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Insights

UK CORPORATE BRIEFING APRIL 2025

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SUMMARY

Welcome to the Corporate Briefing, where we review the latest developments in UK corporate law that you need to know about. In this month's issue we discuss:

Engaging M&A advisers: the importance of agreeing terms for early-stage work

Businesses and their advisers may wish to examine their approach to handling engagement terms for early-stage work on M&A deals following the recent decision in *H&P Advisory Ltd v Barrick Gold (Holdings) Ltd*, which is likely to have significant reverberations for M&A deal making.

FCA: Unlawful disclosure of inside information and M&A transactions

The FCA has published Primary Market Bulletin No. 54 outlining its concerns around the unlawful disclosure of inside information during the course of M&A transactions.

FTSE Russell announces changes to methodology

From September 2025 the requirement for securities to trade exclusively in GBP will be removed and to ensure that companies that come to the market through an IPO are included faster in the FTSE UK Index Series, the Fast Entry Thresholds will be lowered.

Update report from Parker Review

The 2025 update report from the Parker Review on Ethnic Diversity shows significant progress with 95% of FTSE 100 companies having met the target of at least one minority ethnic director on their board and 82% of all FTSE 250 companies.

FCA changes its proposed policy on publicising enforcement investigations

Following strong feedback, the FCA is not proceeding with its proposals to change the public interest test when deciding whether to announce investigations into regulated firms and listed companies.

Equality (Race and Disability) Bill

The government has published a consultation seeking views on how to introduce mandatory ethnicity and disability pay reporting for large employers ie. more than 250 employees. Responses are required by 10 June 2025.

Coming soon: identity verification at Companies House

Identity verification at Companies House, as introduced by the ECCTA, will be available from 8 April and is set to become mandatory this autumn, subject to transitional provisions. In preparation, Companies House has been rolling out new services, rules and guidelines.

Court finds that actionable misrepresentations might be made in a draft disclosure letter

The judge in this case held that the buyer of a business might have a right to claim for misrepresentation in relation to information provided in a draft disclosure letter.

ENGAGING M&A ADVISERS: THE IMPORTANCE OF AGREEING TERMS FOR EARLY-STAGE WORK

Partners Tom Bacon and Andrew Street and Associates Soroush Fini and Sarah Platts wrote an article for PLC Magazine on the recent decision in *H&P Advisory Ltd v Barrick Gold (Holdings) Ltd* and its ramifications on M&A dealings. This article first appeared in the April 2025 issue of PLC Magazine.

Read the full PDF >

FCA: UNLAWFUL DISCLOSURE OF INSIDE INFORMATION AND M&A TRANSACTIONS

BACKGROUND

Under the UK Market Abuse Regulation (“MAR”) it is an offence for a person who possesses inside information to disclose that information to any other person except where disclosure is made in the normal exercise of an employment, a profession or duties. Breach of these rules can result in unlimited fines or injunctions.

STRATEGIC LEAKS AND UNLAWFUL DISCLOSURE

In Primary Market Bulletin No 54 the FCA reports that it is seeing an increase in instances where material information on ‘live’ M&A transactions appears to have been deliberately leaked to the press. These concern leaks which occur inadvertently, by hinting at market sensitive information

(even if specific details are not mentioned) and strategic leaks where inside information is deliberately given to the press by individuals at an issuer or its advisers.

Individuals involved in the transactions seem to be poorly handling the inside information, failing to take adequate measures to prevent leaks and seem to be part of a culture where strategically leaking inside information to the media is acceptable. The consequence can include significant movement in share prices, the improper dissemination of information and damage to the integrity of the markets.

Examples of leaks include details of discussions between the board of an offeree company and a potential offeror following an approach for a possible offer, or where the offeree board has rejected an approach but an increased offer is likely. In many cases, the information leaked constituted inside information under MAR and resulted in a significant effect on the share price of the offeree company and/or the offeror.

