

This week at the UK regulators

Thirty second guide: The week in overview

The FCA has remained active on all fronts during the past week.

It has charged more individuals in connection with criminal investigations into alleged unauthorised business, and has progressed prosecutions against others. Last week also saw the first arrests for insider dealing and market abuse related offences since it assumed responsibility for investigating and prosecuting these offences.

It has taken strong regulatory enforcement action against individuals for failing to prevent a firm being used for the purposes of mortgage fraud and has concluded the first enforcement case relating to breaches of the Payment Services Regulations 2009.

It has been a week that has illustrated the breadth of the FCA's remit, and the flexible approach to which it has committed itself in tackling it. Statistics released by the FCA confirm that numbers of "skilled person" reports commissioned under section 166 of the Financial Services and Markets Act 2000 remain high and continue to be largely focused on the conduct of larger institutions. Meanwhile, through its well-publicised research on interest only mortgages, the FCA has illustrated the balance it is seeking to strike between taking proactive steps to ensure that firms treat customers fairly and encouraging customers to take responsibility for their own financial decisions.

Away from the financial regulators, last week saw confirmation of important developments in the UK which will allow financial institutions and other corporate organisations to settle criminal charges without being prosecuted.

Further afield, the Hong Kong Securities and Futures Commission, in a case resonating with some previous cases involving UK and US authorities in their jurisdictions, has successfully defended its right to seek freezing injunctions and other remedial orders in market misconduct cases, even where the firms concerned have not been convicted of offences.

FCA arrests and prosecutes more individuals

On 3 May, the FCA announced that it, working with the City of London Police, searched premises in London on 30 April under warrant. It confirmed that a man and a woman on 30 April were arrested in connection with an investigation into insider dealing and market abuse. It added that premises in Switzerland were also searched by the Swiss authorities in connection with the same investigation.

In a separate case, the FCA announced on 2 May that, on 29 April, **Mr Michael Lewis**, a former mortgage broker, appeared at Medway Magistrates' Court in connection with 13 counts of breaching the general prohibition under section 23 of the Financial Services and Markets Act 2000 (FSMA 2000) and three counts of assisting a fraud by false representation under section 2 of the Fraud Act 2006. Mr Lewis has been charged in connection with a joint investigation undertaken by the FSA and Kent Police. He was previously made the subject of a prohibition order

issued by the FSA in August 2011. Mr Lewis was committed to Maidstone Crown Court and the case will continue on a date to be fixed.

In another development, the FCA announced on 29 April that it has charged **Mr Alex Hope** and **Mr Raj Von Badlo** with a total of ten offences in connection with an unauthorised investment scheme which it alleges they promoted and operated. The charges follow arrests and searches by the FSA in April and May 2012.

<http://www.fca.org.uk/news/two-arrested-in-fca-insider-dealing-investigation>

<http://www.fca.org.uk/news/former-mortgage-broker-committed-to-crown-court-for-conducting-unauthorised-business>

<http://www.fca.org.uk/news/unauthorised-investment-scheme>

Firm censured in first regulatory action under Payment Services Regulations

The FCA has (on 30 April) imposed a public censure on **Horn Express Limited (formerly Qaran Express Money Transfer Limited)** (QEMTL) for breaches of regulation 19 of the Payment Services Regulations 2009 (PSRs), which relates to the arrangements which payment services institutions must have in place to safeguard and segregate customers' funds.

Specifically, the FCA found failures to place customers' funds in a separate designated bank account, to properly record or reconcile customers' funds or to oversee adequately its international or UK agents or branches.

The FCA has indicated in the Final Notice issued to QEMTL that it would have imposed a financial penalty of £95,400 (after discount for settlement at stage one of its executive settlement procedures) had QEMTL not been able to demonstrate that it would have caused serious financial hardship.

The action is the first time a payment services institution has been subjected to a regulatory penalty for breaches of the PSRs since they came into force in November 2009.

<http://www.fca.org.uk/your-fca/documents/final-notices/horn-express>

Mortgage firm directors disciplined for integrity and competence breaches

In final notices dated 29 April, the FCA has taken action against **Mr Douglas Jones** and **Mr Derek Jones**, who formerly acted as Chief Executive and director respectively of Which Mortgage, based in Glasgow. Both also acted as mortgage advisers between March 2010 and October 2011.

