

6 April 2020

Our Ref: FOI7145

### **Freedom of Information: Right to know request**

Thank you for your request dated 25 February 2020 received under the Freedom of Information Act 2000 ("the Act") for information about the number of enforcement cases against Senior Managers. For ease of reference, we have re-numbered your questions, the full copy of your request is enclosed in Annex A below.

Firstly, please accept our sincere apologies for the delay in responding.

Your request has now been considered, and we can confirm that we hold the information you are seeking and the information relating to **questions 1 to 4** is set out below.

However, although we can confirm we hold the information in relation to **question 5**, we are unable to disclose it as we consider that section 31 (Law enforcement), section 43 (Commercial interests) and section 40 (Personal information) of the Act applies. Full details of why these exemptions apply can be found in Annex B below.

We would like to explain that the number of investigations listed below do not include the number of investigations that we have opened into individuals and senior managers for misconduct prior to the introduction of the Senior Managers and Certification Regime (SM&CR), which still reflects the large majority of our individual investigations to date.

Turning now to your request.

- 1. How many enforcement investigations did the FCA open into individuals who hold SMFs per financial year? This includes information for the following years, 16/17, 17/18, 18/19, 19/20(to present time of request).*

The table below provides the information you have requested.

<b>Financial Year</b>	<b>Enforcement Investigations</b>
2016/2017	3

2017/2018	12
2018/2019	9
2019/2020*	2

\* data correct as at 4 March 2020

2. How many enforcement investigations into individuals who hold SMFs did the FCA close without action per financial year? This includes the same dates listed in (1).

The table below provides the information you have requested.

<b>Financial Year</b>	<b>Enforcement Investigations</b>
2016/2017	0
2017/2018	0
2018/2019	5
2019/2020*	2

\* data correct as at 4 March 2020

3. How many enforcement investigations into individuals who hold SMFs did the FCA close with action per financial year? This includes the same dates listed in (1).

The table below provides the information you have requested.

<b>Financial Year</b>	<b>Enforcement Investigations</b>
2016/2017	0
2017/2018	0
2018/2019	2
2019/2020*	0

\* data correct as at 4 March 2020

4. How many enforcement investigations into individuals who hold SMFs did the FCA have open as of the end of each Financial year, since the Regime went live in March 2016?

The table below provides the information you have requested.

<b>Financial Year</b>	<b>Cumulative total of cases opened at end of financial year</b>
2015/2016	0
2016/2017	13
2017/2018	15
2018/2019	17
2019/2020*	17

\* data correct as at 4 March 2020

5. Of the numbers disclosed in (4), could you please break down the numbers by the individual's respective SMF? (e.g. SMF1, SMF2, SMF3, SMF4, SMF5 etc.)

We are unable to provide you with this information, for the reasons outlined in Annex B below.

If you are unhappy with this response, you have the right to request an internal review. If you wish to exercise this right you should contact us within 40 working days of the date of this response.

If you are not content with the outcome of the internal review, you also have a right of appeal to the Information Commissioner, who can be contacted by phone or on their website:

Telephone: 0303 123 1113

Website: [www.ico.org.uk/global/contact-us](http://www.ico.org.uk/global/contact-us)

Yours sincerely,

Information Disclosure Team

## **Annex A**

- 1. How many enforcement investigations did the FCA open into individuals who hold SMFs per financial year? This includes information for the following years, 16/17, 17/18, 18/19, 19/20(to present time of request).*
- 2. How many enforcement investigations into individuals who hold SMFs did the FCA close without action per financial year? This includes the same dates listed in (1).*
- 3. How many enforcement investigations into individuals who hold SMFs did the FCA close with action per financial year? This includes the same dates listed in (1).*
- 4. How many enforcement investigations into individuals who hold SMFs did the FCA have open as of the end of each Financial year, since the Regime went live in March 2016?*
- 5. Of the numbers disclosed in (3), could you please break down the numbers by the individual's respective SMF? (e.g. SMF1, SMF2, SMF3, SMF4, SMF5 etc.)*

