

# This week at the UK regulators

## Thirty second guide: The week in overview

The main enforcement development last week was the publication of Final Notices prohibiting two individuals for integrity failings. In separate cases, the Upper Tribunal has decided that proceedings concerning the identification of individuals in enforcement notices issued by the FCA need not await the conclusion of proceedings pursued by the Serious Fraud Office. Away from enforcement developments, the Treasury Committee has continued a long-running chain of correspondence, writing to the PRA to clarify actions being taken by it on various issues relating to resolution and bail-in, appropriate levels of regulatory involvement with decision making by firms and capital requirements.

In policy developments, the FCA has published a consultation paper proposing two minor changes to its Handbook to address divergent practices amongst mortgage borrowers in dealing with customers who are experiencing a payment shortfall.

Further afield, the SEC has announced its second biggest whistle-blower award, bringing the total level of such awards since 2011 to over USD 85million.

## FCA bans two individuals for integrity failings

In Final Notices dated 1 March but released on 9 June, the FCA has prohibited Mark Kelly and Patrick Gray from performing any functions in relation to any regulated activities. Mr Kelly traded under the name PCD Wealth and Pensions Management ("PCD") which was not a legal entity but merely a name under which he traded in the UK. Mr Gray was an adviser for PCD.

The FCA found that Mr Kelly demonstrated a lack of honesty and integrity in that he invested customers' pensions funds without any regard as to the suitability of the investment and without customers' knowledge or consent by a process designed to prevent customers from discovering that their funds had been so invested, concealed information about fees and charges, received monies directly into his bank account from product providers without customers' knowledge and falsely certified copies of customers' passports without having met those customers. The FCA found that Mr Gray demonstrated a lack of honesty and integrity in that he recklessly provided clients with investment advice without the relevant qualifications or training, misleading information in relation to fees and costs, and pensions reports with misleading assurances and that he knowingly and dishonestly gave a false and misleading impression by providing customers with pension reports containing false and misleading assurances that advice and

recommendations would be provided as to the investment of their pension funds.

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

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

## Upper Tribunal presses on with identification proceedings

On 9 June, the Upper Tribunal has released its directions setting out the 'timetable' to a hearing in cases involving various individuals who claim they were identified in notices issued to banks in connection with regulatory action concerning benchmark rates. Following a case management hearing, it decided that no stay was necessary in relation to the main reference to the Upper Tribunal and that it was not necessary to consolidate some ancillary proceedings with the main proceedings at this stage, but that some elements of the reference should await the outcome of another case concerning identification of individuals in regulatory notices, currently before the Supreme Court.

<http://www.tribunals.gov.uk/financeandtax/Documents/decisions/Bittar-etc-v-FCA-Directions.pdf>

## Treasury Committee publishes PRA correspondence

On 6 June, Andrew Tyrie, Chairman of the Treasury Committee, wrote to Andrew Bailey, Deputy Governor of the PRA, to clarify points raised in previous correspondence regarding the actions being taken by the PRA in response to the concerns raised by the Treasury Committee. Issues raised included resolution and bail-in of banks, the intrusiveness of regulation vis-à-vis concerns that the PRA might be regarded as a shadow director (which might relieve boards of too much responsibility and thereby pose financial risks to the government), competition and internal modelling (particularly the interaction of the risk weighted capital requirement and the leverage requirement).

<http://www.parliament.uk/documents/commons-committees/treasury/Chairman-to-Andrew-Bailey-06062016.pdf>

## FCA's Response to the Complaints Commissioner's Report

On 10 June, the FCA published its response to a report by the Complaints Commissioner (FCA00141) concerning a complaint that the FCA does not have or enforce rules regarding third party insurers' obligations to consumers who deal with them. It concluded that although the FCA correctly concluded that third party insurers are allowed to contact consumers and enter into direct negotiations with them

despite the fact that they are not subject to Financial Ombudsman Service adjudication, the FCA had provided erroneous information to the complainant.

The FCA accepted the Commissioner's findings and recommendation and is considering whether existing rules and principles are sufficiently clear to consumers. The FCA has apologised to the complainant and is arranging an ex gratia payment.

<http://www.fca.org.uk/static/documents/foi/response-complaints-commissioner-report-fca00141.pdf>

<http://fsc.gov.uk/wp-content/uploads/FCA00141-FD-13-05-16.pdf>

## FCA publishes Quarterly Data Bulletin

On 9 June, the FCA has published its sixth Data Bulletin providing an update on attestations and skilled person reports, the latest figures on complaints against the FCA, statistics on how we review certain financial promotions and an update on the Consumer Credit authorisations process with updated data. The underlying data was also published on the same day.

<http://www.fca.org.uk/static/fca/documents/data-bulletin/data%20bulletin%20issue%206.pdf>

<http://www.fca.org.uk/your-fca/documents/data-bulletin/underlying-data-issue-6>

## FCA warnings

Name of firm	Date of warning	Details
Stanford Law	10 June 2016	Not authorised <a href="http://www.fca.org.uk/news/warnings/stanford-law">http://www.fca.org.uk/news/warnings/stanford-law</a>
Capita Consult	6 June 2016	Clone firm <a href="http://www.fca.org.uk/news/warnings/capita-consult-clone">http://www.fca.org.uk/news/warnings/capita-consult-clone</a>

## Policy developments

FCA		PRA	
Proposed developments			
		Deadline for responses	
<b>Consultation papers</b>	<p>On 10 June, the FCA has published its Consultation Paper CP16/16 proposing two minor changes to the Handbook to address divergent practices amongst mortgage borrowers in dealing with customers who are experiencing a payment shortfall.</p> <p><a href="http://www.fca.org.uk/static/documents/consultation-papers/cp16-16.pdf">http://www.fca.org.uk/static/documents/consultation-papers/cp16-16.pdf</a></p>	10 August 2016	

## Further Afield

### SEC Issues USD17 Million Whistleblower Award

On 9 June, the SEC announced its second-largest whistleblower award of more than USD17 million to a former company employee whose detailed tip substantially advanced the agency's investigation and ultimate enforcement action. By law, the SEC protects the confidentiality of whistleblowers and does not disclose information that might directly or indirectly reveal a whistleblower's identity. The SEC has not released any substantive details of the case, but has confirmed that it has now paid over USD 26 million to whistleblowers over the past month and has paid over USD 85 million to 32 whistleblowers since the inception of the programme in 2011.

<http://www.sec.gov/news/pressrelease/2016-114.html>

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