

Harriett Baldwin MP
Chair
Treasury Select Committee
House of Commons
SW1A 0AA

3 July 2023

Dear Harriett,

FCA investigation into Odey Asset Management

Thank you for your letter of 14 June.

Since our evidence to the Women and Equalities Select Committee in 2018,¹ the continued bravery of victims and reporters has brought the prevalence of abuse against women, in workplaces of all kinds, to the fore. It is unacceptable that women should still be made to feel frightened for their safety at work and afraid for their careers when they raise concerns. I have been deeply moved to read the testimony of victims of sexual misconduct and I want to thank those who speak out, often in incredibly difficult circumstances. It should not require, however, the bravery of a few or the professional work of investigative journalists for a culture of decency to prevail.

The FCA remains focused on improving the culture of the firms it regulates, assuring the fitness and propriety of those firms' senior managers, and requiring firms to properly assess the fitness and propriety of their certified staff. Both individual fitness and corporate culture play significant roles in the risk a firm and its staff pose to our objectives. It is why the FCA has taken a forthright stance and leading role among UK and international regulators on non-financial misconduct.

A corporate culture that tolerates sexual harassment or other non-financial misconduct is unlikely to be one in which people feel able to speak up and challenge decisions, or one in which they will have faith that concerns will be independently and fairly assessed. Such a culture also raises questions about a firm's decision making and risk management.

We see that the vast majority of firms we regulate understand that we consider non-financial misconduct relevant to assessments of fitness and propriety, and non-financial misconduct can amount to a breach of our conduct rules. This is in large part due to our assertive public position on the subject. We intend to provide further guidance on this issue, including how non-financial misconduct should be considered within our rules, later this year.²

It is important, however, to recognise that the FCA is not an alternative to criminal prosecution, a firm's internal disciplinary processes or for proceedings through the Employment Tribunal. We can only take action to achieve or further one of our statutory

¹ <https://www.fca.org.uk/publication/correspondence/wec-letter.pdf>

² <https://www.fca.org.uk/publication/discussion/dp21-2.pdf>

objectives. Our objectives relate to the protection of consumers, integrity of the market and promotion of competition in the interests of consumers and our focus has to be whether and how non-financial misconduct affects the delivery of those objectives.

Our role

We expect firms to have effective systems in place to identify and mitigate risks of all kinds. Should allegations or evidence of non-financial misconduct come to light we expect a regulated firm to take them seriously through appropriate internal procedures. We can investigate and act against authorised firms that fail in this regard for inadequate systems and controls.

We can investigate whether someone is failing to meet our fitness and propriety requirements based on evidence of non-financial misconduct. We have publicly prohibited seven individuals for non-financial misconduct of various kinds, including sexual assault, possession of indecent images of children, voyeurism, serious assault, non-payment for railway tickets and use of work email to send inappropriate messages. All but one of these cases involved a criminal conviction or a caution. We are currently considering six banning cases involving criminal convictions for a wide range of sexual and other offences and have two open enforcement investigations related to non-financial misconduct, which are detailed below.

You will note that the range of potential non-financial misconduct is wide and may often involve offences that are properly primarily for other authorities to investigate, particularly the police, not least as the allegations in question may require highly specialised investigative teams and witness support programmes.

Non-financial misconduct is an important factor when we assess whether a person who is submitted for approval meets the fit and proper test. We will assess information relating to any criminal or civil proceedings, disciplinary investigations or dismissals, resignations or suspensions.

We have significantly increased resources within our authorisations teams and developed new, more assertive processes to prevent the entry of those who may put at risk our objectives. Powers in the Financial Services and Markets Act 2023 enable the FCA to place conditions upon new controllers where this has the effect of advancing our statutory objectives, which will further assist us in dealing with misconduct in the future.

