FINANCIAL CONDUCT AUTHORITY

12 Endeavour Square
London
E20 1JN

Tel: +44 (0)20 7066 1000
Fax: +44 (0)20 7066 1099
www.fca.org.uk

Lord Forsyth of Drumlean
Financial Services Regulation Committee
House of Lords
London
SW1A 0PW

25 April 2024

Our Ref: 240418C

Dear Lord Forsyth,

**RE: Consultation Paper CP24/2: *Our Enforcement Guide and publicising enforcement investigations – a new approach***

Thank you for your letter of 18 April to our Chief Executive, Nikhil Rathi, about our proposed changes to publicising enforcement investigations. We are replying as the Executive Directors leading on this consultation.

We welcome the Committee's interest in this topic and appreciate your role in scrutinising consultations of significant importance under the recently enhanced accountability framework for financial regulators. We have taken note of the additional points made in your associated press release.

Enforcement action is a vital tool. Its purpose goes beyond penalising specific misconduct. To tackle unlawful behaviour and ensure the UK's high standards for the protection of consumers and market integrity are met, our enforcement work needs to deliver impactful deterrence. Done effectively, it builds confidence and trust in our markets.

We must, and will continue to, treat subjects of investigation fairly and meet legal thresholds of proof overseen by the UK's widely respected tribunals and courts.

The proposals on which we are consulting cover one central element of effective enforcement: what is the appropriate approach to transparency? They are part of our wider ambition to significantly improve the pace and focus of our investigations and together increase the deterrent impact of our enforcement work.

We would like to take this opportunity to set out:

- our proposals and how they relate to our current approach to transparency of investigations;
- why we have made these proposals;
- the approach taken by other UK regulators;
- the data underpinning our consultation and that you have requested, including the impact on firms and the wider market;

- answers to your outstanding questions; and
- next steps, including our approach to engagement which will continue after the consultation formally closes on 30th April.

**Section A: Our current approach and new proposals**

We have long maintained a presumption against publication of the fact of an enforcement investigation in relation to a specific firm, unless there are exceptional circumstances in the public interest that warrant disclosure.

We are proposing to move away from a presumption against disclosure to a public interest framework for deciding whether the fact of an investigation should be announced. There would be no presumption in favour of disclosure. In some cases, we consider the public interest will support naming a firm at the appropriate point in our investigative process, in others it will not.

In practice, some enforcement investigations are announced, typically by those under investigation, or become public for a number of reasons beyond the exceptional circumstances provision that exists today. We provide a non-exhaustive list of reasons below and some examples throughout this response:

1. A UK listed company may assess the fact of an investigation to be inside information such that it is subject to an obligation to announce as soon as possible. The fact of an investigation may also need to be disclosed in a prospectus when raising debt or equity capital.
2. An overseas listed company with a UK regulated branch or subsidiary may deem it necessary to disclose an FCA investigation under the rules and practices of their home securities market[1].
3. A firm may choose to announce an FCA investigation of its own accord for a range of different reasons, for example in their Annual Report[2].
4. In a joint or coordinated investigation, a partner authority in the UK or overseas may make a disclosure.
5. The FCA may make a disclosure to Parliament, and Parliament might choose to publish this; as the Treasury Committee did recently in relation to Odey Asset Management[3].
6. The method of investigation may result in the fact of an investigation effectively becoming public, for example if we conduct a search or freeze assets [4].

This gives us an evidence base of cases to evaluate when considering the impact of disclosure.

Our proposals also recognise that there are specific legal considerations when publishing information about individuals, and so we propose to maintain our policy of not usually announcing that we are investigating a named individual. This will also be part of our consideration where naming a firm would almost certainly result in the naming an individual.

**Section B: Why have we made these proposals**

[1] For a very recent example in the last few days, please see the announcement by Alti, a global wealth and alternatives manager at page 62; https://ir.alti-global.com/static-files/f6b3935c-c6fe-4932-8f2c-ee1e086c36fa.
[2] While not an enforcement investigation, one regulated firm announced earlier this week a supervisory intervention for market transparency reasons (p 47) ; https://plc.quilter.com/siteassets/documents/stock-exchange-announcements/quilter-plc-full-year-results-2023.pdf
[3] https://committees.parliament.uk/publications/40749/documents/198516/default/
[4] WealthTek is a recent example of this;
https://www.fca.org.uk/news/fca-orders-wealthtek-cease-operations-high-court-appoints-interim-managers

We are consulting on changes because we no longer consider that our current approach of a presumption against disclosure adequately serves our primary statutory objectives or supports an appropriate degree of transparency and accountability, including to Parliament. We also consider that clean markets with more effective enforcement of proportionate regulation support competitiveness of the UK economy and wider financial services industry, including its reputation.

A degree of greater transparency will amplify the deterrent impact of our work:

- By making firms aware at a much earlier stage of the process of important issues where they may need to examine their own conduct and processes and raise standards.
- By enhancing public confidence and demonstrating that we are deploying our investigation tool for the protection of consumers and markets, building trust in the system. This includes providing assurance to investors who may have been subject to significant harm (or even fraud) that matters are being investigated.
- By improving our own accountability and enabling greater and more timely and more granular scrutiny of our effectiveness.
- By encouraging witnesses to come forward[5].

Our proposals should be seen in the context of our ambition to increase the effectiveness of our enforcement work by increasing the pace and focus of our investigations. We are committed to reducing the timelines of our investigations. We will streamline our investigations portfolio, aligning it to our strategic priorities. And we will improve our triage across our authorisations, supervision and enforcement teams to make sure that we are deploying all the tools available to us to resolve harm, enabling us to do fewer investigations at a faster pace. We expect to see fewer cases resulting in no further action as well as timely and impactful enforcement outcomes. We are already seeing the results of our sharper focus, opening fewer cases in 2023/24 than we have done in the preceding years.

We have also concluded that there were instances in the past where earlier publication would have enhanced our response, and the market's reaction. For example, if we had been able to more overtly communicate the failings we identified with some firms on anti-money laundering controls, years before the regulatory outcomes in 2021, 2022[6]and 2023[7], other firms could have acted more quickly to resolve similar issues before they worsened.

