FCA – What happens when things go wrong?

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July 2016
Paths to enforcement

- Attestations
- Complaints
- Thematic work
- Referrals from other authorities
- Principle 11 reporting
- Whistle blowing
- FCA intelligence
- Supervision
- Authorisation

Enforcement
“The FCA will adopt a pre-emptive approach which will be based on making forward looking judgements about a firm’s business models, product strategy and how they run their businesses… This approach will be delivered through a risk based and proportionate supervisory approach.”
Supervision to enforcement

Supervision
- Attestations
- Enhanced supervision
- Thematic reviews
- Early intervention

Enforcement
- “Go directly to jail. Do not pass Go”
- Investigations s167 and s168

= Referral
The FCAs referral criteria

Overarching question “is enforcement likely to further the FCAs aims and statutory objectives”?

Strength of evidence
- Evidence
- Proportionality
- Impact
- Prioritisation

Purpose
- Specific deterrence
- General deterrence
- Justice
- Protection

Effectiveness
- Deterring wrongdoers from repeating behaviour
- Changing behaviour and raising standards
- Holding those responsible to account
- Removing wrongdoers from the industry
Investigations

- Wide ranging powers to investigate
- Very low threshold tests for opening an investigations-
- FCA must give written notice
- Investigatory powers: interviews and information requests
- Civil or criminal process
HBOS – What happened?

- 2 Investigations into HBOS failure
  - Mr Cummings – CEO Corp Division
  - HBOS in relation to management and control of Corp Division
- Cummings only member of senior management to be investigated and disciplined
- Public message
- Green Report
Findings of the Green Report

- FSAs actions relating to its investigation of HBOS in 2008/2009

- Not reasonable for the FSA to only investigate Mr Cummings and the Corporate Division of HBOS

- Not reasonable for the FSA to decide not to investigate Mr Hornby and others (including Lord Stevenson and the CEOs of the International and Treasury Divisions)

- The FSAs failure to investigate the bank more broadly was not reasonable
Green’s recommendations

- Pre-referral decision making needs to be more robust

- Ongoing dialogue between Enforcement and Supervision during an investigation

- Informing the subject of an investigation about the matters under investigation
Final notices

*Year to date
Final Notice – Individuals vs firms

2013: 63% Individuals, 38% Firms
2014: 63% Individuals, 37% Firms
2015: 57% Individuals, 43% Firms
2016*: 54% Individuals, 46% Firms

*Year to date
Investigations – Individuals vs firms

<table>
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<th>Year</th>
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<th>Opened Into Firms</th>
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Skilled Person’s Review
A versatile tool

• It is:
  o a way to send a big message to management
  o asking you to sort the problem out
  o regarded as having an element of punishment
  o exceptionally used as part of the authorisation process

• It is not:
  o enforcement
  o a process automatically leading to enforcement
  o an audit
# Some s166 statistics...

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<tr>
<th>Year</th>
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<th>Total Skilled Person reviews</th>
<th>Enforcement outcome</th>
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The s166 journey

- Requirement notice
- Selection of Skilled Person
- Scoping and planning
- Fieldwork
- Reporting
- Conclusion
Requirement notice

- Purpose of the Report
- Scope
- Time expectations
- Other relevant matter
Selection of Skilled Person

Which Skilled Person is best?

- Sector specific experience

Client Assets

Governance, controls and risk

Conduct of business

Data & IT infrastructure

Financial Crime

Prudential deposit takers and RCH

Prudential insurance

Prudential investment firms, intermediaries and RIE

- Cost and approach
- Capacity
Scoping and planning

- Type of s166 Report and understand the Requirement Notice
- Include ALL key individuals
- Understand the measuring standards
Fieldwork

- Anticipate document request, plan ahead
- Advise business and prepare for interviews – be open
- Highlight known issues early to Skilled Person
- Appreciate that it will be resource intensive
Reporting

- Review report in detail

- If you challenge findings, be evidence based and focus on the most significant findings

- Appreciate the validity of the Skilled Person’s view

- Remember it is the Skilled Person’s report to the FCA
Conclusion

- Clarity on regulator’s expectation
- Often need cultural and governance change
- Implement remediation plan promptly
- Meet deadlines
Summary

- Skilled Person’s Review remains a cost effective tool

- Expensive and resource intensive

- Investigations – FCA will no longer just focus on the low hanging fruit

- Senior Mangers Regime – more focused on individuals
Any questions?