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GLOBAL INVESTIGATIONS BULLETIN

February 2025

REFLECTIONS AND PROJECTIONS ON FCA ENFORCEMENT TRENDS //

Over the past 18-months, the FCA has been refining its enforcement strategy, reducing its number of enforcement cases, adopting a more proactive approach to interventions, and increasing the pace and focus of at least some of its investigations. At the same time, the FCA has continued to focus on familiar themes: tackling financial crime, safeguarding consumer protection, and strengthening market integrity. Looking ahead, key areas of attention will likely include continued emphasis on consumer redress and the introduction of new policies including those proposing to name firms under investigation at an early stage. We explore these evolving themes below and offer insights into what we expect from the FCA in 2025.

Enforcement reflections

The number of open enforcement investigations decreased from 224 to 188 over the past 12 months. This appears to reflect the continuing effort by the FCA to close long-running investigations, and the opening of a relatively small number of new investigations - reflecting efforts to streamline the enforcement caseload under the new leadership in the Enforcement Division. Key factors contributing to this trend likely include the FCA's claims to have "raised the bar" for opening investigations and strengthening its pre-investigative triage processes to prioritise cases "most likely to deliver industry wide deterrence". The pace of some investigations has also improved.

Another significant trend we have seen over the past 12 months is the FCA's shift towards more proactive interventions. This was evident in the sharp rise in skilled person reviews, which nearly doubled compared to the same period last year. This greater use of intervention powers highlights the regulator's stated preference for early remediation measures over formal enforcement action.

At the same time, the frequency and size of financial penalties increased modestly in 2024, reaching approximately £176 million, a marked increase from the relatively low total of £53 million in 2023. Notably, large penalties were imposed on several firms for unfair customer treatment. Volkswagen Financial Services received a fine for failing to treat customers in arrears or financial difficulty fairly. Similarly, TSB Bank and HSBC were fined for shortcomings in their treatment of customers in arrears or financial distress. Forex TB was fined for pressuring customers to put their money at risk through 'contract for differences' trading. Challenger banks also faced increased scrutiny for deficiencies in their financial crime controls, with institutions like Coinbase, Metro Bank, and Starling Bank receiving substantial penalties. However, the year's highest fine of £40 million (for Barclays) related to listing rule breaches that occurred more than 15 years ago during the 2008 financial crisis.

Consumer redress in the spotlight

Consumer redress also emerged as a central theme in 2024, shaped by significant regulatory actions, judicial decisions, and the FCA's reform proposals. The FCA's decisions last year against H2O and Link Fund Solutions highlighted a clear strategic shift toward prioritising compensation for harmed investors. In both cases, the regulator chose to prioritise securing substantial redress schemes from the firms' limited resources rather than imposing financial penalties, signalling a commitment to restitution as a primary enforcement goal.

Adding another dimension to the evolving landscape in 2024 was the Court of Appeal's landmark ruling in *FCA v BlueCrest Capital Management*. In its ruling the Court of Appeal effectively broadened the scope of the FCA's *own initiative requirement* (OIREQ) powers under the Financial Services and Markets Act 2000 (FSMA), allowing the FCA, in principle, to mandate a single firm redress scheme without needing to establish that there has been loss, breach of duty, or causation, as would be required in a multi-firm scheme. This interpretation of the relevant provisions in FSMA has sparked concern amongst industry participants, as subject to any appeal to the Supreme Court, the decision gives the FCA a wide, largely untrammelled power to impose redress requirements on single firms.

The FCA's focus on consumer harm also extended to its ongoing review into motor finance commission arrangements, initiated in early 2024. This review examines whether certain types of commission arrangements, which were banned in 2021, caused harm to consumers prior to the ban. A particularly key development in this area came in the form of the Court of Appeal's decision in *Johnson and Wrench v FirstRand Bank* and *Hopcraft v Close Brothers*, which found that car dealers could not receive commission without fully disclosing it to customers and obtaining informed consent. This judgment goes beyond the standards set by applicable regulatory rules and guidance and its upcoming appeal to the Supreme Court will likely shape the FCA's future approach to its motor finance review.

At the same time, following a commitment from the Chancellor "to create a surer climate for investment", the FCA and the Financial Ombudsman Service (FOS) launched a joint 'Call for Input' to modernise the consumer redress framework. This initiative aims to address inefficiencies in managing large numbers of complaints about similar issues, which have surged in areas like motor finance and consumer credit affordability. Taken together, these regulatory reforms, judicial decisions, and the FCA's evolving priorities point to a potentially transformative period for consumer redress in 2025 and beyond.

What's on the agenda for the rest of 2025?

