

REGULATION NEWSLETTER FOR INTERMEDIARIES

Monday 6th to Thursday 9th April 2009

Welcome to the weekly regulation newsletter designed specifically for intermediaries. This newsletter is compiled by IFact Services and includes regulatory and topical information relating to Independent Financial Advisers, General Insurance and Mortgage Advisers.



Financial Advisers - FSA Factsheet Improving the quality of advice process - Post-sale

Financial Services Authority

http://www.fsa.gov.uk/smallfirms/resources/factsheets/pdfs/post_sale.pdf

This fact sheet is for you if you provide financial advice to retail clients (known as 'private customers' under the old Conduct of Business rules). This is the seventh and last of a series of factsheets that FSA are publishing. The factsheets focus on the different areas of the advice process, that FSA reviewed in the firms visited and mystery shopped during the quality of advice processes II project. FSA published the detailed findings of the project on their small firms website. In addition to this factsheet, FSA have published six others, one focusing on: quality of advisers, impartiality of advisers, assessment of customer needs, recommendations (including research), communication and management information/systems and controls. All of these factsheets highlight examples of good and poor practice. The examples outlined are designed to help you consider your own processes for offering and conducting regular reviews of your customers. There may be other ways of achieving the same outcomes and complying with FSA rules and principles. You should consider the relevance of these examples to your business, as you may choose an alternative approach

Financial Advisers - Frequently asked questions - pension switching advice follow-up work

Financial Services Authority

http://www.fsa.gov.uk/smallfirms/resources/faqs/pension_switching.shtml

These new web pages provide answers to the following FAQs in respect of FSA's pension switching advice work:

1. What types of pension switching should firms focus on?
2. What time period should firms focus on?
3. Do all firms need to review files?
4. What does the FSA expect in terms of sample size and methodology?
5. What evidence is the FSA expecting to see to demonstrate a file has been reviewed or a process assessed?
6. Can firms contact customers as part of file reviews?
7. What constitutes an unsuitable file?
8. What action should a firm take if its review identifies unsuitable files?
9. What redress is a firm expected to provide?
10. When does the FSA expect this work to have been completed by?
11. Do firms need to inform their PI insurers of any work they are undertaking?
12. Should I update the FSA on the progress of my firm's past review?

www.qbeurope.com/pi
tel: 020 7105 4000
e-mail: enquiries@uk.qbe.com

Final Notice - FSA bans director for advice failings

Financial Services Authority

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2009/047.shtml>

The Financial Services Authority (FSA) has banned Worcestershire financial adviser Norman Mark McCance for failings related to quality and suitability of advice and compliance at his firm, Penn Financial Services Unlimited (Penn). Penn's main business was investment bonds. The FSA found that Mr McCance lacked competence and capability and on occasions acted recklessly. As Penn's sole director he also failed to ensure that the firm met FSA compliance standards. Mr McCance as adviser:

- acted recklessly in arranging transactions which could not be justified in terms of suitability, particularly in relation to advising customers to re-mortgage to raise funds to invest in investment bonds which were unlikely to generate sufficient income or capital to repay the mortgages;
- acted recklessly in providing written loss guarantees to individuals who complained about the performance of their investment bonds, thereby deterring them from pursuing complaints about their investments;
- failed to record sufficient and accurate information about customers' personal and financial circumstances for assessing the suitability of recommendations;
- completed mortgage applications with inaccurate information; and
- conducted pension transfers outside the scope of Penn's permission.

Mr McCance as director of Penn failed to:

- put in place adequate and effective compliance arrangements over the firm's business;
- monitor and/or review the firm's business by undertaking compliance checks; or
- improve the firm's compliance resources despite recognising these were inadequate.

Jonathan Phelan, FSA head of retail enforcement, said: "It is vital that Approved Persons demonstrate the necessary degree of competence and capability when providing investment advice and overseeing compliance by a firm. Those who do not demonstrate the necessary degree of competence and capability face the risk of being prohibited from the financial services industry." The FSA has also cancelled the permission of Penn.

FSA Statement - Presbyterian Mutual Society

Financial Services Authority

<http://www.fsa.gov.uk/pages/Library/Communication/Statements/2009/presbyterian.shtml>

The FSA's normal practice is neither to confirm nor deny that they are investigating a particular firm or individual. However, in the light of the information already in the public domain about the FSA's involvement and the public interest in this case, the FSA can confirm that it has investigated the activities of Presbyterian Mutual Society, now in administration, to consider if it was conducting regulated activities without the necessary authorisation or exemption.

