

This week at the UK regulators

Thirty second guide: The week in overview

The main enforcement development last week was a decision by the Upper Tribunal to make a partial prohibition order in respect of an individual after long running proceedings.

In other developments, the FCA published findings from two recent reviews. Releasing the final report of its investment and corporate banking market study, it stated that improvements could be made in some areas to encourage competition, particularly for smaller clients. It also found that although recent rules on packaged bank accounts have improved standards, firms have more work to do on sales and complaints handling.

The FCA also announced that it will consult on new guidance on the treatment of customers with mortgage payment shortfalls. The guidance is expected to deal with the automatic inclusion of arrears balances in customers' mortgage payments, an area in which the FCA believes there is currently a lack of transparency.

Culture also made the news this week, as The FCA's Chief Economist Peter Andrews gave a speech at the Westminster Business Forum in which he stressed the importance of the FCA's initiatives on culture and set out his views on how good culture can drive financial stability and economic growth.

Further afield, the Malaysian central bank has become the latest to announce plans for a regulatory sandbox aimed at stimulating innovation in the financial services sector.

Upper Tribunal dismisses challenge to partial prohibition order

The Upper Tribunal has (on 20 October) released its judgment in relation to the reference pursued by Mr Tariq Carrimjee in respect of the decision by the FCA to prohibit him from holding the CF10 (compliance oversight) or CF11 (money laundering reporting) significant influence functions. It held that Mr Carrimjee does not satisfy the relevant competence and capability criteria for these roles.

The Tribunal imposed a financial penalty of £89,004 on Mr Carrimjee in March 2015 in relation to failures to identify possible attempts by others to engage in market manipulation. On that occasion, it rejected suggestions that Mr Carrimjee lacked integrity and remitted the question of whether to impose a prohibition order back to the FCA.

In this latest instalment of the proceedings, the Tribunal examined the scope of its more limited jurisdiction to make orders in cases involving prohibition orders, as opposed to "disciplinary references" for the purposes of section 133 of the Financial Services and Markets Act 2000. It also confirmed that, when making determinations in relation to "non-disciplinary references", it is permitted to take account of matters relating to the subject matter of a reference but

which have arisen after a decision has been taken by the FCA in proceedings relating to a prohibition order.

<http://taxandchancery.ut.decisions.tribunals.gov.uk/Documents/decisions/Carrimjee%20v%20FCA%20for%20website.pdf>

<http://taxandchancery.ut.decisions.tribunals.gov.uk/Documents/decisions/Tariq-Carrimjee-v-FCA.pdf>

FCA publishes findings on packaged bank accounts

In 2013, the FCA introduced new rules on packaged bank accounts designed to help customers understand whether particular products were right for them. Among other things, these rules required banks to send annual statements to customers, prompting them to consider whether the products continue to meet their needs. The findings released by the FCA last week show that these rules have raised standards in the market, but that firms have more work to do, specifically in relation to sales and complaints handling. According to the FCA, too many customers who complained about being mis-sold packaged bank accounts in 2014 did not get the right outcome.

The FCA has written to all firms involved in the review to

provide individual feedback and noted that, where firms were not involved in the review, they should consider whether any of the issues identified apply to their own businesses, and take action where necessary.

<https://www.fca.org.uk/news/press-releases/new-rules-packaged-bank-accounts-have-improved-standards-firms-have-more-work-do>

FCA releases final report on the investment and corporate banking market

Further to an interim report published in April 2016, the FCA has produced its final report on the investment and corporate banking market. The report states that although many clients feel well served by primary capital market services, improvements could be made in some areas to encourage competition. This was found to be most noticeable for smaller clients. The report sets out a range of remedies, which include: (i) banning banks from using contractual clauses that seek to limit clients' choices in relation to future transactions (final rules to be published in early 2017); (ii) removing misleading bank league tables from client pitch documents; (iii) asking league table providers to review their recognition criteria so as to reduce the incentives for banks to undertake loss-making trades to elevate themselves in league tables; and (iv) introducing a supervisory programme for IPOs for certain firms where shortcomings were identified.

The FCA also announced that it is continuing to look at how the IPO process can be improved and expects to publish a separate consultation paper on this topic in winter 2016/17.

<https://www.fca.org.uk/news/press-releases/fca-publishes-final-report-investment-and-corporate-banking-market-study>

FCA to consult on new guidance on the treatment of customers with mortgage payment shortfalls

Having identified that some mortgage firms have automatically included customers' arrears balances within their monthly mortgage payments which are recalculated from time to time (e.g. when interest rates change) the FCA

has announced this week that it considers this practice to be an "automatic capitalisation" and a likely breach of FCA rules. The FCA further explained that automatic inclusion of arrears balances in customers' mortgage payments lacks transparency and can be prejudicial to customers. It can for example take a customer longer to repay their arrears, or may lead to inappropriate fees being charged in relation to the arrears. The FCA has identified approximately 750,000 affected customers and this number may rise following recent recalculations triggered by August's interest rate change.