Our approach to authorisation, supervision and enforcement is underpinned by the intelligence we gather. We receive around six reports per quarter from firms regarding non-financial matters of concern. In addition to these reports, we also consider criminal and civil court cases, press reporting and, vitally, information provided by whistleblowers. We receive around 1000 whistleblowing disclosures a year. Of these, around three per quarter relate to allegations of sexual misconduct.

We have a dedicated, well-trained team to receive whistleblowing reports. This team remains in contact with whistleblowers throughout the handling of their case, where this is requested. Colleagues across the FCA receive mandatory training in how to escalate suspected whistleblowing cases, and the dedicated team have training on handling more vulnerable whistleblowers, in recognition of the stressful circumstances that often lead someone to take this step. Our whistleblowing team captures the report, ensures it is considered by the right part of the FCA, and protects the whistleblower's identity where requested. The team can also

share information about other authorities that a whistleblower may wish to contact where the FCA is not the appropriate authority to investigate an allegation.

As mentioned above, an assessment that leads us to believe an individual is not fit and proper may result in us making a prohibition order banning them from performing regulated activity. We can exercise this power where we consider that it is appropriate to achieve or advance one or more of our statutory objectives, including protecting consumers and protecting and enhancing the integrity of the UK financial system. The purpose of a prohibition order is protective and not punitive, and the central question to be considered is whether the individual is fit and proper to perform specified functions in the future on the basis of their honesty, integrity and reputation; competence and capability; and financial soundness. It involves consideration of all relevant circumstances.

In the case *Jon Frensham v FCA*, the Upper Tribunal said a conviction relating to child sexual grooming was insufficient alone to justify a prohibition by the FCA.³ However, the Upper Tribunal upheld our prohibition of Mr Frensham because he also committed the offence in breach of his bail conditions and failed to inform the FCA of the conviction and his expulsion from a professional body. The Upper Tribunal's decision demonstrates the challenge we may face banning people relating to sexual misconduct alone, even when criminal convictions have been secured.

We continue to consider, however, that such misconduct can, of itself, create a sufficient risk to our objectives such that it should result in a prohibition and we continue to pursue cases on that basis. We also recognise that Parliament may choose to legislate if it wished to specify that certain offences should lead to an automatic prohibition from a regulated sector.

We can consider allegations subject to ongoing criminal investigations. But it is important to set out that, where an individual has been acquitted of criminal charges, there may be significant challenges to using the same evidence to justify the use of our formal powers.

Our investigations

The Committee's interest in what the FCA is doing in response to serious public allegations is properly part of its function. In line with our accountability to Parliament, primarily through your Committee, and in the exceptional circumstances of this case, it is necessary and appropriate for me to confirm to the Committee that the FCA has ongoing investigations into both Mr Crispin Odey and Odey Asset Management LLP ("OAM").

I should note that it is a matter of public record that Mr Odey denies the allegations of sexual impropriety.

The amount of information I can share about our investigations and the circumstances surrounding them is necessarily limited. As the Committee is aware, statutory restrictions are in place on the information the FCA can divulge about the firms and people it regulates. Additionally, we do not want to prejudge what conclusions we may draw at the completion of the investigations. It is vital such investigations are conducted properly, fairly and by reference to available evidence.

³ <https://www.gov.uk/tax-and-chancery-tribunal-decisions/jon-frensham-v-the-financial-conduct-authority-2021-ukut-0222-tcc>

The current scope of the investigation into Mr Odey focuses on allegations that he dismissed OAM's Executive Committee for an improper purpose. We are investigating whether Mr Odey is a fit and proper person to work in financial services and whether Mr Odey has failed to comply with the FCA's conduct rules relating to integrity and acting with due skill, care and diligence.

Mr Odey has not held an approved senior manager role since 2020. His position as a certified individual was removed, at OAM and Odey Wealth Management's request, in June this year.

We are investigating OAM for possible contraventions of the FCA's Principles for Business for failing to conduct its affairs with due skill, care and diligence, and failing to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems and controls.

The FCA is investigating whether or not these possible contraventions occurred in circumstances where it appears that OAM may have failed to have or risked failing to have a functional and compliant governance structure.

