

The FCA Business Plan & Priorities: 2021-2022

DWF Regulatory Consulting &
Financial Services Regulatory

dwfgroup.com



dwf

Your presenters



Andrew Jacobs

Head of Regulatory Consulting

- Andrew has been a regulatory professional for 20 years, working across a number of different areas of the financial services sector within the UK and internationally.
- Andrew has works with Tier 1 and 2 Banks, Overseas Banks, Investment Managers, Fund Managers, Wealth Managers, CFD, Brokers, Private Equity firms, Consumer Credit firms, E-Money and Payment Services providers, and a range of Not For Profit businesses.
- Andrew has also been a Skilled Person in respect of a host of clients across a range of FCA Skilled Person Lots.



Robbie Constance

Head of FS Regulatory

- Robbie is a regulatory lawyer with nearly 20 years experience. He specialises in conduct risk and regulation, proposition and distribution, principally in the retail investment sector.
- Robbie was a Skilled Person on the FCA's s.166 panel for conduct reviews and now advises on the implementation of new regulation, and new business and distribution models, giving conduct risk and regulation advice to firms and their Senior Managers.
- Robbie helps firms manage systemic risks, dealing with internal investigations, regulatory notifications and review and redress schemes



Imogen Makin

Head of FS Regulatory Investigations

- Imogen specialises in financial services investigations and has worked on some of the most high-profile regulatory investigations of the post-financial crisis period, topics have included whistleblowing allegations, non-financial misconduct.
- Imogen represents a wide-range of financial institutions and has worked on both domestic and international investigations involving multiple regulators, including the FCA and SFO in the UK, the DoJ and Commodity Futures Trading Commission in the USA.



Charlie Baillie

Senior Regulatory Manager

- Charlie has worked in Financial Services for around 10 years. He has worked both in consultancy and in an in-house capacity, having been in consulting for the last 7 years. Charlie has a broad range of experience having advised firms across the financial services sector. This includes asset managers, wealth managers, brokers, insurance firms, e-money and payment services firms, and banks.
- Charlie has a range of experience covering Financial Crime, Brexit, FCA Skilled Person reviews and a host of advisory projects including due diligence reviews, Senior Managers and Certification Regime (SM&CR), MiFID II, and ESG.

Agenda

1. FCA's outlook and future approach

2. FCA Plans and Consumer priorities

3. Cross-sector priorities

4. Wholesale priorities

5. What the Business Plan may mean in terms of the FCA's approach to enforcement

6. What the Business Plan may mean in terms of the FCA's approach to supervisory focus

7. Q&A

8. Final thoughts

FCA outlook and future approach

Andrew Jacobs



“We are an organisation of immense responsibility. Our actions have a profound effect on people’s daily lives and the UK economy.”

Nikhil Rathi – Chief Executive Officer, Financial Conduct Authority (FCA).

FCA Outlook

The tone from the top

- Renewed and increased sense of responsibility to consumers
- Satisfied that its confident, energetic and effective responses stood up for consumers during the pandemic
- Key drivers of change are noted as being the pandemic, Brexit, technology and the need to be greener
- In the spirit of this outlook, the FCA reconfirmed its desire to be transparent about its plans and to transform itself
- Our view: The FCA's outlook is more protectionist
- Clearly comfortable that this approach is what's needed to fulfil its statutory objectives in today and tomorrow's world

FCA future approach

The FCA commits to being more:



Innovative

- Taking advantage of data and technology to increase its ability to act decisively in the interests of consumers



Assertive

- Testing limits of its own powers and engaging with partners to make sure that they bring their powers to bear



Adaptive

- Constantly learning and always adjusting its approach as consumer choices, markets, services and products evolve.