Indeed, in 2022, the House of Commons Public Accounts Committee criticised our approach to enforcement as lacking sufficient deterrence in their report into the British Steel Pension Scheme[8] (BSPS) and called on us to publish lists of those under investigation where there is a continuing risk to consumers. The Committee said:

*"the FCA does not publish lists of firms or advisers who are under investigation.... the FCA must look into whether it would be an option to publish lists of those under investigation, where there*

[5] As happened with the Serious Fraud Office investigation into Raedex, which was announced after supervisory action on our part and which specifically sought information from investors in a structured format; https://www.sfo.gov.uk/2021/04/09/sfo-announces-investigation-into-the-raedex-consortium-group-of-companies/. Charging decisions have now been made and the matter is before the courts.

[6] https://www.fca.org.uk/freedom-information/information-anti-money-laundering-investigations-2021-february-2022

[7] We have taken other significant enforcement action against lax AML controls, including fines for Al Rayan Bank (£4 million) in 2023, Santander (£107.7 million) in 2022, Ghana International Bank (£5.8 million in 2022), HSBC Bank (£63.9 million) in 2021, and Standard Chartered Bank (£102.2 million) in 2019.

[8] In particular, page 12; https://committees.parliament.uk/publications/23164/documents/169426/default/

*are significant grounds to believe they are committing serious harm to consumers. Two enforcement investigations have been reported publicly by the FCA; however, the remaining cases are subject to legal restrictions and obligations until final decisions are made.. . These issues risk signalling to consumers that the advice market is safer than it is and highlights the FCA's failure to deter bad actors from operating within the market."*

In relation to BSPS, we have taken the unusual step of publishing our complaints decision letter in response to calls for greater transparency.[9] In addition to implementing a redress scheme, the FCA has also undertaken unprecedented levels of enforcement activity against those who delivered the poor advice. To date, this has resulted in multiple actions against firms and 15 bans for individuals and fines or payments to the Financial Services Compensation Scheme (FSCS) totalling £8.87m, though some matters have been referred to the Upper Tribunal.

While there has always been interest in Parliament in investigations of significant public interest, particularly after the last global financial crisis on cases relating to HBOS or RBS, there has been a sustained and significant increase in parliamentary interest in specific cases or groups of cases. In recent years this has included requests from the Treasury Committee for information or specific disclosures about the FCA's work (including enforcement action) in relation to cases including Greensill Capital[10], Collateral[11] , the FinCen leaks[12] , Blackmore Bonds[13], Woodford Investment Management and Link Fund Solutions[14] and London Capital & Finance. Last year, following extensive media reporting, the Committee asked us to disclose details on any investigation we had conducted into Odey Asset Management LLP[15].

Furthermore, the Chancellor asked us in an open letter[16] in August last year to confirm what ongoing enforcement action we were taking in relation to the provision of banking services. It was widely known at that time that one particular UK bank was at the heart of the discussion on debanking.

We estimate that we receive on average around 650 letters from Members of Parliament per year, largely writing on behalf of their constituents. Over two-thirds of these relate to our supervisory and enforcement work and many relate to specific firms. We are often asked detailed questions by parliamentarians interested in specific cases[17].

Whistleblowing is a key channel of intelligence for our supervisory and enforcement work. The work we have done to strengthen our response to whistleblowing has also shown that whistleblowers' confidence is undermined by a perceived lack of feedback from the FCA as to whether their concerns are being investigated. Our published survey specifically noted that

[9] https://www.fca.org.uk/news/news-stories/fca-publishes-response-british-steel-pension-scheme-complaints
[10] https://committees.parliament.uk/publications/5524/documents/54959/default/
[11] https://committees.parliament.uk/publications/8613/documents/87153/default/
[12] https://committees.parliament.uk/publications/2693/documents/26670/default/
[13] Question 660; committees.parliament.uk/oralevidence/13996/pdf/
[14] https://committees.parliament.uk/committee/158/treasury-committee/news/160197/treasury-committee-calls-on-fca-to-enable-swift-conclusion-to-woodford-investigation/
[15] https://committees.parliament.uk/committee/158/treasury-committee/news/195725/treasury-committee-writes-to-fca-on-allegations-around-odey-asset-management/
[16] Page 77; https://www.fca.org.uk/publication/corporate/uk-payment-accounts-access-and-closures.pdf
[17] For example, on LBG; https://www.appgbanking.org.uk/wp-content/uploads/2021/01/Kevin-Hollinrake-Letter-to-Nikhil-Rathi-FCA-27.01.2021.pdf
And Phillips Trust Corporation; https://www.fca.org.uk/news/news-stories/update-consumers-philips-trust-corporation

respondents "told us that the updates 'lacked substance', 'no real information was given' and 'didn't say if the FCA was investigating or not'.[18]"

We therefore recognise that our current refusal to disclose the existence of an investigation other than in exceptional circumstances can impede parliamentarians' ability to help their constituents and hold us to account, can stop whistleblowers coming forward and can hamper efforts to protect consumers from further harm.

For the reasons of bolstering operational effectiveness and impactful deterrence and for the wider reasons of accountability articulated above, we came to the view that it was necessary to consult on a shift in our approach to enable the public interest to be weighed differently in service of our statutory objectives, whilst protecting the rights of those under investigation. We recognise that these can be sensitive and emotive issues and therefore welcome your engagement and that of other parliamentary stakeholders on how we strike the right balance.

**Section C: The approach taken by UK and other regulators**

The FCA has a wide remit and supervises over 40,000 firms, ranging from individual financial advisers who may be sole traders through to the largest global financial services institutions. We work with a vast range of regulatory partners in the UK and internationally across financial services, law enforcement, digital regulation and competition. Many of our cases involve cooperation with our regulatory partners. This will only grow as digital markets become more central to our work. We therefore think it is relevant to consider and learn from the approach of our partners.

