

This week at the UK regulators

Thirty second guide: The week in overview

The only significant enforcement development last week was the handing down of a judgment issuing directions in a case relating to bench mark rate misconduct. Aside from this, the main developments were the publication by the FCA of the results of two reviews. Its review of early arrears management in unsecured lending found that many firms are improving the way they deal with customers in early arrears, but that there is still room for improvement. Announcing the findings of a separate review, the FCA noted that pension providers have made significant progress towards meeting recommendations to reduce fees and charges, but it and the Department for Work and Pensions, with which it partnered to conduct the review, made clear that it will be contacting those providers who have not yet taken satisfactory actions to remedy poor value schemes.

In addition to issuing several consultation papers, the most significant of which relates to future funding arrangements for the Financial Services Compensation Scheme, the FCA also launched a market study in relation to competition in the mortgage sector. Continuing its series of Occasional Papers providing analysis on the ways in which psychology overlaps with financial services regulation, it published papers looking at issues including whether increasing fines serves as an effective deterrent and setting out possible approaches to incentivising effective compliance within firms.

The only policy developments emerging from the PRA were consultation papers relating to reporting requirements and various aspects of Solvency II.

Further afield, the Hong Kong Securities and Futures Commission announced significant reforms relating to individual accountability which reflect some aspects of the new regimes in place in the UK.

Upper Tribunal issues directions in bench mark trader reference

The Upper Tribunal has (in a judgment dated 15 December 2016) issued directions in relation to a reference pursued by Arif Hussein, a former trader in respect of whom the FCA has decided to impose a prohibition order following findings of misconduct in relation to bench mark rate submissions.

Mr Hussein applied to the Tribunal for disclosure of particular documents relating to (1) evidence led before the FCA's Regulatory Decisions Committee in respect of an individual who was a senior colleague of Mr Hussein and against whom the FCA pursued but subsequently discontinued enforcement proceedings (2) communications between various employees at the bank at which he worked at the material time which, he contended, are relevant to the issues relating to bench mark submissions with which his reference is concerned and (3) various other documents which he contended were relevant based upon matters pleaded by him in his Reply filed in connection with his reference. The FCA applied to the Tribunal for particular parts of his Reply to be struck out on the basis that they

contained allegations about the conduct of the FCA not relevant to the matters in issue before the Tribunal.

Unusually, both parties succeeded in their applications to the Tribunal, which ordered that the particular parts of Mr Hussein's Reply identified by the FCA should be struck out and ordered that the FCA should make further disclosure (although it indicated that it is unnecessary for it to undertake further searches for documents).

The substantive hearing of the reference is scheduled to take place in 2017, although an exact date has not yet been publicised.

<http://taxandchancery.ut.decisions.tribunals.gov.uk/Documents/decisions/Arif%20Hussein%20v%20FCA%20cmh.pdf>

Enforcement notices

In separate cases, the FCA has cancelled the permissions of Tim Morse and Longlands Cars Stockton Limited (on 13 December) and Waap Limited, Warmcool Limited and Macauley Myers Limited (on 16 December). In all cases, the FCA's action was based upon breaches of Principle 11 (relations with regulators) of the Principles for Businesses through failures to be open and cooperative.

FCA finds that progress still to be made at firms dealing with customers in early arrears

The FCA has (on 13 December) published the findings of a thematic review looking at early arrears management in unsecured lending. The review focused on firms' policies and procedures for handling customers in arrears and tested outcomes by reviewing customer case files to see how those policies and procedures were applied in practice. The FCA also visited firms to observe their approaches to dealing with customers and to interview staff involved in arrears handling.

The FCA found that the forbearance and repayment solutions offered to customers varied significantly in terms of the range of options available and the way in which payment difficulties were assessed. The FCA took the opportunity when announcing the findings of the review to underscore the importance of good culture within firms, which, it reiterated, influences the approach taken to giving due consideration and forbearance to customers in arrears difficulties.