FCA plans for 2021/22



How the FCA will implement its plans



Setting the bar high to support market integrity and innovation



Using new approaches to find harm faster



Enabling customers to make informed financial decisions



Ensuring that firms and individuals start with high standards



Tackling misconduct to maintain trust

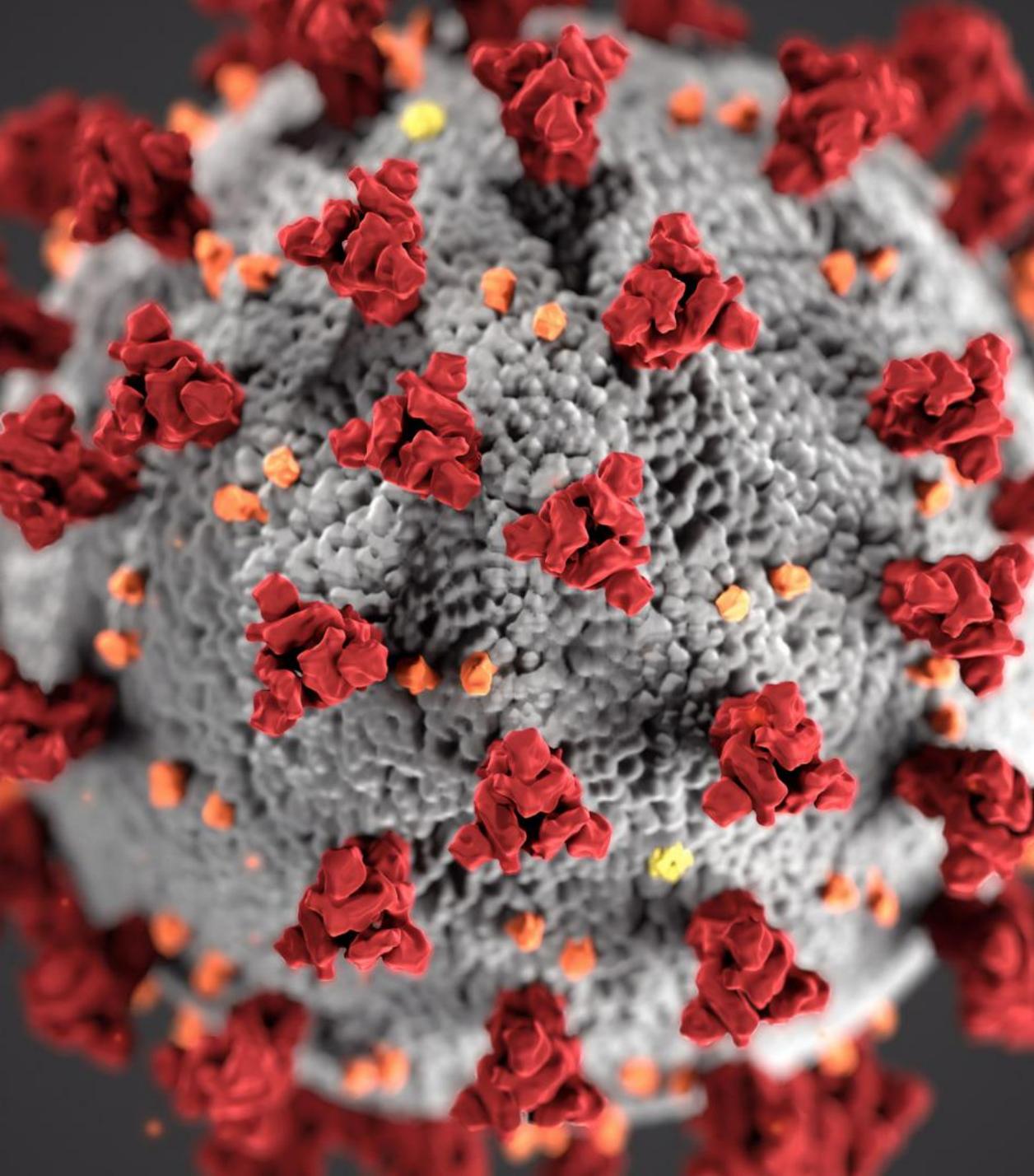


Proactive at the boundaries of the perimeter

Consumer Priorities

The shape and scope of some priorities have changed, but are broadly the same as featured in the previous plan:





Polling question

Do you feel that the FCA's consumer priorities have sufficiently evolved for the UK FS & Insurance market post COVID-19 and Post Brexit?

- a. The priorities seem to be right for consumer needs now
- b. They look likely to deliver consumer protection needed in future
- c. They don't really seem to have moved on since the last Business Plan
- d. They miss where consumers need the greatest protection

Cross-sector priorities

Cross-sector priorities

The FCA has set out its key outcomes in relation to each priority:

1. Fraud

- Slow the increased volume and variety of fraudulent activity in the UK.
- Disrupt, detect and pursue fraudsters, to ensure that activity is brought to heel, regardless of the jurisdiction or oversight body.

2. Financial Resilience & Resolution

- To minimise the harm and loss to customers and markets when firms fail.
- Firms have appropriate capital, liquidity and reserves to cover outstanding redress liabilities, so they do not fail in a disorderly manner.

3. Operational Resilience

- Firms should be operationally resilient against multiple forms of disruption to minimise the harm caused to consumers and markets.
- A reduction in the number, type, duration of incidents and the level of harm they cause.

Cross-Sector priorities

The FCA has set out its key outcomes in relation to each priority:

4. Diversity & Inclusion

- Regulation supports improved outcomes for different groups in the population (DP21/2)
- Firms design and deliver products that reflect the diverse needs of consumers, offer fair value and are delivered in a fair and accessible way.

