

THIS WEEK AT THE UK REGULATORS 5 NOVEMBER 2018

FCA fines Liberty Mutual Insurance Europe SE £5,280,000

The FCA has fined Liberty Mutual Insurance SE ("Liberty") £5,280,000 for breaches of Principle 3 (Management and Control) and Principle 6 (Customers' interests) of the FCA's Principles for Businesses in its oversight of its mobile phone insurance ("MPI") claims and complaints handling systems administered through a third party (the "Third Party").

The Third Party and Liberty's parent entities had an established relationship in the USA and the Third Party was a large market participant in the USA and elsewhere, but not Europe. The Third Party agreed to undertake all administrative functions associated with the MPI on Liberty's behalf. However, although Liberty and the Third Party discussed the Third Party's compliance plan and made the Third Party's commitment to meet UK regulatory requirements a term of the arrangements, Liberty did not undertake an adequate risk assessment, review or adequately plan for ongoing monitoring of the Third Party's work before the arrangement started. This resulted in certain customers being exposed to unfair treatment in respect of MPI claims and complaints over a five-year period.

Liberty agreed to settle at an early stage and therefore qualified for a 30% (stage 1) discount under the FCA's executive settlement procedures. The penalty would otherwise have been £7,544,000.

<https://www.fca.org.uk/publication/final-notices/liberty-mutual-insurance-europe-se-2018.pdf>

FCA issues prohibition order

The FCA has made an order prohibiting Jonathan Mathew from performing any function in relation to any regulated activity carried on by an authorised or exempt person, or exempt professional firm. Mr Mathew was convicted in 2016 of one count of conspiracy to defraud in respect of fixing the USD LIBOR and sentenced to four years' imprisonment.

<https://www.fca.org.uk/publication/final-notices/jonathan-mathew-2018.pdf>

FCA discusses Brexit preparations

The FCA has published a speech by Sarah Rapson, Director, Authorisations, which looked at the FCA's preparations for all Brexit scenarios and its work on authorisations. The speech included details of what the FCA, together with the Bank of England and the Government, has been doing to develop safeguards and contingencies in the event of a hard Brexit, to ensure that 'Day 1' works smoothly. This includes work on the temporary permissions regime.

<https://www.fca.org.uk/news/speeches/update-our-approach-authorisation-and-our-brexit-preparations>

Thirty second guide: The week in overview

The main enforcement development last week was the FCA's £5,280,000 fine issued to Liberty Mutual Insurance SE in connection with the firm's mobile phone insurance.

The FCA also published complaints figures in respect of regulated firms for the first half of 2018.

Elsewhere, the Cryptoassets Taskforce published its final report, and is working towards guidance by the end of the year on which cryptoassets fall within the existing regulatory perimeter.

FCA discusses the benefits of purposeful leadership

The FCA has published a speech by Jonathan Davidson, Director of Supervision – Retail and Authorisations, to the Consumer Credit Trade Association Conference. Mr Davidson spoke about realising the benefits of purposeful leadership. He noted that the consumer credit sector had demonstrated a lot of positive change in recent years, but that regulatory change would continue as long as the FCA continued to find evidence of considerable harm to consumers. He said that consumer outcomes are driven by the purpose underlying a firm's business model and culture, and leadership is vital in ensuring that a firm's purpose is the right one and in setting the tone for the rest of the organisation.

<https://www.fca.org.uk/news/speeches/realising-benefits-purposeful-leadership>

FCA publishes complaints figures

The FCA has published its complaints figures for regulated firms for the first half of 2018. Complaints reached a new record level of 4.13 million complaints made to 3,161 firms, although 98% of the complaints were made to 235 firms. PPI complaints represented 42% of all complaints, while 15% of complaints were about current accounts, 8% about credit cards and 6% about motor and transport insurance.

<https://www.fca.org.uk/news/press-releases/fca-data-shows-increase-complaints-more-4-million-during-first-half-2018>

FCA publishes Market Watch newsletter

On 2 November 2018 the FCA published its "Market Watch" newsletter, setting out its requirements for firms in respect of "flying prices" and "printing trades". "Flying" involves a firm communicating to its clients or other market participants via screen, instant message, voice or other method, that it has bids or offers when they are not supported by, or derived from, an order or a trader's actual instruction. "Printing" is communicating by one of the above methods that a trade has been executed at a specified price and/or size when no such trade has taken place.

<https://www.fca.org.uk/publication/newsletters/market-watch-57.pdf>

Cryptoassets Taskforce publishes final report

The Cryptoassets Taskforce is a joint HM Treasury-FCA-Bank of England body established in March 2018 by the Chancellor as part of the Government's Fintech Sector Strategy. Its purpose was to explore the risks of cryptoassets and the potential benefits of distributed ledger technology, and to assess the future response of the appropriate authorities.

The Taskforce published its final report on 29 October 2018 and has committed to a number of actions, including perimeter guidance by the end of 2018 to clarify which cryptoassets fall within the existing regulatory perimeter and those assets that may fall outside. It also intends to consult by Q1 2019 on a potential prohibition of the sale to retail customers of derivatives referencing certain types of cryptoassets.