We have included in a table in **Annex III** a non-exhaustive list of the wide range of UK authorities that do make disclosures about the opening of an investigation. This includes OFCOM, CMA, FRC, OFGEM, OFWAT and the Serious Fraud Office. We have not included details in relation to the police, though they do in certain cases disclose investigations and we do often cooperate with different police forces on criminal investigations.

We have concurrent or adjacent responsibilities to a significant number of the UK agencies cited and we will often be interacting with or investigating the same market players. The agencies listed are responsible for enforcement in key sectors that are critical to UK consumers and the competitiveness of the UK economy and we are not aware of significant evidence that their approach to disclosure undermines competitiveness of their regulated sectors. We are happy to consider any evidence provided on this point.

Given the wide range of investigations that are made public both through the circumstances cited in Section A and by partner authorities in the UK as mentioned above, we also do not consider that a public interest framework for considering disclosure undermines the fundamental legal principle of "innocent until proven guilty".

We also note that where investigations are announced the language used is factual and measured. We have provided references in the table for the Committee to consider. We do not consider that such an approach constitutes "naming and shaming", as has been suggested by

[18] Section 5.5; Figure 3: https://www.fca.org.uk/data/whistleblowing-qualitative-assessment-survey-2022

some stakeholders. Nor do we consider that when parliamentary stakeholders and others to whom we are accountable have requested information from us about live enforcement investigations, the intent was to encourage us to "name and shame" as opposed to bolstering transparency and accountability in the public interest.

For criminal investigations, we are subject to the Code for Crown Prosecutors and accountable before the courts for the conduct of our investigations, including any public statements we have made about a particular criminal investigation[19].

We recognise, however, that some (though not all) firms we regulate may be in a different position to those regulated by our partner agencies by virtue of the financial services they offer. That is why we are not proposing to go as far as some of our regulatory partners do in making an automatic presumption of disclosure, with non-disclosure only in exceptional circumstances. And we are conscious that, unlike other regulators, our significant small and medium sized firm population, and focus on individual accountability under the Senior Managers and Certification Regime means that we must be mindful when announcing where this could inadvertently identify an individual.

As explained above, we are proposing to move to a public interest framework with no automatic presumption in favour or against disclosure. In particular, we are proposing to decide on a case-by-case basis, taking all relevant facts and circumstances into account. We will continue to keep the fact of our investigations confidential in certain situations, including when we consider publication would be likely to adversely affect those or other investigations, the interests of consumers or our operational objectives.

You asked us about the approach of regulators in other countries. We have included information about some international comparators in Annex II. It is worth noting that many of these are subject to varying cultural norms and expectations about transparency and differing accountability frameworks. The UK has recently adopted a framework with significantly enhanced accountability for financial regulators, with a wider range of structured mechanisms for engagement with the legislature and stakeholders to whom we are accountable, compared to a number of other jurisdictions. In the US system, by contrast, there is far more litigation involving financial regulators and therefore more disclosures come through the court process.

**Section D: Data and the impact on firms**

The cases where there is already disclosure as set out in Section A plus the experience of those regulated by our partner agencies as mentioned in Section C give us a reasonable dataset to enable us to consider impact, for example on share prices or customer/client confidence.

It is worth noting that we are talking about relatively small numbers – in 2023/24 we opened investigations into four listed firms. We have identified that 3 of those announced the fact of the investigation. Firms listed in the UK and other issuers of shares publicly traded in the UK (e.g. on AIM), or on an EU regulated market or trading venue, are already generally required to publicly disclose FCA investigations as soon as possible where the fact of those investigations, if

[19] In support of HM Government's Economic Crime Plan we have more than doubled the number of decisions to prosecute individuals. In 2023/2024 we charged over 25 individuals for various offences including fraud, money laundering and breaches of FSMA, compared to 13 the previous year.

public, would be likely to have a material effect on their share prices. As you will see in the Annex there are also extensive disclosure obligations for US listed companies, and FCA investigations may be disclosed by US parents as highlighted in Footnote 1 above in relation to the announcement earlier this week by Alti, a wealth and alternatives manager.

We opened 11 other investigations into regulated firms, out of a population of over 40,000. Of these 11 investigations 1 was made public by us and 1 was made public by the firm[20].

Of investigations into firms opened by the FCA in 2021 to 2024 inclusive, we have so far identified 7 instances where there was a firm disclosure of the fact of the investigation(s), directly or indirectly, to the UK market. We discounted 2 of those instances, because the relevant shares were suspended at the time of the announcement. Of the remaining 5, on the day of all but one of those announcements, the relevant firm's share price did not move negatively by more than 1%[21].

The one exception was Vanquis Banking Group (VBG) (then called Provident Financial). Its share price dropped 27.7% on 15 March 2021; but we consider that this was more related to its announcement about redress payments affecting the solvency of its consumer credit division and media commentary than any announcements relating to FCA activity.

Separately from share price impact, we have seen no public statements by firms, including VBG, that our investigation caused them a material permanent commercial impact, for example through net loss of clients not returning following closure of the investigation.

We also note that we are often interacting with some of the largest global firms and the likelihood of an FCA investigation impacting their share price materially, given the scale of their market capitalisation is limited. Many of these firms have multiple enforcement investigations across multiple jurisdictions running at the same time on a wide range of regulatory matters.

Your letter suggests that our consultation explicitly rules out taking account of the impact of disclosure on the firm that is the subject of an investigation. We would like to reassure you that is not the case. While we have not included it as a specified factor in our framework because we have prioritised the primary objectives given to us by Parliament, we would, under our proposals, consider all relevant factors when weighing up whether or how an investigation interacts with the public interest test and, as explained above, will additionally consider likely impact on the relevant firm and senior individuals.

There will be various types of enforcement investigation, for example those looking at serious cyber or other vulnerabilities, where immediate announcement may not be in the public interest. We are also mindful of the potential impact on small firms and are listening carefully to the feedback of our Smaller Business Practitioner Panel, whilst bearing in mind the nature of concerns raised in relation to smaller financial advisors outlined by the Public Accounts Committee in its BSPS report cited above. We also know that we may be dealing with very fast moving situations, for example where we have serious concerns that an authorised firm is defrauding investors.

