

FSA Update

28 February 2011

At the FSA last week:

- **Fine for irresponsible lending and poor treatment of arrears customers**

The FSA has fined DB Mortgages £840,000 for irresponsible lending practices and unfair treatment of customers in arrears. The FSA found that the firm's systems and controls were such that the firm was unable to show that some customers could afford mortgages sold where the term continued after their retirement and that the firm had consistently considered whether there were cheaper mortgages available for customers seeking self-certified mortgages and consistently obtained information of where customers would live at the end of the term if they needed to sell their house to pay off an interest-only mortgage. The FSA also found that the firm did not consider customers' individual circumstances or tell them about the range of options that were available to them, and applied charges that were unfair because they were charged repeatedly or did not accurately reflect the cost of administering an account in arrears. The FSA took into account that DB Mortgages worked in an open and cooperative way with the FSA, has agreed to a wide ranging customer redress programme of approximately £1.5 million and has made significant improvements to its arrears handling procedures. DB Mortgages is the fourth lender referred to enforcement following the FSA's thematic project on mortgage arrears handling.

http://www.fsa.gov.uk/pubs/final/db_uk.pdf

- **Consultation Paper published on protecting with-profits policyholders**

The FSA has published Consultation Paper CP11/05: "Protecting with-profits policyholders", which sets out proposals to strengthen its existing rules on with-profits to improve protection for policyholders. In 2010, the FSA carried out a review of the way in which firms have met the requirements for the fair treatment of with-profits policyholders that were introduced in 2005. The FSA's review identified a number of concerns about the way in which firms were operating their with-profits funds and treating their policyholders. The proposals in CP11/05 are based on the findings from the review and include:

- strengthening the requirement for boards and governing bodies to obtain independent advice on the management of funds by enhancing the role of the with-profits committee and the with-profits actuary;
- requiring all firms to have a plan to distribute any excess surplus fairly to policyholders, particularly where a firm experiences a significant fall in the amount of new business it is writing;
- strengthening the requirement for any new business backed by the with-profits fund to deliver value to all with-profits policyholders so that writing new business has no adverse effect on their interests;
- improving the ways in which firms identify and manage conflicts of interest affecting with-profits policyholders;
- emphasising how with-profits policyholders in mutually-owned funds should expect to be treated, specifically around distributions of excess surplus;

Headlines

Fine for irresponsible lending and poor treatment of arrears customers

Consultation Paper published on protecting with-profits policyholders

Policy Statement published on Decision Procedure and Penalties manual and Enforcement Guide review

Policy Statement published on tracing employers' liability insurers

The Information Commissioner's Office has issued two more fines for breaches of the Data Protection Act caused by the use of unencrypted laptops

If you would like to know more about the subjects covered in this publication or our services, please contact:

Regulatory Group Contacts

[Roger Best](#) +44 20 7006 1640
[Matthew Newick](#) +44 20 7006 8492
[Martin Saunders](#) +44 20 7006 8630
[Carlos Conceicao](#) +44 20 7006 8281
[Luke Tolaini](#) +44 20 7006 4666

FSA Update Editor

[Susan Poffley](#) +44 20 7006 5918

To email one of the above, please use firstname.lastname@cliffordchance.com

Clifford Chance LLP, 10 Upper Bank Street,
London, E14 5JJ, UK
www.cliffordchance.com

- restricting the circumstances under which firms can impose a market value reduction; and
- improving the reattributions process.

The consultation closes on 24 May 2011.
http://www.fsa.gov.uk/pubs/cp/cp11_05.pdf

- **Policy Statement published on Decision Procedure and Penalties manual and Enforcement Guide review**

The FSA has published Policy Statement 11/03: "Decision Procedure and Penalties manual and Enforcement Guide review", which reports on the main issues arising from Consultation Paper 10/23: "Decision Procedure and Penalties manual and Enforcement Guide review 2010". It publishes final amendments to the Glossary, the General Provisions module, the Decision Procedure and Penalties manual and the Enforcement Guide.
http://www.fsa.gov.uk/pubs/policy/ps11_03.pdf

- **Policy Statement published on tracing employers' liability insurers**

The FSA has published Policy Statement 11/04: "Tracing employers' liability insurers". The Policy Statement reports on the main issues arising from Consultation Paper 10/13: "Tracing employers' liability insurers" and publishes final rules. The rules and guidance come into force on 6 March 2011. All general insurers must notify the FSA by 6 April 2011 of their actual or potential liability for UK commercial line employers' liability cover, and where applicable, the internet address of the tracing office used or their own web page together with other contact details. Where applicable, insurers must set up their initial ELR (not necessarily with any policy information at this stage) dated 1 April 2011. Tracing information must be made available on ELRs for policies that on or after 1 April 2011 are entered into, renewed or for which claims are made. The information must

appear on the ELRs either on insurers' websites or through a qualifying tracing office no later than three months from the date of transaction. The Policy Statement contains transitional provisions.
http://www.fsa.gov.uk/pubs/policy/ps11_04.pdf

And you may be interested to know:

- **The Information Commissioner's Office has issued two more fines for breaches of the Data Protection Act caused by the use of unencrypted laptops.**

- Ealing Council was fined £80,000 after two laptops containing the details of around 1,700 individuals were stolen from an employee's home. The council provides an out of hours service for its own residents, and also those of Hounslow Council. The service is operated by nine staff who work from home. They receive contact from a variety of sources and rely on laptops to record information about individuals. Almost 1,000 of the individuals were clients of Ealing Council and almost 700 were clients of Hounslow Council. Both laptops were password protected but unencrypted – despite this being in breach of both councils' policies.
http://www.ico.gov.uk/~media/documents/library/data_protection/notices/ealing_council_monetary_penalty_notice.pdf
- Hounslow Council was fined £70,000 for failing to have a written contract in place with Ealing Council and for failing to monitor Ealing Council's procedures for operating the service securely.
http://www.ico.gov.uk/~media/documents/library/data_protection/notices/london_borough_of_hounslow_monetary_penalty_notice.pdf

This Client briefing does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

If you do not wish to receive further information from Clifford Chance about events or legal developments which we believe may be of interest to you, please either send an email to nomorecontact@cliffordchance.com or by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ.

www.cliffordchance.com

Clifford Chance LLP is a limited liability partnership registered in England and Wales under number OC323571.

Registered office: 10 Upper Bank Street, London, E14 5JJ

We use the word 'partner' to refer to a member of Clifford Chance LLP, or an employee or consultant with equivalent standing and qualifications.

Abu Dhabi ■ Amsterdam ■ Bangkok ■ Barcelona ■ Beijing ■ Brussels ■ Bucharest ■ Dubai ■ Düsseldorf ■ Frankfurt ■ Hong Kong ■ Kyiv ■ London ■ Luxembourg ■ Madrid ■ Milan ■ Moscow ■ Munich ■ New York ■ Paris ■ Prague ■ Riyadh* ■ Rome ■ São Paulo ■ Shanghai ■ Singapore ■ Tokyo ■ Warsaw ■ Washington, D.C.

* Clifford Chance also has a co-operation agreement with Al-Jadaan & Partners Law Firm in Riyadh.