

# This week at the UK regulators

## Thirty second guide: The week in overview

UK enforcement activity last week was limited to the PRA's first enforcement action against individuals, a decision by the FCA not to revoke a five-year-old prohibition order imposed on an individual who was found not to be a fit and proper person to perform an authorised function and the release of details of a Warning Notice issued to an individual in relation to pension advice failings.

The Upper Tribunal found that a former senior trader was not identified in Decision Notices issued to two banks in respect of findings of breaches of provisions relating to their risk management systems and controls in connection with G10 spot FX voice trading.

In policy developments, the FCA requested feedback on its proposals to implement the Mortgage Credit Directive. The PRA requested feedback on its proposal for the introduction of a new rule on buy-outs of variable remuneration.

The FCA also published numerous responses to Freedom of Information Act requests, including in connection with its decision not to pursue its thematic review of bank culture, and published its memorandum of understanding with the Competition and Markets Authority in respect of consumer protection matters.

Further afield, the US Securities and Exchange Commission announced its examination priorities for 2016 and the President of BaFin discussed the reorganisation of Germany's Federal Financial Supervisory Authority.

## PRA concludes first enforcement action against individuals

The PRA has (on 15 January) imposed financial penalties totalling over £260,000 on Mr Barry Tootell and Mr Keith Alderson, formerly CEO and Managing Director of the Corporate and Business Banking Division of the Co-operative Bank ("Co-op Bank") respectively and has imposed partial prohibition orders on them both for breaches related to the running of Co-op Bank.

The PRA fined Mr Tootell £173,802 and imposed a partial prohibition order on him based on findings that he breached Principle 6 (due skill, care and diligence) of the Statements of Principle for Approved Persons ("APER") and was knowingly concerned in breaches by Co-op Bank of Principle 3 (management and control) of the Principles for Businesses ("the Principles") between January 2009 and May 2013. The PRA made a number of findings against him relating to Co-op Bank's risk management.

The PRA fined Mr Alderson £88,890 and imposed a partial prohibition order on him based on findings that he also breached Principle 6 of APER and was knowingly concerned in breaches of Principle 3 of the Principles between August 2009 and May 2013. The PRA made a number of findings against him relating to the management of risk and impairments in Co-op Bank's corporate loan

book.

The PRA did not maintain that either individual lacked integrity or acted dishonestly. The financial penalties imposed were reduced by 30 per cent as they both settled with the PRA at an early stage of its investigation.

<http://www.bankofengland.co.uk/pr/Documents/supervision/enforcementnotices/en150116a.pdf>

<http://www.bankofengland.co.uk/pr/Documents/supervision/enforcementnotices/en150116b.pdf>

## Upper Tribunal rules former senior trader not prejudiced by FX decision notices

The Upper Tribunal has (on 14 January) ruled that Mr Christopher Ashton, a former senior trader, was not identified in Decision Notices issued to two banks in respect of findings of breaches relating to their risk management systems and controls in connection with G10 spot FX voice trading. Applying the test formulated by the Court of Appeal last year in *Financial Conduct Authority v Macris*, the FCA dismissed Mr Ashton's challenges pursued under section 393 of the Financial Services and Markets Act 2000, concluding that the words in those notices referring to him would not "*reasonably in the circumstances lead persons acquainted with him professionally, or who operate in his area of the financial services industry, to believe as at the*

*date of the promulgation of the respective notices that he is a person prejudicially affected by matters stated in any of the reasons contained in those notices".*

<http://www.tribunals.gov.uk/financeandtax/Documents/decisions/Christopher-Ashton-v-FCA-prelim-decision.pdf>

## **FCA refuses application to revoke prohibition order**

The FCA has (on 12 January) published a Final Notice refusing an application by Mr Mark Thorogood to revoke the FCA's prohibition order imposed on him on 7 December 2010. The FCA's original Final Notice on 7 December 2010 determined that Mr Thorogood was not a fit and proper person to perform any function in relation to any regulated activity carried on by any authorised person, exempt person or any exempt professional firm, by reason of a lack of integrity and competence. The FCA's determination was based on its finding that, acting in his capacity as sole trader between October 2004 and May 2008 as Property Park, an independent mortgage advisory firm, Mr Thorogood knowingly submitted fraudulent mortgage applications, failed to retain adequate records to demonstrate the suitability of a recommendation given to a customer and failed to implement adequate systems and controls to ensure suitable mortgage advice, adequate staff supervision and that Property Park was not used as a vehicle for financial crime.

The FCA refused Mr Thorogood's application to revoke the prohibition order because it determined that the behaviour giving rise to the prohibition order was serious, that Mr Thorogood had neither accepted that his behaviour was wrong nor provided any evidence which suggests he remedied the lack of fitness and propriety that led to the prohibition being imposed and that Mr Thorogood had not demonstrated that he would not continue to pose a risk to consumers or to confidence in, or the integrity of, the financial system, were the prohibition order to be revoked.

