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FCA Enforcement  
Insights - A Year in  
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# FCA ENFORCEMENT INSIGHTS - A YEAR IN REVIEW //

On 5<sup>th</sup> September, the FCA published its [Annual Report for 2023/24](#), together with data on its [enforcement performance](#). The data shows a reduction in the FCA's enforcement caseload, an increase in interventions, and continued focus on financial crime. In this briefing we explore these (and other) key enforcement takeaways.

## (1) The number of open enforcement investigations has reduced - with fewer new investigations and an uptick in closures

During the year, the FCA had 188 open enforcement cases, compared with 224 last year. 24 new investigations were opened (down from 34 last year) and 60 investigations were closed (up from 38). The result is a much-reduced FCA enforcement caseload. This may be a result of the new co-directors of the Enforcement Division taking a different strategy from the previous director and creating a more streamlined investigations caseload.

## (2) The number and average amount of financial penalties has decreased

In the period, the FCA imposed financial penalties on 12 individuals and firms - down from 24 last year. The total amount of fines has also significantly reduced to £42.5 million, from £199 million in 2022/23, and £331 million in 2022/21. Generally, this reflects the fact that fewer fines were imposed on larger institutions - whose higher revenues result in larger fines under the FCA's penalty calculation.

## (3) The FCA remains focused on tackling financial crime

During the period, 44% of the FCA's open enforcement cases related to its strategic commitment to 'reduce and prevent financial crime'. 45% of current cases were categorised as criminal or dual track (where criminal and regulatory cases are investigated concurrently). These figures show that the FCA's focus on criminal conduct and reducing financial crime remains strong.

#### (4) An increase in interventions - with the largest portion resulting in voluntary outcomes

The FCA's Interventions team sits within its Enforcement Division and works closely with the Supervision Division. Enforcement opens an Intervention case when Supervision has concerns about a firm that presents a risk of ongoing harm or loss to consumers. The Interventions team can use a variety of tools to engage with firms including formal tools (eg. varying or imposing requirements on a firm's regulatory permissions) and informal tools.

During 2023/24, the Interventions team advised on 268 cases - an increase from 209 in the previous year. The team obtained 102 'voluntary outcomes' (where the firm agrees with the FCA the steps it will take to meet its requirements). By comparison there were 25 'own initiative outcomes' (where the FCA exercises its formal powers to eg. impose requirements on a firm's permissions or vary a firm's permissions). The FCA said that the numbers for this year reflect its strategy of seeking to agree more voluntary requirements with firms.

#### (5) Skilled Person Reviews - on the rise again

Section 166 of FSMA gives the FCA the power to get an independent view of aspects of a firm's activities that cause them concern or requires further analysis. Whilst not an enforcement tool, skilled person reviews can be a precursor to enforcement investigations or highlight areas of focus or supervision for the FCA.

In 2023/24 the FCA commissioned 86 skilled person reviews - nearly double the amount from last year. In 17 of those cases, the skilled person was appointed by the FCA. The aggregate cost incurred by the regulated firms for s166 work in the period, including reviews that remained in progress from previous years, was £38.3 million.

#### (6) Whistleblowing reports are on the rise, but only a small percentage result in enforcement action

The number of whistleblowers who approached the FCA increased by 6% in 2023/24, with the FCA receiving 1,080 reports. Of the top ten allegations reported, the majority related to fitness and propriety, culture, and compliance. It's unsurprising to see these issues at the top of the list given the FCA's focus on organisation culture and non-financial misconduct.

For Q1 and Q2 2024, the FCA published additional data on the number of whistleblowing reports that have been closed and the type of action taken in response. In 5% of reports, the FCA took 'significant action' - this means enforcement action, a s.166 skilled persons report or restricting a firm's permissions or individual's approval. In 54% of reports the FCA acted to 'reduce harm' - which means requesting information, making firm visits, or requiring a firm to attest to complying with FCA rules. In 34% of cases the FCA said the reports informed their work, but no direct action was taken. 3% of reports were not considered indicative of harm.

