



UK financial services enforcement in 2023 and looking ahead

by Tom Clark and Sharon Grennan

There has been a decline in the number and value of financial penalties imposed by the Financial Conduct Authority (FCA) in the last two years. In 2021 the total value of fines was over £576m, in 2022 the total value of fines was less than half this. In 2023, the total value of fines was even lower, at just under £53m. As usual, however, that is not the whole story as the FCA, which conducts the majority of financial services enforcement actions, is using a wider range of powers including prohibitions, withdrawing authorisation, criminal powers, requests to media platforms and firms to withdraw promotions.

An emerging trend is that UK financial institutions face investigation and enforcement from a wider range of authorities, which have had powers for a long time but not always used them regularly in this sector. Whilst FCA still brings more enforcement actions than the Prudential Regulation Authority (PRA) (which focuses on operational resilience, capital adequacy and similar issues), the PRA has been more active as an enforcement agency recently.

Firms also, however, face investigation/sanction by the Information Commissioner (the UK’s data regulator), the UK energy regulator OFGEM, the Payment Systems Regulator, the Advertising Standards Agency, the mainstream competition authority (although the FCA also has competition powers) and the usual range of criminal prosecutors including the Office of Financial Sanctions Implementation (OFSI). A couple of examples of this are given below.

FCA Enforcement Statistics 2017-2023

Calendar Year	2018	2019	2020	2021	2022	2023
Total Fines (£)	60,467,212	391,773,187	192,570,018	576,865,219	215,834,156	52,802,900
Total Fines (companies) (£)	59,104,112	312,245,700	192,470,018	576,628,419	214,128,293	49,002,400
Total Fines (individuals) (£)	1,363,100	79,527,487	100,000	466,837	1,705,863	3,800,500
No. of fines overall	15	17	11	11	26	8
No. of fines (individuals)	8	5	1	4	10	2
Largest fine (£)	32,817,800	102,163,200	64,046,800	264,772,619	107,793,300	17,219,300

Financial Year	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24
No. of cases open at 01 April	496	647	645	603	591	
Top 5 case types open at 31 March	1. Retail Conduct (78) 2. Unauthorised Business (77) 3. Financial Crime (76) 4. Insider Dealing (73) 5. Culture/Governance (61)	1. Unauthorised Business (142) 2. Retail Conduct (134) 3. Insider Dealing (88) 4. Financial Crime (71) 5. Advice - Pensions (61)	1. Unauthorised business (176) 2. Retail conduct (103) 3. Insider dealing (72) 4. Advice – pensions (58) 5. Financial crime (54)	1. Unauthorised business (210) 2. Retail conduct (83) 3. Insider dealing (71) 4. Advice – pensions (59) 5. Financial crime (47)	1. Unauthorised business (206) 2. Retail conduct (83) 3. Insider dealing (68) 4. Advice – pensions (58) 5. Financial Crime (30)	

Retail sector

The largest retail sector penalty in 2023 was £11.2m against Equifax for failing to manage and monitor the security of UK consumer data that it had outsourced to its parent company based in the United States. In publishing the penalty, the FCA restated that financial institutions have an obligation of oversight and responsibility for the outcomes in outsourcing arrangements to intragroup companies in the same way as outsourcing arrangements with third parties. The FCA viewed the cyberattack and unauthorised data access as preventable in the light of known weaknesses in systems and controls. The breach allowed hackers to access the personal data of millions of people and exposed UK consumers to the risk of financial crime. The original breach was compounded by Equifax’s inability to handle consumer complaints after the U.S. group company informed the UK company of the impact on UK consumers five minutes before the public announcements. Equifax also did not amend public announcements when consumers misinterpreted the scope of the unauthorised data access.

Notably, Equifax obtained a 15% penalty credit, in addition to a 30% early settlement discount, because of its high level of cooperation with the FCA during the investigation, voluntary consumer redress and its global remediation programme. This shows the continuing emphasis on cooperation and putting things right.

