

**ANOTHER WARNING FIRED TO SENIOR MANAGERS AS THE FSA FINES PARTNERS IN FINANCIAL ADVICE FIRM**

**Written by Ian Mason and Stuart Maleno**

The Financial Services Authority has fined a small Derbyshire firm, Sett Valley Insurance Services, and its two partners for systems and controls and senior management failings. The failings were identified during an FSA visit as part of its programme for assessing treating customers fairly compliance among small firms. Sett Valley is a small independent financial adviser firm which provides mainly investment advice, although it also conducts some insurance intermediary business. The firm is made up of two partners and four customer advisers.

Although Sett Valley itself also received a fine, it is the enforcement actions taken against its only partners (and, therefore, its senior managers) that provide salutary reminders to senior managers on the importance of maintaining proper systems and controls and management oversight of a firm's operations, and that they can be found personally responsible for a firm's failings. The partners, John Hargreaves and Leslie Lugsden, were each fined £10,500 (which would have been £15,000 had they both not settled at an early stage) for failing to comply with principles two and seven of the FSA's Statements of Principle and Code of Practice for Approved Persons.

The reasons for the FSA's enforcement decisions were broadly the same in the case of both partners in that they both failed to act with due skill, care and diligence in managing the business of Sett Valley. They also failed to take reasonable steps to ensure that Sett Valley complied with the relevant rules and standards for firms under the FSA's Conduct of Business Sourcebook and the Insurance: Conduct of Business Sourcebook. In brief, senior managers failed to:

- Demonstrate that they had obtained sufficient information on Sett Valley's customers to assess the suitability of its advice.
- Demonstrate that they had adequately assessed and described Sett Valley's customers' attitude to risk.
- Demonstrate that they had undertaken adequate or independent product research.
- Ensure that suitability reports were clear, fair and not misleading.
- Ensure that suitability reports sufficiently explained the suitability of Sett Valley's recommendations to its customers.
- Explain the main consequences, including costs and risks, of their recommendations to customers.
- Retain adequate records to explain why their recommendations were suitable.

Senior managers also failed to ensure that Sett Valley had adequate systems and controls in relation to management, oversight and sales processes and to ensure that Sett Valley was providing suitable advice to its customers. One of the partners, who was responsible for training and competence, was also found to have failed to adequately review the competence, skills, knowledge, training and performance of Sett Valley's staff. These management failures resulted in Sett Valley failing to comply with its regulatory obligations.

As can be seen from the above, senior managers' failings are often compounded to create a situation where they may not be able to demonstrate that customers received the best advice. Sett Valley's files did not contain sufficient information on their customers, nor adequate information on possible alternative products or providers that could have been recommended to customers. This meant that the firm could not demonstrate that it was providing suitable advice to its customers, which lead to concerns that it was not in fact providing such advice. In fact, where files did contain suitability reports, these often did not contain sufficient details on costs and charges, nor risk warnings appropriate to the customer.

The firm also had no systems in place to assess the performance and competence of its staff. This meant that the firm could not know whether the advice its staff was providing to customers was suitable, nor whether customers were in general being treated fairly. If Sett Valley could not know whether its staff were competent, it equally was not in a position to address any staff competence deficiencies with adequate training. Although the fine is small and is against a small firm, larger firms should be wary of falling into the trap of believing that the lessons drawn from this enforcement action do not apply to them. This case is not only another example of the FSA holding senior managers personally liable for a firm's failings, but is also a useful reminder of the proper documentation and related processes that a firm should have in operation. It is not enough for a firm to treat customers fairly and provide them with suitable advice; a firm must also be able to physically demonstrate that it is doing so. Senior managers should, therefore, ensure that:

- They keep full and proper documentation of all advice provided to a customer.
- Full training is given to all relevant staff on the proper processes to be followed when dealing with customers.
- Training records are documented and updated as necessary.
- Staff competence is measured regularly, for example, through both formal and informal appraisals.

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