## RECENT NEWS //

[FCA Round-up: FCA consults on APP Fraud; First prosecution for illegal crypto ATMs; Fine for PwC; Firm fined for failing to treat customers fairly; H20 to pay €200m to investors; Upper Tribunal agrees with FCA's finding on fitness and propriety](#)

The FCA has published a [consultation paper \(GC24/5\)](#) on proposed changes to its Payment Services and Electronic Money Approach Document, to support new legislation tackling authorised push payment (APP) fraud. Changes have been proposed to the Payment Services Regulations 2017 which would enable payment service providers (PSPs) to delay making a payment transaction where they have reasonable grounds to suspect fraud or dishonesty. To support this policy, the FCA is proposing changes to its Approach Document to explain how PSPs should apply the legislative changes to minimise the impact on legitimate payments. The deadline for responses to the consultation is 4 October 2024.

The [FCA has charged the first individual with unlawfully running multiple crypto ATMs](#), which allowed people to buy and convert money into cryptoassets, without FCA registration. The charges are the FCA's first criminal prosecution relating to unregistered cryptoasset activity under the Money Laundering Regulations 2017. The FCA has confirmed that there are presently no legal crypto ATM operators in the UK.

The [FCA has fined PwC £15 million](#), for failing to report its suspicions of fraudulent activity at London Capital & Finance plc, when PwC was its statutory auditor. Auditors of regulated firms have a duty to report certain matters to the FCA. This includes raising suspicions of fraud. In this case PwC suspected fraud at London Capital but eventually satisfied itself that the accounts for the period were accurate. Nevertheless, the FCA found that it should have reported the various red flags that indicated a risk of fraud. This is the first time the FCA has fined an audit firm. The fine follows one day after the [FCA's first public censure of another audit firm \(Macintyre Hudson\)](#) for breaches of different rules. These actions highlight the FCA's focus on audit firms and their reporting obligations. Audit firms are also separately regulated by the Financial Reporting Council (FRC) who has powers to investigate misconduct and can impose sanctions from a public statement to financial penalties.

A [final notice has been issued to Forex TB Ltd](#), an investment firm that markets contracts for difference. The FCA has fined Forex £276,100 for: (1) a breaching Principle 6 of its Principles for Business by failing to pay due regard to the interests of its customers and treat them fairly; and (2) breaching section 20(1) of FSMA by carrying out the regulated activity of advising on investments without the necessary permissions.

H2O AL MMP, a portfolio management company has been [ordered to pay €250 million](#) to investors unable to access their funds since 2020. The FCA found that H2O failed to conduct sufficient due diligence on high-risk and illiquid investments relating to the companies it introduced. As a result, H2O entered into investments without having appropriately considered their merits and risks. The FCA found that H2O breached Principle 2 (skill, care and diligence), Principle 3 (management and control) and Principle 11 (relations with regulators) of its Principles for Business. The FCA has agreed that H2O will make €250 million available to all those whose investments remain trapped. Were it not for this payment (and the penalty already issued by the French Regulator in relation to the same investments), the FCA said it would have issued H2O with a substantial fine.

The [Upper Tribunal has dismissed a reference made by Saranac Partners Ltd](#), a wealth and investment management firm, in relation to its founder, Mr Kalaris. The reference relates to the FCA's decision to refuse Saranac's application for approval of Mr Kalaris to perform certain senior management functions, on the grounds Mr Kalaris was not a fit and proper person. The Tribunal agreed with the FCA's finding that Mr Kalaris had not been candid in his answers to the Authority during an interview and that one of his answers was dishonest.

