



# **Enforcement Annual Performance Account 2012/13**



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# Enforcement Annual Performance Account 2012/13

## Foreword by Tracey McDermott

This Enforcement Annual Performance Account looks at the fairness and effectiveness of the Financial Services Authority's (FSA's) enforcement function over the 2012/13 year; we publish this report at the same time as our Annual Report.

While this is the last Enforcement Performance Account summarising the activities and achievements of the Enforcement function in the last 12 months of the FSA, we will continue to produce this report as the Financial Conduct Authority's (FCA) Enforcement function in the future. In March 2013 we issued a Consultation Paper on how we can be more transparent as a regulator. This included suggestions for changing this report to increase transparency. At the time of publication, this consultation had just closed, but responses were very much in favour of a more transparent approach. We have therefore made some changes to this report to make clearer what we have been focused on over the last year, and the lessons we have learned. We will continue to consider what further information it would be useful to publish in future FCA Enforcement Annual Performance Accounts.

The FSA's approach has been to achieve credible deterrence regarding our Financial Services and Markets Act (FSMA) mandate. We have focused on cases where we think we can make a real difference to consumers and markets, using enforcement strategically as a tool to change behaviour in the financial services industry. We have a range of sanctions available – criminal, civil and administrative – and we use these sanctions to deliver strong, visible enforcement outcomes. To achieve credible deterrence, wrongdoers must not only realise that they face a real and tangible risk of being held to account, but must also expect to face a meaningful sanctions.

The FSA published 79 Final Notices in 2012/13. We imposed £423.2 million in financial penalties during the year. These included some of the highest fines we have levied to date. We have devoted significant resources to LIBOR in the past year and expect to continue to do so during 2013/14. We also saw significant sanctions imposed for failures in the retail markets including two relating to Payment Protection Insurance (PPI) complaints handling. Redress directly related to Retail Enforcement cases totalled more than £14 million.

On the criminal side we concluded four trials, resulting in 13 criminal convictions – 12 for insider dealing and one related to unauthorised business.

We continued to focus on taking actions against individuals. The FSA took more actions against individuals over the 2012/13 year than we did against firms. We took action against 55 individuals, imposing over £5 million in fines, 43 prohibitions, and 13 criminal convictions. We made some progress on our agenda of holding Significant Influence Functions (SIFs) in larger firms to account: we imposed penalties and prohibitions on Peter Cummings (formerly of HBoS) and Yohichi Kumagai (formerly of Mitsui Sumitomo Insurance Company (Europe) Ltd). We also publicly censured Tidjane Thiam for his role in breaches by Prudential of Principle 11. We recognise, however, that there is much more to do in this area and it will be a continued area of focus for the FCA in 2013/14.

This document includes an overview of the enforcement action we have taken and statistical and background information about enforcement investigations and their outcomes. We also assess the fairness and effectiveness of the enforcement process, based partly on feedback from the firms and practitioners that have been involved in the enforcement process.

We welcome comments and feedback on the new form of this report.

## Retail conduct

1. The FSA had a statutory objective to secure an appropriate degree of protection for UK consumers. Enforcement action has played an important role in both disciplining firms and securing consumer redress where the FSA found that firms have acted unfairly. The FSA's retail Enforcement teams have concluded cases in the 2012/13 year that have resulted in fines of over £96.8 million and the banning of 24 individuals from the financial sector. Twelve public censures were published for misconduct in relation to retail issues, eight firms had their Part IV Permissions cancelled, and a further 10 individuals had their approval to act as a regulated person withdrawn. Some examples of our cases are summarised below.

### *UCIS*

- One of the FSA's priorities in 2012/13 was investigating the mis-selling of investment products such as Unregulated Collective Investment Schemes (UCIS) and the mis-use of self-invested pension plans. In October 2012, for example, the FSA fined Martin Rigney of Topps Rogers £117,330 and banned him from the financial services industry for mis-sales of UCIS. Rigney advised 94 customers to invest over £12 million in UCIS that were highly risky and not suitable for his clients' needs. This is the 26th enforcement action we have imposed in relation to poor UCIS practice since 2010, prohibiting 16 individuals and imposing fines of over £500,000.
- Given the on-going and widespread failures demonstrated by our supervision of the UCIS market, we have now introduced new rules to strengthen the regime and reduce the scope for poor practice.

### *Low-cost insurance*

- The FSA highlighted concerns about the way in which low-cost insurance is sold to customers. In November 2012, we imposed a fine of £10.5 million on Card Protection Plan (CPP) Limited for mis-selling its insurance products. The FSA found widespread mis-selling of CPP's two main UK products, card protection and identity protection insurance. CPP sold its card protection product by emphasising that customers would benefit from up to £100,000 worth of cover for fraudulent transactions on lost or stolen debit and credit cards. However, this cover was not needed because customers were already covered by their banks. CPP also overstated the risks and consequences of identity theft during its sales of identity protection. While CPP's products were relatively inexpensive, the FSA found that they were mis-sold widely and CPP encouraged its sales agents to be overly persistent.
- We continue to work with CPP and some of the banks and card issuers that sold the protection policies to agree compensation arrangements for customers who were mis-sold a policy.
- The FCA continues to do more work in this area, including in enforcement.

### *Payment Protection Insurance (PPI)*

- The FSA continued to take action against firms for payment protection insurance (PPI) related misconduct. Following a lengthy process, the Upper Tribunal gave its judgment in the case of Black and White Group Limited (Black and White) in December 2012, directing the FSA to censure Black and White, fine the former CEO and Chairman, and ban the former Chairman and COO for failings in relation to the sale of mortgages and PPI. The Tribunal decision upheld the FSA's view that Black and White had failed to treat its customers fairly by encouraging staff to focus on sales rather than considering whether the products were suitable for customers.
- Our more recent focus has been on complaints handling in relations to PPI and we have, to date, imposed two penalties, on Lloyds Banking Group (LBG) and the Co-operative Bank for delays in making redress payments to customers about PPI.

