

23 January 2012

At the FSA last week: - FSA issues fine of £2.17 million for deficiencies in files provided

The FSA has imposed a financial penalty of £2.17 million on UK Insurance Limited for a breach of Principle 2 (skill, care and diligence) of the FSA's Principles For Businesses. The breach related to responses to requests for the provision of files to the FSA during the course of ongoing routine supervision of complaints handling capabilities.

The action followed a detailed internal investigation by the firms concerned, which found that documents in some customer complaint files had been altered prior to being provided to the FSA. The FSA acknowledged that the amendments made were minor, did not result in any consumer detriment, and were made during the course of an exercise intended to ensure that the FSA received complete files.

Although the financial penalty is the first to be imposed on a firm under the FSA's five stage method for calculating penalties in force since 6 March 2010 (but only applicable in cases where the relevant conduct occurred on or after that date), the process for assessing the level of fine appears to have been no different from that which would have been followed under the previous regime.

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2012/003.shtml>

FSA begins distribution of monies to Bayshore boiler room fraud victims

Further to civil action concluded in 2009, the High Court has given permission to the FSA to distribute £260,608 recovered from individuals associated with Bayshore Nominees Limited, a company found to have been promoting shares without FSA authorisation, back to investors. This is estimated to represent approximately seven per cent of the monies they invested. The remainder is thought by the FSA to have been dissipated overseas.

<http://www.fsa.gov.uk/pages/consumers/information/scamsandswindles/latest/bayshore-boiler-room.shtml>

FSA changes rules and issues guidance on custody liens

Further to initial consultation in July 2011 (CP11/15 - http://www.fsa.gov.uk/pages/Library/Policy/CP/2011/11_15.shtml), the FSA has (through Policy Statement PS12/2) made amendments to provisions of its Client Assets Sourcebook ("CASS") relating to liens in custody agreements.

This consultation followed the implementation in October 2010 (through Policy Statement PS10/16 - http://www.fsa.gov.uk/pages/Library/Policy/Policy/Policy/2010/10_16.shtml) of

changes to client assets rules in the wake of the collapse of Lehman Brothers International (Europe) Limited, and subsequent industry feedback, which suggested that the rules on liens over omnibus accounts and assets held overseas would require significant changes to firms' business models. The rules in these areas have now been amended in response to the concerns raised.

The FSA has indicated that firms must ensure that any custody agreement they enter into on or after 1 April 2012 complies with the new rules and any custody agreement entered into before 1 April 2012 complies with these rules as soon as possible but no later than 30 September 2012.

http://www.fsa.gov.uk/pages/Library/Policy/Policy/2012/12_02.shtml

Key issues

- FSA issues fine of £2.17 million for deficiencies in files provided
- FSA begins distribution of monies to Bayshore boiler room fraud victims
- FSA changes rules and issues guidance on custody liens
- FSA agrees undertaking with National House Building Council
- Serious Fraud Office recovers dividend from shareholder of company convicted of bribery offences

FSA agrees undertaking with National House Building Council

The FSA has agreed an undertaking with the National House Building Council ("NHBC") in relation to the wording of its Buildmark policy. This follows a review by the FSA, which led it to challenge the term under the Unfair Terms in Consumer Contracts Regulations 1999. The policy has been changed by the inclusion of detailed technical information to enable consumers to better judge the circumstances in which they will be able to make a claim.

<http://www.fsa.gov.uk/pubs/other/undertaking-nhbc.pdf>

Further afield: Serious Fraud Office recovers dividend from shareholder of company convicted of bribery offences

The Serious Fraud Office ("SFO") has used civil recovery proceedings under Proceeds of Crime Act 2002 to recover £131,204 received as dividends from a shareholder of Mabey & Johnson Limited, a company convicted of corruption offences and breaches of sanctions in September 2009. The order, which was made by agreement with the shareholder concerned and following co-operation with the SFO, marks the first time that the SFO has sought to pursue the owners of a company for historic corruption offences.

For full details and analysis, see our briefing note at

http://www.cliffordchance.com/publicationviews/publications/2012/01/shareholders_carryfinancialriskforbribery.html

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