There were a number of smaller penalties in the retail sector and a range of activity to reduce consumer detriment and assist redress. Individual fines and prohibitions continue from the FCA's focus on poor advice relating to transferring out of defined benefit pension schemes ([Paul Steel](#) and [Mark Abley](#)). In addition to the penalties imposed, the FCA required these individuals to pay into the Financial Services Compensation Scheme to meet some consumer claims because the underlying business book had been sold at an undervalue to one of them and the advice firm was insolvent in the other case.

The FCA continues to be concerned about consumer detriment when retail customers invest in novel or complex products. Cryptoassets are high on this list, with concerns about the broader marketing of these products to mainstream consumers through social media and influencers, and the lack of customer understanding of the nature and risks of crypto products. The FCA started by bringing marketing of cryptoassets within the UK financial promotions regime on October 8, 2023 so that the FCA has formal powers over advertisements rather than just its informal requests to internet and social media platforms to remove adverts. The FCA issued 146 warnings of non-compliant promotions within 24 hours of the regime being extended on October 8; 221 warnings by October 25.

Financial crime

Financial crime enforcement last year focused on anti-money laundering (AML) controls re business in riskier jurisdictions and/or riskier business lines; also cum ex trading and failing to prevent transactions with no real commercial value.

The FCA fined [AL Rayan Bank](#) £4.0m for failing to have adequate checks on the source of wealth or source of funds to verify that funds were not connected to financial crime. The breaches were exacerbated by lack of staff training on large deposits and the time it took for the bank to correct known weaknesses. Then, the FCA fined [Guarantee Trust Bank](#) £7.7 million for AML systems failings. The FCA found that customer risk was not assessed or documented adequately, and transactions were not adequately monitored. The bank was previously fined by the FCA for AML failings in 2013 but, despite internal and external warnings, system failings remained.

Finally, the FCA imposed a penalty of £6.5 million on an investment broker that failed to have adequate initial or ongoing customer risk assessment to identify financial crime risks ([ADM Investor Services International](#)). The broker had a high proportion of high-risk customers due to its geographical reach and the number of politically exposed people within its customer base. The FCA initially raised concerns about AML policies in 2014; issues remained by the time of a supervisory visit in 2016.

In addition to the financial penalties and more importantly for the businesses concerned, all three businesses were subject to business acceptance restrictions until the FCA was satisfied that adequate remediation had taken place. These enforcement decisions tell a familiar story – the FCA is imposing penalties on firms that have flaws in their AML systems even in the absence of evidence of actual money laundering, and the FCA will treat firms more severely if there is evidence that warning signs of problems have been ignored or active remediation not taken when a problem arises.

The FCA continues to penalise firms involved in cum ex trading. The FCA fined [ED&F Man Capital Markets](#) £17.2 million and [Bastion Capital London](#) £2.5 million for their roles in facilitating trading strategies designed to enable customers to illegitimately reclaim tax refunds from overseas tax authorities rather than having any genuine commercial purpose.

For the first time, OFSI used its sanctions enforcement powers to publish a notice against a financial institution ([Wise Payments Limited](#)). Wise Payments allowed a deposit withdrawal by a company owned or controlled by a UK designated person. Wise Payments did identify that the business had been added to the UK designated person list, but the lack of limits on debit card withdrawals once an account holder has been connected with a designated person and the time taken to escalate the match were viewed by OFSI as flaws in the firm's sanctions compliance procedures.

Wholesale sector

The FCA continues to monitor firms and the market for market abuse and other misconduct. For example, the FCA decided to fine [Banque Havilland](#), a private bank headquartered in Luxembourg, £10 million and also fined three of its employees because the bank had drawn up trading strategies to devalue the Qatari Riyal and harm the Gulf state's economy ([FCA press release](#)). The bank and two employees are challenging this decision. The FCA considers that between September and November 2017, [Banque Havilland](#) acted without integrity by creating and disseminating a document that contained manipulative trading strategies aimed at creating a false or misleading impression as to the market in, or the price of, Qatari bonds. The FCA alleges that the objective was to devalue the Qatari Riyal and break its peg to the U.S. dollar, thereby harming the economy of Qatar. The strategy in the document was not implemented but the FCA believes that such manipulative trading would be a criminal offence, if implemented in the UK.

