



**Enforcement annual
performance account
2007/08**

Contents

Enforcement annual performance account 2007/08	
Background	3
Effectiveness of the enforcement function	3
Our approach to enforcement	4
• Thematic reviews	4
• Consumer redress	5
• Consumer protection	5
• Capital markets	5
• Financial Services and Markets Tribunal	5
• International work and policy	5
Summary of feedback meetings	6
Executive settlement	7
Conclusions	7
Data and analysis	
Enforcement statistics from the Annual Report	8
Private warnings	9
Referrals and decisions of the Financial Services and Markets Tribunal	9
Number and trend referrals to the Tribunal	9

Enforcement Annual Performance Account 2007/08

Background

1. This is our Enforcement Annual Performance Account of the fairness and effectiveness of our enforcement process, which we publish when we produce our Annual Report.
2. We include statistical and background information about enforcement investigations and their outcomes. We also provide an assessment of the fairness and effectiveness of the enforcement process. We base this on feedback from firms and practitioners that have been involved in the enforcement process. We also highlight our enforcement strategy.
3. Our Annual Report for 2007/08 contains a selection of key enforcement outcomes that highlight our activities for the year; this paper communicates our approach to enforcement more generally.

Effectiveness of the enforcement function

4. During the year, the Executive has considered the effectiveness of enforcement on a regular basis. We are committed to measuring and reporting on our performance – this account is one way of reporting on our effectiveness.
5. The Executive believes we are using the enforcement tool strategically to achieve our goal of credible deterrence. We are selective in the cases we investigate. Our considerations include:
 - whether the misconduct poses a significant risk to our objectives;
 - if it is serious or egregious in nature or both;
 - if there is actual or potential consumer loss or detriment;
 - if there is evidence or risk of financial crime or market abuse; and
 - whether it is an FSA priority to raise standards in that sector or issue.
6. As well as receiving formal feedback from those involved in the enforcement process (which we discuss below), supervisors provided feedback about the behaviour of firms after we published enforcement outcomes. We are pleased that publishing enforcement action, along with appropriate supervisory follow up, has often led other uninvolved firms to consider whether the enforcement action has implications for their business, systems and controls. In addition, we have been pleased to see that following our published outcomes, firms do take steps to ensure they are compliant in the relevant area.
7. We publish details of our enforcement decisions in our Final Notices. These are an important tool to enable the industry to understand better the types of behaviour we consider unacceptable. We recognise that we need to be clear about what concerns us. To help achieve consistency and fairness in our decision-making and clarity in the way our messages are expressed, a lawyer independent of the case team reviews all enforcement cases before they are submitted to the relevant decision maker. We will continue to ask for feedback, via supervisors and in other ways, to assess how enforcement action changes industry behaviour.

Our approach to enforcement

8. Our approach is to achieve credible deterrence through our enforcement work. We focus on those cases where we think we can make a real difference to consumers and markets, using enforcement strategically as a tool to change behaviour in the industry. To achieve credible deterrence, wrongdoers must realise that they face a real and tangible risk of being held to account and expect a significant penalty. This applies across the spectrum, from our work to prevent market abuse, to our work helping to ensure that customers are treated fairly.
9. Where there is evidence that standards are not improving, despite clear messages to the industry, we have moved towards increasing the level of penalties. There are a range of disciplinary sanctions available and we are also using our powers to bring criminal prosecutions and to restrain the proceeds of crime in appropriate cases.
10. Most enforcement actions in the last financial year were based on Principles only or a combination of Principles and rules. Of 48 disciplinary cases, 21 (44%) were based on Principles and almost all of the remaining cases were a combination of Principles and rules. This demonstrates the continued alignment of enforcement with the move towards principles-based regulation. Our Principles have the status of rules and we will continue to take action where they are breached. Our new Enforcement Guide, which was adopted on 28 August 2007, makes clear that we acknowledge that firms may comply with the Principles in different ways and that we will not take enforcement action unless it was possible to determine at the relevant time that the conduct fell short of our requirements. We will apply the standards required by the Principles at the time the conduct took place and not later, higher standards. However, where conduct falls below the standards we require, we may take action even if the conduct is widespread within the industry.
11. You can find a breakdown of cases the Enforcement Division investigated during 2007/08 and their outcomes on page 8.

