

Inside FCA Podcast: Kate Tuckley interview on the approach to Enforcement, and what it means for firms

OI: Hello and welcome to the Inside FCA podcast. I'm Ozge Ibrahim and today I'll be speaking with Kate Tuckley who leads one of the FCA's enforcement teams, who work as part of a wider operation to achieve fair and just outcomes in response to misconduct, and to ensure firms are complying with rules and requirements.

Welcome Kate, thank you for joining me today.

KT Thank you.

OI Can you describe the work of the Retail 4 Enforcement function?

KT As you can imagine we receive an extremely wide variety and volume of referrals from all over the FCA, including Supervision and Intelligence as well as external partners. We're involved in matters that relate to, for example, mis-selling of retail investments or insurance products, unaffordable lending, financial promotions, financial crime systems or controls, and unsuitable pensions advice to name but a few.

No two matters are really the same and often many of them involve complicated networks of firms and individuals, as well as multiple different potential breaches, criminal offences and types of misconduct.

So we always seek to look at a matter holistically and to assess next steps taking into account the very wide range of tools that we do have at our disposal. And I think what's important to flag is that the first step when we're assessing a matter is urgent information gathering and triage, and that can involve compelling bank statements to assess money flows and carrying out unannounced visits to firms if we determine there's a risk of evidence being destroyed.

As you can imagine, it's always a little bit of a shock to a firm to have the FCA turn up on their doorstep demanding documents and to speak to senior management. But it's often one of the most effective steps we can take.

Having gathered the relevant information, we may then, for example, determine that a firm needs to stop doing a certain type of business or even stop carrying out all regulated activity, because based on the evidence we've seen, it's putting consumers at risk. And where that's the case, we will first, where appropriate, ask a firm voluntarily to take such steps but if it doesn't, then we won't hesitate to use our formal powers to impose a requirement via our decision-making committees.

Our powers in that respect are extensive and can have immediate effect. So for example we can impose asset freezes if we have concerns monies are being dissipated, or we can ban financial promotions if they are misleading. And of course, the real nuclear option in our arsenal is also that we can look to remove a firm's authorisation if it's not meeting the threshold conditions, which include having adequate resources and suitable management.

We're using all of these powers more and more assertively and frequently to ensure we protect consumers that are at risk. And from a firm's perspective, although this may mean there is a disruption to their business they are of course afforded all of the rights in terms of being able to contest the use of such powers and appeal matters to our committees and even the tribunal, where appropriate.

OI And how has this work resulted in action against firms, can you give us some examples?

KT We've been really effective recently in preventing harm to consumers and stopping financial crime, which often does not get as much press attention as a multi-million pound fine, but it's just as important. For example, in the last ten months Enforcement has been involved in securing 36 requirements to restrict firms' activities, 9 of which have been by way of own initiative action. These are made public by way of our Financial Services Register to ensure consumers are aware and if own initiative is taken a Supervisory Notice will also be published.

And a really good recent example of action coordinated by Retail 4 is that taken against four firms which had passported into the UK to provide financial services from Cyprus, and in particular, to sell contracts for difference to UK consumers. These firms sold these high-risk products to consumers using fake celebrity endorsements, and in quite an inappropriate way. We estimated that consumers may have lost hundreds of thousands of pounds by investing in these products.

The public outcomes we achieved were to require these firms to stop selling these products, to close existing positions with UK customers, to return the UK customers' money and to notify UK customers of the FCA's action. These outcomes are currently being contested through the appeal process, but they really do demonstrate the type of important work that Retail 4 is doing.

Other recent examples of cases we are working on which are actually not yet public relate to individuals that we consider are not meeting the minimum standards of fitness and propriety, specifically integrity, for being involved in what we call non-financial misconduct. Non-financial misconduct can include, for example, harassment, discrimination and even sexual offences. This is a really important area for the FCA and we hope to be able to publicise outcomes soon, to reinforce our messages about the importance of firms dealing with these issues appropriately.

OI How many cases are you working on right now?

KT So Retail 4 is an exceptionally high-volume casework area. For example, the Referrals team which considers new matters for investigation has over eighty matters on its books right now. The Interventions team has approximately seventy matters it's considering for urgent action and the Threshold Conditions Team receives in excess of a hundred and fifty referrals a month.

The actual public outcomes and formal notices that we obtain therefore are the tip of the iceberg and there's a huge amount of work going on behind the scenes that is not always accompanied by a press release, but is also critical in our fight to prevent harm. And dealing with such a volume of cases, we need to make sure we work flexibly, creatively and at pace. The decisions we take in Retail 4 are often incredibly difficult judgement calls, so we seek to ensure that our teams include those with significant experience and technical expertise.

