

Consultation Paper **CP24/2****

Our Enforcement Guide and
publicising enforcement
investigations—a new approach

February 2024

How to respond

We are asking for comments on this Consultation Paper (CP) by **30 April 2024**. We have extended by two weeks, from 16 April 2024, the date by which we originally asked for those comments.

You can send them to us using the form on our [website](#).

Or in writing to:

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

Or by email:
cp24-2@fca.org.uk

In your response, please indicate whether or not you consent to our publication of your name as a respondent. For further information on the confidentiality of responses, see page 30 of this CP.



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Foreword



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Reducing and preventing serious harm is one pillar of the FCA's 3-year strategy and enforcement plays a vital role in delivering this aim effectively. Fines, bans and prosecutions are often what the public notices most about our enforcement work, and they are vital tools in holding to account those who don't meet our standards. But enforcement action is not simply about individual instances of punishment. Its greatest impact is as deterrence, and in educating the whole market on what we expect, and where others have fallen short.

Transparency about what we are investigating further helps to reassure, educate and drive our own accountability. That is why we're proposing to communicate more about our investigations.

Doing so has three significant benefits.

First, it builds trust in the system and the public will know we're on the case.

Firms and the market will benefit too. By being clearer about the types of misconduct we think warrant a formal investigation, it allows other firms to learn lessons, raise their standards and think twice about doing the same at a much earlier stage than currently.

And it will support our accountability by shining a light on the efficiency and pace of our investigations.

We are conscious in our proposals of the significance that any investigation can have. That is why any decision to announce an investigation into a firm will be taken case-by-case, with careful consideration of whether it is in the public interest to do so. And, given the specific legal considerations regarding information about individuals, we will not generally announce when we've opened an investigation into a named individual.

We will also state clearly that announcing an investigation does not automatically mean we have decided that there has been misconduct or breaches of our requirements, and we will be transparent when we close cases with no outcome.

The deterrent effect of enforcement action is greater the closer it is to misconduct occurring. The longer it takes for outcomes to be determined, the longer it takes for us to send important signals to the markets we oversee about what we consider serious misconduct to be.

That is why we want to speed up investigations. We will do so with a streamlined caseload of investigations better aligned to our strategic priorities of putting consumers' needs first, delivering assertive action on market abuse and reducing and preventing financial crime.

Nor should enforcement be seen as the only or best way of tackling harm. Preventing it in the first place, or quickly remediating it when it does happen are equally important.

That is why, as an organisation, we've acted with greater assertiveness in preventing those who can't or won't meet our standards entering into or remaining in the regulated sector. And it is why we have steadily increased the use of our other powerful tools, like business restrictions and our use it or lose it powers for those holding unused regulatory permissions.

These intervention powers are highly effective at nipping harm in the bud and protecting consumers in real time and increasing their use will continue to be a core part of our regulatory approach alongside our strategic use of enforcement.

We will continue to investigate potential serious misconduct by individuals and firms and will not shy away from challenging and complex investigations.

More broadly, and subject to consultation, we are simplifying our Enforcement Guide (EG). We intend for this to be a more useful and focussed document going forwards, and are moving key information to our website where it's more easily accessible.

We know these proposed changes to what we will tell the public about our work are different to the approach we have taken previously, and we are keen to hear feedback on our proposals.

Chapter 1

Summary

Why we are consulting

- 1.1** Being open about our enforcement activities as soon as we are able is important. It reassures the public that we are taking appropriate and prompt action, ensures the faster dissemination of best practices and concerns, increases deterrence and drives positive behavioural change. It also encourages witnesses and whistleblowers to inform our enforcement and supervisory work. These positive results in turn help us address risks to consumers and investors and build their confidence in increasingly fast-moving and emerging markets.
- 1.2** Our commitment to transparency, and our obligations to have regard to transparency in performing our functions, underpin the existing publicity of our enforcement and supervisory outcomes, including our interventions to stop harm and our imposition of sanctions. But we must review and calibrate this approach as we tackle new and complex threats to consumers and investors, and as public expectations of the transparency of our enforcement response increase.
- 1.3** There can inevitably be some time between the misconduct and harm we identify, and the announcement of our resulting interventions and sanctions. We currently publish very little information about the investigations we have opened that lead to those actions. Public concern about whether we are taking appropriate steps can develop in this gap, which can also undermine the educational value and deterrent impact of those outcomes.
- 1.4** Even when our investigations lead to no public regulatory or other outcomes, we consider that firms we regulate would benefit from a greater understanding of the types of suspected misconduct and other failings we consider should be investigated.
- 1.5** We intend to start publishing more information about the enforcement investigations we have opened, using a flexible public interest framework to inform our case-by-case decision-making on whether and what to announce.
- 1.6** Our development of a new approach to publicising enforcement investigations formed part of a wider review of EG. As our remit has grown significantly, we have regularly updated and amended EG. As a result, its focus is no longer exclusively on the core elements of our enforcement investigations.
- 1.7** We have carried out a comprehensive review of EG and concluded it contains too much redundant material. EG includes information that could sit better elsewhere, and there are some areas where EG has become out of date and does not reflect our current policies and ways of working. Our key proposals here involve:

- revising EG to set out our key enforcement policies relevant to our investigation process
- directing stakeholders to information about our strategic approach and general enforcement priorities
- moving information currently in EG but relevant to our wider work to our website to make it easier to find, and
- deleting content that is repetitive or duplicates that found in the Financial Services and Markets Act 2000 (FSMA), our Decision Procedure and Penalties Manual (DEPP) and other legislative provisions.

1.8 The focus of this CP is a proposal to be more transparent around what enforcement activity we are doing. Proposed revisions to the rest of EG aim to improve the accessibility of information about how we carry out our investigations. We want the information we provide to be concise, relevant and, ultimately, more useful.

Who this applies to

1.9 This CP is likely to be of interest to:

- firms that fall within our regulatory oversight and that may be subject to an enforcement investigation, whether authorised or registered with us or that will be carrying out designated activities, as well as individuals working in these firms
- consumer and investor groups and individual consumers and investors
- industry groups, trade bodies, experts and commentators, and
- other regulatory bodies.

What we want to change

1.10 To make sure we are transparent about how we operate, make our decisions and otherwise advance our statutory objectives in the public interest, we already publish a significant volume of statistics, metrics, research data and other information, including in our Business Plans and Annual Reports.

1.11 We also currently publish information about our enforcement investigations when these lead to outcomes. This includes when we issue or propose to issue statutory notices imposing sanctions, prohibitions and requirements, such as to pay redress. However, we do not currently make public at an earlier stage the fact that we are investigating, except in exceptional circumstances.

1.12 In future, we want to proactively publish more information about our enforcement investigations including their opening and progress. This includes publishing the identity of the subject of the investigation, if we assess that it is in the public interest to do so and if there are no compelling legal or other reasons not to. It will also include publishing updates on our investigations and announcing that we have closed cases where our investigations have not led to regulatory or other action.

1.13 We will decide whether and what to publish on a case-by-case basis, using a new public interest framework and taking all relevant facts and circumstances into account. But we will continue to keep the fact of our investigations confidential in certain situations. This

includes when we consider publication would be likely to adversely affect those or other investigations, the interests of consumers or our operational objectives.

- 1.14** Our proposals also recognise that there are specific legal considerations when we publish information about individuals. So our approach to publishing investigation announcements about individuals will be different and we will not usually announce that we are investigating a named individual.
- 1.15** Announcements we make about our investigations will make it clear that we have not yet decided whether there has been misconduct or breaches of our requirements, unless it is inappropriate to do so. We give an example in paragraph 3.9 below of a situation in which it may be inappropriate.
- 1.16** We propose amending EG (specifically now EG 4.1 in the revised EG we are more widely consulting on) to explain when, and how, we will announce the investigations we have opened, and publish updates on those investigations. Our proposals will not affect how we publish the outcomes of our investigations, including when we publish a statutory notice under section 391 of FSMA.

Outcomes we are seeking

- 1.17** We want EG to set out the relevant enforcement policies of our investigation process in a streamlined and more accessible way. We also want information that sets out our strategic approach to enforcement to be more accessible on our website.
- 1.18** By amending our investigation publicity policy, we will also be more open in the way we explain our enforcement process. Our proposals will achieve greater transparency whilst still operating within the existing relevant statutory framework.

Read more about our proposed changes to our policy on publicising our investigations in Chapters 2 and 3 and our proposed changes to the rest of EG in Chapter 4 of this CP.

Measuring success

- 1.19** We will seek to monitor the impact of our proposed changes, for example by tracking, as far as reasonably possible:
- the reasons for whistleblowing disclosures and witnesses coming forward to us
 - public and industry awareness of and confidence in our enforcement work via relevant surveys
 - any relevant changing behaviours reflected, for example, by potentially better and faster remedial measures by firms, and
 - any feedback on EG we receive.

Next steps

- 1.20** We want your feedback on our proposals and the issues discussed in this CP. Please send your answers to the questions in this CP by 30 April 2024 using one of the methods given in the 'How to respond' section on page 2. In your response, please let us know whether you consent to us naming you publicly as a respondent and whether you want us to keep the content of your response confidential, although please note the statement on page 30. Following this consultation, we will publish a policy statement and feedback statement.

Chapter 2

The wider context of our publicity policy changes

Introduction

- 2.1** In this chapter we cover, in relation to our investigation publicity proposals:
- the issues we are trying to address
 - the outcomes we want to see
 - the relevant legal and regulatory background, and
 - how our proposals link to our statutory objectives.
- 2.2** We also cover potentially relevant environmental, social, governance, equality and diversity considerations and our engagement on our proposals to date with the Prudential Regulation Authority (PRA).
- 2.3** We give details of our proposals in Chapter 3.

Transparency and transformation

- 2.4** We are committed to being a transparent regulator, to being clear in how we communicate and in the way we work. We want to be as open and accountable as possible so we can educate, inform and be scrutinised by consumers, the firms and individuals we regulate and Parliament.
- 2.5** Our existing approach to transparency sets the context. However, we have not evaluated it recently, in the context of investigation publicity, to ensure our approach fully supports our statutory objectives and strengthens the impact of our enforcement work as we respond to today's challenges.
- 2.6** We have been transforming to become a more innovative, adaptive, assertive and proactive regulator. We have already transformed many of our operations, including by introducing a more rigorous and effective authorisations process. This means we can better focus our supervision resources and see fewer and faster enforcement investigations.
- 2.7** As part of this, we have looked at how we can maximise the benefits of transparency by disclosing more information about our enforcement activities at an earlier stage.

Transparency as a regulatory tool

- 2.8** Our approach to transparency is underpinned by our statutory obligations in FSMA and the Legislative and Regulatory Reform Act 2006 (LRRRA) to:
- exercise our functions as transparently as possible
 - consider publishing information about regulated firms and individuals, and
 - have regard to the principle that regulatory activities should be carried out in a way that is transparent, accountable, proportionate and consistent.
- 2.9** In line with these obligations, our overall approach to transparency is a presumption in favour of using it as a regulatory tool to help us achieve our operational objectives, unless there are compelling regulatory, legal or other reasons to the contrary.
- 2.10** We implemented this approach in our Code of Practice on Regulatory Transparency (published in CP09/21) and also in our public Transparency Framework. The guiding principle of a presumption of transparency is subject to the following:
- any disclosure should not infringe any statutory restrictions, including those in FSMA
 - we should proactively disclose information that we believe, on balance, to serve, rather than harm, the public interest, and
 - we should meet our relevant standards of economy, efficiency and effectiveness.

Transparency of our enforcement investigations

- 2.11** Following this approach, we have previously been clear that publishing timely information about our investigations is a robust and effective way of raising consumer awareness, maintaining market confidence and deterring future breaches of our rules and requirements. We believe that such transparency strongly supports our operational objectives, in particular, securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.
- 2.12** However, we rarely publish any information about the investigations we have opened and their progress, unless and until they result in actual or proposed outcomes such as censures or penalties. By that time, the reassurance, educational value, and effectiveness of that information, which benefits consumers and the industry, is often significantly reduced. Further, it is given too late to encourage witnesses and whistleblowers to inform our relevant enforcement and supervisory work.
- 2.13** We consider that we would advance our objectives far better by publishing information about the investigations we have opened at an earlier stage, if it is in the public interest to do so and having regard to all relevant facts and circumstances. We also believe that publishing updates on the progress of our investigations, and announcing the closure of investigations which do not lead to further action, will increase the effectiveness and accountability of our enforcement activities. We additionally recognise the need to conduct our investigations efficiently and with appropriate pace. An increase in transparency will make our efficiency and pace more visible.

2.14 However, we also need to strike a balance between the clear benefits of transparency and other factors, including statutory limits on what we can say, the potential for publicity to hamper investigations and the potential harm to achieving our objectives.

Restrictions on transparency

2.15 FSMA does not impose any specific restriction on our publishing the fact that we are conducting an investigation. However, while we do set out to be open and transparent, we are legally required to:

- protect, subject to exceptions, confidential information that we receive that relates to individuals or firms (section 348 of FSMA)
- follow due process requirements before publishing a statement amounting to a 'public censure' of a firm or individual (section 205 of FSMA), and
- consider requirements and restrictions in other provisions, including the Data Protection Act 2018 (DPA 2018), the UK General Data Protection Regulation (UK GDPR) and the European Convention on Human Rights (ECHR).

2.16 We do not consider that these legal restrictions prevent us from being a more transparent regulator as long as we consider, on a case-by-case basis, the information we intend to disclose and whether the relevant legislation imposes restrictions.

2.17 Our proposed approach to not normally announce an investigation into a named individual, unless it is in the public interest and lawful, takes account of these restrictions. In particular, the UK GDPR generally prohibits processing personal data unless there is a lawful reason for it.

Relevant approaches taken by other bodies

2.18 We consider that our proposed approach is consistent with the approaches taken publicly by a number of other bodies. These include the Competition and Markets Authority, the Office of Communications and the Office of Gas and Electricity Markets and, outside the UK, the Monetary Authority of Singapore.

How this links to our objectives

2.19 As we have explained above, we believe that increasing the transparency of our investigations will strongly support our operational objectives, in particular securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system. It will also increase our accountability by making our enforcement work more visible to consumers, the firms and individuals we regulate, and Parliament.

2.20 More specifically, such early publicity, via its educational and deterrent effects, will decrease the likelihood that harm to consumers and markets will occur in the first place. It will also enable us to more effectively address risks to consumers and investors in increasingly fast-moving and emerging markets.

- 2.21** We also believe that increasing public confidence that we are effectively addressing such risks to consumers and investors will increase market confidence and so enhance the stability and integrity of the UK's financial system.
- 2.22** We consider our proposed changes are also compatible with our secondary objective of advancing the international competitiveness of the UK economy and its growth in the medium to long-term.
- 2.23** We believe that being more transparent about the opening and progress of our investigations, via our new public interest framework, will promote trust in our financial markets, by demonstrating how we are striving to ensure compliance with relevant requirements, and reduce non-compliance through education and deterrence.
- 2.24** We consider, as indicated above, that our new policy is consistent with the policies of other UK regulators and that it will advance our objectives in improving the long-term integrity, cleanliness and attractiveness of the UK market.

Environmental, social & governance considerations

- 2.25** In developing this CP, we have considered the environmental, social and governance implications of our proposals and our duty under sections 1B(5) and 3B(c) of FSMA to have regard to contributing towards the Secretary of State achieving compliance with the net-zero emissions target under section 1 of the Climate Change Act 2008 and environmental targets under section 5 of the Environment Act 2021.
- 2.26** Overall, we do not consider that our proposals are relevant to contributing to those targets. We will keep this issue under review during the consultation period. In the meantime, we welcome your input to this consultation on this issue.

Equality and diversity considerations

- 2.27** We have considered the equality and diversity issues that may arise from the proposals in this CP. Overall, we do not consider that the proposals materially impact any of the groups with protected characteristics under the Equality Act 2010. But we will continue to consider the equality and diversity implications of the proposals during the consultation period. In the meantime, we welcome your input to this consultation on this issue.

PRA engagement

- 2.28** We have discussed our proposals relating to investigation publicity on an initial basis with the PRA and shared with them a draft of our proposed new policy – EG 4.1 within the wider amendments to EG set out in Appendix 1. The PRA has raised no current objections to or concerns regarding our proposals. We will engage with them further before finalising the policy after and subject to this consultation.

Chapter 3

Our proposed new approach to publicising our enforcement investigations

Introduction

- 3.1** This chapter explains our proposed amendments to our existing policy in EG on publicising our investigations. We also summarise how our proposed new policy will operate. The text of the proposed amendments is set out in EG 4.1 in the wider amendments to EG in Appendix 1 to this CP.

Which investigations this will apply to

- 3.2** Our proposed new approach to publicising our investigations, and our new public interest decision-making framework, will apply to all our investigations commenced by way of statutory appointment of investigators, under FSMA or otherwise, including those that are ongoing when we introduce our new policy.

What we propose

- 3.3** We propose publicly announcing that we have opened an enforcement investigation, including the identity of the subject of the investigation, and publishing updates on the investigation, if we consider that it is in the public interest to do so.
- 3.4** We propose following a new public interest framework to inform our decision-making, applying the framework to the fact, content and timing of each announcement. We will also follow it in deciding if and when to publish updates on any investigation that we have announced and what those updates should include.

The public interest framework

- 3.5** We propose a number of factors which we consider indicate that an announcement or update will be in the public interest, specifically the likelihood it will:
- enable the interests of potentially affected customers, or consumers or investors more generally, to be protected
 - help our investigation, for example by encouraging potential witnesses or whistleblowers to come forward
 - address public concern or speculation, including by correcting information already in the public domain
 - provide reassurance that we are taking appropriate action
 - deter future breaches of our rules or other requirements or prohibitions that we are responsible for enforcing, or

- otherwise advance one or more of our statutory objectives, including protecting and enhancing the integrity of the UK financial system.

3.6 Similarly, we propose a set of factors which we consider indicate that an announcement or update may not be in the public interest, specifically if it is likely to have an adverse impact on:

- the conduct of our investigation or an investigation by another regulatory body or law enforcement agency
- the interests of consumers, or
- the stability of the UK financial system or our ability to otherwise carry out our statutory functions.

3.7 The factors set out above are non-exhaustive. We will assess whether to publish an announcement or update and what it should contain, including whether to name the subject of the investigation, on a case-by-case basis, taking all relevant facts and circumstances into account.

3.8 We recognise that this more transparent approach may raise concerns about potential impact on our investigation subjects. We have, however, not included such impact as a specified factor in our proposed framework. This is because we consider that assessing if publication of an announcement or update is in the public interest should, while taking account of all relevant facts and circumstances, be primarily focused on promoting our statutory objectives. It should support the relevant investigation and increase our accountability by providing public reassurance that we are acting in the interests of consumers and investors.

3.9 However, unless inappropriate, our announcements will state that the opening of an investigation should not be taken to imply that we have reached any conclusion that there has been a breach or other misconduct or failing nor determined what resulting enforcement action, if any, is appropriate. Making such a statement may be inappropriate, for example, if we have already publicly taken supervisory intervention action against the subject of the investigation in which formal findings of breach have been made.

3.10 Where we have published an announcement and subsequently close the investigation without regulatory, civil or criminal action, we will publish an announcement to that effect and/or amend the original announcement on our website.

3.11 In these ways, we believe that our proposed framework will be appropriately flexible, fair and proportionate, while also having prompt educational, reassuring, deterrent and accountable impact.

3.12 If we decide that publishing an announcement that we are investigating a particular matter would not be in the public interest, for example where our investigation relies on covert intelligence gathering, we will generally neither confirm nor deny that we are doing so.

Question 1: 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.

Question 2: 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.

Our approach to individuals

- 3.13** Our proposals recognise that there are specific legal considerations where we publish information about individuals.
- 3.14** We have already publicly explained, in our privacy notice relating to enforcement, how and why we use personal data to carry out our enforcement functions. The way in which we process personal data will depend on the nature of our investigations and the outcomes we decide are most appropriate.
- 3.15** Where an investigation is either regulatory or civil, our processing is subject to the UK GDPR, as well as the DPA 2018. Processing in the course of a criminal investigation is solely subject to provisions of the DPA 2018.
- 3.16** The UK GDPR prohibits, with some exceptions, processing personal data unless there is a lawful reason for it. For regulators such as the FCA, this processing must generally be necessary for them to perform a task in the public interest or in the exercise of official authority.
- 3.17** So, we cannot generally publish the name of an individual we are investigating or otherwise process their personal data unless it is necessary to do so for the purposes of our investigation or to carry out one of our statutory functions. Examples of where publication may be necessary include encouraging witnesses to come forward to assist our investigation or fulfil our accountability to Parliament.
- 3.18** As a result, and considering also the ECHR, our proposal is usually not to announce that we are investigating a named individual. However, there will be circumstances when we can lawfully make such an announcement, in the public interest.