<http://www.fca.org.uk/static/fca/documents/final-notices/mark-thorogood.pdf>

[http://www.fca.org.uk/static/pubs/final/mark\\_thorogood.pdf](http://www.fca.org.uk/static/pubs/final/mark_thorogood.pdf)

## **FCA publishes details of Warning Notice on alleged pension advice failings**

The FCA has (on 11 January) published details of a Warning Notice issued on 7 December 2015 to an individual holding the CF1 (Director) and CF3 (Chief Executive) functions at a firm in connection with its proposal to take action against him or her. The proposed action is

based on its view that he or she breaches Principle 7 (compliance by firm with regulatory requirements) of APER by failing to ensure that communications in relation to transfers into self-invested personal pension schemes ("SIPPs") were clear, fair and not misleading, that customers received adequate recommendations and were treated fairly and that regulatory requirements relating to conflicts of interest were complied with. The FCA has not released any further details of the proposed action at this stage.

<http://www.fca.org.uk/static/documents/warning-notice-statements/warning-notice-statement-16-1-individual.pdf>

## **FCA publishes responses to FOI requests**

The FCA has (on 11 January) published several responses to requests made of the FCA under the Freedom of Information Act 2000. In addition to the FCA's response on 11 January 2016 to a request about the circumstances and timing of its decision not to pursue its thematic review of bank culture, the FCA published:

Its confirmation on 1 July 2015 that 57 investigations into insider dealing were opened, closed and/or active in 2014 and that 47 investigations into insider dealing were ongoing as at 31 December 2014;

Its response on 21 July 2014 to a request about the number of judicial review proceedings threatened, commenced, granted or refused permission, discontinued or withdrawn and/or heard from 2012 to 2015 by corporate and individuals;

Its confirmation in August 2015 that it spent £6.8m in 2013/14 and £7.5m in 2014/15 on external investigators (being contractors, secondees, paralegals, experts and counsel) in connection with 82 Enforcement cases. The FCA also confirmed that, of these 82 cases, 36 resulted in the FCA taking enforcement action in 2014/15 and eight resulted in criminal proceedings against an individual or firm in 2014/15; and

Its confirmation in August 2015 that it had completed and published eight studies or reports relating to behavioural economics (or close variants) since July 2013 at a cost of less than £185,000.

<http://www.fca.org.uk/static/documents/foi/foi4350-response.pdf>

<http://www.fca.org.uk/static/documents/foi/foi4091-response.pdf>

<http://www.fca.org.uk/static/documents/foi/foi4101-response.pdf>

[response.pdf](#)

<http://www.fca.org.uk/static/documents/foi/foi4127-response.pdf>

<http://www.fca.org.uk/static/documents/foi/foi4164-response.pdf>

## FCA publishes MOU with CMA in relation to consumer protection

The FCA has (on 13 January) published a memorandum of understanding ("MOU") it concluded with the Competition and Markets Authority ("CMA"), which sets out the working arrangements between the FCA and CMA in respect of consumer protection matters in the financial services sector. This MOU replaces the previous MOU between the FCA and CMA dated 12 June 2014 but is additional to the separate MOU between the FCA and CMA dated 21 December 2015 in respect of concurrent competition powers in the financial services sector.

<http://www.fca.org.uk/static/documents/mou/fca-cma-consumer-protection-mou.pdf>

<http://www.fca.org.uk/static/documents/mou/fca-cma-concurrent-competition-powers-mou.pdf>

## FCA publishes external reviews of board effectiveness

The FCA has (on 14 January) published reviews of the effectiveness of its own Board in 2014 and 2015. These

reviews were conducted between June and October 2015 by Boardroom Review Limited and were considered by the FCA Board at meetings in October and December 2015. The reviews conclude that the FCA Board has performed effectively in the early years of the FCA's existence (as a successor but different agency to the Financial Services Authority) and recommend changes to Board governance in the face of challenges, including stakeholder management, the effectiveness of internal audit, resource allocation, attention to corporate culture, executive development and succession, balance and prioritisation of agendas and the role of non-executive directors.

