

Financial Services Update

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It's tough at the top...and it's about to get tougher!

When you next visit the windswept Canary Wharf you may well hear the FSA's new battle cry "Credible Deterrence!" In its efforts to change the behaviour of market participants, the FSA is focusing its efforts on individuals and in particular Approved Persons. At the summer FSA Enforcement Law Conference, the Director described Enforcement as a tool "to bring about real changes in behaviour to protect consumers and to guard against abuse in the markets." The Director also referred to "...a strategic decision to investigate more individuals" and "...more supervision and enforcement focus on individuals - especially Significant Influence Function (SIF) holders."



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The FSA believes that the message will hit home harder if the Approved Person rather than a regulated firm is faced with enforcement action. Of more significance is the regulator's intention to consider and possibly to take action against a SIF holder based on their competency. Whereas in the past the FSA has been concerned with acts of misconduct and dishonesty by

Approved Persons, it will now consider acts of incompetence.

The regulator's hardened attitude to Approved Persons was demonstrated when it took enforcement action against Paul Briant, the CEO of Land of Leather. In fining Mr Briant £14,000 for a breach of Principle 7, the FSA remarked that a financial penalty was: "...required to strengthen the

message to the market that it is imperative that chief executives and other senior managers who perform SIF exercise due care and diligence in performing their roles and take reasonable steps to ensure that the business for which they are responsible complies with the relevant requirements..."

At first glance, enforcement action against the CEO of a sofa

retailer may not be of significant relevance to the regulated sector; however, the FSA's comments on the delegation of authority and responsibility are applicable to all firms. Mr Briant's Final Notice stated; "*Whilst the FSA recognises that an approved person may delegate authority for dealing with a part of the business, he cannot delegate responsibility. Given that Mr Briant had chosen not to actively involve himself in PPI issues on a regular ongoing basis, he nonetheless needed to maintain an adequate understanding of the firm's PPI business to effectively oversee the firm's systems and controls.*" In light of these comments, a review of a firm's apportionment record may well pay dividends for an Approved Person.

A month after the Director's speech the FSA fined PMSG Insurance Services Limited £35,000 for failing to ensure that the mortgage advice provided to its customers was suitable. The FSA also withdrew the approval of the firm's compliance officer, Irene Hall, to perform controlled function CF8 (apportionment and oversight) because she lacked the competence and capability to ensure that PMSG was organised and resourced so that it complied with the regulatory requirements aimed at treating customers fairly.

The FSA Final Notice stated that: "*...on her own admission, [Ms Hall] did not have sufficient knowledge of regulatory requirements or the competence and capability, to oversee PMSG's regulated business, ensure compliance with regulatory requirements or exert influence over its adviser. As such she failed to comply with Statement of Principle 6.*" Ms Hall also accepted: "*...that she failed to recognise that the overall responsibility of ensuring proper compliance and administration of all systems and controls was a function that could not be delegated and that as the holder of the CF8 function she retained ultimate responsibility.*"

The regulated sector would agree that an Approved Person who has demonstrated a lack of integrity or dishonesty deserves

to be punished by the regulator, but is competency really a matter for FSA enforcement? Surely, it is an issue for supervision or, better still, the start of the process - authorisation.

Under the Fit and Proper Test for Approved Persons (FIT), the FSA determines an applicant's competence and capability with reference to the individual's training, expertise and experience. A later assessment of competence does not reflect well on the application of FIT.

While the Code of Practice for Approved Persons (APER) provides some guidance on what the FSA may consider incompetent behaviour, competency remains a very subjective issue. While no Approved Person or regulated firm would condone another's act of misconduct or dishonesty, a lack of competence is not such a straightforward target for the regulator to take aim at.

FSA enforcement action for incompetence may be career limiting or, indeed, ending for the majority of Approved Persons, certainly those in a customer or compliance oversight function. In the face of such an adverse finding, an Approved Person may be more prepared to stand their ground and contest proceedings rather than follow the path of FSA executive settlement. If the regulator is serious about credible deterrence, then it should be prepared for more opposed investigations and contested hearings. The battle cry in reply from the regulated may well be: 'come and have a go if you think you're hard enough'.