Thematic reviews

12. Last year we published a number of outcomes in disciplinary cases that arose as a result of follow-up work from thematic reviews. For example, a number of firms were investigated for failings in Treating Customers Fairly, particularly in relation to the selling of payment protection insurance (PPI). We initially identified PPI as a key thematic area with an extensive programme of visits to a sample of firms. Our work in this area resulted in us disciplining some firms for poor selling practices. Our aim in this workstream was to support the findings of the thematic work in promoting changes in industry behaviour and seeking fair treatment (including compensation where appropriate) for the customers of disciplined firms. We announced in September 2007 that since we were not seeing improvements in this area we would be looking to increase our fines, and since that announcement we have imposed increased fines for PPI failings.
13. Our enforcement strategy for smaller businesses is driven by the way we supervise these types of firms. Our main supervisory concern relates less to the risks posed by an individual firm, and more to the risks posed collectively by smaller businesses. This means our supervisory focus on smaller businesses is often thematic, with supervisors assessing and addressing the issues of greatest concern to them across the sector. Thematic work may lead to enforcement action against firms if it becomes clear that they are not meeting the standards we expect in the particular area of concern. Our enforcement action against smaller businesses has addressed concerns, for example, in the quality of mortgage advice, particularly in the sub-prime area, in the sales practices used by smaller businesses when recommending higher risk shares, and the risks posed by insurance intermediaries in not handling client money appropriately or ensuring that clients are properly advised about risks. We aim to change the behaviour of small firms in a way that improves standards across the industry.

Consumer redress

14. It is common for enforcement actions in retail cases to include a redress element that, if appropriate, tries to put the customer back in the position in which they would have been before the misconduct, or compensates them, or both. One of the benefits of settled cases is that this redress can be agreed as part of the enforcement outcome and may be provided more quickly than if the case proceeds to the RDC and the Tribunal.

15. We have recently re-focused our attention on ensuring that firms carry out effective customer contact exercises and we have been using our settlement process to agree with firms the letters they propose to send to customers as a part of these contact exercises.

Consumer protection

16. We have taken direct action against UK firms that were helping unauthorised overseas firms, commonly known as boiler rooms, which were unlawfully promoting and selling shares to UK consumers. Following winding up petitions we presented, the High Court placed two UK companies which were assisting boiler rooms into liquidation. We also obtained search warrants and made arrests in relation to a firm which had been collecting money from consumers and sending the funds to an overseas boiler room. In cooperation with Canadian regulators on another case, we were able to help 153 investors recover over £1m after they had been illegally sold shares in two North American-based companies by various boiler rooms.
17. We also prosecuted an unauthorised stockbroker for criminal offences following a substantial investigation into his activities; he was sentenced to 15 months' imprisonment.

Capital markets

18. We have continued to focus on market misconduct cases using the range of tools available to us. We have enhanced our in-house criminal investigation and prosecution skills and in January 2008 we began criminal proceedings against two individuals for insider dealing. We have also made clear that we will be imposing increased financial penalties in cases we pursue through the civil route. We aim to send tough messages about wrongful behaviour and impose sanctions that are severe enough to deter others.
19. Our tougher approach is likely to mean that the enforcement process takes longer in the more complex cases and those which are fully defended. Our determination to bring criminal cases and to seek more meaningful sanctions in civil ones will result in more cases being contested: however, little is made public during contested proceedings until the Tribunal or court hearing. While we have not brought to conclusion any regulatory proceedings for market abuse during the year, we have a stream of cases under investigation and in the decision-making process, in addition to the insider dealing prosecution referred to above. We believe that our strategy will deliver more messages with greater impact in the long term to bring about changes in behaviour through credible deterrence.
20. We believe that industry participants should work with us to maintain clean UK markets; we have sought to engage the industry on the issue of market integrity via speeches, Marketwatch newsletters, and thematic work. We will continue to seek to measure our impact and effectiveness in maintaining clean markets by tools such as the market cleanliness statistics that we published in March.

Financial Services and Markets Tribunal

21. Last year the Financial Services and Markets Tribunal heard eight references from firms or individuals that referred matters arising from a Decision Notice. The Tribunal found in favour of the applicant in three of the eight Tribunal decisions. As long as the enforcement and referral process is working properly, we can expect Tribunal cases where we do not succeed in upholding our original decision. We have appealed two of those decisions made in favour of the applicant to the Court of Appeal because we believe the Tribunal erred on points of law in those cases. This is the first time we have appealed decisions of the Tribunal and it will be some time before the outcome of those appeals is known. Unsuccessful outcomes will not therefore deter us from taking on difficult cases, nor will they alter our resolve to pursue appropriate cases.
22. You can find a breakdown of the number and type of referrals during 2007/08 on page 9.

