



# Enforcement Focus



June 2015

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



---

**Market Abuse**  
Enforcement Actions

---



---

**General FCA**  
Enforcement Actions

---

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

Newgate Compliance  
Limited

Contact us:

☐ [email](#); or

☐ 020 7947 4136

# Market Conduct

## What is the Code of Market Conduct?

The Code of Market Conduct provides guidance on FCA's implementation of the Market Abuse Directive. 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 other-wise 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**

Since Newgate's previous Code of Market Primer in April, there have been a number of market abuse enforcement actions which we have included below.

### **Pardip Saini (April 2015) – Sentenced for Failing to Pay Confiscation Order**

<http://www.fca.org.uk/news/pardip-saini-sentenced-for-failing-to-pay-confiscation-order>

A convicted insider trader, Pardip Saini, was told he must spend a further 528 days in prison for failing to pay a Confiscation Order made against him.

Saini has been ordered to pay £464,565 by 12 March after being sentenced to three-and-a-half years in jail for insider dealing in 2012.

The FCA said £222,047 remained to be paid and that interest was accruing at a daily rate of £48.67.

Commenting on the case, Georgina Philippou, acting director of enforcement and market oversight, said:

"The FCA welcomes the Court's decision today. Individuals should not be able to benefit from their crimes and today's outcome should serve as a warning to those considering committing insider dealing."

Saini was originally convicted for dealing while in possession of inside information on six companies. These were Reuters, Biffa, Premier Oil, Vega Group, Enodis and Thus Group. He was convicted alongside six others who took part in a sophisticated and complex scheme to deal on the basis of confidential and price-sensitive information leaked from the print rooms of investment banks to place trades before takeover bids became public, netting them hundreds of thousands of pounds as share prices moved.

### **Logica Plc (April 2015)– Another three charged with insider dealing**

<http://www.fca.org.uk/news/three-charged-with-insider-dealing>

Another three people have been charged with insider dealing offences in relation to Logica Plc shares.

Manjeet Singh Mohal, Reshim Birk and Surinder Pal Singh Sappa; all appeared before Westminster Magistrates' court in respect of offences of insider dealing and were charged.

Mohal appeared in respect of two counts of insider dealing by disclosure of inside information, Birk in respect of one count of insider dealing by dealing in securities (shares and options) and Sappal in respect of one count of insider dealing by dealing in securities (shares).

The offences relate to trading in Logica PLC shares in May and June 2012.

## 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.

### Transaction Reporting Failure (April 2015) – £13m fine for Merrill Lynch International (MLI)

<http://www.fca.org.uk/news/fca-fines-merrill-lynch-international-for-transaction-reporting-failures>

MLI has been fined £13,285,900 by the FCA for incorrectly reporting 35,034,810 transactions and failing to report another 121,387 transactions between November 2007 and November 2014.

This is the highest fine imposed by the FCA for this type of failing. The FCA said the amount levelled at the firm reflects the severity of MLI's misconduct, failure to adequately address the root causes over several years despite substantial FCA guidance to the industry and a poor history of transaction reporting compliance, consisting of a Private Warning issued in 2002 and a fine of £150,000 in 2006. The FCA has used a penalty of £1.50 per line of incorrect or non-reported data for the first time rather than the £1.00 per line used in the three most recent transaction reporting cases because past fines have not been high enough to achieve credible deterrence.

Georgina Philippou, FCA's acting director of enforcement and market oversight, said:

"Proper transaction reporting really matters. Merrill Lynch International has failed to get this right again – despite a private warning, a previous fine, and extensive FCA guidance and enforcement action in this area.

"The size of the fine sends a clear message that we expect to be heard and understood across the industry. Accurate and timely reporting of transactions is crucial for us to perform effective surveillance for insider trading and market manipulation in support of our objective to ensure that markets work well and with integrity."

Firms should check to ensure either it or its EEA regulated brokers are reporting transactions as required.

### Libor and Euribor Misconduct (April 2015) - £227m fine for Deutsche Bank

<http://www.fca.org.uk/news/deutsche-bank-fined-by-fca-for-libor-and-euribor-failings>

The FCA has handed Deutsche Bank AG (Deutsche Bank) a £227 million fine, its largest ever for LIBOR and EURIBOR-related (collectively known as IBOR) misconduct. The fine is so large because Deutsche Bank also misled the regulator, which could have hampered its investigation.

Between 2005 and December 2010, trading desks at Deutsche Bank manipulated its rate submission across all major currencies, the FCA found. Some 29 individuals at the bank, including managers, traders and submitters in London, Frankfurt, Tokyo and New York were involved.

The misconduct went unchecked because of Deutsche Bank's inadequate systems and controls. Deutsche Bank did not have any systems and controls specific to IBOR and did not put them in place even after being put on notice that there was a risk of misconduct.

