

This week at the UK regulators

Thirty second guide: The week in overview

The main enforcement development last week was the imposition of a fine on an approved sponsor for systems and controls failings.

In other developments, the Competition and Markets Authority released its long awaited report into the retail banking market, finding that older and larger banks do not have to compete hard enough for customers business and setting in motion a number of ways to remedy this finding. The FCA also released documents including its board minutes from around the time of the Brexit referendum vote and responses to a number of freedom of information requests. The FCA issued a policy statement and finalised guidance on increasing transparency and engagement at the point of renewal in general insurance markets and the PRA issued a policy statement on remuneration under Solvency II.

Further afield, the Hong Kong Court of First Instance found in favour of two customers in a misselling case.

FCA fines approved sponsor for systems and controls failings

The FCA has (on 8 August) issued a final notice imposing a financial penalty of £530,000 on Cenkos Securities PLC (Cenkos), an AIM listed company approved as a sponsor (and as a nominated adviser for the purposes of AIM) for breaches of section 88A of the Financial Services and Markets Act 2000 (FSMA) and relevant Listing Rules. This was reduced from £757,800 due to Cenkos's early settlement with the FCA. The findings resulted from an attempted transfer of a client from AIM to the LSE's Main Market where Cenkos represented that its client was eligible for a premium listing when it had not carried out adequate due diligence to support such a submission. The FCA found that there was a failure of systems and controls to ensure appropriate oversight of Cenkos's sponsor services business and to ensure that deal teams were adequately supervised and that Cenkos had failed to adequately address the FCA's concerns during the proposed transaction. The FCA considered this to pose a risk of impact to market confidence in the sponsor regime. The findings did not extend to all of Cenkos's business areas, with Investment Funds and Equity Capital Markets teams found to have higher levels of supervision and challenge.

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

Other enforcement notices

- In separate final notices, the FCA has (on 8 August) issued final notices cancelling the permission of

Performance Tuning UK Limited (PTUL), Jay Bee Automotive Limited (JBAL) and Hallbrooke Ballymena Limited (HBL) resulting from a failure to submit required regulatory returns.

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

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

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

- The FCA has (on 9 August) issued a final notice cancelling the permission of Analyst Investment Management Plc (AIMP) as a result AIMP's failure to pay outstanding amounts of the £2,000 to the FCA due as a result of invoices for non-submission of regulatory returns.

<http://www.fca.org.uk/static/documents/final-notices/analyst-investment-management-plc.pdf>

FCA publishes Handbook Notice 36

The FCA has (on 10 August) published Handbook Notice 36 summarising recent changes made to the Handbook relating to information disclosure on renewals of certain insurance policies (see the section on new policy statements below).

<http://www.fca.org.uk/static/documents/handbook-notices/fca-handbook-notice-36.pdf>

FCA publishes board minutes post Brexit-vote

The FCA has (on 11 August) published board minutes from a number of board meetings on 22, 23 24 and 30 June 2016 and 8 July 2016, which deal largely with consideration by the FCA of the aftermath of the vote in favour of Brexit.

<http://www.fca.org.uk/static/fca/documents/corporate/minutes-fca-board-22-23-june-2016.pdf>

<http://www.fca.org.uk/static/fca/documents/corporate/minutes-fca-board-24-june-2016.pdf>

<http://www.fca.org.uk/static/fca/documents/corporate/minutes-fca-board-30-june-2016.pdf>

<http://www.fca.org.uk/static/fca/documents/corporate/minutes-fca-board-8-july-2016.pdf>

FCA publishes responses to numerous Freedom of Information Requests

The FCA has (on 11 August) published its responses to freedom of information requests received between April and June 2016. These cover a wide range of issues, including the costs of the FCA's investigations into LIBOR and FX.

<https://www.the-fca.org.uk/freedom-information/disclosure-log>

FCA accepts Complaints Commissioner's findings

The FCA has (on 8 August) published its response to a report by the Complaints Commissioner. The response accepted the Complaints Commissioner's finding that the FCA had taken too long to respond to the complainant and accepted the recommendation that a payment of £150 should be made to the complainant. The complaint related to comments made by the Manager of the FCA's Mortgage Sector at the Intermediary Mortgage Lenders Association's Great Mortgage Debate Panel 2015 and reported in the national media at the time. The comments were interpreted as directing older home owners to downsize their properties.