Our investigations were opened in mid-2021. It is important to note the nature and scope of investigations can change and it is vital we do not limit them. We constantly assess the available evidence and will adjust the scope of an investigation if the evidence is stronger in relation to one allegation than another.

Our supervision of OAM since 2020 has been intensive. Supervisors' most recent focus has been on ensuring adequate investor and consumer protections as OAM and Odey Wealth Management consider their next steps. The Committee may be aware, for example, that there are various restrictions in place.⁴ These prevent the firms from disposing of assets, outside the normal course of business, without our approval.

In this case, we consider enforcement investigations to be the most appropriate and effective way to look into these matters and establish whether the circumstances suggesting serious misconduct are proven and what sanctions are appropriate, if they are. We have repeatedly and publicly set out that we expect firms to have a healthy culture, where people are able to speak up and challenge – an unhealthy culture can lead to poor governance and poor outcomes, engaging our statutory objectives.⁵

You ask whether the threat of litigation affects our approach. I can confirm that when we first opened our investigation, we received a letter before claim from lawyers acting for Mr Odey threatening judicial review. We responded robustly to this. In the event, court proceedings were not commenced and we continued to investigate. Our investigations are well resourced, and we have significant legal expertise in-house. We can, and do, draw too on external counsel, where appropriate.

We will of course consider legal arguments presented at any stage by those under investigation, as should any enforcement agency. However, a decision to investigate and on an investigation's scope is driven by circumstances suggesting serious misconduct and the available evidence, without fear or favour.

⁴ <https://register.fca.org.uk/s/firm?id=001b000000MfMPRAA3> and <https://register.fca.org.uk/s/firm?id=001b000000MfagaAAB>

⁵ <https://www.fca.org.uk/publication/correspondence/portfolio-letter-alternatives-2022.pdf>
<https://www.fca.org.uk/publication/correspondence/portfolio-letter-wealth-management.pdf>

Nevertheless, it is clearly far quicker to achieve an outcome if people and firms act in response to regulatory concerns on a voluntary basis rather than requiring the use of formal powers, as highlighted in a speech earlier this year by Therese Chambers, our recently appointed joint-Executive Director for Enforcement and Market Oversight.⁶

As I mentioned earlier, regulatory action or an investigation of regulatory matters is not intended as a replacement for, or alternative to, a police investigation or criminal prosecution. There may be occasions where it is appropriate for us to keep our investigation on hold while the police or another authority considers the relevant matters. As some of the allegations reported in the press are potentially criminal in nature, we have been in contact with the police. Any decision on whether or not to investigate is a matter for them. I would encourage anyone who may be a victim of, or witness to, crime to consider going to the police, which has specialist units to investigate sexual offences and dedicated support for victims of sexual offences. We also have processes in place to share information with the police and other law enforcement partners.

As I know the Committee will recognise, cases related to non-financial misconduct are challenging. I want to thank my FCA colleagues who work on these difficult issues for their tireless professionalism.

I hope this letter is helpful in setting out our role in relation to non-financial misconduct and what we are doing in response to allegations about Mr Odey and OAM. I am happy to answer the Committee's questions as fully as I can when we meet on 19 July, though I will be naturally limited in what I can say about the details of live investigations.

Finally, it is important I reassure anyone with information or concerns about a person working in financial services or a firm we regulate that they can come to us knowing we will treat them sensitively, protect their identity and take seriously the information they provide.

Yours sincerely,



Nikhil Rath
Chief Executive

⁶ <https://www.fca.org.uk/news/speeches/do-right-thing>

Annex: FCA enforcement cases for non-financial misconduct

Former Blackrock Asset Management Managing Director Banned

First published: 15/12/2014

The Financial Conduct Authority (FCA) has banned Jonathan Paul Burrows from performing any function in relation to any regulated activities for not being fit and proper.