<https://www.gov.uk/government/publications/cryptoassets-taskforce>

Enforcement notices

The FCA has cancelled the permissions granted to the following firms:

- AOTM Digital Solutions (29 October 2018)
- Autosolve Car Sales Limited (29 October 2018)
- Studio (South East) Limited (29 October 2018)
- Bear Cross Motors Limited (29 October 2018)
- Booth Experience Limited (29 October 2018)
- Galip Systems Limited (29 October 2018)
- Swan Motor Centre Limited (1 November 2018)

<https://www.fca.org.uk/publication/final-notices/aotm-digital-solutions-limited-2018.pdf>

<https://www.fca.org.uk/publication/final-notices/autosolve-car-sales-limited-2018.pdf>

<https://www.fca.org.uk/publication/final-notices/studio-south-east-ltd-2018.pdf>

<https://www.fca.org.uk/publication/final-notices/bear-cross-motors-ltd-2018.pdf>

<https://www.fca.org.uk/publication/final-notices/booth-experience-limited-2018.pdf>

<https://www.fca.org.uk/publication/final-notices/galip-systems-limited-2018.pdf>

<https://www.fca.org.uk/publication/final-notices/swan-motor-centre-limited-2018.pdf>

FCA warnings

| Name of firm | Date of warning | Details |
|---|-----------------|--|
| Arvato Financial Solutions Limited | 29 October 2018 | Clone firm https://www.fca.org.uk/news/warnings/arvato-financial-solutions-limited-clone |
| FX Merchants | 30 October 2018 | Unauthorised firm https://www.fca.org.uk/news/warnings/fx-merchants |
| Trade Capital Investments LLC t/a Trade Capital | 31 October 2018 | Unauthorised firm https://www.fca.org.uk/news/warnings/trade-capital-investments-llc-t-trade-capital |
| Cantor Fitzgerald Bank | 1 November 2018 | Clone firm https://www.fca.org.uk/news/warnings/cantor-fitzgerald-bank-clone |
| Cryptobourse | 1 November 2018 | Clone firm https://www.fca.org.uk/news/warnings/cryptobourse-clone |
| Meta Investing | 1 November 2018 | Unauthorised firm https://www.fca.org.uk/news/warnings/meta-investing |

Policy developments

| | FCA | PRA |
|----------------------------|--|--|
| | Proposed developments | |
| Consultation papers | <p>On 31 October 2018 the FCA published its Discussion Paper DP18/9 on <i>"Fair Pricing in Financial Services"</i>. The Discussion Paper relates to the Research Note published in July, which looked at how the FCA should deal with questions of fairness relating to price discrimination in financial services.</p> <p>Deadline for responses: 31 January 2019</p> <p>https://www.fca.org.uk/publication/discussion/dp18-09.pdf</p> | <p>On 31 October 2018 the PRA published Consultation Paper CP27/18, which contains proposals to amend Supervisory Statement (SS) 3/15 <i>"Solvency II: the quality of capital instruments"</i>. It proposes an expectation that insurers will deduct the maximum tax charge generated on write-down, when including items listed in Articles 69(a)(iii) and (b) of the Solvency II Regulation (the "Solvency II Regulation") or certain items approved under Article 79 of the Solvency II Regulation to be recognised as restricted Tier 1 own funds (rT1) in their own funds. The proposals reflect changes made in the Budget on 29 October 2018.</p> <p>Deadline for responses: 2 January 2019</p> <p>https://www.bankofengland.co.uk/prudential-regulation/publication/2018/solvency-ii-adjusting-for-reduction-loss-absorbency-where-own-fund-instruments-taxed-on-write-down</p> |
| | <p>On 31 October 2018 the FCA published Market Study MS18/1/1 on <i>"General Insurance Pricing Practices"</i>. This follows the FCA's supervisory work, which suggested that people who stay with their home insurance provider for a long time pay significantly more than new customers. The Market Study is the first in a package of measures that the FCA has decided is necessary.</p> <p>Deadline for responses: 3 December 2018</p> <p>https://www.fca.org.uk/publication/market-studies/ms18-1-1.pdf</p> | |
| | <p>On 1 November 2018 the FCA published Feedback Statement FS18/2 in response to its call for input on digital regulatory reporting ("DRR"), issued in February 2018. The call for input outlined a 'proof of concept' developed at the November 2017 TechSprint event and asked for feedback on technical aspects of the proof of concept and views on how it could be improved. In its Feedback Statement the FCA summarises that feedback, sets out its response and explains its next steps. Its conclusion is that, although investigative work is still at a preliminary stage, implementing DRR is a concept that is worth investigating further. There is currently pilot work being undertaken by participants who will publish</p> | |

| | FCA | PRA |
|--------------------------|--|---|
| | <p>a technical paper in Q1 2019. In the meantime, the FCA will publish updates on the pilot on its website at the second link below.</p> <p>https://www.fca.org.uk/publication/feedback/fs18-02.pdf</p> <p>https://www.fca.org.uk/firms/our-work-programme/digital-regulatory-reporting</p> | |
| | Finalised policy and guidance | |
| Policy statements | | <p>On 31 October 2018 the PRA published documents explaining its approach to banking supervision and to insurance supervision. The documents are intended to help regulated firms and the market understand how the PRA supervises these institutions and to aid accountability to the public and to Parliament.</p> <p>Effective date: October 2018</p> <p>https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/approach/banking-approach-2018.pdf?la=en&hash=3445FD6B39A2576ACCE8B4F9692B05EE04D0CFE3</p> <p>https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/approach/insurance-approach-2018.pdf?la=en&hash=4055BBB0B728E1F9E536AB09D69107D01236C658</p> |

FURTHER AFIELD

Securities and Futures Commission outlines new regulatory approach for virtual assets

The SFC issued a statement on 1 November 2018 setting out a new approach to bring virtual asset portfolio managers and distributors of virtual asset funds under its regulatory net. These will include licensing conditions on firms which manage or intend to manage portfolios investing in virtual assets, regardless of whether the assets meet the definition of "securities" or "futures contracts".

<https://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=18PR126>

<https://www.sfc.hk/edistributionWeb/gateway/EN/circular/doc?refNo=18EC77>

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