### *Record-keeping*

- The FSA found significant consumer harm because of poor mortgage records systems at the Bank of Scotland; it fined the firm £4.2 million for failures that meant that it held inaccurate mortgage records for 250,000 Halifax customers for considerable periods of time. This resulted in customers not receiving important information about changes to the terms and conditions of their mortgages. Bank of Scotland

put in place a programme to rectify the fact that some customers had received potentially confusing information about changes to their standard variable rate mortgage contracts. However, while monitoring a consumer forum website, the FSA found a number of customers complaining that they had been wrongly excluded from the programme. In total, approximately 160,000 customers who were due goodwill payments totalling approximately £162 million, were excluded.

2. Some of the cases the retail Enforcement teams have been working on throughout 2012/13 are still on-going. However, since 2010 the FSA has been able to publish Decision Notices regarding firms or individuals where they have referred the FSA's findings to the Upper Tribunal. This has allowed the FSA to publish findings on cases where we have completed the investigation and which have been through the Regulatory Decisions Committee (RDC) process. Last year the retail Enforcement teams published four Decision Notices, including those relating to Arch Financial Products (AFP), Robin Farrell, AFP's Chief Executive and Robert Addison, a senior partner and compliance officer at AFP. The FSA concluded that the parties had failed to manage conflicts of interest and exposed investors to the risk that the funds would not be able to liquidate their investments to meet redemption requests. The matter has been referred to the Upper Tribunal, which will determine the appropriate action, if any, for the Financial Conduct Authority (FCA) to take.

### Threshold conditions cases

3. We have a team dedicated solely to taking actions against firms that do not meet the basic standards needed to carry out the activities for which they have obtained authorisation. In the last year, 36 firms have had their permission to conduct regulated business cancelled, and a further 162 firms have taken remedial steps to address breaches of the Threshold Conditions following action from this team. Recurring breaches include lack of adequate resources (including Professional Indemnity Insurance and financial resources), failures to comply with ombudsman awards, non co-operation with the Authority, non-submission of regulatory returns and non-payment of fees.
4. The team has also taken action against payments services firms, cancelling the registrations of 19 and securing remedial steps from a further 60 firms for basic failings.
5. We saw a 27% reduction (from 179 to 130 firms) in referrals of firms that failed to submit regulatory returns. This has been an area of focus for some time and these figures reflect a long-term trend of improved compliance in this area.
6. In 2012/13, the team also focused on firms 'bumping along the bottom' – i.e. firms that repeatedly failed to meet basic regulatory obligations. Action was taken on seven of these firms: two had their permissions cancelled, one firm applied to cancel, and four firms committed to a formal agreement to comply promptly in future.

### Senior management and Significant Influence Functions (SIFs)

7. Seeking to ensure that senior management are held to account has been a key priority for the FSA. It is often more complex and requires much more resource to pursue enforcement cases against individuals. Our experience in recent years has highlighted a number of changes we had to make to ensure our approach is more effective. This will, however, remain a key priority for us in the FCA. In 2012/13, the FSA took action against 34 individuals who held SIF functions, imposing £2.9 million in fines and 26 prohibitions.
  - In September 2012 we imposed a fine of £500,000 on Peter Cummings, former Executive Director of HBOS plc. and Chief Executive of its Corporate Division, and banned him from holding any senior position in a UK bank, building society, investment or insurance firm. These sanctions reflected his failure to exercise due skill, care and diligence by pursuing an aggressive expansion strategy within the Corporate Division without suitable controls to mitigate the risk, and for failing to take reasonable care to ensure that the Corporate Division adequately and prudently managed high-value transactions that showed signs of stress.
  - In March 2013 we fined companies in the Prudential Group (Prudential) a total of £30 million for breaching FSA Principles and UKLA Listing Principles. The fines related to Prudential's failure to inform the FSA at the appropriate time that it was seeking to acquire AIA, the Asian subsidiary of AIG, in early 2010. The FSA has also censured Tidjane Thiam, Prudential's Group Chief Executive for his role in Prudential's breach of Principle 11.

- The FSA fined Mitsui Sumitomo Insurance Company (Europe) Ltd (MSIEu) £3,345,000 for serious corporate governance failings, and imposed a ban and fine of £119,303 on its former executive chairman, Yohichi Kumagai, banning him from performing any significant influence controlled function in relation to any regulated activity. Despite receiving clear guidance from the FSA that the management structure and composition of the board was ineffective, he failed to take prompt action to remedy the situation. The FSA found that there were significant failings in corporate governance and control arrangements that resulted in the firm being poorly organised and managed.

### Wholesale conduct

8. Enforcement is an important tool in seeking to deter improper conduct in wholesale firms and markets. High standards of conduct in this area are essential to the integrity of the markets. Large failures in wholesale conduct can cause systemic harm and can have serious effects on the wider confidence in the UK financial system. UK markets must be seen as an orderly and safe place to do business.
9. In 2012/13 we published outcomes for significant cases concerning wholesale conduct. In particular, we fined three firms for misconduct relating to LIBOR and other benchmarks. Barclays Bank plc was fined £59.5 million in June 2012, UBS AG was fined £160 million in December 2012, and RBS plc was fined £87.5 million in February 2013. These are the largest penalties the FSA has imposed. The lessons from these cases have wide applicability across other wholesale activities. We continue to devote significant resource to LIBOR-related cases and to work closely with our partners in the UK and overseas to ensure those responsible are held to account.
10. In November 2012 the FSA also fined UBS AG (UBS) £29.7 million for systems and controls failings that allowed an employee to cause substantial losses totalling US\$2.3 billion as a result of unauthorised trading. The trader, Kweku Adoboli, has been convicted of fraud and sentenced to seven years' imprisonment.