5. Environmental Social Governance

- Promote trust and protect consumers from mis-leading marketing and disclosure around ESG-related products.
- Innovation in sustainable finance, making use of technology to bring about change and overcome industry-wide challenges.

6. International Cooperation

- Robust international standards
- Strong relationships with authorities around the globe
- Effective supervision of cross-border financial services.

Market access, equivalence & trade negotiations

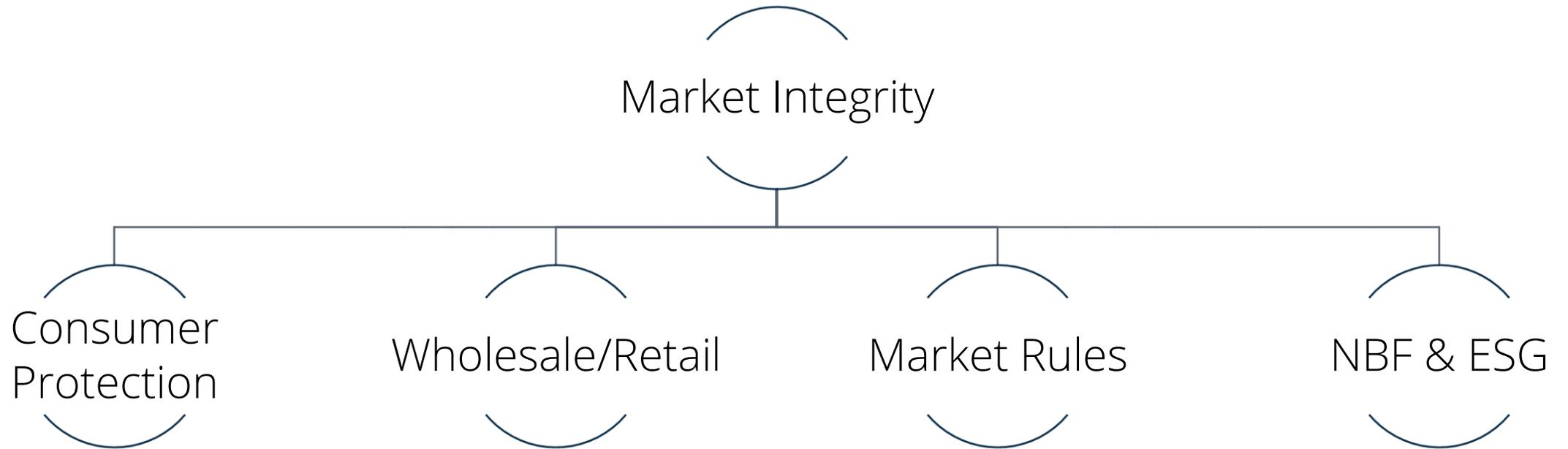


Future trade relationships that support open markets in a way that respects and promotes our objectives and ensures regulatory and supervisory autonomy

