

Enforcement annual performance report

2017/18

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Contents

1	Introduction	4
2	Overview of enforcement action	5
3	Retail conduct	10
4	Wholesale conduct	11
5	Confiscation orders	12
6	Unauthorised business	13
7	Threshold Conditions	15
8	Law and policy	17
9	International cooperation	18
10	Joint Financial Analysis Centre (JFAC)	19
11	Joint Money Laundering Intelligence Taskforce (JMLIT)	20
12	Firm feedback	21

1 Introduction

This report provides an overview of the FCA's enforcement activities during 2017/18, based on our commitment to strengthen financial markets and keep them working well, so that consumers are protected and can use them with confidence. It complements the wider FCA Annual Report for 2017/18, alongside similar statements of our teams' priorities and functions over the last 12 months. In particular, there are reports on competition, anti-money laundering and diversity and inclusion, showcasing the progress we have made.

Previous year's reports on enforcement have gone into far more detail, all of which is still available [on our website](#), and in the many updates we publish on our [enforcement actions and prosecutions](#). In March 2018 we also consulted on our [Approach to Enforcement](#), requesting feedback by 21 June 2018 on how we carry out investigations and decide what action will address harm and achieve substantive justice. We are proud to protect consumers and hope that this account provides a helpful and clear flavour of our work this year. If any aspect is not covered here but you would like more information please contact us at www.fca.org.uk/contact.

This year we have focused on the essential enforcement developments and achievements, so you'll find sections on retail and wholesale conduct, as well as information on the confiscation orders we have made. You can also read about our work to counter unauthorised business, and the way we reinforce our Threshold Conditions. There are also sections on the way we partner with other authorities, both internationally and in the UK, to successfully regulate financial markets and to tackle wrongdoing. If you are interested in upcoming enforcement plans, please see the section titled 'Law and policy'.

All of this is backed up throughout with statistics and graphics, as well as case studies to illustrate how we conduct enforcement actions. We are continually developing as a regulator, so we've included a section on how firms experience enforcement activity, which will inform how we work with them in future.

2 Overview of enforcement action

In 2017/18 we issued 269 Final Notices (248 against firms and individuals trading as firms and 21 against individuals), secured 317 outcomes using our enforcement powers (303 regulatory/civil and 14 criminal) and imposed 16 financial penalties totalling £69.9m (see Figure 2.1).