FSA have concluded their investigation and have decided, on the basis of the information currently available to them, and applying the criteria in the Code for Crown Prosecutors, that it would not be right for FSA to take a case against any of those involved in running the Presbyterian Mutual Society. However, FSA remain in touch with the administrator and, if further information comes to light relating to the issues FSA have investigated, FSA will look into it.

www.qbeeurope.com/pi
tel: 020 7105 4000
e-mail: enquiries@uk.qbe.com

Final Notices - FSA bans directors of mortgage firm for failings on financial crime prevention

Financial Services Authority

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2009/049.shtml>

The Financial Services Authority (FSA) has banned Dorset mortgage brokers Peter and James Dean for failing to prevent their firm from being used to perpetrate financial crime and for other serious regulatory failures. Peter Dean has also been fined £17,500. Georgina Philippou, head of retail enforcement at the FSA, said: "The actions of Peter and James Dean posed a serious risk to lenders and consumers. As part of our crackdown on financial crime in the mortgage market we have banned a number of mortgage brokers and others in the last year and we will continue to make examples of people, including by bans and fines, who either commit mortgage fraud or fail to prevent their firm from being used to further financial crime."

Peter and James Dean were Directors of UK Finance House Limited (UKFH) with Peter Dean based in the Poole office and James Dean in the Bournemouth office. The FSA found that Peter Dean failed to:

- take reasonable steps to prevent false information being supplied to mortgage lenders by UKFH;
- take reasonable steps to prevent UKFH from being used to further financial crime;
- realise that mortgage introducers were acting on behalf of UKFH and arranging regulated mortgage contracts without its authority or permission;
- realise that James Dean was signing off regulated mortgage applications as his own work, when they were in fact prepared by a third party.

The FSA also considers that Peter Dean engaged in unauthorised mortgage business by providing a regulated mortgage contract to a client through an unauthorised company of which he was a Director. Peter Dean qualified for a 30% reduction in penalty by settling at an early stage of the FSA's investigation. Were it not for this discount, the FSA would have imposed a financial penalty of £25,000. The FSA found that James Dean:

- submitted a personal mortgage application containing false information about his employment and earnings;
- signed off and submitted to lenders mortgage applications which contained false applicant incomes and false documentation in support of applicants' identity verifications.

The FSA found that both Peter and James Dean failed to take adequate remedial action in 2006 when they discovered that false information had been supplied to lenders in support of mortgage applications and therefore that UKFH might have been used to perpetrate financial crime. The FSA has also cancelled the permission of UKFH.

www.qbeeurope.com/pi
tel: 020 7105 4000
e-mail: enquiries@uk.qbe.com

FSA Report - Post implementation review of the new use of dealing commission regime

Financial Services Authority

http://www.fsa.gov.uk/pages/Library/Other_publications/Miscellaneous/2009/dealing_commission.shtml

Here, FSA set out the results of the post implementation review of their work on the use of dealing commission. The origins of this work on use of dealing commission lie in the 2001 report by Paul Myners which identified problems in asset managers' use of bundled brokerage and soft commission arrangements. FSA's subsequent investigation suggested that these created a market failure though their lack of transparency, accountability and the conflicts of interest they created. As a result market controls were weak, meaning that asset managers' customers did not receive value for money. FSA therefore introduced rules on the use of dealing commission on 1 January 2006. This new regime sought to achieve the following outcomes though the FSA Handbook and industry-led disclosure codes:

- investment managers' use of dealing commission should be limited to the purchase of 'execution' and 'research';
- investment managers should give their clients better information about the respective costs of execution and research and the overall expenditure on these services;
- investment managers should be encouraged to seek, and brokers to provide, clear payment mechanisms that enable individual services to be purchased separately; and
- to promote a level playing-field in the production of research.

At the time FSA committed to undertaking a post-implementation review to test whether these outcomes were being delivered. FSA therefore commissioned Oxera, a firm of economic consultants, to develop a performance measurement framework to evaluate whether the new regime had achieved its aims and the baseline was measured in 2006. The measurement was repeated in 2008 and the report, detailing the analysis and conclusions of these performance measures, is published and available to review by clicking on the link above.