Industry-led solutions

With the competency of SIF holders on

Enforcement's radar, there seems even greater need for the industry-led solution to ensure that financial professionals consistently achieve high levels of competency. One method of ensuring competency is a requirement to achieve annual Continuing Professional Development (CPD). Other professions rely heavily on CPD to ensure professional competency. Failure to meet required CPD hours can result in disciplinary sanctions; it is not uncommon for legal and health professionals to be suspended for failing to meet CPD requirements.

The Financial Services professional associations would welcome a CPD scheme. In April, the Chartered Insurance Institute, Chartered Institute of Bankers in Scotland, Institute of Financial Planning and the Securities and Investment Institute (SII), 2008 published the Edinburgh Declaration (a joint



Statement of Principles on Professionalism in Retail Financial Services).

The Edinburgh Declaration calls for the establishment of a single independent Professional Standards Board, created to oversee and develop professional standards to ensure consistency and high level standards, an agreed framework of CPD, practice certificates linked to the completion of CPD and a complaints handling/disciplinary system sitting alongside FSA enforcement action.

An industry-led solution would seem preferable, especially as the financial services industry knows its standards better than anyone, including the FSA. This greater role for professional associations is not necessarily a move to self-regulation but in line with the FSA's view that market participants should police themselves. For some time now the regulators have been encouraging the securities industry to police themselves over market misconduct; there is no reason why the industry could not police itself over issues of competency.

Payday

While senior Approved Persons may draw more attention from the regulator at least they are well paid, or are they? Not any more, if the FSA has its way. Following unprecedented economic turmoil and the bail out of high street banks, the FSA's Chief Executive, Hector Sants, circulated a "Dear CEO" letter on the issue of remuneration policies. Concerned that inappropriate remuneration schemes have given bankers incentives to pursue risky investment strategies, the FSA wishes to ensure that firms adopt and follow remuneration policies which are correctly aligned with prudent financial and risk management.

No doubt, thematic reviews and heightened supervision visits will follow on the heels of this Dear CEO letter. Firms, not just banks and investment firms, will need to justify remuneration policies and benchmark themselves against the criteria of good and bad

practice outlined in the Dear CEO letter, to include:

Bad practice	Good practice
Employee bonuses calculated solely on financial performance.	Bonuses awarded on the basis of other performance measures such as risk management skills and adherence to company values.
Cash bonuses.	Payments linked to the interests of the firm, such as shares, to encourage corporate citizenship.
Remuneration which has little or no fixed element.	Fixed component to be large enough to meet essential financial commitments.
Performance adjusted deferred compensation schemes not enforced despite suggestions of poor performance.	Contractually enforceable deferred compensation schemes.
Inadequate or no independent oversight of remuneration policies and awards.	Greater use of remuneration committees, with a majority of Non-Executive Directors, and Human Resources and Risk Management to set and enforce robust remuneration policies.

Of course, a Dear CEO letter does not constitute FSA guidance but it is a sufficient shot across the bow of 'HMS British Banking' that most captains of the financial services industry will wish to review and, if necessary, amend existing policies. The industry may question whether such action by the regulator signals the end of 'light touch' regulation and whether it is the role of the FSA to influence how bankers and investment advisers are paid. Whereas the FSA may have many questions to answer about its role in the recent economic upheaval, it is clear that from now on the regulator will be more closely watching the regulated.

Steven Francis has just joined RPC's financial services team as a partner. He was recently a manager in the FSA's Wholesale Enforcement Division, dealing with criminal insider dealing cases, market abuse and investigations into whether banks, insurance firms and brokers have breached the FSA's various rules and principles. Before that he was a partner in DLA Piper's regulatory group. Steven will work closely with Jonathan Davies and Richard Burger representing clients facing criminal, regulatory and disciplinary proceedings or those who need guidance as they attempt to navigate a way through the rules and principles to which businesses, their directors and employees are increasingly subject.

FSA clamps down on brokers implicated in mortgage fraud

A significant increase in prohibition orders and the introduction of substantial fines mark a significant step-up in the FSA's campaign against mortgage fraud in 2008. Improvement in the sourcing and handling of intelligence have contributed to this increase in enforcement actions and should continue to do so as the FSA develops new partnerships and processes.



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Phillip Robinson, director of the FSA's Financial Crime & Intelligence Division, suggested in his keynote speech to the Council of Mortgage Lenders (CML) earlier this year that, "you could say market conditions have already done a lot to tackle mortgage fraud". This may be taking the FSA's recently maligned reliance on market-led solutions too far. The fraud has already happened. Market conditions are merely revealing the open secrets.

