Regulators: Good v Evil

Why is it that when you mention the Regulator and the Jersey Financial Services Commission ("JFSC") to those who work in the Jersey finance industry, their reaction resembles Munch's terrified mummy in "The Scream"?

In fact most people regard the JFSC as you would Customs officers when walking through Arrivals at Jersey Airport. It is that feeling of wrongdoing even when you have done nothing wrong!

I suspect much of this fear arises from the word: "Enforcement". Enforcement has been in the news of late given recent high profile criminal trials which have concluded or are ongoing. I am particularly thinking of the action involving the failed Providence Investment Funds.

When considering what would be the subject matter of this article, I happened upon the JFSC's annual report for 2017 which made for interesting reading. I have not seen significant reporting of this document in the mainstream media.

The report confirms that the Enforcement section of the JFSC is a busy little unit as reflected in the report's reference to ever increasing litigation costs. In fact, the accounts of the JFSC show that investigation and litigation costs stand at £872,000. Is the tail wagging the dog?

The report informs us that there were 106 live cases in 2017 of which 42 were cases carried over from 2016 and 64 were new. It would seem that 105 formal notices were issued including 14 notices compelling individuals to attend at interview.

There were only 3 requests from overseas regulators.

I understand that only 2 cases were formally referred to the Police and/or the Attorney General. Due to the complexity of many cases, 57 active investigations were carried forward into this year.

For those unfamiliar with enforcement, its role is to conduct investigations into serious or serial regulatory breaches, deal with cases of unauthorised financial services business and respond to requests for assistance from other supervisory bodies.

The report comments that several of the enforcement cases in 2017 featured the serious misconduct of individuals employed in the finance sector. Do people ever learn?

The JFSC take the opportunity in the report to reiterate that enforcement is committed to giving priority to these types of cases in order to protect the public and, of course, Jersey's reputation.

These figures are interesting and clearly show that the enforcement section of the JFSC is alive and well. Perhaps the incursion of such legal costs is a little concerning, particularly given the level of expertise within the JFSC and its 131 staff.

The finance industry appears to be in good shape. However, as the paragon of financial virtue, the bar the JFSC sets for itself is very high and the incursion of such heavy legal costs perhaps reflects that.

Speaking of regulators, I read with interest the lead interview with the Channel Islands Competition and Regulatory Authority (CICRA) in last month's Business Brief.

The chief executive, Michael Byrne commented that every regulator and competition authority gets called "toothless" at some stage. I am not sure that those who have felt the full weight of a JFSC investigation would concur with such a view. Quite the opposite.

Many people question the role and cost of regulators such as the JFSC, CICRA and the likes of the Data Protection Commission. To some they are seen as expensive "busy bodies" (manned by people who cannot cut it in private practice) who have created a parallel civil service and do nothing but stifle business and generate prohibitive costs. The other side see regulators as a force for good. Which side do you support?