During this period, the FCA found that they failed to act with due skill care and diligence to ensure that **Which Mortgage** had appropriate controls to verify information submitted by customers. It found that these failures led to the firm being used to facilitate financial crime by submitting false payslips to lenders. It also found that Mr Douglas Jones dishonestly altered customer files when concerns were raised by lenders in order to seek to mislead the FSA as to the controls in place at Which Mortgage at the time when particular applications were made to those lenders.

The FCA imposed a financial penalty of £13,300 on Mr Douglas Jones for breaching principles 1 (integrity) and 6 (controlled functions: due skill, care and diligence) of its Statements of Principle and Code of Practice for Approved Persons (APER). It found that Mr Derek Jones breached

principle 6 of APER for his part in failing to ensure that the firm had appropriate controls in place. It would have imposed a financial penalty of £11,200 on him had he not been able to demonstrate that it would cause him serious financial hardship. The FCA has withdrawn both men's approval to perform controlled functions. Both were made the subject of prohibition orders banning them from performing any significant influence functions in future.

<http://www.fca.org.uk/your-fca/documents/final-notices/douglas-jones>

<http://www.fca.org.uk/your-fca/documents/final-notices/derek-jones>

Numbers of skilled person reports remain high

The FCA has (on 2 May) released details of the numbers of skilled person reports commissioned by the FSA under section 166 of FSMA during the 2012/2013 financial year.

The statistics show that a total of 113 reports were commissioned during the year. The highest proportion of these (46 per cent) related to banks.

This total represents a small rise from the total of 111 during the previous financial year. Both the FCA and the PRA are able to instruct skilled persons in connection with a wide range of their supervisory and enforcement functions. The FCA in particular has made clear its continuing commitment to the flexible use of powers under section 166 of FSMA. The most recent publicised example of this has been through their use as part of the consumer redress schemes agreed between the FSA and a number of institutions in relation to the historic misselling of interest rate hedging products.

<http://www.fca.org.uk/your-fca/documents/fsa-q1-1213>

<http://www.fca.org.uk/your-fca/documents/fsa-q2-1213>

<http://www.fca.org.uk/your-fca/documents/fsa-q3-1213>

<http://www.fca.org.uk/your-fca/documents/fsa-q4-1213>

FCA warns on repayment of interest only mortgages

The FCA has (on 2 May) published research commissioned by it suggesting that up to ten per cent of home owners with interest only mortgages (approximately 230,000) have no strategy in place to repay the capital amount owing at the end of the term of the mortgage.

It has released a guidance consultation paper at the same time, which sets out details of its expectations about the

types of measures which firms should have in place to ensure that they treat customers fairly under principle 6 of its Principles for Businesses and rules set out in the Senior Management Systems and Controls section of its Handbook (SYSC). Full details are set out in the policy development summary table below.

This proposed guidance is aimed at firms. However, in a move which illustrates its proactive approach to consumer protection issues, it partnered the release of the research and guidance for firms with reminders to consumers of the importance of taking steps to put in place strategies to ensure that they can repay the capital owing at the end of the term of their mortgage.

This approach is the latest indication of the balance which the FCA is seeking to strike between ensuring that firms treat their customers fairly and encouraging consumers to take responsibility for their own financial decisions.

<http://www.fca.org.uk/news/borrowers-interest-only-mortgage>

<http://www.fca.org.uk/your-fca/documents/research/interest-only-mortgages-gfk>

<http://www.fca.org.uk/your-fca/documents/research/residential-interest-only-mortgages>

Updating disclosures to reflect the creation of the FCA and PRA

The FCA has (on 1 May) reminded firms of their obligations to update documents and other disclosures to reflect the fact that the FSA has now been replaced by the FCA and PRA.

In some areas of regulation, there is a transitional period during which firms can run down old stock referring to the FSA. However, in other areas, specifically those emanating from European obligations, such as rules and regulations contained in the Conduct of Business Sourcebook and the PSRs, firms are required to make changes immediately if they have not done so already.

The FCA has stated that it recognises that it will not have been possible to have made changes immediately when the FSA transferred its functions to the FCA and PRA on 1

April 2013, but that it expects all firms to have in place measures to make appropriate changes at the earliest practicable opportunity.

