

# FCA finds against issuer and members of its board for market abuse and Listing Rule failings

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On 24 July 2022 and 28 July 2022, the FCA respectively published a Decision Notice against [Carillion plc \(in liquidation\)](#) (“Carillion”) and Decision Notices against three of its former executive directors: [Richard John Howson](#), [Richard Adam](#) and [Zafar Khan](#) in connection with the dissemination of false and/or misleading information and Listing Rule failings. Carillion has been publicly censured, instead of being fined, as the firm is insolvent and in liquidation. Otherwise, the FCA would have imposed a financial penalty of £37,910,000. Carillion has not referred this decision to the Upper Tribunal.

The FCA has decided to fine Mr Howson (former chief executive officer) £397,800, Mr Adam (former finance director) £318,000 and Mr Khan (former finance director) £154,400. The quantum of each fine reflects the difference between the relevant income of the three individuals at the time of the breaches.

The three individuals have referred their respective Decision Notices to the Upper Tribunal and so their findings are currently provisional.

## Overview

On 10 July 2017, Carillion announced (amongst other things) an expected provision of £845 million as at 30 July 2017, of which £375 million was in relation to projects in Carillion Construction Services (“CCS”). The CCS provision arose when Carillion acknowledged that accounting judgements it had previously made in relation to its

construction projects needed to be revised significantly downwards. Carillion's share price fell by 39% on the day of the announcement and by 70% within three days. It went into liquidation on 15 January 2018.

Before this disclosure, Carillion published announcements on 7 December 2016 (a trading update), 1 March 2017 (results announcement) and 3 May 2017 (AGM statement) which made positive statements about Carillion's financial performance generally and specifically in relation to CCS' construction business. The announcements did not reflect significant deteriorations in the expected performance of CCS' portfolio and the increasing financial risks and exposures associated with it, notwithstanding that CCS' management had highlighted these to one or more of Mr Adam, Mr Khan and Mr Howson.

CCS had throughout this period been under significant pressure to meet very challenging financial targets despite clear warning signs that CCS's business was deteriorating significantly. This resulted in an increasingly large gap between CCS's assessment of its financial performance and its performance as budgeted and reported to the market. To bridge the gap, overly aggressive accounting judgements were used which did not reflect the true financial position or financial risk and did not comply with the applicable auditing standards (IAS 11).

Whilst one or more of Mr Adam, Mr Khan and Mr Howson were made aware of each of the risks and exposures, they did not report these to the wider Board or the Audit Committee.

## Carillion

The FCA concluded that, from 1 July 2016 to 10 July 2017, Carillion breached:

- **Article 15 Market Abuse Regulation** – by disseminating information that gave a false or misleading impression as to the company's share value, in circumstances where it should have been aware that the information was false or misleading;
- **Listing Rule 1.3.3R** – by failing to take reasonable care to ensure that its announcements were not misleading, false or deceptive and did not omit anything likely to affect the import of such information;
- **Listing Principle 1** – by failing to take reasonable steps to establish and maintain adequate procedures, systems and controls to enable the company to comply with its obligations pursuant to the Listing Rules. Carillion's procedures, systems and controls were considered inadequate as significant pressure was placed on CCS to meet targets; there was a lack of awareness and application of Carillion's internal policies; a lack of proper records around contract accounting judgements; inconsistent management and financial information; and a failure to inform the Board and the Audit Committee about the significant financial risks being reported by CCS; and
- **Premium Listing Principle 2** – by acting recklessly in relation to the facts and matters described above, the FCA concluded that Carillion failed to act with integrity towards its holders and potential holders of its premium listed shares.

## Executive directors

In the FCA's view, Mr Howson (in relation to his conduct as CEO from 1 July 2016 to 10 July 2017), Mr Adam (in relation to his conduct as group finance director from 1 July 2016 to 31 December 2016) and Mr Khan (in relation to his conduct as group finance director from 1 January 2017 to 10 July 2017) acted recklessly and were knowingly concerned in Carillion's regulatory breaches.

## Our view

We will watch with interest how the Upper Tribunal considers the cases against the directors, but it comes as no surprise that the FCA has taken a robust approach with regard to individual directors of issuers given its stated priority to hold individuals to account where appropriate. Much of the outcome will turn on the evidence as to whether the individuals can be shown to have been actually involved in the contravention and have knowledge of the facts upon which the contraventions depend.

One immediate point that emerges from the FCA's provisional finding is the lack of clear records of the assessments that were being made by Carillion and which contributed to the lack of rigour in the judgments being made and approved, which is a salutary reminder of the importance of record keeping and governance around decision-making.

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