Figure 2.1: Total value of financial penalties imposed

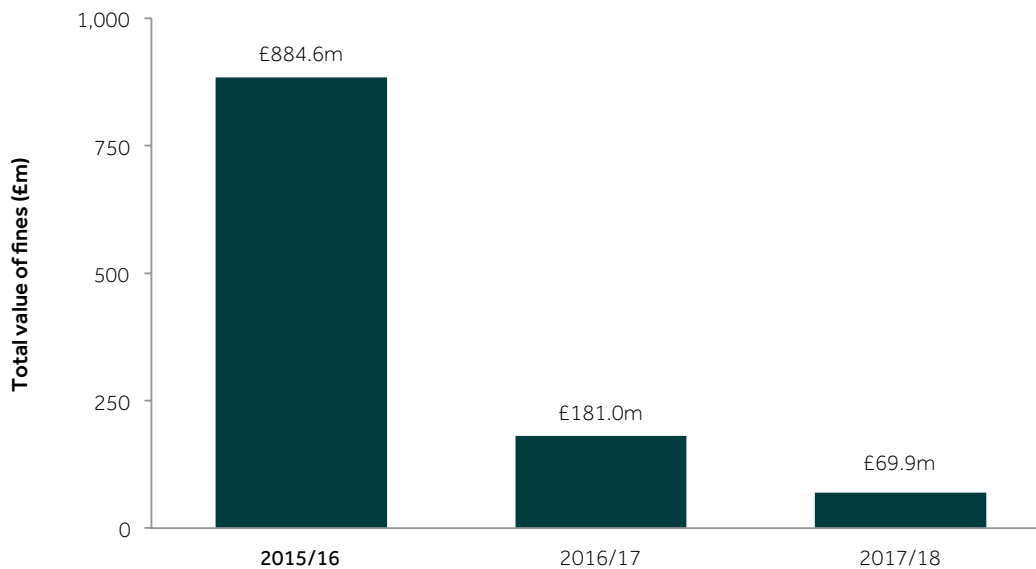
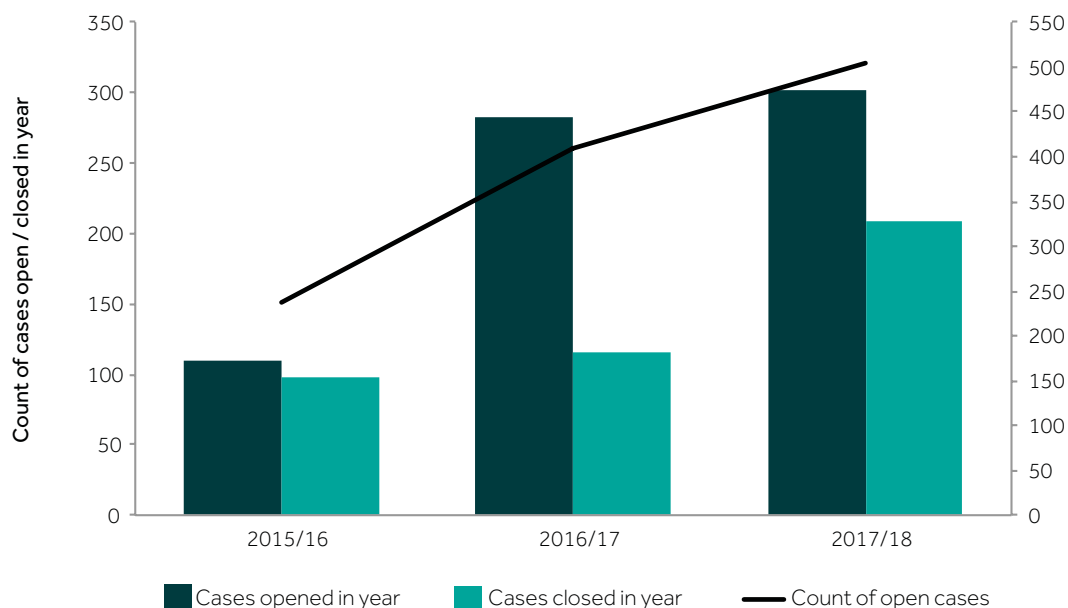


Table 2.1: Breakdown of financial penalties imposed

	2015/16 ¹	2016/17	2017/18
Number of financial penalties imposed	34	15	16
Total value of financial penalties	£884.6m	£181.0m	£69.9m
Number of financial penalties imposed against firms	17	6	6
Total value of financial penalties imposed against firms	£880.4m	£180.1m	£69.0m
Number of financial penalties imposed against individuals	17	9	10
Total value of financial penalties imposed against individuals	£4.2m	£0.9m	£0.9m

[1]: Figures for 2015/16 include exceptional fines related to FX and LIBOR misconduct.

Figure 2.2: Enforcement case movements

Table 2.2: Case movements^[1]

Type of case	Open at 1 April 2017 ^[2]	Opened during year	Closed during year	Open at 31 March 2018
Retail conduct	66	38	26	78
Retail lending	0	3	0	3
Client money/assets	6	5	2	9
Financial crime	55	46	15	86
Mis-selling	15	6	2	19
Culture/governance	15	48	2	61
Financial promotions	7	0	0	7
Wholesale conduct	38	13	25	26
Insider dealing	84	56	65	75
Market manipulation	22	19	13	28
Listing rules/Prospectus rules/DTR breaches	14	12	9	17
Misleading statements	11	7	6	12
Benchmarks	2	0	1	1
Unauthorised business	69	48	40	77
App. to revoke/vary permission or approval	6	1	2	5
Totals (excluding TCT cases^[3])	410	302	208	504

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

[2] Open cases as at 1 April 2017 is restated to reflect a small number of ongoing cases that have been re-classified as a different type of case. In addition, the total has been adjusted from 414 to 410 to reflect 4 cases that were incorrectly showing as open on our case management system.