Robinson's comment was only a prelude to a staunch reaffirmation of the FSA's commitment to focus on mortgage fraud. He added that, "in the current climate, a high-quality loan book – the right loans, made to the right people – is more important than ever". The safety net provided to lenders by a rapidly growing market, protecting them from possible losses on fraudulently obtained loans, has now been taken away. Bringing this into sharper focus, "[the FSA's] estimate for the potential losses on repossessions connected with new-build mortgage fraud are around £45,000 per property ... leaving aside social harm, doesn't that sound like a bottom line incentive for renewed efforts?".

Given that the FSA has banned only five individuals since October 2004 when its regulation of mortgages began, this year's figure of 20 and rising represents a marked shift in the FSA's

campaign. The recurring theme in recent enforcement actions resulting in bans has been a knowing and dishonest involvement in mortgage fraud and, more generally, behaviour which has shown them to lack the honesty and integrity necessary to be considered a fit and proper person to carry on regulated activities.

Clear evidence of fraud by the broker has revealed a new willingness by the FSA to levy substantial fines. However, individuals have also been banned in the absence of allegations of dishonesty where they have failed to take steps to ensure that their business is not used for financial crime. The FSA's campaign is focused not only on rooting out individuals who intentionally perpetrate frauds, but also on ensuring that firms maintain suitably robust due diligence procedures.

Ms Nasir and Mr Fawole - fulfilment of the FSA's promise to increase fines

In July, the FSA banned Ms Nasir and fined her £129,000 for numerous fraudulent mortgage transactions. In only five years, Ms Nasir submitted seven mortgage applications in her own name containing false information about her employment and earnings. In addition, she submitted mortgage applications for clients in which she had entered her own bank details and failed to disclose to

the FSA details of a court order entered against her.

Concluding that Ms Nasir posed a serious risk to lenders, to consumers and to confidence in the financial system, the FSA made a prohibition order against Ms Nasir preventing her from performing any function in relation to any regulated activity and, in addition, imposed a financial penalty of £129,000. It was considered that Ms Nasir's profit should be disgorged and this accounted for £29,000 of the fine. The remaining £100,000 reflected the "need to punish [Ms Nasir] as well as deter others from engaging in this type of activity".

In August, the FSA continued its hard line by banning Mr Fawole and fining him £100,000 for knowing involvement in mortgage fraud. In June 2006 Mr Fawole made a mortgage application on behalf of his firm in which he had intentionally entered grossly inflated net profit figures for the business. In addition, Mr Fawole submitted a mortgage application on behalf of an employee whose earnings he stated to be £70,000 despite the fact that tax records for that year showed the employee earned just £5,248.

Mr Keay - failure to ensure business not used as an instrument of fraud

In April, the FSA prohibited Mr Keay from continuing to perform

any function in relation to regulated activities after concluding that he was not a fit and proper person to perform these functions. Specifically highlighted were Mr Keay's general lack of competence and the serious compliance failures within his business. Mr Keay failed to check the authenticity of key documents relied upon in applications, such as payslips, and where no such supporting evidence was produced he failed to obtain any verification of clients' incomes. He also made it standard practice to certify copy documents as genuine without having examined the originals. Further, Mr Keay resubmitted applications which had been rejected by lenders without fully investigating the reasons for these rejections. In interview, he stated that he had considered it to be the sole responsibility of the lender to check the authenticity of applications submitted. Despite being given almost a year to remedy these failings the FSA concluded that Mr Keay had "failed to put in place adequate systems and controls to prevent [his] business being used as a conduit for financial crime" and had no hesitation in banning him.

Strategy going forward - progress through information sharing

The FSA claims its recent successes in relation to mortgage fraud are largely attributable to better communication between interested parties. Since launching its Information From Lenders (IFL) programme in collaboration with the CML in 2006, over 300 referrals have been received from more than 35 lenders in respect of brokers regarded as suspicious. These referrals have prompted enforcement actions against dozens of brokers and new cases continue to arise. The FSA now hopes that the scheme will expand with participation by the remaining 115 lenders operating in the UK. Robinson suggested in a recent open letter to the CML that, "*in future, engagement with the IFL project is likely to be seen as one yardstick by which to judge a lender's 'state of readiness' to confront mortgage fraud*".

