

# This week at the UK regulators

## Thirty second guide: The week in overview

In the week that the Serious Fraud Office followed up its landmark deferred prosecution agreement by charging another entity with failing to prevent bribery, enforcement action taken by the FCA has been limited to action against two individuals for risk management and oversight failings (one of whom has referred the matter to the Upper Tribunal) and the refusal of two individuals' applications to carry on regulated activities.

Away from enforcement, the FCA has published a number of policy statements, including proposed Handbook amendments to give guidance on its enforcement of the new accountability regimes. Thematic review reports have also drawn attention to FCA concerns that some firms need to make improvements to suitability assessments, and in relation to managing confidential and inside information. Attracting most press attention was the FCA's 'sunlight remedy'; a report designed to shine a light on interest rates for cash saving accounts and cash ISAs which was accompanied by data on the lowest interest rates available, together with a policy statement addressing cash savings remedies more generally. The FCA has also issued its response to a determination by the Complaints Commissioner about its handling of issues raised by investors in a specific institution's notes.

The PRA focussed on the UK leverage ratio framework, publishing a policy statement and two new and one updated supervisory statements on the topic.

### FCA takes action against former directors of adviser network

The FCA has (on 11 December) published a Final Notice imposing a penalty of £14,807 on Paivi Katriina Grigg for failing to comply with Statement of Principle 6 (due skill, care and diligence) whilst performing a CF1 (Director) significant influence function (specifically during her tenure as 'Risk Management Director') at Financial Limited and Investments Limited. The FCA found that Ms Grigg failed adequately to identify, manage or control the material risk arising out of the firms' business model, which, it found, gave an excessive level of flexibility to advisers.

Also on 11 December, the FCA published a Decision Notice (dated 25 September 2015) setting out its intention to impose a penalty of £86,691 on Charles Palmer and to make an order prohibiting him from performing any significant influence function. Mr Palmer has referred the matter to the Upper Tribunal. The FCA had previously (in December 2010) issued a Final Notice imposing a penalty of £49,000 on Mr Palmer, finding that he had breached Statements of Principles 5 (taking reasonable steps to ensure the business is organised so it can be controlled effectively) and 7 whilst performing CF1 and CF8 (Apportionment and Oversight) controlled functions at Financial Limited.

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

<http://www.fca.org.uk/your-fca/documents/decision-notices/charles-palmer>

### Other enforcement notices

The FCA has (on 8 December) issued a Final Notice refusing an application from Big T Media Limited for permission to carry on the regulated activities of Debt Adjusting and Debt Counselling based on findings that it is not able to meet the requirements of various threshold conditions.

<http://www.fca.org.uk/your-fca/documents/final-notices/2015/big-t-media-limited>

The FCA has (on 9 December) issued a Final Notice refusing permission to Craig Anthony Welborn to carry on the regulated activities of Credit Broking, Debt Adjusting, Debt Administration and Debt Counselling. The FCA based its decision on concerns about Mr Welborn's failure to provide requested information and to substantively reply to FCA correspondence.

<https://www.fca.org.uk/your-fca/documents/final-notices/2015/craig-anthony-welborn>

## **FCA points to failings in management of confidential and inside information**

The FCA has (on 10 December) published a report on its thematic review (TR15/13) on flows of confidential and inside information. The review examined the processes used by a sample of investment banking firms to manage the confidential and inside information they receive and generate. The FCA found that there was variation in the standards of controls across firms, with some practices observed resulting in heightened risks for market participants and firms. The FCA found indications of some conduct and conflict of interest failings and other regulatory breaches. While the FCA's review did not test for market abuse, it noted the risk that if the information subject to the failings observed were to qualify as inside information it may result in the commission of serious civil and criminal offences with correspondingly severe penalties and identified a need for some firms to review their systems and controls in this area.

<http://www.fca.org.uk/your-fca/documents/thematic-reviews/tr15-13>

## **FCA shines a light on lowest interest rates for cash savings accounts and cash ISAs**

The FCA has (on 8 December) published the lowest interest rates available on open and closed easy access cash savings accounts and easy access cash ISAs offered by 32 providers. The information has been published in what the FCA has called a 'sunlight remedy', designed to identify and publicise interest rates that are not prominently displayed, and where customers stand to lose out by not switching to another account. This is the first trial publication of this information and reports interest rates offered as at 1 October 2015. The intention is to publish this data on a trial basis for 18 months at six-monthly intervals, with the next report to be published in May 2016. This came on the same day as the FCA published feedback and a policy statement (PS15/27) in respect of a consultation paper (CP15/24) on cash savings remedies (see 'Policy developments' table below for more detail).