Wholesale Markets priorities

Charlie Baillie

Wholesale priorities



Wholesale priorities

Market Integrity

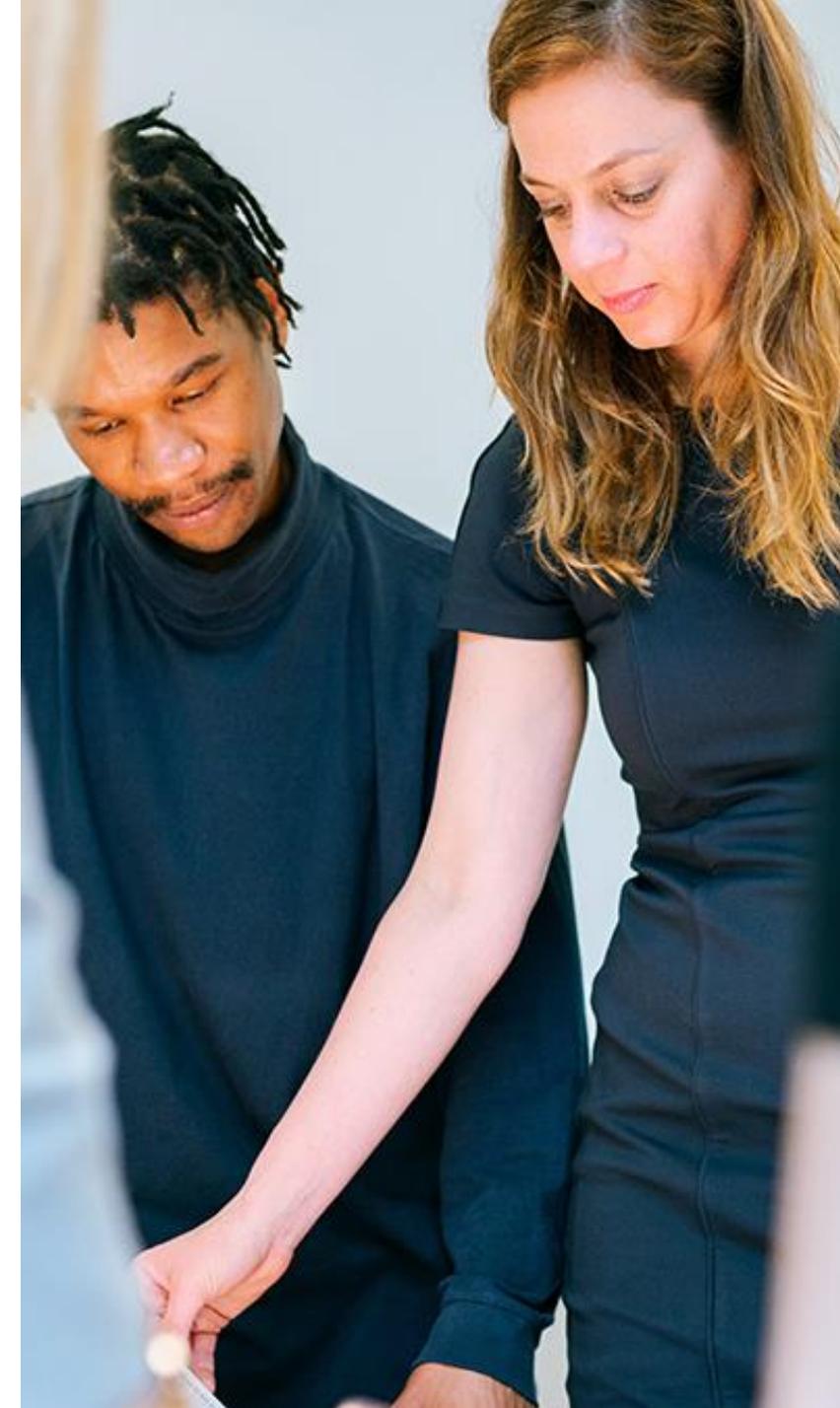
- **Listing & Prospectus Rules** – review of primary markets rules and structural design post-Brexit to better align rules to UK markets. Note UK Listing Review Report, and FCA CPs;
- **Secondary Markets Rules** – FCA and HMT working towards simplification of pre- and post-trade transparency requirements, post-Brexit.;
- **LIBOR** – ensuring smooth transition;
- **Market Abuse & Financial Crime** – A continued focus. Focus on:
 - continuing to analyse transaction reporting data and STORs
 - utilising additional sources of intelligence (including whistleblowing reports)
 - understanding of risk
 - systems and controls.
- **Appointed Representative Regime** – targeted supervision and cross-sector consultation.



