

---

# Enforcement Annual Performance Account

2013/14





# Contents

Foreword by Tracey McDermott	3
<b>1.</b> Retail conduct	5
<b>2.</b> Threshold conditions cases	6
<b>3.</b> Senior management and Significant Influence Functions (SIFs)	7
<b>4.</b> Integrity and lack of truthfulness	7
<b>5.</b> Wholesale conduct	8
<b>6.</b> Criminal action and market abuse	9
<b>7.</b> Transaction reporting	10
<b>8.</b> CASS	10
<b>9.</b> Financial crime	10
<b>10.</b> International cooperation	11
<b>11.</b> Unauthorised business work	12
<b>12.</b> Redress	15
<b>13.</b> Early intervention	15
<b>14.</b> Feedback meetings	16
<b>15.</b> The enforcement process and other enforcement statistics	17
<b>16.</b> Transparency	20
<b>17.</b> Data and analysis	22



## Foreword by Tracey McDermott

This Enforcement Annual Performance Account (EAPA) looks at the fairness and effectiveness of the Financial Conduct Authority's (FCA) Enforcement function over the first year of the FCA. We publish this report at the same time as our *Annual Report*.

Our focus this year, as previously, has been on those cases where we think we can make a real difference to consumers and markets, using enforcement strategically as a tool to help change behaviour in the financial services industry. Enforcement work often spans multiple years and the outcomes covered in this report reflect the continuation by the FCA of the credible deterrence strategy realised under our predecessor, the Financial Services Authority (FSA).

There are, however, also important differences in our approach, we are seeking to identify emerging problems and risks at an earlier stage and taking appropriate steps to manage and avert them. As a part of this, Enforcement has formally assisted in 21 early intervention projects across a range of sectors. We are also looking closely at the root causes of behaviour that leads to poor consumer outcomes and/or market conduct.

To promote early transparency of the FCA's enforcement proceedings, we have the power to publicly announce that we have issued a Warning Notice against a firm or individual where we are proposing to censure, fine or suspend a firm or individual. We published our policy on the use of this power in October 2013 and have published seven warning notice statements in relation to individuals.

The FCA published 56<sup>1</sup> Final Notices in 2013/14. We imposed £425m in financial penalties during the year. For the second year running these included some of the highest fines we have levied to date. This is in part due to more cases being assessed under the revised penalties policy. In particular, we also saw significant sanctions imposed for failures in the retail markets including two relating to mis-selling and inappropriate incentives schemes for staff. Redress directly related to Retail Enforcement cases totalled more than £45m.

We continue to maintain a good record in the Appellate Courts and the Upper Tribunal (Tax and Chancery Chamber) (Tribunal) having successfully defended three contested cases in the Tribunal and been successful in three substantive appeals in the Court of Appeal. On the criminal side we concluded four trials, resulting in four criminal convictions for unauthorised business. We have also secured one criminal conviction for market abuse. As of June 2014, we have four criminal cases pending with a total of 17 defendants awaiting trial.

There has been well publicised delay to some of these cases as a result of the dispute between the Government and the Criminal Bar in relation to Very High Cost Cases (VHCC). We are pleased this issue has now been resolved.

We took action against more firms than individuals. In 2013/14 we took action against 28 individuals, imposing over £3.6m in fines, 26 prohibitions, and obtaining five criminal convictions. We have held 16 Significant Influence Functions (SIFs) holders to account imposing penalties and prohibitions.

<sup>1</sup> This figure includes a Decision Notice imposed in respect of a civil breach of the Money Laundering Regulations 2007, under which there is no requirement to issue a Final Notice for the FCA. We have not included Final Notices which have been issued for Threshold Condition Cases.

The FCA took over consumer credit regulation from the Office of Fair Trading on 1 April 2014. We have achieved a number of significant outcomes already which we will report on in the EAPA 2014/15. From April 2015 we will become a concurrent regulator, which means that we will be able to enforce competition law in financial services concurrently with the Competition and Markets Authority, enabling us through our regulatory tools to promote competition and make markets work well. HMT announced on 6 May 2014 that it was conducting a review into fairness, transparency, speed and efficiency of the institutional arrangements and processes for enforcement decision making at the FCA. This is expected to report in the Autumn and we will consider any recommendations made for improvements to our processes.

This document includes an overview of the enforcement action we have taken and statistical and background information about enforcement investigations and their outcomes. We also assess the fairness and effectiveness of the enforcement process, based partly on feedback from the firms and practitioners that have been involved in the enforcement process.

We welcome comments and feedback on this report.

**July 2014**

# Enforcement Annual Performance Account 2013/14

## Retail conduct

---

1. We have a statutory objective to secure an appropriate degree of protection for consumers. Enforcement action has played an important role in both disciplining firms and securing consumer redress where we found that firms have acted unfairly. Our Retail Enforcement teams have concluded cases in the 2013/14 year that have resulted in fines of over £122.4m and the banning of 16 individuals from the financial sector. Five public censures were published for misconduct in relation to retail issues, five firms had their Part IV Permissions cancelled, and a further seven individuals had their approval to act as a regulated person withdrawn. Some examples of our cases are summarised below. If we are not paid our fines we take steps to recover them. In 2013/14 we concluded bankruptcy proceedings against five individuals.

## Financial incentives

- One of our strategic priorities in 2013/14 was addressing forward-looking risks such as financial incentives. We fined Lloyds Banking Group £28m, one of our largest retail penalties, for having inappropriate incentive schemes in December 2013. These schemes put sales staff under considerable pressure to meet targets, at the expense of consumers. The action we took led to redress being paid to consumers who received inappropriate sales advice and resulted in changes that ensure better treatment of consumers in the future. We increased the fine by 10 per cent because the previous regulator, the FSA, had warned about the use of poorly managed incentive schemes over a number of years.
- We have since published our report summarising the findings of follow-up thematic work into financial incentives in March 2014. Financial incentives will remain on our agenda in 2014/15.

## Low-cost insurance

- We continue to highlight concerns about the way in which low cost insurance is sold to customers. In February 2014, we fined HomeServe Membership Limited (HomeServe) £30.6m for mis-selling its insurance policies, failing to investigate complaints adequately, and failing to ensure that its Board gave sufficient attention to compliance issues and took adequate steps to address them. This is the largest retail penalty to date. HomeServe is also expected to pay a total of £16.8m to affected customers in redress.
- In July 2013, we also fined Policy Administration Services (PAS) Limited £2.8m and Swinton Group (Swinton) Limited £7.3m for poor complaints handling and mis-selling. PAS failed to investigate and address the root-cause of complaints about the sale of insurance policies, such as mis-selling. Swinton's aggressive sales strategy meant that it failed to treat customers fairly in its telephone sales of monthly add-on insurance policies. Swinton has set aside £11.2m to repay those customers who were mis-sold policies.

### Retail investment advice

- It is of fundamental importance that firms providing investment services to retail customers take reasonable care to ensure that they give suitable advice. Consequently, we fined JP Morgan International Bank £3m, Santander UK Plc £12.3m, Sesame Limited £6m and Axa Wealth Services Limited £1.8m for failings surrounding the provision of suitable investment advice.