Another key policy change expected to be finalised in 2025 is the FCA's proposals to publicly name firms under investigation. The original proposals generated a storm of criticism from stakeholders, prompting the regulator to reconsider and outline revised plans for further engagement. Under the revised proposals, firms will now receive 10 days' notice of an announcement (up from one day), with an additional 48 hours' notice if the FCA decides to proceed with a public disclosure. The FCA also proposes to explicitly consider the potential reputational impact on firms as part of the public interest test - an element that was absent from the original proposals. Despite these adjustments, the House of Lords Financial Services Regulation Committee (FSRC) published a report on 6 February, highlighting that serious questions still remain and calling on the regulator to drop the proposal if the right balance cannot be found between the potential benefits for consumer protection and potential risks to firms and market stability.

Concluding remarks

Firms should not only pay attention to what the FCA is investigating, but also to how the regulator is investigating. There is a clear shift towards data-driven enforcement, coupled with mounting pressure to accelerate investigations and actions. For firms, this evolving approach presents a more complex landscape, requiring earlier and more frequent engagement with enforcement risks.

RECENT NEWS //

Trump pauses FCPA enforcement

On 10th February, President Trump issued an Executive Order directing the US Attorney General to reassess the guidelines and policies that govern investigations and enforcement actions under the Foreign Corrupt Practices Act (FCPA). The order cites concerns that the Department of Justice's (DOJ) past application of the FCPA has hindered U.S. foreign policy goals and put American companies at a competitive disadvantage relative to foreign counterparts. As part of this reassessment, the DOJ is expected to issue new FCPA guidelines aimed at bolstering U.S. economic competitiveness and protecting national security interests. During a 180-day review period, no new FCPA investigations or enforcement actions will proceed without the authorisation of the Attorney General, and all ongoing investigations and actions will be re-evaluated. Although it is difficult to predict the precise effects of these Executive Orders on corporate enforcement practices, companies subject to U.S. jurisdiction should closely monitor the Department's implementation of this guidance, particularly the revised FCPA enforcement guidelines. The DOJ's retreat also raises questions about whether prosecuting bodies in the UK and Europe will step in to fill any gaps left by their US counterparts. Whilst the SFO and other European agencies, such as the PNF, have expressed ambitions to tackle foreign bribery, it remains unclear whether they possess the resources, inclination or infrastructure to make a meaningful impact.

Supreme Court overturns long standing precedent on extra-territoriality of UK money laundering offences

In *El-Khouri v Government of the United States* [2025] UKSC 3, the UK Supreme Court quashed an extradition order for a UK-Lebanese dual national accused of insider trading in the US. While the case primarily focused on the correct test for extradition, it importantly also addressed the extra-territorial reach of UK money laundering laws. The defendant was accused of making payments to intermediaries who obtained non-public information about US-listed stocks, which he used to trade contracts for difference (CFDs). Although the CFDs were not traded in the US, the jurisdictional link to the US was the defendant's alleged payments for hotel stays in New York for the intermediaries. The US argued these payments constituted money laundering offences under s329 of the Proceeds of Crime Act 2002 (POCA), and that, due to POCA's extra-territorial effect, this created an "extradition offence." The Supreme Court rejected this argument, limiting POCA's extra-territorial scope. It ruled that the acquisition, use, or possession of criminal proceeds must occur in the UK for it to fall within POCA's jurisdiction. Whilst POCA does provide that the acquisition, use or possession of funds in the UK that derive from criminal conduct abroad constitutes an offence, POCA does not provide that the acquisition, use or possession of property abroad that is derived from criminal conduct abroad constitutes a criminal offence in the UK. In coming to its conclusion, the Supreme Court decided that the Court of Appeal decision in *Rogers* - which to date has been viewed as authority that ss327-329 of POCA have extra-territorial effect so long as the significant part of the underlying criminality took place in the UK – was wrongly decided.

UK Finance issues sector-specific guidance on failure to prevent fraud

UK Finance, the industry body for financial services, has published sector-specific guidance to help firms prepare for the new failure to prevent fraud offence. Released on 11 February, the guidance provides examples and illustrations of how this offence might apply to financial services firms and the broader financial services sector. We discussed the new offence and the separate Government-issued Guidance in our client briefing, Countdown to Compliance. In case of any conflict between UK Finance's guidance and the Government's, the Government Guidance will take precedence.

UK Finance's guidance provides examples of individuals or entities that may be considered an 'associated person' within the financial services sector, including those offering advisory, fund management, custody, arranging, placing, brokerage, or trust and fiduciary services. However, it suggests that certain parties, such as rating agencies, appointed receivers, insurance brokers, and listing agents, are unlikely to fall within the definition.