[SFO Round-up: Speech by Interim Chief Capability Officer; Highlights from SFO Annual Report; ENRC founder's daughter has conviction quashed; Charges for ex-Glencore employees; SFO seize property linked to care home investigation](#)

On 2<sup>nd</sup> September, [the SFO's Interim Chief Capability Officer, Freya Grimwood delivered a speech at the Cambridge International Symposium on Economic Crime](#). The speech discussed the SFO's strategic priorities and recent achievements. Key take-aways from the speech include:

- **New guidance** - The SFO is updating its guidance for companies to provide more clarity around how the agency expects them to cooperate if they suspect wrongdoing in their organisation. The guidance will also cover what is expected when opening negotiations around Deferred Prosecution Agreements (DPAs).
- **Machine learning** - The SFO will continue to focus on machine learning, to improve the disclosure process, reduce costs and improve efficiencies. Grimwood said SFO cases can involve reviewing somewhere between five million and 48 million documents, and meeting this disclosure burden takes up-to 25% of the SFO's operational budget.
- **The importance of whistleblowers** - Grimwood said the SFO wants to incentivise more whistleblowers to come forward, a concept reiterated in the agency's annual report

and in recent statements by the director. In her speech Grimwood also highlighted the existing powers the agency has to offer immunity to cooperating offenders.

At the end of July, the SFO published its [Annual Report for 2023/24](#) which provided an overview of the agency's performance, objectives and financial position. Highlights from the report include that the SFO:

- Had a budget of £95.5 million (up from £78.6 million in 2022/23)
- Secured four convictions
- Carried out 15 searches (across four cases), making 15 arrests, and
- Recovered £1.7 million in criminal proceeds.

The figures make for an underwhelming read when compared to the same period last year, where the agency secured eight convictions and recovered over £95 million through confiscation orders.

The report also states that, during the period, the agency opened six new criminal cases, took three cases to trial, and closed six. The cases closed by the SFO include the long-running investigation into ENRC, which resulted in civil litigation and a judgment finding that the SFO had mishandled the investigation. Notably, the annual report shows that the SFO has made a financial provision worth £237 million to cover potential losses which it would be liable to pay ENRC in the commercial proceedings. Shortly after the annual report was published, the SFO's application for permission to appeal the Commercial Court's judgment was dismissed, meaning the agency will likely have to pay ENRC significant damages.

In another recent development for the SFO, on 16 September, Anna Machkevitch (the daughter of the co-founder of ENRC) was successful in having her conviction for withholding documents quashed. Machkevitch was convicted in January 2020 for failing to comply with a section 2 notice to provide information relating to the ENRC investigation. Section 2 of the Criminal Justice Act 1987 requires recipients to produce information or documents relevant to investigations, or risk criminal conviction. In July, the SFO said it would not oppose an appeal by Machkevitch on her conviction, in light of the civil judgment against the agency.

In August, the [SFO announced charges against a number of former Glencore employees](#) in relation to the long-running bribery investigation involving the company's oil trading division in Africa. The SFO first opened an investigation into the company in 2019. Glencore pleaded guilty to corporate corruption charges in the UK and US in 2022.

On 3 September, the [SFO executed a search warrant and seized property](#) thought to be worth approximately £500,000, as part of a proceeds of crime investigation relating to UK development company, the Carlauren Group. The SFO allege that the developer purchased 23 properties across the UK (mostly former hotels) for renovation into high-end care homes, which it offered an annual return of 10% on. Only nine properties were ever operational, and the group collapsed in 2019. This investigation is a further example of the focus over recent

months and years by the SFO on alleged consumer-facing fraud, rather than the large overseas corruption cases that dominated the agency's caseload over the last decade.

### Forfeiture of luxury properties following UWO

In August, the [NCA announced](#) that it had successfully concluded a six-year investigation, which began with an Unexplained Wealth Order (UWO) and resulted in the forfeiture of two high-profile properties linked to the wife of convicted Azerbaijani banker Jahangir Hajiyev. Following Mr Hajiyev's 2016 conviction, the NCA issued UWOs against two properties. The UWOs (which require the recipient to explain how the assets were purchased) were the first ever granted in the UK. After receiving no satisfactory explanation, the NCA was granted a civil recovery order, resulting in the forfeiture of 70% of the value of both properties. Ms Hajiyev agreed with the NCA not to oppose the forfeiture order. This is the second instance of a high-profile NCA forfeiture "by agreement" in the last few months.