We also have to work in close collaboration with multiple stakeholders to make sure we've got all the right information at our fingertips when we formulate our assessments and action plans.

So yes, we're certainly not quiet.

OI And what other organisations do you partner with and how has that joint working helped to bring success for enforcement cases?

KT Retail 4 works with a large number of stakeholders, as you can imagine, both inside the FCA and outside. As we're the first port of call in Enforcement, we work closely with all the different areas of Supervision, for example, Asset Management, General Insurance as well as intelligence competition and Authorisations, and in terms of external partners, we're in constant daily dialogue with law enforcement, the PRA, other regulators such as the Pensions Regulator, the Information Commissioner's Office as well as other international agencies, for example, the Department of Justice in the USA and the AMF in France.

We regularly work with intelligence to refer matters to the City of London Police, the Serious Fraud Office and the National Economic Crime Centre, and we ensure that they also consider matters that they refer to us. Working with our partners is therefore critical to ensuring the most effective UK response to any misconduct.

And this collaboration can take various different forms, so down the line it could take the form of a parallel investigation with another agency or joint action such as a coordinated search of a firm or an unannounced visit. So, for example, in the case I mentioned earlier about the Cyprus firms, we worked closely with the Cyprus regulator on those to coordinate action.

OI And thinking about the coronavirus situation specifically, can you explain the approach considering how the pandemic is unfolding and the speed at which the situation keeps changing?

KT So, as you can imagine, the FCA as a whole is like many other organisations looking at its prioritisation due to the Covid pandemic but I have to say that the work that Retail 4 does in terms of interventions and threshold conditions cases is deemed to be critical high priority work and in fact it continues apace. The level of referrals to Retail 4 as I mentioned earlier has certainly not decreased recently and during the pandemic.

So we continue to seek to open investigations into serious misconduct, for example, we've recently opened investigations into mis-selling, unsuitable advice, conflicts of interest and we've also got a high volume

of cases being triaged that relate to payments and e-money firms, in particularly for financial crime controls.

So, the pandemic as you can imagine has impacted the FCA in terms of its overall prioritisation but I have to say for Retail 4 and the work we do to protect consumers, it has had very little impact on the high priority work that we do.

OI And has it affected your working practices among your team?

KT Very little in terms of the actual substantive work that we do, but obviously in terms of working from home, then yes, that's certainly something we've all had to get to grips with and, you know, get to grips with the IT and the challenges that come with that. But we are very much business as usual now having been working from home for quite a long time now.

OI Much of the enforcement work you've talked about protects consumers. Can you explain how and why this is a focus for you and the FCA?

KT Protecting consumers is obviously one of the most important of the FCA's statutory objectives and as such it's really at the core of the work that we do in Retail 4 and obviously an integral part of the FCA mission. And it's even more important that we're vigilant to risks to consumers during the pandemic when we're seeing a potential uptake in the number of scams.

We also want to ensure that customers are not being impacted by firms coming under financial strain and or by the coming to the end of the government Covid support schemes. Ensuring we protect consumers' monies and importantly get monies back to consumers when things go wrong is at the forefront of our thoughts when we assess what action to take.

Another important point to remember is that it's not only firms that have large numbers of consumers that we consider for action, many of the firms that we deal with in Retail 4 do not actually have a large number of consumers, but they deal with them in such a way that the seriousness of their misconduct needs to be addressed particularly, for example, if it impacts the most vulnerable in our society. For example, those taking out high cost short-term loans or those seeking to transfer and receive monies and even social security benefits without recourse to high street banks.

OI Finally, Kate, what will you be working on in the upcoming months?

KT So, I hope I've managed to bring to life a little bit about the type of work that we do in Retail 4 but every day brings with it a flow of new interesting matters that require forensic triage and assessment. It's an absolutely fascinating job and I can't tell you how the ingenuity of those that don't comply with our rules never fails to amaze me. It's particularly the case, for example, with crypto business firms that are now within our remit due to the recent money laundering regulations. For example, we're working closely with Authorisations, Supervision intelligence and our Unauthorised Business department, to ensure we use the full suite of our tools to address the emerging risks that we see with crypto businesses.

I'm sure there'll be more of that to come as well as risks and issues that arise out of the economic consequences of Covid and firms, for example, that use social media to mis-sell investments and set up complicated networks of authorised and unauthorised firms to try and hide behind them. Rest assured, however, we're constantly vigilant and we won't hesitate to act where we need to. I've got no doubt that it's going to be a really, really busy period ahead.

OI Thanks, Kate, it's been great learning about the work of the multi-disciplinary enforcement function and how it helps bring positive change to millions of consumers in the UK. You can find out more about the FCA's approach to enforcement and its investigation powers in the Approach to Enforcement publication on the website. For now, stay safe and join us again soon for the next Inside FCA Podcast.

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