FCA Enforcement Themes and Trends

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What we will cover this morning





A look back at 2017/18



The total amount of FCA financial penalties continues to decrease



Source: FCA website and Annual Reports | * As at 7 November 2018 – includes one financial penalty of £76 million imposed on an individual, the majority of which was disgorgement.

FCA areas of enforcement focus 2015/16 – 2017/18



The number of open FCA investigations continues to increase



Source: FCA Annual Reports and Freedom of Information Act request submitted to the FCA by Allen & Overy

The FCA's current* enforcement case portfolio



* As at 31 March 2018 | ** Includes investigations relating to misselling and financial promotions | Source: FCA Annual Report 2017/18



FCA investigation style and methods



The FCA has continued to adopt its 'diagnostic' approach to enforcement investigations

Opening an investigation does not mean we believe misconduct has occurred or that anyone involved in the investigation is guilty of misconduct. The purpose of the investigation is to get a full understanding of the facts so that we can make a decision about whether and, if so, what kind of action may be necessary...

We take a strategic approach in our investigations. We aim to quickly identify the heart of the case so we can focus on the key evidence and decide whether to continue with or close the investigation.

FCA Mission: Our Approach to Enforcement (March 2018)

A significant number of FCA investigations are being closed with no action being taken Average length of an



Source: FCA website and Annual Reports and Freedom of Information Act request submitted to the FCA* | Data only available for FCA financial year

The FCA's approach to discontinuing enforcement investigations varies considerably



Source: FCA website, Annual Report and Board Minutes

The bar for co-operation credit in FCA enforcement actions continues to be a high one: A recent example



Root cause analysis

- Proactively commissioning a third party review of an incident and raising minimal objections to its findings.
- Not claiming privilege over report produced.



Remediation

- Initiating a comprehensive review of relevant systems and controls.
- Taking appropriate remedial steps in a timely fashion.



Investment in training

 Investing significant sums in providing additional and enhanced training in the relevant area(s) to employees.



Co-operation during an investigation

 Includes responding 'promptly and fully' to FCA requests 'without creating obstacles' and bring additional information to the FCA's attention.

Senior management engagement

 Early engagement from senior management and their participation in open meetings with the FCA.



Proactive and voluntary redress

 Proactively initiating comprehensive customer / client redress schemes.

Source: Final Notice issued to Tesco Personal Finance (October 2018)

Continued FCA focus on self-reporting



Source: Final Notice issued to Santander UK plc (December 2018))



Market abuse



The FCA's portfolio of market abuse investigations has dropped, with more cases being discontinued



Source: FCA website and Annual Reports | * In 2012/13 the FCA changed the way it reported its closed market abuse investigations

Key areas of focus for the FCA in relation to market abuse



The FCA continues to receive more STORs, 93% of which related to equities in 2017



Source: FCA website | On 3 July 2016, the Market Abuse Regulation came into force and introduced STORs in place of STRs

The FCA has recently given feedback to firms on their approaches to submitting STORs

Calibration of surveillance systems. A more tailored approach is required.



Source: FCA Market Watch Newsletter (September 2018 / No. 56)

Key themes from recent enforcement cases brought by the FCA in relation to market abuse controls



Source: Final Notices issued to WH Ireland (February 2016) and Interactive Brokers (January 2018) and Decision Notice issued to Linear Investments (June 2018)



Culture and governance



Key priorities for the FCA in relation to culture and governance



Ensure firms create environments of 'psychological safety', where speaking up becomes the norm.



Ensure diversity and inclusion.



Provide better support, capability-building and empowerment to 'squeezed' middle managers.



Working with firms to shape 'healthy cultures'.



Look at a broad range of incentives to shape behaviours, including those that go beyond remuneration and other financial incentives

Source: FCA Discussion Paper (DP 18/2) Transforming culture in financial services.

The FCA now routinely carries out investigations into firms and individuals in parallel

We carry out investigations into both firms and individuals together where it appears those individuals may be involved in the suspected breach. Usually these investigations will be carried out at the same time. This allows relevant facts and matters to be considered together, in the round. This is especially important where relevant individuals have had a senior management or governance role in the circumstances under investigation.