Confirmed Industry Guidance - from the Investment Management Association

Financial Services Authority

http://www.fsa.gov.uk/pubs/guidance/IMA_guidance.pdf

The Financial Services Authority (FSA) has confirmed Industry Guidance which will facilitate paper-free electronic transfer of ownership of units held in an authorised investment fund (an authorised unit trust or an open-ended investment company). Investors who sell or transfer units they hold have until now been required to give the necessary authority in writing. Government regulations and FSA rules which recently came into force allow fund managers to accept the unitholder's authorisation by electronic means such as e-mail or through the internet site of the fund manager. This is designed to permit more automated and efficient processing of unit transfers for investors, while providing adequate protection to the fund and to individual investors against fraud. The Government estimates that these provisions could bring annual administrative savings for UK fund managers of between £70 million and £290 million. The guidance issued by the Investment Management Association explains what fund managers should do to satisfy themselves that instructions given by electronic means are genuine.

Dan Waters, FSA director of retail policy & conduct risk, said: "We are happy to confirm the IMA's Industry Guidance which will help fund managers to make the move from the current cumbersome paper-based transfer system to electronic dealing and settlement without weakening protection for unitholders. Industry Guidance gives firms help and advice on ways of complying with FSA principles and high-level rules, in a way that allows flexibility and innovation. The FSA will, where this is appropriate, use confirmation of Industry Guidance as an alternative to making additional Handbook rules."

www.qbeeurope.com/pi
tel: 020 7105 4000
e-mail: enquiries@uk.qbe.com

Press Release - FSA wins case to ban former chief executive of Gen Re business unit

Financial Services Authority

<http://www.fsa.gov.uk/pages/Library/Communication/PR/2009/048.shtml>

The Financial Services Authority (FSA) has won its case before the Financial Services and Markets Tribunal (the Tribunal) to ban Mr Milan Vukelic from working in the financial services industry in the UK. The Tribunal found that Mr Vukelic's actions whilst CEO of Alternative Solutions (AltSol) lacked integrity.

The AltSol business unit was established by the General Reinsurance Corporation to develop and market financial reinsurance products. These are complex insurance type contracts that can be misused by struggling insurance companies seeking to disguise their true financial position.

Mr Vukelic was CEO from August 1997 until October 2002. During that time Mr Vukelic was responsible for overseeing and structuring three different transactions that were designed to allow the client insurance companies to hide very significant losses in their accounts. Mr Vukelic knew that the deals were not genuine reinsurance transactions and that they could be used to mislead the clients' auditors. Two of the three client insurance companies subsequently collapsed with wide-ranging consequences. The Tribunal found that Mr Vukelic had "turned a blind eye" to the true nature of the contracts and was "reckless as to whether they were intended to mislead auditors and others".

Margaret Cole, FSA director of enforcement, said: "This case has been fought every inch of the way by Mr Vukelic. We are determined to take whatever action is necessary to ensure that individuals should not avoid the consequence of their actions. The Tribunal rightly criticised his persistent failure to recognise his shortcomings. Those carrying out senior functions in regulated firms need to be clear that the FSA will hold them to the highest standards of behaviour and will take action against those who fall short. There is no place in financial services for the sort of behaviour demonstrated by Mr Vukelic."

Mr Vukelic was an FSA approved person at General Reinsurance Life UK Limited from September 2002 and from November 2002 as chief executive of Faraday Reinsurance Co Limited and later Faraday Underwriting Limited. Mr Vukelic ceased to be an approved person in July 2005.

From the FOS - Ombudsman News Issue 76

Financial Ombudsman Service

<http://www.financial-ombudsman.org/publications/ombudsman-news/76/76.pdf>

In this issue:

- case studies involving the transfer of money abroad and associated currency exchange;
- a selection of recent travel-insurance complaints; and
- Walter Merricks, chief ombudsman, on the price of cut-backs by financial services businesses in their customer-service operations.

www.qbeurope.com/pi
tel: 020 7105 4000
e-mail: enquiries@uk.qbe.com

From the ABI - Q1 2009 ABI Savings and Protection survey

Association of British Insurers

<http://www.abi.org.uk/BookShop/ResearchReports/20090409%20Savings%20and%20Protection%20survey%20Research%20Brief.pdf>

This research brief presents the results of the Q1 2009 Association of British Insurers (ABI) Savings and Protection survey. The aim of this research is to track how the economic environment impacts on consumer behaviour and, more specifically, on consumer attitudes towards savings and protection products.