<https://www.fca.org.uk/news/press-releases/fca-review-finds-room-improvement-when-dealing-customers-early-arrears>

FCA finds progress on pension fee arrangements

The FCA and the Department for Work and Pensions (DWP) have (on 13 December) published a report which has confirmed that pension providers have made significant progress in reducing cost and charges as per the recommendations of the Independent Project Board (IPB). The IPB had been established in response to a 2013 market study conducted by the Office of Fair Trading, which had found that £30 billion of savers' funds in defined contributions workplace pensions were at risk of delivering poor value for money.

While the FCA and DWP acknowledged the progress made, both Andrew Bailey and Richard Harrington (Minister for Pensions) noted that some providers still had work to do and stated that they would be contacting a number of institutions to seek assurances that they are taking steps to rectify outstanding issues.

<https://www.fca.org.uk/news/press-releases/pension-providers-making-good-progress-reducing-fees-charges>

FCA commences market study on competition in the mortgage sector

The FCA has (on 12 December) commenced a market study looking at levels of competition in the mortgage sector. The review will focus on whether customers have the requisite tools available to help them make effective decisions and understand the mortgage products on offer. The FCA announced the study and its focus in May, following feedback on competition in the sector.

The FCA intends to engage with a wide range of market participants about their experiences as part of this survey and aims to publish an interim report in summer 2017 containing analysis and preliminary conclusions. This will provide stakeholders with an opportunity to comment prior to a final report in early 2018. The study will also explore whether commercial arrangements between lenders, brokers and other players lead to conflicts of interest to the detriment of consumers.

<https://www.fca.org.uk/news/press-releases/fca-launches-market-study-competition-mortgage-sector>

FCA examines impact of fines on compliance culture

In the latest in its *Insights* series, the FCA has (on 16 December) published two occasional papers.

The first (Occasional Paper 24, entitled "Behaviour and Compliance in Organisations"), authored by a team from the FCA's Chief Economist's Department, sets out how social, psychological and other influences bear upon decision making in organisations. Amongst the conclusions drawn is that evidence suggests that there are limitations on the inflation of financial penalties as a means of deterring misconduct.

The second (Occasional Paper 25, entitled "Incentivising Compliance with Financial Regulation") is authored by Gareth D. Myles of the University of Kent and Christopher Heady of the University of Exeter, both experts on the economics of tax systems. The paper seeks to draw lessons from the experience of tax authorities and explores how they may be applied in the financial services context.

<https://www.fca.org.uk/publication/occasional-papers/op16-24.pdf>

<https://www.fca.org.uk/publication/occasional-papers/op16-25.pdf>

FCA warnings

Name of firm	Date of warning	Details
Sigma Option / BR23 Limited	16 December 2016	Not authorised https://www.fca.org.uk/news/warnings/sigma-option-br23-limited
Penflow Ltd	16 December 2016	Clone firm https://www.fca.org.uk/news/warnings/penflow-ltd
Keiron Partners	16 December 2016	Clone firm https://www.fca.org.uk/news/warnings/keiron-partners-clone
IBA Markets / International Brokers Association Markets	16 December 2016	Not authorised https://www.fca.org.uk/news/warnings/iba-markets-international-brokers-association-markets
Horseshoe Credit Union Ltd	16 December 2016	Clone firm https://www.fca.org.uk/news/warnings/horseshoe-credit-union-ltd-clone
Money Matcher Ltd	15 December 2016	Not authorised https://www.fca.org.uk/news/warnings/money-matcher-ltd
Escrow Custodian Services	14 December 2016	Clone firm https://www.fca.org.uk/news/warnings/escrow-custodian-services-clone

