FINANCIAL CONDUCT AUTHORITY

Enforcement annual performance account

Annual report 2016/17

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1 Foreword

The Enforcement Annual Performance Account is our annual assessment of whether we are operating fairly and effectively in investigating suspected misconduct and in bringing criminal, civil and administrative proceedings where it is appropriate to do so.

There have been several significant outcomes this year, notably:

- We have successfully completed our longest and most complex insider dealing case, which led to five convictions and, following a lengthy trial last year, jail terms for two remaining defendants (4.5 years for one, the longest jail term imposed for insider dealing, and 3.5 years for another). We are continuing to pursue confiscation proceedings in this case.
- We took action against Deutsche Bank over failed anti-money laundering controls and imposed a financial penalty of £163 million, the largest fine for such failures.
- We took action against Tesco plc and Tesco Stores Ltd for market abuse arising from a misleading trading update issued in August 2014, requiring Tesco to pay redress to those who were net purchasers of Tesco shares and bonds between the date of the update and its correction by Tesco in September. This was the first time we had made a redress order under section 384 of the Financial Services and Markets Act 2000. We estimate the amount that may need to be paid to about 10,000 retail and institutional investors will be about £85 million (not including interest).[1]

While the number and overall quantum of financial penalties is less than previous years, the number of criminal convictions remains steady and the number of prohibition orders has increased, as a percentage of all outcomes, by about 15%.

Following our acceptance of the recommendations made by Andrew Green QC in the HBOS Report[2], our general approach is to begin investigations under section 168 of the Financial Services and Markets Act 2000 where there are circumstances suggesting misconduct. This has increased the number of investigations

1 The Serious Fraud Office has instituted criminal proceedings in relation to other persons in respect of the issues that are the subject of the DPA. The DPA concerns only the potential criminal liability of Tesco Stores Limited and does not address whether liability of any sort attaches to Tesco plc or any employee or agent of Tesco plc or Tesco Stores Limited. Our findings in relation to market abuse by Tesco Plc are made in the context of the specific requirements of the Financial Services and Markets Act 2000 and are not findings of criminal misconduct. The FCA makes no findings on whether a criminal offence has or may have been committed by any person.

2 www.bankofengland.co.uk/pra/Documents/publications/reports/agreenreport.pdf

we have opened during the year. We have made a number of process changes to the way we are managing the increased number of investigations and continue to make investigations sharper and more efficient.

Similarly, we completed our consultation on enforcement decision making and we have implemented a number of changes to our decision-making process, including the introduction of partly contested cases before the Regulatory Decisions Committee. These changes bring significant flexibility in proceedings and will help narrow issues in dispute, preserving important incentives to encourage sensible resolutions as early as possible.

The measure of how fair and effective we are must depend not just on outcomes but on how those outcomes are achieved. It is essential that this includes thorough investigation, involving the pursuit of all relevant lines of inquiry, the fair discovery of relevant facts, the proper assessment of evidence according to law and, finally, efficient decision making with both the merits of the case and the public interest in mind.

Finally, as mentioned in last year's Enforcement Annual Performance Account, litigation over third-party rights (the question of when a third party is identified in an FCA notice) was one of the themes of last year and it culminated this year when we won our appeal to the Supreme Court in proceedings initially commenced by Achilles Macris.[3] The Supreme Court has held that a third party is identified if the terms of the notice itself would have conveyed to a reasonable member of the public without extrinsic information that any of the terms was a synonym for that third party.

This decision brings welcome clarity to the area and nearly all of the pending cases against the FCA concerning third-party rights have now been discontinued.

We welcome your feedback on this report, which can be emailed to EnforcementFeedback@fca.org.uk

Mark Steward
Executive Director
Enforcement and Market Oversight

3 Financial Conduct Authority v Macris [2017] UKSC 19 (22 March 2017)

2 Summary of 2016/17 outcomes

We delivered strong public outcomes in 2016/17. We issued 180 final notices (155 against firms and 25 against individuals), secured 209 outcomes using our enforcement powers (198 regulatory/civil and 11 criminal) and imposed 15 financial penalties totalling £181m (Figure 2.1).

Figures for 2015/16 and 2014/15 include exceptional fines related to FX and LIBOR misconduct. We remain committed to investigating and holding firms and individuals accountable for misconduct and to ensure wrongdoers pay for the costs of remediation. There has been no change in our approach to misconduct or financial penalties.

Further statistical information on our performance in 2016/17 can be found in chapter 17 of this report: Enforcement statistics.

Figure 2.1: Total value of financial penalties levied

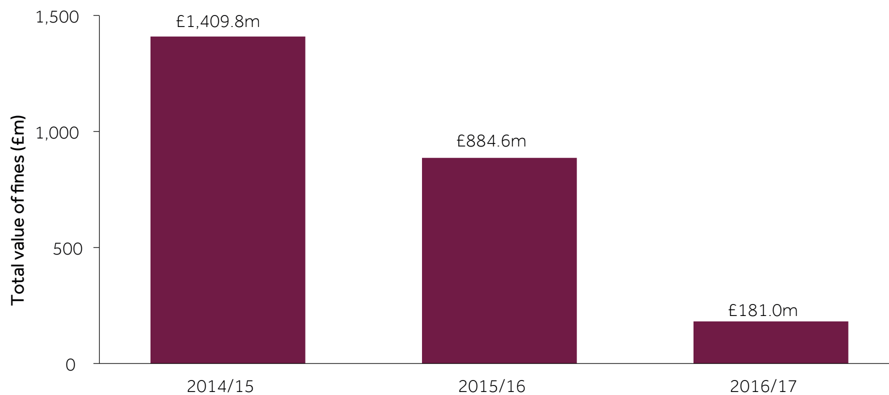

Figure 2.2: Financial penalties imposed

	2016/17	2015/16	2014/15
Number of financial penalties imposed	**15**	**34**	**43**
Total value of financial penalties	**£181.0m**	**£884.6m**	**£1,409.8m**
Number of financial penalties imposed against firms	6	17	23
Total value of financial penalties imposed against firms	£180.1m	£880.4m	£1,403.1m
Number of financial penalties imposed against individuals	9	17	20
Total value of financial penalties imposed against individuals	£0.9m	£4.2m	£6.7m

3 Retail conduct

Introduction

Our Retail and Regulatory Investigations team focuses on cases where we think we can make a real difference to consumers, using enforcement as a tool to change behaviour in the industry and get compensation. With that in mind, a key focus of our enforcement action has been on protecting consumers from unfair treatment and detriment resulting from poor standards of conduct by retail firms. Furthermore, we have continued to hold senior management to account where appropriate, with a view to promoting high standards of personal conduct.

Statistics

Figure 3.1: Retail conduct cases 2016/17 (not including financial crime investigations)

Number of cases opened in the financial year	59
Number of cases closed in the financial year	34
Number of open cases at 31 March 2017	119
Number of financial penalties imposed	7
Total value of financial penalties imposed	£13.9m

Case study

Aviva Pension Trustees UK Limited and Aviva Wrap UK Limited (together Aviva)

The Client Assets Sourcebook (CASS) rules are there to protect client money and custody assets if a firm becomes insolvent, and to ensure money and assets can be returned to clients as quickly as possible.