More detail can be found in the report by the Complaints Commissioner, which noted that the FCA had thoroughly considered the complainant's grievance and adopted a number of measures designed to address the concerns raised, but found that the FCA had taken too long to respond to the complainant.

<http://www.fca.org.uk/static/documents/response-complaints-commissioner-report-fca00151.pdf>

<http://fsc.gov.uk/wp-content/uploads/FCA00151-Final-Decision-13-07-16.pdf>

CMA releases report on its retail; banking market investigation

The Competition and Markets Authority (CMA) has (on 9 August) issued its final report into the retail banking market. The report concludes older and larger banks do not have to compete hard enough for customers business, whereas newer and smaller banks find it difficult to grow.

The report sets out a package of measures that the CMA intends to impose on banks to remedy these issues. The main requirement is for banks to implement 'Open Banking' by 2018, which will enable consumers to share their own bank data securely with third parties in order to allow customers to access better value services and enable them to take more control of their finances and compare products on the basis of their own requirements. Banks will also be required to publish objective information about the quality of their service on their websites and in branches based on a range of quality metrics and send prompts to customers to review the services they are receiving and to inform them of a grace period to avoid charges where they enter unarranged overdrafts.

<https://assets.publishing.service.gov.uk/media/57a9c52b40f0b608a700000a/retail-banking-investigation-full-final-report.pdf>

FCA warnings

Name of firm	Date of warning	Details
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Unsecured Loan For UK	11 August 2016	Not authorised https://www.fca.org.uk/news/warnings/unsecured-loan-for-uk-cc
Piper Jaffray	11 August 2016	Clone firm http://www.fca.org.uk/news/warnings/piper-jaffray-clone
Natix Bank	9 August 2016	Clone firm http://www.fca.org.uk/news/warnings/natix-bank-clone
Wheaton Capital Limited	9 August 2016	Clone firm http://www.fca.org.uk/news/warnings/wheaton-capital-limited-clone

Policy developments

FCA		PRA	
Finalised Policy and guidance			
		Implementation/effective date	
Policy statements	The FCA has (on 10 August) published a policy statement (PS16/21) on increasing transparency and engagement at renewal in general insurance markets, providing feedback on consultation responses and with final rules amending ICOBS. http://www.fca.org.uk/static/fca/article-type/policy%20statement/ps16-21.pdf	1 April 2017	The PRA has (on 12 August) published a policy statement (PS22/16) on Solvency II remuneration requirements. This includes a supervisory statement (SS10/16) and a remuneration policy statement reporting template. http://www.bankofengland.co.uk/p/ra/Documents/publications/ps/2016/ps2216.pdf http://www.bankofengland.co.uk/p/ra/Documents/publications/ss/2016/ss1016.pdf
Finalised guidance	The FCA has (on 10 August) published finalised non-Handbook		

	guidance (FG16/8) on improving general insurance renewal practices. This is contained in PS16/21 (see above).			
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Further Afield

Hong Kong Court of First Instance finds in favour of customers in mis-selling case

The Court of First Instance in *Chang Pui Yin v Bank of Singapore Ltd* [2016] HKEC 1721 has (on 8 August) found in favour of two elderly customers who claimed that they had been sold complex products which they did not understand and that were completely unsuitable for them.

Although the language of the contracts was not clear-cut, the Court found the bank had a contractual duty to advise and that the relationship was not execution-only. The Court found that the relationship manager and the bank breached a contractual duty of care owed to the customer by failing to exercise reasonable care and skill: (i) in ascertaining and having regard to their investment objectives and risk appetite, (ii) when offering products which were not suitable to their investment objectives and risk appetite, and (iii) by not warning of the risks inherent in the investments that were being offered to them. The Court held that, if it was wrong and the contract was execution-only, contractual estoppel would have applied and the customers would have lost their case. The case reflects a trend for courts (especially at first instance) to find a creative way around non-reliance language in banking contracts where they believe the merits favour the customer.

[http://legalref.judiciary.gov.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=105273&QS=\(chang%2Bpui%2BByin\)&TP=JU](http://legalref.judiciary.gov.hk/lrs/common/search/search_result_detail_frame.jsp?DIS=105273&QS=(chang%2Bpui%2BByin)&TP=JU)

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