Wholesale priorities

Consumer Protection

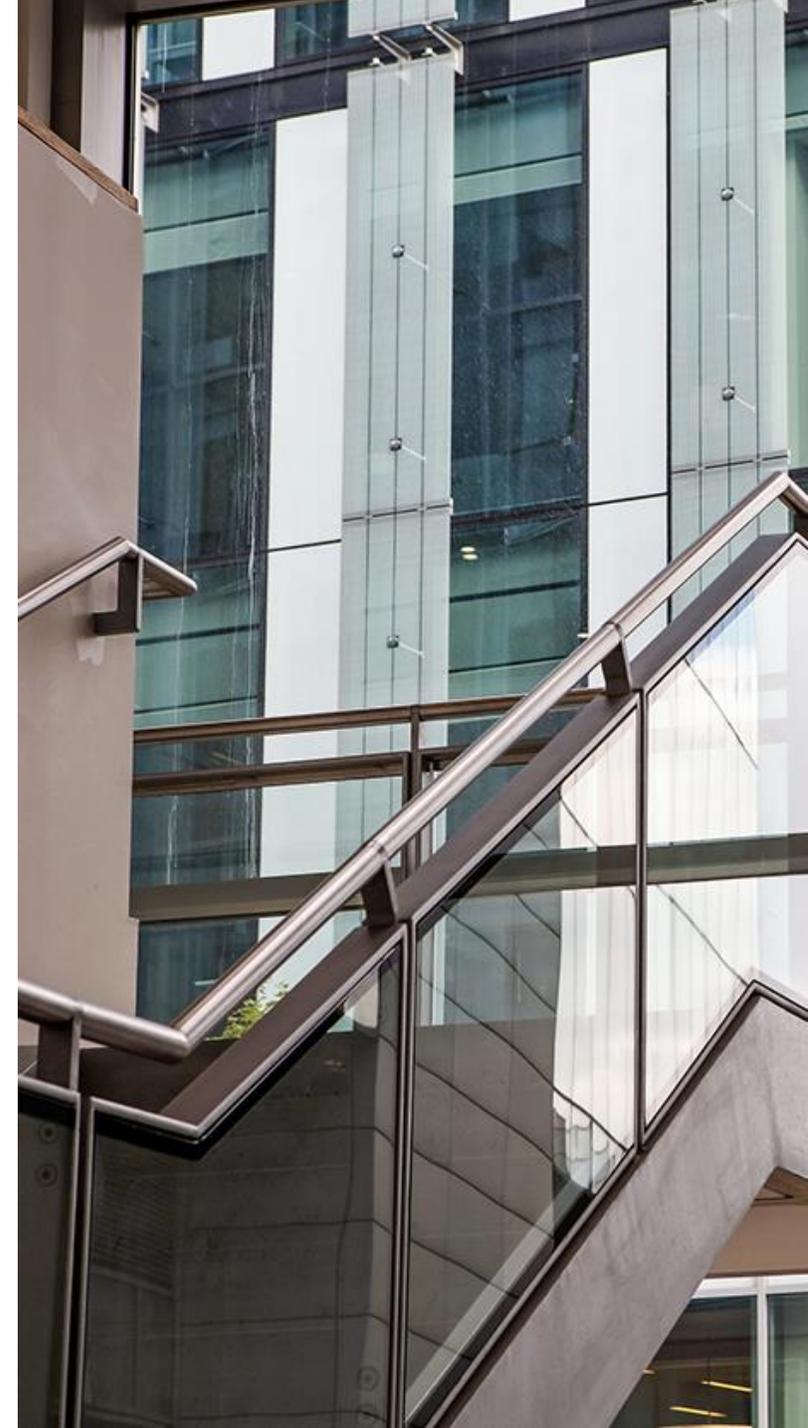
- Wholesale / Retail Link – understanding potential for customer detriment;
- Asset Management & Non-Bank Finance – particular focus on illiquidity and conflicts of interest;
- ESG Supervision – ensuring investment products with ESG attributes are clear, fair, and not misleading;
- Pension Products – focus on design of products during accumulation;



Wholesale priorities

What does this all mean for firms?

- **Regulatory Change** – ensuring the necessary resource and expertise is in place to track developments and implement;
- **Increased Supervision** – be aware of the particular focus on customer outcomes, financial crime, market abuse, and Appointed Representatives;
- **Governance & Three Lines of Defence** – ensuring that senior management can evidence ‘reasonable steps’;
- **Systems & Controls** – awareness of FCA comms. Note the recent FCA Dear CEO Letter on financial crime;
- **Consumer Outcomes** – wholesale firms must understand and monitor customer outcomes.





Are you confident in the strength of your firms' AML controls following issues identified in the Dear CEO Letter to retail banks?

- a. Very confident
- b. Confident
- c. Somewhat confident
- d. Not confident
- e. Losing sleep

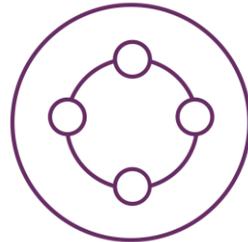
What the business plan means in terms of Enforcement activity