[3] TCT (Threshold Conditions Team) cases involve regulated firms that fail to meet the FCA's minimum standards ie Threshold Conditions. See section 6.

Table 2.3: Tribunal statistics¹

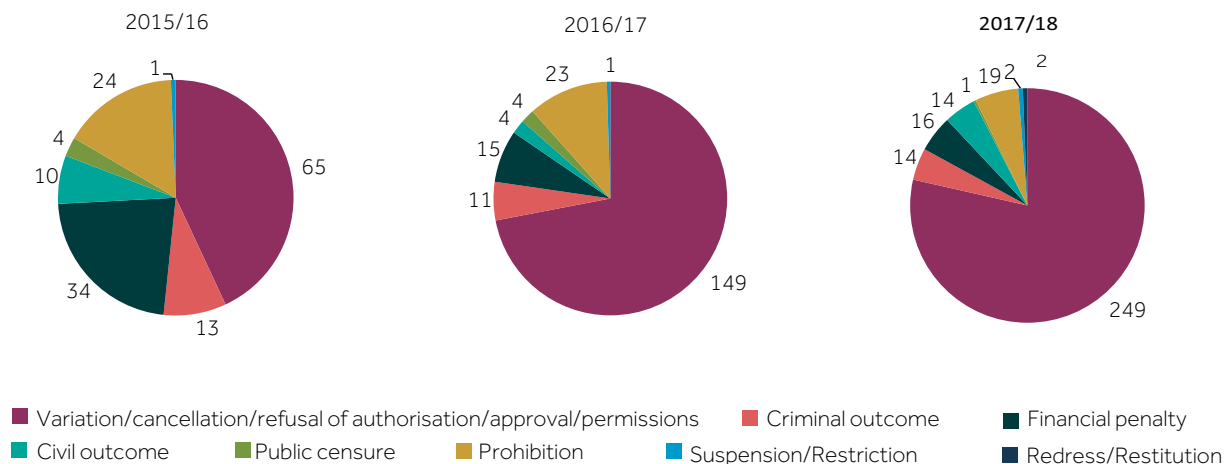
Type of cases/ references	Live	Outcome		
		Tribunal decision	Dismissed without substantive hearing	Withdrawn
TCT			2	
Authorisation	1			
Market abuse				
Regulatory ^[2]	12	1	1	6
Validation Order ^[3]	36 ^[4]			
Totals	49	1	3	6

[1] The Financial Services and Markets Act 2000 specifies the instances when a person who receives a statutory notice from the FCA has the right to make a reference to the Tribunal. The Tribunal is independent of the FCA and will consider the case afresh. References to the Tribunal can be made in respect of both disciplinary matters such as, for example, market abuse, and non-disciplinary matters such as, for example, applications for Part 4A permission by firms seeking authorisation. In disciplinary cases, 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 Tribunal.

[2] Regulatory cases included here are both disciplinary cases against firms and individuals, as well as non-disciplinary cases, for example, where persons allege that the FCA should have given them a copy of a statutory notice in accordance with section 393 of the Financial Services and Markets Act 2000.

[3] 'Validation order' is an industry term that refers to a notice allowing an agreement to be enforced or a notice allowing money paid or property transferred under the agreement to be retained. A relevant firm may seek a validation order where agreements that are entered into while carrying on a credit-related regulated activity are unenforceable because of sections 26, 26A or 27 of the Financial Services and Markets Act 2000. The FCA may only grant a validation order if it considers it just and equitable to do so. A person aggrieved by the granting of a validation order, such as, for example, a customer that entered into the agreement in question, can refer the matter to the Tribunal.

[4] Of these Tribunal references, 35 relate to the same validation order.

Figure 2.3: Published outcomes by financial year

Note: The financial year of an outcome is based on the date it was publicised.

Transparency

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

Regulatory and civil cases

Case length

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

Table 2.4 shows the average length of time civil and regulatory cases take from the date we began formal investigation to the date of closure, whether it was settled, referred to the RDC or Tribunal, or closed with no further action (NFA).