### Criminal action and market abuse

11. 2012/13 saw the culmination of many years' work in several criminal investigations. We also published a number of market abuse outcomes.

#### *More convictions and longer sentences*

12. 2012/13 saw the conclusion of four criminal trials as we prosecuted more individuals for insider dealing this year than any other. This included James Sanders and Richard Joseph, who both received four year sentences in separate cases for insider dealing, which are the highest sentences imposed in FSA insider dealing cases to date.

#### *Increasing complexity of cases*

13. The cases we bring are increasing in complexity, and this year we successfully prosecuted our most intricate case to date, securing the convictions of Ali Mustafa, Pardip Saini, Paresh Shah, Neten Shah, Bijal Shah and Truptesh Patel, who operated an insider dealing ring trading multiple stocks between 2006 and 2008.

## Saturn

The FSA's case against Ali Mustafa and others (Operation Saturn) was the most complex prosecution brought by the FSA to date. Following a four and half month trial, six defendants were convicted of insider dealing in July 2012 and all received prison sentences ranging between 18 months and 3.5 years. The defendants obtained confidential and price sensitive information from investment banks concerning proposed or forthcoming takeover bids. They then used a large number of accounts to place spread bets ahead of those announcements knowing that when the information became public knowledge, the price would rise. The defendants were convicted of making a combined profit of £732,044.59 on trading in six companies' stocks. Proceedings are ongoing to confiscate the defendants' proceeds. It was a sophisticated and complex scheme in which the defendants took careful steps to conceal activity such as the use of un-registered mobile phones and email drop boxes.

To uncover and investigate the criminality, the FSA obtained and reviewed over 200,000 lines of trading in 130 accounts and 375,000 lines of telephone call records. Digital forensic technology played a critical part in establishing the passage of data between the defendants. Over 300 witness statements were adduced at the trial.

### *Increase in guilty pleas*

14. In 2012/13 we saw also an increase in the number of defendants charged with insider dealing who entered guilty pleas, with five individuals pleading guilty in the period. One of these, Thomas Ammann, was sentenced to two years and eight months' imprisonment for two counts of insider dealing and two counts of encouraging insider dealing. Mr. Ammann (who was at the time of the offences was an approved person and held a Controlled Function, CF30, at Nomura) used inside information to encourage two others to deal. Our most recent plea was from Paul Milsom, a former senior equities trader at Legal and General, who was sentenced to two years' imprisonment for disclosing inside information he obtained while employed between 2008 and 2010.

### *Increase in convictions of City professionals and approved persons*

15. We also saw an increasing number of convictions of FSA approved persons and City professionals.
16. This is as a result of targeting individuals within the industry in our market abuse investigations. James Sanders and James Swallow were both approved persons and were sentenced to four years and ten months in custody respectively after pleading guilty to insider dealing. Sanders and Swallow were FSA-authorized directors at Blue Index, a specialist Contract for Difference (CFD) brokerage. Ammann and Milsom, as mentioned above, were both FSA-approved persons. We also prohibited Christian and Angie Littlewood from working in the financial services industry – they were previously convicted of insider dealing in 2011.

### *Recovery of proceeds*

17. The FSA obtained five confiscation orders against individuals with a value of almost £2.8 million. The FSA participates in the Asset Recovery Incentivisation Scheme, which means that of the money confiscated, half goes to the Home Office while the other half is divided between the investigating, prosecuting and enforcement agencies. Last year the FSA received 37.5% of the confiscation proceeds, as we act as both the investigator and prosecutor in insider dealing cases. This money is used to drive up performance on asset recovery and to fund initiatives to fight financial crime. In 2012/13, we received around £380,000 through the scheme, which was used to enhance our capability to deal with unauthorised businesses, and the procurement of relevant investigative software.

### *Non-criminal outcomes*

18. Where criminal prosecutions have not been appropriate, we have also continued to bring non-criminal action for regulatory market abuse, including imposing fines of £1.58 million on three individuals, and four prohibitions for market abuse and market manipulation. The Upper Tribunal also issued a judgement upholding an FSA decision to impose an £8 million penalty on a company formerly known as Swift Trade Inc. for repeated market manipulation. This is subject to appeal at the Court of Appeal.

## Transaction reporting

19. The FSA continued to take enforcement action against firms that failed to comply with the Transactions Reporting Regime, which is a critical part of our overall approach to tackling market abuse.
20. During 2012/13, Plus500 UK Limited and James Sharp and Company were fined £205,128 and £49,000 respectively for failing to provide accurate and timely transaction reports to the FSA.
21. Plus500 were the first regulated firm to be fined for transaction reporting failings under the new FSA penalties policy which came into force on 6 March 2010. This policy was established to provide a consistent and more transparent framework for the calculation of financial penalties. The penalty imposed on Plus500 was calculated based on the number of affected transactions. This approach is likely to lead to penalties that are larger than they would have been under the previous regime.

## Listing Rules

22. The FSA took enforcement action in five Listing Rules cases across a wide range of areas reflecting a continuing focus on ensuring appropriate information is given to the market and the regulator in a timely manner.
23. In March 2013 we fined Lamprell plc £2,428,300 for significant failings in its systems and controls, resulting in a failure to identify and disclose inside information in a timely fashion, leading to Listing Rules and other related breaches. In February 2013 the FSA fined Nestor Healthcare Group Limited £175,000 for failure to take all proper and reasonable steps to secure the compliance with the Model Code. In April 2012 the FSA fined Exillon Energy plc £292,950 for failing to identify related party transactions and disclose them to the FSA in a timely manner. In October 2012, the FSA banned John Blake, former managing director of Welcome Financial Services Limited, and fined him £100,000 for providing false and misleading information to the market.
24. The FSA also fined companies in the Prudential Group (Prudential) £30 million for breaching FSA Principles and UKLA Listing Principles and censured the CEO, Tidjane Thiam.

