

This week at the UK regulators

Thirty second guide: The week in overview

The main enforcement development last week was a case where the FCA imposed a fine and exercised its little used power to impose a restriction on taking on new customers for failures relating to systems and controls to prevent market abuse. It also issued a statement setting out how it intends to approach an unauthorised collective investment scheme. In other developments, the National Audit Office published a report evaluating the approaches of the FCA and the Financial Ombudsman Service to mis-selling regulation and redress and the FCA published statistics tracking substantial increases in numbers of suspicious transaction reports submitted between 2007 and 2015. In policy developments, the FCA released a discussion paper summarising various stakeholders' perspectives on the provision of financial services to an ageing population, whilst the PRA published new rules concerning internal governance in third country branches and fees. In the High Court, a novel attempted challenge to a decision taken by an independent reviewer under a redress scheme has been dismissed.

FCA imposes fine and restriction for market abuse systems and controls failings

In a Final Notice issued on 22 February, published on 23 February, the FCA has imposed a financial penalty of £1.2 million on W H Ireland Limited ("WHI"). It has also imposed a restriction on WHI's Corporate Broking division taking on new clients in relation to the carrying on of regulated activities for a period of 72 days. The FCA found that WHI breached Principle 3 (management and control) of the Principles for Businesses by failing to maintain adequate systems and controls to protect against the risk of market abuse occurring between 1 January 2013 and 19 June 2013. In particular, the FCA identified deficiencies in compliance oversight and controls to prevent the leakage of inside information between the public and private sides of WHI's business, inadequate personal account dealing rules and failures to maintain effective conflict of interest policies.

The FCA and the PRA acquired the power to impose restrictions (under section 206A of the Financial Services and Markets Act 2000 ("FSMA")) in April 2013, but have only used it on a handful of occasions since then.

The financial penalty and the duration of the restriction imposed were both reduced by 20 per cent as WHI settled at stage 2 of the FCA's executive settlement procedures.

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

Other Final Notices

In separate cases, the FCA has (on 25 February) cancelled

the permissions of AKV Vehicles Limited, Mr Alan Whittington, Mr Jawad Khan, Mr John Sanders, Mr Jonathan R Milnes, Mrs Parvin Oghabi Sajjadi and Mr Simon Wright for failures to submit required regulatory returns and of FJ Autos Limited for failing to engage in discussions with the FCA about concerns about the way in which its credit broking activities have been conducted.

<http://www.fca.org.uk/static/documents/final-notices/akv-vehicles-limited.pdf>

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

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

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

<http://www.fca.org.uk/static/documents/final-notices/jonathan-r-milnes.pdf>

<http://www.fca.org.uk/static/documents/final-notices/parvin-oghabi-sajjadi.pdf>

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

<http://www.fca.org.uk/static/documents/fj-autos-limited.pdf>

In separate cases, the FCA has (on 23 February) refused applications for approval made by Mr David Williams T/A Debts Maze Solutions and Cross Keys Estate & Finance Limited based on findings that they do not meet the threshold conditions.

<http://www.fca.org.uk/static/fca/documents/final-notice/dwilliams.pdf>

<http://www.fca.org.uk/static/documents/final-notice/cross-keys-estate-finance-limited.pdf>

FCA explains film scheme investors' options

The FCA has (on 25 February) published a statement setting out the steps it has taken and its proposed approach to a collective investment scheme which, it has found, was set up without authorisation (in breach of the general prohibition contained in section 19 of FSMA). It states that the FCA has given careful consideration to whether to pursue legal or enforcement action against Katherine of Alexandria Limited, a scheme set up to produce, market and distribute a film, but has concluded that it would not be in the investors' interests to do so or to close the company down. Instead, it has chosen to make clear to investors that they are not protected by the Financial Ombudsman Service or the Financial Services Compensation Scheme and to set out the options potentially available to them. In appropriate cases, these will include seeking recovery of sums invested and/or compensation under section 26 of FSMA and/or seeking to unwind contracts entered into.

<http://www.fca.org.uk/news/katherine-of-alexandria-ltd-options-for-investors>

National Audit Office reports on FCA response to mis-selling

In a report published on 24 February, the National Audit Office ("NAO") has evaluated the approaches of the FCA and the Financial Ombudsman Service ("FOS") to regulation and redress in relation to mis-selling of financial products. The report concludes that the FCA's approach in this area continues to evolve and that the FCA and FOS still have some work to do to convince firms that they are effectively co-ordinating their responses. It also sets out findings that there are some gaps in the FCA's

understanding of the costs of regulation in this area and in the evidence for the success of interventions to date, although it notes that increased fines and redress payments appear to have substantially reduced the financial incentives for mis-selling and that the FCA has also acted to address other causes of mis-selling. On redress, it sets out the NAO's assessment that banks' approaches to handling of complaints have been poor and that the FOS has provided an effective service but that large numbers of complaints have led to a substantial backlog and that amounts of compensation received by complainants have been reduced in a substantial proportion of cases by the involvement of claims management companies.