[20] Our investigation into the London Metal Exchange plc was made public by us and another by the firm. See here.
[21] Nationwide Building Society; Revolution Beauty Group PLC; Lloyds Banking Group PLC; Barclays

We are very open to receiving further evidence of the actual impact of announcement on firms and consumers and have specifically asked multiple stakeholders to provide this in their consultation responses.

Turning now to questions you have set out that we have not yet addressed.

**Data**

Please find the remaining data you requested on enforcement investigations at **Annex I**. This, along with the other data above, has been compiled on a best efforts basis in the time available and we will continue to refine and extend our evidence base as we consider the feedback and finalise our approach.

**Appeal Mechanism**

We have considered how partner agencies operate and they typically do not provide an appeal mechanism on the specific point of disclosure. We have proposed to give the subject due to be named appropriate advance notice and we are receiving feedback on this point during the consultation. Any firm or individual would have the ability to challenge a decision to name them, for example through a judicial review or an injunction.

**Thematic disclosure**

We will be guided by what is in the public interest. We do not rule out thematic disclosure. Indeed, we are keen to do it more. But we do not see it as an alternative to disclosure, in a factual and measured way, of individual investigations when doing so is in the public interest. We are also mindful of the potential for thematic disclosure to lead to speculation about which firms are under investigation, with those not under investigation making public that they are not, with subsequent rounds of speculation focusing on those firms who have not issued a denial.

**Cost Benefit Analysis**

We appreciate your feedback on the lack of inclusion of a cost benefit analysis. A formal cost benefit analysis is not required because we are not proposing new rules. We also note the relatively small number of regulated firms affected in any given year and the differences between each case, which would limit the value of a traditional CBA.

However, we will consider as part of our consultation response how we can explain more of our thinking about anticipated impact and what commitments we could make to assessing the impact of any changes one year after they are brought in; or, in the event that this is not practical, we will write to your Committee and the Treasury Select Committee to set out why we can't, in line with our accountability commitments. We also hope that any additional information we may disclose about investigations will provide useful material with which your and other Committees can hold us to account and that you will also be able to take evidence from the industry and other parties as to the impact of our policy in practice.

**Section E: Next steps and further engagement**

We have engaged extensively with stakeholders over the course of this consultation and have received much constructive feedback, for which we are grateful. Our consultation closes on 30th April.

We will consider all responses very carefully and we plan a further round of discussion and engagement to ensure we have understood all points raised and to share our initial thinking.

We also plan to do more work with stakeholders on a granular level to be clear about the process we might follow, the matters we might take into account and – importantly – what announcements might look like. We will use this process to flesh out our draft public interest framework and, while the FCA under oversight of our Board will need to decide the content and timing of any final proposals, we look forward to engaging with and hearing from your Committee about its views.

We recognise these proposals represent a change in our established practice. We think it is important and timely to open the debate. We know that firms benefit hugely from understanding the issues that lead us to investigate and that they use that understanding to drive higher standards of conduct. We know that consumers benefit significantly from knowing when the regulator is on the case. And we know that a number of those to whom we are accountable have frequently and forcefully expressed their frustration at our lack of transparency hitherto.

Ultimately, we all want the UK's financial markets to sustain their competitiveness and continue to flourish and grow on the reputation that they were built on: fair play, cleanliness and integrity. Effective regulation is a key foundation for that reputation. We will consider carefully all feedback we receive with a view to our new proposed approach to enforcement, with continued improvements in our operational effectiveness, helping to achieve those ambitions.

Yours sincerely,

**Therese Chambers & Steve Smart**

**Joint Executive Directors**

**Enforcement and Market Oversight**

**ANNEX I**

**DATA ON FCA INVESTIGATIONS**

***Annual Caseload***

The number of investigations[22] we open can significantly vary year on year, and it is falling as we do more on prevention, to stop bad actors at the outset, strengthen our supervisory work and better prioritise the enforcement cases we pursue.

Data for the last three years, broken down by regulated and unregulated firm and individual can be found in the table below. During the financial year 2023/2024, we opened enforcement investigations into 11 of the 40,000 firms we regulate – equating to less than 0.03% of the overall firm population. We opened investigations into 4 listed firms that were not regulated by us.

| | **A – All firms** | | **B - Individuals** | |
|---|---|---|---|---|
| **Year opened** | **Regulated/Listed** | **Unregulated** | **Individuals** | **Total** |
| 2021/22 | 33 | 47 | 110 | 190 |
| 2022/23 | 22 | 5 | 74 | 101 |
| 2023/24 | 15 | 12 | 37 | 64 |

***Current Investigations***

As of 31 March 2024, we had a total of 500 investigations underway, broken down as 336 investigations into individuals, and 164 are investigations into firms.

Of the 164, these further broke down into 79 unregulated firms, and 85 regulated or listed firms. These figures include investigations where any litigation is ongoing, including appeals or enforcing confiscation orders made under the Proceeds of Crime Act.

***Outcomes of closed investigations***

During 2023/24 we closed 153 investigations. The outcomes were as follows:

- 19% of investigations that were closed (28), were closed with enforcement action having been taken (for example the imposition of financial penalty or a public censure).
- 67% of investigations that were closed (104), were closed with no further action.

[22] These statistics do not include our volume cancellation cases and other Threshold Conditions cases.

- 14% of investigations that were closed (21), were closed with some other form of action having been taken (for example action by Supervision, a compliance advisory letter or being dealt with by another agency).

***Length of investigations***

We will strengthen our operational focus, but the speed of investigations and the length of time that an investigation may remain open will depend upon various factors, including:

- the level of cooperation from subjects of investigations, including legal cooperation
- the complexity of the issues under investigation
- the volume of data and evidence to be obtained and reviewed
- whether the subject contests the allegation

Historically, investigations closed in 23/24 took an average of 43 months from our decision to open an enforcement investigation to closure. This includes all investigation types (firms and individuals) into potential regulatory, criminal and civil breaches. This period covers all stages of the investigation and subsequent litigation (including any appeal) as well as our case closure processes.