Following the suspension of LME nickel trading on March 8, 2022, the FCA has opened an investigation in relation to the systems and controls in place at the London Metal

Exchange ([FCA statement](#)). The English High Court has dismissed judicial review proceedings by institutions whose contracts were affected, but the regulatory requirements for adequate systems and controls will be assessed by the FCA on a different basis.

In the public markets, [NMC Health plc](#) was censured by the FCA for market abuse after it published a series of financial statements and several clarification announcements that contained materially inaccurate information understating its debt position. The FCA refrained from imposing a financial penalty because the company was in administration.

The FCA continues to bring criminal prosecutions in this area, for example against [five individuals](#) using inside information to place CFD trades. The FCA's intentions are shown by the high number of open investigations for insider dealing: against 71 individuals in June 2023.

The UK regulators (akin to the U.S. regulators) are focusing on traders using off-channel communications in trading activity i.e. not recorded lines/channels. Communications of this nature raise a concern that market misconduct will go undetected and both firms and regulators will be unable to monitor or investigate suspected misconduct fully. The FCA has indicated that it will scrutinise this area but the only UK enforcement decision so far has come from the UK energy regulator, OFGEM. OFGEM fined [Morgan Stanley](#) £5.4m for failing to take adequate steps to ensure that electronic communications relating to wholesale energy trading were recorded and retained. This is the first time that OFGEM has imposed a fine of this nature.

The issue of communication channels was also raised in a PRA enforcement decision ([Wyelands bank](#)). The PRA censured the bank primarily for breaches of requirements for large exposure limits, capital reporting and governance controls. Internal policies that failed to take account of modern communication techniques also featured; the policy did not prevent employees from using WhatsApp and other similar instant messaging systems on private devices that were not recorded. The PRA viewed the wide range of breaches of PRA fundamental rules as justifying a penalty of £8.5 million but substituted the penalty with a public censure in light of the bank's insolvency.

In the PRA's largest penalty to date, the regulator fined members of the Credit Suisse group £87 million in connection with the firms' exposures to Archegos Capital Management ([PRA press release](#)).

Individuals and culture

The FCA continues to impose prohibition orders against individuals, usually because they have breached rules in undertaking their work or if they are responsible for a

breach by their firm, but also some cases where the FCA alleges that non-financial misconduct shows a lack of integrity that means they should not continue working in the financial services sector.

The FCA has decided to fine the former chief executive officer of Barclays £1.8 million and ban him from holding a senior post in the financial services industry, after the FCA found that he approved a letter from Barclays to the FCA, which contained two misleading statements about the nature of his relationship with Jeffrey Epstein and the point of their last contact ([James Staley](#)). Mr Staley is challenging the FCA's decision.

The FCA wants to encourage cultures where non-financial misconduct such as bullying, sexual harassment and discrimination are not tolerated. Part of the regulatory agenda is to encourage whistle-blowing in relation to this kind of misconduct. "Creating a culture of fearlessness, not fear, where employees can speak up and employers listen up is vital for healthy cultures." Sheree Howard, executive director of risk and compliance oversight, said in a [speech](#) in November.

Many individuals facing enforcement decisions refer their cases to the Upper Tribunal, especially if the allegations relate to a lack of integrity or non-financial misconduct.

Criticism of FCA investigations

The FCA faced a number of adverse decisions from the Upper Tribunal (Tribunal) in 2023. These were accompanied by criticism of the FCA's analysis and investigation procedure.