### Action against smaller firms

- We continue to focus on the conduct of smaller firms. In 2013/14 we banned 15 individuals and fined nine individuals £2.2m in the C4 firm category<sup>2</sup> including imposing the highest ever fine on a retail sole trader, Gurpreet Chadda of £945.2k, and banning him for defrauding vulnerable sale and rent back customers. We also fined Ewan King £19.9k and banned him for fabricating Statements of Professional Standing as required by the Retail Distribution Review (RDR).
  - The Tribunal upheld our decision to fine Westwood Independent Financial Planners (Westwood) £100,000 for suitability failings in relation to geared traded endowment policies (GTEPs). Westwood is the latest firm to be disciplined as a result of the FSA's thematic review into GTEPs.
  - Common themes in Enforcement action taken against C4 firms were failings in relation to the advice given to occupational pension schemes, mortgage fraud and mis-selling.
2. Some of the cases Retail Enforcement teams have been working on throughout 2013/14 are still ongoing. However, since 2010 the FSA was able to publish Decision Notices regarding firms or individuals where they have referred the FSA's findings to the Tribunal. This allowed the FSA – and allows us – to publish findings on cases where we have completed the investigation and which have been through the Regulatory Decisions Committee (RDC) process. In 2013/14, Retail Enforcement teams published seven Decision Notices, four of which related to individuals.

### Threshold conditions cases

3. We have a team dedicated solely to taking actions against firms that do not meet the basic standards needed to carry out the activities for which they have obtained authorisation. During this year, 28 firms have had their permissions to conduct regulated business cancelled, and a further 237 firms have taken remedial steps to address breaches of the threshold conditions.
4. The team has also taken action against payments services firms, cancelling the registrations of 32 firms and securing remedial steps from a further 48 firms for basic failings.
5. The team also acted for the first time to cancel the registration of a firm registered under the Third Money Laundering Directive. Recurring breaches related to lack of adequate resources (including PII and financial resources) and failures to comply with Ombudsman awards, non-cooperation with us, non-submission of regulatory returns and non-payment of our fees.
6. The number of referrals of firms that failed to submit regulatory returns appears to have plateaued after several years of improved compliance in this area. In the coming year we will look at ways of further driving down non-compliance in this area.

<sup>2</sup> Retail and wholesale firms with a small number of customers have been assigned the 'C4' conduct supervision category. This category in 2013/14 covered around 25,000 firms.



7. We have also seen a 50% increase (from 123 to 184) in referrals of firms who do not meet the basic standards in other ways, triggered by a number of firms failing to comply with new regulatory requirements introduced by the RDR.
8. In 2013/14, the team also focused on firms 'bumping along the bottom' – i.e. firms that repeatedly failed to meet basic regulatory obligations. We took action against five of these firms: two had their permissions varied to stop them conducting regulated business, one firm's permission was cancelled, one firm applied to cancel its permission, and one firm committed to a formal agreement to comply promptly in future.

### Senior management and Significant Influence Functions (SIFs)

9. Seeking to ensure that senior management are held to account is a key priority for the FCA. It requires significant resource to pursue enforcement cases against individuals which can take a number of years to conclude. We continue to improve and evolve our approach to these challenging cases based on our experience in recent years. In 2013/14, we took action against 19 individuals who held SIF functions, imposing £1.2m in fines and 16 prohibitions.
  - In February 2014, we banned Arnold Eber, the former Chief Executive Officer of CIB Partners Limited (CIB), from performing any function in relation to any regulated activity in the financial services industry. Between September 2007 and mid-2009, CIB was engaged as an adviser to SLS Capital S.A. (SLS), a Luxembourg-based special purpose vehicle. SLS issued bonds underpinning investments which were sold to investors in the UK. He became aware, in 2007, that without continuous cash injections, there was a high risk that the SLS portfolio would suffer from severe liquidity issues within a year and that, in 2008, SLS had sold off most of the asset portfolio that underpinned the SLS bonds. Despite this knowledge, he issued a number of false and misleading documents about the strength of the SLS portfolio. He also failed to inform us of these concerns.
  - In October 2013, we fined Mark Bentley-Leek and Mustafa Dervish, who were both directors of Bentley Leek Financial Management a total of £885,000 and banned them from holding any position at a financial services firm. They were found to have lacked integrity and to have misled clients as investments they recommended were affected by the economic downturn. Between 5 March 2004 and 23 November 2010 they both advised over 300 customers to invest over £35m in a series of property developments in the UK and abroad. Despite the riskiness of the investments they were selling, the pair told some of their clients that their money and a 6%-18% return on the investment was guaranteed.

### Integrity and lack of truthfulness

10. We expect approved persons to act with honesty and integrity at all times. Where approved persons fail to meet this standard we have taken action to ban them. On 24 February 2014 we prohibited Anthony Verrier (a former senior executive at BGC Brokers LP (BGC)) based on the findings of the High Court<sup>3</sup> that Mr Verrier participated in an unlawful conspiracy. The High Court found that:

'...in his evidence Mr Verrier stuck to the truth where he was able to, but departed from it with equanimity and adroitness where the truth was inconvenient.'

<sup>3</sup> Tullett Prebon plc (and two others) v BGC Brokers LP (and 13 others including Mr Verrier) [2010] EWHC 484 (QB)

11. On 14 February 2014 we prohibited David Hobbs (a former derivatives trader) following a decision by the Tribunal<sup>4</sup> that Mr Hobbs, by putting forward a false defence during our market abuse investigation and in maintaining that defence in evidence before the Tribunal, had exhibited such a lack of integrity that he was not a fit and proper person.
12. Both individuals were prohibited from performing any regulated activity due to a lack of integrity and truthfulness in dealings with, in the case of Mr Verrier, the High Court, and in the case of Mr Hobbs, both the Tribunal and the FCA.

### Wholesale conduct

13. Enforcement is an important tool in seeking to protect and enhance the integrity of the UK financial system. To ensure that the relevant markets work well, we focus on delivering good market conduct. In 2013/14, we have reinforced our expectations of wholesale firms and markets by taking decisive action where firms or individuals fail to manage risk effectively or observe proper standards of market conduct.
14. We are increasing our focus on misconduct in the wholesale market which places customers at a disadvantage. In particular, we fined State Street UK £22.8m in January 2014 for deliberately overcharging six clients a total of \$20.2m by its UK Transition Management business. We also fined Forex Capital Markets Ltd and FXCM Securities Ltd (FXCM UK) £4m in February 2014 for allowing the US based FXCM Group to withhold profits worth \$9.9m that should have been passed on to FXCM UK's clients.

### Failure to be open and honest with the FCA

15. We have increased the size of our fines where firms have failed to be open and honest with us. FXCM UK also failed to tell us that the US authorities were investigating another part of the FXCM Group for the same misconduct. We fined FXCM UK £800k for failing to be open and cooperative with us.
16. In September 2013, we fined JP Morgan Chase Bank N.A. (JP Morgan) £137.6m for \$6.2bn trading losses sustained by its Chief Investment Office (CIO) in 2012 caused by a high-risk trading strategy, weak management of that trading and an inadequate response to important information which should have notified the firm of the huge risks present in the CIO's Synthetic Credit Portfolio (SCP). During the first half of 2012, JP Morgan failed to be open and cooperative with us in that it concealed the extent of the losses as well as numerous serious and significant issues regarding the situation in the SCP. £60.3m of JP Morgan's fine related to its failure to be open and honest with the FCA.

### Benchmarks

17. Failures in wholesale conduct can undermine the integrity of the wholesale market, cause systemic harm and can have a serious impact on the wider confidence in the UK financial system. We continue to take Enforcement action in relation to benchmark misconduct. We fined two firms for misconduct relating to LIBOR in 2013/14. ICAP Europe Limited (ICAP) was fined £14m in September 2013 and is the first broking firm to be fined for failings relating to the benchmark. Coöperatieve Centrale Raiffeisen-Boerenleenbank B.A. (Rabobank) was fined £105m in October 2013.

