



# Enforcement Focus



October 2016

Please click on either option below to learn more about recent enforcement cases handled by the FCA...



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**Market Abuse**  
Enforcement Actions

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**General FCA**  
Enforcement Actions

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Please call us if you would like to discuss any of these cases in more detail.

Newgate Compliance  
Limited

Contact us:

☐ [email](#); or

☐ 020 3696 8750

# Market Conduct

## What is the Code of Market Conduct?

The Code of Market Conduct provides guidance on FCA's implementation of the Market Abuse Regulations. It offers assistance in determining whether or not behaviour amounts to market abuse, The Code applies to all who use the UK financial markets.

Behaviour which could constitute market abuse is summarised below:

1. *Insider dealing* - an insider deals or attempts to deal in qualifying investments or related investment on the basis of inside information relating to the investment in question;
2. *Improper disclosure* – an insider discloses inside information to another person otherwise than in the proper course of the exercise of his employment, profession or duties;
3. *Manipulating transactions* – trading, or placing orders to trade, that gives a false or misleading impression of the supply of, or demand for, one or more investments, raising the price of the investment to an abnormal or artificial level
4. *Manipulating devices* - behaviour which consists of effecting transactions or orders to trade which employ fictitious devices or any other form of deception or contrivance;
5. *Dissemination* – behaviour which consists of the dissemination of information that conveys a false or misleading impression about an investment or the issuer of an investment where the person doing this knows the information to be false or misleading; or
6. *Misleading behaviour and distortion* - which gives a false or misleading impression of either the supply of, or demand for an investment; or behaviour that otherwise distorts the market in an investment.

Penalties can vary from public censure to imprisonment.

For further information please see the Code which is located in the FCA Handbook. *Code of Market Conduct* <http://fsahandbook.info/FSA/html/handbook/MAR/1>

**If you have any suspicion of market abuse, please speak to your Compliance Officer as soon as possible.**

## Selection of Recent Market Abuse Enforcement Actions

The following section shows the market abuse enforcement actions taken by the FCA since our last enforcement focus in July. Please continue to keep up to date with market conduct by regularly visiting the FCA website. <http://www.fca.org.uk/firms/markets/market-abuse>

### **The FCA fines, publicly censures and orders Jersey resident to pay restitution for insider dealing and improper disclosure – July 2016**

<http://www.fca.org.uk/news/fca-fines-publicly-censures-orders-jersey-resident-pay-restitution>

The FCA have fined Gavin Breeze £59,557 for engaging in market abuse in the form of insider dealing and have also publicly censured him for improper disclosure.

The FCA found that Mr Breeze had attempted to sell his entire 8% shareholding in MoPowered plc whilst in the possession of inside information which he also passed on to another shareholder. Those who purchased Mr Breeze's shares did so at a higher price than they would have done if they had access to the same information that he did. This information, regarding the company's intention of raising new capital via a share placement later had a profound effect on the share price of MoPowered, which fell from 20.25p to 8p in the first hour of post-announcement trading. Had Mr Breeze been successful in selling his entire shareholding, he could have avoided a loss of up to £242,000.

Mr Breeze was ordered by the FCA to pay restitution to the sum of £1,850 plus interest of £259 to the individuals who suffered financial loss from his actions, as well as the fine.

### **Tribunal upholds the FCA's decision to impose a partial ban on Tariq Carrimjee - October 2016**

<https://www.fca.org.uk/news/press-releases/tribunal-upholds-decision-impose-partial-ban-tariq-carrimjee>

In our April 2015 Enforcement Focus bulletin, we reported on the Upper Tribunal upholding the FCA's decision to impose a penalty of £89,004 on Mr Carrimjee, an investment and fund manager at Somerset Asset Management LLP, also responsible for compliance oversight. Mr Carrimjee failed to escalate the risk, that should have been apparent to him, that a client might have been intending to engage in market manipulation.

In November 2015, FCA imposed a partial ban on Mr Carrimjee relating to the compliance oversight and money laundering reporting significant influence functions. Mr Carrimjee then referred that decision to the Tribunal. The Tribunal upheld the FCA's decision, finding that his failure to spot the warning signs of market abuse were "basic, fundamental and serious".