Deutsche Bank provided the FCA with a false attestation that stated that its systems and controls in relation to LIBOR were adequate and also failed to provide timely, accurate and complete information. In one instance, Deutsche Bank in error destroyed 482 tapes of telephone calls, which fell within the scope of an FCA notice requiring their preservation.

Georgina Philippou, acting director of enforcement and market oversight, said:

"This case stands out for the seriousness and duration of the breaches by Deutsche Bank – something reflected in the size of today's fine. One division at Deutsche Bank had a culture of generating profits without proper regard to the integrity of the market. This wasn't limited to a few individuals but, on certain desks, it appeared deeply ingrained."

"Deutsche Bank's failings were compounded by them repeatedly misleading us. The bank took far too long to produce vital documents and it moved far too slowly to fix relevant systems and controls. This case shows how seriously we view a failure to cooperate with our investigations and our determination to take action against firms where we see wrongdoing."

## **Paul Reynolds - Trader banned and fined for providing misleading and unsuitable advice (May 2015)**

<http://www.fca.org.uk/news/fca-bans-and-fines-paul-reynolds-for-misleading-and-unsuitable-advice>

Paul Reynolds (formerly known as Paul Brian Reynolds) has been fined £290,344 and banned from performing any function in relation to regulated activities on the basis that he is not fit and proper because he lacks integrity.

Between 2005 and 2010, Mr Reynolds was an approved person at Aspire Personal Finance Limited. He recommended a number of complex and high risk products to his clients, many of whom were on low incomes and had little or no investment experience. FCA found that some were unaware that they had invested in unregulated investments and were not told of the associated risks. Suitability letters on some clients' files, explaining the risks, had not been sent to the clients.

FCA's investigation found, amongst others, Mr Reynolds had recklessly recommended high risk investment products to eight retail clients when he was aware that he could not justify their suitability, retrospectively created documents explaining the risks that had not been sent to clients, retrospectively created signatures on two sophisticated investor certificates to suggest the UCIS could be promoted to them, and produced inflated valuations to conceal poor performance of the recommended investments.

Georgina Philippou, acting director of enforcement and market oversight at the FCA said:

"People should be able to trust advisers to recommend products which will suit their needs. Today's fine reflects the fact that we will not hesitate to take action against firms or individuals who fail to put the best interests of their clients first."

## **Forex failings – Barclays receive largest ever financial penalty; £284m! (May 2015)**

<http://www.fca.org.uk/news/fca-fines-barclays-for-forex-failings>

FCA have fined Barclays Bank £284,432,000 for failing to control business practices in its foreign exchange (FX) business in London. This is the largest financial penalty ever imposed by the FCA, or its predecessor the FSA.

Between 1 January 2008 and 15 October 2013, Barclays' systems and controls over its FX business were inadequate. These failings gave traders in those businesses the opportunity to engage in behaviours that put Barclays' interests ahead of those of its clients, other market participants and the wider UK financial system. These behaviours included inappropriately sharing information about clients' activities and attempting to manipulate spot FX currency rates, including in collusion with traders at other firms, in a way that could disadvantage those clients and the market.

Barclays primarily relied on its front office FX business to identify, assess and manage the relevant risks – however the front office failed to pick up on obvious risks associated with confidentiality, conflicts of interest and trader conduct. Some of those responsible for front office management were aware of and/or at times involved in this misconduct.

Barclays engaged in collusive behaviour in which traders from different banks, including Barclays, formed tight knit groups and communicated through electronic messaging systems including chat rooms with names like "The Cartel", "The 3 Musketeers" or "The Bandits Club" to organise methods to influence the value of major currencies in the hope of inflating their profits. For example, ensuring that the rate at which the bank had agreed to sell a particular currency to its clients was higher than the average rate at which it had bought that currency in the market to ensure a profit for Barclays".

The FCA also found examples of inappropriate sharing of confidential information by spot FX traders and sales staff, including sharing client identities and information about client orders, creating significant potential for client detriment.

Georgina Philippou, the FCA's acting director of enforcement and market oversight said:

"This is another example of a firm allowing unacceptable practices to flourish on the trading floor. Instead of addressing the obvious risks associated with its business Barclays allowed a culture to develop which put the firm's interests ahead of those of its clients and which undermined the reputation and integrity of the UK financial system. Firms should scrutinise their own systems and cultures to ensure that they make good on their promises to deliver change."

## **£80m fine for Keydata trio - failure to act with integrity and misleading the then Financial Services Authority (May 2015)**

<http://www.fca.org.uk/news/fca-published-decision-notice-three-former-members-keydatas-senior-management>

The FCA has published Decision Notices in respect of three former members of Keydata's senior management, including a £75m fine for the founder Stewart Ford. The penalty, which also included fines of £4m and £200,000 for former sales director Mark Owen and compliance officer Peter Johnson are being contested and all three decision notices have been referred to the Upper Tribunal, which has the authority to overturn or uphold them, or to modify the enforcement action.