<sup>4</sup> [www.tribunals.gov.uk/financeandtax/Documents/decisions/David-John-Hobbs-v-FCA.pdf](http://www.tribunals.gov.uk/financeandtax/Documents/decisions/David-John-Hobbs-v-FCA.pdf)

- 18.** The significance of LIBOR-related misconduct is well known and the lessons from these cases have wide applicability across other wholesale activities and benchmarks. We confirmed in October 2013 that we are conducting investigations alongside several other agencies into a number of firms relating to trading on the foreign exchange (FX) market.
- 19.** In conducting both LIBOR and FX investigations we have continued to work closely with other agencies and regulators in the UK and overseas.

### **Criminal action and market abuse**

- 20.** In 2013/14 we secured one criminal conviction for market abuse. We have secured four restraint orders under the Proceeds of Crime Act 2002 (POCA) to protect assets valued at over £806k. We also published a number of market abuse outcomes (discussed below).

#### **Recovery of proceeds**

- 21.** We obtained four confiscation orders against individuals with a value over £2.6m. We participate in the Asset Recovery Incentivisation Scheme, which means that of the money confiscated, half goes to the Home Office while the other half is divided between the investigating, prosecuting and enforcement agencies. During the year we received 37.5% of the confiscation proceeds, as we act as both the investigator and prosecutor in insider dealing cases. This money is used to drive up performance on asset recovery and to fund initiatives to fight financial crime. In 2013/14, we received around £700,000 through the scheme, which was used to purchase forensic and investigative equipment, contribute to ongoing investigations, support secondments to other regulators and provide software and staff training. In addition, confiscated money was used to support FCA educational and awareness work to prevent UK consumers from falling victim to financial crime.

#### **Non-criminal market abuse outcomes**

- 22.** We have continued to bring non-criminal action for regulatory market abuse, including imposing fines of £1.37m on four individuals and four prohibitions for market abuse and market manipulation.
- 23.** These cases included action against a high frequency trader and action for manipulation of the gilt market. In July 2013, we fined US based high frequency trader, Michael Coscia, US \$903,176 (£597.9K) for deliberate manipulation of commodities markets. In March 2014, we banned and fined Mark Stevenson, a bond trader and an approved person, £662.7k for attempting to manipulate the gilt price during quantitative easing operations.
- 24.** In December 2013, the Court of Appeal handed down its judgment on the appeal by the Canadian company formerly known as Swift Trade Inc (Swift Trade) and its former director Peter Beck (President and CEO of Swift Trade), who had appealed against a decision of the Tribunal issued in January 2013 finding that Swift Trade had engaged in deliberate market abuse. The Court of Appeal agreed with the Tribunal and the FSA's decision that Swift Trade had engaged in market abuse. We fined Swift Trade £8m for market abuse. Between 1 January 2007 and 4 January 2008, Swift Trade engaged in a systematic and deliberate form of manipulative trading known as 'layering' in relation to shares traded on the London Stock Exchange. Swift Trade is an example of us aggressively pursuing those who abuse UK markets and developing more sophisticated practices for investigating market abuse.

25. The new Market Abuse Regulation (Regulation No 596/2014) and Market Abuse Directive (Directive 2014/57/EU) will further strengthen the Market Abuse regime and bring more financial products within our regulatory scope and extend transparency and risk management to the derivatives market.

### Transaction reporting

---

26. Accurate and complete transaction reporting is essential to enable the FCA to meet its operational objective of protecting and enhancing the integrity of the UK financial system. We fined the Royal Bank of Scotland plc and the Royal Bank of Scotland N.V. £8m for failing to report accurately approximately 44.8m transactions, and for failing entirely to report approximately 804,000 transactions, that it executed.
27. We have provided a significant quantity of guidance to firms on how to report and check these reports and we encourage firms to make use of this guidance.

### CASS

---

28. Protecting client assets and money is fundamental to consumers' rights and the trust they place with firms that are often acting as their agents, fiduciaries and/or counterparties. It is at the heart of ensuring a well-functioning and robust market place. Firms that hold client assets should ensure they continue to strengthen their management, oversight and controls in this area.
29. In June 2013, we fined Xcap Securities PLC £120,900 for failing to adequately protect client money and client assets and in November 2013 we fined SEI Investments (Europe) Limited £900,200 for failings in relation to its protection of client money.
30. We also fined Aberdeen Asset Managers Limited and Aberdeen Fund Management Limited £7.2m in July 2013 for failing to identify, and therefore properly protect, client money placed in Money Market Deposits (MMDs) with third party banks. The average daily balance in MMDs affected by this failure was £685m.

### Financial crime

---

31. One of our objectives is to protect and enhance the integrity of the UK financial system. Firms must ensure they have effective systems and controls in place to ensure their business cannot be used for the purposes of financial crime. Firms play a key role in the UK's fight against financial crime and we expect them to manage these risks extremely diligently to prevent the laundering of criminal proceeds.
32. In January 2014, we fined Standard Bank PLC £7.6m for failure to comply with Regulation 20(1) of the Money Laundering Regulations 2007 as it failed to take reasonable care to ensure that all aspects of its anti-money laundering (AML) policies were applied appropriately and consistently to its corporate customers connected to politically exposed persons (PEPs). This is the first AML case we, or our predecessor the FSA, have brought that focused on commercial banking activity. In April 2013, we fined EFG Private Bank Ltd £4.2m and in August 2013 Guaranty Trust Bank (UK) Ltd £525,000 for serious failings relating to their AML policies and procedures for high risk customers.

- 33.** We also fined JLT Specialty Limited £1.8m in December 2013 and Besso Limited £315,000 in March 2014 for failing to take reasonable care to establish and maintain effective systems and controls for countering the risks of bribery and corruption in relation to third parties.
- 34.** The FCA will continue to focus on potential financial crime risks, in line with our objectives to protect and enhance the integrity of the UK financial system and will take intensive and intrusive action where serious issues are identified.

### International cooperation

- 35.** Over the last few years we have seen a steady increase in the number and complexity of international requests for assistance in enforcement-related matters, and we are expecting this trend to continue. In 2013/14, we received 1022 formal requests for assistance from our overseas counterparts in relation to their investigations. Increasingly these require more intensive assistance, e.g. through interviews as well as the more routine gathering of information and documents. We also dealt with many more requests through the criminal mutual legal assistance route.
- 36.** We have also asked our counterparts overseas for assistance. This commonly involves locating and interviewing subjects of investigations, or possible witnesses, who may be residing outside the UK, and using the powers of overseas regulators to obtain documentation or information located abroad. Effective relationships with our overseas counterparts are vital in enabling us to deliver case outcomes and to meet our international obligations. Those day-to-day working relationships are enhanced through our participation in global committees such as the International Organisation of Securities Commissions (IOSCO) and in the European Supervisory Authorities, notably the European Securities and Markets Agency (ESMA).
- 37.** We continue to work very closely with our international regulatory colleagues on both criminal and regulatory cases. Examples this year included working with the US Department of Justice, the US Commodities and Futures Trading Commission (CFTC), De Nederlandsche Bank, the Openbaar Ministerie, the Japanese Financial Services Authority and other international regulators to bring coordinated enforcement action against Rabobank and ICAP Europe Limited for failings in relation to their LIBOR submissions. We also worked very closely with the U.S. Securities and Exchange Commission, U.S. Attorney's Office for the Southern District of New York, the Federal Bureau of Investigation, the Office of the Comptroller of the Currency, the New York Federal Reserve Bank and the CFTC on the cross-border investigation into JP Morgan in relation to serious failings related to the \$6.2bn trading losses sustained in 2012. We worked with the CFTC on the investigation into Michael Coscia, the US based trader, who used an algorithmic programme of his own design to instigate an abusive trading strategy known as 'layering'.
- 38.** We have seen a steady increase in the number of cases we conduct in parallel with overseas regulatory authorities over the last few years as misconduct across borders becomes increasingly common. We have worked with the international regulatory community to build on existing relationships and expertise to work together to tackle misconduct that often crosses borders. For example, our FX investigation (publicly announced on 16 October 2013) has prompted unprecedented global cooperation. The lessons learned, and relationships built, during the LIBOR investigations have helped to ensure the process is as efficient and effective as possible. In 2013/14, we have received 52 requests for assistance in relation to FX alone and we anticipate that trend increasing this year as our investigation progresses.

