

Calling all directors and company secretaries of LSE listed companies – key takeaways from the FCA fine imposed on the former Carillion finance director.

Last week the FCA fined Carillion's former group finance director, Mr Adam, £232,800. The FCA found that Carillion had breached the following rules and that Mr Adam had been knowingly concerned in those breaches:

- Article 15 of MAR (prohibition of market manipulation)
- Listing Rule 1.3.3R (misleading information must not be published)
- Listing Principle 1 (procedures, systems and controls); and
- Premium Listing Principle 2 – now Listing Principle 4 (acting with integrity)

The breaches primarily focus on a trading update issued by Carillion on 7 December 2016 which made positive statements about Carillion's financial performance generally and gave no indication that a provision was likely to be required. On 10 July 2017 the company announced that it expected to make a provision of £845 million. Carillion's share price fell by 70% within three days of that announcement and the company went into liquidation six months later.

There was significant pressure on one Carillion business unit – Carillion Construction Services (CSS) – to meet very challenging financial targets. This led to an increasingly large gap between the assessments within CSS of its financial performance and its performance as budgeted and ultimately reported to the market.

Internal reports provided to Mr Adam between July 2016 and December 2016 highlighted financial risks and exposures of CSS, including £172 million which was contained within budgeted forecasts and which CSS management considered as unlikely to be recovered.

Mr Adam did not share this information with Carillion's Board or Audit Committee, nor did he disclose it when the Board was considering and approving the December 2016 trading update. Instead, directors received papers showing revenue for CSS of between £42 million and £44 million rather than a likely exposure of £172 million.

Takeaways

It could be argued there is little directors can do if a key employee and fellow director is purposefully not disclosing key information that would reasonably be expected to be shared with the board. However in light of this fine and the UK Code Provision 29/AIC Code Provision 34, directors should review and gain comfort that:

- The material controls with respect to reporting, including financial reports and announcements issued to the market are sufficiently robust and operating efficiently; and
- The company's procedures, systems and controls are sufficiently robust to provide clear, consistent and transparent reporting throughout the company.

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