Between 1 January 2013 and 2 September 2015, Aviva breached our CASS rules and requirements that firms should have adequate management, systems and controls (Principle 3) and properly safeguard clients' assets (Principle 10).

During that period, Aviva failed to put in place appropriate controls over Third-Party Administrators (TPAs) to which they had outsourced the administration of client money and external reconciliations in relation to custody assets. This resulted in Aviva failing to sufficiently challenge the internal controls, competence and resources of their TPAs.

Aviva also failed to dedicate adequate resource and technical expertise to enable them to implement effective CASS oversight arrangements, resulting in their delayed detection and rectification of CASS risks and compliance issues.

We also found deficiencies with Aviva's internal reconciliation process, which resulted in the under- and over-segregation of client money. From 10 February 2014 to 9 February 2015, under-segregation peaked at £74.4m.

While there was no actual loss of client money or custody assets in this instance, the rules are designed to be preventative. Had Aviva suffered an insolvency event during the period, customers could have suffered loss due to Aviva's non-compliance with the CASS rules.

As a result, Aviva was fined £8,246,800 for failings in its oversight of its outsourced providers in relation to the protection of client assets. It agreed to settle at an early stage and in doing so it qualified for a 30% discount. Without the settlement

4 Wholesale conduct

Introduction

We have continued to investigate and bring cases that support our strategy of making sure that wholesale markets are functioning well. This is consistent with our increased focus on ensuring that wholesale markets are efficient, stable, fair, clean and resilient, that their infrastructure is made more robust, and that conduct standards are improved.

We continue to pursue outcomes in current investigations and litigation relating to individuals' misconduct in relation to benchmarks. These failings in wholesale conduct undermine integrity of the wholesale market, cause systemic harm and have a serious impact on confidence in the UK financial system.

We want to ensure that the UK's wholesale markets are not used for trading that facilitates illicit movement of funds (ie money laundering). Firms must be vigilant in their controls to ensure they are not enabling clients to engage in suspicious behaviour.

We imposed a financial penalty on Deutsche Bank for serious failings in its anti-money laundering control framework and resulting facilitation of suspicious trades (see the case study below for details).

We recognise the importance of holding to account individuals in senior positions of responsibility when they are responsible for misconduct. In October 2016, the court upheld our decision to ban Tariq Carimmjee, an investment and fund manager who held senior positions at Somerset Asset Management LLP, from carrying out the compliance oversight and money laundering reporting significant influence functions. Mr Carrimjee had failed to act with due skill, care and diligence in his role. The court also imposed a financial penalty of £89,004 on Mr Carrimjee.[4]

Statistics

Figure 4.1: Wholesale conduct cases 2016/17

Number of cases opened in the financial year	20
Number of cases closed in the financial year	16
Number of open cases at 31 March 2017	48
Number of financial penalties imposed	3
Total value of financial penalties imposed	£163.2m

4 www.fca.org.uk/news/press-releases/tribunal-upholds-decision-impose-partial-ban-tariq-carrimjee

Case study

Deutsche Bank AG – financial crime and AML failings (£163m fine)

In January 2017, we imposed a financial penalty of £163 million on Deutsche Bank for failing to maintain an adequate anti-money laundering (AML) control framework between 1 January 2012 and 31 December 2015. This is the largest financial penalty for AML controls failings ever imposed by the FCA.

To prevent the UK financial system from being exposed to financial crime risks, regulated firms are required to comply with certain obligations when entering into new business relationships. We emphasise the importance of having a strong AML control framework through our proactive supervisory programmes on AML. Firms are regularly reminded of the importance of safeguarding the UK financial system from financial crime and how to comply with AML requirements.

Deutsche Bank exposed the UK financial system to the risks of financial crime by failing to properly oversee the formation of new customer relationships and the booking of global business in the UK. As a consequence of its inadequate AML control framework, Deutsche Bank was used by unidentified customers to transfer approximately $10 billion, of unknown origin, from Russia to offshore bank accounts in a manner that is highly suggestive of financial crime.

Deutsche Bank's failings allowed the front office of Deutsche Bank's Russia-based subsidiary (DB Moscow) to execute more than 2,400 pairs of trades that mirrored each other (mirror trades) between April 2012 and October 2014. The mirror trades were used by customers of Deutsche Bank and DB Moscow to transfer more than $6 billion from Russia, through Deutsche Bank in the UK, to overseas bank accounts. The customers on the Moscow and London sides of the mirror trades were connected to each other and the volume and value of the securities was the same on both sides. The purpose of the mirror trades was the conversion of roubles into US dollars and the covert transfer of those funds out of Russia, which is highly suggestive of financial crime.

As a result, Deutsche Bank breached Principle 3 (taking reasonable steps to organise its affairs responsibly and effectively, with adequate risk management systems) of our Principles for Businesses. In addition, Deutsche Bank also breached Senior Management Arrangements, Systems and Controls (SYSC) rules 6.1.1R and 6.3.1R.

The financial penalty we imposed included disgorgement of £9.1 million in commission that Deutsche Bank generated from suspicious trading, so that the firm received no financial benefit from the misconduct.

5 Financial crime

Introduction

The UK financial system is a major global hub that attracts investment from across the world. However, its size and openness also make it attractive to criminals seeking to hide the proceeds of crime among the huge volumes of legitimate business.

Financial crime remains one of our key priorities in our Business Plan for 2017/18. We have an important role to play in ensuring that firms have adequate safeguards to prevent themselves from being used to facilitate financial crime, in particular money laundering. Therefore, it is important that we ensure that firms have effective, proportionate and risk-based systems and controls to ensure they cannot be used for financial crime.

Statistics

Figure 5.1: Financial crime cases 2016/17

Number of cases opened in the financial year	43
Number of cases closed in the financial year	7
Number of open cases at 31 March 2017	56
Number of financial penalties imposed	3*
Total value of financial penalties imposed	£166.3m*

* Includes fine for Deutsche Bank AG, also included under Wholesale Conduct.

Case study

Sonali Bank (UK) Ltd and Mr Steven Smith

Financial services firms are required to maintain robust and risk-sensitive systems and controls to ensure they cannot be used for financial crime. We expect regulated firms to promote a culture that supports these controls and that impresses on all members of staff the importance of complying with them. In October 2016, following an enforcement investigation, we took action against Sonali Bank (UK) Ltd (SBUK) and Steven Smith, its former money laundering reporting officer (MLRO) and compliance officer.

We found serious weaknesses affected almost all levels of SBUK's AML controls. This meant that the firm failed to comply with its operational obligations in respect of customer due diligence, the identification and treatment of politically exposed persons, transaction and customer monitoring and making suspicious activity reports.

As a result, SBUK breached Principle 3 (taking reasonable steps to organise its affairs responsibly and effectively, with adequate risk management systems) of our Principles for Businesses. Further, while under our investigation, SBUK breached

Principle 11 (dealing with regulators in an open and co-operative way) by failing to notify us of an allegation of significant fraud.

