

Market justice

FSA is right to raise the fear factor against insider traders

The Financial Services Authority has talked for some time about raising the "fear factor" against market miscreants. Now it is doing it. In the wake of three successful - if small - insider trading convictions, it is pursuing bigger fry. The agency's ongoing investigation into an alleged insider dealing ring - which has so far involved seven arrests, including several senior market practitioners - is the sort of muscular action that might send icy fingers running up the spines of a few City recalcitrants.

And about time too. The FSA has been too laid back about punishing market abuse. In the near-decade since it took over responsibility for tackling insider trading, its own measure of "market cleanliness" (the number of deals preceded by suspicious price movements) has barely budged from 31 per cent of deals in 2000 to 29 per cent in 2008. Until the recent three cases, it had secured no insider dealing convictions at all.

Cynics will say that the crack-down is a deathbed conversion, and only happened because the Conservative party has threatened the FSA with oblivion. But it pre-dates the Tory policy. Since 2007 the FSA has been improving the quality of its enforcement officers, and the budget for tackling market malpractice has risen sharply.

The biggest barrier to successful enforcement has always been the difficulty of securing convictions. Insider trading is hard to prove. In the absence of confessions, it often depends upon circumstantial evidence, and innocent explanations can generally be found for even the most suspicious trades.

The FSA is actively seeking the co-operation of witnesses. US style plea bargaining may not be possible, but the penalties at its disposal - administrative and judicial - give it levers to pull. Take the recent conviction of Malcolm Calvert, an ex-banker. This relied on the testimony of an accomplice, who was fined after admitting his own offence while Calvert went to jail. True, there is always a risk that this sort of bargaining may lead to tainted evidence. But the FSA's approach is not oppressive.

The key to the new approach will be to pick the right cases. The insider ring investigation will be the FSA's biggest test. It must also ensure that the manner in which it conducts cases does not expose it to criticism. The FSA has been too slow in pursuing cases, even when the individuals under examination have been named and had their reputations trashed. Enforcement must be fair as well as tough. And the FSA should remember that justice delayed is justice denied.