The FCA has therefore announced that it will consult on new guidance on the treatment of customers with mortgage payment shortfalls, adding that it may use enforcement action to deal with any unfair behaviour from firms.

<https://www.fca.org.uk/news/press-releases/fca-consult-mortgage-payment-shortfall-remediation-guidance>

FCA Chief Economist makes the case for good culture as a driver of financial stability and economic growth

On Tuesday, FCA Chief Economist Peter Andrews gave a speech to the Westminster Business Forum in which he stressed the importance of good culture in the banking sector. Mr. Andrews argued that finance has a significant effect on the economy as a whole through the choices it makes in allocating capital and that firms with good culture are likely to allocate capital well. He then explained that, in his view, good culture within a firm could involve a shared belief in the importance of delivering value for clients and acting with honesty, prudence and personal accountability. Mr. Andrews also highlighted that good culture was an issue that should pervade in markets and has an important read across into areas such as tax compliance, and made reference to a forthcoming occasional Paper to be released entitled 'Behaviour and Compliance in Organisations'. He suggested that this paper will be aimed at providing guidance based on a combination of behavioural economics, sociology, psychology and traditional economic thinking.

FCA warnings

Name of firm	Date of warning	Details
Treasury Advisory Group	21 October 2016	Not authorised https://www.fca.org.uk/news/warnings/treasury-advisory-group
Telford and Bernstein	21 October 2016	Not authorised https://www.fca.org.uk/news/warnings/telford-and-bernstein
Adexec Loans & Financial Solutions	21 October 2016	Clone firm https://www.fca.org.uk/news/warnings/adexec-loans-financial-solutions-clone
Titanium Wealth Management	19 October 2016	Not authorised https://www.fca.org.uk/news/warnings/titanium-wealth-management
Corpserv	19 October 2016	Clone firm https://www.fca.org.uk/news/warnings/corpserv-clone
www.loanshuttle.com	19 October 2016	Clone firm https://www.fca.org.uk/news/warnings/wwwloanshuttlecom-clone-fca-authorized-firm
www.loankite.co.uk	19 October 2016	Clone firm https://www.fca.org.uk/news/warnings/wwwloankitecouk-clone-fca-authorized-firm
Shaks Specialist Cars	18 October 2016	Clone firm https://www.fca.org.uk/news/warnings/shaks-specialist-cars-clone
Click Search Media t/a Debt Friendly	18 October 2016	Clone firm https://www.fca.org.uk/news/warnings/click-search-media-debt-friendly-clone
Knight Capital Markets	17 October 2016	Clone firm

		https://www.fca.org.uk/news/warnings/knight-capital-markets-clone
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Policy developments

FCA				PRA
Proposed developments				
		Deadline for responses		
Guidance consultation				<p>The PRA has (on 18 October 2016) published a statement setting out the feedback it received during the consultation period for CP21/16 'Pillar 2 liquidity'.</p> <p>http://www.bankofengland.co.uk/p/ra/Documents/publications/reports/prastatement181016.pdf</p>

Finalised Policy and guidance				
		Implementation/effective date		
Finalised guidance				<p>The PRA has (on 20 October 2016) published a statement on the concept of 'durable link'.</p> <p>http://www.bankofengland.co.uk/p/ra/Documents/publications/reports/prastatement201016.pdf</p>

Further Afield

Central Bank of Malaysia announces details of its Financial Technology Regulatory Sandbox Framework

Following a consultation earlier in the year, the Central Bank of Malaysia has published details of its forthcoming fintech Regulatory Sandbox Framework. This follows similar frameworks in other jurisdictions including the UK, Australia and Singapore (see, for example, This week at the UK Regulators, 16 May 2016 and our separate Clifford Chance briefing). The aim of the framework is to improve the accessibility, quality and security of financial services and enhance efficiency.

The framework will take effect immediately and is now open for application. The Bank has stated that it will inform applicants of their eligibility to participate in the sandbox within 15 working days of receiving a complete application.

http://www.bnm.gov.my/index.php?ch=en_press&pg=en_press_all&ac=3493&lang=en

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbFgNhLNomwBI%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZe7draet49bqY4fowllkxzt7p%0D%0A5mt12P8Wnx03DzsaBGwslB3EVF8XiHbSpJa3xHNE7tFeHpEbaelf&attachmentsize=175250>

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbFgNhLNomwBI%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZe617waQv5LxeRY6zypUeRNTp%0D%0A5mt12P8Wnx03DzsaBGwslB3EVF8XiHbSpJa3xHNE7tFeHpEbaelf&attachmentsize=185191>

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