First, the Tribunal upheld a challenge to an FCA decision to fine and ban Mr Markos Markou for allegedly acting recklessly in failing to manage risks in breach of the requirement to act with integrity ([Tribunal decision](#)). Despite some failings on the part of Mr Markou, the Tribunal was not satisfied that Markou had failed, recklessly or otherwise, to establish, maintain and enforce effective financial crime systems and controls to detect and prevent mortgage fraud. The Tribunal held that the FCA had made no findings of misconduct and no findings as to whether Markou had committed any other misconduct than that pleaded (a breach of Statement of Principle 1 to act with integrity), so it did not consider whether there had been a breach of the requirement to act with reasonable care and skill. This decision is subject to appeal.

Secondly, in a challenge by Bluecrest Capital Management of a decision by the FCA to impose a £40.8 million penalty and customer redress for conflict management failings, the Tribunal commented that the FCA's statement of case "demonstrates a considerable amount of muddled thinking on the part of the Authority and a lack of clarity as to the reasons it gives for its conclusion that

there has been a breach of Principle 8” ([Tribunal decision](#)). The Tribunal held that there was no reasonable prospect of an actionable loss to justify the customer redress. Bluecrest used the rarely used fast-track process to bypass an Regulatory Decisions Committee (RDC) hearing to take the case straight to the Tribunal.

Third, following an FCA fine of £18 million against Julius Baer bank, the FCA decided to ban three individual employees. The three individuals referred the FCA’s decision to the Tribunal. The [Tribunal rejected the FCA’s argument](#) that a finding of recklessness could be made where a reasonable person would have appreciated the risk presented. The Tribunal held that it is instead necessary to show that the individual did actually appreciate the risk and then to assess whether it was reasonable in the circumstances for that individual to ignore it.

The Tribunal also criticised the FCA’s delay in issuing decision notices, over-reliance on the firm’s internal investigation report rather than FCA findings, reliance on evidence of a witness without calling them and disclosure failings.

These Tribunal decisions may encourage more subjects of enforcement to challenge regulatory decisions in future.

What is on the horizon for 2024?

Potential enforcement targets for this year include:

- *Financial crime* – A continued focus on all forms of financial crime, with a particular focus on sanctions, AML, customer fraud and other areas where customers suffer a direct loss.
- *Mis-selling and unsuitable advice* – The FCA is considering amending the advice regime but the regulator may bring enforcement for unsuitable advice and mis-selling of cryptoassets and other high-risk products in the meantime. Questions around the size and disclosure of commission payments that featured in PPI cases now features in other areas, such as motor finance.
- *Fair treatment under the consumer duty and other obligations* – The cost of living crisis and step change in interest rates from the position up to two years ago means many consumers continue to face financial hardship. Firms will face scrutiny in how consumers are treated on mortgage renewals and in other situations.
- *Wholesale misconduct* – The FCA may announce the outcome of its investigation of the LME’s procedures following the 2022 market disruption. And the FCA will continue to identify key cases for criminal and regulatory proceedings where there is evidence of market abuse or other misconduct.

- *Green washing* – The FCA is scrutinising firms for misleading or inaccurate climate-related disclosures.

Authors: Tom Clark and Sharon Grennan, Freshfields

Produced by Thomson Reuters Accelus Regulatory Intelligence



Tom Clark

Partner, London

T +44 20 7785 2083

E thomas.clark@freshfields.com



Sharon Grennan

Knowledge Lawyer, London

T +44 20 7716 4775

E sharon.grennan@freshfields.com

freshfields.com

This material is provided by the international law firm Freshfields Bruckhaus Deringer LLP (a limited liability partnership organised under the laws of England and Wales authorised and regulated by the Solicitors Regulation Authority (SRA no. 484861)) and associated entities and undertakings carrying on business under, or including, the name Freshfields Bruckhaus Deringer in a number of jurisdictions, together referred to in the material as 'Freshfields'. For further regulatory information please refer to www.freshfields.com/support/legal-notice.

Freshfields Bruckhaus Deringer has offices in Austria, Bahrain, Belgium, China, England, France, Germany, Hong Kong, Ireland, Italy, Japan, the Netherlands, Singapore, Spain, the United Arab Emirates, the United States and Vietnam.

This material is for general information only and is not intended to provide legal advice.

© Freshfields Bruckhaus Deringer LLP 2024