These break down as follows:

| Outcome category | Number of Investigations | Average (mean) time to case closure |
|---|---|---|
| FCA enforcement action | 28 | 57months |
| Other FCA action | 21 | 53 months |
| No further action | 104 | 37 months |
| **Total** | **153** | **43 months** |

Investigations closed in 23/24 where we had taken enforcement action took on average 41 months to either settle, issue civil or criminal proceedings or issue a Warning Notice. Investigations that were contested took on average 56 months to determine.

The length of our cases can also be impacted by delays in the justice system; for example, in one recent regulatory case we issued a Decision Notice in May 2023 and the matter will not be heard in the Upper Tribunal until March 2025 and in a criminal case, where we made a charging decision also in May 2023 the trial will not be heard until January 2026.[23]

**Annex II International Comparisons**

When formulating our proposals we considered other authorities' policies and there is no singular approach.

[23] See; https://www.fca.org.uk/news/press-releases/three-individuals-face-charges-unauthorised-sale-and-rent-back-schemes

Your letter references the Monetary Authority of Singapore, which has a policy[24] based on disclosure in the public interest - factors in favour include those investigations with widespread implications for consumers, or where there is a need to address reputational risk.

The Australian Securities and Investments Commission (ASIC) has a longstanding policy[25] that it may make a statement about an investigation when it is in the public interest to do so. ASIC balances that public interest benefit against the potential for prejudice to individuals who are the subject of an investigation and other factors which weigh against disclosure.

Other authorities take a privacy first approach.

For example the French Autorite des Marches Financiers (AMF) maintains privacy around its investigations[26]. The Swiss Financial Market Supervisory Authority (FINMA)[27] also has a general policy that it will not communicate on individual enforcement proceedings. However, it reserves the right to communicate on enforcement proceedings when there is a supervisory need to do so. FINMA will also always provide information when investors, creditors or other market participants require swift protection, or when misleading information that could damage investors or supervised institutions needs to be corrected.

The US Securities and Exchange Commission (SEC) conducts its investigations privately. Facts and evidence obtained by the SEC during an investigation are not made public unless and until the SEC files a formal enforcement action. However, US requirements on firms publicly traded there do mean that listed firms regularly announce SEC, Department of Justice or other investigations. Some state level regulators may also proactively announce financial services investigations[28] .

[24] https://www.mas.gov.sg/-/media/mas/news-and-publications/monographs-and-information-papers/enforcement-monograph-final-revised-apr-20221.pdf

[25] https://asic.gov.au/about-asic/asic-investigations-and-enforcement/public-comment-on-asic-s-regulatory-activities/#our-general

[26] AMF Investigation guide- September 2021 (amf-france.org)

[27] https://www.finma.ch/en/~/media/finma/dokumente/dokumentencenter/myfinma/3durchsetzung/leitlinien-zur-kommunikation.pdf?sc_lang=en&hash=C7C3D98ED7BE962856D5EB48DAD1EAE9

[28] For example, New York and payroll advance; https://natlawreview.com/article/ny-dfs-announces-multistate-investigation-payroll-advance-industry

FINANCIAL CONDUCT AUTHORITY

12 Endeavour Square
London
E20 1JN

Tel: +44 (0)20 7066 1000
Fax: +44 (0)20 7066 1099
www.fca.org.uk

**Annex III**
**Investigation Publicity – Other UK Agencies' Relevant Policies**

| Agency | Relevant Policy or Policies and Relevant Recent Announcements | Key Relevant Policy Text |
|---|---|---|
| **The Competition and Markets Authority ("CMA")** | The CMA has a general policy on transparency and disclosure, linked here, which covers investigation publicity.<br><br>It additionally has two further policies, relating to different key workstreams, which contain additional material relating to investigation publicity. Both of these polices are expressly subject to the transparency and disclosure policy.<br><br>One of the two relates to the CMA's investigations under the Competition Act 1998 (its "CA98 Policy"). It is linked here. | **Transparency and Disclosure Policy**:<br><br>When the parties directly involved are informed of the formal case opening decision, the CMA will also provide them with … a brief description of the case, the relevant legislation, the industry sector concerned and the CMA's reasons for starting a formal case. The level of information may vary according to the circumstances of the case. It may not be appropriate to name the parties directly involved at this early stage of a case.<br><br>In all cases other than criminal cartel and criminal consumer investigations, the CMA will place a case opening announcement on www.gov.uk/cma announcing its decision to formally begin a case except if to do so would prejudice the case or would otherwise be inappropriate. At the same time as or following the public announcement of a case opening, the CMA will also publish, if and as soon as reasonably practicable, the information referred to … [above].<br><br>The CMA will review the information provided on the status of the case and consider whether it is appropriate to update the information provided to the parties directly involved or the published information. … |

| Agency | Relevant Policy or Policies and Relevant Recent Announcements | Key Relevant Policy Text |
|---|---|---|
| | The other relates to its consumer enforcement investigations (its "Consumer Enforcement Policy"). It is to be found in two separate documents, linked here and here although, as regards publicity, primarily in the latter, from which all the text at right, in relation to this policy, is taken.<br><br>Notes on policy text at right:<br><br>• The references to cases and case-opening are to the CMA's investigations and to the commencement of its investigations.<br><br>• The "*parties directly involved*" include the subject(s) of the relevant investigation.<br><br>In the year to the end of March 2024, the CMA publicly named 17 firms as newly under misconduct investigation, via the following announcements (two of which cover multiple firms):<br><br>Television producers and broadcasters | Publication of case closure announcements and decisions is a means of enhancing the visibility of the CMA's completed work, and of widening its impact, as well as enabling interested persons to hold the CMA to account.<br><br>…<br><br>The CMA will in the majority of cases give the parties directly involved such advance notice as it considers fair and sufficient before making any public announcements, either during or at the end of the case. The CMA will aim to balance an open approach with the need to ensure the orderly announcement of full information.<br><br>**CA98 Policy**:<br><br>Once a formal investigation is opened and the parties have been informed of this, the CMA will generally publish a notice of investigation on its webpages as soon as practicable after the formal investigation has been opened and updated thereafter, as appropriate. However, the CMA will generally not publish or update any notice where doing so may prejudice the investigation – or any criminal investigation or any investigation under the Company Directors Disqualification Act for the purpose of deciding whether to make an application for a Competition Disqualification Order.<br><br>Section 25A(1) of the Competition Act 1998 sets out the type of information that a notice of investigation may contain. The notice will generally include basic details of the case, such as whether the case is being investigated under the Chapter I and/or II prohibitions, a brief summary of the suspected infringement, the industry sector involved, and the identity of the businesses being investigated and may include on the case webpage an explanation of the reasons for prioritising the case. The CMA will also outline the administrative timetable for the case. If the timetable changes during the |