## CASS

25. It is essential that firms comply with CASS rules to protect client assets so that in the event that should anything go wrong, client assets and money are segregated and protected. The FSA fined Blackrock Investment Management £9,533,100 and Christchurch Investment Management £26,600 for failing to comply with our CASS requirements.

## Financial crime

26. Firms must ensure that they have effective systems and controls in place to ensure that their business cannot be used for the purposes of financial crime. Firms play a key role in the UK's fight against financial crime and we expect firms to manage these risks extremely diligently to prevent the laundering of criminal proceeds.
27. In May 2012 the FSA fined Habib Bank AG Zurich (Habib) £525,000 and its former Money Laundering Reporting Officer (MLRO), Syed Itrat Hussain, £17,500 for failure to take reasonable care to establish and maintain adequate AML systems and controls.
28. The FSA also fined Turkish Bank (UK) Ltd (TBUK) £294,000 in July 2012 for breaches of the Money Laundering Regulations 2007 in relation to its correspondent banking arrangements.

## International cooperation

29. We continue to work very closely with our international regulatory colleagues on both criminal and regulatory cases. This year we worked very closely with our counterparts in the US Department of Justice, the US Commodities and Futures Trading Commission, the Swiss FINMA and other international regulators to bring coordinated enforcement action against Barclays, UBS, and RBS for failings in relation to their LIBOR submissions. We also worked very closely with the Swiss FINMA on the enforcement investigation into UBS in relation to their unauthorised trading incident.
30. We have seen a steady increase in the number of cases we conduct jointly with overseas regulatory authorities over the last few years as misconduct across borders becomes increasingly common. The international

regulatory community has built on existing relationships and expertise to work together to tackle misconduct that often crosses borders.

31. Over the last few years we have seen a steady increase in the number and complexity of international requests for assisting in enforcement related matters, and we are expecting this trend to continue. In 2012/13 we received over 855 formal requests for assistance from our overseas counterparts in relation to their investigations. Increasingly these require more intensive assistance, e.g. through interviews as well as the more routine gathering of information and documents. We also dealt with many more requests through the criminal mutual legal assistance route.
32. The FSA has also sought assistance from our counterparts overseas. This commonly involves locating and interviewing subjects of investigations, or possible witnesses, who may be residing outside the UK, and using the powers of overseas regulators to obtain documentation or information located abroad. Effective relationships with our overseas counterparts are vital in enabling us to deliver case outcomes and to meet our international obligations. Those day-to-day working relationships are enhanced through our participation in global committees such as the International Organisation of Securities Commissions (IOSCO) and in the ESAs, notably the European Securities and Markets Agency (ESMA).
33. We play an active role in IOSCO, in particular, in its focus on improving global standards of cooperation by encouraging regulators from around the world to become signatories to the IOSCO Multilateral Memorandum of Understanding (MMoU) concerning Consultation, Cooperation and Exchange of Information. One of the Heads of Department (HoD) in the Enforcement and Financial Crime Division (EFCD) currently chairs IOSCO's Committee on Enforcement and Cooperation, whose workstreams include leading the important dialogue with 'uncooperative jurisdictions' to encourage them to raise their standards and become IOSCO members and signatories to the MMoU, which is recognised as setting the international benchmark for cooperation and information exchange in this field. As of June 2013, 94 IOSCO members had become full signatories of the IOSCO MMoU – a key achievement that the FSA led through the chairmanship of Committee 4 on Enforcement and Cooperation and the co-chairmanship of the Screening Group, which assess applications to sign the MMoU. Both committees are heading various important strategic projects that focus on raising standards of enforcement cooperation.
34. We also participate actively in ESMA in its Market Integrity Standing Committee, which undertakes ESMA's work on issues relating to market surveillance, enforcement, cooperation and the exchange of information in market abuse investigations. The Standing Committee provides a forum in which the FCA may share with its EU counterparts experiences in enforcement activities. It also works to ensure timely and efficient cooperation in cross-border cases and facilitates information-sharing under the ESMA MMoU. Finally, the Standing Committee has responsibility for elaborating advice to the European Commission, and technical standards and guidelines and recommendations on issues relating to the integrity of the markets (e.g. the Market Abuse Directive and short-selling). The Enforcement and Financial Crime Division is heavily involved in all of these workstreams through the participation of an Enforcement HoD in the enforcement discussions at the Standing Committee.

### Unauthorised business work

35. The FSA continued to take action against unauthorised investment businesses, including share frauds, landbanking and 'get rich quick' investment scams in 2012/13. The FSA receives about 6,000 reports each year of potential unauthorised activity in the UK. We identify the most serious matters posing the greatest risk to consumers and seek to stop them through a combination of methods including bringing legal proceedings against the perpetrators, disruption tactics such as taking down websites, and publishing consumer warnings.
36. We have taken five civil actions this year and four actions in the criminal courts as well as publishing consumer warnings on 144 unauthorised firms.
37. Judgment in our favour was given by the High Court in a case against Asset Land and its directors David Banner-Eve and Stuart Cohen, who ran an unauthorised landbanking investment scheme, which the High Court found was an unauthorised collective investment scheme. Asset Land sold plots of land across the UK on the promise that investors would make substantial profits when the land was re-zoned and given planning permission. The business is believed to have taken around £15 million from investors. Asset Land may be one of our last big landbanking investigations. Since 2011, reports of landbanking activity have dropped

off dramatically. At its height the FSA received reports of 10 to 20 new cases a month, and had as many as 150 active firms, however, only six new firms were reported in 2012 and we have not received any reports about new schemes in 2013. We attribute this to a combination of shutting down 13 of the largest and most egregious schemes together with a concerted consumer guidance campaign on the risks involved in buying land without planning permission from unauthorised firms and working together with other agencies with an interest in this area, such as the Department for Business, Innovation and Skills (BIS) and the Solicitors Regulation Authority (SRA).