## **Annex B:**

- **General right of access to information held by public authorities**

Under section 1(1)(a) of the Act, any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information of the description specified in the request. If the public authority holds information of the type specified in the request, the person requesting the information is entitled under section 1(1)(b) to have the information communicated to them. The rights in section 1(1)(a) and (b) are, however, subject to a number of exclusions and exemptions, including the following:

- **Section 31 (Law enforcement)**

The qualified exemption in section 31(1)(g) of the Act applies (for the purpose set out in 31(2)(a), (b) and (c)) because, disclosure of the information requested would, or would be likely to, prejudice the exercise by the FCA of its functions for the purposes of ascertaining whether:

- circumstances which would justify regulatory action in pursuance of any enactment exist or may arise;
- any person has failed to comply with the law;
- any person is responsible for conduct which is improper.

This exemption is qualified and we have balanced the public interest for and against disclosure as required by the Act.

*For disclosure:*

- There is a strong public interest in favour of transparency and in the public being reassured about the effectiveness of the regulatory approach taken by the FCA and disclosure of the information would demonstrate how the FCA responds to matters arising within the sector it regulates.
- There is a strong public interest in the public being aware of any enquiries, considerations or actions the FCA may be taking in relation to the markets, firms or individuals who are, or may be, operating in the financial services industry.
- Disclosure of the information would increase public awareness and understanding of decisions taken by the FCA.

*Against disclosure*

- As mentioned, disclosure of the detailed information you are seeking in question 5 would be likely to lead to the identification of the firms and individuals involved. This, in turn, would be likely to prejudice the FCA ability to carry out its functions in the most effective manner possible, as it would be likely to cause those firms and individuals to act in a way that circumvents our regulatory processes.

- Disclosure of the information would be likely to prejudice the outcome of future investigations or criminal prosecutions should they arise.
- Disclosure would be likely to affect the brand and reputation of the relevant markets and/or entities in the absence of due process having been followed – i.e. in the absence of any formal public announcement and without the relevant markets and/or entities having had the opportunity to comment.

On this occasion, we have concluded that the balance of the public interest is in favour of not disclosing the information, for the reasons set out above.

- **Section 43 (Commercial Interests)**

Section 43(2) of the Act provides that information is exempt if its disclosure would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).

The commercial interests of the firms in question, should any of their details be made public, may be harmed in several ways as this would be likely to lead to further comment and speculation about them. In turn, this would or would be likely to harm the firms' brand and so harm their commercial interests as well as that of their stakeholders, including their employees. As there is no routine public disclosure of firms' dealings with the FCA, ad hoc public disclosure under the Act would be likely to attract a disproportionate amount of attention to the firm concerned.

This exemption is qualified and we have balanced the public interest for and against disclosure as required by the Act.

*For disclosure:*

- Disclosure of the information would reassure the public about the effectiveness of the regulatory approach taken by the FCA and demonstrate how the FCA responds to supervisory matters within the sector it regulates.
- Disclosure would also provide information to consumers to assist them in making decisions about their dealings or potential dealings with firms and individuals that are, or may be, operating in the financial services industry.

*Against disclosure:*

- Disclosure would be likely to lead to widespread speculation which would be likely to affect the firms brand and reputation in the market in which they operate, in the absence of due process having been followed - i.e. in the absence of any formal public announcement and without the firms having had the opportunity to comment.

On this occasion, and for the reasons set out above, we have concluded that the balance of the public interest is in favour of not disclosing the information.

- **Section 40 (Personal Information)**

Section 40 of the Act provides an exemption from the right to information if it is personal data, as defined in the Data Protection Act 2018("DPA").

In broad summary, it states that an exemption applies under the Act if:

- it is the personal data of the requestor; or
- it is the personal data of someone else; and

- disclosure would contravene the data protection principles;
- disclosure would contravene an objection to processing; or
- the data is exempt from the right of subject access.

We have applied this exemption because the first condition (as stated in section 40(3A) of the Act) would be satisfied if the information requested comprises the personal data of individuals other than yourself and which, if disclosed, would breach the requirement of the General Data Protection Regulations ("GDPR"), including the data protection principles of Article 5 and the Data Protection Act 2018 ("DPA")

This is an "absolute exemption", and so it is not necessary to balance the public interest for and against disclosing the information.