RESPONSIBILITIES OF ISSUERS AND ADVISERS

There are various actions issuers can take to prevent unlawful disclosure of inside information including:

- adopting procedures to control access to the information – for example, password and/or restricted access to key documents and the use of code names;
- not disclosing inside information selectively, except in very limited circumstances, or leaking inside information;
- restricting access to inside information to those who need to access it within the group;
- having in place a disclosure committee and policy for determining whether information is inside information and when it should be announced. This should reflect the issuer's (and its employees' and executives') legal obligations in the context of the issuer's day-to-day activities and identifies practical situations/behaviours that create risk;
- policies and procedures can have limited effectiveness if they are not accompanied by culture and practices which actively discourage leaks. Employees should receive regular training with real examples of what is inside information and the process for dealing with this;
- maintaining "insider lists" and ensuring that persons acting on the issuer's behalf (for example advisers) also maintain such lists;
- if an issuer can satisfy the conditions and delay disclosure of the inside information, it should keep a record of that decision and if there is a leak or market rumour that indicates a possible leak, the information should be announced as soon as possible; and

- enquiries from the press seeking disclosure of any information should be directed to the appropriate person in accordance with the issuer's disclosure policy. Insiders who confirm information put to them by a journalist may commit market abuse by disclosing inside information.

Issuers and advisers are also reminded of Rule 2.1(a)of the Takeover Code which states that "*Prior to the announcement of an offer or possible offer, all persons privy to confidential information, and particularly price-sensitive information, concerning the offer or possible offer must treat that information as secret and may only pass it to another person if it is necessary to do so and if that person is made aware of the need for secrecy. All such persons must conduct themselves so as to minimise the chances of any leak of information*."

FTSE RUSSELL ANNOUNCES CHANGES TO METHODOLOGY

From September 2025 securities which trade in Euros and US Dollars will be considered for inclusion in the FTSE UK Index Series if eligible in addition to securities which trade in Sterling. Inclusion will still require a UK nationality and a listing on the Equity Shares (Commercial Companies) or Closed-ended investment fund categories.

The base currency of the FTSE UK Index Series will remain GBP, but non-GBP securities will have their market price converted to GBP for index calculations, using the end-of-day exchange rate for daily calculations and the real-time exchange rate for intra-day calculations.

FTSE Russell has also announced that it will lower the Fast Entry Thresholds. "Fast Entry" IPOs are where large IPO companies are added to an index, subject to meeting a materiality threshold, five days after listing. Current Fast Entry thresholds are:

- A company must have a full market capitalisation that ranks 75th or above on the FTSE UK Monitored List
- The security's investable market capitalisation must be at least GBP two billion, based on the IPO offering shares minus any restricted holdings, if applicable
- Fast entry results in an eligible security being added to the FTSE 100 index if it satisfies all inclusion criteria and the above thresholds

From 22 September 2025 under revised Fast Entry Thresholds, at the close on the first day of official unconditional dealings:

- A company must have a full market capitalisation that ranks 225th or above on the FTSE UK Monitored List
- A security's investable market capitalisation must be at least GBP one billion

An IPO company, which satisfies all inclusion criteria and the above thresholds, will be added to the FTSE 100 if it ranks at the index review auto-include level of 90 or above; otherwise, it will be added to the FTSE 250. Previously, only fast entry additions to the FTSE 100 were considered. If the thresholds and all other eligibility criteria are satisfied, the index changes will be implemented after the close on the fifth day of official unconditional dealings.

Related materials

LSEG announcement and FAQs

UPDATE REPORT FROM PARKER REVIEW

BACKGROUND

The Parker Review recommended that there should be (i) one director from a minority ethnic group on each FTSE 100 board by 2021; and (ii) one on each FTSE 250 board by 2024. FTSE 350 companies were also requested to set, by December 2023, a percentage target for ethnic minorities in their senior management teams to be achieved by December 2027.

Since 2023, 50 of the UK's largest private companies were asked to have at least one ethnic minority director on their board by December 2027 and to set an ethnicity target by December 2024 for their senior management team to be met by December 2027.

KEY FINDINGS FROM THE LATEST REPORT FROM THE PARKER REVIEW

The 2025 update report found, as of December 2024:

	Percentage of companies with at least one ethnic minority director on their board	**Ethnicity target for senior management**	**Percentage of that target met**
FTSE 100	95% (96% in 2023)	▪ 59% have set a UK senior management target for 2027 ▪ Average target is 15%	11%
FTSE 250	82% (70% in 2023)*	▪ 40% have set a UK senior management target for 2027	9%

		▪ Average target is 13%	
Private companies	48%	▪ 28% have set a UK senior management target for 2027 ▪ Average target is 13%	9%

*These figures represent the whole of the FTSE 250 including companies that did not respond.