38. The Supreme Court decided the case against Digital Satellite Warranty Cover Ltd, which was an unauthorised business offering satellite repair insurance. The Supreme Court held that the warranty product that the firm sold amounted to a contract of insurance and that the firm needed to be authorised by us to continue selling it. This has wider implications for more than 100 other unauthorised businesses that sell similar products to the public.

### *Prohibited individuals*

39. This year the FSA also devoted more resource to taking action against individuals who have been prohibited by the FSA but attempt to carry on their activities under the radar. We have commenced a criminal prosecution against a prohibited IFA, Gary Hexley, and another former IFA, John Cooper, for giving investment advice without FSA authorisation. The two men are also charged with dishonestly concealing information about, amongst other things, their lack of authorisation and the suitability of the products that they were advising elderly and in some instances very vulnerable ex-clients to invest in. Both men are due to stand trial for these offences in September 2013.
40. Another banned IFA, Michael Lewis, was charged in February with 13 counts of breaching the General Prohibition and three counts of Assisting a Fraud by False Representation (contrary to the Serious Crime Act 2007 and the Fraud Act 2006). He pleaded guilty on 14 June 2013 to ten counts of breaching the general prohibition under Section 19 of the Financial Services and Markets Act and to two counts of supplying/making an article for use in fraud under Section 7 of the Fraud Act 2006 for providing false employment details for two of his clients. At the time of publication he is awaiting sentencing.

### *Investment fraud*

41. We continue to scan the horizon for emerging trends in investment frauds. We have been particularly concerned by the growth of new alternative investment products such as carbon credits and rare earth metals, which fall outside current legislation; we have worked hard to raise consumer awareness about the risks posed by such products. In April 2012 we wrote to over 76,000 potential victims of investment scams, warning them that they might be targeted by fraudsters.

### *Redress*

42. It is common for enforcement actions in retail cases to include a redress element that aims to put the customer back in the position in which they would have been before the misconduct, or to compensate them, or both. One of the benefits of settled cases is that this redress can be agreed as part of the enforcement outcome and may be provided more quickly than if the case proceeds to the RDC and the Tribunal. During the year, we required a number of authorised firms to review their past business, contact consumers and pay redress where appropriate. This included IFA networks, such as Pi Financial Limited and wealth managers, such as Savoy Investment Management Limited. While some of these past business reviews are on-going, the FSA secured over £14 million in redress packages in relation to enforcement cases in 2012/13.

### *Authorisations refusals*

43. The FSA is required to maintain the 'gateway' to the industry by considering applications for authorisation or approval. Where cases are likely to be refused, Enforcement assists our colleagues in the Authorisations Division.
44. Frequently, as a result of the FSA's efforts in assessing applications, firms revise (or withdrawn) their applications. However, a number of firms have challenged the FSA's position. One such firm was First Financial Advisers Ltd, which had sought the FSA's approval for Stephen Herbert Danner to perform the CF30 function – this was even though the FSA expressed concerns as to Mr Danner's fitness and propriety

to perform that function, due to concerns about his management of conflicts of interest and the suitability of recommendations he made to customers to invest in Arch cru products. The matter was referred to the Upper Tribunal, which reached the view that it could not be satisfied that Mr Danner was fit and proper to perform the CF30 function and, accordingly, it directed that the application should be refused. This case is but one example of the FSA taking steps, consistent with its consumer protection objective, to ensure that those holding positions of trust in the financial services industry are fit and proper to do so.

### Early intervention

45. Early intervention is a key part of the FCA approach, In the 2012/13 year the Enforcement and Financial Crime Division dedicated a proportion of its resource to working closely with teams from Supervision to support early intervention. That work is being carried forward and developed by the FCA, with a number of significant outcomes already achieved. Successful early intervention cases will often not produce public outcomes, as the outcome is frequently swift remedial action without necessarily involving any immediate publicity.
46. Examples of the types of cases we have taken include cases involving two (unrelated) firms where the FSA had concerns about advice provided to consumers. The FSA intervened to ensure that the firms either identified and addressed the root causes of the problems identified, or, stopped providing advice to consumers. In another action, we found serious weaknesses in how a firm managed its high risk PEP (Politically Exposed Person) accounts. This resulted in an immediate remediation exercise on its AML (anti-money laundering) controls; the firm stopped taking on new high risk PEPs until we were satisfied that adequate controls were in place. These examples demonstrate the new way of working between Enforcement and supervisors to ensure rapid, effective action.

### Feedback meetings

47. At the conclusion of an enforcement case, we give those who have been investigated the opportunity to comment on our enforcement procedures and decision-making. These meetings focus on handling the practical and procedural aspects of the case by FSA/FCA staff and decision makers, not on the outcome of the case. The opportunity to give feedback has usually been available in all disciplinary cases that have closed since 10 October 2005, including those that were settled or discontinued. However, it is not available for investigations, such as unauthorised activity investigations, where the only RDC involvement is to approve the start of civil or criminal proceedings.

