

This week at the UK regulators

Thirty second guide: The week in overview

The past week has seen the reinforcement of key messages by the FCA. Action for integrity failings against a trader who worked alongside Kweku Adoboli underlined the importance it attaches to individual accountability and proactive reporting of wrongdoing. A substantial financial penalty imposed for investment management failings provided one of the clearest illustrations to date of the inflationary effect of the penalty calculation rules applying to conduct occurring after March 2010, and of the FCA's readiness to use the flexibility given to it by the ability to use "relevant revenue" as the starting point for penalties to send a deterrence message, even where losses to investors have been relatively limited. It has also provided a further demonstration, if it were needed, of its strategy of combining enforcement action with clear statements of its policy and expectations, issuing a warning to firms involved in the provision of Self-Invested Personal Pensions.

The FCA suffered a setback in the criminal courts with the staying of criminal proceedings against five individuals for alleged illegal land banking activities, although it has indicated its intentions to pursue leave to appeal. In other news, the FCA has released details of the protocol and the updated terms of reference governing the independent inquiry into the handling of its announcement of supervisory work concerning long standing life insurance customers.

FCA bans individual for failure to report Adoboli trading activities

The FCA has (on 1 May) imposed a prohibition order on **Mr John Hughes**, a trader who worked alongside Kweku Adoboli, who was jailed for seven years in 2012 for offences under the Fraud Act 2006 in connection with trading losses. The FCA found that his failures to report mechanisms used by Adoboli as part of his unauthorised trading to manipulate reported profit and loss amounted to dishonesty and demonstrated a lack of fitness and propriety.

<http://www.fca.org.uk/your-fca/documents/final-notices/2014/john-christopher-hughes>

FCA takes action for investment management failings

The FCA has (in a Final Notice dated 24 April, released on 28 April), imposed a financial penalty of £18.643 million on **Invesco Asset Management Limited and Invesco Fund Management Limited** (together "Invesco") for breaches of Principles 3 (management and control) and 7 (communications with clients) of its Principles for Businesses and specific rules contained in the Collective Investment Schemes ("COLL") section of its Handbook. Specifically, it found, in some cases between May 2008 and November 2012, breaches of investment limits, insufficient disclosure to investors about risks where leverage was

introduced into funds and shortcomings in relation to controls aimed at accurate valuation and fair allocation of trades between funds.

The FCA has recognised that where losses occurred (which amounted to £5.3 million), Invesco has already compensated the relevant funds and that it has co-operated fully throughout the FCA's investigation. The financial penalty, imposed under a combination of the pre-March 2010 rules contained in chapter 6.5 of the FCA's Decision Procedure and Penalties manual ("DEPP") and the more prescriptive five stage calculation methodology contained in chapter 6.5A of DEPP in respect of conduct after that date, was reduced by 30 per cent as Invesco agreed to settle at an early stage of the FCA's investigation. The process by which the penalty was calculated in this case is one of the clearest illustrations of the inflationary effect of the new rules since they entered into force in March 2010. In particular, the impact of the use of "relevant revenue" as the starting point for the calculation of penalties is clearly illustrated by the disparity between the size of the pre- and post-March 2010 constituent elements of the penalty imposed.

<http://www.fca.org.uk/your-fca/documents/final-notices/2014/invesco-asset-management-limited>

Land banking trial collapses

The trial of five individuals being prosecuted by the FCA for offences in connection with alleged unauthorised land banking has (on 1 May) collapsed after HH Judge Leonard ruled that extreme difficulties encountered by them in obtaining legal aid funding rendered a fair trial impossible. The indictments against them were stayed following applications that the trial amounted to an abuse of process in circumstances where rules relating to public funding effectively prevented them from being represented in the proceedings. The case may have important implications for others where individuals who are unable to fund their defence privately are prosecuted by the FCA and other criminal enforcement authorities. The FCA has indicated in a short statement that it will be seeking leave to appeal.

<http://www.fca.org.uk/news/firms/fca-statement-on-r-v-crawley-others>

<http://www.judiciary.gov.uk/Resources/JCO/Documents/Judgments/r-v-crawley-others.pdf>

FCA independent directors publish protocol and updated terms of reference for life insurance inquiry

Further to the appointment of Simon Davis of Clifford Chance on 8 April to undertake an independent inquiry into the handling of the FCA's announcement of proposed supervisory work on the fair treatment of long standing customers in life insurance (see This week at the UK regulators, 14 April 2014), and following discussions with the Chairman of the Treasury Select Committee, the FCA independent directors have (on 2 May) published the protocol and the updated terms of reference governing the inquiry.