<http://www.fca.org.uk/your-fca/documents/cash-savings-sunlight-remedy-october-2015>

## **FCA reports on suitability of retail investment portfolios provided by wealth management firms and private banks**

The FCA has (on 9 December) published a report on its thematic review (TR15/12) which follows up on the FSA's earlier thematic review of suitability in a sample of wealth management firms, following which a Dear CEO letter was published in June 2011. Regulatory actions ensued against some of the firms involved. This follow-up review shows that, while a number of firms have taken steps to improve in this area, many firms need to make substantial improvements in the level of customer information held to support investment portfolios and make sure that suitable systems and controls are in place to meet their responsibilities in relation to suitability. The report notes that five firms in the project sample may be required to undertake significant remediation programmes to bring them up to the FCA's expected standard, and the FCA is considering using its regulatory powers, such as requiring appointment of a skilled person, or enforcement action against these firms.

<http://www.fca.org.uk/your-fca/documents/thematic-reviews/tr15-12>

## **FCA responds to Complaints Commissioner's verdict on investor concerns**

In a short statement released on 10 December, the FCA has responded to a determination made by the Complaints Commissioner on 25 November in relation to a complaint made by or on behalf of investors in Enhanced Capital Notes issued by Lloyds Banking Group. The Complaints Commissioner ruled that a complaint about a decision not to take regulatory action in connection with the declaration of a "Capital Disqualification Event" in December 2014 should not have been excluded by the FCA from the complaints scheme, but that its decision not to take such regulatory action was within the range of reasonable decisions open to the FCA.

He also ruled in favour of the FCA in respect of a complaint that a communication gave the appearance of bias. However, he did issue guidance on steps which the FCA should take to avoid the perception of bias and on steps which should be taken to avoid the recurrence of confusion arising from conflicting statements made by senior figures at the FCA and the PRA concerning which authority would decide whether there would be a regulatory response to the declaration.

<http://fscs.gov.uk/wp-content/uploads/FCA00053-FD-publish-25-11-15.pdf>

<http://www.fca.org.uk/your-fca/documents/response-to-the-complaints-commissioners-report-fca00053>

### **FCA publishes findings on changes to practices in the mobile phone insurance market**

The FCA has (on 10 December) published its findings from a follow-up review of the mobile phone insurance market, together with a review findings infographic. In its previous report (Thematic Review 13/2: see This week at the UK regulators, 1 July 2015), the FCA pointed to practices which were leading to poor customer outcomes, in response to which it took some regulatory actions. This report suggests that there are still a significant range of practices and outcomes in the market, with some firms not having improved practices or met the FCA's expectations.

<http://www.fca.org.uk/your-fca/documents/thematic-reviews/mobile-phone-follow-up>

<http://www.fca.org.uk/your-fca/documents/thematic-reviews/mobile-phone-insurance-follow-up-review-findings-infographic>

[http://www.cliffordchance.com/briefings/2015/07/this\\_week\\_at\\_theukregulators-1july2015.html](http://www.cliffordchance.com/briefings/2015/07/this_week_at_theukregulators-1july2015.html)

### **Bank of England governor addresses ECON on ESRB efforts to assist in maintaining financial stability**

In a speech to the European Parliament's ECON Committee in Brussels on 7 December, Governor of the Bank of England Mark Carney (in his capacity as Vice-Chair of the European Systemic Risk Board ("ESRB")) called for steps to maintain financial stability through strong policy frameworks, a dynamic understanding of risk and co-ordination of individual macro-prudential policies when appropriate. He outlined the work that the ESRB has been undertaking to help Member States be flexible in their response to shocks, increase levels of resilience when risks

increase and remain alert to emerging vulnerabilities. He noted that over the coming year the ESRB will "develop assessments of the macroprudential stances of Member States to complement its existing risk monitoring and focus on the risks of low interest rates on financial stability and an abrupt transition to a low-carbon economy".

<http://www.bankofengland.co.uk/publications/Pages/speeches/2015/869.aspx>

### **FCA to produce consultation papers on MiFID II implementation**

In minutes published on 8 December of the MiFID II implementation roundtable, held at the FCA on 30 November 2015, the FCA noted that it intends to publish a first consultation paper on MiFID II implementation in the middle of December 2015, but in light of the possible change to the date of application it would consider publishing a second consultation paper in March 2016. The first consultation will cover mainly markets issues, and the consultation will run for three months. The second consultation paper will pick up the issues set out in its discussion paper 15/3 (published on 26 March) and changes to the Handbook.

The FCA also noted at the meeting that the European Parliament has written to the European Commission saying it is willing to consider a year's delay to the overall date of application to MiFID II. The FCA remarked on the effect of this, including noting that the application date for the Market Abuse Regulation was unlikely to change. It has also stated that it will be holding a special roundtable in February 2016 to discuss product governance and costs and charges disclosure.