Tracey McDermott the FCA's director of enforcement and financial crime, said:

'Burrows held a senior position within the financial services industry. His conduct fell short of the standards we expect. Approved persons must act with honesty and integrity at all times and, where they do not, we will take action.'

Burrows was a Managing Director at Blackrock Asset Management Investor Services Limited. On 19 November 2013, Burrows was stopped by a Revenue Protection Officer at the exit gates of London Cannon Street Station and was found to have failed to purchase a valid ticket for the entire journey whilst travelling on the Southeastern train service from Stonegate railway station, East Sussex. Burrows was interviewed under caution and admitted to evading his rail fares on a number of occasions.

On the occasions on which Burrows failed to purchase a valid ticket he boarded the London bound train at Stonegate, a rural station with no barriers, without purchasing a ticket. Once he had arrived in London he exited through the barriers at Cannon Street Station by "tapping out" using an Oyster travel card, paying the maximum fare of £7.20 rather than purchasing the required ticket for £21.50.

Burrows admitted to the FCA that he had evaded his train fare on a number of occasions and had done so in the knowledge that he had been breaking the law. The FCA does not consider that this is fit and proper behaviour for an approved person.

Burrows also admitted in interview that he did not disclose his behaviour to his employer. Although the FCA is not penalising Burrows for not informing his employer the FCA has taken this into account, amongst other things, in deciding what action to take.

FCA bans former Co-operative Bank Chair, Paul Flowers, from the financial services industry

First published: 06/03/2018

The Financial Conduct Authority (FCA) has banned the former Chair of Co-operative Bank PLC (Co-op Bank), Paul Flowers, from the financial services industry.

Mr Flowers was Chair of Co-op Bank between 15 April 2010 and 5 June 2013. The FCA found that Mr Flowers' conduct demonstrated a lack of fitness and propriety required to work in financial services.

Mark Steward, Executive Director of Enforcement and Market Oversight said:

"The role of Chair occupies a unique place of trust and influence. The Chair is pivotal in setting expectations of a company's culture, values and behaviours.

"Mr Flowers failed in his duty to lead by example and to meet the high standards of integrity and probity demanded by the role. These high standards are what the financial services industry and the wider community rightly expect of its senior individuals. Where a Chair, or other senior individual, fails to discharge these standards the FCA will hold them to account."

The FCA found that Mr Flowers has demonstrated an unwillingness to comply not only with the FCA's requirements and standards but also with other legal, regulatory and professional requirements. The FCA believes Mr Flowers' disregard for the standards he is expected to meet demonstrates a lack of integrity and that any future involvement by Mr Flowers in the financial services industry risks undermining consumer and market confidence.

The FCA found that while Chair Mr Flowers:

- used his work mobile telephone to make a number of inappropriate telephone calls to a premium rate chat line in breach of Co-op Group and Co-op Bank policies; and
- used his work email account to send and receive sexually explicit and otherwise inappropriate messages, and to discuss illegal drugs, in breach of Co-op Group and Co-op Bank policies despite having been previously warned about his earlier misconduct.

In addition, after stepping down as Chair, Mr Flowers was convicted for possession of illegal drugs.

Throughout its investigation into Mr Flowers, the FCA has liaised with and received the support of the Prudential Regulation Authority (PRA). The FCA thanks the PRA for its support.

FCA bans three individuals from working in the financial services industry for non-financial misconduct

First published: 05/11/2020

The Financial Conduct Authority (FCA) has prohibited Russell David Jameson, Mark Horsey, and Frank Cochran from working in the financial services industry following findings that they are not fit and proper. Each of them had been convicted of serious non-financial indictable offences while working in the financial services industry.

Mark Steward, Executive Director of Enforcement and Market Oversight, said:

'The FCA expects high standards of character, probity and fitness and properness from those who operate in the financial services industry and will take action to ensure these standards are maintained.'

Russell David Jameson

Jameson was a financial adviser at an authorised firm and was approved by the FCA to hold various significant influence and customer facing functions at the firm.