Question 3: 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 content of an announcement

- 3.19** Our intention is that an announcement will contain sufficient information for the public interest purposes we have identified in the relevant case, in particular to enable consumers, firms and other relevant market participants to understand the nature of our concerns.
- 3.20** More specifically, each announcement may contain the following:
- the identity of the subject of the investigation
 - the industry sector and regulatory or legal provisions the investigation relates to, and
 - a summary of the suspected breach, failing or other misconduct being investigated.
- 3.21** As noted above, our announcements will make clear that the opening of an investigation does not imply that we have reached a conclusion that there has been a breach, failing, or other misconduct unless it is inappropriate to do so.
- 3.22** We consider that our proposals to announce investigations will not generally involve breaching any of our FSMA obligations, including the restriction on publishing confidential information. However, we will carefully consider whether each announcement would breach this restriction or any others which apply to the case.
- 3.23** Generally, we do not expect that it will be in the public interest to announce an investigation we have opened on behalf of an overseas regulator, in line with relevant non-statutory confidentiality restrictions.

Question 4: Do you agree with the proposed content of our announcements? Please give reasons for your answer if you do not agree.

How we make announcements and updates

- 3.24** Where we decide to announce an investigation, or publish an update on such an investigation, which names the subject, we will give the subject appropriate advance notice. Normally we will give the subject no more than 1 business day's notice. However, the particular facts and complexities of the investigation and the surrounding circumstances may mean that we give no notice if we consider we need to announce, or give an update on, an investigation urgently.
- 3.25** Publicising our announcements and updates will increase their visibility and positive impact. So, we will normally publish announcements and updates on our website and may issue a press release with a link to the relevant page.
- 3.26** We aim to balance an open approach while ensuring announcements and updates are orderly. If an announcement or update is potentially market sensitive, we will generally inform the subject of the announcement or update after markets have closed, publishing on our website at 7.00am and via an FCA-approved primary information provider. If the subject is a listed company in another jurisdiction, and the announcement

or update is potentially market sensitive, we will, where possible, try to avoid publication during stock exchange hours in that jurisdiction.

Question 5: Do you agree with our proposed methods of publicising an announcement and updates? Please give reasons for your answer if you do not agree.

Publishing investigation updates, outcomes and closures

- 3.27** Where we have published an announcement, we may also publish updates on the investigation if we consider that it is in the public interest to do so, considering the factors and guidance described above. However, we will not publish details of the information we have gathered or our conclusions, other than as legally permitted or required, including by or under FSMA and other applicable legislation.
- 3.28** Our proposals do not affect our approach to confidential information, including the information that subjects and others give us during an investigation. Nor do our proposals affect our existing approach to publishing enforcement and other regulatory outcomes, including where we publish statutory notices under section 391 of FSMA and in accordance with other parts of EG.
- 3.29** Publishing case closure announcements is a way of increasing the visibility of our completed work and being accountable for the pace and efficiency of our enforcement activities. We propose that, where we have published an announcement of an investigation and we subsequently close it without taking enforcement or other action, we will make a public announcement stating this and/or amend the original announcement on our website.

Question 6: 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.

When we will start our new approach to investigation publicity

- 3.30** Our consultation closes on 30 April 2024. After carefully considering the responses, we will publish a policy statement with the final text of our policy.
- 3.31** We will start to apply our new approach to investigation publicity to all our enforcement investigations from the date the new policy comes into force. This will include new enforcement investigations and ongoing investigations, where we assess that publishing an announcement or update is in the public interest.

Chapter 4

Our proposals for a revised Enforcement Guide

Introduction

- 4.1** This chapter explains the broad outline of our proposals for the remaining specific chapters and content of the Enforcement Guide (EG). It does not duplicate the draft EG text to show what these changes would look like if implemented. There is a full draft of our revised EG at Appendix 1 of this CP.
- 4.2** EG provides information on key aspects of our enforcement policy, where these are not provided elsewhere. It covers how we conduct a typical enforcement investigation and how we will generally seek to use our powers to investigate and take enforcement action.
- 4.3** We are not aiming to make wide-scale changes to our existing policies in EG, which we consider remain fit for purpose. We have removed content from EG which repeats provisions of FSMA, other legislation or information available in DEPP. But we have identified and retained text that explains our approach where the wording of statutory provisions alone is not enough to make our policy clear.
- 4.4** FSMA does not require us to have an enforcement guide. DEPP sets out specific statements of policy that we are required to put in place, consult on and publish under FSMA and other legislation. These policies primarily cover our decision-making procedures, financial penalties, public censures, suspensions and restrictions and conducting interviews following the request of an overseas authority.
- 4.5** There is significant overlap between EG and DEPP that we propose to address, and many of these specific statements of policy are also referred to in chapter 19 of EG. We do not propose any changes to the substance of these policies, or to DEPP more generally.
- 4.6** Similarly, DEPP already sets out our approach to sanctions and penalties, so we intend to remove this material from EG. There is 1 point on the apportionment of penalties in EG 7.4 that we propose to move to DEPP and our consultation on the use of private warnings, which is presently set out in EG 7.6.
- 4.7** Paragraphs 2.25 to 2.27 above, regarding environmental, social, governance, equality and diversity considerations, also apply to the proposals in this chapter.

Strategic policies

- 4.8** We propose to move information about our broader strategic approach to enforcement from EG to our [Enforcement pages](#) on our website, where it will be more accessible.
- 4.9** This will make all the material setting out our high-level approach to enforcement, our investigation opening criteria and our Enforcement Information Guide available in one place.

Question 7: Do you agree with our proposal that moving our strategic policy information to the website will make information more accessible? Please give reasons if you do not agree.

Investigation policies

- 4.10** Chapters 1 and 2 of the new EG explain our powers that we use during a typical investigation. Chapter 1 remains an introduction to EG and also signposts to other strategic policy material. Chapter 2 sets out our powers when conducting a typical enforcement investigation. It includes information on starting an investigation and scoping discussions, information gathering and investigation powers, our approach to interviews and settlement discussions.
- 4.11** Changes to chapter 2 include clarifying our approach to the attendance of legal advisers at a compelled interview of a subject under investigation where there may be a conflict of interest. We have also removed references to preliminary findings letters and preliminary investigation reports because we no longer use them in this form. We have also deleted repetition. We have the same general approach to the appointment of investigators, regardless of the legislative power we are using. This means there is no need to repeat that approach for each different legislative power.
- 4.12** The remaining chapters set out and update our policies that directly involve carrying out an investigation and its outcome, but which may not apply in every case.
- 4.13** Chapter 3 contains our approach to enforcing breaches of the FCA's Principles for Businesses and the Individual Conduct Rules and Senior Management Responsibility. It also includes our use of FCA guidance and industry guidance in an enforcement context, joint PRA investigations and our approach to assisting overseas authorities. We have set out our approach to firms conducting their own investigations in anticipation of enforcement action, and clarified the basis on which we will accept reports provided to us on a limited waiver basis (the basis that a firm may assert legal privilege as grounds for non-disclosure to a party other than us).
- 4.14** In EG 3.8.1 we have set out that decisions to apply to the court to commence civil proceedings will be made by an Executive Director or a Director in Enforcement. This has also been mirrored in EG 6.1.4 in relation to commencing criminal proceedings. We believe that extending the power to make these decisions to Directors in Enforcement would align better with how we operate and still reserve the decision to an appropriately senior level of decision-maker.
- 4.15** Chapter 4 of the revised EG now deals with publicity which we cover in chapter 3 of this CP.

4.16 Chapter 5 sets out our approach to Prohibition Orders and withdrawal of approvals and chapter 6 covers the prosecution of criminal offences. For these chapters, we have made only minor changes from the present text of EG.

Question 8: Do you have any comments on the revised content of chapters 1-6 of EG?

4.17 Appendix 1 to EG now briefly sets out our other powers that we may use alongside our investigation and enforcement powers in the specific areas set out in this paragraph. However, these powers will not be relevant in all cases. To make it easier to cross-reference, in this paragraph we have identified these by their existing EG references. They relate to:

- injunctions (EG 10)
- insolvency (EG 13)
- collective investment schemes (EG 14)
- disqualification of auditors and actuaries (EG 15)
- disapplication orders against members of the professions (EG 16), and
- cancellation of approval as sponsor or primary information provider (EG 18).

4.18 While some of these powers can be used by Enforcement, they are cross-FCA powers more frequently used by our other functions in carrying out their work. Some relate to authorisation issues or are rarely-used powers. We propose keeping a summary of these powers in EG, rather than deleting these chapters completely.

4.19 We are consulting on whether this material should be retained in EG, relocated elsewhere (either on the FCA website or in separate guidance), or whether these chapters do not help understanding of how we work and could also be deleted.

Question 9: Are there any chapters set out in paragraph 4.17 that you consider should be kept in full as part of EG?

Question 10: Are there any chapters that you consider should be relocated elsewhere?

Question 11: Are there any chapters that you consider can be deleted altogether?

4.20 We have removed the present chapter 8 that deals with the exercise of our powers to impose a variation, cancel a permission, impose requirements on the FCA's own initiative and intervene against incoming firms.

4.21 Chapter 6 of the Supervision manual (SUP) in the FCA Handbook sets out our powers and approach to firm's applications to vary and cancel Part 4A permissions and requirements. We propose to move EG 8 to sit alongside SUP 6, so that our approach to these powers sits in one place.

Question 12: Do you agree that the present chapter 8 of EG should be moved from EG and included in SUP 6? Please give reasons if you do not agree.

4.22 Our powers for restitution and redress are described in the existing chapter 11 of EG, which we propose to remove. This is a cross-FCA power and most redress schemes are agreed and overseen by our Supervision Division. In our Business Plan 2023/24, we committed to consulting on guidance for firms on redress exercises.

Question 13: Do you agree with the removal of the restitution chapter from EG? Please give reasons if you do not agree.

4.23 We propose to retain some of the material contained in EG 19 and EG 20 as an Appendix. Appendix 2 to EG gives a summary of our non-FSMA powers under other legislation and our approach to enforcement of the Consumer Credit Act 1974.

Question 14: Do you have any comments on our proposal to retain EG 19 and 20?

Private warnings

4.24 We previously set out our policy on private warnings in EG 7.6.

4.25 We aim to strike a balance between our commitment to the principle that we should exercise our functions as transparently as possible with providing appropriate information about our regulatory decisions. A private warning is never intended to be a determination as to whether the recipient has breached our rules. Where we have concluded that it is not appropriate to impose a disciplinary sanction but where we can give useful feedback about our expectations of firms or individuals, we can do so in correspondence or through wider industry engagement.

4.26 As a result, we consider that we should not use private warnings as an enforcement tool in circumstances where we cannot be more publicly transparent about the issues that concerned us. For that reason, we propose to delete EG 7.6.

Question 15: Do you agree that we should not use private warnings as an alternative to taking formal action and remove any reference to them from EG?

Future consultation

4.27 As noted above, we are not required by FSMA to have EG, and so the FSMA requirements for consultation do not apply where we are proposing to amend EG. Over time, we have consulted whenever EG is changed. However, we do not expect to make regular or substantive changes to EG in the future. We will continue to consult where statute requires it, or where we believe it is necessary to do so. We will not continue to consult in all cases, and any changes will be published on our website.

Question 16: Do you have any comments on our proposed approach to future consultation?

Annex 1

Questions in this paper

- Question 1:** 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.
- Question 2:** 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.
- Question 3:** 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.
- Question 4:** Do you agree with the proposed content of our announcements? Please give reasons for your answer if you do not agree.
- Question 5:** Do you agree with our proposed methods of publicising an announcement and updates? Please give reasons for your answer if you do not agree.
- Question 6:** 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.
- Question 7:** Do you agree with our proposal that moving our strategic policy information to the website will make information more accessible? Please give reasons if you do not agree.
- Question 8:** Do you have any comments on the revised content of chapters 1-6 of EG?
- Question 9:** Are there any chapters set out in paragraph 4.17 that you consider should be kept in full as part of EG?
- Question 10:** Are there any chapters that you consider should be relocated elsewhere?
- Question 11:** Are there any chapters that you consider can be deleted altogether?

- Question 12:** Do you agree that the present chapter 8 of EG should be moved from EG and included in SUP 6? Please give reasons if you do not agree.
- Question 13:** Do you agree with the removal of the restitution chapter from EG? Please give reasons if you do not agree.
- Question 14:** Do you have any comments on our proposal to retain EG 19 and 20?
- Question 15:** Do you agree that we should not use private warnings as an alternative to taking formal action and remove any reference to them from EG?
- Question 16:** Do you have any comments on our proposed approach to future consultation?

Annex 2

Cost benefit analysis

- 1.** Under section 138I of FSMA, if the FCA wishes to make new rules, it must, subject to certain exceptions, publish a relevant cost benefit analysis along with the proposed rules, when publicly consulting on the latter.
- 2.** In this CP, we are not proposing to make any new rules. We have not therefore undertaken a relevant cost benefit analysis.

Annex 3

Compatibility statement

Compliance with legal requirements

1. This Annex records the FCA's compliance with a number of legal requirements imposed by FSMA applicable to the proposals in this CP.
2. Further, under the LRRRA the FCA is required to have regard to a number of high-level principles in the exercise of certain of our regulatory functions, including giving guidance of the sort we are consulting on via this CP, and, in doing so, to also have regard to the Regulators' Code. This Annex explains how we have complied with those requirements.
3. This Annex also confirms our assessment of the potential equality and diversity implications of our proposals and explains how we have considered the most recent recommendations made by the Treasury under s 1JA of FSMA about aspects of the economic policy of His Majesty's Government to which we should have regard in connection with our general duties.

The FCA's objectives and duties

4. We are required by section 1B of FSMA, when issuing guidance of the type we are consulting on, to act, so far as reasonably possible, in a way which is compatible with our strategic objective and advances one or more of our operational objectives.
5. Our strategic objective, specified by section 1B of FSMA, is to ensure that the relevant markets function well, those markets, specified by section 1F of FSMA, including the financial markets and the markets for regulated financial services.
6. Our operational objectives, also specified by section 1B, as well as sections 1C and 1D, of FSMA, include securing an appropriate degree of protection for consumers and protecting and enhancing the integrity of the UK financial system.
7. We consider that the announcements and updates provided for by the new investigation publicity policy we are consulting on via this CP, via their educational and deterrence effects, will decrease the likelihood of harm to consumers and those markets.
8. We also believe that increasing public trust and reassurance, via those announcements and updates, that we are effectively addressing risks to consumers and investors will increase confidence in those markets and so enhance the integrity of the UK financial system.
9. Section 1B of FSMA also sets us an objective, secondary to those referred to above, to act, when issuing such guidance and so far as reasonably possible, in a way that

facilitates the international competitiveness of the UK economy, including in particular the financial services sector, and its growth in the medium to long term.

10. As to this secondary objective, we believe that the education, deterrence, trust, reassurance and confidence referred to above will advance our objectives in improving the long-term integrity, cleanliness and attractiveness of the UK market.
11. Section 1B of FSMA also requires us, when issuing such guidance, to have regard to the regulatory principles specified by section 3B of FSMA. We have done so in particular in developing our proposed new investigation publicity policy.
12. They include the principle that we should exercise our functions as transparently as possible and the desirability, in appropriate cases, that we should publish information relating to persons on whom requirements are imposed by or under FSMA, as a means of contributing to our advancement of the objectives referred to above.
13. Section 1B of FSMA additionally requires us, in issuing guidance of the type we are consulting on:
 - to do so in a way that promotes effective competition in the interests of consumers, so far as that is compatible with advancing our consumer protection and integrity objectives referred to above; and
 - to have regard to the importance of taking action intended to minimise the extent to which it is possible for certain businesses to be used for a purpose connected with financial crime.
14. We consider that we will comply with both of those duties via the educational and deterrent impacts of our proposed new investigation publicity policy, which will relate to the investigations we open into suspected financial crime carried on by or via such businesses and will reduce the likelihood of unfair competition via non-compliance with requirements and prohibitions we enforce.

Equality and diversity

15. We are required under the Equality Act 2010, in exercising our functions, to have due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited by or under the Act, advance equality of opportunity between persons who share a relevant protected characteristic and those who do not and foster good relations between people who share a protected characteristic and those who do not.
16. We therefore ensure that the equality and diversity implications of any new policy proposals are considered. The outcome of our consideration in relation to these matters in this case is stated in paragraph 2.27 of this CP.

Legislative and Regulatory Reform Act 2006

- 17.** We have had regard to the principles in the LRRRA when developing the guidance we are now consulting on. Specifically:
- we have, in proposing to introduce, subject to this consultation, our new investigation publicity policy, had regard to the principle that regulatory activities should be carried out in a way that is transparent and accountable; and
 - in designing that proposed new policy, in particular its public interest decision-making framework and its assurance that we will take account of all relevant facts and circumstances, we have had regard to the principle that such activities should be carried out in a way that is proportionate, consistent and targeted.
- 18.** We have also had regard to the Regulators' Code in developing the proposals described in this CP. We have, in particular, in doing so, had regard to the provisions of the Code relating to:
- the transparency of our regulatory activities, the desirability of such transparency being, as explained above, one of the key factors leading us to propose our new investigation publicity policy; and
 - clear, accessible and concise guidance, which we have sought to produce not only via that new policy but also in proposing to generally simplify and streamline EG as described above.

Treasury recommendations

- 19.** In his letter to the CEO of the FCA dated 8 December 2022, the Chancellor of the Exchequer stated that we should, in assessing the benefits of potential policies, take into account the government's objective of medium to long-term economic growth in the interests of consumers and businesses and the government's commitment to securing better outcomes for all consumers.
- 20.** We have had regard to that statement in developing our proposed new investigation publicity policy, which, as explained above, is particularly focused on such outcomes.

Annex 4

Abbreviations used in this paper

Abbreviation	Description
CP	Consultation paper
DEPP	Decision Procedure and Penalties Manual
DPA 2018	Data Protection Act 2018
ECHR	European Convention on Human Rights
EG	Enforcement Guide
FCA	Financial Conduct Authority
FSMA	Financial Services and Markets Act 2000
LRRA	Legislative and Regulatory Reform Act 2006
PRA	Prudential Regulation Authority
SUP	Supervision Manual
UK GDPR	UK General Data Protection Regulation

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Appendix 1

Amendments to the Enforcement Guide

ENFORCEMENT GUIDE (AMENDMENT) INSTRUMENT 2024

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of section 139A (Power of the FCA to give guidance) of the Financial Services and Markets Act 2000 (“the Act”).

Commencement

- B. This instrument comes into force on *[date]*.

Amendments to material outside the Handbook

- C. The Enforcement Guide (EG) is amended in accordance with the Annex to this instrument.

Notes

- D. In the Annex to this instrument, the notes (indicated by “**Note:**” or “*Editor’s Note:*”) are included for the convenience of readers but do not form part of the legislative text.

Citation

- E. This instrument may be cited as the Enforcement Guide (Amendment) Instrument 2024.

By order of the Board
[date]

Annex

Amendments to the Enforcement Guide (EG)

The Enforcement Guide is deleted in its entirety and replaced with the following. The text is not underlined.

1 Introduction

- 1.1.1 This guide sets out key aspects of our enforcement policy where these are not provided elsewhere. It should be read alongside the *Act*, other relevant legislation, *DEPP*, the Regulatory Processes module in the *FCA Handbook* and our website at www.fca.org.uk/about/how-we-regulate/enforcement/. This guide applies to all enforcement investigations regardless of *firms*’ or *individuals*’ regulatory status.
- 1.1.2 On our website you can find the *FCA*’s high-level approach to enforcement strategy, including information on case selection and when we investigate, here: www.fca.org.uk/about/how-we-regulate/enforcement/investigation-opening-criteria
- 1.1.3 This guide covers how we conduct a typical enforcement investigation. It also contains information about other powers available, which may not apply in every investigation.
- 1.1.4 This guide will be reviewed and amended as appropriate in light of further experience and developing law and practice. We will not consult on future changes to this guide unless it is required by statute or where we consider it necessary to do so.
- 1.1.5 The material in this guide does not form part of the *FCA Handbook* and is not *guidance on rules*. It is ‘general guidance’ as defined in section 139B of the *Act*.