In a long list of accusations, the FCA accused the trio of lacking 'integrity' and 'misleading' the regulator over investment performance and is of the view that all three should be banned from performing any role in the regulated financial services industry.

Keydata was found to have sold so called "death bonds" as eligible for inclusion within individual savings accounts, even though the directors allegedly knew they did not qualify. Thousands of investors were sold policies offered by two companies in Luxembourg, called SLS Capital and Lifemark. The products were based on second-hand life insurance policies bought from elderly citizens in the US.

The FCA allege that the bonds were sold in an unclear, incorrect and misleading manner. In the FCA's opinion Mr Ford, Mr Owen and Mr Johnson failed to act with integrity and also misled the then FSA on a number of occasions in relation to the performance of the investment products. Also that Mr Ford and Mr Owen failed to disclose to the FCA the significant personal benefits and commissions they received from the sale of the Lifemark products, when they were aware of the FCA's concerns around their involvement in Lifemark and the commissions they received.

Keydata was put into administration in 2009 after it was told the products would not qualify as ISA eligible and the firm could not afford to pay the resulting tax bill. Between them investors lost at least £330m which the FSCS is currently in the process of refunding.

## **Eight convicted for operating an unauthorised collective investment scheme (June 2015)**

<http://www.fca.org.uk/news/eight-convicted-for-role-in-unauthorised-collective-investment-scheme>

Eight men, Scott Crawley, Dale Walker, Daniel Forsyth, Brendan Daley, Aaron Petrou, Ross Peters, Adam Hawkins, and Ricky Mitchie have been convicted for their parts in the operation of an unauthorised collective investment scheme which led to 110 investors losing over £4.3 million.

Between July 2008 and November 2011 the defendants were involved in the operation of an unauthorised collective investment scheme through three companies: Plott Investments Ltd, (subsequently Plott UK Ltd), European Property Investments (UK) Ltd, and Stirling Alexander Ltd.

Salesmen for the companies cold-called potential investors to sell them agricultural land that the companies had bought for minimal amounts as well as land the companies did not own. Using sales scripts, misleading promotional material, and high-pressure sales techniques they lied about the current and future value of the land. People were persuaded to purchase land at a vastly inflated price, on the false promise of a substantial profit. None of the investors has seen a return.

The defendants were convicted of various offences including conspiracy to defraud, breaching the general prohibition by conducting investment business without FCA authorisation, aiding and abetting a breach of the general prohibition, possessing criminal property, and providing false and misleading information to the (then) FSA in a compelled interview.

Sentences ranged from 8 years imprisonment to 4 months imprisonment suspended for 18 months.

## Lloyds Banking Group fined £117m for failing to handle PPI complaints fairly (June 2015)

<http://www.fca.org.uk/news/lloyds-banking-group-fined-for-failing-to-handle-ppi-complaints-fairly>

FCA issued its largest ever retail fine of £117 million to Lloyds Bank, Bank of Scotland Plc and Black Horse Ltd (together Lloyds) for failing to treat their customers fairly when handling Payment Protection Insurance (PPI) complaints between March 2012 and May 2013.

In March 2012, Lloyds issued guidance instructing complaint handlers that the overriding principle when assessing complaints was that Lloyds' PPI sales processes were compliant and robust unless told otherwise ("the Overriding Principle").

In addition, Lloyds did not notify complaint handlers of known failings identified in its PPI sales processes during the relevant period. Some complaint handlers relied on the Overriding Principle to dismiss customers' personal accounts of what had happened during the PPI sale or to not fully investigate customers' complaints. In some instances, Lloyds did not contact customers to enable them to give their account of the sale.

As a result of Lloyds' misconduct, a significant number of complaints were unfairly rejected.

During the relevant period Lloyds assessed customer complaints relating to more than 2.3 million PPI policies and rejected 37 percent of those complaints. FSA started an investigation into Lloyds PPI complaint handling process as it was concerned by a substantial decline in the proportion of complaints upheld between March 2012 and October 2012. Following the FSA's intervention Lloyds removed the Overriding Principle from its PPI complaint assessment process and provided information on all sales process failings to complaint handlers.

Georgina Philippou, acting director of enforcement and market oversight at the FCA said:

"PPI complaint handling is a high priority issue for the FCA. If trust in financial services is going to be restored following the widespread mis-selling of PPI, then customers need to be confident that their complaints will be treated fairly.

"The size of the fine today reflects the fact that so many complaints were mishandled by Lloyds. Customers who had already been treated unfairly once by being mis-sold PPI were treated unfairly a second time and denied the redress they were owed. Lloyds' conduct was unacceptable."