We also found that Mr Smith failed to oversee the day-to-day operation of, and ensure the effectiveness of, SBUK's AML systems and controls. We considered that Mr Smith demonstrated a serious lack of competence and capability. SBUK was fined £3,250,600 and we imposed a restriction, preventing it from accepting deposits from new customers for 168 days. We also fined Mr Smith £17,900 and prohibited him from performing the MLRO or compliance oversight functions at regulated firms. Both SBUK and Mr Smith agreed to settle at an early stage and therefore qualified for a 30% (stage 1) discount.

6 Market abuse

Introduction

It is essential that our wholesale markets are seen to embody the highest standards of fairness, effectiveness, and cleanliness. The fight against market abuse is integral to that effort. We take seriously instances of market abuse and use regulatory and criminal powers to enforce against it.

As part of our wider market abuse strategy, in our surveillance and enforcement efforts we aim to be responsive, active and effective in detecting and investigating instances of market abuse across the broad scope of asset classes and behaviour types.

At any given time we have a number of insider dealing and market abuse cases at different stages of investigation and litigation. In 2016/17 we secured six criminal convictions for insider dealing. These included guilty pleas from three individuals; the quality of our investigatory work and our reputation as a prosecutor is evident in the defendants' decisions to plead guilty. We are particularly concerned to stamp out market abuse by city professionals and one of the individuals who pleaded guilty was a former Equity Portfolio Manager at BlackRock.

In May 2016, following a long-running criminal insider dealing investigation in partnership with the National Crime Agency, we secured jury convictions against a senior investment banker and a chartered accountant who were sentenced to 4.5 years and 3.5 years imprisonment respectively. The investment banker's sentence is the longest ever handed down for insider dealing in a case brought by the FCA.

In addition to our work in secondary markets, we are equally concerned to ensure cleanliness and smooth operation of our primary market. This includes the sponsor regime in relation to Premium Listed companies; sponsor firms have key gatekeeper functions to ensure a candidate for listing is eligible. We will hold sponsor firms strictly accountable whenever these standards are not met, as failures in this respect jeopardise market integrity and the wellbeing of the investing public.

In August 2016 we imposed a financial penalty on Cenkos Securities plc (Cenkos) of £530,500 for failures in its sponsor services business. Cenkos failed to have appropriate systems and controls in place across its sponsor services business, and, on a particular transaction, Cenkos represented to us that one of its clients was eligible for a Premium Listing when it had not carried out the requisite due diligence to ensure that this was correct.

Also in primary market enforcement, we secured agreement from Tesco to pay compensation to investors following inflated share prices as a result of market abuse by the company (see case study below for details).

Statistics

Figure 6.1: Market abuse cases 2016/17

Number of cases opened in the financial year	120
Number of cases closed in the financial year	52
Number of open cases at 31 March 2017	122
Number of financial penalties imposed	3
Total value of financial penalties imposed	£0.6m
Number of criminal convictions secured	6

Case study

Tesco plc and Tesco Stores Limited (Tesco)

In March 2017, Tesco agreed that they committed market abuse in relation to a trading update published on 29 August 2014, which gave a false or misleading impression about the value of publicly traded Tesco shares and bonds. Tesco agreed to pay compensation to investors who purchased Tesco shares and bonds on or after the 29 August 2014 and who still held those securities when the statement was corrected on 22 September 2014.

This was the first time we used our powers under section 384 of the Financial Services and Markets Act to require a listed company to pay compensation for market abuse. Conduct by issuers in the primary market affects the integrity of investments and securing compensation is an important step in ensuring effective access to redress for those investors, especially for the very significant number of retail investors that this redress scheme will benefit, whether they invested privately or through participation in a pension fund or similar investment.

As a result of false or misleading information within a 29 August 2014 announcement by Tesco, the market price for Tesco shares and bonds was inflated. This continued until Tesco issued a corrective statement on 22 September 2014. Purchasers of shares and bonds between these dates paid a higher price than they would have paid had the false impression not been created.

Under the compensation scheme Tesco will pay an amount to each purchaser of Tesco shares and bonds who makes a claim under the proposed scheme that is equal to the inflated amount for each share or bond. We estimate the total amount of compensation that may be payable under the scheme will be approximately £85 million, plus interest.

We considered the outcome was in the public interest because Tesco accepted responsibility for market abuse and agreed to remediate the consequences in an appropriate way that tackles directly the loss caused by the market abuse, avoiding the costs and burden on investors of litigation.

Tesco Stores Limited also entered into a deferred prosecution agreement (DPA) with the Serious Fraud Office (SFO) relating to false accounting, for which it will pay a fine of £128,992,500. We worked with the SFO on the case and we acknowledge the SFO's co-operation and assistance. In light of the conduct of Tesco plc and Tesco Stores Limited in accepting responsibility for market abuse, in agreeing to the first compensation order under section 384 and, in the case of Tesco Stores Limited, for accepting responsibility for false accounting, we did not impose any additional sanction on them for market abuse.[5]

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5 The Serious Fraud Office has instituted criminal proceedings in relation to other persons in respect of the issues that are the subject of the DPA. The DPA concerns only the potential criminal liability of Tesco Stores Limited and does not address whether liability of any sort attaches to Tesco plc or any employee or agent of Tesco plc or Tesco Stores Limited. Our findings in relation to market abuse by Tesco Plc are made in the context of the specific requirements of the Financial Services and Markets Act 2000 and are not findings of criminal misconduct. We make no findings on whether a criminal offence has or may have been committed by any person.

7 Confiscation orders

Introduction

Following almost every FCA prosecution, convicted defendants are subject to confiscation proceedings, when the Crown Court decides how much the defendant has benefitted from their criminal conduct. In certain circumstances, a defendant's benefit can extend beyond that obtained from the offence(s) they have been convicted of if they are deemed to have a criminal lifestyle.

Once it has quantified a defendant's benefit, the court must then decide whether the value of the defendant's interest in assets is equal to or less than the benefit from their criminal conduct. The source of the funds used to acquire those assets is immaterial (ie the court can take legitimately acquired assets into account). The court will then decide on the amount and order the defendant to pay that sum within a specified period.

Statistics

In 2016/17, our Accredited Financial Investigators worked on confiscation investigations concerning 99 individuals under the Proceeds of Crime Act 2002. As at 31 March 2017, we had restraint orders in place against 30 suspects or defendants. Eight of those orders were obtained during 2016/17.

In that same period, we obtained eight confiscation orders totalling £2,440,413 (see Figure 7.1 below). £2,127,675 from that sum will be used to compensate the victims of the defendants' crimes. As at 31 March 2017, three of the confiscation orders had been satisfied in full and the time given to the defendants to pay the remaining five confiscation orders had not expired.

Figure 7.1: Confiscation orders in 2016/17

Date	Defendant	Amount
21 December 2016	Mark LYTTLETON	£149,861
06 January 2017	Scott CRAWLEY	£627,190
12 January 2017	Brendan DALEY	£411,815
10 January 2017	Adam HAWKINS	£65,023
10 January 2017	Ross PETERS	£136,238
06 January 2017	Ricky MITCHIE	£1
13 January 2017	Reshim BIRK	£162,876.69
08 February 2017	Dale WALKER	£887,408

Case study

Operation Cotton – R v Scott Crawley & Others

Operation Cotton was one of the largest criminal investigations we have undertaken. The case concerned the operation of an unauthorised collective investment scheme through three companies between July 2008 and November 2011. In 2015, it resulted in the conviction of eight individuals with sentences totaling over 33 years.

