

## Exploring the FCA Annual Report 2016/17

19/07/2017

Financial Services analysis: The Financial Conduct Authority (FCA) annual report sets out a review of progress that the FCA has made in the preceding year. Financial services lawyer James Smith of Addleshaw Goodard LLP in London looks at what the FCA's annual report contains and what firms can take from this for the year ahead as the UK heads towards Brexit.

### Original news

FCA publishes annual report 2016/17, LNB News 05/07/2017 132

*The FCA has published its annual accounts and reports, detailing key pieces of work undertaken by the regulator throughout 2016/17, and a series of reports on areas of its remit.*

### What areas does the FCA highlight in the report?

The FCA's annual report for 2016 is divided into two principal parts:

- strategic report
- financial statements and corporate governance statement

The strategic report summarises key activities undertaken against each of the FCA's three core objectives of:

- protecting consumers and ensuring fair outcomes
- protecting and enhancing the integrity of the financial system
- promoting competition

In each of these areas, the FCA has included examples of work undertaken and measures of success against their 2016 business plan.

### Protecting consumers

The FCA provides an overview of some of the work it completed in 2016 against this objective. This includes:

- taking action to ensure fair treatment of mortgage customers in payment shortfalls
- protecting customers from poor practices of appointed representatives in the general insurance sector
- consulting on changes to the handling of payment protection insurance complaints

These three key business plan commitments from 2016/17 are also highlighted too:

- pensions policy and legislation
- financial advice
- treatment of existing customers to deliver better outcomes for them

### **Integrity of the financial system**

In the past year, work has been carried out in a number of areas to enhance market integrity. The report describes three key activities:

- protecting those who invested in illiquid assets such as property
- ensuring retail investment providers act with integrity
- taking action against market abuse

The report then focuses on these three commitments that were in the FCA's 2016 business plan

- ensuring wholesale financial markets are clean, effective and that consumers can trust that they are open and transparent
- enhanced financial crime and anti-money laundering (AML) supervision
- firm culture and governance

### **Promoting competition**

In chapter five, the report sets out a summary of the findings of the numerous market studies that the FCA has carried out. Some attention is also given to its work in supporting the implementation of the revised Payment Services Directive (Directive 2015/2366/EC) (PSD2). Finally, this section reports on the FCA's 2016 business plan commitment relating to innovation and technology and how these help to drive competition in financial services.

### **What does the FCA say about its work on Brexit?**

This year and 2018 will be busy for the FCA. One of its key priorities will be to provide impartial technical advice to the government to support EU withdrawal negotiations and support the government with Brexit. It will be preparing amendments to its rules and give effect to Brexit. The FCA also suggests it may need to boost its capability to design its own policies independently from the EU.

### **What does the FCA say in its accompanying annual reports on competition, enforcement and AML?**

#### **Competition**

The report's chapter on competition is divided into three parts. The first part covers the findings of the various market studies the FCA has carried out

- the consumer credit market study
- the asset managers market study
- investment and corporate banking market study
- mortgages market study
- general insurance add-ons market study

The second part covers PSD2 and a description of the FCA's work to implement PSD2 in the UK. The final part covers the FCA's 2016 business plan commitment to innovation and technology. It sets out examples of work and programmes such as the Regulatory Sandbox, Big Data, and helping firms to improve their cyber resilience and infrastructure.

In chapter three, the FCA refers to its retirement outcomes review to assess the impact of pension's reforms on competition in the retirement income market. It plans to publish its interim report this summer. In the retail banking space, the FCA summarises the work it has done following publication of the Competition Market Authority's retail banking market investigation remedies.

#### **Enforcement**

In 2016, the FCA used its enforcement powers to require Tesco plc to pay £85m compensation in investor redress for market abuse. It also fined Deutsche Bank £163m for failing to maintain an adequate anti-money laundering control framework.

The report also contains a summary of the competition enforcement tools it has used in the past 12 months such as 'on notice' letters to firms issued under the Financial Services and Markets Act 2000 (FSMA 2000), where the FCA considers there may be a potential infringement of competition law but where a decision has been made not to prioritise opening an investigation.

## AML

Financial crime and AML was one of the FCA's key business plan priority commitments in 2016 and it sets out the most significant work it has done in this area in the past year. On the AML front, the FCA has been undertaking an increasingly expansive and proactive AML supervision role. This includes implementation of an enhanced AML supervision strategy and visits to lower risk firms to ensure firms make their AML frameworks effective and proportionate.

## What can firms take from this for the year ahead?

Throughout this year, the FCA will spend considerable time and resources supporting the government on Brexit, but that does not mean less focus from it on its wider regulatory agenda and priorities. Firms can expect the FCA to continue its focus on the areas outlined in its 2016 report, and they should consider these alongside the FCA's priorities in its 2017 business plan.

In particular, we expect conduct, governance and culture to remain a key priority along with how firms treat their existing customers (including vulnerable customers). The report suggests that the FCA will continue to focus on its thematic work and make further use its competition powers, so firms should ensure they are prepared if they receive FCA requests for information and copies of their documentation, including policies and procedures.

## What should lawyers advise their clients?



Culture and governance and their impact on conduct remain an FCA priority. Firms should continue to focus on their internal culture and governance frameworks and work to ensure these promote a positive customer centric conduct culture. With the expansion of the senior managers' regime (SMR) to all other FSMA 2000 regulated firms, many firms will already be currently making changes to their existing frameworks to prepare for the new requirements. The FCA's aim is that the SMR will form the principal regulatory framework to promote a culture of accountability among senior business managers.

The FCA's vulnerability agenda continues to expand across many areas of its work, so as part of their product or service governance and design frameworks, firms should ensure they have considered and documented how they are appropriately identifying and managing vulnerable customers.

Finally, the FCA has taken an increasingly proactive role in supervising compliance with AML obligations. The new Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, SI 2017/692 recently came into force, implementing the fourth EU Money Laundering Directive 2015/849. Firms will be expected to demonstrate compliance with new requirements and ensure their approaches are both effective and proportionate. The FCA's enforcement activity in 2016 demonstrates that a failure to operate effective anti-money laundering controls can result in significant financial exposure and reputational damage for firms.

*Interviewed by David Bowden.*

*The views expressed by our Legal Analysis interviewees are not necessarily those of the proprietor.*

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