2 Conduct of typical enforcement investigations

2.1 Starting investigations

- 2.1.1 Our investigation opening criteria are on our website at www.fca.org.uk/about/how-we-regulate/enforcement/investigation-opening-criteria. For information about publicity, including during *FCA* investigations, see *EG* 4.

2.2 Notifying the person under investigation

- 2.2.1 The *FCA* will always give written notice of the appointment of investigators to the *person* under investigation if it is required under section 170 of the *Act*. The *FCA* is not always required to give written notice of the appointment of investigators. However, it will normally notify the *persons* that they are under investigation when the *FCA* exercises its statutory powers to require information from them, providing such notification will not, in the *FCA*’s view, prejudice its ability to conduct the investigation effectively.

2.2.2 In certain types of investigations, the *FCA* may not know the identity of the perpetrator or may be looking into market circumstances at the outset of the investigation rather than investigating a particular *person*. These investigations could relate to potential *insider dealing*, *market abuse*, misleading statements and impressions offences, breaches of the *general prohibition*, the restriction on *financial promotion*, or the prohibition on promoting *collective investment schemes*. In those circumstances, the *FCA* will give an indication of the nature and subject matter of its investigation to those who are required to provide information to assist with the investigation. As soon as a *person* becomes the focus of the *FCA*'s enquiries, the *FCA* will consider whether it is appropriate to notify that *person* that they are under investigation.

2.2.3 If a decision to open an enforcement investigation into an *individual* or *firm* is made, the *FCA* will, considering the criteria applied in coming to the decision, give the reason for the referral, a summary of the circumstances and potential breaches at the start of the investigation or when otherwise notifying the *person* under investigation.

2.3 Scoping discussions

2.3.1 For cases involving *firms*, *approved persons* or *conduct rules staff*, the *FCA* will determine on a case-by-case basis whether to hold scoping discussions with the *firm* or individuals concerned. Where scoping discussions are appropriate, they will normally be held close to the start of the investigation. The purpose of these discussions is to give the *firm* or individuals concerned in the investigation an indication of: why the *FCA* has appointed investigators (including the nature of and reasons for the *FCA*'s concerns); the scope of the investigation; how the process is likely to unfold and an indication of the likely timing, if possible, of the key milestones and next steps in the investigation; the individuals and documents the team will need access to initially and so on. There may be a limit, however, as to how specific the *FCA* can be about the nature of its concerns in the early stages of an investigation. The *FCA* team for the purposes of the scoping discussions may include the nominated supervisor if the subject is a relationship-managed *firm*.

2.3.2 Throughout the investigation process, there will be an ongoing dialogue with the *firm* or individuals. We will aim to give periodic updates at least on a quarterly basis covering the steps taken in the investigation to date as well as the next steps in the investigation and indicative timelines. Where the nature of the *FCA*'s concerns changes significantly from that notified to the *person* under investigation and the *FCA*, having reconsidered the case, is satisfied that it is appropriate in the circumstances to continue the investigation, the *FCA* will notify the *person* of the change in scope.

2.4 Information gathering and investigation powers

2.4.1 There are several ways by which the *FCA* gathers or receives information for its investigations – for example, by using its statutory powers under the *Act* or other legislation, requesting information from others (national or international

authorities), and receiving voluntary information from others (*firms, individuals, whistleblowers*, other authorities or agencies).

- 2.4.2 The *FCA* has various powers to gather information and appoint investigators. These include, under Part XI of the *Act*, powers to compel the production of documents and provision of information, to compel attendance at an interview to answer questions, and to require the production of a report by a *skilled person*. Some of these powers can support both the *FCA*'s supervisory and enforcement functions – for example, under sections 122A, 122B, 165 and 166 of the *Act*. In any particular case, the *FCA* will decide which powers, or combination of powers, are most appropriate to use, having regard to all the circumstances. The *FCA* also has powers to gather information and appoint investigators on behalf of an *overseas regulator* on request.
- 2.4.3 Information may also be provided to the *FCA* voluntarily. For example, *firms* may at times commission an internal investigation or a report from an external law firm or other professional adviser and decide to pass a copy of this report to the *FCA*. Such reports can be very helpful for the *FCA* in circumstances where enforcement action is anticipated or underway. The *FCA*'s approach to using firm-commissioned reports in an enforcement context is set out in *EG 3.5*.

2.5 Use of statutory powers to require the production of documents, the provision of information or the answering of questions

- 2.5.1 The *FCA*'s standard practice is to use statutory powers to require the production of documents, the provision of information or the answering of questions in interview. This is for reasons of fairness, transparency and efficiency. It will sometimes be appropriate to depart from this standard practice. For example:
- (1) For suspects or possible suspects in criminal or *market abuse* investigations, the *FCA* may prefer to question that *person* on a voluntary basis, possibly under caution. In such a case, the interviewee does not have to answer but if they do, those answers may be used against them in subsequent proceedings, including criminal or *market abuse* proceedings.
 - (2) In the case of third parties with no professional connection with the financial services industry, such as the victims of an alleged fraud or misconduct, the *FCA* will usually seek information voluntarily.
 - (3) In some cases, the *FCA* is asked by *overseas regulators* to obtain documents or information or conduct interviews on their behalf. In these cases, the *FCA* will consider with the *overseas regulator* the most appropriate method for obtaining evidence required – for example, by obtaining it voluntarily.
- 2.5.2 If a *person* does not comply with a requirement imposed by the exercise of statutory powers, they may be held to be in contempt of court. The *FCA* may also choose to bring proceedings for breach of *Principle 11, Statement of Principle 4* or *COCON 2.1.3R* as this is a serious form of non-cooperation.

2.5.3 The *FCA* will not bring enforcement proceedings against a *person* for failing to be open and cooperative with the *FCA* simply because, during an investigation, they choose not to attend or answer questions at a purely voluntary interview. However, there may be circumstances in which an adverse inference may be drawn from the reluctance of a *person* (whether they are a *firm* or individual) to participate in a voluntary interview. If a *person* provides the *FCA* with misleading or untrue information, the *FCA* may consider acting against them.

2.6 Timeframe for responding to information and document requirements

2.6.1 Delays in the provision of information and/or documents can have a significant impact on the efficient progression of an investigation, and so the *FCA* expects *persons* to respond to information and document requirements in a timely manner to appropriate deadlines. When an investigation is complex (and the timetable allows), the *FCA* may decide to issue an information or document requirement in draft, allowing a specified period (of usually no more than 3 *business days*) for the *person* to comment on the practicality of providing the information or documentation by the proposed deadline. After considering any comments, the *FCA* will then confirm or amend the request.

2.6.2 Once it has formally issued a requirement (whether or not this has been preceded by a draft), the *FCA* will not usually agree to an extension of time for complying with the requirement.

2.7 Approach to interviews and interview procedures

2.7.1 The type of interview (eg, being voluntary or compelled) is a decision for the *FCA*. A *person* required to attend an interview using statutory powers has no entitlement to insist that the interview takes place voluntarily. If someone does not attend an interview required under the *Act*, they can be dealt with by the court as if they were in contempt (where the penalties can be a fine, imprisonment or both).

2.7.2 Similarly, a *person* asked to attend an interview on a purely voluntary basis is not entitled to insist that they be served with a requirement. A *person* is not obliged to attend a voluntary interview or to answer questions put to them at that time. But they should be aware that, in an appropriate case, an adverse inference may be drawn from the failure to attend a voluntary interview, or a refusal to answer any questions at such an interview.

Interviews generally

2.7.3 Where the *FCA* interviews a *person*, it will allow the *person* to be accompanied by their own legal adviser. Depending on the particular facts of the case, the *FCA* may refuse the attendance of a particular legal adviser, where it may reasonably be assessed as potentially prejudicing the investigation or any other ongoing investigation – for example, where that legal adviser has a conflict of interest or owes a duty of disclosure to another person (including the interviewee's employer).

- 2.7.4 The *FCA* will also, where appropriate, explain what use can be made of the answers in proceedings against the person. Where the interview is recorded, the *person* will be given a copy of the audio of the interview once available and, where a transcript is made, a copy of the transcript.

Interviews under caution

- 2.7.5 Individuals suspected of a criminal offence may be interviewed under caution. These interviews will be subject to all the safeguards of the relevant Police and Criminal Evidence Act Codes and are voluntary on the part of the suspect. The *FCA* will warn the suspect at the start of the interview of their right to remain silent (and the consequences of remaining silent) and will inform the suspect that they are entitled to have their own legal adviser present. The *FCA* will also give a cautionary warning in similar terms to interviewees who are the subject of *market abuse* investigations.

Subsequent interviews

- 2.7.6 If a suspect has been interviewed by the *FCA* using statutory powers, before they are re-interviewed on a voluntary basis (under caution or otherwise), the *FCA* will explain the difference between the 2 types of interview. The *FCA* will also tell the individual about the limited use that can be made of their previous answers in criminal proceedings or in proceedings in which the *FCA* seeks a penalty for *market abuse* under Part VIII of the *Act*.

- 2.7.7 Where a suspect has been interviewed under caution, and the *FCA* later wishes to conduct a compulsory interview with them, the *FCA* will explain the difference between the 2 types of interview and will notify the individual of the limited use that can be made of their answers in the compulsory interview.

Interviews under arrest

- 2.7.8 On occasion, where the police have a power of arrest, the *FCA* may make a request to the police for assistance to arrest the individual for questioning by the *FCA* (*FCA* investigators do not have powers of arrest) – for example:

- (1) where it appears likely that inviting an individual to attend on a voluntary basis would prejudice an ongoing investigation or risk the destruction of evidence or the dissipation of assets; or
- (2) where a suspect declines an invitation to attend a voluntary interview.

Interviews in response to a request from an overseas regulator or EEA regulator

- 2.7.9 Where the *FCA* has appointed an investigator in response to a request from an *overseas regulator*, it may, under sections 131FA or 169(7) of the *Act*, direct the investigator to allow a representative of that regulator to attend, and take part in, any interview conducted for the purposes of the investigation.

- 2.7.10 The factors that the *FCA* may consider when deciding whether to make a direction under section 169(7) include the following:

- (1) the complexity of the case;
- (2) the nature and sensitivity of the information sought;
- (3) the *FCA*'s own interest in the case;
- (4) costs, and the availability of resources; and
- (5) the availability of similar assistance to *UK* authorities in similar circumstances.

2.7.11 Under sections 131FA and 169(9) respectively, the *FCA* is required to prepare a statement of policy with the approval of the Treasury on the conduct of interviews attended by representatives of *overseas regulators*. The statement is set out in *DEPP* 7.

2.8 Settlement and the FCA

2.8.1 The *FCA* resolves many enforcement cases by settlement. Early settlement has many potential advantages as it can result, for example, in *consumers* obtaining compensation earlier than would otherwise be the case, the saving of *FCA* and industry resources, messages getting out to the market sooner and a public perception of timely and effective action. The *FCA* therefore considers that it is in the public interest for matters to settle, and settle early, if possible. It can also be advantageous to subjects of investigations as it will save resources and time and bring the dispute to an end.

2.8.2 The *FCA*'s policy for settlement is set out in *DEPP* 5 and the discount scheme for early settlement is set out in *DEPP* 6.7. General information regarding the settlement process can be found on the Enforcement section of the *FCA*'s website at www.fca.org.uk/about/how-we-regulate/enforcement/settlement-mediation-enforcement-cases.

2.8.3 Settlement discussions between *FCA* staff and the *person* concerned are possible at any stage of the enforcement process if both parties agree.

2.8.4 When the *FCA* has a 'sufficient understanding of the nature and gravity of the breach to make a reasonable assessment of the appropriate penalty' (as set out in *DEPP* 6.7.3G), it will normally send a letter to the subject of the investigation to commence the settlement process (a 'stage 1 letter').

2.8.5 The *FCA* will aim to give 28 *days*' notice prior to the beginning of the settlement process, or stage 1, to allow the parties involved to make administrative arrangements – for example, ensuring that key staff can be available to participate where necessary in any settlement discussions. Where appropriate, the *FCA* will offer a preliminary without prejudice meeting to explain the *FCA*'s view of the misconduct (including the key factual and legal bases for our view), and to give the *firm* or individual an opportunity to identify where they believe there are errors in the factual basis and to indicate the extent to which they agree with the outline findings.

- 2.8.6 There is no set form for a stage 1 letter, though it will always explain the nature of the misconduct, the *FCA's* view on the sanction, and the period within which the *FCA* expects any settlement discussions to be concluded. In some cases, a draft *statutory notice* setting out the alleged *rule* breaches and the proposed sanction may form part of the letter, to convey the substance of the case team's concerns and reasons for arriving at a particular level of sanction. The *FCA* will identify the key evidence on which its case relies at the commencement of stage 1. While the *FCA* will identify the key evidence that underpins our outline findings, the *FCA* will not generally provide evidence where that evidence is already in the possession of the *firm* or individual.
- 2.8.7 The *FCA* considers that 28 *days* following a stage 1 letter will normally be the 'reasonable opportunity to reach agreement as to the amount of penalty' before the expiry of stage 1 contemplated by *DEPP* 6.7.3G. Extensions to this period will be granted in exceptional circumstances only. Factors that will be taken into account in considering a request for extension will include the extent to which factors outside the *firm's* or individual's control will have a material impact on their ability to engage in settlement negotiations within the period set out in the stage 1 letter.
- 2.8.8 Enforcement cases often involve multiple parties – for example, a *firm* and individuals in the *firm*. Enforcement action may be appropriate against just the *firm*, just the individuals or both. In some cases, it will not be possible to reach an acceptable settlement unless all parties are able to reach agreement.
- 2.8.9 The *settlement discount scheme* does not apply to civil or criminal proceedings brought in the courts, or to *public censures*, *prohibition orders*, withdrawal of *authorisation* or approval, limitations of the period for which any approval is to have effect, or the payment of compensation or redress.
- 2.8.10 The *FCA* will engage senior management in discussions (either heads of department or directors), liaising where appropriate with the *settlement decision makers*, attending a without prejudice meeting during discussions or arranging for the attendance of an appropriately senior *FCA* representative.
- 2.8.11 A *firm* or individual may agree to resolve part of a case by entering into a *focused resolution agreement* with the *FCA*. Information about *focused resolution agreements* and the process is in *DEPP* 5.1.8A.

2.9 Notice of termination of investigations

- 2.9.1 Except where the *FCA* has issued a *warning notice*, and the *FCA* has subsequently discontinued the proceedings, the *Act* does not require the *FCA* to provide notification of the termination of an investigation or subsequent enforcement action. However, where the *FCA* has given a *person* written notice that it has appointed an investigator and later decides to discontinue the investigation without any present intention to take further action, it will confirm this to the *person* concerned as soon as it considers it is appropriate to do so, bearing in mind the circumstances of the case.

3 Other matters relevant to enforcement investigations

3.1 Enforcement and the FCA's Principles for Businesses ('the Principles')

3.1.1 The *FCA* will, in appropriate cases, take enforcement action on the basis of the *Principles* alone (see *DEPP* 6.2.14 G).

3.1.2 The *FCA* wishes to encourage firms to exercise judgement about, and take responsibility for, what the *Principles* mean for them in terms of how they conduct their business. But we also recognise the importance of an environment in which *firms* understand what is expected of them. So we have indicated that *firms* must be able reasonably to predict, at the time of the action concerned, whether the conduct would breach the *Principles*. The *FCA* will not take enforcement action unless it was possible to determine at the time that the relevant conduct fell short of our requirements.

3.1.3 To determine whether there has been a failure to comply with a *Principle*, the standards we will apply are those required by the *Principles* at the time the conduct took place. The *FCA* will not apply later, higher standards to behaviour when deciding whether to take enforcement action for a breach of the *Principles*. However, where conduct falls below expected standards, the *FCA* considers that it is legitimate for consequences to follow, even if the conduct is widespread within the industry or the *Principle* is expressed in general terms.

3.2 Enforcement and the FCA's individual conduct rules and senior management responsibility

3.2.1 The conduct *rules* in *COCON* set minimum standards of individual behaviour in financial services. Where senior managers have failed to meet our standards, the *FCA* will, where appropriate, bring cases against individuals as well as, or instead of, *firms*. The *FCA* believes that deterrence will most effectively be achieved by making these individuals realise the consequences of their actions. The *FCA*'s policy on disciplinary action against senior management and against other individuals under section 66 of the *Act* is set out in *DEPP* 6.2.4G to *DEPP* 6.2.9BG. The *FCA*'s policy on prohibition and withdrawal of approval is set out in *EG* 5.

3.3 FCA guidance and supporting materials

3.3.1 The *FCA* uses *guidance* and other materials to supplement the *Principles* where it considers that this would help *firms* to decide what action they need to take to meet the necessary standard.

3.3.2 *Guidance* is not binding on those to whom the *FCA*'s *rules* apply. Nor are the variety of materials (such as case studies showing good or bad practice, *FCA* speeches, and generic letters written by the *FCA* to chief executives in particular sectors) published to support the *rules* and *guidance* in the Handbook. These materials are intended to illustrate ways (but not the only ways) in which a person can comply with the relevant *rules*. If a *firm* has complied with the *Principles* and

other *rules*, it does not matter whether it has also complied with other material the *FCA* has issued (see *DEPP* 6.2.1G(4)).

3.3.3 *Guidance* and supporting materials are, however, potentially relevant to an enforcement case and a decision maker may take them into account in considering the matter. Examples of the ways in which the *FCA* may seek to use *guidance* and supporting materials in an enforcement context include, but are not limited to:

- (1) helping to assess whether it could reasonably have been understood or predicted at the time that the conduct in question fell below the standards required by the *Principles*;
- (2) explaining the regulatory context;
- (3) informing a view of the overall seriousness of the breaches;
- (4) informing the consideration of a *firm*'s defence that the *FCA* was judging the *firm* on the basis of retrospective standards; and
- (5) being considered as part of expert or supervisory statements in relation to the relevant standards at the time.

3.3.4 The extent to which *guidance* and supporting materials are relevant will depend on all the circumstances of the case. It is for the decision maker – whether the *RDC*, *Tribunal* or an executive decision maker – to determine this on a case-by-case basis.

3.3.5 The *FCA* may take action in areas in which it has not issued *guidance* or supporting materials.

3.4 Industry guidance and FCA-recognised industry codes

3.4.1 The *FCA* believes that Industry Guidance and industry codes of conduct have an important part to play in a principles-based regulatory environment, and that *firms* and individuals may choose to follow such guidance, and *firms* to have regard to such codes, as a means of seeking to meet the *FCA*'s requirements and to conform to proper standards of market conduct. This will be true especially where Industry Guidance and industry codes of conduct have been 'confirmed' or 'recognised' by the *FCA* – *DEPP* 6.2.1G(4) and *DEPP* 6.2.1G(4A).

3.4.2 However, *FCA*-confirmed Industry Guidance, *FCA-recognised industry codes* and non-recognised codes are not mandatory. The *FCA* does not regard adherence to Industry Guidance, or to industry or market codes, as the only means of complying with applicable *FCA rules* and *Principles*.

3.4.3 Industry Guidance may be relevant to an enforcement case in similar ways to those described at *EG* 3.3.3. The specific status of *FCA*-confirmed Industry Guidance will be considered when the *FCA* assesses the relevance of Industry Guidance in its investigations.

3.5 FCA approach to firms conducting their own investigations in anticipation of enforcement action

Firm-commissioned reports: the desirability of early discussion and agreement where enforcement is anticipated

- 3.5.1 The *FCA* recognises that there are good reasons for *firms* to carry out their own investigations. This might be for, for example, disciplinary purposes, general good management, or operational and risk control. A *firm* needs to know the extent of any problem, and it may want advice about immediate or short-term measures it needs to take to mitigate or correct any problems identified. The *FCA* encourages this proactive approach and does not wish to interfere with a *firm's* legitimate procedures and controls.
- 3.5.2 A *firm's* report – produced internally or by an external third party – may also be useful to the *FCA* where there is an issue of regulatory concern. Sharing the outcome of an investigation can potentially save time and resources for both parties, particularly where there is a possibility of the *FCA* taking enforcement action in relation to a *firm's* perceived misconduct or failing. This does not mean that *firms* are under any obligation to share the content of legally privileged reports they are given or advice they receive. It is for the *firm* to decide whether to provide such material to the *FCA*. But a *firm's* willingness to volunteer the results of its own investigation, whether protected by legal privilege or otherwise, is welcomed by the *FCA* and is something the *FCA* may take into account when deciding what action to take, if any. (The *FCA's* approach to deciding whether to take action is described in more detail in *DEPP* 6.2.)
- 3.5.3 Work done or commissioned by the *firm* does not prevent the *FCA* from using its statutory powers – for example, to require a *skilled person's* report under section 166 of the *Act* or to carry out a formal enforcement investigation. A report commissioned by the *firm* cannot be a substitute for regulatory action, although it may help the *FCA* decide on the appropriate action to take – for example, by narrowing the issues or removing the need for certain work.
- 3.5.4 The *FCA* invites *firms* to consider, in particular, whether to discuss the commissioning and scope of a report with *FCA* staff where:
- (1) *firms* have informed the *FCA* of an issue of potential regulatory concern, as required by *SUP* 15; or
 - (2) the *FCA* has indicated that an issue or concern has or may result in an enforcement investigation.
- 3.5.5 The *FCA's* approach in commenting on the proposed scope and purpose of the report will vary according to the circumstances in which the report is commissioned; it does not follow that the *FCA* will want to be involved in discussing the scope of a report in every situation. But if the *firm* anticipates that it will proactively disclose a report to the *FCA* in the context of an ongoing or prospective enforcement investigation, the potential use and benefit to be derived

from the report will be greater if the *FCA* has had the chance to comment on its proposed scope and purpose.