Upon conviction, we commenced confiscation proceedings against all eight individuals. Between January and May 2017, confiscation orders totalling £2,195,496 were made against all eight defendants: Scott Crawley, Brendan Daley, Daniel Forsyth, Adam Hawkins, Ross Peters, Ricky Mitchie, Aaron Petrou and Dale Walker.

The court ordered all confiscated sums to be used to compensate the victims of their crimes proportionate to their losses. This will mean that investors in the scheme will receive in excess of 40% of the capital sums owed to them.

This case demonstrates that we will continue to work hard to ensure that wrongdoers are held to account, not only for their wrongdoing, but also for its consequences, especially for victims.

8 Unauthorised business

Introduction

In 2016/17, our Unauthorised Business Department continued to detect, deter, disrupt and prosecute firms and individuals conducting unauthorised business, including collective investment schemes, investment and insurance frauds, deposit taking, boiler rooms and pension scams.

We received 8,612 reports this year of potential unauthorised activity in the UK. We assess all of these cases. If the firms and/or individuals reported to us fall within our remit then we investigate and take action on as many as we can, identifying and determining the most serious matters that pose the greatest risk to consumers. This ranges from publishing 'unauthorised firms and individual warnings' and taking down websites to taking civil court action to stop activity and freeze assets, insolvency proceedings and, for the most serious cases, criminal prosecution. We issued a total of 285 consumer alerts in 2016/17.

In the civil courts, we made pro-rata distributions to investor victims of over £3 million. We also wound up Asset Land Investments Plc following confirmation by the Supreme Court that it had been operating an unauthorised collective investment scheme. We are preparing for two trials; one in relation to an unauthorised forex trading scheme in June 2017, and the other in relation to a number of unauthorised collective investment schemes in July 2017.

In the criminal courts, we have charged a number of individuals for share frauds and are preparing for two share fraud trials, taking place in September 2017. We also charged an individual acting as an unlicensed consumer credit lender, which is our first criminal action in this area, and a trial has been fixed for January 2018.

Horizon scanning continues to be an invaluable part of our work, particularly as the environment in which unauthorised firms operate is constantly evolving. One of the main emerging trends in unauthorised activity over the past couple of years has been binary options trading. Binary options fraud has grown to become a major risk to UK consumers. From 3 January 2018, as part of the package of amendments to MiFID II, binary options will become regulated financial instruments coming within the scope of our oversight and regulation. We have been working closely with counterparts at City of London Police, The Gambling Commission and Trading Standards to assess the scale of the problem of binary options fraud and devise an appropriate strategy to deal with these firms when the legislation changes in January 2018.

We have also continued to focus on consumer education to reduce the number of victims of unauthorised activity through media campaigns and by improving the tools available to investors, such as the FCA warning list and ScamSmart pages. This increases consumer awareness and scepticism, which are healthy and helpful defences to investment fraud.

We continue to monitor the pensions market and the shifting trends within it, adapting our ideas and approach to respond to changes. This has also included consumer education and communications to industry, as at least 40% of the reports we received this year about possible pension scams were concerned with unauthorised introducers. We therefore issued a warning reminding authorised firms of their responsibilities when accepting business from unauthorised introducers or lead generators.

We continue to maintain and strengthen our strong relationships with other domestic and international law enforcement agencies and regulators, to identify problems and share intelligence, which has contributed to our success in detecting, deterring and disrupting unauthorised business.

Statistics

Figure 8.1: Unauthorised business cases in 2016/17

Number of cases opened in the financial year (the most serious matters where we appoint investigators)	18
Number of cases closed in the financial year	6
Number of open cases at 31 March 2017	69
Number of consumer alerts issued	285

Case study

Consumer credit

Following the start of our regulation of consumer credit in April 2014, the Unauthorised Business Department established a dedicated Consumer Credit Team to provide a fully-focused specialist team with the skills and resource to identify and proactively investigate unauthorised firms and individuals targeting some of the most vulnerable consumers.

Aside from our investigation work in this area, a key aim was to build knowledge and relationships across external agencies, the consumer credit industry and consumers.

We have liaised regularly with other government departments regarding policy issues and developed better relationships with trade bodies by hosting regular meetings to raise awareness of the work we carry out and encourage reporting of unauthorised consumer credit firms.

We have a close working relationship with the Illegal Money Lending Teams (IMLTs) in England and Wales, working together and providing mutual support regarding casework and intelligence and, where appropriate, referring cases of illegal money lending to the IMLTs for their consideration.

We also contributed to a UK-wide research project into unauthorised and illegal money lending to understand the scale, typology and demographics of unauthorised borrowing in the UK, or the factors that lead to it. This has involved working together with research experts in this field, the Illegal Money Lending Teams and trusted third parties to conduct research in known hot spot areas across the UK. This research, which has largely been completed, will inform the scope of any future consumer awareness work into unauthorised lending and influence.

In terms of our investigation work, we have undertaken investigations into debt management, advance fee fraud and unlicensed lending activities by firms and individuals. We have referred a number of cases to other agencies and a four-week trial has been set for January 2018 in our first criminal action against an individual acting as an unlicensed money lender.

9 Interventions

Introduction

In 2016/17, our Supervision and Enforcement divisions worked together to take action in 13 intervention cases. The outcomes of these included Voluntary Requirements, Own Initiative Requirements and supporting the police in a criminal prosecution. We currently have 11 open intervention cases being worked on.

In these cases, Supervision and Enforcement work together to intervene early and eliminate or reduce any ongoing risk to consumers or markets. A joint team will determine the appropriate response to the issues and engage with the firm to understand whether they will address them voluntarily. A voluntary agreement can often be achieved quickly and without the need to use our formal statutory powers to require a firm to take steps.

We can, if appropriate, also use more formal powers, for example to formally vary a firm's regulatory permissions or impose a formal requirement on a firm. We publish the details of all such formal action taken against a firm on the Financial Services Register, which is a public record of all the firms, individuals and other bodies that we regulate.

Early intervention in action

A number of interventions in the last year have involved seeking to prevent money laundering risks at financial services firms. One of these concerned very serious deficiencies in a firm's systems and controls to prevent money laundering.

In the first part of the year we became aware of concerns about a firm and conducted a short-notice visit as part of an early intervention. During the visit (which included interviewing key members of staff and conducting customer file reviews), we identified significant failings with the firm's financial crime systems and controls, including the failure to conduct adequate customer risk assessments, the failure to conduct enhanced due diligence and the failure to conduct ongoing monitoring.

These failings had led to the firm potentially being used to facilitate financial crime. These findings were communicated to the firm in a letter. As a result of the visit and the letter, the firm agreed to an extensive remediation programme. The firm also signed a voluntary requirement that restricts business with high-risk customers, politically-exposed persons and residents in a country on the firm's high-risk country list.

