

# FSA Update

## Last week at the FSA: -

### Investment banker sentenced for insider dealing

On 13 December, **Thomas Ammann** was sentenced to 32 months' imprisonment following his conviction for two counts of insider dealing and two counts of encouraging insider dealing in November (see FSA Update – 19 November 2012). Confiscation and costs proceedings will follow.

He becomes the 21st individual to be jailed for insider dealing since the FSA's first prosecution of offences under the Criminal Justice Act 1993 in 2009. The FSA is currently prosecuting five other individuals for insider dealing.

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbFgNhLNomwBl%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZeytUa0UITjX2wHBQc9zqbsHp%0D%0A5mt12P8Wnx03DzsaBGwslB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=119263>

### Tribunal rules on directors' liability for PPI and mortgage sales failings

The Upper Tribunal has (on 10 December) imposed financial penalties of £50,000 and £10,000 respectively on **Christopher Ollerenshaw** and **Thomas Reeh**, the former Chairman and Chief Executive

of **Black and White Group Limited (in liquidation)** ("Black and White"), in respect of failings in relation to the sale of mortgages and payment protection insurance ("PPI"). The FSA had been seeking to fine them £100,000 and £50,000 (and indicated that it would have sought to fine them £250,000 and £170,000 respectively had they not provided evidence of serious financial hardship). The Tribunal upheld a prohibition order which the FSA had decided to impose on Mr Ollerenshaw but decided not to impose a prohibition order on Mr Reeh.

The Tribunal upheld the FSA's arguments that Mr Ollerenshaw and Mr Reeh breached Principles 1 (integrity) and 7 (significant influence functions: compliance by firm with regulatory requirements) of its Statements of Principle for Approved Persons ("APER"). It found that, although Black and White maintained a panel of over 20 lenders, they encouraged sales advisers to sell a particular lender's products without considering whether the products were suitable for customers. It also agreed with the FSA that Black and White placed undue pressure on sales advisers to sell PPI to customers, due in part to sales targets imposed by Mr Reeh which incentivised the sale of single premium policies over regular premium policies and did not take proper account of the suitability of policies for customers.

The FSA has indicated in a press release that it has banned **Adrian Childs**, the firm's previous Chief Operating Officer from "*holding a senior position in regulated financial*

*services*" and that he would have been fined £50,000 if he had not been declared bankrupt in 2009. Its press release states that action was taken against him "*because he did not understand, or take steps to understand, how to perform his role*".

The FSA has also indicated that it has imposed a public censure on Black and White for "*operating in a way that created a very high risk of unsuitable sales and customers not being treated fairly*".

Although the Upper Tribunal has released its lengthy judgment in respect of the references pursued by Mr Ollerenshaw and Mr Reeh, the FSA has not yet released Final

## Key issues

- Investment banker sentenced for insider dealing
- Tribunal rules on directors' liability for PPI and mortgage sales failings
- Tribunal rules on recusal of judge
- FSA imposes requirements on anti-money laundering and US sanctions compliance
- FSA imposes fines for mortgage lending and arrears processes
- PRA sets out its approach
- FSA writes to asset management firms on outsourcing
- FSA issues finalised guidance on the role of the asset pool monitor in regulated covered bond regime

Notices issued to them, Mr Childs or Black and White.

### Comment

The action follows a guidance consultation paper published in September 2012 in relation to the risks posed to consumers by incentive schemes for sales staff (see FSA Update – 10 September 2012). The consultation period ended on 31 October and the FSA is yet to release details of finalised guidance. At the time of the release of the guidance consultation paper Martin Wheatley stated the intention of the FSA and, after April 2013, the Financial Conduct Authority, to work together with firms to "*draw a line in the sand*" on mis-selling and treating customers fairly. This case is the latest in a line of enforcement cases which demonstrate to continuing to take robust action to safeguard consumers' interests in these areas.

<http://www.tribunals.gov.uk/financeandtax/Documents/decisions/christopher-ollerenshaw-thomas-reeh-v-fsa.pdf>

<http://www.fsa.gov.uk/static/pubs/guidance/gc12-11.pdf>

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbfGnhLNomwBI%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZe6w6dcZNMymf0khXMULlq4%2Fp%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=114487>

<http://www.fsa.gov.uk/library/communication/pr/2012/084.shtml>

### Tribunal rules on recusal of judge

In a judgment dated 7 December (released 10 December), the Upper Tribunal has rejected an application made by **Andrew Jeffery** for the

Tribunal Judge hearing his reference to recuse himself from the case. Mr Jeffery sought to argue that the fact that the Judge worked closely with, and shared an office with, another judge who previously acted as Chairman of the FSA's Regulatory Decisions Committee ("RDC") which issued the Decision Notice in his case gave rise to a real possibility of an appearance of bias.