In 2012/13 we received feedback from 11 firms and individuals, and two feedback questionnaires. The key issues include:

- The feedback around the level of information provided to firms during the course of the investigation was generally positive. Generally, firms explained that they were kept up to date with the investigation's progress and had ongoing correspondence with the case teams. However, there was one example of an individual feeling they were not kept up to date and informed of the progress of the investigation, or being given any estimated timeframe for completion. Concerns were also raised about the lack of evidence that the FSA was willing to share before settlement. This made it difficult for firms to assess whether or not the FSA's allegations could be substantiated by the evidence.
- A common theme throughout the feedback meetings was that firms felt the FSA had already made their decision before the investigation stage had begun. As an example, one interviewee explained that the style in which an interview was conducted, and the nature of the questions posed, made it feel as though the purpose of the interview was to confirm a prior-held belief rather than as a mechanism to elicit new information to assist the investigation.
- Some firms commented that it was still not clear how their settlement figures had been reached and expressed an opinion that the new regime had not achieved its objective of becoming more transparent. On a number of occasions firms disagreed with the level of income that was used to calculate the settlement figure, and some firms also felt that mitigating circumstances had not been taken into account when finalising this figure.
- A concern raised in a number of feedback meetings was the high level of staff turnover that occurred

during the course of the investigation. This led to information having to be repeated or re-submitted to the new investigators, which caused delays and additional costs for firms. For investigations that required a certain level of understanding of a firm's internal systems, once staff left the investigation, this understanding had to be built up by their replacements, which took time and may have caused unnecessary delays.

- On the whole, firms commented that staff were courteous, professional, constructive, and were willing to be as accommodating as possible to requests for additional time to provide documentation, and around the wording of the Notices. However, there were also some comments that the investigators may not be fully aware of the impacts that a personal investigation has on an individual and that a different approach in these circumstances may be needed.

We have carefully considered the key themes raised and are working to ensure that we take forward the lessons learned. The issues raised in feedback meetings are discussed at the FCA's Executive Committee and the EFCD senior management team work with individual case teams so that useful lessons can be learnt and our processes updated as necessary for our future interactions with those under investigation.

## The enforcement process and other enforcement statistics

### *Private Warnings*

48. Not all the cases that we investigate will result in a public outcome. In some cases we may issue a Private Warning and in the past year we did so on 25 occasions (ten were issued by Supervision and 15 by Enforcement). Private Warnings may be issued where we have concerns about the behaviour of a firm or approved person, but where we decide it is not appropriate to bring formal disciplinary action.

### *No Further Action*

49. We also expect to conclude a number of our cases without taking further action. This may be because, following investigation, we conclude there is insufficient, or no evidence of wrongdoing, or because in all of the circumstances of the case we do not consider it appropriate and proportionate to take disciplinary action. In the last 2012/13 financial year, 10.5% of cases (excluding threshold conditions cases) closed with no further action being taken.

### *Warning Notices*

50. Cases may be settled at any stage of the process. If a settlement has not been agreed by the Warning Notice stage, the Regulatory Decisions Committee (RDC) is asked to issue a Warning Notice, which sets out the details of further action.
51. In the vast majority of cases where a Warning Notice is issued, we will go on to issue a Decision Notice. This reflects the controls that we have in place, such as the independent legal review carried out by a lawyer who has not been part of the investigation team and the separate check undertaken by the RDC's own legal advisers as well as the scrutiny applied by the RDC.
52. In every settled case, both a Warning Notice and Decision Notice are issued (more information on cases concluded by Executive Settlement can be found below). In contested disciplinary cases<sup>1</sup>, the figures for 2012/13 show that in one case out of 23, we issued a Warning Notice that was not followed by a Decision Notice, although in other cases the Decision Notice issued may have contained changes from the Warning Notice – for example, reducing or increasing the penalty or narrowing or expanding the range of breaches.

<sup>1</sup> For the purpose of these figures we have only included disciplinary cases (e.g. breaches of FSA rules and the imposition of prohibitions); this number does not include contested Warning Notices for which an outcome has yet to be determined by the RDC. We have not included cases taken by EFCD which relate to the cancellation of an authorisation or threshold conditions cases.

*Tribunal statistics*

53. Once a Decision Notice has been issued by the RDC, the subject of the Notice may choose either to accept the outcome, in which case a Final Notice will be issued, or refer it to the Upper Tribunal (Tax and Chancery Chamber). The Tribunal is independent of the FCA and will consider the case afresh.
54. In 2012/13 there were 19 Tribunal Decisions issued. In 17 references the Tribunal either upheld the decision in full or agreed that the applicant had engaged in the misconduct alleged by the FSA. The Tribunal made two decisions in favour of the applicants and directed the FSA to take no action and discontinue proceedings (Pottage and Hobbs. The FSA appealed the decision in the Hobbs case, which will be heard in the Court of Appeal in July 2013). In another decision the Tribunal upheld the decision on liability, but reduced the financial penalties imposed. A further 14 references were withdrawn by the applicant and four references were dismissed without a substantive hearing.

Type of cases/ references	Live	Outcome		
		Tribunal decision	Dismissed without substantive hearing	Withdrawn
TCT	0	1	0	1
Authorisation	0	2	0	2
Market abuse	2	6 (1 in favour of applicant)	0	1
Regulatory	14	10 (1 in favour of applicant*)	4	10
<b>Totals</b>	<b>16</b>	<b>19</b>	<b>4</b>	<b>14</b>

\* In a further decision involving two references, the Tribunal upheld the FSA decision on liability, but reduced the financial penalties imposed.

*Types of cases/references:*

- TCT: these cases involve regulated firms that fail to meet the FSA's minimum standards i.e. Threshold Conditions.
- Authorisation: these cases relate to refusals to authorise firms or to approve individuals.
- Market abuse: these cases relate to allegations of market abuse against individuals.
- Regulatory: these are regulatory disciplinary cases against authorised firms or individuals, including referrals relating to prohibition orders of non-approved persons.