Following the intervention, the firm and several individuals, including senior management, were referred to Enforcement for investigation.

10 Threshold conditions

Introduction

We have a team dedicated to taking actions against firms not meeting the basic standards (threshold conditions) needed to carry out the activities for which they are authorised. During this year, 141 firms have had their permissions to conduct regulated business cancelled, and a further 751 firms have taken remedial steps to address breaches of the threshold conditions when faced with the threat of formal action. The substantial increase in these outcomes from 2015/16 is because of the impact of consumer credit firms referrals, which increased significantly in the year to 1,074 cases (from 218 referrals in 2015/16).

Statistics

Figure 10.1: Threshold conditions cases in 2016/17

Threshold Conditions Team (TCT) cases	Open at 1 April 2016	Opened during the year	Closed during the year	Open at 31 March 2017
FSMA firm cases	33	153	146	40
PSD firms	7	77	84	0
Consumer Credit firms	38	1074	989	123
3MLD firms	0	11	11	0
UKLA firms	1	0	0	1
AIFMD firms	0	0	0	0
TCT cases total	79	1315	1230	164

Notes

1. PSD (Payment Services Directive) cases involve enforcement action against firms failing to comply with the Payment Services Regulations.
2. 3MLD (the Third Money Laundering Directive (2005/60/EC)) cases involve enforcement action against firms which fail to comply with the Money Laundering Regulations.
3. UKLA (UK Listing Authority) cases involve companies whose listing of securities have been suspended and we are seeking to cancel the listing of those securities.
4. AIFMD cases involve referrals of firms registered under the Alternative Investment Fund Managers Directive.

Case study

Michael Wilkinson Mortgages

Part of the team's work involves taking action against firms that are failing to meet the minimum standards we expect from authorised firms.

An example is Michael Wilkinson Mortgages, a firm that included inaccurate and misleading information in its regulatory returns, and was unable to provide satisfactory evidence to support the information it had reported to us. In addition, Michael Wilkinson Mortgages' capital resources were significantly below the minimum level of financial resources it was required to maintain. Authorised firms must ensure that they maintain adequate financial resources and that their affairs are conducted in a sound and prudent manner. Michael Wilkinson Mortgages was failing to meet these standards, and its permission was therefore cancelled.

The action taken against Michael Wilkinson Mortgages sends a strong message to other authorised firms regarding the importance of maintaining adequate capital and of reporting accurately to us.

Richard Clay

Another aspect of the work of the team is to initiate action to ban individuals who have been convicted of offences involving fraud and dishonesty.

Richard Aston Clay is one such individual, who was prohibited as a result of his conviction for three counts of fraud. Mr Clay's conviction related to a fraudulent investment scheme that he operated, which resulted in consumers suffering significant financial losses.

Prohibiting individuals like Mr Clay ensures that consumers are protected from individuals who are convicted of severe acts of fraud and dishonesty, which undermine the integrity of the financial services industry.

11 International co-operation

Introduction

Effective international collaboration is key to ensuring efficient enforcement outcomes and we have continued to focus this year on building relationships with our key international partners, working with them to secure successful outcomes. We are increasingly strengthening our ties with prosecutors such as the US Department of Justice, given that much of the conduct we investigate is not just cross-border, but also straddles the regulatory/criminal divide.

The assistance we provided during the year ranged from conducting compelled and voluntary interviews – in which requesting authorities were able to participate – and obtaining bank records and transaction data, to providing information held by us to assist our international counterparts to tackle investment scams. We have also collaborated with a number of agencies on concurrent and joint investigations in order to secure co-ordinated outcomes against firms and individuals engaged in misconduct.

Collaboration is not just case-specific – we engage with other enforcement agencies in a variety of ways to address emerging trends in misconduct and share good practice. We continue to participate actively in the European Securities and Markets Authority's (ESMA's) Market Integrity Standing Committee (MISC) and in the International Organisation of Securities Commission's (IOSCO's) Committee on Enforcement and the Exchange of Information. One of our Heads of Department was successfully elected to the role of Vice Chair of this committee and of the Multilateral Memorandum of Understanding (MMoU) Screening Group after Georgina Phillippou, our Chief Operating Officer, stood down in October having served the maximum term as the committee's Chair.

A highlight was the launch on 31 March of IOSCO's Enhanced Multilateral Memorandum of Understanding (EMMoU). The EMMoU contains new enforcement co-operation powers for responding to the challenges arising from recent developments in global financial markets and is a significant milestone for cross-border co-operation, enhancing signatories' abilities to meet the challenges of financial misconduct in an increasingly technology-dominated environment.

We have also been engaged in preparations for the UK's fourth round mutual evaluation by the Financial Action Task Force, which will take place during 2018.

Statistics

In 2016/17, we received 998 requests for assistance from a range of regulatory and law enforcement agencies across 59 different countries.

Case studies

Significant outcomes resulting from international co-operation

FCA assistance has directly contributed to a number of successful outcomes for enforcers across the world. In the last year, this has included outcomes for the US Commodity Futures Trading Commission and the Australian Securities & Investments Commissions against multiple firms in relation to benchmark manipulation, and for the US Securities and Exchange Commission in relation to breaches of the US Foreign and Corrupt Practices Act by the Och Ziff Capital Management Group, which also resulted in the firm agreeing to enter into a Deferred Prosecution Agreement with the US Department of Justice.

We also worked with agencies in a number of jurisdictions, including the New York Department of Financial Services (NY DFS), to secure our outcome in January against Deutsche Bank for serious anti-money laundering failings, which resulted in the largest financial penalty for AML controls failings ever imposed by the FCA (£163 million). The Central Bank of Russia and the NY DFS secured outcomes against the firm in December 2016 and January 2017, respectively.

12 Pension scams

Introduction

We have established a team to provide intelligence and cases to Specialist Supervision and Enforcement. Since its inception, the team has become the hub of our efforts against pension scams by aggregating all of the intelligence that flows into the FCA. This team also liaises and shares intelligence with The Pensions Regulator, the Treasury, HMRC and the National Fraud Intelligence Bureau under the umbrella of Project Bloom and ScamSmart.

Statistics

In 2016/17, the team created 766 Intelligence Logs.

13 Law and policy

Introduction

In 2016/17 we produced a number of other public documents relating to our enforcement policy changes, in addition to our project described in the case study below.

In April 2016 we published a consultation paper relating to our implementation of the enforcement aspects of the Market Abuse Regulation. This gave us new powers to impose disciplinary prohibitions and powers to impose disciplinary suspensions and limitations in new circumstances. Our policy statement followed in June 2016.

We contributed to many other EU-related projects, including the implementation of MiFID II, the Benchmarks Regulation, the PRIIPs Regulation, the Insurance Distribution Directive and PSD 2. Our MiFID II work has led to a consultation paper, published in March 2017, relating partly to extensions to our enforcement powers.

In September 2016, we published our consultation paper on enforcement of the duty of responsibility. This was introduced by Parliament through amendment to section 66A of the Financial Services and Markets Act 2000, and is a key element of our Senior Managers and Certification Regime (SM&CR). We have since published the relevant policy statement and continue to work on the extension of the SM&CR.