### HMRC fined two businesses for export control breaches

On 11 September, [HMRC announced](#) that it had fined two unnamed businesses for illicitly exporting dual-use and military goods, in breach of the UK's controls for exports to Russia. One business was fined £258,000 for the unlicensed export of dual-use goods. The second business was fined £90,853 for exporting military goods subject to restrictions without permission. Both cases were resolved through a mechanism known as compound settlement, which does not require the name of the company to be made public. HMRC has now issued nine export control fines in 2024.

### OFSI Round-up: New powers to issue secondary sanctions; Office of Trade Sanctions Implementation (OTSI) to launch in October

New powers have [entered into force in the UK](#), to sanction people or companies that provide financial services to parties that support or benefit from the Russian government. Two new clauses have been added to the designation criteria in the Russian sanctions regulation, expanding the reasons for adding a person or business to the sanctions list. The Foreign Commonwealth and Development Office (FCDO) can now sanction parties for "providing financial services or making available funds, economic resources, goods or technology to persons involved in obtaining a benefit from or supporting the Government of Russia." The expansion of the UK's designation criteria appears to be aimed at preventing sanctions evasion and the diversion of export-controlled goods to Russia via third countries that don't recognise Western sanctions.

The government has announced plans to [launch the Office of Trade Sanctions Implementation \(OTSI\) in October 2024](#). OTSI will be responsible for the civil enforcement of certain trade sanctions as they relate to UK services and overseas trade with a UK nexus. It will have authority to impose monetary penalties, and where a civil monetary penalty can be imposed,

breaches may be determined on a ‘strict liability’ basis. Penalties can be imposed on the basis of the civil standard of proof.

### ICO Round-up: Provisional fine for processor; Reprimand for the Labour Party

Following its finding that software provider Advanced Computer Software Group Ltd (Advanced) failed to implement adequate measures to protect personal data, the ICO has published a [provisional decision](#) to fine the company, £6.09 million. Advanced is a data processor on behalf of organisations across the UK including the NHS trust and other major social care bodies. Read more on the ICO’s decision in [The Lens](#).

On 28 August, the [ICO issued the Labour Party with a reprimand](#) for repeatedly failing to respond to people on time, who made a Subject Access Requests (SARs) to see what personal information the party held on them. In November 2022, the Labour Party had received 354 SARs that required a response. Of that number, 78% did not receive a response within the maximum compulsory time limit (of three months) and over half were delayed by over a year. The backlog of SARs developed following a cyber-attack on the Labour Party in October 2021, which led to an increase in requests from the public.

### US DOJ Launches Corporate Whistleblower Awards Programme

In August, the US Department of Justice (the DOJ) launched its [Corporate Whistleblower Awards Pilot Programme](#). This is a three-year pilot programme that uses financial rewards to incentivise whistleblowers to report corporate misconduct to the Department. Under the programme, individuals are eligible to receive a monetary award when they provide the DOJ with original and truthful information about criminal misconduct, provided that information is not already covered by another federal whistleblower programme or statutory initiative. The information must also fall within a designated subject area (described in more detail in the [programme guidance](#)), and lead to a successful criminal or civil asset forfeiture that exceeds \$1 million in net proceeds.

## Horizon Scanning

### What to look out for:

- The long-awaited Guidance on the new failure to prevent fraud offence. A spokesperson for the Home Office has said that the Guidance will be published in September or October 2024. The new offence was introduced in the Economic Crime and Corporate Transparency Act 2023 and is expected to come into force six months after the Guidance is issued.
- The latest instalment in the sanctions evasions case against Dimitrii Ovsyannikov (former Russian trade minister), will take place later this month when the court hears Ovsyannikov’s application to dismiss the charges against him. The case is

significant as it's the first-time prosecutors have charged a suspect with criminal sanctions evasion since the introduction of the UK's autonomous post-Brexit sanctions regime in 2018.