

# This week at the UK regulators

## Thirty second guide: The week in overview

There was a significant development this week in the FCA's largest ever insider dealing prosecution, known as Operation Tabernula, as the jury, which has been deliberating for eight days, was given a direction that it could return a majority verdict.

Elsewhere, in a relatively busy week, the FCA has published a number of statutory notices against consumer credit firms. On 4 and 5 May 2016 the FCA published Final Notices against five such firms cancelling or refusing permissions to conduct regulated activities for failure to satisfy the threshold conditions.

On 3 May 2016 the FCA published a Decision Notice against Money Matcher Limited refusing the firm's application to carry out consumer credit related activities on the basis that it did not have appropriate human resources or systems and controls. The Decision Notice was issued on 9 March 2016 but Money Matcher referred the matter to the Upper Tribunal and applied for an order preventing publication of the Decision Notice. That application was refused by a judgment of the Upper Tribunal dated 13 April 2016.

The FCA has also published data showing the number of skilled person reports which it commissioned in the last quarter of its 2015/16 year.

## Jury given majority verdict direction in Tabernula insider dealing trial

On 6 May 2016, in the trial of Martyn Dodgson, Grant Harrison, Andrew Hind, Iraj Parvizi and Ben Anderson who are accused by the FCA of insider dealing, the jury were directed that they could now give a majority verdict, having deliberated for eight days. "Operation Tabernula" is the largest ever insider dealing investigation and prosecution pursued by the FSA and FCA. The FCA alleges that Dodgson and Harrison, former corporate brokers, passed inside information to Andrew Hind who then placed trades on behalf of the pair through day traders Parvizi and Anderson.

## FCA imposes cancellations on four firms in the consumer credit sector

On 4 and 5 May 2016 the FCA published Final Notices against four firms in the consumer credit sector cancelling their permissions to conduct regulated activities because they had failed to satisfy the threshold conditions.

Harrogate Van Centre Limited, Motoassist UK Limited, El-Essawy Holistic Care Limited and Rivington Bikes Limited each failed to submit form CCR007 containing data relating to consumer credit related activities, despite repeated requests from the FCA to do so. Each was found to have failed to comply with Principle 11 of the FCA's Principles for

Businesses and to have failed to satisfy the FCA that it was ready, willing and organised to comply with the requirements and standards under the regulatory system. The FCA found that each had failed to manage its business in such a way as to ensure that its affairs are conducted in a sound and prudent manner, that each was not a fit and proper person, and that each was therefore failing to satisfy the Threshold Conditions in relation to the regulated activities for which it had a permission.

<http://www.fca.org.uk/static/documents/final-notices/harrogate-van-centre-limited.pdf>

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

<http://www.fca.org.uk/static/fca/documents/final-notices/el-essawy%20holistic%20care%20ltd%20final%20notice.pdf>

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

## FCA refuses application for permission for disclosure failure

On 5 May 2016 the FCA published a Final Notice against Aspect Garage Ltd refusing its application for permission to carry on the regulated activities of credit broking, debt adjusting and debt counselling. Mr Asa Dobbing, Aspect Garage's sole director and shareholder, disclosed in the

Application that he was convicted in 2009 of assisting in the management of a brothel used for the practices of prostitution and was at the date of the Decision Notice due to be tried for the offence of conspiracy to supply class A drugs, but failed to disclose that he was also arrested and charged with the offence of aiding and abetting misconduct in public office and that he received a caution for battery in 2014. The FCA found that Aspect Garage and Mr Dobbing had not been open and co-operative. The FCA could not be satisfied that Aspect Garage would satisfy the threshold conditions.

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

### FCA publishes Decision Notice refusing application of permission

On 3 May 2016 the FCA published a Decision Notice against Money Matcher Limited notifying Money Matcher of the FCA's decision to refuse the firm's application to carry out consumer credit related activities because it did not have appropriate human resources and its systems and controls were deficient. The Decision Notice was issued on 9 March 2016 and it had the effect of terminating Money Matcher's interim permission. On 20 March 2016 Money Matcher referred the matter to the Upper Tribunal and at the same time applied for a direction that the effect of the Decision Notice be suspended pending the determination of the reference and that publication of the Decision Notice be prohibited.