<http://www.fca.org.uk/news/firms/updates-disclosures-to-reflect-the-creation-of-fca-pra>

FCA warnings

Name of firm	Date of warning	Details
Independent Carbon (IDC)	3 May	Not authorised http://www.fca.org.uk/news/warnings/independent-carbon-idc
John Fletcher Financial Management Limited	3 May	Not authorised http://www.fca.org.uk/news/warnings/john-fletcher-financial-management
SFVA Finance	2 May	Clone of FCA EEA authorised firm http://www.fca.org.uk/news/warnings/risk-portfolio-management
Empire Global Group LLC/EG International	2 May	Not authorised http://www.fca.org.uk/news/warnings/empire-global-group

Astorg Partners	2 May	Clone of FCA EEA authorised firm http://www.fca.org.uk/news/warnings/astorg-partners-clone
Benefit Planners Intl	2 May	Clone of former FCA EEA authorised firm http://www.fca.org.uk/news/warnings/benefit-planners-intl-clone
NetoTrade UK Limited and NetoTrade Global Investments Limited	2 May	Not authorised http://www.fca.org.uk/news/warnings/netotrade-uk
Apollo Financial Management	2 May	Not authorised http://www.fca.org.uk/news/warnings/apollo-financial-management
DeVere & Partners UK Limited/DeVere Limited	1 May	Clone of FCA authorised firm http://www.fca.org.uk/news/warnings/devere-partners
Corestone Distributors	1 May	Clone of a FINRA-registered broker-dealer http://www.fca.org.uk/news/warnings/corestone-distributors
Hayes Associates	1 May	Not authorised http://www.fca.org.uk/news/warnings/hayes-associates
Emerald Securities	30 April	Not authorised http://www.fca.org.uk/news/warnings/emerald-securities

Policy developments

FCA		PRA	
Proposed developments			
		Deadline for responses	
Guidance consultation	On 2 May, the FCA released a paper (GC13/2) setting out its expectations as to how they	3 June	

	<p>should deal fairly with interest only customers who risk being unable to repay their loan</p> <p>http://www.fca.org.uk/static/documents/guidance-consultations/gc13-02.pdf</p>			
Discussion papers	<p>On 3 May, the FCA published responses to the FSA's discussion paper on transparency (DP13/1), originally published on 5 March 2013.</p> <p>http://www.fca.org.uk/your-fca/documents/discussion-papers/fsa-dp131-responses</p> <p>http://www.fca.org.uk/news/discussion-papers/fsa-dp13-01-fca-transparency</p> <p>It has indicated that it will issue a full feedback statement in June 2013 and a further update later in 2013 evaluating progress and setting out its proposed next steps.</p>	N/A		

Further afield

Hong Kong's highest Court upholds regulator's power to freeze hedge fund's assets

In a landmark ruling on 30th April 2013, Hong Kong's Court of Final Appeal (CFA) dismissed **Tiger Asia Management LLC's** (Tiger Asia) appeal brought against the Hong Kong Securities & Futures Commission (SFC), in which Tiger Asia, an off-shore hedge fund based in New York, had sought to challenge the market regulator's power to seek final freezing orders against some of Tiger Asia's assets in the jurisdiction, without Tiger Asia or its executives ever having been convicted of an offence of insider dealing or market misconduct in Hong Kong for its alleged dealings in shares of the Bank of China Limited and the China Construction Bank Corporation Limited during 2009. The CFA ruling, which upholds an earlier Court of Appeal ruling

in the SFC's favour, means that the SFC does have authority to seek remedial orders and injunctions against Tiger Asia without a criminal conviction or civil misconduct offence having been recorded, and to ban Tiger Asia from trading in Hong Kong, by invoking section 213 of the Securities & Futures Ordinance - paving the way for the SFC to pursue compensatory claims on behalf of investors.

<http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=13PR41>

Deferred prosecution agreements move one step closer to reality in the UK

On 25 April, the Crime and Courts Act 2013 (the Act) received Royal Assent in the UK. Amongst the changes in the Act is the introduction of deferred prosecution agreements (DPAs) in the UK, which will enable corporate organisations to settle criminal investigations without being prosecuted. DPAs have long been a feature of the US enforcement landscape, and have been used to conclude a

number of high profile investigations involving financial services institutions. DPAs, when they are introduced (which is estimated to be in early 2014), will not be available to the FCA. However, they will cover a number of offences relevant to the operations of financial services institutions in the UK and abroad, and there is scope, in

due course, for the FCA to be added to the list of designated prosecutors who may use them.

A full Clifford Chance briefing is being prepared and will be sent separately.

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
Lawyer

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

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www.cliffordchance.com

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