




FCA Plan: Priorities and Enforcement

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This meeting will be recorded.

Contents

FCA Plan: Priorities and Enforcement

- Key priorities by sector
- Enforcement focus
- Lessons from recent enforcement actions

A Quick Poll?

- Has your firm noticed any change in the intensity of FCA supervision in 2021?
 - a) Greater intensity?
 - b) The same?
 - c) Less intensive supervision?

Poll 1

- Please note: this poll is CONFIDENTIAL



The FCA Business Plan 2021-22

Headlines

1. continue to deliver for consumers by taking forward the 4 priorities we identified in last year's Business Plan, as well as our new Consumer Duty
2. continue to enhance market integrity by reinforcing the effectiveness of UK wholesale markets and enhancing our supervisory approach to specific issues
3. focus on 6 of the most important cross-market issues; fraud, financial resilience, operational resilience, improving diversity and inclusion, enabling a more sustainable financial future, and international cooperation

- enabling effective consumer investment decisions
- ensuring consumer credit markets work well
- making payments safe and accessible, and
- delivering fair value in a digital age

“Over the next year, you will see another step-change in our approach. One that is even more innovative, led by data and technology. Even more assertive to ensure consumer protection and market integrity. And even more adaptive to meet the challenges we know about and prepare for those that will come.”

Nikhil Rathi Chief Executive

Headlines

- A more robust gateway for new firms. Our standards will be higher with more intensive assessment and greater scrutiny of firms' financials and business models
- Stronger oversight for newly authorised firms (a regulatory 'nursery')
- Stronger oversight of firms which are growing significantly - a "Regulatory Scalebox". This will help newly authorised firms with plans to scale fast to receive support and oversight.

Headlines

- £120m investment over 3 years to deliver data strategy
- More automation, better analysis of data across systems, earlier action to prevent or stop misconduct and strengthen holistic firm assessments

Financial Promotions

- “We are making changes to our financial promotions regime. We have put new procedures in place to fast-track our supervisory and enforcement response to breaches. We will proactively monitor firms that repeatedly breach our rules and investigate where breaches indicate more serious issues.”

Financial Promotions - FCA Action

- Q2 2021: FCA reviewed 439 financial promotions
- **48% of reports came from consumers**
- **28% of reports came from internal areas of the FCA**
- **13% of reports came from UK regulators**
- **6% from FCA's own monitoring**
- **3% from other firms**
- **2% from other sources**
- 34 cases resulted in 84 promotions being amended or withdrawn through FCA interaction with authorised firms
- **88% of the amend/withdraw outcomes related to either website or social media promotions.**

Consumer Priorities

- We want to see a higher level of consumer protection in retail financial markets, where firms are competing vigorously in the interests of consumers. We are proposing to introduce a new ‘Consumer Duty’, that would set higher expectations for the standard of care that firms provide to consumers. For many firms, this would require a significant shift in culture and behaviour, where they consistently focus on consumer outcomes, and put customers in a position where they can act and make decisions in their interests.
- CP 21/13

- enabling effective consumer investment decisions
- ensuring consumer credit markets work well
- making payments safe and accessible, and
- delivering fair value in a digital age

Wholesale Markets - Headlines

- Revising the listing and prospectus rules framework for issuance of securities in primary markets, as well as the MiFID rules around trading of financial instruments in secondary markets
- Ensuring UK markets complete an orderly transition away from LIBOR to stronger, more transparent risk-free rates
- Increasing our supervision of whether the ESG attributes of asset managers' investment products are fair, clear and not misleading
- Review where the regulatory framework for money market funds needs amending given illiquidity issues revealed last spring
- Continued low interest rates make investment structures that aim to achieve a premium return over the most liquid investments more attractive. But it is important that the liquidity and other risks of these structures are clear and managed in a way that does not harm investors or distort market functioning
- Tightening our supervision and supervisory expectations of Appointed Representatives and their principal firms to reduce risks that the use of ARs in wholesale markets weakens conduct standards.

Market Abuse

- We want the firms we regulate to be effective in preventing market abuse and reducing the risks of financial crime
- We will continue to monitor the transactions in financial instruments reported to us, assess Suspicious Transaction and Order Reports (STORS) and follow up intelligence from whistleblowers on financial crime or fraud
- We track the volume and quality of STORs from wholesale firms and venues as an indicator of market quality and potential market abuse
- We track the number of supervisory cases involving financial crime and other issues, including information from whistleblowers
- We also publish annual data on market cleanliness
- NB. Data use by the FCA – perhaps the most important comment on market abuse.

Cross-Market Priorities

- Fighting fraud
- Financial resilience and resolution – “the firms we prudentially regulate are not deemed individually systemic” , so some may fail
- If firms fail, they do not do so “in a disorderly manner”
- Operational resilience – “Firms should be operationally resilient against multiple forms of disruption to minimise the harm caused to consumers and markets”
- “From 31 March 2022 to 31 March 2025, we will assess how able firms are to remain within their impact tolerances – the maximum tolerable amount of disruption to an important business service.”
- Diversity and inclusion – “Together, diversity and inclusion can reduce groupthink, encourage debate and innovation and so improve outcomes for consumers and across markets.”

Cross-Market Priorities – ESG Outcomes

- high-quality climate- and sustainability-related disclosures to support accurate market pricing, helping consumers choose sustainable investments and drive fair value
- promote trust and protect consumers from mis-leading marketing and disclosure around ESG-related products
- regulated firms have governance arrangements for more complete and careful consideration of material ESG risks and opportunities
- active investor stewardship that positively influences companies' sustainability strategies, supporting a market-led transition to a more sustainable future
- promote integrity in the market for ESG-labelled securities, supported by the growth of effective service providers – including providers of ESG data, ratings, assurance and verification service
- innovation in sustainable finance, making use of technology to bring about change and overcome industry-wide challenges

The FCA Business Plan 2021-22

- Do you believe that the FCA Business Plan will make the UK financial markets:
- a) Stronger?
 - b) About the same?
 - c) Weaker?