Table 2.4: 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, including NFA cases (months)
2015/16	25.2	35.9	53.8	25.7
2016/17	23.2	33.6	61.2	17.6
2017/18	32.3	59.4	52.4	19.1

Case costs

Table 2.5 shows the average cost of our civil and regulatory cases. The resource required for each particular case varies depending on several factors, including scale and complexity. The cost of regulatory cases we have conducted can range from around £2,000 to over £1m.

Table 2.5: 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, including NFA cases (£000s)
2015/16	565.8	181.6	384.0	325.0
2016/17	240.9	122.9	251.7	182.9
2017/18	290.5	469.0	712.4	137.8

Criminal cases

Case length

Table 2.6 shows the average length of time for a criminal case. Criminal cases can take significantly longer to resolve than regulatory cases.

Table 2.6: 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 ¹ area (months)	Average length of all criminal cases (months)
2015/16	14.7	32.7	16.3
2016/17	75.6	N/A	75.6
2017/18	59.8	57.7	58.2

Case costs

Table 2.7 shows the average cost of criminal cases closed in 2017/18. 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.

Table 2.7: Average cost of criminal cases closed in 2017/18¹

Year	Average cost of criminal cases in the Wholesale area (£000s)	Average cost of criminal cases in the UBD ¹ area (£000s)	Average cost of all criminal cases (£000s)
2015/16	181.8	409.9	227.4
2016/17	886.0	N/A	886.0
2017/18	1601.6	939.3	1160.1

1 Unauthorised Business Department

3 Retail conduct

Protecting consumers is at the heart of our Retail and Regulatory Investigations Directorate. Our varied portfolio of casework reflects our drive to achieve fair and just outcomes in response to misconduct. Increasing the focus on pensions cases is helping us to change industry behaviour, ensure customers are treated fairly and secure redress when there is poor conduct. In addition, our money laundering investigations aim to strengthen the UK financial system and make it inhospitable to people who abuse it by laundering the proceeds of crime.

Case study

Capita Financial Managers Limited (CFM) – operators of the Connaught income fund, Series 1

CFM operated an unregulated collective investment scheme (the Fund) which invested in high-risk loans, and provided short-term bridging finance to commercial operators in the UK property market. Before taking on the role of the Fund's operator, CFM failed to conduct adequate due diligence in relation to the Fund and did not rectify this failure when it became aware its due diligence processes had been inadequate. This meant that CFM did not adequately understand the Fund's structure or its own role as operator. CFM did not adequately monitor the Fund for the majority of its time as operator. It also failed to communicate with the Fund's investors in a way that was clear, fair and not misleading. The Fund went into administration after the bridging lender that it had provided loans to went into administration. In November 2017 CFM was publicly censured for its failings, so it agreed to pay up to £66m to put (as far as possible) investors back in the same position they would have been in if they had never invested. CFM's failings would ordinarily have caused us to impose a financial penalty, but CFM would not have been able to compensate the Fund's investors if a financial penalty were also imposed.

For more information please see our [Press Release](#).

4 Wholesale conduct

It is essential that our wholesale markets embody the highest standards of fairness, effectiveness, stability, resilience and cleanliness. We have increased our focus on ensuring that the cases we investigate and bring encourage wholesale markets to reflect these qualities. We want markets' infrastructure to be more robust, and we want to improve conduct standards.

For example, we continue to pursue current investigations and litigation relating to individuals' misconduct around benchmarks. These conduct failings undermine the 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 enables the illicit movement of funds (ie money laundering). Firms must be vigilant in their controls to ensure they are not allowing clients to engage in suspicious behaviour.

At any given time we have a number of insider dealing and market abuse cases at different stages of investigation and litigation.

In addition to our work in secondary markets, we are just as keen to ensure that our primary market is clean and works smoothly. This includes the sponsor regime for Premium Listed companies; sponsor firms have key gatekeeper functions to ensure a candidate for listing is eligible. We hold sponsor firms strictly accountable whenever these standards are not met, as these failures jeopardise market integrity and the wellbeing of the investing public.