## General FCA Compliance, High Level Principles and Approved Person Primer

**FCA Objectives** - The FCA has an overarching strategic objective of ensuring that relevant financial markets function well. To support this it has three operational objectives: to secure an appropriate degree of protection for consumers; to protect and enhance the integrity of the UK financial system; and to promote effective competition in the interests of consumers.

**FCA Principles for Business** - The FCA have 11 high level principles that underpin their approach to regulation of firms.

1 Integrity	A firm must conduct its business with Integrity.
2 Skill, care and diligence	A firm must conduct its business with due skill, care and diligence.
3 Management and control	A firm must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
4 Financial prudence	A firm must maintain adequate financial resources.
5 Market conduct	A firm must observe proper standards of market conduct.
6 Customers' interests	A firm must pay due regard to the interests of its customers and treat them fairly.
7 Communications with clients	A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.
8 Conflicts of interest	A firm must manage conflicts of interest fairly, both between itself and its customers and between a customer and another client.
9 Customers: relationships of trust	A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment.
10 Clients' assets	A firm must arrange adequate protection for clients' assets when it is responsible for them.
11 Relations with regulators	A firm must deal with its regulators in an open and cooperative way, and must disclose to the appropriate regulator appropriately anything relating to the firm of which that regulator would reasonably expect notice.

**Principles for Approved Persons** - Approved Persons are required to comply with Statements of Principles for Approved Persons which describe the conduct that the FCA requires and expects of the individuals it approves. All Approved Persons are required to act with: integrity; due, skill care and diligence; observe proper standards of market conduct; deal with FCA in an open and cooperative way. Those holding significant influence functions also have further responsibilities to ensure that their business units are organised and controlled; they manage their business with due skills, care and diligence; and that they ensure compliance with regulations.

## Selection of FCA Enforcement Actions

The following is a selection of recent FCA enforcement actions where undue risk has been posed to FCA Objectives and firms and individuals have fallen short of FCA's standards.

### **FCA fines Towergate and former director Timothy Philip for client and insurer money failings - July 2016**

<http://www.fca.org.uk/news/fca-fines-towergate-timothy-philip-for-client-insurer-money-failings>

The FCA has fined Towergate Underwriting Group Limited (Towergate) £2,632,000 for failings in relation to its protection of client and insurer money.

Towergate accumulated a shortfall of £12.6 million in its client and insurer money bank accounts which went unnoticed for years due to weaknesses in the systems and controls in place. The shortfall was first identified in May 2013 but it took until November of that year to correct it, despite CASS Rules requiring any shortfall to be corrected on the day the firm performed its client money calculation. Towergate also failed to report the shortfall immediately to the FCA. In addition to this, the FCA has also fined former Towergate Client Money Officer and Director Timothy Phillip £60,000 and banned him from having direct responsibility for client and insurer money due to his failure to meet the minimum regulatory standards in terms of competence and capability.

The FCA found that Towergate failed to comply with CASS Rules and Principles 3 and 10 of the FCA's Principles of Business and Mr Phillip for failing to exercise due skill, care and diligence in managing the business for which he was responsible.

### **FCA bans Mark Kelly and Patrick Gray for lack of integrity – June 2016**

<http://www.fca.org.uk/news/fca-bans-two-individuals-for-lack-of-integrity>

The FCA has banned Mark Kelly and Patrick Gray from working in the financial services industry on the basis that they lack integrity.

Mr Kelly provided financial services to UK customers under the name PCD Wealth and Pensions Management (PCD) with Mr Gray being one of his advisers. Between 2008 and 2010, PCD advised over 350 clients and invested nearly £24 million of customer funds into potentially unsuitable investments. The company also failed to declare its fees to customers that it was receiving from a number of these investments. It was found that Mr Kelly invested customers' pension funds in to risky and unsuitable investments without their knowledge or consent and prevented customers from discovering where their funds had been invested. Mr Gray provided investment advice in the knowledge that he had no qualifications or training to do so.

However, the FCA cannot fine either individual because they were not approved persons at the time of misconduct. Further investigations are continuing.

