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Regulators unite on misconduct

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Financial Services analysis: Are we going to see increased cooperation between regulators when tackling misconduct in the financial services sector? Siobhain Egan, director at Lewis Nedas Law and financial crime and compliance specialist, believes the recent collaboration between The Pensions Regulator (TPR) and the Financial Conduct Authority (FCA) could be the shape of things to come.

Original news

Press Release: FCA bans four for 'disgraceful' failings in relation to occupational pension schemes, LNB News 17/12/2013 96

Four men have received bans from the FCA. Three of the men were banned from working in the financial industry, and the fourth man was banned from holding a key position in the financial industry. The four were investigated by TPR after it became aware the men were providing advice which unnecessarily moved funds to generate commission.

What is the background to the disciplinary action?

The FCA has banned three individuals from working in financial services, and a fourth from holding key positions, having concluded an in-depth investigation into CBW Trustees, CBW Forensics (CBW), G & G Financial Services and Staverton Wealth Management, and their activities concerning six occupational pension schemes.

The FCA's findings make horrific reading, and follow a TPR investigation into CBW which also found 'fundamental failings in their professional conduct'. The FCA went further--they determined that the schemes' investments were unnecessarily moved around, generating some £4m in commissions for these named individuals, and are likely to result in lower pension payments for the members of the schemes.

In short, two of the four individuals involved were described as 'lacking integrity' and the remaining two were held to be 'incompetent and incapable of discharging their duties'.

How did TPR cooperate with the FCA in this case?

From reading various press reports, it seems that TPR first became involved upon receipt of a complaint, and then worked closely with the FCA.

This degree of cooperation is now to be expected following the publication of the Memorandum of Understanding (MOU) agreed between the FCA and TPR, dated April 2013. In summary, while the MOU acknowledges the very different roles of the respective regulators, it also highlights the many areas and objectives which they hold in common. The MOU stresses:

- cooperation

- coordination
- the exchange of information
- joint remedial actions
- joint investigation, and
- enforcement, to name but a few areas

So, for example, in this case TPR appointed an independent trustee to all six schemes--they instituted civil recovery proceedings against the four individuals concerned and froze their assets, in order to recover monies for the schemes. In turn the FCA, after concluding their investigation and disciplinary tribunals, refrained from imposing fines on these individuals, so that the maximum amounts could be recovered from them to the benefit of the members of the schemes.

Does the decision have any impact on the pensions liberation investigations being carried out by the regulators?

Project Bloom is the name of the combined task force of numerous regulators, prosecuting and investigating authorities, whose primary objective is to tackle the huge and relatively recent escalation of Pension Liberation Fraud (PLF) which is costing pension scheme members millions every year.

In 2013 Baker Tilly completed research into PLF and concluded that it cost tens of millions in 2012 (local authority schemes alone lost over £20m that year).

As a result of well-founded concerns about PLF, in May 2013 the City of London fraud squad, working with TPR, the Serious Fraud Office, the Serious Organised Crime Agency (SOCA), HM Revenue & Customs and the FCA, arrested seven individuals on suspicion of facilitating PLF. Additionally, in October 2013, the new National Crime Agency (which replaced SOCA) ordered that ten websites they believed were facilitating PLF to be taken down.

The CBW investigation is another example of aggressive, coordinated activity by the regulators into pension abuse, though perhaps not strictly PLF.

What are the trends in this area?

We fully expect this trend in enforcement by the regulators and authorities to continue and escalate. There will be more coordinated action and sharing of information between the respective authorities.

There will also be more legal focus on the trustees who, according to the Baker Tilly research, fail to recognise their responsibilities to detect and prevent fraud--this will undoubtedly mean civil actions against the trustees.

What should lawyers advising in this area be aware of?

Advising clients in this area does depend upon which type of client the lawyer is dealing with.

If it is a trustee then they should ensure that they:

- choose their advisers carefully
- monitor what those advisers are doing even more carefully
- ensure that the controls, compliance and governance of the schemes are up to scratch, so they do not fall foul of any of the relevant regulators
- are advised of all their duties in this area and of their personal liability if it all goes wrong

Interviewed by Anne Bruce.

The views expressed by our Legal Analysis interviewees are not necessarily those of the proprietor.