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| | Simba Sleep<br><br>Vifor Pharma<br><br>Housebuilders | investigation, the timetable will be updated in the notice of investigation including, where possible, reasons for the changes that have been made.<br><br>The CMA will normally publish the names of the parties under investigation in the notice, other than in exceptional circumstances, such as where doing so could in the CMA's view prejudice a CMA investigation or an investigation of one of the CMA's enforcement partners. If it has not already done so when opening the investigation, the CMA will usually include parties' names in the notice of investigation at a later stage of an investigation, and if a Statement of Objections is issued.<br><br>In some cases, such as cartel investigations, it may not be possible to include many details of the investigation at the stage of publishing the notice of investigation, as to do so might prejudice the CMA's ongoing investigation. Save where a party has done so itself with the consent of the CMA, the CMA also will not mention publicly at the opening of an investigation whether any party to the suspected infringement had applied for leniency.<br><br>**Consumer Enforcement Policy**:<br><br>The CMA is committed to the principle of transparency in its consumer protection work and in general aims to be as transparent as it can about its enforcement activities, for example, to aid consumer and business understanding of how it seeks to ensure that markets work well.<br><br>The CMA's experience of consumer enforcement cases is that there is a clear public interest in the transparency of such work. Sharing information about its consumer cases – including, where appropriate, the names of parties – can facilitate the performance of the CMA's functions by, among other things: |

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| | | • encouraging business and consumers to come forward with information that can assist the CMA's investigation and protection of the public in appropriate cases<br>• enhancing consumer and business understanding of when the CMA does, and does not, consider it appropriate to take enforcement action in relation to consumer law infringements<br>• keeping the public informed of the progress of a case, including to make clear when businesses in a sector are not under investigation, and<br>• developing public confidence in consumer markets and the consumer protection regime as a whole, by demonstrating how the CMA is acting to ensure that consumer law is complied with.<br>The CMA publishes information about its enforcement activities that it considers lawful and in the public interest to disclose, in particular on www.gov.uk/cma and through issuing press notices where appropriate. In doing so it will take into account the importance of respecting confidentiality and the need to comply with any relevant statutory provisions in this regard …<br>The importance of transparency in consumer enforcement cases is recognised in … [the other CMA documents forming part of the policy] … which, for example, make clear that:<br>• the CMA will place a case opening announcement on www.gov.uk/cma announcing its decision formally to begin a consumer enforcement case, except if doing so would prejudice the case or otherwise be inappropriate, and<br>• at the same time or as soon as reasonably practicable thereafter, the CMA will also publish a brief description of the case, the relevant legislation, the industry sector concerned and the CMA's reasons for starting a formal case. |

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| | | The level of information about a case provided in a case-opening announcement may vary according to the circumstances of the case.<br><br>The information that may be published under the transparency policy of the CMA … may include naming the trader whose conduct is subject to investigation. [We] … are clear that parties in a consumer enforcement case will generally be named in announcements made at the following points in such a case when:<br><br>• the CMA makes an application for an enforcement order in civil consumer enforcement actions, and<br><br>• the outcome of a case is announced.<br><br>However, these are not the only circumstances in which the CMA would expect to name parties in a consumer enforcement case.<br><br>In particular, the CMA would also normally expect to identify publicly all parties who are the subject of CMA consumer enforcement action:<br><br>• other than in exceptional circumstances, when making any relevant case-opening and/or case update announcements<br><br>• when the CMA issues a consultation letter in the case, and<br><br>• when the CMA informs that party that it proposes to seek a court order to address identified consumer law infringements. The CMA would normally expect this to happen where that party has failed to provide suitable undertakings … to address those identified infringements by a reasonable deadline notified to the party.<br><br>Where, exceptionally, the CMA does not name one or more parties in one of the circumstances listed in … [the paragraph] … above, it may subsequently decide to do so where it considers it appropriate, such as where: |

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| | | • continuing to leave such parties unidentified could be expected to result in significant consumer detriment and/or significant harm to other businesses (including those in the same sector)<br><br>• the party's involvement in a CMA investigation has subsequently come into the public domain or become the subject of significant public speculation<br><br>• the subject matter of the investigation has become of widespread public concern<br><br>• a party has requested that it be named by the CMA<br><br>• the CMA considers that it would be appropriate to do so to enable the case to be progressed more effectively, or<br><br>• enforcement action is associated with similar action being undertaken by one or more other regulators and/or consumer enforcement agencies, whether in the United Kingdom or elsewhere. |
| **The Serious Fraud Office ("SFO")** | The SFO's relevant policy is linked here.<br><br>In the year to the end of March 2024, the SFO publicly named five firms as newly under investigation, via the following announcements:<br><br>Carlauren Group<br><br>Signature Group | We try to provide as much information as we can without compromising law enforcement work, prejudicing the right of defendants to a fair trial, or causing avoidable reputational damage or harm to individuals or businesses under investigation. In practice the amount of information we can provide, particularly about cases which are in the investigation stage, is usually very limited.<br><br>Before the Director decides whether to open an investigation, the SFO does not normally confirm or deny interest in allegations made against either companies or individuals. If asked, we would normally say no more than that we are aware of the situation and that we are monitoring it. |