Imogen Makin

Enforcement trends 2020/2021



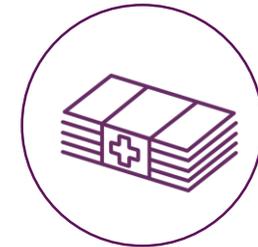
593 open investigations



Average length of cases has increased to 24.7 months



Decrease in the single largest fine imposed to £64m



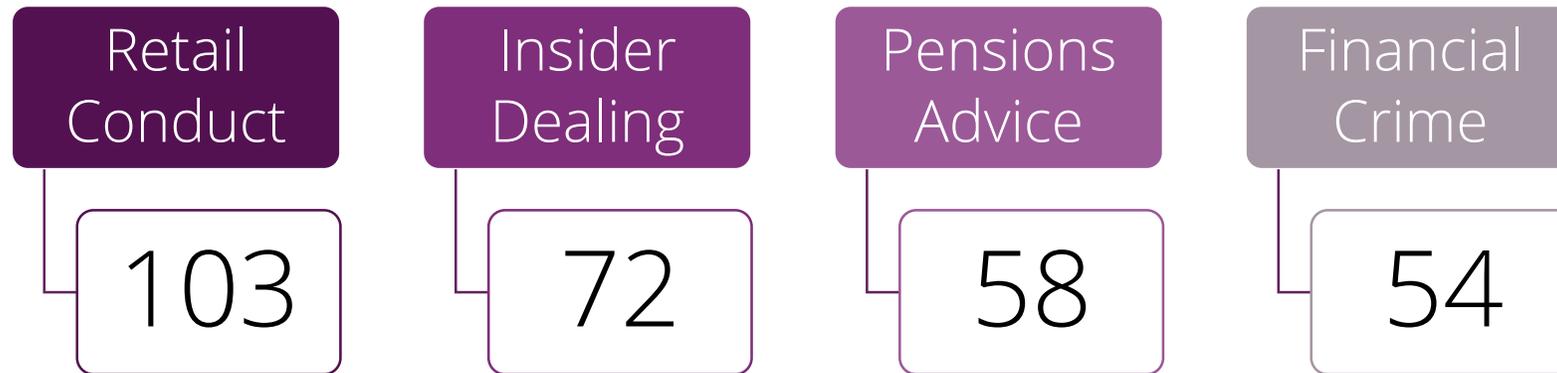
Slight decrease in total fines: £189.8m

2018/2019
288 enforcement outcomes
Fines totaling c. £227.3m



2019/2020
217 enforcement outcomes
Fines totaling c. £224.4m

Subject matter of investigations



Enforcement: Looking ahead

Retail Conduct

- 'sludge practices' which make it hard for consumers to cancel a product or service online
- Disclosures, for example, in relation to high risk investments or ESG
- DB pension transfer advice

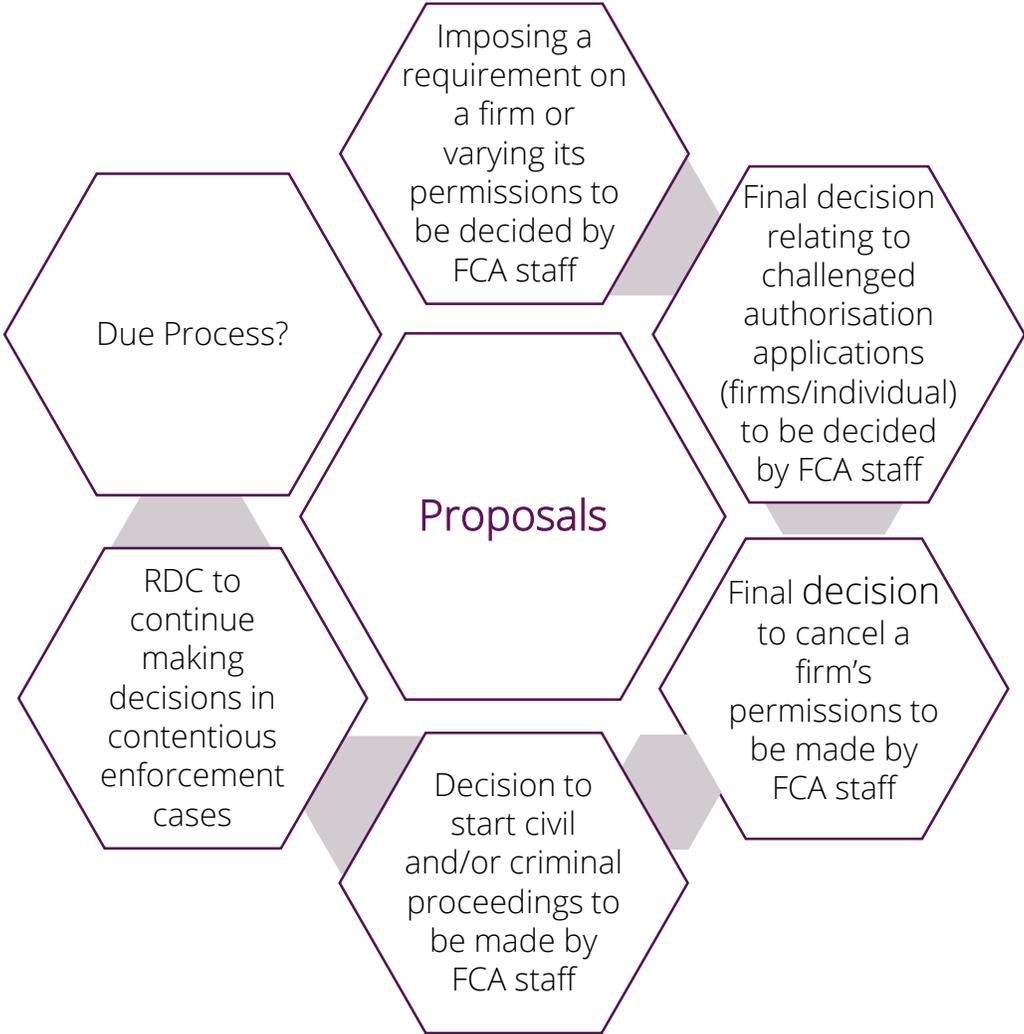
Financial Crime

- Systems and controls failings during remote working
- Failure to heed regulatory statements/publications
- Scams during Covid

