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CONCERNING CONDUCT: QUARTERLY CASES

Recent cases concerning culture and conduct ISSUE 3 • Q2 2020

Insurance and the pandemic:
The UK's Financial Conduct Authority (FCA) warned insurers to pay up quickly to small businesses affected by coronavirus.

Despite many insurers saying the business interruption policies will not cover losses for Covid-19, lawyers for policyholders argue the opposite. The FCA said it is important that claims are assessed and settled quickly and that insurers should consider making interim payments. If insurers disagreed, the FCA is asking for the grounds for reaching the decision and saying the decision is likely to 'help inform' the FCA's assessment of the insurer's culture.

In a separate effort to reduce ambiguity, the FCA is taking a test case to the High Court to assess whether seventeen disputed business interruption insurance policy wordings should pay out for the disruption caused by Covid-19. The hope is for a decision in late July. The insurers include Hiscox, Royal & Sun Alliance and Zurich.

The FCA also told insurers that they must be flexible in the way they treat customers in the light of the pandemic across other policies.

In guidance to the providers of travel, motor, home and medical policies the FCA said it 'would not expect to see a customer's ability to claim affected by circumstances over which they have little control'.

Expenses scandal and conflict management at the world's biggest sovereign wealth fund.
Norway's $1tn wealth fund was hit by an expenses scandal that impacted both its outgoing and incoming chief executives. The current CEO, due to step down in September, admitted that he should not have accepted a charter flight home from a seminar paid for by the hedge fund billionaire who is set to become the new CEO. Current CEO Yngve Slyngstad gave a lecture at a seminar in Wharton, Pennsylvania in November 2019. The wealth fund paid for his flight to the US and the train to Pennsylvania, but Nicolai Tangen, the new appointee, paid for his hotel, food and a charter flight back to Oslo. The three-day seminar included concerts by Sting and Gregory Porter. Questions are being asked about the procedure used in appointing Mr Tangan as well as whether the hospitality should have been accepted by Mr Slyngstad.

Subsequently, the incoming Chief Executive agreed an employment contract that attempts to manage conflicts of interest. Mr Tangen owns seventy-eight per cent of AKO Capital, an $18bn hedge fund, and agreed to reduce his voting stake from seventy-eight per cent down to forty-three per cent, appoint a trustee to control the stake and to donate all dividends to his charitable foundation. He has also agreed to place his personal wealth in a blind trust with a Norwegian fund manager.

Potential for backlash for big US groups.
The US Paycheck Protection Program (PPP) – a bailout fund aimed at keeping small businesses afloat during the coronavirus shutdown – started at $350bn. It was exhausted extremely quickly but also accessed by some larger firms that are suffering great criticism. In particular, multinational burger chain Shake Shack and large restaurant chain Potbelly accessed the scheme that was aimed at keeping small, private companies alive. Adverse publicity and the possibility that customers might choose to take their business elsewhere as a result, may make the firms regret their decision.

Judge rules in favour of LSE over manipulation claim.
A UK High Court judge rejected claims from litigation funding company Burford Capital that it was the victim of stock price manipulation. Burford claimed that the London Stock Exchange (LSE) should release trader information after its share price fell sixty per cent over two days in August 2019. The two days followed a report from hedge fund Muddy Waters detailing a short position on an 'accounting fiasco' that did not reveal it related to Burford Capital. Burford claimed it had found evidence of 'spoofing' and 'layering'. The LSE said it had found 'no evidence whatsoever' of share price manipulation.

Softbank CEO says he is misunderstood – just like Jesus Christ.
In an attempt to defend his investment strategy surrounding a $13bn annual loss, Masayoshi Son, the CEO of Softbank, noted that Jesus was also misunderstood and criticised. Several of Softbank's large investments such as ride hailers Uber and Didi and hotel company Oyo have been hit hard by the coronavirus crisis.

VW rapidly withdraws Instagram ad with 'racist overtones'.
Carmaker Volkswagen rapidly withdrew an Instagram video that was part of its campaign for its new model of the Golf. The video included an oversized white hand flicking away a dark-skinned person from a Golf. An internal investigation was subsequently undertaken by VW which found no indication of 'racist intent', but a lack of 'intercultural sensitivity'. VW now plans to create a board of diversity experts to check ads for offensive or discriminatory elements.

UK Covid testing stats fall well short of expectations.
The UK statistical regulator (the UK Statistics Authority) rebuked the UK government for its daily coronavirus testing figures as 'far from complete and comprehensible' and falling 'well short of expectations'. Daily briefings by the UK government tended to focus on numbers 'tested' that included tests posted out, and testing capacity rather than tests actually performed. 'The aim seems to be to show the largest possible number of tests, even at the expense of understanding' said the regulator.

Baker McKenzie ex-London boss fined for misconduct.
Gary Senior, former London boss of law firm Baker McKenzie, was found guilty of misconduct at a Solicitors Disciplinary Tribunal for inappropriate behaviour relating to an incident in 2012. He behaved inappropriately towards a female lawyer who ended up signing a non-disclosure agreement, was given a cash settlement and left the firm. Mr Senior was ordered to pay £55,000 in fines and £40,000 in legal costs.

HSBC and StanChart facing difficulties over supporting Beijing security law.
HSBC and Standard Chartered are trying to navigate the difficulty of keeping a strong presence in Hong Kong (an important source of profit) whilst satisfying investors in the UK and elsewhere with their stance over China's imposition of new security laws to suppress political protests in the territory. The two banks carefully worded their backing of the new measures but faced criticism over whether they are meeting their corporate social responsibilities.

Facebook facing boycott from advertisers for failing to stop controversial posts.
In a continuing struggle to balance free expression with the need to stop abuse and misinformation, Facebook is facing a boycott from major advertisers. Unilever decided to pull its advertising, joining others like North Face, Patagonia, Verizon and Ben & Jerry's as Facebook continues to allow posts that some accuse of glorifying violence and provoking anger. The posts included Donald Trump's 'when the looting starts, the shooting starts' about protests over the death of George Floyd. Mr Floyd, an African American, died after being arrested by police. The arrest was captured on video and shared on social media revealing that a white police officer knelt on Mr Floyd's neck for almost nine minutes.

Amigo Loans struggles with complaints.
Subprime lender Amigo Loans warned that it is struggling to deal with a rising tide of complaints. The scale of complaints means Amigo has delayed publication of its full year results. Amigo dominates the market for guarantor loans in the UK.

Wirecard finally collapses into insolvency.
What appears to be a multi-year fraud has led to the arrest of Wirecard's former Chief Executive and the insolvency of the previously heralded European fintech champion and key DAX constituent. Wirecard was already facing a market manipulation probe from German financial markets regulator BaFin, and the Frankfurt exchange was assessing the need for formal sanctions for the continuing delay in publishing its full year results. The issues started with allegations that Wirecard's revenues and cash reserves had been materially misstated, reinforced after a special investigation by accounting firm KPMG reported an inability to satisfy itself that the numbers had been appropriately reported in Wirecard's financial statements. It appears that the fraud involved a €1.9bn 'cash' balance that is thought to have never existed and was misrepresented to auditors EY using forged documentary evidence.

PE and hedge fund managers rebuked by US SEC.
The US Securities and Exchange Commission (SEC) issued a 'risk alert' that rebuked private equity and hedge fund managers for overcharging investors and secretly favouring their high paying clients over others. The SEC warned that managers will face fines and enforcement action unless procedures and policies resolve the problems.