Case study

Rio Tinto plc

In October 2017 we fined Rio Tinto plc £27.4m for breaching our disclosure and transparency rules. This was the largest fine we have imposed for this kind of breach. It was made possible by our close collaboration with authorities in the USA and Australia. We found that Rio Tinto had failed to write down the value of some of its mining assets in the Republic of Mozambique when it published its interim results to the market. This meant that its financial reporting was inaccurate and misleading.

For more information please see our [Press Release](#).

5 Confiscation orders

Following almost every FCA prosecution, convicted defendants are subject to confiscation proceedings. This is 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 the amount obtained from their offence(s) 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. That is, 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. This is called making a confiscation order.

Table 5.1: Confiscation orders in 2017/18

Date	Defendant	Amount
22 May 2017	Daniel Forsyth	£62,834
22 May 2017	Aaron Petrou	£4,987
24 July 2017	Damian Clarke	£350,000

6 Unauthorised business

In 2017/18 we have seen a significant increase in the number of victims reporting potential unauthorised activity in the UK, with a record 13,309 reports received in 2017/18. This activity includes pensions scams, investment and insurance fraud, boiler room schemes and unauthorised collective investment or deposit taking business, among others.

Every report is assessed and, depending on the seriousness and risk of consumer harm, we can take action. For example, we might issue warning letters, publish consumer alerts, take down websites, obtain undertakings or alert other agencies. For the most serious cases we can take civil action to stop activity and freeze assets, insolvency proceedings or criminal action. Last year we issued 63 warning letters and published 216 alerts. We resolved a further 112 matters through correspondence, opened 20 formal investigations and looked into the activities of 34 unauthorised pension introducer firms.

We conducted 3 large criminal trials, each lasting between 1 and 3 months, and secured 14 criminal convictions, totalling 14 years and 4 months imprisonment. We prosecuted illegal money lender Dharam Gopee who received a 3 years and 6 months' custodial sentence and a Serious Crime Prevention Order. This was the first successful criminal prosecution of an individual for illegal money lending since we took over responsibility for regulating consumer credit in April 2014. A further 6 individuals were prosecuted and convicted for their part in running a series of boiler room scams in which investors lost an estimated £2.8m. They are awaiting sentencing.²

In the civil courts we commenced proceedings against Avacade and Alexandra Associates, who were unregulated pension introducers involved in the transfer of at least £86million in pension assets from over 2,000 consumers. We are seeking restitution orders, declarations and injunctions to prevent further breaches in schemes which were unlawfully promoted to the public using false, misleading and deceptive statements. We took action against Capital Alternatives and others in the High Court and secured restitution orders for £16.9m for investors in these schemes. We also took civil action to stop an unlawful foreign exchange investment scheme operated by Noerus Capital. This meant obtaining injunctions and restitution orders against a number of people involved in the scheme, and we secured the return of some of the funds recovered to investors.

Consumer education and awareness is a key focus. This year, our ScamSmart campaign has been advertised widely on several national media platforms, generating the highest ScamSmart media coverage to date. Increasing consumer awareness and scepticism helps to stop people falling victim to unauthorised activity in the first place.

On the basis of horizon scanning and trend analysis, we identified fraudulent binary options trading as a particular risk area. As a result, we published a list of unauthorised binary options providers in January 2018, when binary options became a regulated investment product. Publication of the list attracted favourable media coverage both domestically and internationally.

² Three individuals were found guilty in December 2017, and three pleaded guilty earlier in the proceedings, details of which we published in December. However, we have not included these outcomes in the statistics for 2017/18 as we only recognise convictions when a sentencing judgment is issued. The individuals are due to be sentenced at a later date.