The FSA also recognises that any programme to combat mortgage fraud needs to be considered as part of a broader strategy in relation to financial crime. Accordingly, the FSA will continue to work with law enforcement agencies and, in particular, the

City of London Police, the national leaders for fraud work. In this vein, an investigation into Gordon Benville, an IFA, involving close collaboration between the FSA and Kent Police's Serious Economic Crime Unit eventually led to him being jailed for three and a half years in July for a string of fraud offences and obtaining money by deception. Given the circumstances in which some brokers have been banned this year, it would not be surprising to see criminal sanctions following on from more FSA investigations in the near future. Further, there will be close engagement by the FSA with the fledgling National Fraud Strategic Authority. It is also recognised that more effective use of information gathered from IFL and other sources is key. To this end, the FSA is in the process of developing a mortgage fraud database.

It remains to be seen whether the FSA's efforts, combined with the effects of a falling market, will be sufficient to root out unscrupulous brokers and prompt others to make the improvements in procedures necessary to ensure the authenticity of mortgage applications.

Who knows your secrets?

Firms are facing a two-pronged attack from the FSA and the Information Commissioner over the steps they take to maintain security of personal data. The two regulators are working together to require the financial services industry to improve the precautions it takes to prevent data loss. Both regulators have brought disciplinary proceedings against firms. In particular, firms who allow data to be held on unencrypted laptops or memory sticks face enforcement proceedings from both the FSA and the Information Commissioner.



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It's happening nationwide
The FSA's clampdown on lapses in data security began last year with a £980,000 fine imposed on Nationwide Building Society. A

laptop was stolen from the home of a Nationwide employee which contained confidential information about customers which could have been used for

the purposes of financial crime. Although the theft of the laptop was promptly reported by the employee to Nationwide, it took three weeks before Nationwide

investigated what data was held on the laptop. Nationwide was found to have acted in breach of FSA principle 3 which requires firms to take reasonable care to organise and control their affairs responsibly and effectively with adequate risk management systems. The FSA was particularly concerned that the Nationwide had failed to take appropriate steps to prevent financial crime.



Laptops skipping away

In February 2008 the Information Commissioner brought proceedings against Skipton Financial Services, a subsidiary of the Skipton Building Society, after a laptop had been stolen from one of its contractors. The laptop contained personal information about 14,000 customers including names, dates of birth, national insurance numbers and amounts invested. The Information Commissioner required Skipton to give an undertaking that all personal data held on laptop computers must be encrypted. It is notable that the Skipton theft occurred not from its own employee but from the employee of a contractor. This did not reduce Skipton's responsibility. Indeed, the Information Commissioner required Skipton to undertake risk assessments to ensure the security of data passed to third parties. This case is a salutary reminder that when firms outsource IT or any other functions, they remain responsible for them.

The FSA's do's and don'ts

The FSA has now published a detailed paper "Data Security in Financial Services" containing

some 100 pages of examples of good and poor practice. Top of the list of prohibitions is that customer data must not be taken offsite on laptops or other portable devices (for example memory sticks) which are not encrypted. Firms breaching this rule can expect to be the subject of enforcement action by both the FSA and the Information Commissioner. The FSA expects firms to have detailed data security policies and there should be a senior manager with overall responsibility for data security. Data security is not just an IT issue but should be an integral part of firm's risk management procedures.

Staff should be trained on the financial crime risks arising from poor data security. All staff who may have access to data should be vetted. This covers not only professional staff but also, for example, cleaners who have access to areas where personal data may be contained in unlocked filing cabinets or sitting on people's desks. Staff with no genuine business need should not be allowed to access areas where customer data is held.

Data security is not only an issue for banks and insurers with data bases of millions of customers. Most financial advisors who visit customers in their homes or offices will use a laptop to undertake their fact-finding. That laptop will then contain clients' personal data and must be encrypted.