3.5.6 In certain circumstances the *FCA* may prefer that a *firm* does not commission its own investigation (whether an internal audit report or a report by external advisers) because action by the *firm* could itself be damaging to an *FCA* investigation. This is true in particular of criminal investigations, where alerting the suspects could have adverse consequences. For example, where the *FCA* suspects that individuals are abusing positions of trust within financial institutions and that an *insider dealing* ring is operating, it might notify the relevant *firm* but would not want the *firm* to embark on its own investigation: to do so would alert those under investigation and prejudice ongoing monitoring of the suspects and other action. *Firms* are therefore encouraged to be alive to the possibility that their own investigations could prejudice or hinder a subsequent *FCA* investigation, and, if in doubt, to discuss this with the *FCA*. The *FCA* recognises that *firms* may be under time and other pressures to establish the relevant facts and implications of possible misconduct, and will have regard to this in discussions with the *firm*.

3.5.7 Nothing in *EG* 3.5.1 to *EG* 3.5.6 extends or increases the scope of the existing duty to report facts or issues to the *FCA* in accordance with *SUP* 15 or *Principle* 11.

Firm-commissioned reports: material gathered

3.5.8 Where a *firm* does conduct or commission an investigation, it is very helpful if the *firm* maintains a proper record of the enquiries made and interviews conducted. This will inform the *FCA*'s judgment about whether any further work is needed and, if so, where the *FCA*'s efforts should be focused.

3.5.9 How the results of an investigation are presented to the *FCA* may differ from case to case. The *FCA* will take a pragmatic and flexible approach when deciding how to receive the results of an investigation. However, if the *FCA* is to rely on a report as the basis for taking action or not, then it is important that the *firm* should be prepared to give the *FCA* underlying material on which the report is based as well as the report itself. This includes, for example, notes of interviews conducted by the lawyers, accountants or other professional experts carrying out the investigation, etc.

3.5.10 The *FCA* is not able to require the production of 'protected items', as defined in the *Act*, but it is not uncommon for there to be disagreement with *firms* about the scope of this protection and whether certain documents attract privilege. If a *firm* decides to give a report to the *FCA*, then the *FCA* considers that the greatest mutual benefit is most likely to flow from disclosure of the report itself and any supporting papers. A reluctance to disclose these source materials will, in the *FCA*'s opinion, devalue the usefulness of the report and may require the *FCA* to undertake additional enquiries.

Firm-commissioned reports: *FCA* use of reports and the protection of privileged and confidential material

- 3.5.11 *Firms* may seek to restrict the use to which a report can be put, or assert that the report attracts legal privilege. The *FCA* will accept reports over which legal privilege is asserted without agreeing the fact or extent to which it is legally privileged. In those circumstances, the *firm* may choose to provide the report on a limited waiver basis to the *FCA* – ie, on the basis that it may assert legal privilege as grounds for non-disclosure to a party other than the *FCA*.
- 3.5.12 The *FCA* understands that the concept of a limited waiver of legal privilege is not one which is recognised in all jurisdictions: the *FCA* considers that English law does permit such ‘limited waiver’ and that legal privilege could still be asserted against third parties notwithstanding disclosure of a report to the *FCA*. However, the *FCA* cannot accept any condition or stipulation which would purport to restrict its ability to use the information in the exercise of the *FCA*’s statutory functions. In this sense, the *FCA* cannot ‘close its eyes’ to information received or accept that information should, for example, be used only for the purposes of supervision but not for enforcement.
- 3.5.13 This does not mean that information provided to the *FCA* is unprotected. The *FCA* is subject to strict statutory restrictions on the disclosure of confidential information (as defined in section 348 of the *Act*), breach of which is a criminal offence (under section 352 of the *Act*). Reports and underlying materials provided voluntarily to the *FCA* by a firm, whether covered by legal privilege or not, are confidential for these purposes and benefit from the statutory protections.
- 3.5.14 Even in circumstances where disclosure of information would be permitted under the ‘gateways’ set out in the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001 the *FCA* will consider carefully whether it would be appropriate to disclose a report provided voluntarily by a *firm*. If the *FCA* contemplates disclosing a report voluntarily provided by a *firm*, the *firm* will normally be notified and given the opportunity to make representations about the proposed disclosure. The exceptions to this include circumstances where disclosure is urgently needed, where notification might prejudice an investigation or defeat the purpose for which the information had been requested, or where notification would be inconsistent with the *FCA*’s international obligations.

3.6 Joint investigations with the PRA

- 3.6.1 A need for a joint investigation with the *PRA* may arise where either the *FCA* or the *PRA* identifies circumstances which suggest that a *firm* or individual has committed misconduct that adversely affects both regulators’ statutory objectives. In such cases, the regulators will determine whether they should carry out separate but coordinated investigations, or whether it would be more appropriate for one of the regulators to carry out an investigation, keeping the other informed.
- 3.6.2 In such cases, the *FCA* will attempt to ensure that the subject of the investigation is not prejudiced or unduly inconvenienced by the fact that there are 2 investigating authorities. The *FCA* and *PRA* investigation teams will keep each other and their respective supervisory teams informed about the progress of the

investigation. Discussions with the *firm* or individual under investigation should normally occur with the representatives of both regulators present.

- 3.6.3 Both the *FCA* and the *PRA* will seek to ensure that, as far as possible, their respective processes (whether for contested or settlement decision-making) occur in a coordinated and timely manner in a joint investigation. For example, the regulators will, where appropriate, endeavour to settle a joint investigation into a relevant *firm* or individual simultaneously.

3.7 Assisting overseas authorities

- 3.7.1 The *FCA* views cooperation with its *overseas* counterparts as an essential part of its regulatory functions. Section 354A of the *Act* imposes a duty on the *FCA* to take such steps as it considers appropriate to cooperate with others who exercise functions similar to its own. This duty extends to authorities in the *UK* and *overseas*. In fulfilling this duty, the *FCA* may share information which it is not prevented from disclosing, including information obtained in the course of the *FCA*'s own investigations, or exercise certain of its powers under Part XI of the *Act*.

- 3.7.2 The *FCA* has various powers to assist *overseas regulators*, including to conduct investigations on their behalf, to compel the production of documents and provision of information, and to compel attendance at an interview to answers questions.

3.8 Commencing civil proceedings

- 3.8.1 Decisions about whether to apply to the civil courts for:

- (1) *injunctions* (or in Scotland, *interdicts*);
- (2) restitution orders; or
- (3) *insolvency orders*,

under the *Act*, or other enactments giving the *FCA* the power to apply for such orders, will be made by an executive director or a director in Enforcement.

4 Publicity

4.1 Publicity during FCA investigations

- 4.1.1 (1) The *FCA* is committed to proportionate and timely transparency of its enforcement activities, including the opening and progress of its investigations. This is an effective way of alerting *consumers* and *firms* to its concerns about suspected poor practices, promoting market confidence by reassuring the public that appropriate and prompt action is being taken, and deterring misconduct.
- (2) In line with this commitment, the *FCA* may publicly announce that it has opened an enforcement investigation, including an investigation opened before this guidance was issued and including the identity of the subject of

the investigation, and publish updates on the investigation, if it considers that it is in the public interest to do so. This guidance applies only to *FCA* enforcement investigations commenced by the appointment of investigators under relevant statutory powers.

- 4.1.2 Such an announcement or update will usually be in the public interest when it is likely to:
- (1) facilitate the protection of the interests of potentially affected *customers*, or *consumers* or investors more generally;
 - (2) assist the *FCA*'s investigation, for example by encouraging potential witnesses or *whistleblowers* to come forward;
 - (3) address public concern or speculation, including by correcting information already in the public domain;
 - (4) provide reassurance that the *FCA* is taking appropriate action;
 - (5) deter future non-compliance with the *FCA*'s *rules* or other requirements or prohibitions that the *FCA* is responsible for enforcing; or
 - (6) otherwise advance one or more of the *FCA*'s *statutory objectives*, including protecting and enhancing the integrity of the *UK financial system*.
- 4.1.3 Such an announcement or update may not be in the public interest when it is likely to have an adverse impact on:
- (1) the conduct of the *FCA*'s investigation or an investigation by another *regulatory body* or law enforcement agency;
 - (2) the interests of *consumers*; or
 - (3) the stability of the *UK financial system* or the ability of the *FCA* to otherwise carry out its statutory functions.
- 4.1.4
- (1) The factors set out above are non-exhaustive. The *FCA* will take into account all relevant facts and circumstances in deciding whether to publish an announcement of or update on an investigation and whether to include in the announcement or update the name of the subject of the investigation.
 - (2) The absence of an *FCA* announcement that it is investigating a particular matter does not mean that it is not doing so. The *FCA*'s gathering of evidence in the relevant investigation may, for example, need to be covert. In the absence of such an announcement, the *FCA* will generally neither confirm nor deny that it is investigating the matter.

- 4.1.5 (1) The *FCA* will not usually announce that it is investigating a named individual, having regard to restrictions imposed by *data protection legislation* and other applicable statutory restrictions.
- (2) However, the *FCA* may publish such an announcement, and updates on such an investigation, if it considers that it is in the public interest to do so, having regard to the above factors and guidance, and if such an announcement or update can be published without breach of that legislation and those restrictions.
- 4.1.6 (1) An announcement that the *FCA* is investigating a particular matter may contain:
- (a) the identity of the subject of the investigation;
 - (b) the industry sector and regulatory or legal provisions to which the investigation relates;
 - (c) a summary of the suspected breach, failing or other misconduct under investigation; and
 - (d) a statement that the opening of the investigation should not be taken to imply that the *FCA* has reached any conclusion that any regulatory or legal provision has been breached or otherwise made a finding of misconduct or other failing or determined the appropriate resulting enforcement action to be taken.
- (2) The information contained in an announcement may vary according to the facts and circumstances of the case.
- (3) All announcements and updates will be subject to and comply with the restriction on disclosure of confidential information in section 348 of the *Act*, subject to section 349 of the *Act* and having regard to the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001.
- 4.1.7 If the *FCA* decides to publicly announce its investigation into a particular matter or to publish an update on such an investigation, and to name the subject of the investigation in doing so, it will give the subject such advance notice as it considers appropriate. The *FCA* will usually give no more than 1 *business day's* notice but may give no notice if it considers that the circumstances require urgency.
- 4.1.8 Where the *FCA* intends to publish an announcement of or update on an investigation, it will carefully consider the timing and method of publication. Where an announcement or update is potentially market sensitive, the *FCA* will generally inform the subject of its intention to publish the announcement or update after markets have closed, with publication at 7.00am on the *FCA's* website and via an *FCA*-approved *primary information provider*. Where the subject is a listed company in another jurisdiction and the announcement or

update is potentially market sensitive, the *FCA* will, where possible, seek to avoid publication during stock exchange hours in that other jurisdiction.

4.1.9 Where the *FCA* has published an announcement in accordance with the above:

- (1) If the investigation subsequently leads to regulatory, civil or criminal action, this will be made public only as described in other sections of this chapter.
- (2) If it subsequently closes its investigation without taking such action, it will make a public announcement to that effect and/or amend the original announcement on its website accordingly.

4.2 Publicity of statutory notices

Warning notice statements

4.2.1 The *FCA* has discretion to publish information about *warning notices* which fall within section 391(1ZB) of the *Act*. These are essentially disciplinary *warning notices* – for example, where the *FCA* is proposing to censure, fine, or impose a suspension, restriction, condition or limitation on a *firm* or individual. The power to publish information does not apply to *warning notices* that propose only protective measures – for example, to prohibit an individual, withdraw the approval of an individual or cancel the *permission* of a *firm*.

4.2.2 The decisions on whether to exercise the power to publish information about a *warning notice*, and if so what information to publish, will be taken by the *RDC* after it has consulted with the *persons* to whom the *warning notice* has been given or copied. The procedure the *FCA* will follow when making these decisions is set out in *DEPP* 3.

4.2.3 Where the *settlement decision makers* decide to issue a *warning notice*, they may also take the decision on whether to exercise the power to publish information about a *warning notice*. The *FCA* expects that the *settlement decision makers* are unlikely to decide that it is appropriate to publish information about a *warning notice* where a *focused resolution agreement* has been entered into and where it is likely that a *final notice* will shortly follow, save in exceptional circumstances. The procedure the *FCA* will follow when making these decisions is set out in *DEPP* 5.

4.2.4 The principal purpose of this power is to promote the early transparency of enforcement proceedings. This has several benefits, including the following:

- (1) *consumers, firms* and market users will be able to understand the types of behaviour that the *FCA* considers unacceptable at an earlier stage, which in turn should encourage more compliant behaviour;
- (2) by showing at an earlier stage that the *FCA* is taking action, confidence in the *FCA* and the regulatory system should be enhanced;

- (3) there will be more openness in respect of the enforcement process, which will generally be in the public interest; and
- (4) it aligns the stage at which publicity is given in regulatory cases with the stage at which publicity is given in civil and criminal cases.

4.2.5 The *FCA* will take the following steps in considering whether it is appropriate to exercise this power:

- (1) It will consider whether it is appropriate to publish details of the *warning notice* in order to enable *consumers*, *firms* and market users to understand the nature of the *FCA*'s concerns. The *FCA* will consider the circumstances of each case but expects normally to consider it appropriate to publish these details.
- (2) Where the *FCA* considers it is appropriate to publish details of the *warning notice*, it will consider whether it is also appropriate to identify the subject of the *warning notice*. The *FCA* will consider the circumstances of each case but expects normally that it will be appropriate to identify a *firm*, but that it will not be appropriate to identify an individual. This is because the potential harm caused to an individual from publication at this stage of the enforcement proceedings will normally exceed the benefits of early transparency. However, there may be circumstances where the *FCA* considers identification of an individual appropriate – for example, where:
 - (a) it is not possible to describe the nature of its concerns without making it possible to identify the individual;
 - (b) it is necessary to avoid other *persons* being mistakenly believed to be the individual in breach;
 - (c) it would help to protect *consumers* or investors;
 - (d) it is necessary to maintain public confidence in the *financial system* or the market; or
 - (e) it is desirable to quash rumours in the market.
- (3) The *FCA* will then consider whether any of the grounds set out in section 391(6) of the *Act* prohibiting publication apply. One of these grounds is whether publication would be unfair. In considering this ground, the *FCA* will have regard to, among other matters, whether the *person* with respect to whom the action was proposed to be taken is a *firm* or an individual, the size of a *firm*, and the extent to which the *person* has been made aware of the case against them during the course of the investigation.
- (4) The *FCA* will also have regard to restrictions imposed by the *data protection legislation* when deciding whether to publish a *warning notice* statement relating to an individual.

- (5) Where the *FCA* considers it is appropriate either to publish details of the *warning notice* without identifying its subject, or to publish details of the *warning notice* and identify its subject, it will consult the *persons* to whom the notice is given or copied.

4.2.6 A *person* to whom the *warning notice* is given or copied who seeks to demonstrate potential unfairness from publication must provide clear and convincing evidence of how that unfairness may arise and how they could suffer a disproportionate level of damage. For example, this may be the case if publication could materially affect the *person's* health, result in bankruptcy or insolvency, a loss of livelihood or a significant loss of income, or prejudice criminal proceedings to which they are a party. The *FCA* is more likely to consider that the negative impact of publication on a *person's* reputation amounts to unfairness if the *person* also provides evidence of the harm that they could suffer as a consequence of the damage to their reputation. Arguments made solely on the basis that it is unfair for the *FCA* to have the power to publish information at this point of the enforcement process will have no effect on the *FCA's* decision. Similarly, arguments about the merits of the *warning notice* itself will not be material to publication decisions.

4.2.7 If, after consulting the *persons* to whom the notice is given or copied, the *FCA* still considers it is appropriate to publish information about a *warning notice*, it will publish this information in a statement (a *warning notice* statement). This will ordinarily include a summary of the facts which gave rise to the *warning notice* to enable *consumers, firms* and market users to understand the nature of the *FCA's* concerns. Where the *FCA* considers it appropriate to identify the subject of the *warning notice*, it will also include details of:

- (1) the name of the *firm* or individual;
- (2) additional information to enable the identification of the *firm* or individual; and
- (3) in the case of an *approved person* or *conduct rules staff*, their employer at the relevant time.

4.2.8 As the *FCA* may only publish information about disciplinary *warning notices*, it will not publish details of all the sanctions it is seeking to impose (for example, the fact that it is proposing to prohibit an individual as well as impose a fine).

4.2.9 Any *warning notice* statement the *FCA* publishes will make clear that:

- (1) the *warning notice* is not the final decision of the *FCA*;
- (2) the recipient has the right to make representations to the *RDC* which, in light of those representations, will decide on the appropriate action and whether to *issue a decision notice*; and
- (3) if a *decision notice* is issued, the subject of the notice will have the right to refer the matter to the *Tribunal*, which will reach an independent decision on the appropriate action for the *FCA* to take.

4.2.10 Publication will generally include placing the *warning notice* statement on the *FCA* website. The *FCA* will also consider what information about the matter should be included on the *Financial Services Register*, if any.

Decision notices and final notices

4.2.11 The *FCA* will consider the circumstances of each case, but will ordinarily publicise enforcement action where this has led to the issue of a *final notice*. The *FCA* may also publicise enforcement action where this has led to the issue of a *decision notice*. The *FCA* will decide on a case-by-case basis whether to publish information about the matter to which a *decision notice* relates, but expects normally to publish a *decision notice* if the subject of enforcement action decides to refer the matter to the *Tribunal*. The *FCA* may also publish a *decision notice* before a person has decided whether to refer the matter to the *Tribunal* if the *FCA* considers that there is a compelling reason to do so. If a *person* decides not to refer a matter to the *Tribunal*, the *FCA* will generally only publish a *final notice*.

4.2.12 If the *FCA* intends to publish a *decision notice*, it will give advance notice of its intention to the *person* to whom the *decision notice* is given and to any third party to whom a copy of the notice is given. The *FCA* will consider any representations made, but will normally not decide against publication solely because it is claimed that publication could have a negative impact on a person's reputation. The *FCA* will also not decide against publication solely because a *person* asks for confidentiality when they refer a matter to the *Tribunal*.

4.2.13 Publication will generally include placing the *decision notice* or *final notice* on the *FCA* website and this will often be accompanied by a press release. If a *decision notice* or *final notice* is published, the *FCA* will update the *Financial Services Register* to reflect the actions taken.

4.2.14 However, as required by the *Act*, the *FCA* will not publish information if publication of it would, in its opinion, be unfair to the *person* in respect of whom the action is taken, prejudicial to the interests of *consumers* or detrimental to the stability of the *UK financial system*.

4.2.15 Publishing notices is important to ensure the transparency of *FCA* decision-making; it informs the public and helps to maximise the deterrent effect of enforcement action. The *FCA* will on request review *warning notice* statements, *decision notices*, *final notices* and related press releases that are published on the *FCA's* website. The *FCA* will determine at that time whether continued publication is appropriate, or whether notices and publicity should be removed or amended.