Poll 2



FCA Enforcement Issues

FCA Fines 2021

Firm or individual fined	Date	Amount	Reasoning
<u>Lloyds Bank General Insurance Limited, St Andrew's Insurance Plc, Lloyds Bank Insurance Services Limited and Halifax General Insurance Services Limited</u>	08/07/2021	£90,688,400	This Final Notice refers to breaches of PRIN 3 and PRIN 7 related to communications with customers in the general insurance and protection sector. We imposed a fine.
<u>Crosfill and Archer Claims Limited</u>	28/06/2021	£110,000	This Final Notice refers to breaches of breach of the Conduct of Authorised Persons Rules 2014 ("CAPR") related to unfair treatment of customers in the claims management sector. We imposed a fine.
<u>Sapien Capital Limited</u>	06/05/2021	£178,000	This Final Notice refers to breaches of PRIN 2 and PRIN 3 related to the risk of financial crime in the trading firms sector. We imposed a Fine.

FCA Fines 2021

<u>Simon John Varley</u>	15/04/2021	£68,300	This Final Notice refers to Section 63A FSMA and breaches relating to APER 1 and FIT relating to a lack of honesty and integrity in the investment advisory sector. We imposed a fine and a prohibition.
<u>Adrian Horn</u>	04/03/2021	£52,500	The Final Notice refers to breaches of MAR and FIT relating to Market Abuse in the Trading Firm sector. We imposed a Fine and Prohibition.

2021 Fines to date: 5 fines totalling £91,097,200

2020 Fines: 11 fines totalling £192,570,018

2019 Fines: 21 fines totalling £392,303,087

Jon Frensham

- FCA published Decision Notice 29/3/21
- Frensham was an IFA and Director of Frensham Wealth Limited
- Decision:
 - no longer a fit and proper person
 - approval to perform his current senior management functions withdrawn
 - made an order prohibiting him from performing any functions in relation to regulated activity.
- Mr Frensham referred the Decision Notice to the Upper Tribunal

Jon Frensham

- March 2017: Frensham was convicted of attempting to meet a child following sexual grooming. He committed this offence whilst he was an approved person. Mr Frensham was sentenced to 22 months' imprisonment, suspended for 18 months
- FCA considers that Mr Frensham is not a fit and proper person to perform any function in relation to any regulated activity

“This is because he lacks the necessary integrity and reputation.”

“The FCA considers that, as a result of this, Mr Frensham poses a risk to consumers and to confidence in the financial system. Therefore, the FCA considers it is appropriate, in order to advance its statutory objectives (which include protecting consumers and the integrity of the UK financial system), to withdraw his approval to perform senior management functions and to impose a prohibition order on him.”

Jon Frensham

- The Tribunal upheld the FCA's verdict, but criticised the regulator for:
- Failing to follow up certain matters with Frensham, including a lack of knowledge about his conviction
- Being “reluctant” to express an opinion on the non-financial misconduct issues surrounding Frensham
- Fielding poorly prepared witnesses at the Tribunal hearing

Forsyth

The “lack of integrity” was based on the allegation that Mrs Forsyth did no material work for SBIA, which was found NOT to be the case

➤ 30 September 2019:

- Stuart Malcom Forsyth Decision Notice
- Forsyth was CEO of Scottish Boatowners Mutual Insurance Association
- Fine of £76,180 (PRA) and £78,318 (FCA) and banned from regulated activity based on alleged tax evasion leading to a breach of Principle 1 (Integrity)
- 6th July 2021: The Tribunal overturned the FCA’s and PRA’s case against Forsyth

“We have found that the Regulators have not made out their case that Mr Forsyth failed to act with integrity in relation to the subject matter of these references. Accordingly, we have directed that the Regulators should not impose a financial penalty on Mr Forsyth, and we have remitted the question of whether a prohibition order should be imposed to the Regulators for them to reconsider their decision in that regard. “

Integrity and Fitness & Propriety

- Judgement in the Forsyth Case:
- “A lack of integrity does not necessarily equate to dishonesty. While a person who acts dishonestly is obviously also acting without integrity, a person may lack integrity without being dishonest. One example of a lack of integrity not involving dishonesty is recklessness as to the truth of statements made to others who will or may rely on them or wilful disregard of information contradicting the truth of such statements.”

Integrity and Fitness & Propriety

- Wingate v SRA [2018]
- “As a matter of common parlance and as a matter of law, integrity is a broader concept than honesty... . In professional codes of conduct, the term “integrity” is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members. The underlying rationale is that the professions have a privileged and trusted role in society. In return they are required to live up to their own professional standards. Integrity connotes adherence to the ethical standards of one’s own profession. That involves more than mere honesty.”

Integrity and Fitness & Propriety

- “We accept that Mr Forsyth, as the Chief Executive of a regulated insurance firm, would likewise be expected to adhere to higher standards than those expected from general members of the public because of the trust that the public rightly put in those who lead regulated financial services firms.
- This is one of the ways of distinguishing “integrity” from “honesty”. The latter concept is a basic moral quality which is expected of all members of society. Honesty involves being truthful about important matters and respecting the property rights of others. It follows that a person who is dishonest in his conduct is guilty of more serious misconduct than a person who acts without integrity. That is why regulators are usually astute in identifying whether they characterise the conduct of which they complain as demonstrating a lack of honesty as opposed to a lack of integrity.”