

This week at the UK regulators

Thirty second guide: The week in overview

The Easter period has been relatively quiet at the regulators, with the only significant enforcement development being action concluded against several financial advisers for failings in relation to the suitability of investment recommendations. Although no financial penalties have been imposed, the action provides an example of an increasingly pragmatic approach to enforcement being taken by the FCA, with a requirement for amounts which would otherwise have been ordered to be paid as financial penalties to instead be remitted to the Financial Services Compensation Scheme.

In the latest of a series of cases concerning the meaning of "collective investment scheme", the Court of Appeal has endorsed the FCA's view that a land banking scheme fell on the wrong side of the dividing line. The FCA has not yet secured the return of funds to investors though, as the point may yet fall to be considered by the Supreme Court.

Away from enforcement action, the past week has been marked by new appointments, with a new Complaints Commissioner taking up his post and announcements that new advisers on competition and investment banking have been recruited to the FCA's ranks. It has also been a week of expansion for the rule book, with new rules relating to affordability of mortgages finally entering into force, and an announcement that the long awaited revised Listing Rules remain on course to do so in several weeks time. The FCA has also continued its campaign on fairness towards consumers, issuing a call for an end to the use of premium rate telephone lines.

FCA bans SIPP firm directors for suitability failings

The FCA has (on 17 April) imposed prohibition orders on **Mr Andrew Rees** and **Mr Timothy Hughes**, partners in **1 Stop Financial Services**, a firm which has now ceased trading and applied to the FCA to cancel its permissions. The FCA found that Messrs Rees and Hughes breached Principle 7 (compliance by firm with regulatory requirements) of its Statements of Principle and Code of Practice for Approved Persons by advising customers to invest in unregulated investments without assessing their suitability. It also found that they failed to adequately disclose a conflict of interest in relation to commission payments.

The FCA's final notices indicate that it would have fined Messrs Rees and Hughes a total of £490,100, but that it has instead agreed that this sum should be paid to the Financial Services Compensation Scheme ("FSCS"), which is investigating claims that redress may be due to customers. Messrs Rees and Hughes will be writing to all customers to inform them of the action taken and the investigation currently being undertaken by the FSCS.

<http://www.fca.org.uk/static/documents/final-notices/andrew-charles-rees.pdf>

<http://www.fca.org.uk/static/documents/final-notices/timothy-adrian-hughes.pdf>

Court of Appeal rejects land bank firm's appeal

Following a judgment handed down by the High Court in February 2013 (see FSA Update, 18 February 2013), the Court of Appeal has (on 14 April) dismissed an appeal pursued by **David Banner-Eve** and **Asset Land L.I.** The Court upheld the previous decision that the scheme operated by Mr Banner-Eve, Asset Land L.I. and others amounted to a collective investment scheme. An order requiring the payment of £21 million to the FCA for redistribution to investors, sought by the FSA following the initial judgment in February 2013 and stayed pending the outcome of this appeal will, for the time being, remain stayed until the period within which Mr Banner-Eve and/or Asset Land L.I. may appeal to the Supreme Court has elapsed. The FCA has indicated that investors are unlikely to receive the full amount they paid into the scheme.

<http://www.fca.org.uk/news/firms/land-bank-firm-shut-down-by-the-fca-has-appeal-rejected>

<http://www.fsa.gov.uk/library/communication/pr/2013/012.shtml>

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbfGnlhLNomwBI%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZe%2FE2k50cRDezuCQfe4ARxc7p%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=136950>

FCA calls on firms to stop using premium rate telephone lines

The FCA has released details of its concerns about the continued use by some firms of premium rate telephone lines, which cost consumers seeking to contact financial services institutions more than basic telephone numbers. In a letter to the consumer organisation Which?, dated 7 February and released on 14 April, Martin Wheatley, CEO of the FCA committed to consulting on proposals to make calls more affordable. The FCA has indicated that the consultation, expected to be released later this year, will also cover banks' complaints handling systems, and will respond directly to some of the recommendations made by the Parliamentary Commission on Banking Standards in this regard.

<http://www.fca.org.uk/static/documents/premium-phone-lines-which-letter.pdf>

New mortgage rules come into force

As has been widely reported in the press this week, new rules derived from the FSA's mortgage market review entered into force on 25 April. The focus of the new rules is on affordability. They include provisions preventing the use of self-certification and incorporate requirements for lenders to complete more detailed checks on the income and outgoings of prospective borrowers.

<http://www.fca.org.uk/news/press-releases/new-mortgage-rules-come-into-force>

FCA confirms go-live date for new listing rules

Further to consultation papers released by the FSA in January and October 2012 and the FCA in November 2013, the FCA has (on 17 April) confirmed that the amended version of the Listing Rules will be considered by the FCA board on 1 May, and are due to be implemented

on 16 May. See This week at the UK regulators (11 November 2013) for further details of the changes.