- 39.** We play an active role in IOSCO, in particular, in its focus on improving global standards of cooperation by encouraging regulators from around the world to become signatories to the IOSCO Multilateral Memorandum of Understanding (MMoU) concerning Consultation, Cooperation and Exchange of Information. One of the Heads of Department (HoD) in the Enforcement and Financial Crime Division (EFCD) currently chairs IOSCO's Committee on Enforcement and Cooperation, whose workstreams include leading important dialogue with 'uncooperative jurisdictions' to encourage them to raise their standards and become IOSCO members and signatories to the MMoU, which is recognised as setting the international benchmark for cooperation and information exchange in this field. As of June 2014, 103 IOSCO members had become full signatories of the IOSCO MMoU. We also co-chair the Screening Group, which assesses applications to sign the MMoU. Both committees are heading various important strategic projects that focus on raising standards of enforcement cooperation.
- 40.** We also participate actively in ESMA in its Market Integrity Standing Committee, which undertakes ESMA's work on issues relating to market surveillance, enforcement, cooperation and the exchange of information in market abuse investigations. The Standing Committee provides a forum for the FCA to share its experiences in enforcement activities. It also works to ensure timely and efficient cooperation in cross-border cases and facilitates information-sharing under the ESMA MMoU. The Standing Committee has responsibility for providing advice to the European Commission, and technical standards and guidelines and recommendations on issues relating to the integrity of the markets (e.g. the Market Abuse Directive and short-selling). EFCD is heavily involved in all of these workstreams through the participation of an Enforcement HoD in the enforcement discussions at the Standing Committee.

### Unauthorised business work

- 41.** We continued to take action against unauthorised investment businesses, including share frauds, landbanking and 'get rich quick' investment scams in 2013/14. We receive over 6,000 reports each year of potential unauthorised activity in the UK. We identify the most serious matters posing the greatest risk to consumers and seek to stop them through a combination of methods including bringing legal proceedings against the perpetrators, disruption tactics such as taking down websites, and publishing consumer warnings.
- 42.** We have taken four civil actions this year and four actions in the criminal courts as well as securing four restraint orders under the POCA to protect assets valued at over £750,000 (the FCA currently has assets valued at approximately £3.99m under restraint in relation to unauthorised business cases). Additionally, we have published consumer warnings on 295 unauthorised firms.
- 43.** Judgment in our favour was given by the High Court which ruled that two investment schemes, promoted by Capital Alternatives<sup>5</sup> and a number of other firms, were collective investment schemes. It was found that the purpose of the Financial Services and Markets Act 2000 (FSMA) was to provide protection for investors in collective investments schemes, where there is either pooling or collective management. This ruling was important to us as an endorsement of the approach that we have taken to unauthorised collective investment schemes because it demonstrated that even where the operators had deliberately tried to structure their scheme to avoid regulation, it was still necessary to look at the substance of the arrangements.

<sup>5</sup> We are reporting on Capital Alternatives as one civil action but the underlying litigation involves 8 firms, 7 individuals and the estate of one deceased individual.

44. Having previously secured a judgment in our favour in the case of Asset Land, an appeal was bought before the Court of Appeal by the respondents David Banner Eve and Asset Land L.I. The appeal was dismissed on all counts. The Court of Appeal upheld the original decision that the arrangements relating to sales of land by Asset Land L.I. were collective investment schemes and as such their operation was in breach of the general prohibition. The Court of Appeal also upheld the interim payment order of over £21m.

### Ben Wilson

Ben Wilson operated SureInvestment which was an unauthorised collective investment scheme and Ponzi scheme. Wilson from 2003 claimed to be running a successful investment business in which he persuaded friends, colleagues and members of the public to invest. Wilson would explain that he used mathematical models to outperform the market, regularly making returns of 5% per month. Only 20% of the total money that investors gave him between 2003 and 2010 was ever traded and when Wilson did trade he invariably lost money. In total, over 300 investors trusted Wilson with £21.8m. When we closed down the scam, £17.54m was owed to investors and it is estimated that £5.39m in total will be recovered.

In October 2010, we acted through the civil courts, obtaining an injunction to freeze assets and restrain the unauthorised activity. When the scale of his dishonesty became clear, we began a criminal investigation. Wilson was arrested and his house and offices were searched in a joint operation with Dorset Police. In 2012, we charged Wilson with seven offences relating to the unauthorised investment scheme he operated. In October and December 2013, Wilson entered guilty pleas for fraud, forgery and operating a collective investment scheme without authorisation.

In February 2014, Wilson was sentenced to seven years imprisonment and a Financial Reporting Order was placed on him for ten years. The Court found Mr Wilson's criminal benefit to be £21,844,775 but made a nominal confiscation order based on his lack of realisable assets.

### Prohibited individuals

45. This year we also devoted more resource to taking action against individuals who have been prohibited by the regulator but attempt to carry on their activities under the radar.
46. We began a criminal prosecution against a prohibited IFA, Gary Hexley, and another former IFA, John Cooper, for giving investment advice without FSA authorisation. They were also charged with dishonestly concealing information about, amongst other things, their lack of authorisation and the suitability of the products that they were advising elderly and in some instances very vulnerable ex-clients to invest in. On 14 November 2013, after a five week trial, Gary Hexley was convicted of 6 counts on the indictment (one count of giving investment advice without authorisation under section 19 of FSMA and five counts of dishonestly concealing material facts from his clients pursuant to section 397 of FSMA) and John Cooper was convicted of two counts (one count of giving investment advice without authorisation and 1 count of dishonestly concealing material facts from clients). Gary Hexley was sentenced to two years' imprisonment and John Cooper nine months.

- 47.** Another banned IFA, Michael Joseph James Lewis, was charged with 13 counts of breaching the general prohibition and 3 counts of Assisting a Fraud by False Representation (contrary to the Serious Crime Act 2007 and the Fraud Act 2006). He pleaded guilty on 14 June 2013 to ten counts of breaching the general prohibition under Section 19 of FSMA and to two counts of supplying/making an article for use in fraud under Section 7 of the Fraud Act 2006 for providing false employment details for two of his clients. On 12 July 2013, he was sentenced to two years in prison for two counts of making/supplying documentation for use in fraud and ten counts of carrying on a mortgage advisory business despite being prohibited from doing so.