Policy developments

FCA		PRA		
Proposed developments				
		Deadline for responses		
Consultation papers	<p>The FCA has (on 12 December) published a consultation paper (CP 16/41) setting out amendments to Notes for completion of the Mortgage Lenders & Administrators Return (MLAR)</p> <p>https://www.fca.org.uk/publications/consultation-papers/cp16-41-amendments-notes-completion-mortgage-lenders-administrators</p>	13 March 2017	13 March 2017	<p>The PRA has (on 12 December) published a consultation paper (CP46/16) setting out proposed changes to reporting requirements arising from the introduction of the IFRS 9 reporting standard.</p> <p>http://www.bankofengland.co.uk/pr/Pages/publications/cp/2016/cp4616.aspx</p>
	<p>The FCA has (on 12 December) released a consultation paper (CP 16/42) opening up discussion on the funding of the Financial Services Compensation Scheme ("FSCS") and consulting on a number of specific changes to the scheme rules. The FSCS is the UK's statutory compensation scheme of last resort, which can step in when an authorised financial services firm is unable, or likely to be unable, to pay claims against it. Firms from across the financial services industry pay levies to fund both the FSCS's operating costs and the compensation it pays out. The rules for the FSCS were last reviewed in March 2013 when the FCA concluded a review of the scheme's funding and published final rules. Since then, the scale and impact of FSCS levies has risen sharply for some firms. The consultation will focus on how the</p>	31 March 2017	15 March 2017	<p>The PRA has (on 15 December) published a consultation paper (CP 47/16) on the maintenance of the 'transitional measure on technical provisions' under Solvency II.</p> <p>http://www.bankofengland.co.uk/pr/Pages/publications/cp/2016/cp4716.aspx</p>

	FSCS is funded, as well as the rules that affect its scope, including who may qualify for compensation. The FCA has indicated that it expects to issue a further consultation paper on the FSCS in the second half of 2017. https://www.fca.org.uk/publication/consultation/cp16-42.pdf			
	The FCA has (on 16 December) published a consultation paper (CP 16/43) on its fourth set of implementation proposals for MiFID II. https://www.fca.org.uk/publication/consultation/cp16-43.pdf	17 February 2017 (except for responses in relation to Chapter 7 on fees, which should be submitted by 16 January 2017)	14 March 2017	The PRA has (on 15 December) published a consultation paper (CP 48/16) on matching adjustments in relation to illiquid unrated assets and equity release mortgages under Solvency II. http://www.bankofengland.co.uk/pr/Pages/publications/cp/2016/cp4816.aspx

Finalised Policy and guidance				
		Implementation/effective date		
Policy statements	The FCA has (on 14 December) published a policy statement (PS 16/25) setting out final rules for firms dealing with customers experiencing a payment shortfall under mortgages or home purchase plans. https://www.fca.org.uk/publications/policy-statements/home-finance-customers-payment-shortfall	9 December 2016	14 December 2016	The PRA has (on 12 December) published a policy statement setting out its responses to its occasional consultation paper (CP 26/16) and introducing final rules and updating Supervisory Statement 24/15 in relation to the PRA's approach to the supervision of liquidity and funding risks (see entry in relation to SS 24/15 below). http://www.bankofengland.co.uk/pr/Pages/publications/ps/2016/ps3516.aspx
			Various	The PRA has (on 12 December) published a policy statement (PS 36/16) setting out responses in relation to consultation paper CP17/16 on financial statements.

				http://www.bankofengland.co.uk/pra/Pages/publications/ps/2016/ps3616.aspx
			19 December 2016	The PRA has (on 16 December) published a policy statement (PS 37/16) setting out final rules in relation to its transitional approach concerning fees and FSCS levies for insurers. http://www.bankofengland.co.uk/pra/Pages/publications/ps/2016/ps3716.aspx
Finalised guidance				The PRA has (on 12 December) released an update to the text of supervisory statement 24/15 on its approach to supervising liquidity and funding risks (see entry in relation to CP 26/16) above). http://www.bankofengland.co.uk/pra/Pages/publications/ss/2016/ss2415update.aspx

Further Afield

Hong Kong Securities and Futures Commission announces new individual accountability requirements

The Hong Kong Securities and Exchange Commission has (on 16 December), published a circular setting out details of measures aimed at augmenting the accountability of senior management in financial services firms. It is proposed that firms will be required to designate a "Manager in Charge" of each of eight "Core Functions". Although the proposed rules are less voluminous than those now in force in the UK, it is likely that they will require firms in Hong Kong to consider many of the same questions about the allocation of responsibilities as have their UK counterparts.

For further details of the new measures, please see our Clifford Chance briefing.

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbfqNhLNomwBl%2B33QzdFhRQAhp>

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<http://www.sfc.hk/edistributionWeb/gateway/EN/circular/openFile?refNo=16EC68>

This week at the UK regulators will return on 5 January 2017. We wish all our readers a Merry Christmas and a Happy New Year.

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