Case study

Operation Alfreton

We prosecuted Samrat Bhandari, Dr Muhammad Aleem Mirza, Michael Moore and Paul Moore for their roles in operating an investment scheme that led to more than 300 investors in Symbiosis Healthcare plc losing over £1.4m. Between 2009 and 2014, each of the defendants played an instrumental role in the systematic and prolonged misleading of investors, many of whom were vulnerable or retired individuals. These investors were induced to buy shares through a combination of cold calling, pressure selling and wholly misleading claims about the company's value. Despite promises to investors of large profits, and extravagant claims about the expansion of a network of medical clinics in Dubai and elsewhere, in reality the shares in the company were effectively worthless. They were convicted and sentenced to a total of 6 years and 9 months' imprisonment.

Our Press Releases on the [prosecution](#) and [sentencing](#) give more details.

7 Threshold Conditions

We have a team dedicated solely to taking action against firms that do not meet the FCA's minimum standards (the Threshold Conditions) needed to carry out the activities for which they are authorised. This year, the team has cancelled 222 firms' permissions to conduct regulated business, and has prohibited 6 individuals. The increase in numbers is due to referrals from consumer credit firms, which rose from 218 referrals in 2015/16 to 1,294 in 2017/18.

Recurring breaches related to:

- lack of adequate resources (including PII and financial resources)
- failures to comply with Financial Ombudsman awards
- non-cooperation with the FCA
- convictions of offences involving fraud and dishonesty
- directors' disqualifications
- non-submission of regulatory returns, and
- non-payment of fees

Table 7.1: Threshold Conditions cases in 2017/18

Threshold Conditions Team (TCT) cases	Open at 1 April 2017	Opened during the year	Closed during the year	Open at 31 March 2018
FSMA firm cases	34	167	163	42
PSD firms	0	45	42	3
Consumer Credit firms	120	1294	1194	221
3MLD firms	0	9	6	3
UKLA firms	0	0	0	0
AIFMD firms	0	0	0	0
TCT cases total	154	1515	1405	269

1. TCT (Threshold Conditions Team) cases involve regulated firms that fail to meet the FCA's minimum standards ie the Threshold Conditions
2. PSD (Payment Services Directive) cases involve enforcement action against firms failing to comply with the Payment Services Regulations
3. MLD cases involve enforcement action against firms who fail to comply with the Money Laundering Regulations
4. UKLA cases involve companies whose listing of securities have been suspended and we are seeking to cancel the listing of those securities
5. AIFMD cases involve referrals of firms registered under the Alternative Investment Fund Managers Directive

Case study

Alex Hope

We prohibited Alex Hope as a result of his conviction for dishonesty by making false representations to investors. He knew the representations he made were misleading. Mr Hope's misconduct resulted in consumers losing over £5m because he misrepresented his own wealth and the financial prospects of a fictitious investment scheme.

Prohibiting Mr Hope helps to protect consumers from individuals who are convicted of severe acts of fraud and dishonesty, as these acts can undermine the integrity of the financial services industry.

8 Law and policy

In March 2018 we consulted on our Approach to Enforcement, requesting feedback on how we carry out investigations and decide what action will address harm and achieve substantive justice.

In 2017/18 we developed and consulted on a number of proposed enforcement-related changes to the FCA's Handbook. These arose from the implementation of the Second Markets in Financial Instruments Directive (MiFID2), the Second Payment Services Directive (PSD2), the Fourth Money Laundering Directive (MLD4), the Benchmarks Regulation (BMR), the Insurance Distribution Directive (IDD) and the Packaged Retail and Insurance-based Investment Products Regulation (PRIIPs). We also asked for feedback on the FCA's proposed approach to industry codes of conduct relating to unregulated activities.

We continue to work on the enforcement-related legal and policy aspects of other FCA-wide projects such as expanding the Senior Managers and Certification Regime, preparing for Brexit, introducing the Office for Professional Body Anti-Money Laundering Supervision and reviewing the Consumer Credit Act. We will also support the migration of claims management companies to FCA regulation. In addition, we have advised on a number of new products, services and models, including cryptocurrencies and those accepted for testing in the FCA's regulatory sandbox.

We will publish a further consultation paper following our review of the FCA's penalty policy later this year.

