

Insights

UPPER TRIBUNAL RULING IN THE CASE OF CRAIG DONALDSON AND DAVID ARDEN (METRO BANK)

Jun 18, 2025

SUMMARY

The Upper Tribunal has upheld the FCA's decision that the CEO and CFO of Metro Bank were knowingly concerned in the Bank's breach of the Listing Rules.

The decision serves as a reminder of the importance for listed company directors to ensure that any market disclosures made by a listed company are accurate, not misleading or deceptive, and do not omit anything likely to affect the import of the information that is disclosed.

BACKGROUND

In December 2022 Metro Bank (the Bank) was fined £10m by the FCA for publishing inaccurate information concerning its risk weighted assets in its Q3 trading update in breach of LR 1.3.3R. LR 1.3.3R requires an issuer to take reasonable care to ensure that any information it notifies to a RIS or makes available through the FCA is not misleading, false or deceptive and does not omit anything likely to affect the import of the information.

The FCA also fined Mr Donaldson (CEO) and Mr Arden (CFO) on the basis that they were knowingly concerned in the Bank's breach of LR 1.3.3R. It was found that both Mr Donaldson and Mr Arden knew that the Q3 trading update contained inaccurate information whilst having a central role in reviewing, finalising and approving that trading update as members of the Board. They also failed to ensure that the Audit Committee and the Board were given an opportunity to consider whether the inclusion of the inaccurate risk weighted assets figure in the Q3 trading update without any qualification was appropriate.

Mr Donaldson and Mr Arden subsequently referred the decision to the Upper Tribunal.

FINDINGS OF THE UPPER TRIBUNAL

First issue – had the Bank breached LR 1.3.3R?

Yes. The Upper Tribunal confirmed that the Bank failed to take reasonable care to ensure that the Q3 trading update was not false or misleading and did not omit anything likely to affect the import of the information contained within it. The FCA's position was that LR 1.3.3R does not require issuers to publish accurate and complete information only if it is reasonable to do so, but instead requires them to take reasonable care to "ensure" that published information is accurate and complete, and this is always the position. If, for any reason, including internal control or data failings, an issuer is unable to report accurate figures, it has to "come clean about that". It does not have the choice to report a figure that is known to be inaccurate or not believed to be reliable, without qualification. It is irrelevant that qualification may be embarrassing or commercially inconvenient.

Second issue - were Mr Donaldson and Mr Arden "knowingly concerned" in the breach?

The Tribunal stated in its findings that to be "knowingly concerned" in a breach:

1. a person must have been actually involved in the contravention; merely passive knowledge is not sufficient; and
2. must have had knowledge of the facts on which the contravention depends; and
3. it is immaterial whether such person had knowledge of the law, unless:
 - i. that person had received and was relying on independent legal advice that the activity concerned was not in contravention of the law; and
 - ii. that advice was based on a correct and complete factual matrix.

The Upper Tribunal found that both Mr Donaldson and Mr Arden were "involved in the contravention" and did not have merely "passive knowledge". The legal advice given to them did not satisfy the requirement of (3) above and Mr Donaldson and Mr Arden had the necessary "knowledge of the facts on which the contravention depends". As a result, they were "knowingly concerned" in the Bank's breach of LR 1.3.3R.

However, due to mitigating circumstances, the Upper Tribunal reduced the penalties against them by 25%.

PRACTICAL IMPLICATIONS OF THIS CASE

1. Directors should focus on and challenge any verification processes undertaken by the company to ensure the accuracy of information being published to the market.

2. Directors should ensure that they are given a reasonable opportunity to review and comment on any information to be published to the market.
3. If any of the Directors are aware of any additional matters or information that may be relevant to information to be published to the market then this should be shared with the wider board.

Donaldson and Arden v The FCA

RELATED CAPABILITIES

- M&A & Corporate Finance
- Securities & Corporate Governance
- UK Public Company

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