We are also involved in non-EU related work, which will continue into 2017/18, including our review of the Consumer Credit Act 1974 as well as the implementation of the Financial Advice Market Review, the introduction of the Office for Professional Body Anti-Money Laundering Supervision and the Innovation Hub.

We maintain close working relationships with other law enforcement and regulatory bodies, especially the PRA, and work with them to ensure appropriate enforcement policy coordination and to share learning and experience related to referral mechanisms, investigatory powers and techniques, selection of sanctions, penalty setting, settlement and other similar issues.

Case study

Changes to enhance enforcement decision-making processes

During 2016/17, we made changes to our enforcement decision-making processes, designed to enhance their transparency and effectiveness.

Many of these changes were made in response to recommendations in the Treasury's final report of its review of enforcement decision-making at the FCA and PRA (published in December 2014) and Andrew Green QC's findings in relation to the Financial Services

Authority's enforcement actions following the failure of HBOS (published in November 2015).

We also went further and developed our own proposals to introduce a streamlined procedure to narrow the issues between us and the firm or individual under investigation.

The primary proposal was that we may enter into a focused resolution agreement with the person or firm under investigation in which the facts and liability are agreed. This would then leave the RDC to decide what action should be taken by us, after hearing representations on the appropriate sanction.

The firm or individual would still retain a discount for resolving issues with us early. For example, where all material facts and liability are agreed (but the penalty is not agreed), the investigation subject would retain the full 30% discount offered to subjects who resolve their case with us in full at the same stage, without RDC involvement.

We consulted on our proposals in April 2016. This was a joint consultation with the PRA about regulator co-operation and subjects' understanding and representations in the context of enforcement investigation.

The responses were broadly supportive of our proposals, many of which were amendments to our existing enforcement process and centred on increasing transparency.

We published our policy statement on 1 February 2017, and from 1 March 2017 we introduced the procedure for partly contesting cases, which can now be found in DEPP 5.1.8 A-Q and 6.7 in our Handbook. This included extending the scope of partly contested cases to include contesting liability, or a narrow set of issues.

We continue, as was our previous practice, to approach the subject of an investigation once we have a sufficient understanding of the nature and gravity of the suspected misconduct to make a reasonable assessment of the appropriate sanction.

We will allow a reasonable period during which the firm or individual may resolve the case with us with a sanction discount for agreement. Now, however, there is a range of additional possibilities, as described above, involving the RDC.

14 Joint Financial Analysis Centre (JFAC)

Introduction

On 11 April 2016, the Government announced the creation of a cross-agency taskforce, consisting of the FCA, HMRC, NCA and SFO to analyse all the information that had been made available from the International Consortium of Investigative Journalists Panama Papers data leak.

One of the key developments from the taskforce has been the establishment of the JFAC. We have embedded analysts from our Intelligence Department within JFAC. Using the data and intelligence gathered from across the taskforce, the JFAC has developed cutting-edge software tools and techniques, ensuring the taskforce has access to the very best information.

The proactive acquisition of data, alongside the establishment of the JFAC, has enabled the taskforce to identify a number of areas for further investigation across the full range of tax and economic crime, as well as links to organised crime, which will be the focus of its work over the coming months. JFAC has identified multiple opportunities for joint working with partner agencies and has contributed to a number of ongoing investigations by identifying hidden criminal assets.

15 Joint Money Laundering Intelligence Taskforce (JMLIT)

Introduction

We have been a member of the JMLIT since its inception in February 2015. The JMLIT is a public–private UK partnership of banks, law enforcement, government bodies and regulators.

The JMLIT has operational, strategic and developmental objectives. Operationally, the JMLIT seeks to enhance collective anti-money laundering detection capability and generate increased prevention and disruption opportunities. Strategically, the JMLIT aims to increase public and private sector resilience to economic crime. Developmentally, the JMLIT's goal is to build the collective UK response to money laundering. Our staff visited regulators in Singapore and Hong Kong in March to promote JMLIT and the benefits of public-private partnership with our regulatory partners.

Between May 2016 (when the JMLIT became a business as usual initiative) and the end of March 2017, the JMLIT contributed to over 1,000 new bank-led investigations and facilitated or supported over 60 arrests.

16 Firm feedback

Introduction

At the conclusion of an enforcement case, we give those who have been investigated the opportunity to comment on the practical and procedural aspects of our enforcement process, and the impact of enforcement actions more generally. These feedback meetings focus on the handling of the case by our staff and decision makers, not on the substantive facts or outcome of the investigation.

Summary of feedback

In 2016/17 we received feedback from four firms. The key themes raised include:

- Firms were generally not surprised when their matter was referred for investigation and found the referral period reasonable. Scoping meetings were useful to clarify the potential breaches, purpose, aims and steps of the investigation, although more clarity about the extent to which we intended to focus on potential individual misconduct would have been helpful.
- Feedback indicated that investigation teams were receptive to open dialogue and the concerns and challenges raised. Many commented that teams were collaborative, professional, flexible and measured in their approach. Challenges were experienced, however, when members of the investigation team changed.
- In terms of progress updates, firms found regular meetings and ongoing telephone conversations directly with the investigation team helpful. However, more progress updates and dialogue would have been appreciated, particularly at the early stages of the investigation.
- Feedback included the fact that information requirements were detailed and reflected a thorough understanding by us of the issues. They were, however, sometimes too onerous in terms of the resource required to comply. Discussions with us were helpful to narrow the issues and agree how searches should be conducted, reducing the quantity of information required and the resulting effort.
- To help interviewees prepare for interviews, one firm found it helpful to receive interview bundles and an agenda of the topics to be covered in advance of the interview. Questions during the interviews were felt to be fair and clear.
- Firms generally found investigations resource-intensive and particularly challenging where remediation/business transformation programs were taking place in parallel. However, feedback indicated that the experience was an opportunity for firms to learn and to help improve compliance and governance processes and staff awareness.

We have considered the key themes raised and are working to ensure that we take forward the lessons learned.

17 Enforcement statistics

Introduction

In 2016/17 we issued 180 final notices (155 against firms and 25 against individuals), secured 209 outcomes using our enforcement powers (198 regulatory/civil and 11 criminal) and imposed 15 financial penalties totalling £181m (see Figure 17.1).

Statistics

Figure 17.1: Financial penalties imposed

	2016/17	2015/16	2014/15
Number of financial penalties imposed	15	34	43
Total value of financial penalties	£181.0m	£884.6m	£1,409.8m
Number of financial penalties imposed against firms	6	17	23
Total value of financial penalties imposed against firms	£180.1m	£880.4m	£1,403.1m
Number of financial penalties imposed against individuals	9	17	20
Total value of financial penalties imposed against individuals	£0.9m	£4.2m	£6.7m

Figures for 2014/15 and 2015/16 include exceptional fines related to FX and LIBOR misconduct. We remain committed to investigating and holding firms and individuals accountable for misconduct and to ensure wrongdoers pay for the costs of remediation. There has been no change in our approach to misconduct or financial penalties.