<http://www.fca.org.uk/your-fca/documents/minutes-of-mifid-ii-implementation-roundtable-november-2015>

<https://www.fca.org.uk/your-fca/documents/discussion-papers/dp15-03>

## FCA warnings

| Name of firm   | Date of warning  | Details   |
|--|------------------|---|
| Loans Money  | 11 December 2015 | Clone firm<br><a href="http://www.fca.org.uk/news/warnings/loans-money-clone-cc">http://www.fca.org.uk/news/warnings/loans-money-clone-cc</a>   |
| JJ Bauer Asset Management / JJ Bauer Equity Research | 11 December 2015 | Clone firm<br><a href="http://www.fca.org.uk/news/warnings/jj-bauer-asset-management-jj-bauer-equity-research-clone">http://www.fca.org.uk/news/warnings/jj-bauer-asset-management-jj-bauer-equity-research-clone</a> |
| Need Quid  | 11 December 2015 | Clone firm<br><a href="http://www.fca.org.uk/news/warnings/need-quid-clone-cc">http://www.fca.org.uk/news/warnings/need-quid-clone-cc</a>   |
| IRDM Brokers   | 10 December 2015 | Not authorised<br><a href="http://www.fca.org.uk/news/warnings/irdm-brokers">http://www.fca.org.uk/news/warnings/irdm-brokers</a>   |
| EQMC Europe Development Capital Fund                 | 9 December 2015  | Clone firm<br><a href="http://www.fca.org.uk/news/warnings/eqmc-europe-development-capital-fund-clone">http://www.fca.org.uk/news/warnings/eqmc-europe-development-capital-fund-clone</a>                             |
| IIB International Broker                             | 9 December 2015  | Clone firm<br><a href="http://www.fca.org.uk/news/warnings/iib-international-broker-clone">http://www.fca.org.uk/news/warnings/iib-international-broker-clone</a>   |
| First City Bank - UK                                 | 9 December 2015  | Not authorised<br><a href="http://www.fca.org.uk/news/warnings/first-city-bank-uk">http://www.fca.org.uk/news/warnings/first-city-bank-uk</a>   |
| Goldfish Private Bank/ Cooks Private Bank            | 7 December 2015  | Not authorised<br><a href="http://www.fca.org.uk/news/warnings/goldfish-private-bank">http://www.fca.org.uk/news/warnings/goldfish-private-bank</a>   |

## Policy developments

| FCA                   |  | PRA                    |   |
|-----------------------|--|------------------------|---|
| Proposed developments |  |                        |   |
|                       |  | Deadline for responses |   |
| Consultation papers   |  | 11 March 2016          | <p>The PRA has (on 11 December) published a consultation paper (CP44/15) in respect of the minimum requirement for own funds and eligible liabilities ("MREL"). The paper sets out the PRA's proposals regarding the relationship between MREL and regulatory buffers, together with proposals regarding the relationship between MREL and the PRA's Threshold Conditions, which provide the minimum requirements that firms must meet in order to be permitted to carry on the regulated activities in which they engage.</p> <p>Alongside CP 44/15, the Bank of England is consulting on its approach to setting MREL in line with relevant legislation. The Bank's consultation will run until 11 March 2016, with an intention to publish a Statement of Policy in Q2 2016. The Bank will provide firms with an indication of their prospective 2020 MREL during 2016, and will set MRELS on a transitional basis until 1 January 2020.</p> <p><a href="http://www.bankofengland.co.uk/pr/Documents/publications/cp/2015/cp4415.pdf">http://www.bankofengland.co.uk/pr/Documents/publications/cp/2015/cp4415.pdf</a></p> <p><a href="http://www.bankofengland.co.uk/financialstability/Documents/resolution/mrelconsultation2015.pdf">http://www.bankofengland.co.uk/financialstability/Documents/resolution/mrelconsultation2015.pdf</a></p> |