#### **Investment fraud**

- 48.** We continue to scan the horizon for emerging trends in investment frauds. We are particularly concerned by the growth of new alternative investment products such as carbon credits and rare earth metals, which fall outside current legislation; we have worked hard to raise consumer awareness about the risks posed by such products. In December 2013, we published a warning about investments involving the man-made material 'graphene'; the latest unregulated commodity being aggressively promoted to consumers by unauthorised brokers.
- 49.** We are also concerned that customers are receiving offers of 'free pension reviews'.<sup>6</sup> These reviews are designed to persuade customers to move money saved in their existing personal or occupational pension to a self-invested personal pension (SIPP) or a small self-administered scheme (SSAS). The pension pot is then typically invested in high risk unregulated investments like overseas property developments, forestry or storage units known as store pods. We are supporting a multi-agency initiative, Campaign Bloom, to combat pension liberation fraud. We assisted law enforcement partners execute warrants on Operation Neem resulting in seven arrests in London, Scotland and Cheshire in May 2013. We are focusing on introducers involved in persuading consumers to transfer out of current pension products in favour of unregulated high risk investment vehicles by way of a SIPP / SSAS. We have appointed investigators in connection with two unauthorised introducers.

#### **Operation Rico**

- 50.** Over a two-year period, with the National Crime Agency (NCA) and Serious Fraud Office (SFO), we played a major part in an unprecedented police operation led by the City of London Police and the NCA to significantly disrupt the activities of many boiler rooms targeting individuals both here and overseas. Working with domestic and international law enforcement partners, Operation Rico led to 115 arrests in Spain, England, the United States and Serbia. The operation also led to the closure of what are believed to be 14 boiler rooms in Spain, two in the UK and one in Serbia.
- 51.** Following on from the success of this joint operation, we will be launching a media awareness campaign in order to educate and warn potential victims of the dangers associated with boiler rooms.
- 52.** The complexity of our work means that there is often overlap with other agencies, and we will maintain a close relationship with the police, the SFO, the NCA and other agencies domestically and internationally to ensure that there is an effective and coordinated approach to combating financial crime.

<sup>6</sup> [www.fca.org.uk/consumers/financial-services-products/pensions/protect](http://www.fca.org.uk/consumers/financial-services-products/pensions/protect)



## Redress

---

- 53.** We have sought to disclose more details about redress where this results from an executive settlement in enforcement cases. We have now concluded a number of settlement agreements where firms have agreed to full openness in respect of redress. This has enabled us to disclose more details about redress in our Final Notices.
- 54.** In 2013/14, redress directly related to Retail Enforcement cases totalled more than £45m. In particular, we fined Clydesdale Bank (Clydesdale) £8.9m for failing to inform its customers clearly of their rights after the bank miscalculated the repayments on over 42,500 mortgages. Clydesdale agreed to undertake an appropriate redress exercise details of which are included in the Final Notice.

## Early intervention

---

- 55.** On a day-to-day basis, FCA supervisors take action to mitigate ongoing risks to consumers and markets at the firms we regulate. There are some cases where supervisors benefit from support from the FCA's Enforcement and Financial Crime Division, for example because the firm resists the steps the supervisors want the firm to take.
- 56.** In the financial year 2013/14, our Supervision and Enforcement Divisions worked together to intervene early to tackle ongoing risks to customers and markets in 21 cases. For Enforcement and Financial Crime, these 'early interventions' mean engaging far earlier than we normally would in the course of an ordinary, disciplinary investigation and working closely with FCA supervisors. Together we agree the appropriate response to the issues, and while this might involve formal disciplinary action, in the interests of getting to a good consumer outcome quickly, we often reach a voluntary agreement with the firm without conducting a full investigation or using our formal statutory powers of investigation or discipline.
- 57.** The fact that in many cases we have not taken formal action means that we cannot always publicise the intervention or, at least, we cannot disclose the names of the firms. However, we aim to be as transparent as we can so that firms and consumers know what we have been doing, so that the firms know what behaviours are unacceptable, and so that consumers have the information they need to make the right decisions.
- 58.** The results of these interventions vary from redress exercises to systems and controls changes in wholesale and retail firms. In particular, in the year 2013/14, firms responding to our concerns have agreed to change their approach to complaints handling, exited certain product markets, agreed not to publish or broadcast particular advertisements and even cancelled their authorisation. Examples of the types of action we have taken:
- Four of these early interventions involved anti-money laundering at banks. One of these concerned very serious deficiencies in a bank's systems and controls to prevent money laundering, and we obtained a voluntary undertaking that the bank would not take on any new clients until we were satisfied that those issues were resolved.
  - In September 2013, we became concerned about the provision of professional indemnity insurance for 500 professional services firms, and we secured the agreement of three firms to vary their permissions to ensure that clients were advised of the concerns, and premiums received from clients were appropriately segregated and safeguarded.

- Formally varying a firm's regulatory permissions.
- 59.** Where we take action that results in us formally varying a firm's regulatory permissions, or imposing a formal requirement on a firm, details are published on the Financial Services Register which is a public record of all the firms, individuals and other bodies that we regulate.
- 60.** The early intervention steps which Enforcement and Supervision jointly took in the financial year 2013/14 resulted in eight such variations/requirements, against the following firms:
- AccessBI Limited, FRN 457654
  - Bar Professions Ltd, FRN 480860
  - Coverall Worldwide Limited, FRN 307681
  - Millburn Insurance Company Limited, FRN 202177
  - MoneySupermarket.com Financial Group Limited, FRN 303190
  - Union Investment Management Limited, FRN 178723
  - Woodside Corporate Services Limited, FRN 467652 and
  - YouTrade Capital Markets Limited, FRN 548033

### Feedback meetings

---

- 61.** At the conclusion of a disciplinary enforcement case, we give those who have been investigated the opportunity to comment on the practical and procedural aspects of our enforcement process, and the impact of enforcement actions more generally. These feedback meetings focus on the handling of the case by FCA staff and decision makers, not on the substantive facts or outcome of the investigation.
- 62.** The opportunity to give feedback on all disciplinary cases that have closed, including those that were settled or discontinued, has been available since 10 October 2005. However, feedback is not available for all investigations, such as unauthorised activity investigations.
- 63.** In 2013/14, we received feedback from 12 firms and individuals. The key themes raised include:
- Before the referral from Supervision to Enforcement, some firms said they would have appreciated more notice about the possibility of an investigation, as well as more information about the specific drivers for the referral. However, firms generally felt that any concerns they had during the pre-referral process were addressed during scoping meetings which made clear the scope of the investigation and the responsibilities of the parties involved.
  - Firms felt that information requirements were sometimes wide in scope and could be more focused. Firms commented that the willingness of FCA staff to hold constructive dialogue and listen to concerns about their ability to produce the information required helped the parties to overcome issues. One firm noted that responding to information requirements was challenging and expensive and suggested it would be helpful if FCA staff thought more about the timing and format of data provision.

- Another common theme raised by firms related to the level of interaction with FCA staff during the investigation. Firms commented that to help conclude investigations swiftly, it would be helpful to receive more regular updates about the issues under consideration, the evidence gathered and the general progress of the case, which would contribute to more constructive dialogue about any further steps to be taken.
  - Firms appreciated being able to review the draft Final Notice and press release ahead of publication during the settlement process. However, firms commented that they did not understand how their financial penalty figure had been reached. Some firms felt that mitigating circumstances had not been considered when finalising this figure.
  - Firms commented that FCA staff were generally professional, experienced and knowledgeable, accommodating to requests, open to alternative arguments and willing to change their views where appropriate. However, feedback suggested that FCA staff did not always fully understand the impact of an investigation on firms and individuals in terms of time, resources or stress. A participant in one feedback meeting commented that FCA staff were sometimes over represented at meetings and this could be intimidating for subjects who were not legally represented.
  - In 2013/14 we specifically asked firms what the impact of Enforcement action was on their business. Firms commented that Enforcement action helped to accelerate remedial programmes started during the referral process and put issues on the radar of senior management. Firms stated that they regularly reviewed FCA communications to identify relevant issues which might affect their business and to inform the approach taken to risk assessment and compliance plans. Firms felt that key messages in Final Notices were now more readable and prominent. Firms suggested that it would be helpful if the FCA could issue more informational communications and make clearer its expectations on regulatory requirements as guidance was sometimes vague and difficult to understand.
- 64.** We have considered the key themes raised and are working to ensure that we take forward the lessons learned.