*Case length*

55. Contested cases take a significantly longer time to resolve than settled cases. We have included average case lengths closed in 2012/13 below. The periods below reflect the average length of time a case takes from the date the case was referred to enforcement to the date of closure whether it was settled, or if it was referred on to the RDC or Tribunal.

Year	Average length of cases that concluded as a result of settlement (months)	Average length of cases referred to RDC (months)	Average length of cases referred to Tribunal (months)
2012/13	19.6	37.8	50.1

*Executive settlement*

56. The settlement policy enables enforcement teams conclude cases by way of settlement on the basis of an agreement by two settlement decision makers, at least one of whom is of Head of Department level, with the other settlement decision maker to be of at least Director level. The key features of the executive settlement procedure are the direct involvement of our executive management, strict timescales and a financial discount. Executive settlement allows us to secure prompt redress in consumer-related cases, send timely messages to the industry, and achieve swift and effective outcomes. This enables us to use resources more efficiently and achieve prompt change in industry behaviour. This is especially important in cases where we are attempting to address a thematic issue. By contrast, contested cases (which may be more complex and/or multi-party cases) typically have significantly extended timescales. Executive settlement has many benefits, but we will only settle if we are satisfied that this delivers the right regulatory outcome. We recognise the importance and significance of our published outcomes and the need to demonstrate clarity and consistency. We therefore meet regularly with the RDC (which has no involvement in settled cases) to discuss the reasons for our decisions.
57. In 2012/13, 76 cases were closed (excluding TCT cases), as set out in the table in Appendix 2 of the 2012/13 Annual Report, and 39 of these closed cases were concluded by executive settlement. Cases may involve multiple parties and both firms and individuals.

# Data and analysis

Enforcement statistics from the *Annual Report*

## Appendix 2 of the 2012/13 *Annual Report* – Enforcement activity

Issue <sup>1</sup>	Open at 1st April 2012	Opened during the year	Closed during the year	Open at 31st March 2013
Systems and Controls	35	21	22	34
Treating Customers Fairly	20	15	13	22
Unauthorised Activities	24	2	12	13
SIF Holders	14	8	8	14
Market Protection	26	11	9	28
Listing Rules	5	3	5	3
Authorisations	0	1	0	1
Money laundering controls and Financial Fraud	24	2	7	19
<b>Totals (Excl TCT)</b>	<b>148</b>	<b>63</b>	<b>76</b>	<b>134</b>
<b>Threshold Conditions Team<sup>2</sup> (excluding RMAR and PSD cases)</b>	35	123	126	32
<b>TCT RMAR Cases<sup>3</sup></b>	13	130	139	4
<b>TCT PMD Cases<sup>4</sup></b>	18	115	112	21
<b>International Requests</b>	132 <sup>5</sup>	885	793	224

1 Cases may involve multiple parties and include both firms and individuals.

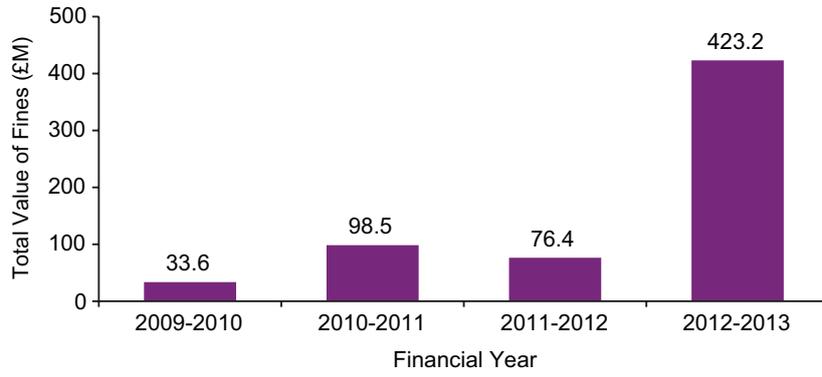
2 TCT (Threshold Conditions Team) cases involve regulated firms that fail to meet the FSA's minimum standards i.e. Threshold Conditions.

3 The RMAR (Retail Mediation Activities Return) enforcement project began in October 2005. It focuses on ensuring that firms comply with our requirement to submit electronic returns.

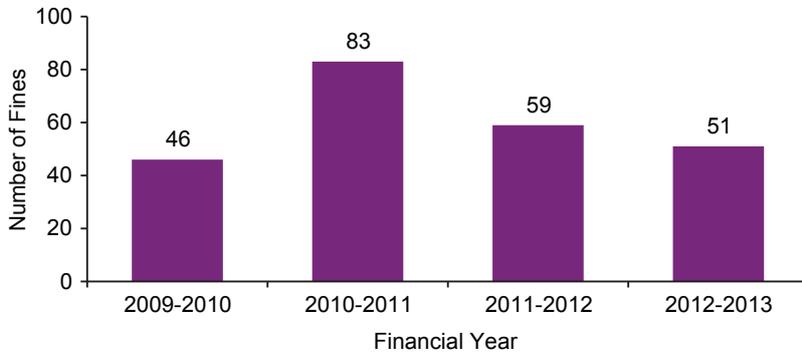
4 PSD (Payment Services Directive) cases involve enforcement action against firms failing to comply with the Payment Services Regulations.

5. In the 2011/12 Annual Report Appendix we reported that 225 cases were open at 31 March 2012, however this figure has since been corrected and the number of international requests open at the end of last year was 132.