Executive settlement

In 2016/17, 115 cases were closed (excluding threshold condition cases), and 13 of these were concluded by executive settlement (out of 18 cases where executive settlement was attempted). Cases may involve multiple parties and both firms and individuals.

Figure 17.2: Cases closed by executive settlement

	2016/17	2015/16	2014/15
Total cases closed (excluding TCT)	115	98	115
Settlement attempted	18	48	45
Cases concluded by settlement	13	40	39
Percentage of cases concluded by settlement where settlement is attempted	72%	83%	87%

Notes:
1. TCT (Threshold Conditions Team): these cases involve regulated firms that fail to meet our minimum standards (ie threshold conditions).

No further action

We also expect to conclude some cases without taking further action. This may be because we determine there is insufficient or no evidence of wrongdoing, or because we do not consider it to be in the public interest to take disciplinary action. In 2016/17, 62% of the total cases closed (excluding TCT cases) were closed with no further action being taken.

Figure 17.3: Cases closed with no further action

	2016/17	2015/16	2014/15
Total cases closed (excluding TCT)	115	98	115
Number of cases closed with no further action	71	24	38
Percentage of cases closed with no further action	62%	24%	33%

Notes:
1. For 2015/16, the definition of cases closed with no further action has been amended to exclude cases that were discontinued by the RDC or Tribunal.

Transparency

To support our commitment to being a transparent regulator, we provide details around the length and cost of our enforcement activities.

Regulatory and civil case length

Contested cases take a significantly longer time to resolve than settled cases.

Figure 17.4 shows the average length of time a case takes from the date we began formal investigation to the date of closure, whether it was settled or if it was referred on to the RDC or Tribunal. We also include the average length of our civil and regulatory cases.

Figure 17.4: Average case length

Year	Average length of cases concluded as a result of settlement (months)	Average length of cases referred to RDC (months)	Average length of cases referred to Tribunal (months)	Average length of all cases (months)*
2014/15	16.1	29.1	54.8	18.5
2015/16	25.2	35.9	53.8	25.7
2016/17	23.2	33.6	61.2	17.6

* Includes cases closed with no further action.

Regulatory and civil case costs

Figure 17.5 shows the average cost of our civil and regulatory cases. The resource required for each particular case will vary depending on a number of factors, including scale and complexity. The cost of regulatory cases we have conducted can range from around £250 to over £5m.

Figure 17.5: Average cost of civil and regulatory cases

Year	Average cost of cases concluded as a result of settlement (£000s)	Average cost of cases referred to RDC (£000s)	Average cost of cases referred to Tribunal (£000s)	Average cost of all cases (£000s)*
2014/15	241.0	310.7	322.4	246.8
2015/16	565.8	181.6	384.0	325.0
2016/17	240.9	122.9	251.7	182.9

* Includes cases closed with no further action.

Criminal case length

Figure 17.6 shows the average length of time for a criminal case. Criminal cases take a significantly longer time to resolve than regulatory cases.

Figure 17.6: Average length of a criminal case

Year	Average length of criminal cases in the Wholesale area (months)	Average length of criminal cases in the UBD area (months)	Average length of all criminal cases (months)
2014/15	26.5	37.0	31.7
2015/16	14.7	32.7	16.3
2016/17	75.6	N/A	75.6

Criminal case costs

Figure 17.7 shows the average cost of criminal cases closed in 2016/17. Generally, far fewer criminal cases are pursued in comparison to regulatory action. However, the costs for individual criminal cases can be significantly higher than those for our regulatory cases.

Figure 17.7: Average cost of criminal cases closed in 2016/17

Year	Average cost of criminal cases in the Wholesale area (£000s)*	Average cost of criminal cases in the UBD area (£000s)	Average cost of all criminal cases (£000s)*
2014/15	289.7	321.6	305.6
2015/16	181.8	409.9	227.4
2016/17	886.0	N/A	886.0

* Average cost excludes the Operation Tabernula criminal investigation as elements of the case are still ongoing.

18 Data and analysis

Figure 18.1: Enforcement case movements

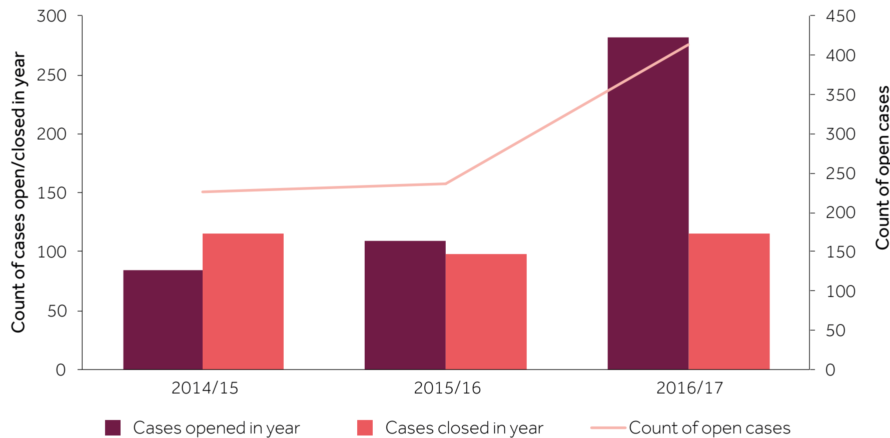


Figure 18.1: Enforcement case movements

Type of case	Open at 1 April 2016	Opened during year	Closed during year	Open at 31 March 2017
Retail conduct	53	30	16	67
Client money/assets	9	2	5	6
Financial crime	20	43	7	56
Mis-selling	18	6	7	17
Culture/governance	6	9	3	12
Financial promotions	0	7	0	7
Wholesale conduct	42	13	16	39
Insider dealing	35	78	26	87
Market manipulation	16	29	24	21
Listing rules/Prospectus rules/DTR breaches	3	13	2	14
Misleading statements	6	5	0	11
Benchmarks	3	0	1	2
Unauthorised business	35	40	6	69
App. to revoke/vary perm. or approval	1	7	2	6
Totals (excluding TCT cases)	**247**	**282**	**115**	**414**

Notes
1. Cases may involve multiple parties and include both firms and individuals.
2. The open cases at 1 April 2016 have been restated to reflect revised case type categories introduced in 2016.
3. The open cases at 1 April 2016 have been restated to reflect ten re-opened cases (one retail conduct related, one culture and governance, four wholesale conduct and four insider dealing).

Figure 18.2 Tribunal statistics

Type of cases/references	Live	Outcome		
		Tribunal decision	Dismissed without substantive hearing	Withdrawn
TCT	4	0	0	3
Authorisation	1	1	1	1
Market abuse	0	0	0	0
Regulatory	21	1	0	1
Totals	**26**	**2**	**1**	**5**

Once a Decision Notice has been issued by the Regulatory Decisions Committee, 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 Tribunal. The Tribunal is independent of the FCA and will consider the case afresh.

Published outcomes by financial year

In these figures, the financial year of an outcome is based on the date it was publicised.