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|  |  |  | 11 March 2016 | <p>Also on 11 December, the PRA published an addendum to the consultation paper published in October 2015 (CP 38/15) on ensuring operational continuity in resolution. The addendum clarifies the scope of application of the PRA's proposals in CP38/15. Together the addendum and CP38/15 set out the PRA's framework for requiring firms to ensure continuity of critical shared services to facilitate recovery actions, orderly resolution and post-resolution restructuring.</p> <p><a href="http://www.bankofengland.co.uk/pr/Documents/publications/cp/2015/cp3815addendum.pdf">http://www.bankofengland.co.uk/pr/Documents/publications/cp/2015/cp3815addendum.pdf</a></p> |
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#### Finalised Policy and guidance

|                         |  | Implementation/effective date |                 |   |
|-------------------------|--|-------------------------------|-----------------|---|
| <b>Policy statement</b> | <p>The FCA has (on 8 December) published feedback and a policy statement (PS15/27) in respect of a consultation paper (CP15/24) published earlier this year on cash savings remedies, which looked at improving the information that firms provide to consumers in relation to savings accounts and making it easier for consumers to open, manage and switch their savings accounts. Feedback was requested in relation to three areas: the switching box, the sunlight remedy and the AER code.</p> <p>From December 2016, firms will have to provide clear information on interest rates offered on cash savings products as well as clearly reminding consumers about changes in interest rates or</p> | 1 December 2016               | 7 December 2015 | <p>The PRA has (on 7 December) published an update to Supervisory Statement 3/13 on capital requirements for major UK banks and building societies, amended to remove the existing expectation in relation to the leverage ratio, which has been superseded by policy issued on the UK leverage ratio framework (Policy Statement 27/15).</p> <p><a href="http://www.bankofengland.co.uk/pr/Documents/publications/ss/2015/ss313update.pdf">http://www.bankofengland.co.uk/pr/Documents/publications/ss/2015/ss313update.pdf</a></p> <p><a href="http://www.bankofengland.co.uk/pr/Documents/publications/ps/2015/ps2715.pdf">http://www.bankofengland.co.uk/pr/Documents/publications/ps/2015/ps2715.pdf</a></p> |

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|                               | <p>the end of an introductory rate.</p> <p><a href="http://www.fca.org.uk/your-fca/documents/policy-statements/ps15-27">http://www.fca.org.uk/your-fca/documents/policy-statements/ps15-27</a></p>  |              |  |   |
|                               | <p>The FCA has (on 8 December) published a policy statement (PS15/28) in which it reports on the main issues arising from a consultation paper released earlier this year (CP15/17) on capital resources requirements for personal investment firms and publishes final rules.</p> <p><a href="http://www.fca.org.uk/your-fca/documents/policy-statements/ps15-28">http://www.fca.org.uk/your-fca/documents/policy-statements/ps15-28</a></p>   | 30 June 2016 |  |   |
|                               | <p>The FCA has (on 9 December) published a policy statement (PS15/29) in which it sets out its amendments to the Decision Procedure and Penalties Manual (DEPP) and the Enforcement Guide (EG), to give guidance on how it will enforce the new accountability regime (including the Senior Managers Regime and the Certification Regime), and use the new powers created by the Financial Services (Banking Reform) Act 2013.</p> <p><a href="http://www.fca.org.uk/your-fca/documents/policy-statements/ps15-29">http://www.fca.org.uk/your-fca/documents/policy-statements/ps15-29</a></p> | 7 March 2016 |  |   |
| <b>Supervisory statements</b> |   |              |  | <p>The PRA has also published this week two supervisory statements (SS45/15 and SS 46/15) on the UK leverage ratio framework, to be read in conjunction with PS27/15. The first sets out the PRA's expectations on leverage ratio buffers and the reporting and disclosure of an averaged</p> |

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|  |  |  |  | <p>leverage ratio, as well as providing some clarification on the PRA rules. The second sets out the PRA's expectations for firms when completing the data items required under Chapter 3 and Chapter 4 of the Reporting Leverage Ratio Part of the PRA Rulebook when submitting supervisory reports.</p> <p><a href="http://www.bankofengland.co.uk/pradocuments/publications/ss/2015/ss4515.pdf">http://www.bankofengland.co.uk/pradocuments/publications/ss/2015/ss4515.pdf</a></p> <p><a href="http://www.bankofengland.co.uk/pradocuments/publications/ss/2015/ss4615.pdf">http://www.bankofengland.co.uk/pradocuments/publications/ss/2015/ss4615.pdf</a></p> |
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## Further Afield

### UK Serious Fraud Office charges another entity with failing to prevent bribery following landmark DPA

Swiftly following on from the first deferred prosecution agreement to be concluded in the UK at the end of last month (see our Clifford Chance briefing) on the basis of an offence under Section 7 of the Bribery Act 2000, the UK Serious Fraud Office this week confirmed (on 9 December) that it has charged Sweett Group PLC with offences under the same section for failure to prevent bribery in relation to securing a contract in Dubai.

<http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2015/sfo-charges-sweett-group-plc.aspx>

[http://www.cliffordchance.com/briefings/2015/12/double\\_firs\\_t\\_forsoprovidestemplatefo.html](http://www.cliffordchance.com/briefings/2015/12/double_firs_t_forsoprovidestemplatefo.html)



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