

FCA Enforcement - More cases, increased costs, fewer fines

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The FCA recently published its Enforcement Annual Performance Account for 2017/18. For reasons unknown, the report comes in at half the length of previous reports and therefore includes far less detail than we have come to expect. However, it still contains the usual statistics and these show some interesting trends. As with all statistics, they have to be approached with caution and there may be many explanations for the variations from prior years. The FCA have not provided much commentary or explanation to accompany the data, so we are left guessing. So what conclusions might be drawn from the FCA enforcement data?

FCA enforcement is very busy (to say the least)

The statistics show a continuing upward trend in the workload of the Enforcement team. There has been a doubling in the number of open cases over the past two years. The number of open cases in March 2018 was over 500, compared with 234 in 2016. The FCA make no comment on this ramping up in workload but the change to a lower threshold for opening investigations is likely to be a contributing factor. There has also been a significant increase in the number of Threshold Conditions cases (those where the FCA may have to cancel a firm's permission) from 154 to 269 over the last year. The FCA note that this increase is related to a large number of consumer credit referrals. What is not clear is how the FCA are coping with such a significant uptick in work. It hasn't increased the number of staff – headcount for Enforcement was actually down compared to 2017 – so we assume everyone is working quite a lot harder.

Enforcement cases are taking longer to resolve

It would come as no surprise if the workload versus resource conundrum led to a slowing down of the enforcement process. Our experience and the statistics certainly suggest that this is the case. Settlement of cases is taking approximately 30% longer than two years ago and the average time taken to resolve cases going to the Regulatory Decisions Committee ("RDC") has increased by 60% from 35 to 59 months. By any measure, including High Court litigation, 5 years is a long time to resolve an enforcement case. Criminal cases have seen an even more significant increase in length from an average time of 15 months to 5 years.

Costs are increasing

Perhaps a product of an elongated process, the figures reveal some significant cost increases. The average cost to the FCA of cases referred to the RDC has increased from £123,000 to £469,000. Perhaps the most dramatic statistic is the average cost of criminal cases (and there were over 100 opened in the past year). The average cost has gone from £181,000 in 2015/16 to £1.6m. Again, the FCA provide no explanation for the near ten-fold increase but it seems likely that one very expensive case is driving up the average.

Fines are down (again)

Fines have fallen back to levels last seen in 2011. A total of 16 fines were imposed in 2018, with a total value of £70m. Even if the exceptional LIBOR and FX fines are taken out of account, that is still less a tenth of the value of penalties imposed in 2015/16 (£884m).

Governance & Culture are important

Nobody needs reminding of this fact but it is reinforced by the data. The number of open enforcement cases involving governance & culture have quadrupled over the past 12 months (from 15 to 61 cases).

Financial Crime remains a priority

The number of open financial crime cases has also increased significantly, with 46 new cases opened during the year.

How was it for you?

The FCA have included a section setting out feedback received from the subjects of an investigation. Perhaps the most surprising element of this is that nobody complained about delay. On the contrary, feedback taken from the subjects of an investigation apparently “*showed swift progress in resolving investigations*”. Some feedback providers did highlight “*the significant impact of investigations*” but otherwise the feedback was pretty positive. It is worth noting that only 6 subjects provided feedback.

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