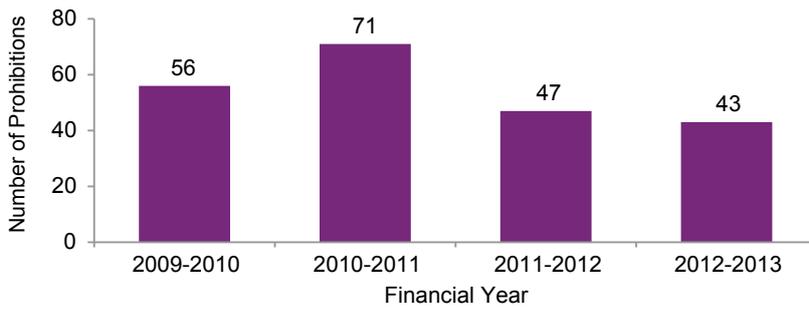
*Total value of fines*



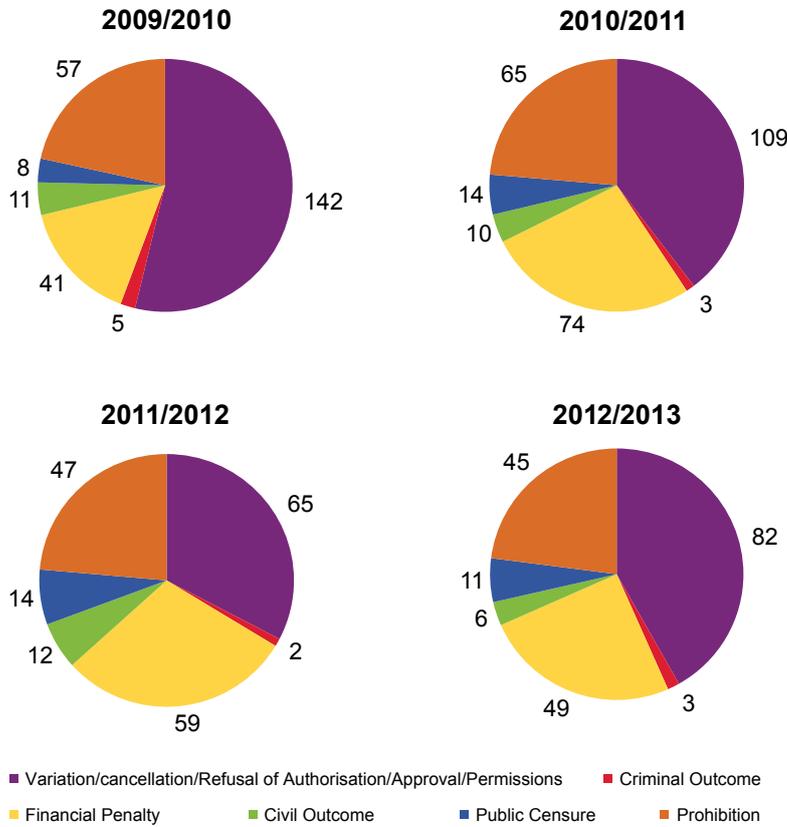
*Number of fines*



*Number of prohibitions*

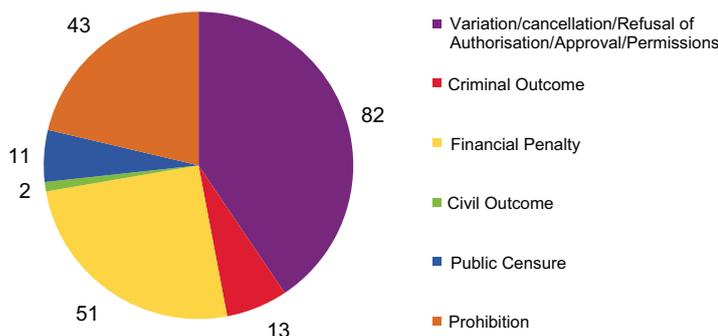


*Use of powers – Cases closed*



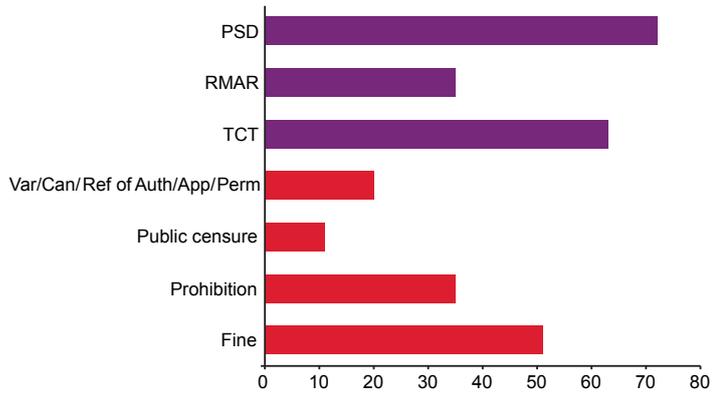
- Note 1: In 2012/13, 204 cases were closed. 196 outcomes resulted from the use of powers. 15 private warnings were issued by EFCD and 8 cases were closed with no further action being taken.
- Note 2: RMAR and PSD cases are excluded from these graphs. 36 firms had their permissions cancelled as part of RMAR work, and 19 firms had their permissions cancelled as part of PSD work in 2012/13.
- Note 3: In these charts outcomes are counted in the financial year that the case is closed on FSA systems – this can differ to the year outcomes are published. In other charts the financial year is based on the date an outcome is publicised.
- Note 4: The number of criminal outcomes (convictions) in this chart is based upon closed cases. In the 2012/13 financial year there were 13 criminal convictions however cases remain open while ancillary proceedings (such as confiscation and costs hearings) are ongoing. Details of convictions are published on the FSA website.

*Use of powers – outcomes published 2012-13*



- Note 1: While the charts above detail the use of enforcement powers based on closed cases data, this chart shows the use of enforcement powers based on published outcomes in 2012/13, this includes TCT outcomes but excludes RMAR and PSD cases

*Number of outcomes published 2012-13*



Note 1: This bar chart shows the number of outcomes, split by TCT, RMAR and PSD outcomes, and other regulatory outcomes.

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