

Telephone: 020 7066 9346

Email: enquiries@fs-cp.org.uk

Enforcement Law and Policy
Financial Conduct Authority
12 Endeavour Square
London E20 1JN

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Submitted online: cp24-2@fca.org.uk

Dear Sir / Madam,

**Financial Services Consumer Panel response to FCA CP 24/2:
Enforcement Guide and publicising enforcement investigations – a
new approach**

The Financial Services Consumer Panel (the Panel) welcomes the opportunity to respond to the FCA's consultation paper on the Enforcement Guide and publicising enforcement investigations – a new approach. The Panel agrees that publicising FCA investigations will provide significant benefit to consumers (including SMEs who use financial services):

- Consumers will be better able to assess firms whose services they may use or seek, as they will have greater visibility of the potential risks associated with the firm and its products or services.
- Consumers will have sight of the actions the FCA is taking to investigate and eliminate questionable practices or behaviours, this should lead to greater confidence regarding the protections for consumers.
- Consumers and other stakeholders will have greater visibility into the actions they can take when they believe they have experienced or observed harm, helping both the impacted consumer and the FCA investigation team.
- Firms should better consider the potential business and personal impacts from their decisions, leading to better outcomes for consumers.

Taken together, these benefits will improve a consumer's ability to navigate and have trust in the overall regulatory system, which is essential for the FCA to achieve its statutory objectives of ensuring consumer protection and market stability.

Whilst factual publication of investigations is viewed positively, the Panel encourages the FCA to use caution with its publication and to monitor and respond to reactions in the media and by consumers. There are two primary concerns.

1. The possibility that the popular press or social media may find "a story" and distort the intended message, which then overly alarms consumers
2. The right balance needs to be struck so that the FCA give confidence to consumers that action is being taken whilst not causing so much concern that consumers disconnect from financial services altogether.

However, it is also noted that publication in popular media also provides an opportunity for the FCA to encourage greater consumer awareness of its enforcement activities and also to encourage individuals to raise complaints to the firm or the FOS where appropriate. Wider publication may also increase consumer usage of the FCA website (albeit the Panel still believe the consumer journey through the FCA website needs to be further improved).

One aspect which The Panel feel is under-considered in the consultation document is how these proposals will impact the Financial Services Register.

While the Panel believe consumers' use of The FCA Register is low it remains an important source of information for those consumers that access it. Therefore, the Panel believe that all announcements of enforcement investigations should result in a clear 'marker' on the Register so that consumers can see that a firm is under investigation. All press releases and associated web content which announce enforcement investigations could include a link to the relevant firm's Register entry.

Given that consumers are less likely to rely on the actual text of the Enforcement Guide, please find the Panel's responses to the questions posed raised in Annex A below.

Yours sincerely,

Helen Charlton

Chair of the Financial Services Consumer Panel

Annex A – Response to consultation questions

Q1. Do you agree with our proposal to announce our investigations, including the names of the subjects, and publish updates on those investigations, when in the public interest? Please give reasons for your answer.

Yes the Panel agrees.

For the reasons noted above, the Panel agrees that announcing investigations and publishing updates on those investigations is in the best interest of protecting consumers. The FCA should also recognise that consumers are not generally scanning the FCA website on a regular basis, and many may not even be aware that it exists; therefore, the FCA should also publish press releases to make these details more accessible to consumers.

Publishing the names of subject firms will be helpful for the overall protection of consumers, as they can better assess the risk of doing business with the firm or if they have had a negative experience of that firm may encourage them to either report this to the FCA or raise a complaint to the firm or the FOS.

The Panel considers that the FCA will also need to give careful thought to the impact such an announcement may have on existing customers of the firm being named, and expects the FCA to weigh the impact on new and existing customers appropriately.

Q2. Do you agree with the structure and content of our proposed new public interest framework, including the factors proposed, and the other features of our proposed new policy described in paragraphs 3.5 to 3.12 above? Please give reasons for your answer if you do not agree.

The Panel consider the structure and content of the public interest framework to be reasonable.

There is, however, the potential that the consequences of publication will not be clear until the proposed approach is put into practice. To ensure that it is achieving the desired outcomes and there are no negative unintended consequences, the FCA should capture pre- and post-publication metrics and compare these to expectations. The Panel would expect these metrics to have a significant focus on the outcomes (and potential harms) for consumers.

Q3. Do you agree with our approach to announcements and updates where the subject is an individual? Please give reasons for your answer if you do not agree.

The Panel recognise the legal limitations to publishing the names of individuals under investigation but would encourage the FCA to err on the side of publication rather than non-publication.

It is possible that the names of individuals may be less useful to consumers than the name of the firm. However, as noted in 3.17 publication of the name of the individual (especially as people move between firms) may encourage consumers / witnesses to come forward to the FCA or to raise complaints with either the firm or the FOS.

The other situation where a name is relevant is when the named individual is publicly recognised, possibly more so than the firm they are employed by. As with firms, when the FCA names an individual, the Panel would encourage the FCA to consider any consequences on existing customers.

The Panel would expect, and hope, that a benefit of publishing the names of individuals is that it will act as a deterrent to others. The Panel would therefore encourage the FCA to ensure that any names of individuals that cannot be published during the investigation / enforcement process are made public if enforcement action is taken.

Q4. Do you agree with the proposed content of our announcements? Please give reasons for your answer if you do not agree.

In general, the Panel agrees with the proposed content of the announcements. However, please refer to the response to Q1 and Q3 for the Panel's position regarding publishing the identity of the subject of the investigation.

Press releases should include summaries that are designed for the general public, not industry experts. They should use simple and easily understood explanations and avoid industry jargon or referring the reader to sections, articles, paragraphs of law or regulation. In the early stages, it may be helpful to test such content with consumers (who should not have a legal or regulatory background). The content on the FCA website can and should refer the reader to more technical details.

While it may not always be possible to publish information regarding the sources of information underlying an investigation where customer complaints led to or helped the investigation, then this should be made

clear as this will both confirm to consumers that their complaints are taken seriously and encourage others to come forward where appropriate.

Q5. Do you agree with our proposed methods of publicising an announcement and updates? Please give reasons for your answer if you do not agree.

The Panel agrees with the proposed methods of publicising announcements and updates.

However, as noted in the response to Q1, consumers (and small businesses) are unlikely to access the FCA website for information on a regular basis. Therefore, it is essential that announcements and updates are given in press releases that are likely to be more widely read either in print or online. This should also include the link to the appropriate FCA website page, and it should contain messaging that will encourage consumers to access the FCA website for any further information or concerns relating to financial services.

As stated in our covering letter above, we believe that all announcements of enforcement investigations should result in a clear 'marker' on the Register so that consumers can see that a firm is under investigation. The Panel would expect that all press releases and associated web content which announce enforcement investigations should include a link to the relevant firm's Register entry.

Q6. Do you agree with our proposed approach to publicising investigation updates, outcomes and closures? Please give reasons for your answer if you do not agree.

Updates will be particularly helpful for investigations that will take an extended period to conclude, for example when the investigation is complex or where the impact is large. The communication strategy should be established as part of the roadmap for the investigation project.

The publication of outcomes and closures will be especially useful and are critical for any investigation that is announced to the public. Where investigations are closed without further FCA action, the Panel would expect this to be announced so that consumers are aware and can consider their own actions.