4.2.16 In carrying out its review, the *FCA* will consider all relevant factors. In particular, the *FCA* will take into account:

- (1) the seriousness of the *person's* misconduct;
- (2) the nature of the action taken by the *FCA* and the level of any sanction imposed on the *person*;

- (3) whether the *FCA* has continuing concerns in respect of the *person* and any risk they might pose to the *FCA*'s objectives;
- (4) whether the *person* is a *firm* or an individual;
- (5) whether the publication sets out the *FCA*'s expectations regarding behaviour in a particular area, and if so, whether that message still has educational value;
- (6) public interest in the case (both at the time and subsequently);
- (7) whether continued publication is necessary for deterrence, *consumer* protection or market confidence reasons;
- (8) how much time has passed since publication; and
- (9) any representations made by the person on the continuing impact on them of the publication.

4.2.17 The *FCA* expects usually to conclude that *warning notice* statements, notices and related press releases that have been published for less than 6 years should not be removed from the website, and that notices and related press releases relating to *prohibition orders* which are still applicable should not be removed from the website, regardless of the length of time they have been published. If applicable, the *FCA* will have regard to *data protection legislation* when determining whether continued publication is appropriate.

4.2.18 In cases where the *FCA* publishes a *warning notice* statement and the *FCA* subsequently decides not to take any further action, or where it publishes a *decision notice* and the subject of enforcement action successfully refers the matter to the *Tribunal*, the *FCA* will make it clear on its website that the *warning notice* or the *decision notice* no longer applies. The *FCA* will normally do this by publishing a *notice of discontinuance* with the consent of the *person* to whom the *notice of discontinuance* has been copied, or by adding a note at the top of the first page of published notices on its website with information about its decision.

4.2.19 In other cases where a case is resolved following the publication of a *warning notice* statement, the *FCA* will consider on a case-by-case basis whether to update its website to explain what the outcome was of the case described in the *warning notice* statement. Where the *warning notice* statement was issued on an anonymised basis, the *FCA* will at the same time consider the extent to which it is appropriate to identify the subject of the statement.

4.3 Publicity during, or upon the conclusion of civil action

4.3.1 Civil court proceedings nearly always take place in public from the time they begin. Therefore, civil proceedings for an *injunction* (see *EG* App 1.1) or a restitution order, for example, will often be public as soon as they start.

4.3.2 The *FCA* considers it generally appropriate to publish details of its successful applications to the court for civil remedies, including *injunctions* or restitution

orders. For example, where the court has ordered an *injunction* to prohibit further illegal *regulated activity*, the *FCA* thinks it is appropriate to publicise this to tell *consumers* of the position and help them avoid dealing with the *person* who is the subject of the *injunction*. Similarly, a restitution order may be publicised to protect and inform *consumers* and maintain market confidence. However, there may be circumstances when the *FCA* decides not to publicise, or not to do this immediately. These circumstances might, for example, be where publication could damage confidence in the *financial system* or undermine market integrity in a way that would be prejudicial to the interests of *consumers*.

4.4 Publicity during, or on the conclusion of criminal action (see chapter 6)

- 4.4.1 The *FCA* will normally publicise the outcome of public hearings in criminal prosecutions.
- 4.4.2 When conducting a criminal investigation, the *FCA* will generally consider making a public announcement when suspects are arrested, when search warrants are executed and when charges are laid. A public announcement may also be made at other stages of the investigation when this is considered appropriate.
- 4.4.3 The *FCA* will always be very careful to ensure that any *FCA* publicity does not prejudice the fairness of any subsequent trial.

4.5 Behaviour in the context of takeover bid

- 4.5.1 Where the behaviour to which a *decision notice*, *final notice*, civil action, or criminal action relates has occurred in the context of a *takeover bid*, the *FCA* will consult the *Takeover Panel* over the timing of publication if the *FCA* believes that publication may affect the timetable or outcome of that bid, and will give due weight to the *Takeover Panel's* views.

4.6 The Financial Services Register: publication of prohibitions of individuals (see chapter 5)

- 4.6.1 Once the decision to make a *prohibition order* is no longer open to review, the *FCA* will consider what additional information about the circumstances of the *prohibition order* to include on the *Financial Services Register*. The *FCA* will balance any possible prejudice to the individual concerned against the interests of *consumer* protection. The *FCA's* normal approach to maintaining information about a *prohibition order* on the *Financial Services Register* is as follows:

- (1) The *FCA* will maintain an entry on the *Financial Services Register* while a *prohibition order* is in effect. If the *FCA* grants an application to vary the order, it will make a note of the variation on the *Financial Services Register*.
- (2) Where the *FCA* grants an application to revoke a *prohibition order*, it will make a note on the *Financial Services Register* that the order has been revoked, giving reasons for the revocation. The availability to *firms* and *consumers* of a full record of *FCA* action taken in relation to an individual's fitness and propriety will help the *FCA* in furthering its

statutory objectives. In particular, it will help with protecting *consumers* and the maintaining of confidence in the *financial system*.

- (3) The *FCA* will maintain an annotated record of revoked *prohibition orders* for 6 years from the date of the revocation, after which time it will remove the record from the *Financial Services Register*.

5 Prohibition orders and withdrawal of approval

5.1 Introduction

5.1.1 The *FCA*'s power under section 56 of the *Act* to prohibit individuals who are not fit and proper from carrying out functions in relation to *regulated activities* helps the *FCA* to work towards achieving its *statutory objectives*. The *FCA* may exercise this power to make a *prohibition order* where it considers that, to achieve any of those objectives, it is appropriate either to prevent an individual from performing any function in relation to *regulated activities*, or to restrict the functions which they may perform.

5.1.2 The *FCA*'s effective use of the power to withdraw approval from an *approved person* will also help ensure high standards of regulatory conduct by preventing an *approved person* from continuing to perform the *controlled function* to which the approval relates if they are not a fit and proper *person* to perform that function. Where it considers this is appropriate, the *FCA* may prohibit an *approved person*, in addition to withdrawing their approval.

5.2 The FCA's general policy

5.2.1 In deciding whether to make a *prohibition order* and/or, in the case of an *approved person*, to withdraw its approval, the *FCA* will consider all the relevant circumstances, including whether other enforcement action should be taken or has been taken already against that individual by the *FCA*. The *FCA* will also consider whether enforcement action has been taken against the individual by other enforcement agencies or *designated professional bodies*.

5.2.2 In appropriate cases, the *FCA* will take other enforcement action against the individual in addition to seeking a *prohibition order* and/or withdrawing their approval, including the use of its powers to: impose a financial penalty or issue a *public censure*; apply for an *injunction* to prevent dissipation of assets; stop any continuing misconduct; order restitution; apply for an *insolvency order* or an order against debt avoidance; and/or prosecute certain criminal offences.

5.2.3 The *FCA* has the power to make a range of *prohibition orders* depending on the circumstances of each case and the range of *regulated activities* to which the individual's lack of fitness and propriety is relevant. Depending on the circumstances of each case, the *FCA* may seek to prohibit individuals from performing any class of function in relation to any class of *regulated activity*, or it may limit the *prohibition order* to specific functions in relation to specific *regulated activities*. The *FCA* may also make an order prohibiting an individual from being employed by a particular *firm*, type of *firm* or any *firm*.

5.2.4 The scope of a *prohibition order* will depend on the range of functions which the individual concerned performs in relation to *regulated activities*, the reasons why they are not fit and proper and the level of risk which they pose to *consumers* or the market generally.

5.2.5 Where the *FCA* issues a *prohibition order*, it may indicate in the *decision notice* or *final notice* that it would be minded to revoke the order on the application of the individual in the future, in the absence of new evidence that the individual is not fit and proper. If the *FCA* gives such an indication, it will specify the number of years after which it would be minded to revoke or vary the prohibition on an application. However, the *FCA* will only adopt this approach in cases where it considers it appropriate in all the circumstances. The *FCA* would not be obliged to revoke an order after the specified period even where it gave such an indication. Further, if an individual's *prohibition order* is revoked, they would still have to satisfy the *FCA* as to their fitness for a particular role in relation to any future application for approval to perform a *controlled function*.

5.3 Prohibition orders and withdrawal of approval – approved persons

5.3.1 When the *FCA* has concerns about the fitness and propriety of an *approved person*, it may consider whether it should prohibit that *person* from performing functions in relation to *regulated activities*, withdraw its approval or both. In deciding whether to withdraw its approval and/or make a *prohibition order*, the *FCA* will consider in each case whether its *statutory objectives* can be achieved adequately by imposing disciplinary sanctions – for example, *public censures* or financial penalties.

5.3.2 When the *FCA* decides whether to make a *prohibition order* against an *approved person* and/or withdraw its approval, the *FCA* will consider all the relevant circumstances of the case. These may include, but are not limited to those set out below:

- (1) the matters set out in section 61(2) of the *Act*;
- (2) whether the individual is fit and proper to perform functions in relation to *regulated activities*. The criteria for assessing the fitness and propriety of *approved persons* are set out in *FIT 2.1* (Honesty, integrity and reputation), *FIT 2.2* (Competence and capability) and *FIT 2.3* (Financial soundness);
- (3) whether, and to what extent, the *approved person* has:
 - (a) failed to comply with the *Statements of Principle* or *COCON*, as applicable, issued by the *FCA* with respect to the conduct of *approved persons*; or
 - (b) been knowingly concerned in a contravention by the relevant *firm* of a requirement imposed on the *firm* by or under the *Act* (including the *Principles* and other *rules*), the *AIFMD UK regulation* or any qualifying provision specified, or of a description

specified, for the purpose of section 66(2) by the Treasury by order;

- (4) whether the *approved person* has engaged in *market abuse*;
- (5) the relevance and materiality of any matters indicating unfitness;
- (6) the length of time since the occurrence of any matters indicating unfitness,
- (7) the particular *controlled function* the *approved person* is (or was) performing, the nature and activities of the *firm* concerned and the markets in which they operate;
- (8) the level of risk which the individual poses to *consumers* and to confidence in the *financial system*;
- (9) the previous disciplinary record and general compliance history of the individual, including whether the *FCA*, any *previous regulator*, *designated professional body* or other domestic or international regulator has previously imposed a disciplinary sanction on the individual; and
- (10) where the *approved person* is an *SMF manager*, whether they would be a fit and proper person to perform functions in relation to *regulated activities* if the *FCA* varied their approval by imposing one or more conditions and, if so, whether it is appropriate for the *FCA* to exercise its power to impose such conditions, instead of making a *prohibition order* or withdrawing the *approved person's* approval.

5.3.3 The *FCA* may have regard to the cumulative effect of a number of factors which, when considered in isolation, may not be sufficient to show that the individual is not fit and proper to continue to perform a *controlled function* or other function in relation to *regulated activities*. It may also take account of the particular *controlled function* which an *approved person* is performing for a *firm*, the nature and activities of the *firm* concerned and the markets within which it operates.

5.3.4 Due to the diverse nature of the activities and functions which the *FCA* regulates, it is not possible to produce a definitive list of matters which the *FCA* might take into account when considering whether an individual is not a fit and proper *person* to perform a particular, or any, function in relation to a particular, or any, *firm*.

5.3.5 The following are examples of types of behaviour which have previously resulted in the *FCA* the deciding to issue a *prohibition order* or withdraw the approval of an *approved person*:

- (1) providing false or misleading information to the *FCA*, including information relating to identity, ability to work in the United Kingdom, and business arrangements;
- (2) failure to disclose material considerations on application forms, such as details of county court judgments, criminal convictions and dismissal from

employment for regulatory or criminal breaches. The nature of the information not disclosed can also be relevant;

- (3) acts of dishonesty;
- (4) serious lack of competence; and
- (5) serious breaches of *APER* or *COCON*, for *approved persons*, such as failing to make terms of business regarding fees clear or actively misleading clients about fees; acting without regard to instructions; providing misleading information to clients, *consumers* or third parties; giving clients poor or inaccurate advice; using intimidating or threatening behaviour towards clients and former clients; and failing to remedy breaches of the *general prohibition* or to ensure that a *firm* acted within the scope of its *permissions*.

5.3.6 Certain matters that do not fit squarely, or at all, within the matters referred to above may also fall to be considered. In these circumstances, the *FCA* will consider whether the conduct or matter in question is relevant to the individual's fitness and propriety.

5.3.7 Where the *FCA* considers that it is appropriate to withdraw an individual's approval to perform a *controlled function* within a particular *firm*, it will also consider, at the very least, whether it should prohibit the individual from performing that function more generally. Depending on the circumstances, it may consider that the individual should also be prohibited from performing other functions.

5.3.8 The *FCA* will consult the *PRA* before withdrawing an approval given by the *PRA*.

5.4 Prohibition orders against other individuals

5.4.1 Where the *FCA* is considering making a *prohibition order* against an individual other than an individual referred to in *EG* 5.3.1 to *EG* 5.3.7, the *FCA* will consider the level of the risk posed by the individual, and may prohibit the individual where it considers that this is appropriate to achieve one or more of its *statutory objectives*. For that, the *FCA* will consider all the relevant circumstances of the case, including the factors set out in *EG* 5.3.2, if appropriate.

5.5 Applications for variation or revocation of prohibition orders

5.5.1 When considering whether to grant or refuse an application to revoke or vary a *prohibition order*, the *FCA* will consider all the relevant circumstances of a case. These may include, but are not limited to:

- (1) the seriousness of the misconduct or other unfitness that resulted in the order;
- (2) the amount of time since the original order was made;

- (3) any steps taken subsequently by the individual to remedy the misconduct or other unfitness;
- (4) any evidence which, had it been known to the *FCA* at the time, would have been relevant to the *FCA*'s decision to make the *prohibition order*;
- (5) all available information relating to the individual's honesty, integrity or competence since the order was made, including any repetition of the misconduct which resulted in the *prohibition order* being made;
- (6) where the *FCA*'s finding of unfitness arose from incompetence rather than from dishonesty or lack of integrity, evidence that this unfitness has been or will be remedied; for example, this may be achieved by the satisfactory completion of relevant training and obtaining relevant qualifications, or by supervision of the individual by their employer;
- (7) the financial soundness of the individual concerned; and
- (8) whether the individual will continue to pose the level of risk to *consumers* or confidence in the *financial system* which resulted in the original prohibition if it is lifted.

5.5.2 When considering whether to grant or refuse an application to revoke or vary a *prohibition order*, the *FCA* will take into account any indication given by the *FCA* in the *final notice* that it is minded to revoke or vary the *prohibition order* on application after a certain number of years (see *EG 5.2.5*).

5.5.3 If the individual applying for a revocation or variation of a *prohibition order* proposes to take up an offer of employment to perform a *controlled function*, the *FCA* will take this into account when considering whether to grant or refuse the application.

5.5.4 The *FCA* will not generally grant an application to vary or revoke a *prohibition order* unless it is satisfied that: the proposed variation will not result in a reoccurrence of the risk to *consumers* or confidence in the *financial system* that resulted in the order being made; and the individual is fit to perform functions in relation to *regulated activities* generally, or to those specific *regulated activities* in relation to which the individual has been prohibited. The *FCA* will assess the individual's fitness and propriety to perform these functions on the basis of the criteria in *FIT 2.1* (Honesty, integrity and reputation), *FIT 2.2* (Competence and capability) and *FIT 2.3* (Financial soundness).

5.5.5 The *FCA* will consult the *PRA* before varying or revoking a *prohibition order* if, as a result of the variation or revocation, an individual will either be prohibited from, or no longer be prohibited from, a function of interest to the *PRA* as defined in section 56(7B) of the *Act*.

6 Prosecution of criminal offences

6.1 The FCA's general approach

- 6.1.1 The *FCA* has powers under sections 401 and 402 of the *Act* to prosecute a range of criminal offences in England, Wales and Northern Ireland. The *FCA* may also prosecute criminal offences where to do so would be consistent with meeting any of its statutory objectives.
- 6.1.2 The *FCA*'s general policy is to pursue through the criminal justice system all those cases where criminal prosecution is appropriate. When it decides whether to bring criminal proceedings in England, Wales or Northern Ireland, or to refer the matter to another prosecuting authority in England, Wales or Northern Ireland, it will apply the basic principles set out in the Code for Crown Prosecutors (www.cps.gov.uk/publication/code-crown-prosecutor). When considering whether to prosecute a breach of the Money Laundering Regulations, the *FCA* will also have regard to whether the person concerned has followed the Guidance for the UK financial sector issued by the Joint Money Laundering Steering Group (www.jmlsg.org.uk/guidance/current-guidance/).

Commencing criminal proceedings

- 6.1.3 In cases where criminal proceedings have commenced or will be commenced, the *FCA* may consider whether also to take civil or regulatory action (for example, where this is appropriate for the protection of *consumers*) and how such action should be pursued. That action might include: applying to court for an *injunction*; applying to court for a restitution order; variation and/or cancellation of *permission*; and prohibition of individuals. The factors the *FCA* may take into account when deciding whether to take such action, where criminal proceedings are in contemplation, include, but are not limited to, the following:
- (1) whether, in the *FCA*'s opinion, the taking of civil or regulatory action might unfairly prejudice the prosecution, or proposed prosecution, of criminal offences;
 - (2) whether, in the *FCA*'s opinion, the taking of civil or regulatory action might unfairly prejudice the defendants in the criminal proceedings in the conduct of their defence; and
 - (3) whether it is appropriate to take civil or regulatory action, having regard to the scope of the criminal proceedings and the powers available to the criminal courts.
- 6.1.4 Decisions to commence criminal proceedings will be made by an executive director or a director in Enforcement.

6.2 FCA cautions

- 6.2.1 In some cases, the *FCA* may decide to issue a formal caution rather than to prosecute an offender. In these cases, the *FCA* will follow the Home Office Guidance on the cautioning of offenders, currently contained in the Ministry of Justice – Simple Caution for Adult Offender Guidance (www.cps.gov.uk/legal-guidance/cautioning-and-diversion)

6.2.2 Where the *FCA* decides to administer a formal caution, a record of the caution will be kept by the *FCA* and on the Police National Computer. The *FCA* will not publish the caution, but it will be available to parties with access to the Police National Computer. The issue of a caution may influence the *FCA* and other prosecutors in their decision as to whether or not to prosecute the offender if they offend again. A caution given by the *FCA* will form part of the *person's* regulatory record for the purposes of *DEPP* 6.2.1G(3). If relevant, the *FCA* will take the caution into account in deciding whether to take action for subsequent misconduct by the *person*. The *FCA* may also take a caution into account when considering a *person's* honesty, integrity and reputation and their fitness or propriety to perform controlled or other functions in relation to *regulated activities* (see *FIT* 2.1.3G).

6.3 Criminal prosecutions in cases of market abuse

6.3.1 In some cases, there will be instances of market misconduct that may arguably involve a breach of the criminal law as well as *market abuse*. When the *FCA* decides whether to commence criminal proceedings rather than impose a sanction for *market abuse* in relation to that misconduct, it will apply the basic principles set out in the Code for Crown Prosecutors.

6.3.2 The factors which the *FCA* may consider when deciding whether to commence a criminal prosecution for market misconduct rather than impose a sanction for *market abuse* include, but are not limited to, the following:

- (1) the seriousness of the misconduct – if the misconduct is serious and prosecution is likely to result in a significant sentence, criminal prosecution may be more likely to be appropriate;
- (2) whether there are victims who have suffered loss as a result of the misconduct – where there are no victims, a criminal prosecution is less likely to be appropriate;
- (3) the extent and nature of the loss suffered – where the misconduct has resulted in substantial loss and/or loss has been suffered by a substantial number of victims, criminal prosecution may be more likely to be appropriate;
- (4) the effect of the misconduct on the market – where the misconduct has resulted in significant distortion or disruption to the market and/or has significantly damaged market confidence, a criminal prosecution may be more likely to be appropriate;
- (5) the extent of any profits accrued or loss avoided as a result of the misconduct – where substantial profits have accrued or loss avoided as a result of the misconduct, criminal prosecution may be more likely to be appropriate;
- (6) whether there are grounds for believing that the misconduct is likely to be continued or repeated – if it appears that the misconduct may be continued or repeated and the imposition of a financial penalty is unlikely to deter

further misconduct, a criminal prosecution may be more appropriate than a financial penalty;

- (7) whether the person has previously been cautioned or convicted in relation to market misconduct or has been subject to civil or regulatory action in respect of market misconduct;
- (8) the extent to which redress has been provided to those who have suffered loss as a result of the misconduct and/or whether steps have been taken to remedy any failures in systems or controls which gave rise to the misconduct – where such steps are taken promptly and voluntarily, criminal prosecution may not be appropriate; however, potential defendants will not avoid prosecution simply because they are able to pay compensation;
- (9) the effect that a criminal prosecution may have on the prospects of securing redress for those who have suffered loss – where a criminal prosecution will have adverse effects on the solvency of a *firm* or individual in circumstances where loss has been suffered by *consumers*, the *FCA* may decide that criminal proceedings are not appropriate;
- (10) whether the *person* is being or has been voluntarily cooperative with the *FCA* in taking corrective measures – however, potential defendants will not avoid prosecution merely by fulfilling a statutory duty to take those measures;
- (11) whether an individual’s misconduct involves dishonesty or an abuse of a position of authority or trust;
- (12) where the misconduct in question was carried out by a group, and a particular individual has played a leading role in the commission of the misconduct – in these circumstances, criminal prosecution may be appropriate in relation to that individual;
- (13) where the misconduct in question was carried out by 2 or more individuals acting together and one of the individuals provides information and gives full assistance in the *FCA*’s prosecution of the other(s) – the *FCA* will take this cooperation into account when deciding whether to prosecute the individual who has assisted the *FCA* or bring *market abuse* proceedings against them; and
- (14) the personal circumstances of an individual may be relevant to a decision whether to commence a criminal prosecution.