FCA CHANGES ITS PROPOSED POLICY ON PUBLICISING ENFORCEMENT INVESTIGATIONS

In February 2024 the FCA consulted on changes to its Enforcement Guide which would have allowed it to publish an announcement that it has opened an enforcement investigation if the FCA considered this to be in the public interest. Currently the FCA only announce they have opened an investigation in 'exceptional circumstances' and investigations only come to light when they are concluded and a sanction has been imposed.

The FCA received strong feedback to its original consultation and following meetings with external stakeholders, consumer groups, law firms, the government and other bodies, it published a second consultation to address concerns raised with four significant changes:

- the impact of an announcement on the relevant firm would form part of the public interest test;
- firms would be given 10 business days' notice to make representations and an additional 2 days' notice if the FCA decided to proceed and make an announcement;
- the potential for an announcement to seriously disrupt public confidence in the financial system or the market would be included as a new factor in the public interest test; and
- the FCA would not make proactive announcement of investigations that are already ongoing when the proposals came into force.

This second consultation closed on 17 February 2025. Despite the changes proposed, the industry remained largely opposed to these and given the lack of consensus on this issue, the FCA announced, in a letter to the Chair of The Treasury Select Committee, that it will not be proceeding with these changes and the existing 'exceptional circumstances' test for publicising investigations will remain.

However, the FCA will proceed with the following changes:

- reactively confirming investigations which are officially announced by others, typically market announcements or other disclosures made by firms themselves or sometimes announcements by a partner regulator;
- public notifications which focus on the potentially unlawful activities of unregulated firms and regulated firms operating outside the regulatory perimeter, where doing so protects consumers or furthers the investigation; and
- publishing greater detail of issues under investigation on an anonymous basis.

The FCA will continue to engage with stakeholders before publishing a final policy statement by the end of June, alongside an updated copy of the Enforcement Guide.

EQUALITY (RACE AND DISABILITY) BILL

Under existing regulations, any employer with 250 or more employees (a large employer) on a specific date each year must report their gender pay gap data. The government, in a new consultation, would like to introduce mandatory ethnicity and disability pay gap reporting for large employers using a similar reporting framework as that used for gender pay gap but with certain distinctions. In-scope employers would be required to report on:

- mean differences in average hourly pay
- median differences in average hourly pay
- pay quarters – the percentage of employees in 4 equally-sized groups, ranked from highest to lowest hourly pay
- mean differences in bonus pay
- median differences in bonus pay
- the percentage of employees receiving bonus pay for the relevant protected characteristic

The government is also requesting feedback on proposals to make it mandatory for employers to report on:

- the overall breakdown of their workforce by ethnicity and disability
- the percentage of employees who did not disclose their personal data on their ethnicity and disability

DATES AND DEADLINES

The government proposes the same 2 sets of dates for mandatory pay gap reporting on ethnicity and disability ie. a 'snapshot date' of 5 April each year to collect data from employees and the requirement to report this data within 12 months ie. by 4 April the following year.

ETHNICITY DATA COLLECTION AND CALCULATIONS

Employers will ask employees to report their own ethnicity with an option to opt out. Under the proposals employers should collect ethnicity data using the classifications in the Government Statistical Service ("GSS") ethnicity harmonised standard. Employers are encouraged to show pay gap measures for as many ethnic groups as possible but to help protect privacy and produce statistically robust data, the proposal is for a minimum of 10 employees in any ethnic group that is being analysed.

DISABILITY DATA COLLECTION AND CALCULATIONS

The government proposes a binary approach measuring the disability pay gap by comparing the pay of disabled employees with non-disabled employees using the Equality Act 2010 definition of "disability". As for ethnicity data calculations, there should be a minimum of 10 employees in each group being compared in terms of pay.

COMING SOON: IDENTITY VERIFICATION AT COMPANIES HOUSE

A key feature of the Economic Crime and Corporate Transparency Act is coming into force soon which will require individuals to verify their identity if they are:

- a director;
- a member of an LLP; or
- a person with significant control (a "PSC") or 'relevant officer' of a relevant legal entity (an "RLE").