### **The FCA fines and prohibits financial adviser for failing to act with integrity and for failing to be open and honest with the regulator—September 2016**

<https://www.fca.org.uk/news/press-releases/fca-fines-and-prohibits-financial-adviser-failing-act-integrity-and-failing-be>

The FCA has banned Elizabeth Anne Parry from performing any function in relation to any regulated financial activity and fined her £109,400 for lying repeatedly to the regulator when asked about her qualification status.

Since 2013, retail investment advisers have been required to hold a Statement of Professional Standing (SPS) and achieve the relevant professional qualifications in order to protect consumers from financial harm. Miss Parry continuously lied and provided fabricated documents to the FCA with the intention of making them believe that she was qualified to provide investment advice.

The FCA considers that Miss Parry's behaviour amounted to a failure to act with integrity, and that she put customers at risk since she wasn't qualified to provide investment advice.

## **The FCA publishes Decision Notice for Andrew Tinney, former Barclays Wealth senior director—September 2016**

<https://www.fca.org.uk/news/press-releases/fca-publishes-decision-notice-andrew-tinney-former-barclays-wealth-senior>

The FCA has published a Decision Notice finding that Mr Tinney, the former Global Chief Operating Officer of Barclays Wealth and Investment Management should be publicly censured and banned from carrying out any senior management or Significant Influence Functions in any regulated financial service provider.

In early 2012, Mr Tinney had been appointed to oversee a remediation program to resolve deficiencies identified by the SEC in the firm's US branch, Barclays Wealth America (BWA). This included a "Culture Audit" workstream. A third-party consultancy was engaged to examine how the 'tone at the top' flowed through BWA. The consultancy report included statements from interviewed BWA employees, who were highly critical of BWA's senior management.

The report expressed the opinion that BWA "pursued a course of revenue at all costs and had a culture that was high risk and actively hostile to compliance". Mr Tinney was the only person to see the report and took steps to ensure it was not shared with anyone at the firm or BWA. He told the consultancy not to distribute copies and at one point made statements to suggest the report did not exist. Mr Tinney disputes the FCA's decision to ban him on the grounds he lacks integrity and has referred the matter to the Upper Tribunal.

## **Aviva fined £8.2m for Client Money and Assets failings – October 2016**

<https://www.fca.org.uk/news/press-releases/fca-fines-aviva-pension-trustees-uk-limited-and-aviva-wrap-uk-limited-8-2m>

Aviva was fined £8.2 million by the FCA for failures in the oversight of its outsourced providers in relation to the protection of client assets. This is the third fine for Aviva from the regulator in the last three years.

Aviva outsourced the administration of client money and external reconciliations in relation to custody assets but failed to ensure that it had adequate controls and oversight arrangements to effectively control these outsourced activities.

It is the first time the FCA has meted out a penalty over improper oversight of an outsourcer around client money rules and follows warnings from the regulator in various areas that companies cannot outsource responsibility or liability for failings to third parties. Firms are reminded that when outsourcing arrangements, they remain fully responsible for compliance with the FCA CASS rules.

## **FCA imposes penalties on Sonali Bank (UK) Limited and its former money laundering reporting officer for serious anti-money laundering systems failings - October 2016**

<https://www.fca.org.uk/news/press-releases/fca-imposes-penalties-sonali-bank-uk-limited-money-laundering>

The FCA has fined Sonali Bank (UK) Limited (SBUK) £3,250,600 and has imposed a restriction, preventing it from accepting deposits from new customers for 168 days. It has also fined the bank's former money laundering reporting officer (MLRO), Steven Smith, £17,900 and prohibited him from performing the MLRO or compliance oversight functions at regulated firms.

Despite having previously received clear warnings about serious weaknesses in its AML controls, SBUK failed to maintain adequate AML systems for almost four years. The FCA found serious and systemic weaknesses affected almost all levels of Sonali's AML control and governance structure, including its senior management team, its money laundering reporting function, the oversight of its branches and its AML policies and procedures.

In addition to failing to organise its affairs responsibly and effectively, with adequate risk management systems, SBUK had whilst under investigation, failed to notify the FCA of an allegation of serious fraud.