In July 2018, Jameson was convicted of serious criminal offences involving the making, possession and distribution of indecent images of children. Between January 2013 and August 2017, Jameson made thousands of indecent photographs of children and had thousands of such images in his possession, including films and images of the utmost severity. These offences were committed whilst Jameson was an approved person.

Jameson was sentenced to five years' imprisonment, ordered to sign the sex offenders register indefinitely, and included in the list of individuals barred from working with children or vulnerable adults.

Mark Horsey

Horsey was the sole director and shareholder of an authorised financial advice firm with permission to conduct designated investment business (including advising on and arranging deals in investments) and insurance distribution.

In September 2018, Horsey was convicted of voyeurism, contrary to the Sexual Offences Act 2003. Horsey had surreptitiously observed and video recorded his tenant having a shower without their consent. He committed the offence whilst he was an approved person.

Horsey was sentenced to nine months' imprisonment suspended for 18 months, required to complete 100 hours of unpaid work and 25 days of rehabilitation activity, and required to sign the sex offenders register.

Frank Cochran

Cochran was a director and shareholder of an authorised financial advice firm with permission to advise on pensions, mortgages and investments.

In April 2018, Cochran was convicted of sexual assault, engaging in controlling and coercive behaviour and an offence contrary to the Protection from Harassment Act 1997. These offences were committed whilst he was an approved person.

Cochran was sentenced to seven years' imprisonment and required to sign the sex offenders register.

FCA bans Jon Frensham from working in financial services

First published: 17/09/2021

The FCA has banned director Jon Frensham (formerly known as Jonathan James Hunt) from performing any regulated activity.

The FCA found Mr Frensham, an independent financial adviser and the sole director at Frensham Wealth Limited, lacks the integrity to work in financial services.

In March 2017, Mr Frensham was convicted of attempting to meet a child following sexual grooming. He committed this offence whilst he was an approved person, and whilst on bail for a similar offence. Mr Frensham was sentenced to 22 months' imprisonment, suspended for 18 months.

The FCA also found Mr Frensham failed in his obligation to be open and transparent with the FCA in failing to inform the FCA about his arrest, being remanded in custody in respect of the offence which led to his conviction, and his failure to inform the FCA of the decision by the Chartered Insurance Institute (CII) not to renew his Statement of Professional Standing and to expel him from membership.

Given all of these circumstances, including his conviction for a serious offence, albeit one not connected to financial dishonesty, the FCA considers that Mr Frensham is not a fit and proper person to perform any function in relation to any regulated activity carried on by any authorised or exempt persons or exempt professional persons because he lacks integrity and good reputation.

The FCA previously published a [Decision Notice](#) against Mr Frensham in March 2021, which Mr Frensham referred to the Upper Tribunal. The Upper Tribunal unanimously [dismissed](#) Mr Frensham's reference on 31 August 2021.

FCA bans director from working in financial services after violent criminal conviction

First published: 14/11/2022

The Financial Conduct Authority has banned Mr Ashkan Zahedian from working in financial services following his conviction for serious, violent offences, which took place while he was an approved individual.

Mr Zahedian was the sole director of an authorised consumer credit firm, Vast Cars Limited, and was approved by the FCA as a senior manager.

In May 2020, Mr Zahedian pleaded guilty and was convicted of grievous bodily harm and possession of an offensive weapon, having attacked a security guard at a bar with a machete.

He was sentenced to three years' imprisonment at Lewes Crown Court. The FCA has decided to remove Mr Zahedian's approval to perform the senior management function at Vast Cars Limited and impose a prohibition order, preventing him from working in financial services in the future.

Mark Steward, Executive Director of Enforcement and Market Oversight said:

'Those authorised to provide financial services are required to meet and maintain high standards of character, fitness and properness.

'These were serious, violent criminal offences reflecting on Mr Zahedian's character and justifying the finding that he is not a person to be working in financial services.

'The FCA will continue to uphold high standards of character and conduct for those working in financial services.'