<http://www.fca.org.uk/static/documents/reports/2014-review-of-fca-board-effectiveness.pdf>

<http://www.fca.org.uk/static/documents/reports/2015-review-of-fca-board-effectiveness.pdf>

## FCA warnings

Name of firm	Date of warning	Details
UK Today Loans	14 January 2016	Not authorised <a href="http://www.fca.org.uk/news/warnings/uk-today-loans-cc">http://www.fca.org.uk/news/warnings/uk-today-loans-cc</a>
Finance Life	14 January 2016	Not authorised <a href="http://www.fca.org.uk/news/warnings/finance-life-cc">http://www.fca.org.uk/news/warnings/finance-life-cc</a>
Lelo Loans	14 January 2016	Not authorised <a href="http://www.fca.org.uk/news/warnings/lelo-loans-cc">http://www.fca.org.uk/news/warnings/lelo-loans-cc</a>

Sherman Consultancy Group	14 January 2016	Not authorised <a href="http://www.fca.org.uk/news/warnings/sherman-consultancy-group">http://www.fca.org.uk/news/warnings/sherman-consultancy-group</a>
Cobra Payday Loans	14 January 2016	Clone firm <a href="http://www.fca.org.uk/news/warnings/cobra-payday-loans-clone-cc">http://www.fca.org.uk/news/warnings/cobra-payday-loans-clone-cc</a>
WINTON	12 January 2016	Clone firm <a href="http://www.fca.org.uk/news/warnings/winton-clone">http://www.fca.org.uk/news/warnings/winton-clone</a>
Wiseman Partners Ltd	12 January 2016	Not authorised <a href="http://www.fca.org.uk/news/warnings/wiseman-partners-ltd">http://www.fca.org.uk/news/warnings/wiseman-partners-ltd</a>
Roland Puchta	11 January 2016	Clone firm <a href="http://www.fca.org.uk/news/warnings/roland-puchta-clone">http://www.fca.org.uk/news/warnings/roland-puchta-clone</a>

## Policy developments

FCA		PRA		
Proposed developments				
		Deadline for responses		
<b>Consultation papers</b>	The FCA has (on 15 January) issued a consultation paper (CP 16/2) in response to planned legislative amendments to implement the Mortgage Credit Directive ("MCD"), which will (among other things) clarify the regulatory status of housing association mortgages and other agreements entered into before 1 April 2014 and regulated under the Consumer Credit Act. The FCA expects that minor amendments will be required to its Handbook, particularly the	15 February 2016	13 April 2016	The PRA has (on 13 January) published a consultation paper (CP2/16) setting out its proposal for the introduction of a new rule on buy-outs of variable remuneration, relating to the practice whereby firms recruiting staff 'buy-out' deferred bonus awards that have been cancelled by their previous employer. The PRA considers that the proposed rule would strengthen the existing Remuneration Part of the PRA Rulebook, which applies to all PRA-regulated banks, building

	<p>Perimeter Guidance manual and Glossary of terms, before the MCD comes into force on 21 March 2016.</p> <p><a href="http://www.fca.org.uk/static/documents/consultation-papers/cp16-02.pdf">http://www.fca.org.uk/static/documents/consultation-papers/cp16-02.pdf</a></p>			<p>societies and designated investment firms, subject to the PRA's proportionality framework.</p> <p><a href="http://www.bankofengland.co.uk/pira/Documents/publications/cp/2016/cp216.pdf">http://www.bankofengland.co.uk/pira/Documents/publications/cp/2016/cp216.pdf</a></p>
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### SEC announces its examination priorities for 2016

The US Securities and Exchange Commission ("SEC") has announced (on 11 January) its Office of Compliance Inspections and Examinations' priorities for 2016. New areas of examination focus for the SEC include liquidity controls, public pension advisers, product promotion, exchange-traded funds and variable annuities. The SEC states that these priorities "reflect a continuing focus on protecting investors in ongoing risk areas such as cybersecurity, microcap fraud, fee selection, and reverse churning" and will be applied across financial institutions, including investment companies and advisers, broker-dealers, transfer agents, clearing agencies and national securities exchanges.

<http://www.sec.gov/about/offices/ocie/national-examination-program-priorities-2016.pdf>

[http://www.bafin.de/SharedDocs/Veroeffentlichungen/EN/Fachartikel/2015/fa\\_bj\\_1512\\_interview\\_hufeld\\_en.html](http://www.bafin.de/SharedDocs/Veroeffentlichungen/EN/Fachartikel/2015/fa_bj_1512_interview_hufeld_en.html)

### German regulator discusses key elements of planned restructuring

BaFin, the German Federal Financial Supervisory Authority, has published an interview (on 30 December) with Mr Felix Hufeld, the President of BaFin, about the reorganisation of BaFin from 1 January, partly as a result of new duties in areas such as consumer protection. Mr Hufeld provided an overview of the planned changes to directorates for banking, securities and insurance supervision under an "einer für alle" ("one for all") model that will combine closely aligned functions. His examples include consumer protection, which will fall under the securities supervision directorate but will be concerned not only with investor protection but also insured and bank customer protection and anti-money laundering, which will fall under the banking supervision directorate because of the close connection with banks but also will investigate AML issues with stock exchanges or insurance undertakings. Mr Hufeld also reported on a strategic development section that will address current issues, such as the impact on the financial sector of fintech firms.

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