D&I

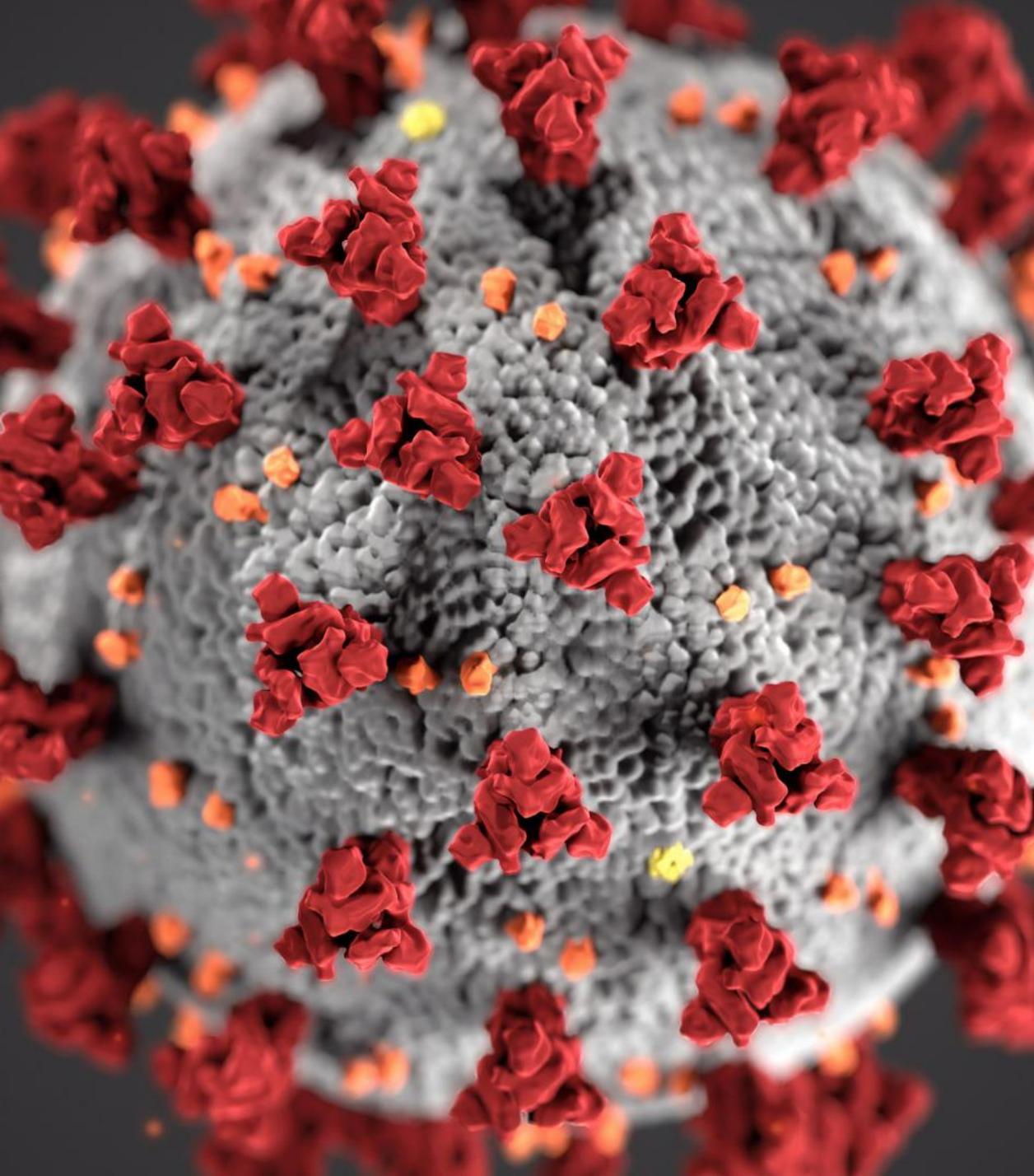
- One of the six most important cross-market issues
- Inclusive culture seen as synonymous with one in which staff can 'speak up'
- Senior Managers' responsibilities for culture (dual-regulated only at the moment but of note for solo-regulated firms)

A new decision-making process?



What the Business Plan means in terms of Supervisory activity

Robbie Constance



Polling question

Through your recent interactions or general sense, do you feel that the FCA's tone and approach have changed?

- a. Yes, consistent with Business Plans, helpful/pro-business
- b. Yes, big change, more intervention, but missing real targets
- c. No, no noticeable change or not enough to go on

More FCA...

Reformed regulator or just more regulation?