The FSA, acting through the RDC, decided in July 2010 to impose a financial penalty of £150,000 and a prohibition order on Mr Jeffery for breaches of Principles 1 (integrity) and 4 (co-operation with regulators).

The Tribunal has now proceeded to hear Mr Jeffery's reference. It is estimated that hearings will continue for two weeks.

<http://www.tribunals.gov.uk/financeandtax/Documents/decisions/andrew-jeffery-recusal-decision.pdf>

### FSA imposes requirements on anti-money laundering and US sanctions compliance

Following action by US authorities, the FSA has (on 11 December) agreed a number of measures with **HSBC Holdings PLC** ("HSBC") in relation to compliance with anti-money laundering ("AML") and counter terrorism financing ("CTF") rules and US sanctions requirements.

As part of the undertaking given to the FSA, HSBC is required to establish a committee of the board and employ an independent monitor to oversee matters relating to AML, CTF, sanctions and proliferation financing, review relevant group policies and procedures and appoint an FSA

approved person as a group money laundering reporting officer ("MLRO").

<http://www.fsa.gov.uk/library/communication/pr/2012/111.shtml>

### FSA imposes fines for mortgage lending and arrears processes

The FSA has (in Final Notices dated 6 December, released on 10 December) imposed fines on **Cheshire Mortgage Corporation Limited** ("CMCL") and two of its directors.

The FSA has imposed a financial penalty of £1.225 million on CMCL for breaches of Principles 3 (management and control), 6 (treating customers fairly) and 7 (communications with clients) of the Principles for Businesses ("the Principles"). The action related to its processes and communications with customers in relation to loan applications and in relation to the treatment of customers in arrears. The FSA has acknowledged in the Final Notice issued to CMCL that it has been open and co-operative throughout its investigation, accepted the findings of a skilled person, committed to paying redress to customers who may have suffered loss, and has already voluntarily done so to some customers. It also acknowledges steps taken by CMCL to improve its lending and arrears handling processes.

The FSA has imposed a financial penalty of £70,000 on **Henry Moser**, the Chief Executive Officer of CMCL, for breaches of Principles 5 and 7 of the Statements of Principle and Code of Practice for Approved Persons ("APER") relating to the management of CMCL and particular directors.

The FSA has imposed a financial penalty of £13,500 on **Andrew**

**Lawton**, the former Compliance Director of CMCL, and has made a partial prohibition order against him. It found that he was knowingly concerned in breaches of 3, 6 and 7 by CMCL and that he failed to demonstrate competence and capability in his role.

The FSA acknowledged the full co-operation provided by both individuals during its investigations and their significant contributions to the implementation of positive wide-ranging changes to organisations, governance and compliance arrangements at CMCL from 2008 onwards.

The penalties imposed on CMCL and the two directors were reduced by 30 per cent as they settled at stage 1 of the FSA's executive settlement procedures.

<http://www.fsa.gov.uk/static/pubs/final/cmc-ltd.pdf>

<http://www.fsa.gov.uk/static/pubs/final/henry-moser.pdf>

<http://www.fsa.gov.uk/static/pubs/final/andrew-lawton.pdf>

## Other Final Notices

- The FSA has (on 11 December) cancelled the authorisation granted to **Afriexchange Limited** as an authorised payment institution under the Payment Services Regulations 2009 ("PSR 2009") for failure to submit regulatory returns.  
<http://www.fsa.gov.uk/static/pubs/final/afriexchange.pdf>
- The FSA has (on 11 December) cancelled the registration of **Mohammed Monuwar Ibrahim** as a small payment institution under PSR 2009 for failure to submit regulatory returns.

<http://www.fsa.gov.uk/static/pubs/final/mohammed-ibrahim.pdf>

- The FSA has (on 10 December) cancelled the Part IV permission of **Euro Mortgages Limited** for failure to submit regulatory returns.

<http://www.fsa.gov.uk/static/pubs/final/euro-mortgages.pdf>

## PRA sets out its approach

Andrew Bailey, who will lead the Prudential Regulation Authority ("PRA") from April 2013, has (on 13 December) released a paper discussing how the PRA proposes to achieve its objectives of promoting safety and soundness, avoiding harm resulting from disruption of continuity to the provision of financial services and ensuring the stability of the UK financial system.

It re-affirms the statements already released by the FSA and the Bank of England setting out the PRA's commitments to a judgement-based, forward-looking and focused approach to supervision, and adds detail to previous specific papers on its approach to banking and insurance regulation (see FSA Update – 23 October 2012) in relation to the areas in which the PRA expects to have to tackle particular risks. It also provides further detail on the proposed "Proactive Intervention Framework" which it intends to use to identify and respond to risks, and confirms its commitment to using its enforcement powers in (it expects, rare) cases where it considers it necessary to deter wrongdoing by a particular firm or the wider regulated community.