Information Commissioner threatens substantial penalties

In a speech on 29 October 2008, the Information Commissioner issued yet another warning of the need for good practice. The Information Commissioner expects, within each organisation, an individual should have responsibility for safe-guarding personal data. This reflects the requirements of the FSA for appropriate apportionment of responsibilities. In his speech, the Information Commissioner viewed data security not as an IT issue but as one of good governance. Firms must put in place appropriate policies and use technology to minimise risks

and must ensure there is an appropriate culture of privacy and data security led from the top. The Information Commissioner has also welcomed new powers being given to him by amendments to the Data Protection Act to allow the Information Commissioner to impose substantial penalties for deliberate or reckless breaches of the Act and to undertake inspections and audits of data controllers: *"the threat and reality of substantial penalties will concentrate minds and act as a real deterrent"*.

Being open about data losses

Principle 11 in the FSA Handbook requires firms to deal with their regulators in an open and co-operative way. This is often viewed as simply an obligation to tell the FSA everything of which it would expect to be notified, but principle 11 applies not only to the FSA but to all regulators. Firms which fail to deal appropriately with the Information Commissioner will be in breach of FSA principle 11.

The Information Commissioner has said that his office should be contacted immediately when any significant breach of the Data Protection Act is discovered. He will expect a risk assessment applying to the particular situation, including steps to reduce the risks to individuals and to the integrity of the organisation's operation.

The biggest loss

Since HMRC lost two CDs containing the entire child benefit database, it has become clear that losses of personal data are unacceptable to the public. The requirements to notify the FSA and the Information Commissioner, and in most significant cases those affected, mean that losses of personal data will inevitably become public. The reputational damage this is likely to cause may be of more concern to firms than even significant regulatory fines.

Hindsight is not so wonderful

Recent judicial support for the Financial Ombudsman’s alleged use of hindsight and personal experience of previous industry practice could not have come at a worse time for a sector waking up to all sorts of potential exposures in the aftermath of the credit crunch and associated economic downturn.



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In July, the High Court upheld an Ombudsman decision against an IFA who had argued that the Ombudsman was wrong to make an award of compensation against him in respect of traded endowment policies (TEPs) on the basis of the Ombudsman’s own knowledge and in the face of written, contemporaneous evidence that such investments were considered low or low to medium risk by the financial services industry in 2002¹. The IFA, who has since retired, advised a 65-year-old architect (who was contemplating retirement) to invest in geared TEPS. The IFA argued that the decline in the market for TEPS and the returns from endowment policies in general was caused by tighter controls imposed by the FSA later in 2003 which resulted in with-profit fund managers reducing the equity content of their funds. He said, with the support of an article from the Financial Adviser publication, that the industry view in 2002 remained that TEPS were low risk investments.

Nonetheless, the Ombudsman upheld the complaint on the basis that the complainant was not to accept a significant risk. This is circular logic – referring to the risk about which the IFA said the industry did not know. However, the Ombudsman felt that the interest rates under the loan taken out to provide the gearing exposed the complainant to a risk of losses that was potentially unlimited given the value of the loan kept increasing until repaid at a time when returns from endowments were in doubt. The solitary article to which the IFA referred the Court did describe

endowment policies as essentially low risk but made clear that the risk increased where the investor borrows to fund the purchase of premiums. The Ombudsman noted that the article was written by the managing director of the company who sold the policies and did not do any further research into the contemporaneous material but relied upon his own knowledge and experience of the relevant period. The Court expressed some sympathy with the IFA and the risk of hindsight but contented itself with a warning to the Ombudsman to guard against “any use of the *retrospectoscope*” when assessing what was known at a given historical point.

As so often seems to be the case, the underlying unsuitability of the investment in geared TEPS for this complainant may have justified the Ombudsman’s decision (at least in his own mind). Advisers and their insurers must guard against indiscriminate use of hindsight (or the ‘retrospectoscope’) in reviewing the investment recommendations that are now leading to losses. What most would describe as a judgement of hindsight can always be dressed up as a failure to appreciate the risks inherent at the time. A reminder of the legal principles in this area is therefore timely. LJ Megarry said in 1972 that advice may, with the benefit of hindsight, be shown to have been utterly wrong “*but hindsight is no touchstone of negligence*”. Professionals are to be judged by the standards applicable at the time of their advice. The

ascertainment of the state of knowledge at the material time is therefore sometimes a central issue in any claim. It is determined not only by the recollection of expert witnesses but (more likely in FOS cases in which reliance on experts is rare) also by reference to contemporaneous published material. (In recognition of this, the AIFA has developed ‘Stakes in the Ground’ to provide documented evidence of current financial services practice.) Professionals are duty-bound to keep themselves informed but in practice they will not read or remember all relevant publications. For example, the Court of Appeal has held that an anaesthetist was not negligent for failing to read a particular article in *The Lancet*. Questions of liability are likely to be determined by whether the adviser reasonably relied upon a supportive body of professional opinion in their sector.