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| | AOG Technics<br><br>Axiom Ince<br><br>Safe Hands Plans | Once the Director has formally opened a criminal investigation, the position will change in the following circumstances:<br><br>• the company under investigation itself makes the information public. This normally happens when a publicly listed company is informed of our investigation and considers this fact to be market-sensitive information of which it must inform the market. In such cases the SFO will (usually in co-ordination with the company's lawyers) confirm the fact and focus of the investigation after the market has been informed, or<br><br>• there are operational reasons for announcing the investigation (such as a call for witnesses), or<br><br>• there is some other substantial reason why the announcement of the investigation would be in the public interest.<br><br>• This policy is intended for guidance only. We apply it on a case-by-case basis in light of all relevant circumstances. |
| **The Office of Communications ("Ofcom")** | Ofcom's primary relevant policy (its "Enforcement Investigation Guidelines") is linked here.<br><br>Ofcom additionally has guidelines covering its investigations under certain particular statutes, the most important being the Competition Act 1998 (its "CA98 Guidelines") linked here. Its Enforcement Investigation | **Enforcement Investigation Guidelines**:<br><br>Shortly after sending the case opening letter(s), we will generally also announce that we have opened an investigation on the Ofcom website, although we may delay doing so if we consider it may prejudice our ability to carry out an investigation.<br><br>The case opening announcement will typically include the following details:<br><br>• the identity of the subject of the investigation; |

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| | Guidelines do not apply to such investigations.<br><br>In the year to the end of March 2024, Ofcom publicly named nine firms as newly under misconduct investigation, via the announcements linked below, two of which relate to separate investigations into Virgin Media. Some of the investigations, as recorded via the links below, have since been closed.<br><br>Vonage Business<br><br>MintStars<br><br>TikTok<br><br>Virgin Media<br><br>My Media World<br><br>BT<br><br>Virgin Media<br><br>Openreach<br><br>Secure Live Media<br><br>Royal Mail | • <br>• the regulatory or legal provisions to which the investigation relates;<br>• <br>• the scope of the investigation; and<br>• <br>• the identity of any complainant, if appropriate.<br><br>…<br><br>Announcing the beginning of an investigation does not imply that Ofcom has formed any view about whether or not any regulatory or legal provision has been contravened.<br><br>…<br><br>• In accordance with our duties under the Communications Act, we are required to investigate and enforce in a transparent and accountable manner. … As such, we will typically … publish details about our investigations …<br><br>We must however balance our duty to be transparent against: (i) the restrictions against disclosure of confidential information contained in legislation we are operating under …; and (ii) the legitimate interests of parties in ensuring that confidential information is appropriately protected.<br><br>If Ofcom is proposing to disclose or publish information which a party considers confidential, we will take reasonable steps to inform that party and give it a reasonable opportunity to make representations on our proposal, before making a final decision on whether to disclose/publish.<br><br>…<br><br>Ofcom is required to have regard to the principle under which regulatory activities should be transparent and accountable. Publicising the |

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| | | investigations we are carrying out and our final decisions is an important part of carrying out our functions, by:<br>• usefully drawing it to the attention of parties who have relevant information;<br>• helping deter non-compliance in future; and<br>• educating others about what can go wrong.<br>As explained above, when we open an investigation we will typically publicise it on the Ofcom website. We will also publish updates on the website when we reach key milestones (such as when we issue a provisional decision, change the scope of an investigation, issue a final enforcement decision or close a case).<br>…<br>There may be certain exceptional cases which we consider it would be inappropriate to publicise, for example because they are particularly sensitive or where publicity could have a detrimental impact on third parties.<br>…<br>**CA98 Guidelines**:<br>Shortly after sending the case opening letter(s), we will generally also announce that we have opened an investigation on the Competition and Consumer Enforcement Bulletin (CCEB) section of our website (although we may delay doing so if we consider it may prejudice our ability to carry out an investigation). The case opening announcement will typically include the following details:<br>• the identity of the subject of the investigation;<br>• the identity of any complainant;<br>• whether the case is being investigated under Chapter I and/or Chapter II of the Act (and/or Article 101 and/or 102 of the TFEU); |

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| | | • the scope of the investigation; and<br>• the case leader's contact details<br>Announcing the beginning of an investigation does not imply that Ofcom has formed any view about whether competition law has been breached.<br>…<br>Ofcom ensures that its regulatory activities are transparent and accountable. Publicising the action we take can also usefully draw it to the attention of parties who have relevant information, can help deter non-compliance in future and educate others about what can go wrong.<br>As explained … above, when we open an investigation, we will typically publicise it on the CCEB section of our website.<br>We will also publish updates regarding the progress of an investigation on the CCEB when we reach key milestones (such as when we issue a statement of objections, when we change the scope of an investigation, when we issue a final infringement decision or when we close a case). …<br>There may be certain cases which we consider it would be inappropriate to publicise, for example because they are particularly sensitive and/or publicity could have a detrimental impact on third parties.<br>… |
| **The Office of Gas and Electricity Markets ("Ofgem")** | Ofgem's most significant relevant guidelines, covering most of its relevant jurisdictions, are its Enforcement Guidelines, linked here.<br>It has additionally published guidelines covering its investigations under the | **Enforcement Guidelines**:<br>We believe that making cases public is important to ensure transparency of our work. It also serves to inform consumers about the work that we are doing, helps identify possible witnesses, and maximises the deterrent effect of enforcement action by encouraging industry compliance. |