### The enforcement process and other enforcement statistics

---

#### Private Warnings

- 65.** Not all the cases that we investigate will result in a public outcome. In some cases we may issue a Private Warning and in the past year we did so on 34 occasions (24 were issued by Supervision, two by UK Listing Authority (UKLA), one by Markets and seven by Enforcement). Private Warnings may be issued where we have concerns about the behaviour of a firm or approved person, but where we decide it is not appropriate to bring formal disciplinary action.

#### No further action

- 66.** We also expect to conclude some cases without taking further action. This may be because we determine there is insufficient, or no evidence of wrongdoing, or because in all of the circumstances of the case we do not consider it appropriate and proportionate to take disciplinary action. In the last 2013/14 financial year, 30.2% of cases (excluding threshold conditions cases) closed with no further action being taken.

### Warning Notices

- 67.** Cases may be settled at any stage of the process. If a settlement has not been agreed by the Warning Notice stage, the Regulatory Decisions Committee (RDC) is asked to issue a Warning Notice, which sets out the details of further action.
- 68.** In the vast majority of cases where a Warning Notice is issued, we will go on to issue a Decision Notice. This reflects the controls that we have in place, such as the independent legal review carried out by a lawyer who has not been part of the investigation team and the separate check undertaken by the RDC's own legal advisers as well as the scrutiny applied by the RDC.
- 69.** In every settled case, both a Warning Notice and Decision Notice are issued (more information on cases concluded by Executive Settlement can be found below). In contested disciplinary cases<sup>7</sup>, the figures for 2013/14 show that in all 11 cases where a Warning Notice was issued it was followed by a Decision Notice. In 2013/14, 16 Warning Notices remain undetermined of which 10 Warning Notices are currently stayed pending SFO investigation.
- 70.** In October 2013, we published our Policy Statement (PS 13/9) on publishing information about Warning Notices. Publication of information about Warning Notices creates a more transparent Enforcement process as:
- consumers, firms and market users will be able to understand the types of behaviour that we consider unacceptable at an earlier stage
  - by showing at an earlier stage that we are taking action, confidence in the regulatory system should be enhanced and
  - there will be more openness in respect of the Enforcement process, which will generally be in the public interest
- 71.** We have now published seven statements about Warning Notices in relation to interest rate benchmarks.

### Tribunal statistics

- 72.** Once a Decision Notice has been issued by the RDC, the subject of the Notice may choose either to accept the outcome, in which case a Final Notice will be issued, or refer it to the Tribunal. The Tribunal is independent of the FCA and will consider the case afresh.
- 73.** In 2013/14, four Tribunal Decisions were issued – all in favour of the FCA. In particular, the Tribunal upheld our decision to ban Andrew Jeffery, director of Jeffery Flanders (Consulting) Limited, and fine him £150,000, one of the largest fines imposed on a broker for insurance fraud. A further seven references were withdrawn by the applicant.

<sup>7</sup> For the purpose of these figures we have only included disciplinary cases (e.g. breaches of FCA rules and the imposition of prohibitions); this number does not include contested Warning Notices for which an outcome has yet to be determined by the RDC. We have not included cases taken by EFCD which relate to the cancellation of an authorisation or threshold conditions cases.

Types of cases/references	Live	Outcome		
		Tribunal Decision	Dismissed without substantive hearing	Withdrawn
TCT	0	0	0	0
Authorisation	0	0	0	0
Market Abuse	1	0	0	1
Regulatory	20	4	0	6
<b>TOTALS</b>	<b>21</b>	<b>4</b>	<b>0</b>	<b>7</b>

#### Types of cases/references

- a. TCT: these cases involve regulated firms that fail to meet the FCA's minimum standards i.e. Threshold Conditions.
- b. Authorisation: these cases relate to refusals to authorise firms or to approve individuals.
- c. Market abuse: these cases relate to allegations of market abuse against individuals.
- d. Regulatory: these are regulatory disciplinary cases against authorised firms or individuals, including referrals relating to prohibition orders of non-approved persons.

#### Executive Settlement

74. The settlement policy enables us to conclude cases by settling on the basis of an agreement by two settlement decision makers (SDM), one of whom may be Head of Department level, with the other settlement decision maker to be of at least Director level. In practice, the SDMs are usually both directors. The key features of the executive settlement procedure are the direct involvement of our executive management, strict timescales and a financial discount.
75. Executive settlement allows us to secure prompt redress in consumer-related cases, send timely messages to the industry, and achieve swift and effective outcomes. This enables us 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 more complex and/or multi-party cases) typically have significantly extended timescales. Executive settlement has many benefits, but we will only settle if we are satisfied that this delivers the right regulatory outcome. We recognise the importance and significance of our published outcomes and the need to demonstrate clarity and consistency. We therefore meet regularly with the RDC (which has no involvement in settled cases) to discuss the reasons for our decisions.
76. In 2013/14, 106 cases were closed (excluding TCT cases), as set out in the table in Appendix 2 of the 2013/14 Annual Report, and 50 of these closed cases were concluded by executive settlement. Cases may involve multiple parties and both firms and individuals.

## Transparency

77. To support the FCA's commitment to being a transparent regulator, we provide details around the length and cost of our Enforcement activities.

### Regulatory and civil case length

78. Contested cases take a significantly longer time to resolve than settled cases. We have included average case lengths closed in 2013/14 below. The periods below reflect the average length of time a case takes from the date the case was referred to enforcement to the date of closure whether it was settled, or if it was referred on to the RDC or Tribunal. We also include the average length of our civil and regulatory cases.

Year	Average length of cases that concluded as a result of settlement (months)	Average length of cases referred to RDC (months)	Average length of cases referred to Tribunal (months)	Average length of regulatory and civil cases (months)
2012/13	19.6	37.8	50.1	-
2013/14	20.4	31.8	62.2	21.8

### Regulatory and civil case costs

79. The figures below reflect the average cost of our regulatory and civil cases. The resource required for each particular case will vary depending on a number of factors including its scale and complexity. The cost of regulatory cases we have conducted can range from around £250 to over £5m.

Year	Average cost of cases that concluded as a result of settlement (£000s)	Average cost of cases referred to RDC (£000s)	Average cost of cases referred to Tribunal (£000s)	Average cost of regulatory and civil cases (£000s)
2013/14	208.1	310.2	681.6	267.0

### Criminal case length

80. The periods below reflect the average length of time for a criminal case. Criminal cases can take a significantly longer time to resolve than regulatory cases.

Year	Average length of criminal cases in the Wholesale area (months)	Average length of criminal cases in the UBD area (months)	Average length of all criminal cases (months)
2013/14	36.0	26.7	34.0

**Criminal case costs**

- 81.** The figures below reflect the average cost of criminal cases closed in 2013/14. Generally, far fewer criminal cases are pursued in comparison to regulatory action. However, the costs for individual criminal cases can be significantly higher than those for our regulatory cases.