In addition to explaining the offence, UK Finance's guidance covers the defence of reasonable prevention procedures. It stresses that firms are not required to duplicate existing compliance controls or procedures and the guidance includes a section on existing controls that could help address the new offence. While duplication is unnecessary, both the UK Finance and Government guidance highlight the need for firms to evaluate the relevance of existing controls to the new offence and determine if any adjustments are necessary.

SFO Round-up: SFO can enforce DPA against Güralp after expiry date; SFO secures its first UWO; Court Upholds Convictions of Global Forestry Investments Directors; Initial findings of SFO e-discovery review

On 31 January, the High Court ruled that the SFO can apply to the court to address a breach of a Deferred Prosecution Agreement (DPA) even after its stated end date. Güralp Systems entered into a DPA with the SFO in October 2019 following a bribery investigation. The DPA required the company to disgorge over £2 million in profits, but lacked a specific payment deadline, only stating it would end once the financial terms were met, by 22 October 2024. In June 2023, Güralp informed the SFO it might not meet its obligations. The SFO proposed a revised payment schedule, but no response was received by October 2024, prompting the SFO to seek a hearing on the breach. Güralp then argued the court lacked jurisdiction since the DPA was stated to end in October 2024. The judge, applying the standard rules on contractual interpretation found that the DPA's purpose was to ensure payment, and the absence of a payment schedule meant the financial terms had to be satisfied by 22 October 2024. As the DPA outlined consequences for late payment, the high court found that it remained effective beyond that date. DPAs have typically expired without further court involvement, making this case the first of its kind in the UK. It will be interesting to see how the court proceeds with addressing the breach now that the jurisdiction issue has been resolved.

On 17 January 2025, the SFO secured its first Unexplained Wealth Order (UWO) in the High Court – its first in seven years, following the introduction of UWOs in 2018. The UWO related to a £1.5m property owned by the ex-wife of Timothy Schools, who was convicted of fraud and money laundering in 2022. The SFO successfully froze the property to ensure proceeds are secured if sold and Ms. Schools has been ordered to provide details of how the property was obtained within 28 days. UWOs are civil tools applied for by law enforcement agencies but in the High Court and applying the 'balance of probabilities' standard. They require individuals to explain the origins of assets worth over £50,000. Failure to comply can lead to the property being considered 'recoverable' under the Proceeds of Crime Act 2002 and the enforcement authority may apply for seizure. The NCA is currently the only other agency to have used this tool, in four reported cases to date.

The SFO has announced that the Court of Appeal has upheld the convictions and sentences of Andrew Skeene and Omari Bowers, former directors of Global Forestry Investments. Skeen and Bowers were found guilty in May 2022 of three counts of conspiracy to defraud and one count of misconduct in the winding up of a company, leading to 11-year prison sentences. The case, which the SFO has been investigating since 2015, involved a purportedly ethical investment scheme that defrauded investors of around £37m. This judgment follows hearings in February and November 2024, during which Skeene and Bowers sought permission to appeal their convictions and sentences.

Earlier this month, the SFO published an update on its ongoing review into its use of software, focusing on its current system, OpenText Axcelerate, and its previous system, Autonomy Introspect. The update confirms that the SFO identified and resolved an "encoding issue" in Axcelerate that affected document display, and that all relevant defendants have been notified. The review of Autonomy was prompted by issues with search term construction that may have caused relevant material to be overlooked in some cases. While the SFO's update confirms that no evidence of compromised convictions has been found, further enquiries are underway, prioritising cases involving defendants currently serving custodial sentences. The review, which includes independent input from the Attorney General's Office and HMCPSI, is still ongoing, and the SFO expects to publish a further update in the coming months.

FCA Round-up: Mako fined for failings relating to cum-ex trading; Broker first to be fined under UK MiFIR; FCA secures confiscation orders in fraud and insider dealing cases; and FSRC publishes report on FCA's controversial proposal to publicise enforcement investigations

The FCA has fined Mako Financial Markets £1.66m for inadequate systems and controls to prevent financial crime, specifically cum-ex trading. This is the eighth enforcement case in the FCA's investigation into cum-ex trading, which involved collaboration with EU and global law enforcement. The FCA has imposed fines of more than £30m in relation to this trading. Between 2013 and 2015, Mako executed large equity trades for the Solo Group, amounting to £92.2bn, linked to potential withholding tax reclaims in Denmark and Belgium. The FCA identified circular trading and other red flags, including unexplained transactions and receiving payments without performing any due diligence, increasing the risk of financial crime.

The FCA has issued a final notice and imposed a £99,200 fine on Infinox Capital Limited for failing to submit over 46,000 transaction reports, potentially allowing market abuse to go undetected. The FCA independently discovered the discrepancy in the transaction data submitted by the firm. The breach revealed weaknesses in the firm's transaction reporting systems and controls, particularly concerning a high-risk investment product. This is the first enforcement action against a firm for violating transaction reporting requirements since they became law under the UK Markets in Financial Instruments Regulation (MiFIR).

