

Double jeopardy: Barclays' fine highlights importance of compliance

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Introduction

The FCA recently fined Barclays £40 million for its failure to disclose certain arrangements with Qatari entities in 2008. Sixteen years is a long time, and as the FCA itself acknowledged when announcing the fine, “we recognise that Barclays is a very different organisation today.” Investigations take time, but the reputational ‘double hit’ is a reminder to firms of why it’s important to avoid an investigation by the regulator in the first place.

Recent Pathlight analysis shows that since 2020, the average elapsed time between when an FCA investigation starts and a final notice is given, is just under five years. This means that even when firms have undergone a review and remediated the original gaps, their reputation and commercials could be impacted a second time when the regulator publishes its final notice, particularly if the fine is as eye-catching and media attention-grabbing as Barclays’.

These cases highlight the importance of getting things right when it comes to compliance, to put in place sufficient controls, and to not assume ‘it will never happen to me’. So, what is our advice to firms to avoid this ‘double jeopardy’?

Our advice on avoiding an investigation

It may sound obvious, but if the FCA issues a Dear CEO letter it will be for a reason. Firms should ensure that they read the letter and take action.

Similarly, if the regulator publishes a thematic review or gap analysis, evaluate where you stand against this and determine if you need to add or adjust any systems or controls. For example, in March, the FCA sent a Dear CEO letter on anti-money laundering frameworks to Annex 1 firms giving them six months to take action. Although this is not an official or legal deadline, the FCA is likely to come looking once the time is up, and you don’t want to get caught short. Furthermore, even though the letter was addressed to a certain tranche of firms, the lessons are applicable industry wide.

Thirdly, invest in your compliance function upfront: both first and second lines of defence. Firms should be ready to use technology, backed-up by skilled personnel in compliance roles. This includes Certified Functions, which do not receive the same level of scrutiny as Senior Manager functions, but nonetheless can have a high impact on your firm’s risk.

Finally, assess your compliance risks and make the business case for risk mitigation - if you don’t invest now, you’ll be hit with the cost of remediation and potentially fines further down the line. Any legal fees due to an investigation will ultimately dwarf compliance fees, so the investment is worth it.



Our advice for firms under investigation

If you do find yourself under investigation by the regulator, the best thing to do as a firm is to lean into the process. Be co-operative and proactive in your engagement with the FCA and the Skilled Person firm if you are required to work with one. This may help shorten the time taken for the review, position you to provide assurance in support of lifting any restrictions that are put in place, and ultimately relieve the ‘sting in the tail’.