6.3.3 The importance attached by the *FCA* to these factors will vary from case to case and the factors are not necessarily cumulative or exhaustive.

6.3.4 It is the *FCA*’s policy not to impose a sanction for *market abuse* where a *person* is being prosecuted for market misconduct or has been finally convicted or acquitted of market misconduct (following the exhaustion of all appeal processes) in a criminal prosecution arising from substantially the same allegations. Similarly, it

is the *FCA*'s policy not to commence a prosecution for market misconduct where the *FCA* has brought or is seeking to bring enforcement proceedings for *market abuse* arising from substantially the same allegations.

App 1 FSMA and other powers

App 1.1 Injunctions

Injunctions (or in Scotland, interdicts)

App 1.1.1 The *FCA* has powers under the *Act* to seek *injunctions* for breaches of a relevant requirement or in cases of market abuse. It also has powers under the courts' inherent jurisdiction – for example, to apply for asset freezing *injunctions*. The broad test the *FCA* will apply when it decides whether to seek an *injunction* is whether the application would be the most effective way to deal with the *FCA*'s concerns.

Injunctions under Schedule 3 to the *CRA* or regulation 12 of the *Unfair Terms Regulations*

App 1.1.2 The *FCA* also has powers under Schedule 3 to the *CRA* to seek an *injunction* if it considers that a term or notice in a consumer contract is unfair, purportedly restrictive or exclusionary or non-transparent within the meaning of the *CRA*. Schedule 3 to the *CRA* provides the process the *FCA* should follow in these circumstances.

App 1.1.3 For contracts entered into before 1 October 2015, the *Unfair Terms Regulations* still apply. The pre-1 October 2015 version of *EG* contains the *FCA*'s approach and policy relating to its powers under the *Unfair Terms Regulations*.

App 1.2 Insolvency

App 1.2.1 The *FCA* has specific rights and powers under the *Act* to apply to the court for orders under existing insolvency legislation and to participate in proceedings under that legislation. The *FCA* also has powers under other legislation in relation to insolvency, including under the Payment and Electronic Money Institution Insolvency Regulations 2021, the Investment Bank Special Administration Regulations 2011 and the Corporate Insolvency and Governance Act 2020. The *FCA*'s effective use of its powers and rights in insolvency proceedings in order to meet its operational objectives enables it to apply to court to:

- (1) stop *firms* and *unauthorised persons* carrying on insolvent or unlawful business; and
- (2) ensure the orderly realisation and distribution of their assets.

[*Editor's note*: App 1.3 takes into account the proposals suggested in the consultation paper 'Implementing the Overseas Funds Regime' (CP23/26) as if they were made final.]

App 1.3 Collective investment schemes

App 1.3.1 The *FCA* has powers in respect of authorised unit trust schemes (*AUT*) and authorised contractual schemes (*ACS*) under relevant sections of the *Act*. These are sections 254 (Revocation of authorisation order otherwise than by consent), 257 (Directions), 258 (Applications to the court) in relation to an *AUT*; and 261U (Revocation of authorisation order otherwise than by consent), 261X (Directions) and 261Y (Applications to the court) in relation to an *ACS*.

App 1.3.2 The *FCA* may use its powers individually or together, and in addition to direct enforcement action against a *depository* or *authorised fund manager* in their capacity as *firms*.

App 1.3.3 Where the *FCA* has a concern about an *AUT* or *ACS* that must be dealt with urgently, it will generally use its power to give directions in the first instance.

App 1.3.4 The *FCA* also has powers in respect of *recognised schemes* under sections 271L, 271N and 271R of the *Act* in relation to *schemes* recognised under section 271A, and sections 279, 281 and 282B of the *Act* in relation to *schemes* recognised under section 272. These powers allow the *FCA* to suspend or revoke a *scheme's* recognition or to issue the *operators* of such *schemes* with a *public censure*.

[**Note:** The table in *EG App 2.2.1* sets out the *FCA's* general policy on the exercise of powers in relation to *OEICs* under the *OEIC Regulations*.]

App 1.4 Disqualification of auditors and actuaries

App 1.4.1 Auditors and *actuaries* fulfil a vital role in the management and conduct of *firms*, *AUTs* and *ACSs*. Provisions of the *Act*, *rules* made under the *Act* and the *OEIC Regulations* impose various duties on auditors and *actuaries*. The *FCA* has powers to disqualify auditors and *actuaries* that breach their duties under these provisions. The *FCA* also has powers to disqualify auditors in breach of duties imposed by *trust scheme rules*, *contractual scheme rules* or the similar *FCA rules* that apply to *ICVCs*.

App 1.4.2 Additionally, the *FCA* has the power under section 345 of the *Act* to impose a financial penalty and a *public censure* on an auditor or *actuary* in respect of a failure to comply with a duty imposed on the auditor or *actuary* by *rules* made by the *FCA* (i.e. *SUP 3*, *SUP 4*, for *ICVCs* in *COLL 4*, *COLL 7*), or a failure to comply with a duty imposed under the *Act* to communicate information to the *FCA*. *Actuaries* carrying out a *designated senior management function* as specified in *PRA rules* will be subject to *COCON*, and other *actuaries* that are *conduct rules staff* will also be subject to parts of *COCON* applicable to *conduct rules staff*.

The *FCA* has the power under sections 249 and 261K of the *Act* to impose a financial penalty and a *public censure* on an auditor in respect of a failure to comply with a duty imposed on them by *trust scheme rules* and *contractual scheme rules*. The *FCA* has similar powers under Schedule 5 of the *OEIC Regulations* for breaches of those *FCA rules* that apply to *ICVCs*.

[**Note:** The table in *EG App 2.2.1* sets out the *FCA's* general policy on the exercise of powers in relation to *OEICs* under the *OEIC Regulations*.]

App 1.4.3 The *FCA*'s statement of policy in relation to the imposition of financial penalties is set out in *DEPP* 6.2 (Deciding whether to take action) and *DEPP* 6.4 (Financial penalty or *public censure*). The *FCA*'s statement of policy in relation to determining the amount of a financial penalty is set out in *DEPP* 6.5 to *DEPP* 6.5D.

App 1.5 Disapplication orders against members of the professions

App 1.5.1 The *FCA* has the power under section 329 of the *Act* to make an order disapplying an exemption from the *general prohibition* in relation to a *person* who is a *member* of the professions on the grounds that the *member* is not a fit and proper person to conduct *exempt regulated activities*. Additionally, the *FCA* has powers to maintain a public record of disapplication orders.

App 1.5.2 When exercising the power to make a disapplication order, the *FCA* will consider whether other action would be more appropriate – in particular, whether to make a *prohibition order*. The *FCA* will also have regard to any disciplinary action taken, or to be taken, against the *person* by the relevant *designated professional body*.

App 1.5.3 In cases where the *FCA* considers making an order prohibiting the individual from performing functions in relation to *exempt regulated activities*, it will consider all the relevant circumstances of the case, including the factors set out in *EG* 5.3.2.

[*Editor's note*: Changes to the Listing Rules sourcebook are being consulted on in the consultation paper CP23/31.]

App 1.6 Cancellation of approval as sponsor or primary information provider

App 1.6.1 The *FCA* has powers to cancel a *sponsor's* approval under section 88 of the *Act* if it considers that a *sponsor* has failed to meet the criteria for approval as a *sponsor* as set out in *LR* 8.6.5R.

App 1.6.2 The *FCA* may also cancel a *primary information provider's* approval under section 89P of the *Act* if it considers that a *primary information provider* has failed to meet the criteria for approval as a *primary information provider* as set out in *DTR* 8.3.

App 1.7 Search and seizure powers

App 1.7.1 Under sections 122D and 176 of the *Act*, the *FCA* has the power to apply to a justice of the peace for a warrant to enter premises where documents or information is held. The circumstances under which the *FCA* may apply for a search warrant include:

- (1) where a *person* on whom an information requirement has been imposed fails (wholly or in part) to comply with it; or

- (2) where there are reasonable grounds for believing that if an information requirement were to be imposed, it would not be complied with, or that the documents or information to which the information requirement relates would be removed, tampered with or destroyed.

App 1.7.2 A warrant obtained pursuant to sections 122D and 176 of the *Act* authorises a police constable or an *FCA* investigator in the company, and under the supervision of, a police constable, to do the following, among other things: to enter and search the premises specified in the warrant and take possession of any documents or information appearing to be documents or information of a kind in respect of which the warrant was issued or to take, in relation to any such documents or information, any other steps which may appear to be necessary for preserving them or preventing interference with them.

App 2 Non-FSMA Powers

App 2.1 Statements of policy

App 2.1.1 The table below identifies the statements of policy which the *FCA* is required to make under legislation other than the *Act*.

In each case, references in *DEPP* to the *Act*, provisions of the *Act* and *persons* regulated under or otherwise subject to the *Act* are to be read as references to that other legislation, equivalent or otherwise applicable provisions of that other legislation and *persons* regulated under or otherwise subject to that other legislation, as appropriate.

Legislation	Description	Statement of Policy
<p>Consumer Credit Act 1974 www.legislation.gov.uk/ukpga/1974/39/contents)</p>	<p>The <i>CCA Order</i> gives the <i>FCA</i> the power to enforce the <i>CCA</i> through the application of its investigation and sanctioning powers in the <i>Act</i> by reference to the contravention of <i>CCA Requirements</i> and criminal offences under the <i>CCA</i>.</p>	<p>Public censure and penalty policy <i>DEPP</i> 6.2 and <i>DEPP</i> 6.4 (relevant factors) and <i>DEPP</i> 6.5 to <i>DEPP</i> 6.5B, <i>DEPP</i> 6.5D and <i>DEPP</i> 6.7 (regarding level of a financial penalty).</p> <p>Power to impose suspension or restriction <i>DEPP</i> 6A.2 and <i>DEPP</i> 6A.4 (relevant factors) and <i>DEPP</i> 6A.3 (regarding length of suspension or restriction).</p>
<p>The Regulated Covered Bonds Regulations 2008 www.legislation.gov.uk/uksi/2008/346/contents/made)</p>	<p>The <i>RCB Regulations</i> provide a framework for issuing <i>covered bonds</i> in the <i>UK</i>. <i>Covered bonds</i> issued under the <i>RCB Regulations</i> are subject to strict quality controls and both bonds and issuers must be registered with the <i>FCA</i>. The <i>RCB Regulations</i> give the <i>FCA</i> powers to enforce these regulations.</p>	<p>Penalty policy <i>DEPP</i> 6.5 to <i>DEPP</i> 6.5D as appropriate, and having regard to other specific matters such as the likely impact of the penalty on the interests of investors in the relevant bonds, as set out in <i>RCB</i> 4.2.5G.</p> <p>Giving warning or decision notices <i>DEPP</i> 3.2 and <i>DEPP</i> 3.3.</p>
<p>Credit Rating Agencies (CRA) Regulation</p>	<p>The <i>CRA Regulation</i> aims to enhance the integrity, responsibility, good governance and independence of credit rating activities, contributing to the quality of credit ratings issued in the <i>United Kingdom</i> while achieving high levels of investor protection. The <i>CRA Regulation</i> imposes requirements including, among other things, obligations on <i>credit rating agencies</i> relating to their independence and avoidance of conflicts of interest, their methodologies and disclosures.</p>	<p>Public censure and penalty policy <i>DEPP</i> 6.2 and <i>DEPP</i> 6.4 (relevant factors) and <i>DEPP</i> 6.5 to <i>DEPP</i> 6.5B and <i>DEPP</i> 6.5D (regarding level of a financial penalty).</p> <p>Conduct of interviews in response to overseas requests Procedures in <i>DEPP</i> 7 (as required by section 169 of the <i>Act</i> for the purposes of these regulations).</p>

Legislation	Description	Statement of Policy
<p>The Electronic Money Regulations 2011 www.legislation.gov.uk/ukxi/2011/99/contents/made</p>	<p>The <i>Electronic Money Regulations</i> impose requirements including, among other things, various provisions regulating the rights and obligations of electronic money institutions.</p>	<p>Penalty policy <i>DEPP</i> 6.2 and <i>DEPP</i> 6.4 (relevant factors) and <i>DEPP</i> 6.5 to <i>DEPP</i> 6.5D (regarding level of a financial penalty).</p> <p>Suspension powers <i>DEPP</i> 6A.</p> <p>Conduct of interviews in response to overseas requests Procedures in <i>DEPP</i> 7 (as required by section 169 of the <i>Act</i> for the purposes of the <i>Electronic Money Regulations</i>).</p>
<p>The Alternative Investment Fund Managers Regulations 2013 www.legislation.gov.uk/ukdsi/2013/9780111540206/contents</p>	<p>The <i>AIFMD UK regulation</i> transposed <i>AIFMD</i> and made the necessary changes to <i>UK</i> legislation in relation to the implementation of the Regulation (EU) No 346/2013, the Regulation (EU) No 345/2013, the Regulation (EU) 2015/760 and the <i>Money Market Funds Regulation</i>.</p>	<p>Penalty policy <i>DEPP</i> 6.2 and <i>DEPP</i> 6.4 (relevant factors) and <i>DEPP</i> 6.5 to <i>DEPP</i> 6.5B, <i>DEPP</i> 6.5D and <i>DEPP</i> 6.7 (regarding level of a financial penalty).</p> <p>Conduct of interviews in response to overseas requests Procedures in <i>DEPP</i> 7 (as required by section 169 of the <i>Act</i> for the purposes of the <i>AIFMD UK regulation</i>).</p>
<p>The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and</p>	<p>The <i>OTC derivatives, CCPs and trade repositories regulation</i> adds to the powers available to the <i>FCA</i> for dealing with breaches of <i>EMIR requirements</i> and sets out information gathering and sanctioning powers enabling the <i>FCA</i> to investigate and take action for breaches of the</p>	<p>Penalty policy The <i>FCA</i> will adopt policies akin to those under the <i>Act</i>. Where the <i>FCA</i> exercises its power to impose a financial penalty under the <i>OTC derivatives, CCPs and trade repositories regulation</i> or the <i>Act</i> for breaches in</p>

Legislation	Description	Statement of Policy
Trade Repositories) Regulations 2013 www.legislation.gov.uk/uksi/2013/504/contents	<p><i>EMIR requirements by non-authorised counterparties and for certain breaches of the OTC derivatives, CCPs and trade repositories regulation by authorised persons.</i></p> <p>The FCA has additional powers in relation to trade repositories under the <i>Trade Repositories (EU Exit) Regulations</i> (see below).</p>	<p>relation to <i>EMIR</i>, it must publish a statement to that effect unless such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.</p> <p>Sanctioning powers</p> <p>Relevant factors in <i>DEPP 6.2.1G</i> and <i>DEPP 6.4</i>.</p> <p>Penalty policy</p> <p><i>DEPP 6.5</i> to <i>DEPP 6.5B</i>, <i>DEPP 6.5D</i> and <i>DEPP 6.7</i>.</p>
The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013 www.legislation.gov.uk/uksi/2013/1635/contents/made	<p>The <i>Referral Fees Regulations</i> give the FCA investigation and sanctioning powers in relation to the contravention of the rules against referral fees contained in sections 56 to 60 of the <i>Legal Aid, Sentencing and Punishment of Offenders Act 2012</i>, as well as the contravention of requirements imposed by, or under, the <i>Referral Fees Regulations</i>.</p>	<p>Public censure and penalty policy</p> <p><i>DEPP 6.2</i> and <i>DEPP 6.4</i> (relevant factors) and <i>DEPP 6.5</i> to <i>DEPP 6.5B</i>, <i>DEPP 6.5D</i> and <i>DEPP 6.7</i> (regarding level of a financial penalty).</p> <p>Power to impose suspension or restriction</p> <p><i>DEPP 6A.2</i> and <i>DEPP 6A.4</i> (relevant factors) and <i>DEPP 6A.3</i> (regarding length of suspension or restriction).</p> <p>The FCA does not have the power to suspend an authorised person's permission under the <i>Referral Fees Regulations</i>.</p>
The Immigration Act 2014 (Bank Account) Regulations 2014 www.legislation.gov.uk/uksi/2014/1635/contents/made	<p>The <i>Immigration Regulations</i> (as amended by the Immigration Act 2014 (Current Accounts) (Excluded Accounts and Notification Requirements) Regulations 2016) give the FCA investigation and sanctioning powers in relation to the contravention of sections 40, 40A, 40B and 40G of the Immigration Act 2014 (as amended by the</p>	<p>Public censure and penalty policy</p> <p><i>DEPP 6.2</i> and <i>DEPP 6.4</i> (relevant factors) and <i>DEPP 6.5</i> to <i>DEPP 6.5B</i>, <i>DEPP 6.5D</i> and <i>DEPP 6.7</i> (regarding level of a financial penalty).</p>

Legislation	Description	Statement of Policy
uk/uksi/2014/3085/contents/made	Immigration Act 2016), as well as the contravention of requirements imposed by, or under, the <i>Immigration Regulations</i> .	Power to impose suspension or restriction <i>DEPP</i> 6A.2 and <i>DEPP</i> 6A.4 (relevant factors) and <i>DEPP</i> 6A.3 (regarding length of suspension or restriction).
The Mortgage Credit Directive Order 2015 (www.legislation.gov.uk/uksi/2015/910/contents/made)	The Mortgage Credit Directive (Directive 2014/17/EU) (allowed for an exemption not to apply the directive to buy-to-let lending if there was in place an appropriate framework for the regulation of these mortgages. The Mortgage Credit Directive Order is the vehicle through which the framework for ‘consumer buy-to-let’ mortgages was established in order to comply with the Mortgage Credit Directive.	Public censure and penalty policy <i>DEPP</i> 6.2 and <i>DEPP</i> 6.4 (relevant factors) and <i>DEPP</i> 6.5, <i>DEPP</i> 6.5A, <i>DEPP</i> 6.5D and <i>DEPP</i> 6.7 (regarding level of a financial penalty). Power to impose suspension <i>DEPP</i> 6A.2 and <i>DEPP</i> 6A.4 (relevant factors) and <i>DEPP</i> 6A.3 (regarding length of suspension).
The Payment Accounts Regulations 2015 (www.legislation.gov.uk/uksi/2015/2038/contents/made)	The <i>Payment Accounts Regulations</i> (‘the <i>PARs</i> ’) implemented the Payment Accounts Directive. They entitle <i>consumers</i> who hold a payment account (such as a current account) to receive certain information about the fees and charges applied to that account. They also entitle <i>consumers</i> to use a switching service which meets certain minimum standards, if they wish to change their payment account to another provider.	Public censure and penalty policy <i>DEPP</i> 6.2 and <i>DEPP</i> 6.4 (relevant factors) and <i>DEPP</i> 6.5, <i>DEPP</i> 6.5A, <i>DEPP</i> 6.5D and <i>DEPP</i> 6.7 (regarding level of a financial penalty).
Securities Financing Transactions Regulation	Supervisory and enforcement functions in respect of <i>trade repositories</i> under the <i>Securities Financing Transactions Regulation</i> were transferred from <i>ESMA</i> to the <i>FCA</i> through the <i>SFTR (EU Exit) Regulations</i> on <i>IP completion day</i> .	Public censure and penalty policy <i>DEPP</i> 6.2 and <i>DEPP</i> 6.4 (relevant factors) and <i>DEPP</i> 6.5 to <i>DEPP</i> 6.5B and <i>DEPP</i> 6.5D (regarding level of a financial penalty).

