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## Financial Services - Enforcement News

*Welcome to this edition of Enforcement News produced by Baker McKenzie's Financial Services Regulatory Group. This publication provides a non-exhaustive guide to enforcement actions plus speeches, policy & rulemaking over the preceding month.*

### Commentary

#### Enforcement Themes - 2018

Overall 2017 was a quieter year for enforcement (judged by published cases). The FCA imposed 13 fines in 2017 compared to 23 fines in 2016 and 40 in 2015. Whilst we are not likely to see the same volume of cases as in 2016 and 2015, the likelihood is that 2018 will be a busier year.

The first cases under the Senior Managers Regime (SMR) will start to emerge, reinforcing the trend that has seen a 75% increase in investigations into individuals. With the planned expansion of the SMR, the output of these cases will be of interest to the broader FSMA regulated community. Individual responsibility will therefore be a key theme.

Another key theme for 2018 will be MiFID 2. The FCA will be paying close attention to implementation and bedding in of new rules. Enforcement is a risk for firms who are considered non-compliant.

#### Libor

The New Year started with a bang as the FCA announced a fine and prohibition against a former RBS trader, Neil Danziger. Mr Danziger's case related to the Libor investigation and events in the period 2007 - 2010. As this period in history recedes, conduct will no doubt remain an area of enforcement focus for the FCA. The introduction of the SMR will place a spotlight on the behaviour of those at the top of organisations who in the context of the Libor and FX investigations were largely able to escape the clutches of the FCA's Enforcement Department.

#### Systems & controls

December 2017 saw the imposition of a fine on Bluefin, a large insurance broker. This concerned its failure to implement adequate systems and controls to manage a conflict of interest that arose from its ownership. It

held itself out as "truly independent" to customers despite being owned by a large insurer. In effect, it prioritised a culture of increasing business with this shareholder over acting in customers' best interests (e.g. brokers failed to disclose the preference for placing business with its then owner). A high-level conflicts of interest policy proved inadequate to counter the risks posed by its business model.

### Inside information

In December 2017, the FCA also published its first enforcement action under the EU Market Abuse Regulation (MAR), which has had direct effect in the UK since 3 July 2016. This involved a small AIM traded investment company, Tejoori Limited which, misconstruing the legal effect of the commercial arrangements it had entered into, failed to understand both that it was in possession of inside information, and the need to disclose that information as soon as possible. Issuers and advisers should take note that the FCA has given no grace period for companies to comply with MAR, and of the importance of an issuer fully understanding the commercial decisions it enters into and when inside information could arise.

### MiFID 2 Enforcement

In a speech on MiFID 2, Megan Butler, FCA Director of Supervision, has referred to the regulator's stance on enforcement action against firms which do not meet all MiFID 2 requirements on 3 January 2018. The FCA has no intention of taking enforcement action "straight away," so there is at least a period of grace, but this is little comfort as there must be evidence (1) of having taken sufficient steps to comply by 3 January, and (2) of having plans in place to complete the process.

#### FCA & PRA Published Statutory Notices (Final & Decision)

Firm / individual	Subject matter	Rule / Sanction	Summary
<b>Bluefin Insurance Services Limited</b>	Inadequate systems and controls and failing to provide information to customers about the firm's status	FCA PRIN 3 and 7 Financial penalty after discount of £5.748 million	Bluefin is an insurance broker to small and medium sized businesses. It held itself out to be "truly independent" over its advice and insurers it recommended to customers. In fact, it failed to disclose and manage an inherent conflict of interest whereby it was owned by a large insurance group.
<b>Six individuals</b> (Reporting restrictions defendants cannot be named)	Illicit high pressure / fraudulent sales of shares	Various conspiracy to defraud, fraud by abuse of position, acts tending and intending to pervert the course of justice, and of communicating an invitation to engage in investment activity	Criminal prosecution for the roles six individuals played in a boiler room scam worth £2.7 million.  Sentencing will take place at Southwark Crown Court at a later date.
<b>Tejoori Limited</b> <a href="#">[Click here for client briefing]</a>	AIM Company / Failure to disclose inside information as soon as possible	Article 17(1) Market Abuse Regulation  Financial penalty after discount of £70,000	Tejoori is a closed-ended investment company whose shares were traded on the AIM between 24 March 2006 and 5 December 2017.  On 12 July 2016, Tejoori was notified by Bekon Holding AG, in which Tejoori had a shareholding, that there would be a compulsory acquisition of Bekon's shares by Eggersmann Gruppe. The information about the sale to Eggersmann was inside information and Tejoori was required to

disclose it as soon as possible. This did not happen and Tejoori's share price rose in response to speculation about the consideration paid by Eggersmann for Tejoori's shares in Bekon.

