although not exclusively) small, and are often no longer trading. However, each occasion on which it successfully takes such action further underlines the message frequently repeated by senior FSA figures that ensuring consumer protection and the accountability of individuals for firms' compliance standards are and will remain high amongst its enforcement priorities.

<http://www.fsa.gov.uk/static/pubs/final/stewart-domke.pdf>

<http://www.fsa.gov.uk/static/pubs/final/city-gate.pdf>

http://www.fsa.gov.uk/static/pubs/final/city_gate_jul09.pdf

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbFgNhLNomwBI%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZe9K4Ku6fUqAldLxAesFABonp%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=123463>

Other Final Notices

On 7 August, the FSA cancelled the Part IV permission of Mr Eric Lung. The final notice issued to Mr Lung does not elaborate upon the reasons for the cancellation, apart from to state that it arose from breaches of

Principle 11 (relations with regulators) of the Principles.

Tracey McDermott confirmed as FSA Director of Enforcement

FSA Update congratulates Tracey McDermott on her appointment as the FSA's Director of Enforcement and Financial Crime on a permanent basis.

Further afield: -

Independent review into LIBOR publishes discussion paper

HM Treasury has (on 10 August) released a discussion paper in connection with the independent review into LIBOR being conducted by Martin Wheatley, which is due to report at the end of the summer. The paper sets out issues and failings within LIBOR and invites comments, to be received by 7 September. In view of the short timescales, the paper indicates that the review team will seek to actively engage with stakeholders in addition to receiving and considering written responses.

Announcing the release of the discussion paper, Martin Wheatley (also on 10 August) gave a speech setting out his objectives, areas of focus for his review and possible options for change.

http://www.hm-treasury.gov.uk/d/condoc_wheatley_review.pdf

<http://www.fsa.gov.uk/library/communication/speeches/2012/0810-mw.shtml>

Claims management regulator emphasises focus on rogue PPI claims handling firms

The Claims Management Regulation Unit of the Ministry of Justice has (on 10 August) released details of the action it has taken over the past year to tackle poor practices employed by claims management businesses pursuing compensation on behalf of clients in connection with mis-sold payment protection insurance ("PPI").

Its report sets out that over 93 per cent of the complaints it received (which led to action against 409 businesses, of which 260 were shut down) related to businesses operating in the financial products and services sector. It also details the steps it is taking to seek to improve standards, including the establishment of a specialist enforcement team and collaboration with financial services providers.

<http://www.justice.gov.uk/downloads/publications/corporate-reports/cmr/cmr-annual-report-2011-2012.pdf>

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