

Burns v FCA: the Court of Appeal clarifies law on directors' fiduciary duties and conflicts of interest

On 21 December 2017, the Court of Appeal handed down judgment in the case of [Burns v The Financial Conduct Authority \[2017\] EWCA Civ 2140](#). This case raised interesting questions about the duties owed by the directors of limited companies, building societies and friendly societies under sections 175 and 177 of the Companies Act 2006 and section 63 of the Building Societies Act 1986, in particular directors' duties in cases of potential conflicts of interest. The judgment provides helpful guidance on this issue.

Angela Burns was an investment consultant. In 2006 she carried out some consulting work for Vanguard, the US asset manager.

In 2008 and 2010 Ms Burns became a non-executive director of two mutuals, Marine and General Mutual Life Assurance Society (MGM) and Teachers Provident Society Limited (Teachers). Her roles at each of MGM and Teachers included acting as chair of their respective investment committees.

In 2009 MGM was considering engaging Vanguard to provide investment services for a new asset-based annuity business. In 2010 Teachers was looking into replacing its existing investment manager and Vanguard was one of the possible replacements.

However, without disclosing the full facts to either MGM or Teachers, Ms Burns had been maintaining her contacts with Vanguard in the meantime. Indeed, she had been attempting to get further work from Vanguard, including becoming a non-executive director of its UK arm. None of these attempts had resulted in any business relationship between Vanguard and Ms Burns and the question for the Court was whether this made any difference: was the fact that she was trying to get work from Vanguard enough to create a conflict of interest?

The Court answered this question "Yes". "She was actively soliciting a remunerative relationship with Vanguard, for her own personal benefit, at the very same time as she owed an undivided duty of loyalty to MGM. In our view there was clearly a sufficient likelihood of a conflict of interest" (at [76]) and "Ms Burns' duty of undivided loyalty to Teachers required that she should have no undisclosed interest in Vanguard, yet ... she actively sought to bring about a situation where she would have such an interest. In our view the act of solicitation itself, against this background, was sufficient" (at [84]).

The consequences for Ms Burns were severe. She was ordered to pay a penalty of £20,000 and has been banned from becoming a non-executive director of a regulated financial services company, the Court of Appeal having agreed with the FCA that she is not a fit and proper person.

Nicholas Vineall QC, joint head of chambers at 4 Pump Court, acted for the Financial Conduct Authority.