<b>Graham Patrick Lockstone</b>	Breaches of FIT relating to a lack of fitness and propriety in the general insurance and protection sector	FIT / Prohibition Order	Lockstone was approved to perform a CF1 (Director) controlled function. He was convicted in 2016 of conspiracy to dishonestly make false representations to make a gain for self/another or cause loss/expose others to risk, and making/supplying articles for use in fraud. On this basis, the FCA concluded that Mr Lockstone is not a fit and proper person and that he poses a significant risk to customers.
<b>Various Defendants</b>	Misleading financial promotions	Variously creating a false or misleading impression, publishing false or misleading statements and carrying on a regulated activity without authorisation. Imprisonment and confiscation of benefit gained from criminal conduct	The defendants created a misleading impression as to the value and prospects of Symbiosis Healthcare Plc between 2009 and 2014. Investors, many of whom were vulnerable individuals, were also mis-sold shares and lost just over £1.4 million through the scheme.

### Tribunal Decisions

Firm / individual	Subject matter	Rule / Sanction	Summary
<i>Angela Burns v FCA</i> [2017] EWCA Civ 2140	Conflict of interest by non-executive director / lack of integrity	Statement of Principle 1 for Approved Persons (APER) / £20,000 penalty and prohibition from CF2 (NED) controlled function	Burns, who was an independent investment consultant, acted without integrity as a NED of the two mutual societies by failing to disclose conflicts of interest in an appointment of a previous employer to whose board she sought to be appointed. The Court of Appeal dismissed Burns appeal, but also a cross appeal where the Tribunal had found that the FCA had acted unreasonably in pursuing allegations over corrupt payments.

### Speeches, Policy & Rulemaking

What & Who	Subject Matter	Summary
<b>Speech</b> , Megan Butler, Effective global regulation in capital markets	MiFID 2 / Regulation in capital markets	Repetition of Mark Steward's (FCA Enforcement) assurance in September 2017, that the FCA has no intention of taking enforcement action against firms for not meeting all MiFID 2 requirements straight away. This is contingent on there being evidence of having taken sufficient steps to meet their new obligations by the start date, and that there are plans in place to

complete the process.

Quarterly Consultation, No 19, <a href="#">CP17/39</a>	Changes to the Decision Procedure and Penalties manual (DEPP) at chapter 4	A change to the FCA's governance structure in January 2018 will mean that a "senior staff committee will become a second "senior executive committee". Consequential changes are made to DEPP 4.
<a href="#">Statement</a> on RBS GRG report publication	Publication of Skilled Person's Report	The FCA explains why it did not publish the full Skilled Person's Report following the independent review of Royal Bank of Scotland's treatment of SME customers transferred to its Global Restructuring Group.
Consultation Paper <a href="#">CP17/42</a>	Senior Managers and Certification Regime: Duty of Responsibility to insurers and FCA solo-regulated firms	The consultation paper explains how the FCA intends to apply the Duty of Responsibility to insurers and solo-regulated firms when the regime is extended. Comments to be received by 21 February 2018.

## How Baker McKenzie can help

We assist financial services clients on complex and high profile banking and financial services disputes, FCA enforcement cases, and internal and external investigations. Our team can provide co-ordinated advice and expertise across 47 jurisdictions in Europe, the United States, the Middle-East, CIS and Asia Pacific. Clients also benefit from our lawyers' experience of working for enforcement authorities in their local jurisdictions, including the SEC and US DoJ.

Our team comprises lawyers with substantial contentious experience combined with a detailed knowledge of banking and financial services-related laws and regulations. Many of our specialists have in-house experience and all have been selected for their in-depth understanding of financial services clients' business environment and commercial objectives. We look to ensure that clients receive the right advice when they most need it.

We also frequently act for individuals, often instructed by financial institutions to act for their employees requiring separate independent representation.

## Contact us



**Arun Srivastava**  
Partner  
+44 20 7919 1285  
[arun.srivastava@bakermckenzie.com](mailto:arun.srivastava@bakermckenzie.com)



**Mark Simpson**  
Partner  
+44 20 7919 1403  
[mark.simpson@bakermckenzie.com](mailto:mark.simpson@bakermckenzie.com)



**David McCarthy**  
Senior Associate  
+44 20 7919 1680  
[david.mccarthy@bakermckenzie.com](mailto:david.mccarthy@bakermckenzie.com)



**Richard Powell**  
Professional Support Lawyer  
+44 20 7919 1577  
[richard.powell@bakermckenzie.com](mailto:richard.powell@bakermckenzie.com)

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