FCA Mission: Our Approach to Enforcement (March 2018)

Investigations into individuals represent a significant proportion of the FCA's current* investigations



Open enforcement investigations into individuals

Open enforcement investigations into firms

Source: Information obtained via Freedom of Information Act request submitted by Allen & Overy | * As at June 2018

Breakdown of current* FCA and PRA enforcement activity in relation to individuals



Source: Freedom of Information Act request submitted to the FCA by Allen & Overy |* Information as at June 2018 |** One Senior Manager under investigation holds two Senior Management Functions.

Practical impact of the FCA's approach to individual accountability



Internal assessments of (mis)conduct

Scrutiny of internal decisions taken about potential breaches of the FCA / PRA Code of Conduct and about individuals' fitness and propriety.

Scrutiny of regulatory references provided by firms.

Parallel investigations and disciplinaries

Tough decisions about when to launch disciplinary proceedings when there are parallel enforcement investigations.

Challenges in relation to the contents of regulatory references for individual under investigation or who have been subject to investigations which are discontinued.

Internal individual accountability exercises

Continued focus on these exercises by the FCA and the PRA.

Particular focus on consideration given to Senior Managers.



Financial crime



During 2017/18, the number of open financial crime enforcement investigation increased further



Open FCA enforcement investigations relating to financial crime as at 31 March 2016

Open FCA enforcement investigations relating to financial crime as at 31 March 2017 Open FCA enforcement investigations relating to financial crime as at 31 March 2018

Source: FCA Annual Reports

The FCA is conducting criminal investigations into firms' money laundering systems and controls



We have also commenced a small number of investigations into firms' systems and controls where, for the first time, we have indicated to those firms that we are looking at whether there has been any misconduct that might justify a criminal prosecution under the Money Laundering Regulations.

Mark Steward, Director of Enforcement and Market Oversight at the FCA (July 2018)

Practical observations from dual-track civil and criminal money laundering controls investigations

Managing individuals who are potentially proximate to the matters under criminal investigation.



Managing potential conflicts of interest between the firm and employees.

Defining and maintaining the scope of the criminal and civil investigations (plus any other parallel reviews) with precision.



Cyber resilience



The FCA has seen a 188% increase in the number of 'cyber incidents' reported to it by firms since 2015

Most common types of cyber incidents reported to the FCA since 2015



Denial of service attacks (41%)

Preventing legitimate users from accessing a service.



Hacking (loss of data) (16%)

Unauthorised access resulting in loss of data.





Hacking (service disruption) (6%)

Unauthorised access resulting in disruption to service.

Source: FCA website and Annual Reports and Freedom of Information Act request submitted to the FCA

Cyber incidents reported to the FCA by sector between 2015 and 2017



Source: FCA website and Annual Reports and Freedom of Information Act request submitted to the FCA

Key areas of focus for the FCA in relation to cyber resilience

Design systems, controls and products with cyber risk in mind.

Seek to mitigate cyber risk and plan how to handle cyber incidents.

Respond to cyber incidents with 'sufficient rigour, skill and urgency'.

Report 'material' cyber incidents to the FCA under Principle 11. The FCA considers the following key factors when assessing materiality:

- If there has been significant data loss;
- The availability or control of firms' IT systems has been impacted;
- A large number of customers / clients are impacted;
- Results in unauthorised access to, or malicious software present on, your information and communication systems.



Proactively and quickly undertake remediation and customer redress (if appropriate).

Source: FCA website | Various FCA speeches | FCA Final Notices

Concluding thoughts and predictions for the future



Predictions for the rest of 2019 and beyond



Regulatory change projects

Scrutinising the robustness of firms' implementation projects, e.g. MIFID II, MAR and the SMCR.



Individual accountability

The FCA and PRA will continue to probe firms' decisions relating to Conduct Rule breaches and fitness and propriety.



More partial settlements

The FCA may be keen to exercise its (relatively new) powers in appropriate cases.



Discontinued investigations

The FCA is likely to maintain its approach to discontinuing a higher proportion of investigations.



Focus on technology

Focus on the use of technology (e.g. in relation to financial crime) but also the risks associated with doing so.



Penalties policy

Long-awaited FCA consultation in relation to its penalties policy is due to be published.





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Questions?

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