<http://www.bankofengland.co.uk/publications/Documents/quarterlybulletin/qb120405pre.pdf>

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=>

[OBWlBfGnNhLNomwBl%2B33QzdFhRQAhp8D%2BxrIGRel2crGgLnALtlyZe2c6Jjh2hRNsZwOl67krIQ3p%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=137242](http://www.bankofengland.co.uk/publications/Documents/other/pra/bankingappr1210.pdf)

<http://www.bankofengland.co.uk/publications/Documents/other/pra/bankingappr1210.pdf>

<http://www.bankofengland.co.uk/publications/Documents/other/pra/insuranceappr1210.pdf>

## Policy statements:

### ■ Packaged bank accounts

Following consultation in October 2011 (CP 11/20) and July 2012 (CP 12/17), the FSA has (on 14 December) issued a policy statement (PS 12/22) setting out changes to rules contained in the Insurance: Conduct of Business Sourcebook ("ICOBS").

[http://www.fsa.gov.uk/pubs/cp/cp11\\_20.pdf](http://www.fsa.gov.uk/pubs/cp/cp11_20.pdf)

<http://www.fsa.gov.uk/static/pubs/cp/cp12-17.pdf>

<http://www.fsa.gov.uk/static/pubs/policy/ps12-22.pdf>

### ■ Changes to client assets rules following EMIR

Following consultation in September 2012 (CP 12/22) on changes to the Client Assets Sourcebook ("CASS") required in order to accommodate the European Market Infrastructure Regulation ("EMIR"), the FSA has (on 14 December), issued a policy statement (PS 12/23) outlining changes to those rules. CP 12/22 was divided into three parts. This policy statement only deals with rule changes in CASS arising in connection with the implementation of EMIR, which were proposed in Part I of CP

12/22. Feedback on the other sections of CP 12/22 is still under consideration by the FSA.

<http://www.fsa.gov.uk/static/pubs/policy/ps12-23.pdf>

<http://www.fsa.gov.uk/library/policy/cp/2012/12-22.shtml>

### **FSA writes to asset management firms on outsourcing**

In a Dear CEO letter dated 11 December, the FSA's Director of Supervision, Clive Adamson, has written to the Chief Executive Officers of asset management firms to remind them of their obligations under the Senior Management Systems and Controls ("SYSC") section of its Handbook to exercise due skill, care and diligence when entering into, managing and/or terminating any outsourcing arrangement. The letter focuses on the contingency and exit arrangements which firms are required to have in place to seek to avoid disruption to firms' ability to carry out regulated activities in the event of the termination of outsourcing arrangements.

[http://www.fsa.gov.uk/static/pubs/ceo/review\\_outsourcing\\_asset\\_management.pdf](http://www.fsa.gov.uk/static/pubs/ceo/review_outsourcing_asset_management.pdf)

### **FSA issues finalised guidance on the role of the asset pool monitor in regulated covered bond regime**

Following consultation in July 2012, the FSA has (on 13 December) issued detailed finalised guidance setting out its interpretation of regulation 17A of the Regulated Covered Bond Regime, which deals with the role of the asset pool monitor. The proposed amendments have

been taken forward with only minor amendments.

<http://www.fsa.gov.uk/static/pubs/guidance/fg12-33.pdf>

## Authors



**Roger Best**  
Partner

T: +44 20 7006 1640  
E: roger.best  
@cliffordchance.com



**Matthew Newick**  
Partner

T: +44 20 7006 8942  
E: matthew.newick  
@cliffordchance.com



**Martin Saunders**  
Partner

T: +44 20 7006 8630  
E: martin.saunders  
@cliffordchance.com



**Carlos Conceicao**  
Partner

T: +44 20 7006 8281  
E: carlos.conceicao  
@cliffordchance.com



**Luke Tolaini**  
Partner

T: +44 20 7006 4666  
E: luke.tolaini  
@cliffordchance.com



**Chris Stott**  
Professional Support Lawyer

T: +44 20 7006 4231  
E: chris.stott  
@cliffordchance.com

This publication 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.

[www.cliffordchance.com](http://www.cliffordchance.com)

Clifford Chance, 10 Upper Bank Street, London, E14 5JJ  
© Clifford Chance LLP 2012

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

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](mailto:nomorecontact@cliffordchance.com) or by post at Clifford Chance LLP, 10 Upper Bank Street, Canary Wharf, London E14 5JJ

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

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