The FCA has secured confiscation orders against two individuals involved in separate financial crime cases. Mohammed Zina, a former Goldman Sachs analyst convicted of insider dealing in 2024, faces a confiscation order of £586,711. If he fails to pay within three months, he will serve an additional five years in prison. Additionally, Mr. Flintham, currently serving a six-year sentence for his involvement in a £19 million fraudulent investment scheme, has been issued a confiscation order of £5,963,376.15. Non-payment will result in a further two-year sentence. Both orders aim to recover illicit profits for the victims.

The House of Lords Financial Services Regulation Committee has published a report highlighting that serious questions remain over the FCA's consultation paper CP24/2 (Part 2) on publicising enforcement investigations. Whilst acknowledging the work that the FCA has done to listen to stakeholders' concerns in the aftermath of its initial consultation, the Committee concludes that the FCA could have avoided much unnecessary controversy by engaging with stakeholders in the development stage of the proposals. The Committee calls on the FCA to, among other things:

- Withdraw the proposals if it has not found an acceptable balance between realising the potential benefits for consumer protection and managing the potential risks to firms, individuals, and market stability;
- Publish further guidance on how the factors contained in the proposed public interest framework will work in practice; and
- Publish a 'lessons learnt' document reviewing the appropriateness of its internal processes and communication strategies for consulting on a change of this scale and setting out measures to prevent similar mistakes in future.

OFSI / OTSI Round-up: OFSI publishes threat assessment; OFSI and OFCA enter into a MoU

The Office of Financial Sanctions Implementation (OFSI) published a threat assessment on 13 February, highlighting the financial services sector's role in UK sanctions compliance. The report revealed that 65% of suspected sanctions breaches reported to OFSI came from financial services firms, with 80% of those reports originating from banks and payment service providers. However, OFSI noted delays in reporting suspected breaches and observed that not all firms involved in breaches were reporting them. Common non-compliance issues included ineffective account freezing, license violations, and inaccurate ownership assessments. OFSI pointed out persistent reports of potential Russian sanctions breaches involving superyachts and a significant number of breaches related to UK residential property. The report also flagged intermediary jurisdictions, such as the British Virgin Islands, Cyprus and the UAE, which were highlighted in breach reports. The findings in OFSI's report align with similar issues identified by the FCA in their 2023 assessment of sanctions systems.

HM Treasury and the Office of Financial Sanctions Implementation (OFSI) have published a memorandum of understanding (MoU) with the US Office of Financial Assets Control (OFAC). The MoU is designed to strengthen the parties' ability to exchange information with a view to greater co-ordination of efforts and advancing common goals around the investigation and enforcement of economic and certain trade sanctions. This enhanced partnership may signal a stronger approach to sanctions enforcement by OFSI and a closer alignment between the US and UK sanctions regimes. However, structural challenges persist within the UK, and without improved coordination among UK sanctions authorities, effective enforcement will continue to be a challenge.

FRC Investigation opened into audit of Entain by KPMG

On 20 January the FRC announced that it has commenced an investigation in relation to the audit conducted by KPMG LLP of the consolidated statements of Entain plc for the year ended 31 December 2022. The investigation will be conducted by the FRC's Enforcement Division under the Audit Enforcement Procedure. The FRC's announcement did not address whether the investigation into KPMG is connected to the DPA that Entain entered into with the CPS in December 2023, relating to allegations of bribery involving Entain's legacy Turkish-facing business.

CMA opens probs under new Digital Markets Competition and Consumer Act powers

One week after initiating its first investigation into whether Google holds strategic market status (SMS) in relation to its general search and search advertising services under the new digital markets competition regime, the Competition and Markets Authority (CMA) has launched two additional parallel investigations. These focus on determining whether Apple and Google possess SMS in relation to their mobile ecosystems. Should the CMA conclude that Apple and/or Google hold SMS within their respective mobile ecosystems, it will then need to assess whether any measures are necessary to protect competition.

Horizon Scanning

What to look out for:

- The Supreme Court is scheduled to hear the case of Tom Haynes, the former Citigroup and UBS trader, in March 2025. This will be Haynes' final attempt to clear his name after his conviction a decade ago for LIBOR rigging. The Court will examine the correct interpretation of the benchmark definitions for LIBOR and EURIBOR, following the Court of Appeal's decision in March 2024 to uphold Haye's conviction.

- In March 2025, the Upper Tribunal will hear the appeal of Jes Staley against the FCA-imposed ban preventing him from holding senior roles at regulated firms. The ban stems from the FCA's finding that Staley misled the regulator about the extent of his relationship with Jeffrey Epstein.