9 International cooperation

Effective collaboration among international regulators and law enforcement agencies is vital to the work that we do. The FCA dedicates significant resource to working with others to tackle cross-border misconduct. The coordinated action taken by the FCA and the US Department of Justice (DOJ) against Beaufort Securities Limited (BSL) and Beaufort Asset Clearing Services Limited is a very successful example of this. Both firms were placed into insolvency on the urgent application of the FCA on 1 March 2018. On the same date, the DOJ indicted a number of firms and individuals, including BSL and one UK-based individual connected with BSL, on US securities fraud and money laundering charges. This was an excellent example of regulatory and law enforcement authorities working together effectively. The British Columbia Securities Commission, the Alberta Securities Commission, the German Bundesanstalt Finanzdienstleistungsaufsicht (BaFin), the Danish Finanstilsynet and the US Securities and Exchange Commission were among the other agencies who worked together to achieve this.

International groups like the International Organisation of Securities Commission's (IOSCO) committee on enforcement and the exchange of information (C4) play a key role by providing a platform for discussion on important and emerging issues in enforcement. The FCA actively engages in and supports IOSCO's work, and is currently the Vice-Chair of C4. We are pleased to have been accepted as one of the first signatories to IOSCO's Enhanced Multilateral Memorandum of Understanding.

In 2017/18 we received 1,064 requests from over 80 different regulatory and law enforcement authorities in 63 countries.

10 Joint Financial Analysis Centre (JFAC)

The FCA remains an active and committed partner in the Joint Financial Analysis Centre (JFAC) alongside the National Crime Agency, HM Revenue and Customs and the Serious Fraud Office. Embedded staff from the FCA at the JFAC undertake analytical work to identify potential regulatory breaches and/or criminal offences associated with the regulated financial industry. They also assist partners in similar work within their areas of responsibility, including a monthly de-confliction of our priority enforcement cases. JFAC holds various data-sets and knowledge, so these FCA employees share their knowledge of the authorised sector with them, enabling the development of analytical products at the strategic, tactical and operational level.

11 Joint Money Laundering Intelligence Taskforce (JMLIT)

The Joint Money Laundering Intelligence Taskforce (JMLIT) is a public-private partnership between law enforcement agencies and the financial sector which aims to combat money laundering and financial crime. The FCA remains a core member of JMLIT. Our membership allows us to learn about perceived risks, and so understand the way firms may be being abused and the vulnerabilities being exploited. We can also identify targeted and coordinated interventions, and proactively engage with partners where we share an interest regarding authorised and regulated firms.

12 Firm feedback

At the end of an investigation we give the subject(s) an opportunity to comment on the practical and procedural aspects of the process, and the general impact of the investigation. These feedback meetings focus on the handling of the case by our staff and decision makers, not on the substantive facts or outcome.

Summary of feedback

In 2017/18 we received feedback from 6 subjects. The key themes include:

- Investigation teams were collaborative and had a good working relationship with subjects. They adopted a professional approach, for example by quickly getting up to speed with the background and issues. Teams investigated with an open mind, which meant that firms felt able to raise concerns and challenges without this being interpreted as a lack of cooperation. Investigators were receptive to suggestions, for example on how to streamline information requirements. Investigators were also commended for their sensible, flexible, pragmatic and measured approach, for example in coordinating outcomes with other organisations.
- On referrals, some concern was expressed for example that the decision to investigate was not proportionate, and that there was insufficient rigour in analysing the issues before going ahead.
- On interviews, feedback indicated that early interviews were beneficial, and that the processes were generally smooth, thorough and well-structured, even when new information was introduced.
- Some subjects felt that they were kept sufficiently updated throughout the investigation, with regular meetings and telephone calls. However, others disagreed. They wanted more communication and information, in particular:
 - at the start of the investigation to enable a better understanding of the nature and extent of the FCA's concerns, and
 - on notification of no further action decisions
- Feedback showed swift progress in resolving investigations. For example there was a short time between interviews and the notification that there would be no further action.
- Feedback highlighted the significant financial impact of investigations, for example in complying with information requirements. However, the experience had some positive impacts, such as providing useful lessons and increasing staff awareness and performance.

We have considered the key themes that were raised and are working to implement the lessons we have learned.



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