International work and policy

23. A significant proportion of our time is spent responding to international requests for assistance, and last year saw an almost 50% increase once again on the number of requests made the previous year. We expect this trend to continue. We also made an increasing number of requests for help ourselves, both for regulatory investigations and in the form of Mutual Legal Assistance requests for investigations being conducted on a

criminal footing. Mutual assistance is sought to locate witnesses and subjects of investigation, to use the powers of overseas regulators to obtain documentation or information located overseas, and to conduct interviews with individuals based overseas. Constructive and effective relationships with our counterparts will continue to be vital to our ability to deliver case outcomes and meet our international obligations. Towards this goal, we play an active role within the International Organisation of Securities Commissions and at the Committee of European Securities Regulators to promote information sharing and cooperation between the FSA and overseas regulators.

24. In July 2007, following a piece of work to simplify our Handbook of rules and guidance, we published a new Enforcement Guide (EG) and our new Decision Procedure and Penalties Manual (DEPP). These came into force on 28 August 2007. Our objectives in replacing the Enforcement and Decision Making Manuals were to streamline and simplify what we say about FSA enforcement and decision making by making this material shorter and more focused; and to enhance the value and relevance to our stakeholders by updating it where appropriate. The text of EG includes an explanation of our increased focus on principles-based regulation and the relevance of FSA guidance and supporting materials when we take enforcement action. It also makes clear that we will take decisions made using the executive settlement process into account in any subsequent case where the same or similar issues are raised, as these have equivalent precedent value to cases where decisions are reached following consideration by the RDC or the Tribunal.
25. When we published DEPP and EG, we made a public commitment to review these materials at least annually and to consult on any changes we made to EG, even though EG is not subject to formal consultation requirements. We published a consultation paper in May 2008 proposing some changes to DEPP and EG that meets these commitments. Amongst the changes we have proposed are the introduction of a leniency factor for suspects who come forward with information and assistance in multi-party market misconduct cases; increased use of our power to vary a firm's permission on our own initiative; and a new chapter in EG which sets out enforcement powers that we have under legislation other than FSMA. This consultation will close on 29 August 2008 with feedback and final DEPP and EG amendments to be published in December 2008.

Summary of feedback meetings

26. At the conclusion of an enforcement case, we usually give those who have been investigated the opportunity to comment on their experience of our enforcement procedures and subsequent decision-making. These meetings focus on the handling of the practical and procedural aspects of the case by the FSA staff and decision makers, not on the outcome of the case. The opportunity to give feedback has usually been available in all disciplinary cases which have closed since 10 October 2005, including those which settled or discontinued. But it is not available for investigations – such as unauthorised activity investigations – where the only RDC involvement is to approve the start of civil or criminal proceedings.
27. During this financial year, we received feedback from 18 firms and individuals. Around half of firms and individuals take us up on the offer of providing feedback and we have carefully considered the key themes raised and we are working hard to ensure that we take forward the lessons learned. The key issues raised include the following:
- We received favourable comments about the professionalism of our staff through the enforcement process.
 - The scoping meetings at the start of cases have been found to be helpful.
 - Some felt our investigation took too long.
 - Comments on our level of communication were evenly split: although we had some positive comments about our communications about the progress of a case, we continued to receive some negative comments about the level of communication in other areas.
28. The issues raised were fed back to individual case teams and are often incorporated into wider good-practice messages communicated across the FSA. The Enforcement Division has been through a substantial restructure during the year and we expect our new operating model to result in more efficient investigations. On our level of communication, we note that this is still an issue for some respondents. Firms and individuals can expect that during some periods of investigation – for example during evidential review – contact will be reduced. However, we continue to work on improving the communication we give when this is possible to do.

Executive settlement

29. Since October 2005, we have been able to conclude settled cases on the basis of an agreement by two FSA directors.
30. Between 1 April 2007 and 31 March 2008, 36 cases were concluded by executive settlement. During that period, 15 cases were referred to the RDC. Approximately three-quarters of cases with a disciplinary outcome settled before reaching the RDC and almost all cases involving a financial penalty settled during the first settlement stage, receiving the full 30% discount on the financial penalty. Only one case did not receive the discount and this was because in that case, investigators were appointed prior to October 2005 and so it was ineligible to be considered for the discount. The availability of our executive settlement procedure continues to result in fewer cases progressing to the RDC.
31. The key features of the executive settlement procedure are direct involvement of executive management, strict timescales and a financial discount. Executive settlement allows us to secure prompt redress in consumer-related cases, including requiring firms to take steps to remediate, send timely messages to the industry and achieve swift and effective outcomes. This enables us, and the industry, to use resources more efficiently and achieve prompt change in industry behaviour. This is especially important in cases where we are attempting to address a thematic issue. By contrast, contested cases (which may be the more complex and/or multi-party cases) typically have significantly extended timescales. Executive settlement has many benefits but we will only settle for the right regulatory outcome. Also, we recognise the importance and significance of our published outcomes and that we need to demonstrate clarity and consistency.