In a brief response, the FCA has welcomed the report and accepted the NAO's findings and recommendations.

<https://www.nao.org.uk/wp-content/uploads/2016/02/Financial-services-mis-selling-regulation-and-redress.a.pdf>

<http://www.fca.org.uk/news/national-audit-office-mis-selling-report>

FCA reports on numbers of suspicious transaction reports

The FCA has (on 24 February) published statistics summarising the numbers of suspicious transaction reports submitted between 2007 and 2015. They show a steep upward trajectory in the numbers of transactions submitted, with exponential increases from 2012 onwards. The statistics illustrate the breakdown of reports concerned with distortion and manipulation, false and misleading information and misuse of information, with the latter accounting for the vast majority throughout the period surveyed.

<http://www.fca.org.uk/static/documents/number-of-suspicious-transaction-reports.pdf>

FCA warnings

Name of firm	Date of warning	Details
Gemini Asset Management	26 February 2016	Not authorised

		http://www.fca.org.uk/news/warnings/gemini-asset-management
Cash Capital (Clone) / Cash Finance	23 February 2016	Not authorised http://www.fca.org.uk/news/warnings/cash-capital-clone-cash-finance-cc
Resolution Investments Plc	23 February 2016	Clone firm http://www.fca.org.uk/news/warnings/resolution-investments-plc-clone
Frank Bossuyt & Partners	23 February 2016	Clone firm http://www.fca.org.uk/news/warnings/frank-bossuyt-and-partners-clone
UK Loan Deals	23 February 2015	Clone firm http://www.fca.org.uk/news/warnings/uk-loan-deals-clone-cc
Cash Match	22 February 2016	Not authorised http://www.fca.org.uk/news/warnings/cash-match-cc

Policy developments

FCA		PRA	
Proposed developments			
		Deadline for responses	
Discussion papers	The FCA has (on 22 February) published a discussion paper (DP 16/1) entitled "Ageing population and financial services". The paper collates the views of various stakeholders from academics, the charity sector and industry and practitioner representatives on the challenges associated with the provision of financial services to	15 April 2016	

	<p>older people. Although it does not contain any rules, guidance or firm policy proposals, it is aimed at stimulating debate and informing the FCA's approach to regulation in this area.</p> <p>http://www.fca.org.uk/static/documents/discussion-papers/dp16-01.pdf</p>			
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Finalised Policy and guidance				
		Implementation/effective date		
Policy statements			7 March 2016	<p>The PRA has (on 26 February) published a policy statement (PS 8/16) on internal governance of third country branches. It sets out final rules and responds to feedback to consultation paper 3/16, published in January 2016. The publication of the policy statement and rules has been delayed to allow for relevant provisions in the Senior Managers and Certification Regimes to progress, although they deal with other aspects of the internal governance of third country branches.</p> <p>http://www.bankofengland.co.uk/p/ra/Documents/publications/ps/2016/ps816.pdf</p> <p>http://www.bankofengland.co.uk/p/ra/Documents/publications/cp/2016/cp316.pdf</p>
			1 March 2016	<p>The PRA has (on 26 February) published a policy statement (PS 7/16) on fees, setting out final rules and responding to consultation paper 40/15, published in October 2015.</p>

				http://www.bankofengland.co.uk/p/ra/Documents/publications/ps/2016/ps716.pdf http://www.bankofengland.co.uk/p/ra/Documents/publications/cp/2015/cp4015.pdf
Supervisory statements			26 February 2016	<p>The PRA has (on 26 February) published a supervisory statement (SS 3/16) on fees to accompany the policy statement and new rules published on the same date (see above).</p> http://www.bankofengland.co.uk/p/ra/Documents/publications/ss/2016/ss316.pdf
			26 February 2016	<p>The PRA has (on 26 February) published an updated version of its guidelines for completing regulatory reports (SS 34/15).</p> http://www.bankofengland.co.uk/p/ra/Documents/publications/ss/2016/ss3415update.pdf
			26 February 2016	<p>The PRA has (on 26 February) published a supervisory statement on internal governance of third country branches (SS 4/16) to accompany the policy statement and new rules published on the same date.</p> http://www.bankofengland.co.uk/p/ra/Documents/publications/ss/2016/ss416.pdf

Further Afield

High Court rejects judicial review challenge to interest rate swap independent review

24 February

The On 24 February, the High Court (Lord Justice Elias and Mr Justice Mitting) rejected a challenge to an award of compensation made to a bank customer under a redress scheme set up in relation to the mis-selling of interest rate hedging products. The case was unusual in that the claimant sought judicial review of a decision made by a non-government entity. The Court held that the independent reviewer's approval of the bank's offer of compensation was not amenable to judicial review as the

reviewer's duties did not have sufficient public law flavour even though it had been assisting the FCA in the effective performance of its functions.

Case reference: R (on the application of Holmcraft Properties Limited) v KPMG LLP [2016] EWHC 323

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

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