More innovative

Whilst digital regulatory reporting, RegTech and SupTech are introduced, and the Sandbox and Innovation Hub continue, we have not seen much in terms of supervisory issues yet

More assertive

“A willingness to take legal risk, especially in situations where the law is unclear or FCA action is intended to prevent imminent consumer harm, was entirely appropriate.” (FCA’s April Board minutes)

More adaptive – new decision making process -

“We expect to intervene in real-time more often to prevent harm to consumers and market integrity, including, if necessary, turning down more applications for authorisation.”

FCA Business Plan – Supervisory focus

Impacts seen and unseen

- Enforcement focus / stats – retail conduct (103, includes investment firms), insider dealing (72), pensions advice (58)
- On-going (relevant) concerns – ‘mini-bonds’ and other high risk investments, DB pension transfers, Principals / ARs in investment management, scams (particularly during COVID)
- ‘shooting first - and not bothering to ask any questions...’
- ‘burden of proof’ – any application or request now more likely scrutinised and higher risk, including VoPs, AR or SMF approvals, VREQs and asset retention consents
- Consumer Duty – sceptics fear it is highly political but with inevitable unforeseen consequences. ‘TCF re-heated’...?
- Well intentioned targeting of wrong-doers but policing perimeter and taking effective action against scammers remains a real challenge
- Experience suggests many of the measures miss their targets and lead to greater regulatory burden on the firms within the perimeter, particularly when judged in hindsight by FOS and/or FSCS



Question?

Final thoughts

Where should you prioritise first?

Wealth Managers:

- Consumer Duty is likely to be impactful and to have implications across all areas of your business. Robo and tech offerings likely to be encouraged, but robustly challenged prior to approval.

Funds and Asset Managers:

- Strong focus around Consumer Duty, particularly if providing access to retail clients. ESG and stewardship will be prominent in this sphere, as will the focus on Financial Promotions.

Retail Banking & Payments Providers:

- Access, clarity and charges will each receive heightened scrutiny, together with Operational Resilience concerns for Banks. Renewed focus on improving consumer trust. Significant financial crime Systems & Control weaknesses continue to be identified by the FCA.

Insurance and General Insurance

- Focus on fairness of charging and renewals, to ensure that those who need insurance products can have their needs met at a reasonable cost. Brexit activity likely a focus, particularly in respect of overseas cover holders.

Consumer Credit

- Scrutiny across the market, from Deferred Payment Credit being brought within scope of the regulatory perimeter to a focus on the cost of credit, and more attention on the arrears processes and debt management.



How DWF can help

Integrated Regulatory and Legal Services

We have listened to our clients and there is a clear desire for business and legal services to be delivered in an easier and more efficient way. We have three offerings which we combine to deliver bespoke solutions for clients.



Legal Advisory – Premium legal advice and excellent client service. Our teams bring commercial intelligence and industry market relevant experience.



Mindcrest – Outsourced and process led legal services which standardise, systematise, scale and optimise legal workflows.



Connected Services – Regulatory and Compliance offerings along with other business services that enhance our legal offerings.

DWF Website: <https://www.dwf.law/en>

Key Contacts



Andrew Jacobs

Partner

T +44 20 7645 4459

M +44 (0)7902 701 867

E Andrew.Jacobs@dwf.law



Robbie Constance

Partner

T +44 20 7645 9629

M +44 (0)7545 100 514

E Robbie.Constance@dwf.law



Imogen Makin

Legal Director

T +44 20 7220 5262

M +44 (0)7842 608 194

E Imogen.Makin@dwf.law



Charlie Baillie

Senior Manager

T +44 20 7645 9564

M +44 (0)7395 251 912

E Charlie.Baillie@dwf.law

DWF Cost of Financial Crime report: <https://dwfgroup.com/en/news-and-insights/reports-and-publications/financial-crime>



DWF is a leading global provider of integrated legal and business services.

Our Integrated Legal Management approach delivers greater efficiency, price certainty and transparency for our clients.

We deliver integrated legal and business services on a global scale through our three offerings; Legal Advisory, Mindcrest and Connected Services, across our eight key sectors. We seamlessly combine any number of our services to deliver bespoke solutions for our diverse clients.

© DWF 2021, all rights reserved. DWF is a collective trading name for the international legal practice and multi-disciplinary commercial business comprising DWF Group plc and all of its subsidiaries and subsidiary undertakings of which, the entities that practice law are separate and distinct law firms. Please refer to the Legal Notices page on our website located at dwfgroup.com for further details. DWF's lawyers are subject to regulation by the relevant regulatory body in the jurisdiction in which they are qualified and/or in which they practise. This information is intended as a general discussion surrounding the topics covered and is for guidance purposes only. It does not constitute legal advice and should not be regarded as a substitute for taking legal advice. DWF is not responsible for any activity undertaken based on this information and makes no representations or warranties of any kind, express or implied, about the completeness, accuracy, reliability or suitability of the information contained herein.

dwfgroup.com