Legislation	Description	Statement of Policy
		<p>Conduct of interviews in response to overseas requests</p> <p>Procedures in <i>DEPP 7</i> (as required by section 169 of the <i>Act</i> for the purposes of these regulations)</p>
<p>The Small and Medium Sized Business (Credit Information) Regulations 2015 (www.legislation.gov.uk/ukxi/2015/1945/contents)</p>	<p>The <i>Small and Medium Sized Business (Credit Information) Regulations</i> were made under the <i>Small Business, Enterprise and Employment Act</i>. The <i>Small and Medium Sized Business (Credit Information) Regulations</i> impose a duty on designated banks to provide information about their small and medium sized business customers (with the consent of those businesses) to designated credit reference agencies.</p>	<p>Public censure and penalty policy</p> <p><i>DEPP 6.2</i> and <i>DEPP 6.4</i> (relevant factors) and <i>DEPP 6.5</i>, <i>DEPP 6.5A</i>, <i>DEPP 6.5D</i> and <i>DEPP 6.7</i> (regarding level of a financial penalty).</p> <p>Power to impose restriction</p> <p><i>DEPP 6A.2</i> and <i>DEPP 6A.4</i> (relevant factors) and <i>DEPP 6A.3</i> (regarding length of restriction).</p>
<p>The Small and Medium Sized Business (Finance Platforms) Regulations 2015 (www.legislation.gov.uk/ukdsi/2015/9780111138939/contents)</p>	<p>The <i>Small and Medium Sized Business (Finance Platforms) Regulations</i> were made under the <i>Small Business, Enterprise and Employment Act</i>. The <i>Small and Medium Sized Business (Finance Platforms) Regulations</i> require <i>designated banks</i> to provide <i>specified information</i> about rejected loan applications made by small and medium sized business customers (with their consent) to <i>designated finance platforms</i> which must then provide such information to <i>finance providers</i> on request.</p>	<p>Public censure and penalty policy</p> <p><i>DEPP 6.2</i> and <i>DEPP 6.4</i> (relevant factors) and <i>DEPP 6.5</i>, <i>DEPP 6.5A</i>, <i>DEPP 6.5D</i> and <i>DEPP 6.7</i> (regarding level of a financial penalty).</p> <p>Power to impose restriction</p> <p><i>DEPP 6A.2</i> and <i>DEPP 6A.4</i> (relevant factors) and <i>DEPP 6A.3</i> (regarding length of restriction).</p>
<p>The Data Reporting Services Regulations 2017 (www.legislation.gov.uk/ukdsi/2017/9780111138939/contents)</p>	<p>The <i>DRS Regulations</i> implemented <i>MiFID</i>. The <i>FCA</i> has investigation and enforcement powers in relation to both criminal and non-criminal breaches of the <i>DRS Regulations</i> (including requirements imposed on <i>persons</i> subject to the <i>DRS Regulations</i> by <i>MiFIR</i> and any <i>onshored regulation</i></p>	<p>Public censure and penalty policy</p> <p><i>DEPP 6.2</i> and <i>DEPP 6.4</i> (relevant factors) and <i>DEPP 6.5</i> to <i>DEPP 6.5D</i> (regarding level of a financial penalty).</p>

Legislation	Description	Statement of Policy
uk/uksi/2017/699/contents)	which was an <i>EU regulation</i> made under <i>MiFIR</i> or <i>MiFID</i>).	<p>Conduct of interviews in response to overseas requests</p> <p>Procedures in <i>DEPP 7</i> (as required by section 169 of the <i>Act</i> for the purposes of the <i>DRS Regulations</i>).</p>
The Financial Services and Markets Act 2000 (Markets in Financial Instruments) Regulations 2017 (www.legislation.gov.uk/uksi/2017/701/contents)	The <i>MiFI Regulations</i> in part implemented <i>MiFID</i> . The <i>FCA</i> has investigative and enforcement powers in relation to both criminal and non-criminal breaches of the <i>MiFI Regulations</i> (including requirements imposed on persons subject to the <i>MiFI Regulations</i> by <i>MiFIR</i> and any <i>onshored regulation</i> which was an <i>EU regulation</i> made under <i>MiFIR</i> or <i>MiFID</i>).	<p>Public censure and penalty policy</p> <p><i>DEPP 6.2</i> and <i>DEPP 6.4</i> (relevant factors) and <i>DEPP 6.5</i> to <i>DEPP 6.5D</i> (regarding level of a financial penalty).</p> <p>Conduct of interviews in response to overseas requests</p> <p>Procedures in <i>DEPP 7</i> (as required by section 169 of the <i>Act</i> for the purposes of the <i>MiFI Regulations</i>).</p>
The Packaged Retail and Insurance-based Investment Products Regulations 2017 (www.legislation.gov.uk/uksi/2017/1127)	The Packaged Retail and Insurance-based Investment Products Regulations implemented the <i>PRIIPs Regulation</i> (before it was brought into <i>UK law</i>). The <i>FCA</i> has investigative and enforcement powers in relation to both criminal and civil breaches of the Packaged Retail and Insurance-based Investment Products Regulations, <i>PRIIPs Regulation</i> and any <i>onshored regulation</i> which was an <i>EU regulation</i> made under the <i>PRIIPs Regulation</i> . The <i>PRIIPs Regulation</i> imposes requirements on both authorised and unauthorised <i>persons</i> who manufacture, advise on, market or sell a <i>PRIIP</i> .	<p>Public censure and penalty policy</p> <p><i>DEPP 6.2</i> and <i>DEPP 6.4</i> (relevant factors) and <i>DEPP 6.5</i> to <i>DEPP 6.5D</i> (regarding level of a financial penalty).</p> <p>Conduct of interviews in response to overseas requests</p> <p>Procedures in <i>DEPP 7</i> (as required by section 169 of the <i>Act</i> for the purposes of these regulations).</p>

Legislation	Description	Statement of Policy
<p>The Payment Services Regulations 2017 www.legislation.gov.uk/ukxi/2017/752/contents/made)</p>	<p>The <i>FCA</i> has investigation and sanctioning powers in relation to both criminal and civil breaches of the <i>Payment Services Regulations</i>.</p> <p>[Note: <i>EG App 2.2.1</i> sets out the <i>FCA</i>'s general approach to the exercise of powers under the <i>Payment Services Regulations</i>.]</p>	<p>Penalty policy</p> <p><i>DEPP 6.2</i> and <i>DEPP 6.4</i> (relevant factors) and <i>DEPP 6.5</i> to <i>DEPP 6.5D</i> (regarding level of a financial penalty).</p> <p>The <i>RDC</i> is the <i>FCA</i>'s decision maker for some of the decisions under the <i>Payment Services Regulations</i> as set out in <i>DEPP 2 Annex 1G</i>.</p> <p>Conduct of interviews in response to overseas requests</p> <p>Procedures in <i>DEPP 7</i> (as required by section 169 of the <i>Act</i> for the purposes of the <i>Payment Services Regulations</i>).</p>
<p>The Financial Services and Markets Act 2000 (Benchmarks) Regulations 2018 www.legislation.gov.uk/ukxi/2018/135/contents)</p>	<p>The <i>UK Benchmarks Regulations 2018</i> in part implemented the <i>benchmarks regulation</i> (before it was brought into <i>UK law</i>). The <i>FCA</i> has investigative and enforcement powers in relation to both criminal and non-criminal breaches of the <i>UK Benchmarks Regulations 2018</i> (including requirements imposed on <i>persons</i> subject to the <i>UK Benchmarks Regulations 2018</i> by the <i>benchmarks regulation</i> and any <i>onshored regulation</i> which was an <i>EU regulation</i> made under the <i>benchmarks regulation</i>).</p>	<p>Public censure and penalty policy</p> <p><i>DEPP 6.2</i> and <i>DEPP 6.4</i> (relevant factors) and <i>DEPP 6.5</i> to <i>DEPP 6.5D</i> (regarding level of a financial penalty).</p> <p>Conduct of interviews in response to overseas requests</p> <p>Procedures in <i>DEPP 7</i> (as required by section 169 of the <i>Act</i> for the purposes of the <i>UK Benchmarks Regulations 2018</i>).</p>
<p>The Over the Counter Derivatives, Central Counterparties and Trade Repositories</p>	<p>Supervisory and enforcement functions in respect of <i>trade repositories</i> under <i>EU EMIR</i> were transferred from <i>ESMA</i></p>	<p>Public censure and penalty policy</p>

Legislation	Description	Statement of Policy
(Amendment, etc, and Transitional Provision) (EU Exit) Regulations 2019 www.legislation.gov.uk/ukxi/2019/335/contents	to the <i>FCA</i> through the <i>Trade Repositories (EU Exit) Regulations</i> on <i>IP completion day</i> .	<p><i>DEPP</i> 6.2 and <i>DEPP</i> 6.4 (relevant factors) and <i>DEPP</i> 6.5 to <i>DEPP</i> 6.5B and <i>DEPP</i> 6.5D (regarding level of a financial penalty)</p> <p>Conduct of interviews in response to overseas requests</p> <p>Procedures in <i>DEPP</i> 7 (as required by section 169 of the <i>Act</i> for the purposes of these regulations)</p>
The Proxy Advisors (Shareholders' Rights) Regulations 2019 www.legislation.gov.uk/ukxi/2019/926/made	The <i>Proxy Advisors (Shareholders' Rights) Regulations</i> in part implement the revised <i>Shareholders Rights Directive (SRD)</i> . The <i>FCA</i> has investigative and sanctioning powers in relation to breaches of the <i>Proxy Advisors (Shareholders' Rights) Regulations</i> .	<p>Penalty policy</p> <p><i>DEPP</i> 6.2 and <i>DEPP</i> 6.4 (relevant factors) and <i>DEPP</i> 6.5 to <i>DEPP</i> 6.5D (regarding level of a financial penalty), in addition to those set out in the <i>Proxy Advisors (Shareholders' Rights) Regulations</i>, where appropriate.</p> <p>Conduct of interviews in response to overseas requests</p> <p>Procedures in <i>DEPP</i> 7 (as required by section 169 of the <i>Act</i> for the purposes of these regulations).</p>
The Securitisation Regulations 2024 www.legislation.gov.uk/ukxi/2024/102/contents/made	<p>[<i>Editor's note</i>: Changes relating to securitisation will be consulted on in a later consultation.]</p> <p>The Securitisation Regulations 2024 form part of HM Treasury's programme to deliver a Smarter Regulatory Framework (SRF) for Financial Services. The Financial Services and Markets Act 2023 (FSMA 2023) repeals assimilated law relating to financial services and replaces it with rules set by regulators within the framework established by Parliament under Part 5A of the <i>Act</i>. The</p>	<p>Public censure and penalty policy</p> <p>Procedures in <i>DEPP</i> 6.</p> <p>Temporary prohibition</p> <p>Factors in <i>DEPP</i> 6A, when determining whether to impose a temporary prohibition and what the length of any temporary prohibition would be.</p>

Legislation	Description	Statement of Policy
	<p><i>FCA</i> has investigative and enforcement powers in relation to both criminal and non-criminal breaches of the Securitisation Regulations 2024. The new framework consolidates existing requirements, including those for Simple Transparent Securitisation (STS) and Securitisation Repositories, and strengthens the legislation on securitisation.</p>	<p>Conduct of interviews in response to overseas requests</p> <p>Procedures in <i>DEPP 7</i> (as required by section 169 of the <i>Act</i> for the purposes of these regulations).</p>

App 2.2 Other general policy

App 2.2.1 The table below sets out the *FCA*'s general policy on the exercise of powers under the legislation listed.

Legislation	Description	Policy
Friendly Societies Act 1974 (FSA74) www.legislation.gov.uk/ukpga/1974/46/contents	<p>The <i>FCA</i> has certain functions in relation to ‘registrant-only’ mutual societies including <i>registered societies</i> or <i>registered friendly societies</i>. These societies are not regulated or supervised under the <i>Act</i>. Instead, they are subject to the provisions of FSA74, FSA92, CCBSA14 and CCBSA(NI)69, which require them to register with the <i>FCA</i> and fulfil certain other obligations, such as the requirement to submit annual returns.</p> <p>Key powers under this legislation are:</p> <ul style="list-style-type: none"> • to refuse registration under the acts; • to prosecute registrant-only societies that fail to submit annual returns; and • to petition for the society’s winding up. 	<p>The <i>FCA</i>’s approach to the exercise of these powers is consistent with the use of powers under the <i>Act</i> and the <i>FCA</i> general policy, including that:</p> <ul style="list-style-type: none"> • the decision as to whether to initiate criminal and other proceedings will be taken in accordance with <i>EG 6</i>; and • the procedure for giving statutory notices under the FSA92 will be in accordance with <i>DEPP 2.5.18G</i>.
Friendly Societies Act 1992 (FSA92) www.legislation.gov.uk/ukpga/1992/40/contents		
Co-operative and Community Benefit Societies Act 2014 (CCBSA14) www.legislation.gov.uk/ukpga/2014/14/contents		
Co-operative and Community Benefit Societies Act (Northern Ireland) 1969 (CCBSA(NI)69) (as modified by the Credit Unions and Co-operative and Community Benefit Societies Act (Northern Ireland) 2016 and the Financial Services Act 2012 (Mutual Societies)		

Legislation	Description	Policy
Order 2018) www.legislation.gov.uk/apni/1969/24		
Credit Unions Act 1979 (CUA79) www.legislation.gov.uk/ukpga/1979/34	The CUA79 and CU(NI)O85 enable certain societies in Great Britain and Northern Ireland to be registered under CCBSA14 and CU(NI)O85 respectively. CUA79 and CU(NI)O85 also make provisions in respect of these societies, and give the <i>FCA</i> additional powers in respect of those credit unions which are <i>authorised persons</i> .	The <i>FCA</i> 's approach to the exercise of these powers is consistent with the use of powers under the <i>Act</i> and the <i>FCA</i> 's general policy as explained in <i>EG</i> , including that the decision as to whether to initiate criminal and other proceedings will be taken in accordance with <i>EG</i> 6.
Credit Unions (Northern Ireland) Order 1985 (CU(NI)O85) (as modified by the Credit Unions and Co-operative and Community benefit Societies Act (Northern Ireland) 2016 and the Financial Services Act 2012 (Mutual Societies) Order 2018) www.legislation.gov.uk/nisi/1985/1205/contents	Powers under this legislation include the power to: <ul style="list-style-type: none"> • require production of books, accounts and other documents in the exercise of certain functions; • appoint an investigator or to call a special meeting of the <i>credit union</i>; • cancel the registration of the <i>credit union</i>; • petition the High Court to wind up the <i>credit union</i> in particular circumstances; and • prosecute offences under the acts. 	Where the <i>FCA</i> decides to cancel or suspend a <i>credit union</i> 's registration, the <i>credit union</i> may appeal that decision to the High Court or, in Scotland, the Court of Session.

Legislation	Description	Policy
<p>The Unfair Terms in Consumer Contracts Regulations 1999 (as amended by SI 2001/1186 and SI 2001/3649) www.legislation.gov.uk/uksi/1999/2083/made</p>	<p>The <i>FCA</i> has general powers under the <i>Unfair Terms Regulations</i>, including its powers to obtain undertakings and seek information from firms.</p>	<p><i>UNFCOG</i> describes how the <i>FCA</i> will use the general powers under the <i>Unfair Terms Regulations</i>.</p> <p><i>EG</i> App 1.1 describes how the <i>FCA</i> will use its injunctive powers under these regulations.</p>
<p>Regulation of Investigatory Powers Act 2000 (RIPA) www.legislation.gov.uk/ukpga/2000/23/contents</p>	<p>RIPA and IPA provide methods of surveillance and information gathering from various sources to assist the <i>FCA</i> in the prevention and detection of crime, where the methods to be used potentially infringe individuals’ right to privacy.</p>	<p>Authorisations under RIPA cover activity such as directed surveillance and the use of CHIS, as well as access to ‘protected’ (encrypted) electronic information. Where the <i>FCA</i> seeks to use the powers granted to it under RIPA, authorisation is sought from a trained head of department in Enforcement. Authorisation will only be given where the proposed action is justified, necessary and proportionate to the objective it seeks to meet in each circumstance. Consideration will be given to the actual or potential infringement of the privacy of individuals who are not the subjects of the investigation or operation (collateral intrusion), including steps taken to avoid or minimise any such intrusion. When considering whether the proposed action is necessary and proportionate, the following non-exhaustive list of factors is likely to be relevant:</p> <ul style="list-style-type: none"> • the seriousness of the offence; • the amount of material that might be gathered; • the nature of the material that might be gathered;
<p>Investigatory Powers Act 2016 (IPA) www.legislation.gov.uk/ukpga/2016/25/contents/enacted</p>	<p>Under these enactments, the <i>FCA</i> is able to: carry out directed surveillance, make use of covert human intelligence sources (CHIS), access ‘protected’ (encrypted) electronic information, and apply for access to communications data.</p>	

Legislation	Description	Policy
		<ul style="list-style-type: none"> • whether there are other less intrusive ways of obtaining the same result; • whether the proposed activity is likely to satisfy the objective; and • where surveillance is proposed, the location of the surveillance operation. <p>The approach to applications for access to communications data under IPA is consistent with applications for use of the powers under RIPA and the same considerations are relevant. However, authorisation to access communications data under IPA is provided by the Office of Communications Data Authorisation (OCDA).</p> <p>The <i>FCA</i> can use specific powers under RIPA to require:</p> <ul style="list-style-type: none"> • a person who holds ‘protected’ electronic information (that is, information which is encrypted) to put that information into an eligible format; and • where the person has a key to the encrypted information, to require the person to disclose the key for this purpose. <p>These powers require the <i>FCA</i> to obtain written permission from an appropriate judicial authority. The <i>FCA</i> does not anticipate using powers under Part III of RIPA very often as it expects firms and individuals to provide information in intelligible format pursuant to requirements to provide information under the <i>Act</i>.</p>

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		<p>In exercising powers under RIPA and IPA, the <i>FCA</i> has regard to the relevant RIPA and IPA codes of practice. The Codes are available on the Home Office websites: www.gov.uk/government/collections/ripa-codes and www.gov.uk/government/collections/investigatory-powers-act-codes-of-practice.</p>
<p>The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (www.legislation.gov.uk/uksi/2001/544/contents/made)</p>	<p>Part V of the <i>Regulated Activities Order</i> requires the <i>FCA</i> to maintain a register of all those people who are not authorised by the <i>FCA</i> but who carry on <i>insurance distribution activities</i>. Under article 95 <i>Regulated Activities Order</i>, the <i>FCA</i> has the power to remove from the register an <i>appointed representative</i> who carries on <i>insurance distribution activities</i> if it considers that they are not fit and proper.</p>	<p>The <i>FCA</i>'s approach to the exercise of these powers is consistent with the use of powers under the <i>Act</i> and the <i>FCA</i>'s general policy, including:</p> <ul style="list-style-type: none"> • when the <i>FCA</i> gives the person a <i>warning notice</i> and a <i>decision notice</i>; • that the decision to give a <i>warning notice</i> or a <i>decision notice</i> will be taken under the <i>executive procedures</i>; and • referral to <i>Tribunal</i> by the person receiving a <i>decision notice</i>.
<p>The Open-Ended Investment Companies Regulations 2001 (www.legislation.gov.uk/uksi/2001/1228/contents)</p>	<p>The <i>OEIC Regulations</i> set out requirements relating to the way in which collective investment management may be carried on by open-ended investment companies. Under the <i>OEIC Regulations</i>, the <i>FCA</i> has the power, among other things, to:</p> <ul style="list-style-type: none"> • revoke an open-ended investment company's authorisation in several situations, including where the firm breaches relevant requirements or provides us with false or misleading information (regulation 23); 	<p>The <i>FCA</i>'s approach to the exercise of these powers is consistent with the use of powers under the <i>Act</i> and the <i>FCA</i>'s general policy as explained in <i>EG</i>, including:</p> <ul style="list-style-type: none"> • when the <i>FCA</i> gives the person a <i>warning notice</i> and a <i>decision notice</i>; • that the decision to give a <i>warning notice</i> or a <i>decision notice</i> will be taken under <i>executive procedures</i>; • referral to the <i>Tribunal</i> by the person receiving a <i>decision notice</i>;