In its judgment dated 13 April 2016 the Upper Tribunal refused the suspension application and the privacy application. It held that, given the serious concerns identified in the Decision Notice and a lack of any evidence that any of these inadequacies have been addressed or remedied, it could not be satisfied that allowing Money Matcher to continue trading pending the determination of its reference would not prejudice the interests of consumers. In circumstances where the effect of the Decision Notice would not be suspended, it would be readily apparent that Money Matcher's interim permission had terminated. In those circumstances, prohibiting publication of the Decision Notice would not preserve Money Matcher's privacy and the Tribunal accepted counsel for the FCA's submission that publication of the Decision Notice would help achieve the objective of ensuring that consumers are made fully aware of the situation.

In reaching its decision the Tribunal reminded itself of the principles established in *Arch v Financial Conduct Authority* (2012) FS/2012/20 and *Angela Burns v Financial Conduct*

*Authority* [2015] UKUT 0601 TCC applicable to applications to prevent the publication of Decision Notices. As summarised by the Tribunal in *PDHL Limited v the Financial Conduct Authority* [2016] UKUT 129 these provide:

- (1) The open justice principle is to be applied such that the starting point is a presumption in favour of publication in accordance with the strong presumption in favour of open justice generally;
- (2) The onus is on the applicant to demonstrate a real need for privacy by showing unfairness;
- (3) In order to tip the scales heavily weighted in favour of publication the applicant must produce cogent evidence of how unfairness may arise and how it could suffer a disproportionate level of damage if publication were not prohibited; and
- (4) a ritualistic assertion of unfairness is unlikely to be sufficient. The embarrassment to an applicant that could result from publicity, and that it might draw the applicant's clients and others to ask questions which the applicant would rather not answer does not amount to unfairness.

<http://www.fca.org.uk/static/documents/decision-notice/money-matcher.pdf>

<http://www.tribunals.gov.uk/financeandtax/Documents/decisions/money-matcher-v-the-fca.pdf>

### FCA publishes data on skilled person appointments in Q4 2015/16

On 4 May 2016 the FCA published data showing the number of skilled person reports which it commissioned in the last quarter of its 2015/16 year. The data show ten skilled person reports commissioned in total: four in relation to banks; one each in relation investment management firms, securities and futures firms, general insurance brokers and stock brokers, and two in relation to consumer credit firms.

<http://www.fca.org.uk/static/documents/skilled-persons-q4-15-16.pdf>

### FCA publishes policy development update for May

On 6 May 2016 the FCA published its policy development update for May 2016 (PDU No.33), setting out the FCA's future publications schedule.

<http://www.fca.org.uk/static/fca/documents/handbook/pdu-33.pdf>

## FCA warnings

Name of firm	Date of warning	Details
Falcon Asset Management	5 May 2016	Not authorised <a href="http://www.fca.org.uk/news/warnings/falcon-asset-management">http://www.fca.org.uk/news/warnings/falcon-asset-management</a>
Oliver Kamann & Partners	4 May 2016	Clone firm <a href="http://www.fca.org.uk/news/warnings/oliver-kamann-partners-clone">http://www.fca.org.uk/news/warnings/oliver-kamann-partners-clone</a>
Scorpion Loans	4 May 2016	Not authorised <a href="http://www.fca.org.uk/news/warnings/scorpion-loans-cc">http://www.fca.org.uk/news/warnings/scorpion-loans-cc</a>

## Policy developments

FCA		PRA	
Proposed developments			
		Deadline for responses	
<b>Consultation papers</b>		5 August 2016	On 5 May 2016 the PRA published a consultation paper on the consolidation of Directors' letters relating to Solvency II (CP20/16). <a href="http://www.bankofengland.co.uk/pradocuments/publications/cp/2016/cp2016.pdf">http://www.bankofengland.co.uk/pradocuments/publications/cp/2016/cp2016.pdf</a>
			On 5 May 2016 the PRA published a consultation paper in relation to changes to internal models and extensions to the scope of internal models that have been approved under Solvency II (CP 19/16).

				<a href="http://www.bankofengland.co.uk/pr/Documents/publications/cp/2016/cp1916.pdf">http://www.bankofengland.co.uk/pr/Documents/publications/cp/2016/cp1916.pdf</a>
			13 June 2016	<p>On 3 May 2016 the PRA published a consultation paper on reporting requirements for non-Solvency II insurance firms (CP18/16).</p> <p><a href="http://www.bankofengland.co.uk/pr/Documents/publications/cp/2016/cp1816.pdf">http://www.bankofengland.co.uk/pr/Documents/publications/cp/2016/cp1816.pdf</a></p>

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