The FCA annual report and reflections on enforcement

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Emma Probyn, Partner, and Sharon Grennan, Knowledge Lawyer, from Freshfields' financial institutions disputes practice, share their thoughts on the latest annual report from the Financial Conduct Authority

In its annual report for the financial year 2023/24, the Financial Conduct Authority (FCA) summarises its wide ranging activities in pursuit of its statutory objectives. It focuses on past activity, but there are also ongoing activities and references to future plans that are of interest.

The main FCA achievements for 2023/24

Highlights in regard to the FCA's work include:

- Introducing the Consumer Duty for most financial products in July 2023 and subsequent monitoring of its implementation;
- Incorporating the FCA's new secondary competitiveness and growth objective into its priorities and ongoing work;
- Reforming the UK's equity capital markets, including launching the new listing regime; and
- Improving the authorisation process, so that 98% of applications are handled within the statutory time limit.

A changing approach to enforcement

The FCA's enforcement data published with the annual report, although not completely up to date, includes some interesting commentary and statistics.

The introduction repeats the intention to use enforcement to create 'impactful deterrence':

'It is important to hold firms and individuals to account when they cause significant harm to consumers or markets. It is also important to prevent wider misconduct. When taking enforcement action, we focus on achieving impactful deterrence aligned to our strategic priorities. We particularly focus on putting consumers' needs first, delivering assertive action on market abuse and reducing and preventing financial crime.'

The FCA opened 25 and closed 60 investigations (many investigations involve multiple subjects) compared with 34 opened and 38 closed in the previous financial year. This is consistent with its intention to reduce the number of open investigations and be more selective in opening new investigations – and this trend may continue.

The focus remains on financial crime. Of the 25 new investigations opened, 13 were in that area. The FCA charged 21 individuals with criminal offences during the year, which is the highest number of charges brought in any year to date. And in addition to the £6.4m fine against ADM Investor Services for serious financial crime control failings, the FCA obtained nine successful convictions against fraudsters, nine freezing orders and restrained £21.1m of assets.

The data shows a fall in enforcement final notices from 29 to 21, a fall in the number of financial penalties from 24 to 12 and a decrease in the total value of penalties from £199m to £42.5m. This implies a drop off in enforcement activity. Despite the drop in the number of notices and penalties against individuals, the value of penalties against individuals almost tripled from £1.5m to £4.3m, and the number of partial or full prohibitions equalled that in the previous year.

The FCA has also used other tools more. There were 295 notices for breach of threshold conditions, the FCA cancelled the authorisation of 1261 firms and focused significant resources on tackling misleading or unauthorised financial promotions. Skilled persons reports were used more – 86 compared with 47 in the previous year.

The Regulatory Decision Committee (RDC) managed to handle the same number of contested cases as it opened during the year, so the number of ongoing cases remained constant, but the average duration of proceedings fell from 15.6 months to 11.6 months. The statistics will be heavily influenced by individual cases and will vary accordingly given that we are only talking about 28 cases in total. Nevertheless, this is a positive development and the FCA is keen to further reduce the duration of all investigations and enforcement proceedings.

The FCA has emphasised its focus on market abuse and market disclosures in recent years, despite the scarcity of enforcement outcomes published in this area. In 2023/24, the FCA assessed 740 allegations of delayed or incomplete market disclosures, issued feedback letters to 16 issuers and intervened 120 times with firms on market abuse controls in high impact, high-risk sectors. The FCA's investment in market analysis over recent years has not yet resulted in the predicted higher enforcement relating to complex market manipulation cases, but the RDC expects to receive some notable enforcement cases, including several on market abuse, in the current financial year. So, keep an eye out for some significant enforcement decisions over the next six months.

Looking ahead

Previous workstreams will continue, for example, we expect the FCA to:

- Publish rules on critical third parties and reporting operational incidents;
- Propose changes to the senior managers and certification regime; and
- Continue its high-profile motor finance commission investigation.

It is too early to expect enforcement relating to breaches of the Consumer Duty, but the FCA will continue to focus enforcement efforts on consumer redress, financial crime and, possibly, market abuse.