<b>Year</b>	<b>Average cost of criminal cases in the Wholesale area (£000s)</b>	<b>Average cost of criminal cases in the UBD area (£000s)</b>	<b>Average cost of all criminal cases (£000s)</b>
2013/14	2,173.7	1,044.0	1,922.6

## Data and analysis

*Enforcement statistics from the Annual Report*

### Appendix 2 of the 2013/14 Annual Report – Enforcement Activity

Issue <sup>8</sup>	Open at 1 April 2013 <sup>9</sup>	Opened during the year	Closed during the year	Open at 31 March 2014
Authorisations	0	6	4	2
Client Assets	5	1	4	2
Fraud	13	0	7	6
Integrity	29	8	10	27
Market Abuse	52	28	20	60
Mis-selling/Customer Care	51	39	32	58
Transaction Reporting	1	4	1	4
UKLA (UK Listing Authority)	11	2	6	7
Unauthorised Activities	41	7	4	44
Wholesale Conduct	49	8	14	43
<b>Totals (excluding TCT cases)</b>	<b>256</b>	<b>109</b>	<b>106</b>	<b>259</b>
<b>Threshold Conditions Team<sup>10</sup> (including RDR cases/ excluding RMAR and PSD cases)</b>	32	184	196	20
<b>TCT RMAR Cases<sup>11</sup></b>	4	127	131	0
<b>TCT PSD Cases<sup>12</sup></b>	21	126	117	30
<b>3MLD Cases<sup>13</sup></b>	0	11	3	8
<b>International Requests</b>	208	1022	785	445

8 Cases may involve multiple parties and include both firms and individuals.

9 The number of cases in progress were restated early in the year to count both firms and individuals. Cases were also re-categorised using new FCA Issue codes as above. It is not possible to restate previously reported case numbers on the new basis.

10 TCT (Threshold Conditions Team) cases involve regulated firms that fail to meet the FCA's minimum standards i.e. Threshold Conditions.

11 The RMAR (Retail Mediation Activities Return) Enforcement project began in October 2005. It focuses on ensuring that firms comply with our requirement to submit electronic returns.

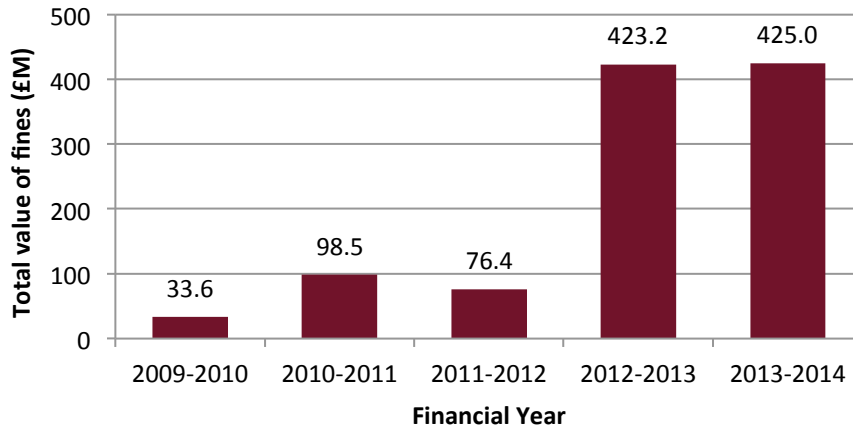
12 PSD (Payment Services Directive) cases involve Enforcement action against firms failing to comply with the Payment Services Regulations.

13 3MLD cases involve Enforcement action against firms who fail to comply with the Money Laundering Regulations.

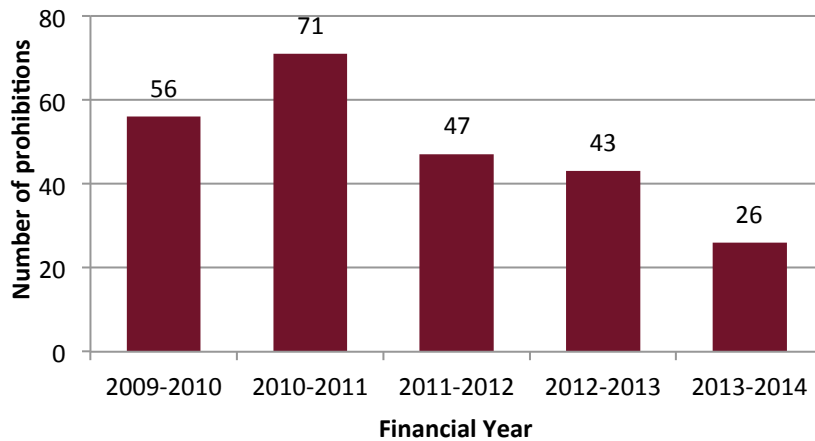


In these charts the financial year of a fine or prohibition is based on the date it was publicised.

