

Lessons From an Enforcement Practitioner



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I believe enforcement is important to make sure that good quality firms are not undercut by those who are happy to break the law, to protect consumers and to deliver a form of justice to those undertaking white collar crime whom national law enforcement authorities in many jurisdictions find it difficult to tackle effectively.

In Guernsey my approach has always been that enforcement is only a tool to be used in the worst cases as 95% of matters of regulatory concern are much more sensibly dealt with through supervision. This remains our approach but in the practise of enforcement against the very worst firms over the past four years I have learnt a number of lessons:



Good quality firms support enforcement

for all the right reasons but they require reassurance that we are using it against the bad guys. This requires a continual programme of outreach to explain, with regard to completed cases, what went wrong and why we took the approach we did.



Public statements matter. They are read very closely by all in industry, and short ones summarising the misconduct are not nearly as effective as long ones which can be properly analysed by directors and compliance officers to see what went wrong and why. Long public statements are a great source of learning and reassurance for firms which want to do the right thing.



Going after individuals who do wrong is important whilst being hard work.

The common rule of thumb is that securing a public finding against an individual is about four times harder than securing one against a corporation. That does not mean it is not worthwhile. The deterrence effect of taking action against individuals (both through public statements and prohibitions) is very high. It stops enforcement being regarded as simply a cost of doing business (akin to a parking fine if you are a delivery driver) and makes people respect the law.



Delivering justice and being seen to deliver justice is vital to the commonwealth. Some of the people against whom you take action will have done bad things either with intent or recklessly, inflicting serious harm on investors, savers and other members of society. In situations where it is not possible to turn the clock back and make the victims whole again, prohibitions which force individuals to leave financial services go a long way to satisfy the almost universal human desire for fairness.

I like to think standards have risen by an appreciable degree since 2007. That said, financial services will always attract some who have a somewhat unhealthy obsession with transferring others' wealth to themselves. Faced with that enduring reality, there will always be bad apples who need to be dealt with robustly if society is to have confidence in the financial services sector. Enforcement should never be used to deal with petty matters, but it is a necessity if we are to protect both the public and the vast majority of good firms from those who seek to exploit both the sector and society.

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