Identity verification will be available on a voluntary basis from 8 April 2025 and will become compulsory from this autumn for all newly held directorships (and other new in scope positions, as set out above) after then. In relation to existing in scope positions, a 12 month transition period will begin in autumn during which any person in an in scope position must verify their identity when a confirmation statement is filed.

Identity verification can be completed in one of three ways:

- online at Companies House using a biometric passport or driving licence;
- in person at the post office; or

- through an Authorised Corporate Service Provider (an “ACSP” and also referred to as a ‘Companies House authorised agent’).

Once successfully verified, an individual will receive a personal code, known as a unique identifier.

In addition, from spring 2026:

- any person wishing to file at Companies House will need to have had their identity verified - or work for an ACSP; and
- general partners of a limited partnership will come within scope and be required to verify their identity.

To support the introduction of identity verification, Companies House has published rules and guidance on how or when to verify:

- Verifying through Companies House
- Verifying through an ACSP
- How to verify your identity for Companies House
- When identity verification is required

Companies House has launched a new service allowing businesses to register as an ACSP (provided that they are registered with an anti-money laundering supervisory body) and has published rules and guidance in relation to them:

- Applications to become an ACSP
- Applying to register as a Companies House authorised agent
- The responsibilities of an Authorised Corporate Service Provider

COURT FINDS THAT ACTIONABLE MISREPRESENTATIONS MIGHT BE MADE IN A DRAFT DISCLOSURE LETTER

Veranova Bidco LP v Johnson Matthey PLC and others [2025] EWHC 707 (Comm)

This case relates to the sale by Johnson Matthey of a pharma health business to Veranova (of the New York investment fund, Altaris Capital Partners) for a reported £325m. During the negotiations, an important customer of the business triggered a pricing review mechanism in its contract which meant that, if the business didn’t match another supplier’s lower price, the customer was free to walk. The sellers’ disclosure letter referred to increased competition in the market that was having an adverse impact that couldn’t be quantified and - though it mentioned pricing negotiations with

the customer in question - the documents that were provided apparently related to earlier negotiations and not the current competing offer. But the buyer alleged that the sellers were aware that the business would need to match that competing offer – resulting in a price reduction that had a serious impact on the value of the business. It has made various claims against the sellers, both for breach of warranty and for misrepresentation, reportedly for c£117m.

This case relates to an action by the sellers to get the buyer's misrepresentation claims struck out – on the basis that information contained in a draft of the disclosure letter could not amount to a 'representation' (i.e. a statement of fact that the buyer was entitled to rely on when entering into the SPA). They argued that the function of the disclosure letter was simply to qualify the warranties – and they pointed to a 'no reliance' provision in the SPA and standard wording in the disclosure letter which provided that "The disclosure of any matter hereby shall not imply any representation, warranty, undertaking, assurance, covenant, indemnity, guarantee or other commitment of any nature whatsoever not expressly given in [the SPA] and none of the [warranties] shall be extended in scope by any of the disclosures."

However, the judge refused to strike out the buyer's claims, as he determined that they had a reasonable prospect of success. After reviewing the case law he concluded:

- there is no rule about what can or cannot amount to a representation when parties exchange what are to become contractual documents, except only that agreeing to provide a warranty will not, without more, amount to making a representation; and

- the fact that the primary contractual function of the disclosure letter is to qualify the warranties, does not mean that it's inherently absurd or implausible that it also provides factual information on which the buyer might reasonably rely.

This decision will no doubt put a fresh spotlight on disclosure letters – which are generally understood to be a 'shield' (to protect a seller against liability) rather than a 'sword' (giving the buyer an additional right of action). Indeed, sellers' counsel in this case had argued that to allow the claims to proceed would 'send shivers through the market' because it would suggest that parties to M&A transactions are unable to control their exposure to claims. However, it's worth noting – as the judge did - that in this case the buyer is alleging fraud – claiming that the sellers knew the information provided in the draft disclosure letter was untrue, or were reckless as to whether it was true. The judge acknowledged that, in the absence of fraud, the contractual regime for limiting liability - as set out in the SPA and the disclosure letter - may well have prevented the buyer from having a claim for misrepresentation in respect of the disclosure letter. Nevertheless, this is perhaps a good reminder to sellers – if one were needed - that they need to believe that the information they are providing is true.

RELATED PRACTICE AREAS

- Corporate
- Employment & Labor
- ESG Governance, Compliance & Reporting

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