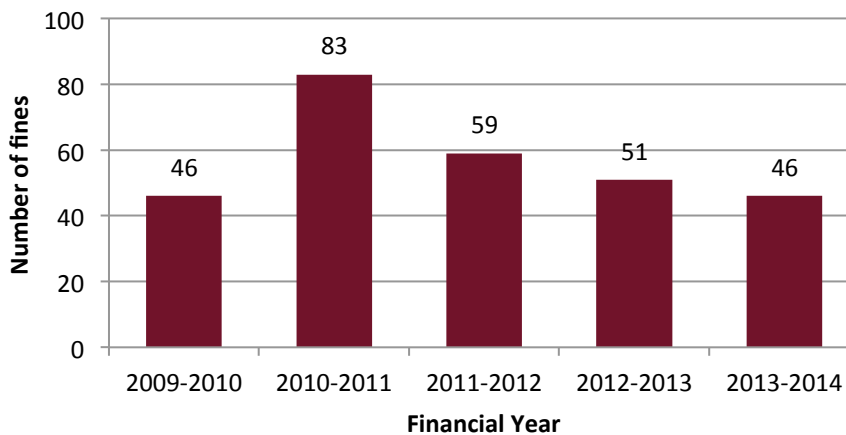
*Total value of fines*



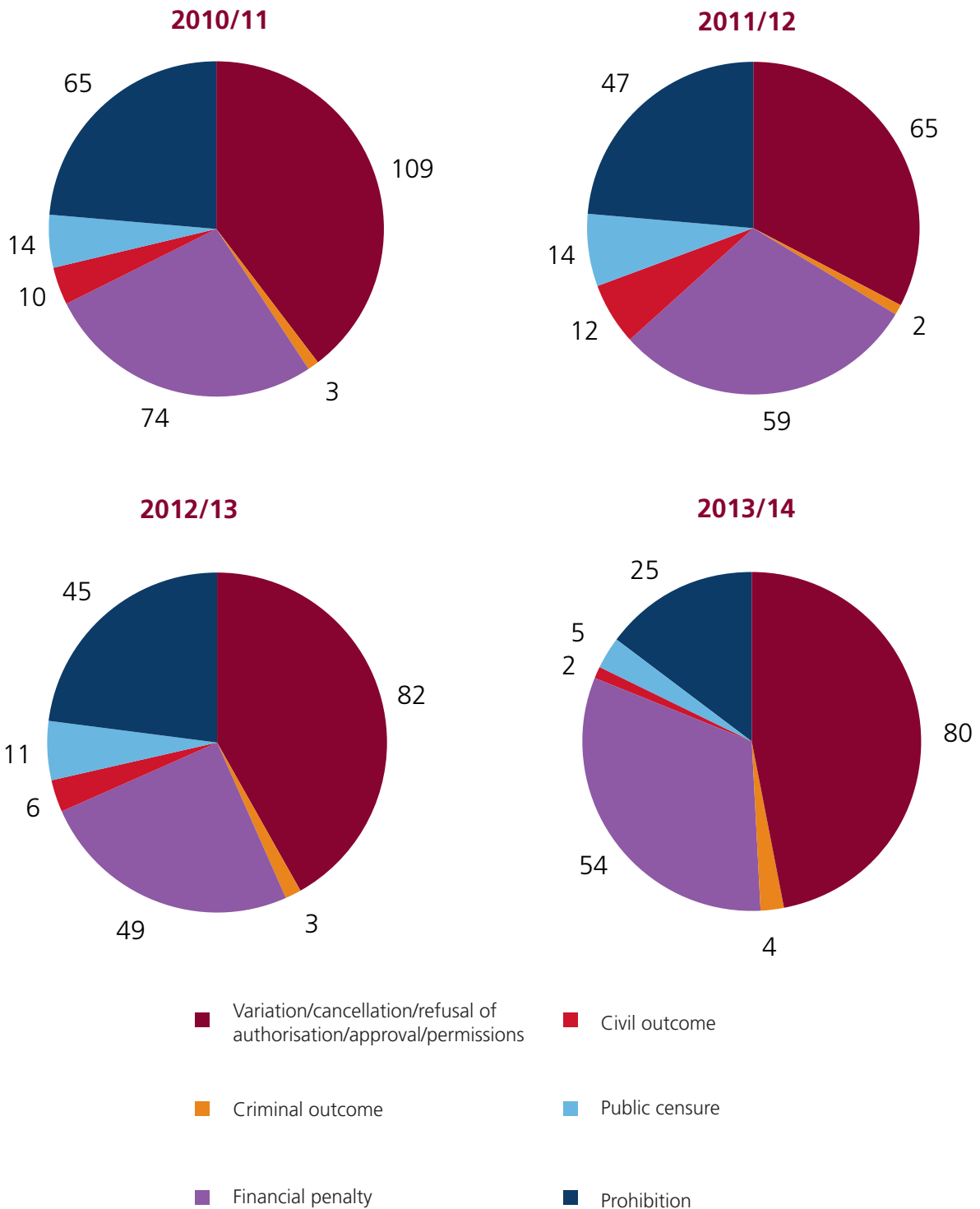
*Number of prohibitions*



*Number of fines*



### Use of powers - cases closed



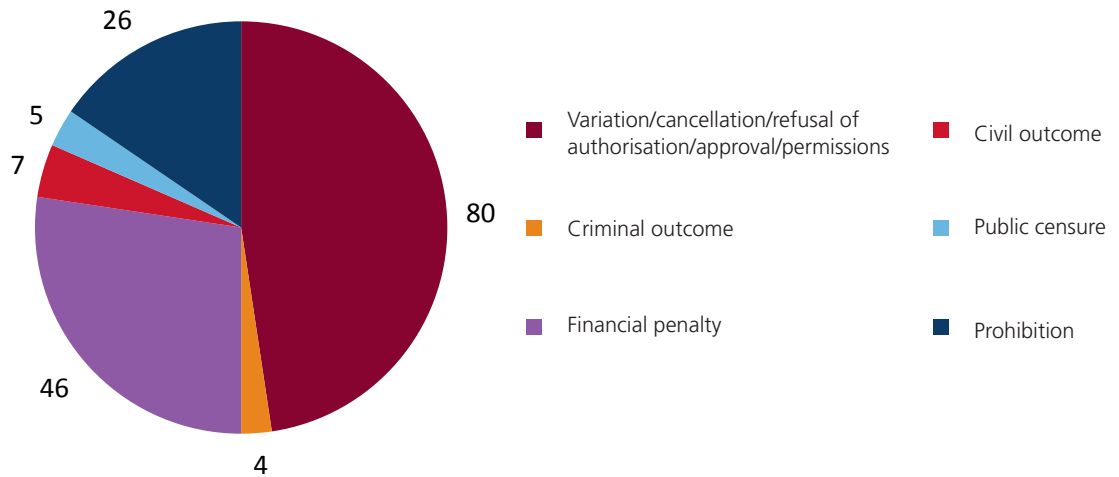
Note 1: In 2013/14, 175 cases were closed. 143 outcomes resulted from the use of powers. 7 Private Warnings were issued by EFCD and 32 cases were closed with no further action being taken.

Note 2: RMAR, PSD and 3MLD cases are excluded from these graphs.

Note 3: In these charts outcomes are counted in the financial year that the case is closed on FCA systems – this can differ to the year outcomes are published. In other charts the financial year is based on the date an outcome is publicised.

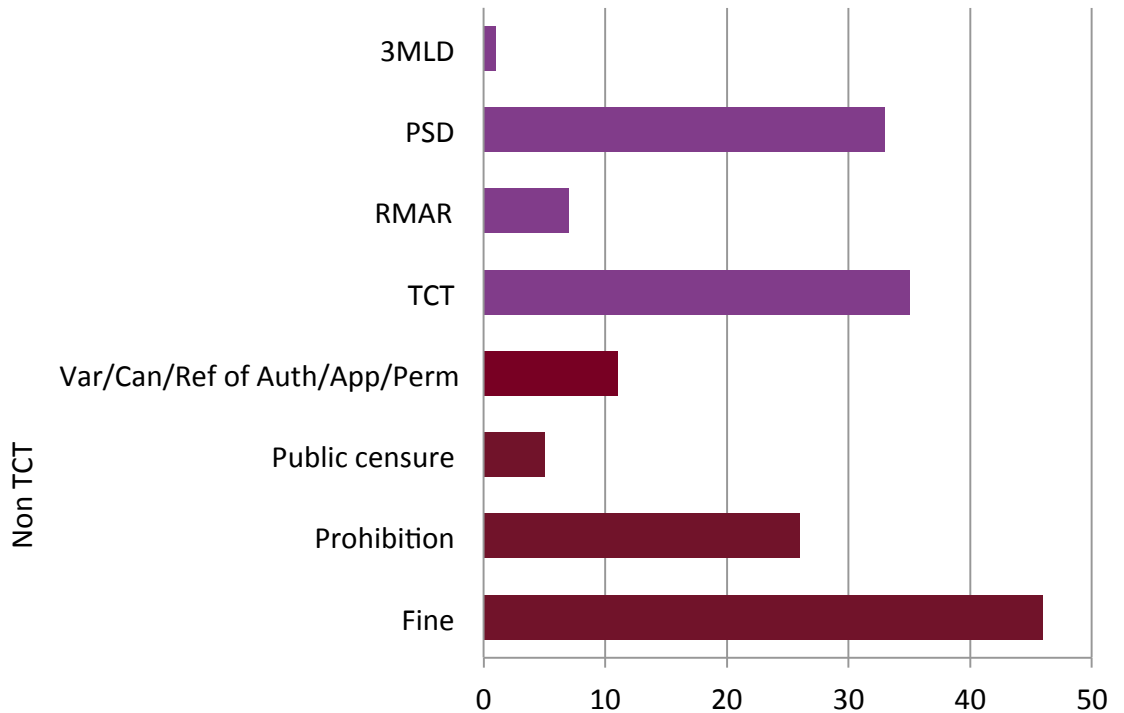
Note 4: The number of criminal outcomes (convictions) in this chart is based upon closed cases. Cases remain open while ancillary proceedings (such as confiscation and costs hearings) are ongoing. We publish details of convictions on our website.

Use of powers - outcomes published 2013/14



Note 1: While the charts above detail the use of Enforcement powers based on closed cases data, this chart shows the use of Enforcement powers based on published outcomes in 2013/14, this includes TCT outcomes but excludes RMAR, PSD and 3MLD cases.

Numer of outcomes published during 2013/14



Note 1: This bar chart shows the number of outcomes, split by TCT, RMAR, PSD and 3MLD outcomes, and other regulatory outcomes.

**Financial Conduct Authority**