Legislation	Description	Policy
	<ul style="list-style-type: none"> • give, vary and revoke certain directions, including that the affairs of the company be wound up (regulations 25 and 28); • apply to court for an order that a depositary or director of a company be removed and replaced (regulation 26); • appoint one or more competent persons to investigate and report on the affairs of the company and specified others (regulation 30). <p>[Note: See <i>EG App 1.3</i> for <i>FSMA</i> powers in relation to <i>AUTs</i> and <i>ACs</i>, and <i>EG App 1.4</i> for powers in relation to auditors and <i>actuaries</i>.]</p>	<ul style="list-style-type: none"> • adopting the approach in <i>EG App 1.3</i> for <i>AUTs</i> or <i>ACs</i>, and for <i>ICVCs</i>, having regard to the relevant conduct of the <i>director</i> or <i>directors</i> of the <i>ICVC</i> and its <i>depositary</i>; • taking disciplinary action against an <i>ICVC</i> as an <i>authorised person</i>; • that when choosing which powers to use, the <i>FCA</i> will adopt the approach in <i>EG App 1.3</i>; and • that the <i>FCA</i> may use its disqualification powers against auditors who fail to comply with a duty imposed on them under <i>FCA rules</i>, as in <i>EG App 1.4</i>.
<p>Enterprise Act 2002 www.legislation.gov.uk/ukpga/2002/40/contents</p>	<p>The <i>FCA</i> has powers under Part 8 of the Enterprise Act to enforce breaches of consumer protection law. The Enterprise Act identifies 2 types of breach which trigger the Part 8 enforcement powers. These are referred to as:</p> <ul style="list-style-type: none"> • ‘domestic infringements’, which are breaches of particular <i>UK</i> enactments or of contractual or tortious duties, in each case if they occur in the course of a business and in relation to goods or services supplied or sought to be supplied: <ul style="list-style-type: none"> ○ to or for a person in the <i>UK</i>; or ○ by a person with a place of business in the <i>UK</i>; and 	<p>Where a breach has been committed, the <i>FCA</i> will liaise with other authorities, particularly the Competition and Markets Authority (the <i>CMA</i>), to determine which authority is best placed to take enforcement action. The <i>FCA</i> would generally expect to be the most appropriate authority to deal with breaches by authorised firms in relation to <i>regulated activities</i>.</p> <p>The <i>FCA</i> anticipates that its powers under the <i>Act</i> will be adequate to address the majority of breaches which it would also be able to enforce under the Enterprise Act and that there will therefore be limited cases in which it would seek to use its powers as an Enterprise Act enforcer. Where the <i>FCA</i> does use its powers under the Enterprise Act, it will have regard to the enforcement guidelines which are published on the <i>CMA</i>’s website: www.gov.uk/government/organisations/competition-and-markets-authority</p>

Legislation	Description	Policy
	<ul style="list-style-type: none"> • ‘Schedule 13 infringements’, which are breaches of the legislation listed in Schedule 13 to the Enterprise Act. <p>In both cases the breach must, to trigger those powers, harm the collective interests of <i>consumers</i>.</p> <p>The <i>FCA</i> has powers under Part 8 of the Enterprise Act both as a ‘designated enforcer’ in relation to domestic and Schedule 13 infringements and as a ‘Schedule 13 enforcer’ which gives the <i>FCA</i> additional powers in relation to Schedule 13 infringements under the <i>CRA</i>. The <i>FCA</i>’s investigative powers in support of its Enterprise Act enforcement powers are set out in Schedule 5 to the <i>CRA</i>.</p>	
<p>Proceeds of Crime Act 2002 (POCA) www.legislation.gov.uk/ukpga/2002/29/contents</p>	<p>POCA provides the legislative framework for the confiscation from criminals of the proceeds of their crime. Under POCA, the <i>FCA</i> can apply to the Crown Court for a restraint order when it is investigating or prosecuting criminal cases.</p> <p>POCA also contains various powers of investigation which the <i>FCA</i> may use in specified circumstances.</p>	<p>The <i>FCA</i> may apply for a restraint order under POCA where a criminal investigation has been started or where proceedings have started but not concluded; in either case there must be reasonable cause to believe that the defendant has benefited from criminal conduct. In this context, a person benefits from criminal conduct if they obtain property or a pecuniary advantage as a result of or in connection with conduct that would be an offence if it took place in England or Wales, regardless of whether they also obtain it in some other connection. The court is required to exercise its powers with a view to securing that the value of realisable assets is not diminished.</p> <p>Where the powers in POCA overlap with powers under the <i>Act</i>, the <i>FCA</i> will in most cases consider it more appropriate to rely on its investigation powers under the <i>Act</i>.</p>

Legislation	Description	Policy
<p>The Financial Conglomerates and Other Financial Groups Regulations 2004 www.legislation.gov.uk/ukxi/2004/1862/contents</p>	<p>These regulations implemented part of the Financial Conglomerates Directive (2002/87/EC), which imposed certain procedural requirements on the <i>FCA</i> as a competent authority under the Directive. These regulations also made specific provision about the exercise of certain supervisory powers in relation to financial conglomerates.</p> <p>The <i>FCA</i>'s powers to vary a <i>firm's Part 4A permission</i> or to impose requirements under sections 55J and 55L of the <i>Act</i> were extended under these regulations.</p>	<p>The <i>FCA</i> is able to use these powers where it is desirable to do so for the purpose of:</p> <ul style="list-style-type: none"> • supervision in accordance with the <i>Financial Groups Directive Regulations</i>; • acting in accordance with specified provisions of the <i>Capital Requirements Regulations 2013</i>; and • acting in accordance with specified provisions that implemented or supplemented <i>Solvency II Directive</i>. <p>The duty imposed by section 55B(3) (The threshold conditions) of the <i>Act</i> does not prevent the <i>FCA</i> from exercising its own-initiative power for these purposes. But subject to that, when exercising this power under these regulations, the <i>FCA</i> will do so in a manner consistent with its approach generally to variation under the <i>Act</i>.</p>
<p>The Financial Services (Distance Marketing) Regulations 2004 www.legislation.gov.uk/ukxi/2004/2095/contents</p>	<p>The <i>FCA</i> can enforce breaches of these regulations concerning 'specified contracts'. Specified contracts are certain contracts for the provision of financial services which are made at a distance and do not require the simultaneous physical presence of the parties to the contract.</p> <p>The <i>FCA</i> may apply to the courts for an injunction or interim injunction against a person who appears to it to be responsible for a breach of these regulations. The <i>FCA</i> may also accept undertakings from the person who committed the breach that they will comply with these regulations.</p>	<p>The <i>FCA</i>'s approach to the exercise of these powers is consistent with the use of powers under the <i>Act</i> and the <i>FCA</i>'s general policy as explained in <i>EG</i>.</p> <p>The <i>FCA</i> must publish details of any applications it makes for injunctions, the terms of any orders that the court subsequently makes, and the terms of any undertakings given to it or to the court.</p> <p>It will generally be appropriate for the <i>FCA</i> to seek to resolve the breach by obtaining an undertaking before it applies for an injunction or initiates a prosecution. Where a failure by a firm to meet the requirements of the Regulations also amounts to a breach of the <i>FCA's rules</i>, the <i>FCA</i> will consider all the</p>

Legislation	Description	Policy
	The <i>FCA</i> may also prosecute offences under these regulations which relate to specified contracts.	circumstances of the case when deciding whether to take action for a breach of its <i>rules</i> or under the Regulations. This will include, among other things, having regard to appropriate factors set out in <i>DEPP</i> 6 and the considerations in <i>EG</i> 6.
Counter-Terrorism Act 2008 (www.legislation.gov.uk/ukpga/2008/28/contents)	<p>The <i>FCA</i> has investigation and sanctioning powers in relation to both criminal and civil breaches of the Counter Terrorism Act 2008 ('the Counter Terrorism Act'). These powers are similar to those given to the <i>FCA</i> by the <i>Money Laundering Regulations</i>.</p> <p>The <i>FCA</i> is responsible for monitoring and enforcing compliance with requirements imposed by the Treasury under the Counter Terrorism Act by 'credit institutions' that are authorised persons and by 'financial institutions' (except money service businesses that are not authorised persons and consumer credit financial institutions). 'Credit institutions' and 'financial institutions' are defined in Part 2 of Schedule 7 to the Counter Terrorism Act.</p>	The <i>FCA</i> 's approach to using its powers under the Counter Terrorism Act will be consistent with its approach to using its powers under the <i>Money Laundering Regulations</i> .
The Insurance Accounts Directive (Lloyd's Syndicate and Aggregate Accounts) Regulations 2008 (www.legislation.gov.uk/uksi/2008/1950/contents)	These regulations give the <i>FCA</i> the power to institute criminal proceedings for an offence committed under the regulations.	The <i>FCA</i> 's approach to the exercise of these powers is consistent with the use of powers under the <i>Act</i> and <i>FCA</i> 's general policy as explained in <i>EG</i> , including that the decision whether to initiate criminal proceedings will be taken in accordance with <i>EG</i> 6.
The Recognised Auction Platforms Regulations	The <i>FCA</i> 's powers given to it by the <i>RAP regulations</i> .	The <i>FCA</i> 's policy for using the powers given to it by the <i>RAP regulations</i> is set out in <i>REC</i> .

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2011 www.legislation.gov.uk/uksi/2011/2699		This includes, for example, its policy in relation to the power to impose a financial penalty on or censure a <i>RAP</i> (<i>REC</i> 2A.4) and its policy in relation to the power to give directions to a <i>RAP</i> (<i>REC</i> 4.6).
The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 www.legislation.gov.uk/uksi/2017/692/contents/made	<p>The <i>FCA</i> has investigation and sanctioning powers in relation to both criminal and civil breaches of the <i>Money Laundering Regulations</i>.</p> <p>The <i>FCA</i> is responsible for monitoring and enforcing compliance with the <i>Money Laundering Regulations</i> not only by authorised firms who are within the <i>Money Laundering Regulations</i>’ scope, but also by what the regulations describe as ‘Annex 1 financial institutions’, and <i>cryptoasset exchange providers</i> and <i>custodian wallet providers</i>. These are businesses which are not otherwise authorised by us, but which carry out certain of the activities which were listed in Annex I of the Banking Consolidation Directive (2013/36/EU), then in Annex I of the Capital Requirements Directive, the relevant text of which is set out in Schedule 2 of the <i>Money Laundering Regulations</i>.</p> <p>[Note: Money service businesses are also outside the definition of ‘Annex 1 financial institution’, which is set out in Regulation 55(2) of the <i>Money Laundering Regulations</i>.]</p> <p>The <i>FCA</i> is also responsible for monitoring and enforcing compliance with the Funds Transfer Regulation by payment service providers specified</p>	<p>The <i>FCA</i>’s approach to the exercise of these powers is consistent with the use of powers under the <i>Act</i> and the <i>FCA</i>’s general policy as explained in <i>EG</i>, including:</p> <ul style="list-style-type: none"> • conduct of an investigation under the <i>Money Laundering Regulations</i>; • when prosecuting <i>Money Laundering Regulations</i> offences – <i>EG</i> 6; • when investigation and sanctioning powers should be used; • when the <i>FCA</i> proposes or decides to censure a person, impose a penalty on a person, suspend, cancel or restrict an authorisation or registration or impose a prohibition on a person under the <i>Money Laundering Regulations</i>, it must give the person a <i>warning notice</i> or a <i>decision notice</i>; • when imposing or determining the level of a financial penalty under regulation 76 of the <i>Money Laundering Regulations</i> – <i>DEPP</i> 6.2.1G and <i>DEPP</i> 6.5 to <i>DEPP</i> 6.5D. The <i>FCA</i> may not impose a penalty where there are reasonable grounds for it to be satisfied that the subject of the proposed action took all reasonable steps and exercised all due diligence to ensure that the relevant requirements of the <i>Money Laundering</i>

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	<p>under regulation 62(1) of the <i>Money Laundering Regulations</i>.</p> <p>The <i>Money Laundering Regulations</i> add to the range of options available to the <i>FCA</i> for dealing with anti-money laundering and anti-terrorist financing failures. These options include:</p> <ul style="list-style-type: none"> • to prosecute a relevant person, including but not limited to an authorised firm or an Annex 1 financial institution or an <i>auction platform</i>, a <i>cryptoasset exchange provider</i> or a <i>custodian wallet provider</i>, as well as any responsible officer; • to fine or censure a relevant person, including but not limited to an authorised firm or an Annex 1 financial institution or an <i>auction platform</i>, a <i>cryptoasset exchange provider</i> or a <i>custodian wallet provider</i>, as well as any officer knowingly concerned in the breach, under regulation 76 of the <i>Money Laundering Regulations</i>; • to cancel, suspend or impose limitations or other restrictions on the authorisation or registration of an authorised person or payment service provider, under regulation 77 of the <i>Money Laundering Regulations</i>; and • to impose a temporary or permanent prohibition on an officer knowingly concerned in a breach by a relevant person, including an 	<p><i>Regulations</i> would be met. In deciding whether a person has failed to comply with a requirement of the <i>Money Laundering Regulations</i>, the <i>FCA</i> must consider whether they followed any relevant guidance which was issued by a European Supervisory Authority in accordance with articles 17, 18.4 or 48.10 of the Fourth Money Laundering Directive, with article 25 of the Funds Transfer Regulation, or with any relevant guidance which was issued at the time by a supervisory authority or other appropriate body, including the Joint Money Laundering Steering Group;</p> <ul style="list-style-type: none"> • when cancelling, suspending or restricting an authorisation or limitation under regulation 77 of the <i>Money Laundering Regulations</i> or determining the duration of any such suspension or restriction, and when imposing or determining the duration of a prohibition under regulation 78 of the <i>Money Laundering Regulations</i> – <i>DEPP</i> 6A; • the <i>settlement discount scheme</i> (<i>DEPP</i> 6.7) which applies to penalties, suspensions, restrictions and temporary prohibitions imposed under regulations 76, 77 and 78 of the <i>Money Laundering Regulations</i>; and • when publicity provisions apply in regulation 84 of the <i>Money Laundering Regulations</i> – <i>EG</i> 4. <p>In the majority of cases where both the <i>Money Laundering Regulations</i> and the <i>FCA rules</i> apply and regulatory action, as opposed to criminal proceedings, is appropriate,</p>

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	<p>authorised firm or Annex 1 financial institution, a payment service provider, a <i>cryptoasset exchange provider</i> or a <i>custodian wallet provider</i> under regulation 78 of the <i>Money Laundering Regulations</i>.</p> <p>In addition to the powers available under the <i>Money Laundering Regulations</i>, the <i>FCA</i> will have the power to take regulatory action against authorised firms for failures which breach the <i>FCA's rules</i> and requirements (for example, under <i>Principle 3</i>, <i>SYSC 3.2.6R</i> or <i>SYSC 6.1.1R</i>). This means that there will be situations in which the <i>FCA</i> has powers to investigate and take action under both the Act and the <i>Money Laundering Regulations</i>.</p> <p>The <i>FCA</i> also has powers under regulation 74C to impose a direction on a <i>cryptoasset business</i> or Annex 1 financial institution to:</p> <ul style="list-style-type: none"> • remedy a failure to comply with a requirement under the <i>Money Laundering Regulations</i>; • prevent a failure to comply, or continued non-compliance with a requirement under the <i>Money Laundering Regulations</i>; or • prevent the <i>cryptoasset business</i> or Annex 1 financial institution from being used for money laundering, terrorist financing or proliferation financing. 	<p>the <i>FCA</i> generally expects to continue to discipline authorised firms under the <i>Act</i>.</p> <p>The <i>FCA</i> will adopt a risk-based approach to its enforcement under the <i>Money Laundering Regulations</i>. Failures in anti-money laundering or counter-terrorist financing controls will not automatically result in disciplinary sanctions, although enforcement action is more likely where a firm has not taken adequate steps to identify its risks or put in place appropriate controls to mitigate those risks, and failed to take steps to ensure that controls are being effectively implemented.</p> <p>The <i>FCA</i> will exercise powers under regulation 74C of the <i>Money Laundering Regulations</i>, to impose a direction on a <i>cryptoasset business</i> or Annex 1 financial institution, where:</p> <ul style="list-style-type: none"> • it has serious concerns about its compliance with the <i>Money Laundering Regulations</i>; • it is concerned that a failure of the <i>cryptoasset business</i> or Annex 1 financial institution to take the desired steps may result in a breach of the <i>Money Laundering Regulations</i>; • the imposition of a direction reflects the importance the <i>FCA</i> attaches to the need for the <i>cryptoasset business</i> or Annex 1 financial institution to address its concerns; and • the imposition of a direction may assist the <i>cryptoasset business</i> or Annex 1 financial institution to take steps which would otherwise be difficult because of legal obligations owed to third parties.

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	<p>The <i>FCA</i> may impose a direction requiring or prohibiting the taking of specified action. <i>Cryptoasset businesses</i> or Annex 1 financial institutions can also apply for a direction to be imposed, varied or rescinded.</p> <p>Under these regulations, the <i>FCA</i> has investigation powers that it can use when investigating whether breaches have taken place, including:</p> <ul style="list-style-type: none"> • the power to require information from, and attendance of, relevant persons, payment service providers and connected persons (regulation 66); and • powers of entry and inspection without or under warrant (regulations 69 and 70). <p>The use of these powers will be limited to those cases in which the <i>FCA</i> is exercising functions under the <i>Money Laundering Regulations</i>. In addition, the <i>FCA</i> may use its powers to require information or attendance at the request of foreign authorities.</p>	<p>The <i>FCA</i> will also exercise its powers to:</p> <ul style="list-style-type: none"> • vary a direction; or • cancel a direction, <p>where it considers it appropriate to do so.</p> <p>The <i>FCA</i> may impose a direction so that it takes effect immediately or on a specified date if it reasonably considers it necessary to do so, having regard to the ground on which it is exercising this power.</p> <p>The <i>FCA</i> will consider imposing a direction as a matter of urgency where:</p> <ul style="list-style-type: none"> • the information available to it indicates serious concerns about the <i>cryptoasset business</i> or Annex 1 financial institution that need to be addressed immediately; and • circumstances indicate that it is appropriate to impose a direction immediately to require and/or prohibit certain actions by the <i>cryptoasset business</i> or Annex 1 financial institution to ensure the <i>cryptoasset business</i> or Annex 1 financial institution addresses these concerns. <p>The <i>FCA</i> will consider the full circumstances of each case when it decides whether an urgent imposition of a direction is appropriate.</p>

Legislation	Description	Policy
<p>The Payment Services Regulations 2017 www.legislation.gov.uk/uksi/2017/752/contents/made</p>	<p>The <i>FCA</i> has investigation and sanctioning powers in relation to both criminal and civil breaches of the <i>Payment Services Regulations</i>.</p> <p>The regulatory powers which the <i>Payment Services Regulations</i> provide to the <i>FCA</i> include:</p> <ul style="list-style-type: none"> • the power to require information; • powers of entry and inspection; • power of public censure; • the power to impose financial penalties; • the power to prosecute or fine unauthorised providers; and • the power to vary an authorisation on its own initiative. <p>[Note: <i>EG</i> App 2.1.1 identifies the <i>FCA</i>'s statements of policy in relation to financial penalties, and conduct of interviews in response to <i>overseas regulators</i>' requests, which the <i>FCA</i> is required to make under the <i>Payment Services Regulations</i>.]</p>	<p>The <i>FCA</i>'s approach to the exercise of these powers is consistent with the use of powers under the <i>Act</i> and the <i>FCA</i>'s general policy as explained in <i>EG</i>.</p> <p>The <i>Payment Service Regulations</i> do not require the <i>FCA</i> to have published procedures to launch criminal prosecutions. However, in these situations, the <i>FCA</i> expects that it will normally follow its decision-making procedures for the equivalent decisions under the <i>Act</i>.</p>
<p>The EEA Passport Rights (Amendment, etc, and Transitional Provisions) (EU Exit) Regulations 2018 www.legislation.gov.uk/</p>	<p>Regulations 28 and 34 of the <i>EU Exit Passport Regulations</i> make provision for certain qualifying persons to be treated as having <i>Part 4A permission</i>. The <i>EU Exit Passport Regulations</i> provide a supervised run-off regime, which enables such <i>persons</i> to run off existing <i>UK</i> contracts and conduct an orderly exit from the <i>UK</i> market.</p>	<p>The <i>FCA</i>'s approach to the exercise of these powers is consistent with the use of powers under the <i>Act</i> and <i>FCA</i>'s general policy as explained in <i>EG</i>, including:</p> <ul style="list-style-type: none"> • the approach to enforcement and cancellation under the <i>Act</i>; and

Legislation	Description	Policy
uksi/2018/1149/contents/made)	The <i>FCA</i> has power under the <i>EU Exit Passport Regulations</i> to direct that the regime should not apply to a particular <i>person</i> . The effect of such a direction would be to remove that <i>person's</i> deemed permission to conduct <i>regulated activities</i> in the <i>UK</i> .	<ul style="list-style-type: none">the approach to making decisions under <i>executive procedures</i>.