<http://www.fca.org.uk/static/documents/consultation-papers/cp13-15.pdf>

http://www.fsa.gov.uk/static/FsaWeb/Shared/Documents/pubs/cp/cp12_02.pdf

<http://www.fsa.gov.uk/static/pubs/cp/cp12-25.pdf>

<https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbfGnlhLNomwBI%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZe%2BUMSgZvTrLVlF1aekBZQynp%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=118335>

New Complaints Commissioner appointed

The Bank of England and the FCA have (on 25 April) announced the appointment of Antony Townsend as the independent Complaints Commissioner overseeing the exercise of their functions. Mr Townsend, formerly the Chief Executive of the Solicitors Regulation Authority, will take over the role from the current Complaints Commissioner, Sir Anthony Holland, whose term comes to an end on 30 April.

<http://www.fca.org.uk/news/press-releases/antony-townsend-new-complaints-commissioner>

FCA appoints new competition and investment banking advisers

The FCA has (on 23 April) confirmed the appointment of David Saunders and Gunner Burkhardt as senior advisers. Mr Saunders is the former Chief Executive of the Competition Commission and Mr Burkhardt has extensive experience of investment banking relationship management in a number of large organisations.

<http://www.fca.org.uk/news/press-releases/fca-appoints-two-new-senior-advisers>

FCA warnings

Name of firm	Date of warning	Details
ING Bank N.V	25 April 2014	Clone firm http://www.fca.org.uk/news/warnings/ing-bank-nv-clone
Dirkmartens Brokers	25 April 2014	Clone firm http://www.fca.org.uk/news/warnings/dirkmartens-brokers-clone
Ok-Loans Limited	24 April 2014	Not authorised http://www.fca.org.uk/news/warnings/ok-loans-limited
Business Finance World	24 April 2014	Not authorised http://www.fca.org.uk/news/warnings/business-finance-world-cc
Lloyd & Mitchell Partners	24 April 2014	Not authorised http://www.fca.org.uk/news/warnings/lloyd-mitchell-partners
Cash Pals	24 April 2014	Not authorised http://www.fca.org.uk/news/warnings/cash-pals-cc
MN Financial Services Ltd	23 April 2014	Clone firm http://www.fca.org.uk/news/warnings/mn-financial-services-ltd-clone
Fortis Commercial Finance	17 April 2014	Clone firm http://www.fca.org.uk/news/warnings/fortis-commercial-finance-clone
Dewcrest Insurance	17 April 2014	Clone firm http://www.fca.org.uk/news/warnings/dewcrest-insurance-clone
Omega Capital Group	16 April 2014	Not authorised http://www.fca.org.uk/news/warnings/omega-capital-group
United Kingdom Tax	16 April 2014	Clone firm

Agency		http://www.fca.org.uk/news/warnings/united-kingdom-tax-agency-clone
LSE Wealth Management / LE Management	15 April 2014	Not authorised http://www.fca.org.uk/news/warnings/lse-wealth-management
Frenson Capital Limited t/a Light Loans	15 April 2014	Not authorised http://www.fca.org.uk/news/warnings/frenson-capital-limited-ta-light-loans-cc
LSE Acquisitions	17 April 2014	Not authorised http://www.fca.org.uk/news/warnings/lse-acquisitions
AXA Investment Managers	17 April 2014	Clone firm http://www.fca.org.uk/news/warnings/axa-investment-managers-clone

New partners

We are pleased to announce that 21 new partners have been elected to join the partnership, with effect from 1 May 2014. Two of these partners, Matthew Scully and Judith Seddon are in the London Litigation and Dispute Resolution (L&DR) practice bringing the total number of London L&DR partners to 26.

Matthew has over 10 years' experience in relation to financial services disputes and regulatory investigations, fraud and asset tracing, corporate litigation and antitrust litigation work and has also worked closely with our Moscow office in relation to disputes with a Russian element. Matthew has also acted for clients involved in overseas disputes, including assisting a client involved in proceedings in the Paris Commercial Court and working with overseas lawyers in relation to a regulatory investigation by an overseas regulator.

Judith has almost 20 years' experience in all areas of national and international business crime, fraud, corruption, bribery and regulatory enforcement investigations, during which time she has advised corporates and individuals facing investigation and criminal prosecution, and is a valuable addition to our investigation and defence capability. Having spent almost 15 years (6 of which as a partner) in a prominent criminal law practice before joining Clifford Chance in 2008, Judith has deep first-hand expertise in criminal law and procedural issues. Throughout her career, Judith has worked on some of the largest and most high-profile investigations and prosecutions brought by agencies including the SFO, CPS and FCA.

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