<http://www.fca.org.uk/your-fca/documents/inquiry-protocol>

[https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbFgNhLNomwBI%2B33QzdFhRQAhp](https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbFgNhLNomwBI%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZe5oudc3Y96SWkOTQBZOd3TLp%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3a3xHNE7tFeHpEbaelf&attachmentsize=129721)

[8D%2BxrlGRel2crGqLnALtlyZe0WS5WfBkThmbfbUta94swHp%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3xHNE7tFeHpEbaelf&attachmentsize=161342](http://www.fca.org.uk/your-fca/documents/inquiry-terms-of-reference)

<http://www.fca.org.uk/your-fca/documents/inquiry-terms-of-reference>

FCA issues further warning on SIPPs

Further to an initial alert issued by the FSA on 18 January 2013, the FCA has (on 28 April) released a further reminder to firms giving advice on Self-Invested Personal Pensions (SIPPs) about their obligations and the FCA's policy. The alert does not add any rules or formal guidance to the provisions of the FCA's Handbook, but does draw firms' attention to the FCA's concerns that advice to invest in non-mainstream propositions will not normally be a suitable option for the majority of retail investors. This latest example of the FCA's use of non-binding public statements in combination with enforcement action in support of its increasingly interventionist consumer protection agenda follows further supervisory work and the recent conclusion of enforcement action against two former partners in a SIPP firm (see This week at the UK regulators, 28 April 2014). The statement released by the FCA refers specifically to firms' obligations under Principles 1 (integrity), 2 (skill, care and diligence) and 6 (customers' interests), and it appears likely that failure to heed the warnings contained in the statement would be likely to be treated by the FCA as an aggravating feature in any future action against SIPP firms.

http://www.fsa.gov.uk/smallfirms/your_firm_type/financial/pdf/alert-pension-transfers.pdf

<http://www.fca.org.uk/news/sipps-further-alert>

[https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbFgNhLNomwBI%2B33QzdFhRQAhp](https://onlineservices.cliffordchance.com/online/freeDownload.action?key=OBWlbFgNhLNomwBI%2B33QzdFhRQAhp8D%2BxrlGRel2crGqLnALtlyZe5oudc3Y96SWkOTQBZOd3TLp%0D%0A5mt12P8Wnx03DzsaBGwsIB3EVF8XihbSpJa3a3xHNE7tFeHpEbaelf&attachmentsize=129721)

FCA warnings

Name of firm	Date of warning	Details
Krono Partners plc	2 May 2014	Not authorised http://www.fca.org.uk/news/warnings/krono-partners-plc
Skylade Insurance Services	2 May 2014	Not authorised http://www.fca.org.uk/news/warnings/skylade-insurance-services
Profit Hunters	1 May 2014	Not authorised http://www.fca.org.uk/news/warnings/profit-hunters
Euro Solution Ltd	30 April 2014	Not authorised http://www.fca.org.uk/news/warnings/euro-solution-ltd
State Street Global Markets International Limited	28 April 2014	Clone firm http://www.fca.org.uk/news/warnings/state-street-global-markets-international-limited-clone

Further Afield

HM Treasury announces review of FCA and PRA enforcement

HM Treasury has (on 6 May) announced a review of FCA and PRA enforcement processes. The wide-ranging review will examine the arrangements from the point when cases are referred to the FCA's and PRA's respective enforcement divisions, aims to ascertain whether current mechanisms provide the "credible deterrence" the regulators aim for and whether they balance the need for robust enforcement with fairness, transparency and proportionality. Particular areas of focus will be the interface between supervision and enforcement activities, approaches adopted to ensure co-ordination of investigations, arrangements for subjects of investigations to understand the case against them and to make representations, settlement processes, the degree of separation of investigatory and decision-making processes

and the mechanisms by which disciplinary decisions are made by FCA and PRA committees. The way in which the regulators' processes interact with those of the Upper Tribunal will also be examined. The call for evidence published by HM Treasury specifically acknowledges previously vented concerns at a perceived lack of independence in the way in which enforcement decisions are made and in particular the operation of the FCA's Regulatory Decisions Committee, concerns in relation to which have been raised most recently in the report of the Parliamentary Commission on Banking Standards.

The paper published by HM Treasury calls for evidence from firms and others with an interest in the way in which FCA and PRA enforcement processes work and indicates that the Treasury review team proposes to hold round table

discussions in London during June. It also indicates that a public consultation will follow and that a report will be provided to the Chancellor of the Exchequer in autumn 2014.

<https://www.gov.uk/government/consultations/review-of-enforcement-decision-making-at-the-financial-services-regulators-call-for-evidence/review-of-enforcement-decision-making-at-the-financial-services-regulators-call-for-evidence>

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