When highly-rated product providers (like AIG) or high street banks are no longer deemed as safe as they once were, complainants are bound to allege that their advisers should have known and warned of the risks (however small). Already people are saying “cash should be cash”, and “the information was there for those that wanted to look”. The defence to many of these allegations may well be simply to ask the complainant “*would you really have done anything different if I had advised of those then small risks?*”

¹ *R (on the application of Keith Williams) v Financial Ombudsman Service* [2008] EWHC 2142 (Admin.)

Round up

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He who dares, loses...

This year saw another IFA try to take a stand against the Financial Ombudsman Service. The battle ground: case fees and the injustice of deciding a complaint on the basis of what is 'fair and reasonable' (s228 FSMA 2000), even if it flies in the face of the common law position.

The two issues were dealt with in separate cases. The first, a complaint about inappropriate advice to leave a final salary pension¹. An adverse finding by the adjudicator was upheld by the Ombudsman on the basis the decision was "fair and reasonable".

The Court of Appeal held that the words "fair and reasonable in all the circumstances of the case" would have been unnecessary and inappropriate if Parliament intended the Ombudsman to determine the complaint in accordance with the common law. In addition, the power was clearly subjective. If the Ombudsman was deciding a complaint on the basis of the common law he would be bound by what the law is and not what he considered the law to be.

The Court reconciled this outcome with the firm's right to a fair hearing under Article 6 of the Human Rights Act. The Ombudsman is required to take into account the relevant law, regulations, regulators' rules and guidance and standards, relevant codes of practice and, where appropriate, what he considers to have been good industry practice at the relevant time. He is free to depart from the relevant law, but if he does so he should say so in his decision and explain why it was reasonable to hold the advisor liable.

There does, however, have to be consistency in the Ombudsman's decisions in order that firms can be assured that they will not be liable to their client in the absence of some "exceptional factor", particularly as the FSA has moved from rule based to principle based regulation. Whilst the judicial review was unsuccessful on these facts, watch this space as to whether the door has been left ajar for other firms to take a stand where the Ombudsman fails to treat like cases alike.

Case Fees

The second case concerned endowment mortgage schemes². The firm contended that the requirement for a firm to pay a case fee, even though the Ombudsman had dismissed the complaint, was unreasonable and unlawful on the basis it had only become payable as a result of the Financial Ombudsman Service's failure summarily to dismiss the complaint when it was first made.

The court was not persuaded. It held it was far from clear that the Ombudsman owed a duty to the firm to consider summary dismissal. We suspect the prevailing reason, however, is that there were a host of public policy reasons for finding in the Ombudsman's favour. The Court of Appeal was keen to avoid a scenario where a liable firm could avoid paying a fee on a technicality (because summary dismissal was not considered). It also wanted to avoid making the collection of case fees subject to inquiry and dispute and to litigation as firms challenged whether the complaint should have been summarily dismissed.

Leave to appeal to the House of Lords has been refused in both cases.

Limitation runs from when...?

Following the recent dramatic falls in the property and equities markets and given their continued volatility, investment advisors can expect to receive a growing number of claims arising out of advice offered many years ago. It is therefore worthwhile touching, once again, on the issue of from when limitation runs.

In *Shore v Sedgwick* the Court held that the six-year limitation period for negligence began to run from when the client had become "demonstrably worse off", for which it might be necessary to look back to fluctuations in the market since the advice had been given.

For the purposes of s14A Limitation Act, the three-year period ran from the date the client had broad knowledge of the matters pointing to the firm's negligence and an appreciation, in general terms, that the loss was attributable to the negligent act or omission.

The DISP rules applicable to FOS complaints are slightly different: time runs from when the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint. This difference should be borne in mind as firms may be able to time-bar complaints under DISP before they would under the Limitation Act.

¹ *R (on the application of Heather Moor & Edgecomb Ltd v Financial Ombudsman Service & Lodge* [2008] EWCA Civ 642

² *Financial Ombudsman Service v Heather Moor & Edgecomb Ltd* [2008] EWCA Civ 643

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