- There has been a reduction in the number of people who think the UK economy will 'worsen a lot' in the next year, but almost two-thirds (64%) of respondents still expect the UK economy to deteriorate further.
- Forty-two percent of working respondents are either saving too little or nothing at all into a pension (of these nearly 30% are saving nothing at all).
- Around a quarter (26%) of non-retired respondents said that early access would cause them to start saving (or to save more) into a pension.
- Sixty-four percent of respondents think the benefits of saving in general have 'gone down a lot' in Q1 2009 an increase of 21 percentage points on Q4 2008.
- Property continues to be regarded as the best long-term investment (45% of respondents chose this). By contrast, savings accounts and stocks and shares remain unpopular (8% each).
- Life insurance is the most popular kind of policy non-holders may consider purchasing in the future.
- Around a fifth (19%) of respondents said they would consider making an exaggerated or completely made-up insurance claim at some point in the future.

From the OFT - OFT consults on financial services strategy

Other Items of Interest

http://www.oft.gov.uk/shared_oft/consultations/oft1077con.pdf

Review of unsecured consumer credit market announced. The OFT has launched a consultation on its proposed financial services strategy which sets out its approach to the sector in response to the current economic crisis. The OFT is asking interested parties to comment on its proposal to focus on two inter-related themes:

- the prioritisation, in the short term, of promoting fairness and responsibility between the credit industry and consumers, and
- advocating choice and competition to ensure that public decisions made to deal with the current crisis do not harm competition in the long term to the detriment of consumers.

The strategy also announces that the OFT is to conduct a review of the unsecured credit market. The financial crisis has led to significant changes in this market and the review will focus on the fair treatment of consumers and on ensuring that this key driver of economic growth works effectively. John Fingleton, Chief Executive, said: 'Much of our work is already aligned with the needs of consumers, business and the economy in the current crisis but this strategy will sharpen our financial services focus over the coming year. With our focus on credit, we are addressing the area in which there is a real risk of short-term consumer harm while also ensuring that the sector that emerges from the current crisis is competitive and behaves fairly and responsibly towards consumers. Looking further forward, the financial services sector that emerges should be characterised both by effective prudential regulation and open markets. Choice and competition involving existing players and new entrants are vital to delivering growth, prosperity and a good deal for consumers. There is a risk that this could be overlooked in the re-design of financial regulations, with high costs for consumers and the economy.'

The consultation will run until 12 June 2009. A final Financial Services Plan, taking account of consultation responses, will be published in July 2009.

www.qbeeurope.com/pi
tel: 020 7105 4000
e-mail: enquiries@uk.qbe.com

Important notice

QBE Insurance (Europe) Limited and any of its associated companies and contractors ("QBE") shall not be liable for any losses or damages whatsoever, whether in contract, tort (including negligence except in the case of death or personal injury) or otherwise arising from use of or reliance on information in, derived from or absent from this Newsletter, or from any delay in receiving or accessing this Newsletter for whatever reason.

QBE does not represent or warrant that access to the Newsletter will be uninterrupted or that there will be no failures, errors or omissions or loss of transmitted information.

QBE shall not be liable to the reader or any third parties for any direct, indirect, special, consequential or punitive damages allegedly sustained arising out of use of or reliance on this Newsletter or any of the information or materials available in it or via the links referred to by it or any subsequent links.

Third party websites

The Newsletter contains links to websites over which QBE has no control. QBE does not accept responsibility or liability for the operation or content of such websites.

Applicable law

The Newsletter (including these terms) shall be governed by English law. The English courts shall have exclusive jurisdiction over any disputes arising in connection with the Newsletter.

Complimentary Helpdesk

Should you require further information or have questions relating to this update or any regulatory issues, QBE has arranged for IFACT Services Ltd to provide a complimentary telephone service to assist intermediaries.

IFACT can be contacted at:

Telephone Number: 08456 121211
Email: queries@ifact.co.uk
Website: www.ifact.co.uk

QBE PI is a combination of the professional indemnity strengths and capabilities of the market leading DA Constable Syndicate 386 and QBE Insurance (Europe) into one specialist team. With over 30 years experience combined, QBE PI is the largest professional indemnity team in the market offering a broad range of flexible solutions to suit the needs of brokers and clients - from major multinational to sole practitioners. QBE PI has been structured to provide the most effective underwriting and claims service reflecting the diversity of our clients' size and professions. Our four underwriting units provide comprehensive insurance solutions across the spectrum of client sizes and buying preferences. For more information, visit www.QBEurope.com/pi

www.qbeurope.com/pi
tel: 020 7105 4000
e-mail: enquiries@uk.qbe.com