Conclusions

32. During the year the Enforcement Division has been through a substantial restructure to ensure we have the staff with the skills and experience required to take on the challenges we face in our work. We continued to handle a steady flow of cases during that period, despite a reduced headcount. As a consequence of this programme we believe we are now better equipped to deliver credible deterrence.
33. We expect that most cases will continue to settle via executive settlement allowing the FSA and the subject of investigation to conclude the matter efficiently and effectively. However, we believe that our move to impose higher penalties and the more robust approach in our requirements for firms to undertake customer remediation exercises may result in a greater number of referrals to the RDC and the Tribunal. We are prepared to take a case to the RDC, to the Tribunal and beyond, if we believe that this is necessary to get the outcomes we need to achieve our goal of credible deterrence. We remain committed to ensuring that we continue to operate a process that is, and is seen to be, fair and effective.

Data and analysis

1. Enforcement Statistics from the Annual Report

- Appendix 5 of the 2007/08 Annual Report – Enforcement activity

Enforcement cases opened and closed in 2007/08				
Issue	Open at 01/04/07	Opened during year	Closed during year	Open at 31/03/08
Selling	24	33	14	43
Pensions and endowments	1	0	1	0
Investment management	1	0	1	0
Unauthorised activities	14	4	1	17
Systems & controls	18	49	20	47
Market protection	27	24	19	32
Listing rules	1	0	1	0
Fitness & propriety issues	22	21	17	26
Non-cooperation with FSA	1	1	2	0
Money laundering controls & financial fraud	16	18	13	21
3rd party rights issue	0	1	1	0
TOTALS (excl TCT)	125	151	90	186
Threshold Conditions Team (TCT)¹	89	147	172	64
TCT RMAR cases	54	501	530	25
International requests	67	649	639	77

Notes:

- 1 These are cases against regulated firms that failed to meet FSA minimum standards ('Threshold Conditions'). The TCT RMAR (Retail Mediation Activities Return) cases are shown separately as they are typically very quickly resolved.

- See also the section headed 'Regulatory Decisions Committee' in Appendix 9 of the 2007/08 Annual Report – Statistics for information on the RDC.

The average length of a regulatory enforcement investigation (excluding threshold condition cases) during 2007/08 was 10.6 months.

2. Private Warnings

During 2007/08, we issued in total 15 private warnings. 13 of these were issued by Enforcement.

3. Referrals and Decisions of the Financial Services and Markets Tribunal

The record of referrals and outcomes for 2007/08 is recorded in the table below.

Type of cases	Live	Outcome		
		Tribunal Decision	Dismissed without substantive hearing	Withdrawn
TCT	1	2	0	1
Authorisation	4	1 (in favour of applicant)	0	1
Market Abuse	1	0	0	0
Regulatory	3	5 (2 in favour of applicant ²)	1	6
TOTALS	9	8	1	8

This table includes referrals and decisions within the relevant financial year. Some of the cases in which decisions were made were, however, referred in previous years.

2 We have appealed these decisions to the Court of Appeal.

4. Total number of cases

Between 1 April 2007 – 31 March 2008, 25 cases were referred to the Tribunal. This is higher than 2006/07 when 12 cases were referred.

5. Types of cases

- TCT: these cases involve firms that have failed to satisfy threshold conditions.
- Authorisation: these cases relate to refusals to authorise firms or to approve individuals.
- Market abuse: these cases relate to allegations of market abuse against individuals.
- Regulatory: these are regulatory disciplinary cases against authorised firms or individuals.

The Financial Services Authority
25 The North Colonnade Canary Wharf London E14 5HS
Telephone: +44 (0)20 7676 1000 Fax: +44 (0)20 7676 1099
Website: www.fsa.gov.uk

Registered as a Limited Company in England and Wales No. 1920623. Registered Office as above.