Figure 18.3: Total value of fines

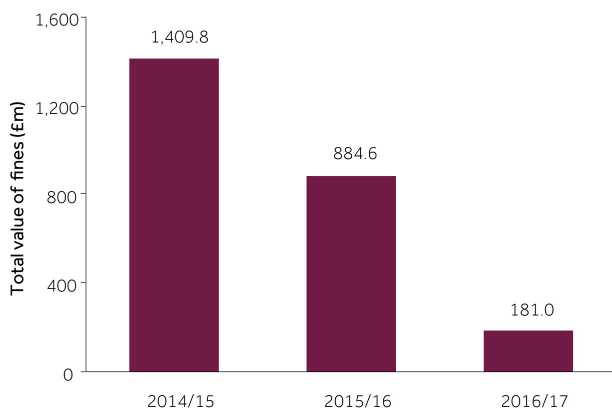


Figure 18.4: Number of fines

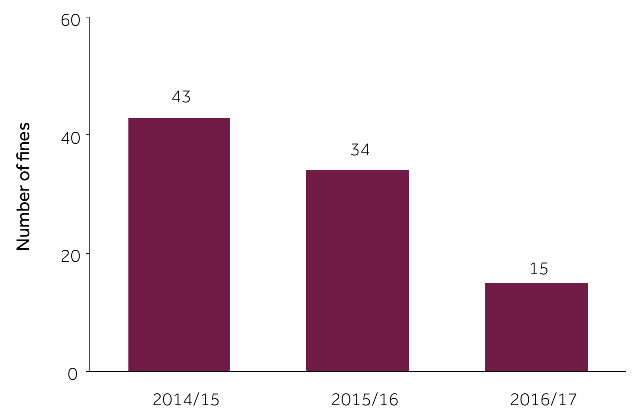


Figure 18.5: Number of prohibitions

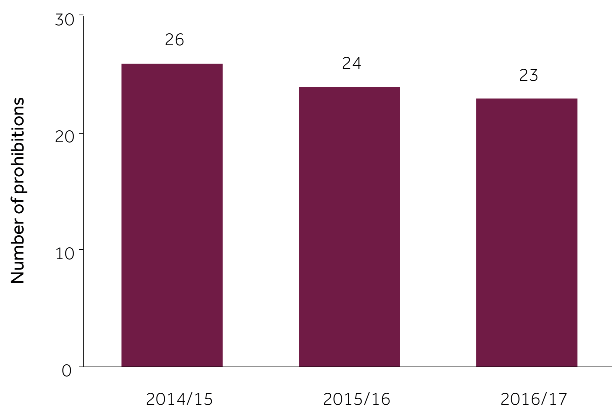


Figure 18.6: Use of powers – outcomes published

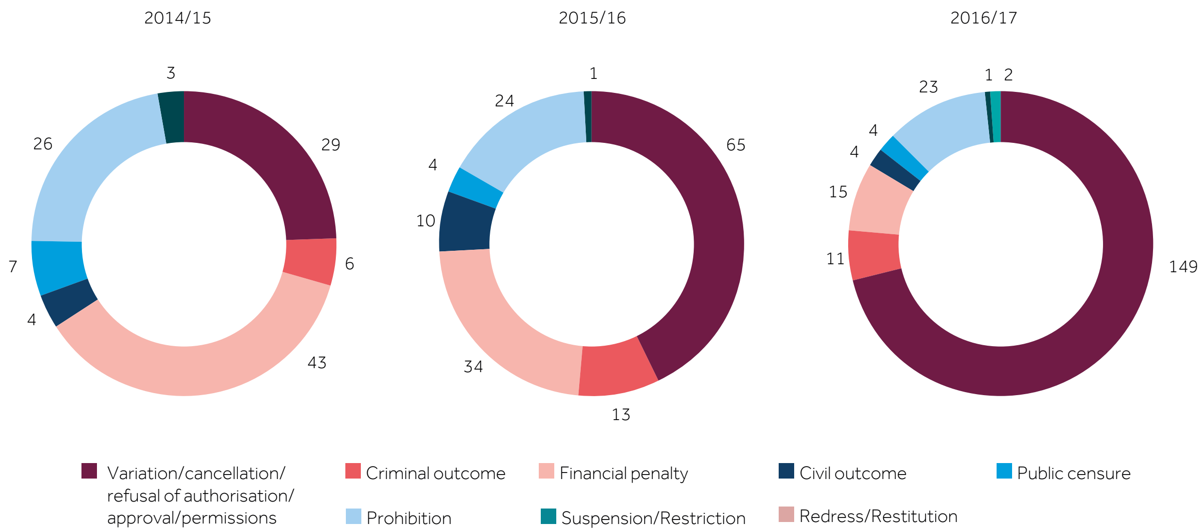
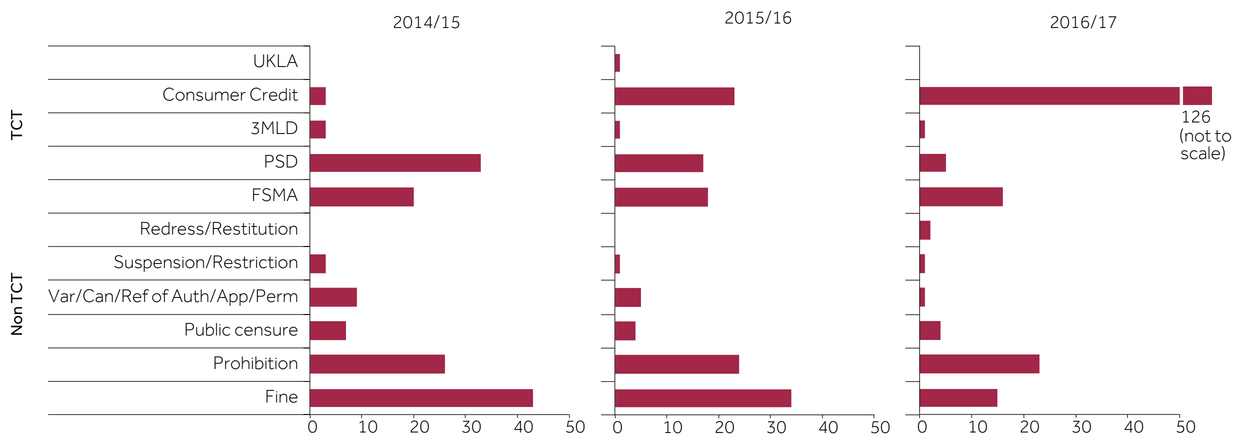


Figure 18.7: Number of outcomes published



Notes

1. Figure 18.6 shows the number of outcomes, split by TCT (including FSMA, PSD, 3MLD, Consumer Credit and UKLA TCT outcomes), and other regulatory outcomes.
2. PSD (Payment Services Directive) cases involve enforcement action against firms failing to comply with the Payment Services Regulations.
3. 3MLD (the Third Money Laundering Directive (2005/60/EC)) cases involve enforcement action against firms which fail to comply with the Money Laundering Regulations.
4. UKLA (UK Listing Authority) cases involve companies whose listing of securities have been suspended and we are seeking to cancel the listing of those securities.

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