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| | UK version of the EU Regulation on wholesale energy market integrity and transparency (its "REMIT Procedural Guidelines") linked here.<br><br>In the year to the end of March 2024, Ofgem publicly named 11 firms as newly under misconduct investigation, via the following announcements, two of which cover more than one firm in the same group:<br><br>Utilita Energy<br><br>Tomato Energy<br><br>Maxen Power Supply<br><br>BES<br><br>Drax Power<br><br>Scottish and Southern<br><br>Ovo | In line with our commitment to ensure transparency, we will publish every case that we open on our website, unless this would adversely affect the investigation (for example, where it may prejudice our ability to collect information), harm consumers' interests, or is subject to confidentiality or other considerations. We will consider on a case-by-case basis how best to publicise the opening of a case, bearing in mind our Enforcement vision and strategic objectives. In some cases, we may also decide to make an announcement to the media, which is often in the form of a press release. We will normally inform a business before we publish the opening of a case on our website or make an announcement to the media.<br><br>When we publish the opening of a case on our website, we will make clear that this does not imply that we have yet made any finding(s) about the issues under investigation.<br><br>We will exclude information from publication only if we consider that failure to do so would harm consumers' interests or might seriously harm the interests of the business under investigation. We will consider these factors when deciding whether to offer anonymity to any business under investigation.<br><br>In Competition Act cases, any notice that we have opened a case may include any of the information set out in section 25A of the Competition Act (our decision to open a case, the section that the investigation falls under, the matter being investigated, the identity of any company being investigated, and the market affected). If publishing details of any company being investigated (or any other information set out in section 25A of the Competition Act) could in the Authority's view prejudice the investigation, we may decide to exclude that information.<br><br>…<br><br>When a case has been made public on opening, then, if we close it with no finding of breach or infringement (for example due to lack of evidence, on the grounds of administrative priorities, or because we are taking Alternative |

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| | | Action), we will also make these details public. As a courtesy, we will normally inform a business before we publish the closing of a case on our website or make an announcement to the media, however, we are not obliged to do so.<br><br>**REMIT Procedural Guidelines**:<br><br>We will not normally make a public announcement when we open a REMIT investigation. However, a public announcement may be appropriate in cases where (but not limited to) we consider that we need to:<br><br>• Inform Market Participants, consumers and / or the market more generally about the investigation and the work we are doing.<br>• Maximise the deterrent effect of enforcement action by encouraging industry compliance.<br>• Identify additional evidence. |
| **The Financial Reporting Council ("FRC")** | The FRC has two publication policies.<br><br>One, linked here, applies to its audit enforcement process. The other, linked here, applies to its accountancy and actuarial enforcement processes.<br><br>Note, as to the references in the text at right to a "*Statutory Auditor Respondent*" and to a "*Member*", such a person will always be an individual. | **Audit Enforcement Publication Policy**:<br><br>The Conduct Committee will only decide to publish the fact of its decision to investigate if it considers:<br><br>• that such publication is necessary in all the circumstances; and<br>• any potential prejudice to the subject of an investigation is outweighed by the factors in favour of publication.<br><br>In order to determine that an announcement is necessary in all the circumstances, the Conduct Committee must consider that an announcement will: |

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| | In the year to the end of March 2024, the FRC publicly named three firms as newly under misconduct investigation, via the following four announcements, two of which relate to separate investigations into Ernst & Young:<br><br>Deloitte<br><br>Ernst & Young<br><br>Ernst & Young<br><br>KPMG | • help to maintain public confidence in Statutory Auditors;<br>• help to maintain public confidence in the regulation of Statutory Auditors;<br>• protect users of financial statements;<br>• protect investors;<br>• help to prevent malpractice that is potentially widespread;<br>• contribute to the effectiveness of the investigation itself, for example by bringing forward witnesses;<br>• help to allay concern;<br>• help to contain speculation or rumour; or<br>• otherwise help or contribute to the public interest.<br><br>Where the Conduct Committee has exercised its discretion to publish its decision to commence an investigation under the Audit Enforcement Procedure, and it has been decided that no further action is to be taken following that investigation, the Conduct Committee should also publish the outcome of that investigation unless there is a good reason not to. …<br><br>…<br><br>Where the Conduct Committee decides to publish a matter relating to a decision to commence an investigation, the announcement will include sufficient information to enable the reader to understand in broad terms the matter which is being investigated.<br><br>The Committee will not normally publish the names of a Statutory Auditor Respondent whose conduct is under investigation except where:<br><br>• failure to do so would defeat the purpose of the announcement, for example because it would not be possible to understand the nature of the matters under investigation without doing so; |

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| | | • the identity of the person is already a matter of public knowledge;<br>• the identity of the person is obvious from the description of the matter; or<br>• there are other circumstances which, in the opinion of the Committee, make it appropriate to identify individuals under investigation.<br>…<br>Save where … the Committee … decides that a lesser period is appropriate (e.g. more urgent publication is desirable to safeguard the public interest), any Respondent and, where appropriate, any other party named or identifiable in an announcement will be given a copy of its proposed terms a minimum of seven days before its intended publication. Where any comments are received in response to such advance notice and to enable the FRC to give due consideration to the comments received, the announcement will not usually be published before the expiry of a further seven days from the original intended publication date unless otherwise agreed or where the … Conduct Committee considers earlier publication to be in the public interest.<br>**Accountancy and Actuarial Enforcement Publication Policy**:<br>The Committee will only decide to publish the fact of its decision to commence an investigation if it considers:<br>• that such publication is necessary in all the circumstances; and<br>• any potential prejudice to the subject of an investigation is outweighed by the factors in favour of publication.<br>In order to determine that an announcement is necessary in all the circumstances, the Committee must consider that an announcement will: |

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| | | • help to maintain public confidence in the accountancy or actuarial professions;<br>• help to maintain public confidence in the regulation of these professions;<br>• protect users of financial statements;<br>• protect investors;<br>• help to prevent malpractice that is potentially widespread;<br>• contribute to the effectiveness of the investigation itself, for example by bringing forward witnesses;<br>• help to allay concern;<br>• help to contain speculation or rumour; or<br>• otherwise help or contribute to the public interest.<br>Where the Committee has exercised its discretion … to publish its decision to commence an investigation under the Scheme, and it has been decided that no further action is to be taken following that investigation, the Committee should also publish the outcome of that investigation unless it decides that it is not in the public interest to do so.<br>…<br>Where the Committee decides to publish a matter relating to a decision to commence an investigation, the announcement will include sufficient information to enable the reader to understand in broad terms the matter which is being investigated.<br>The Committee will not normally publish the names of any Member whose conduct is under investigation except:<br>• where failure to do so would defeat the purpose of the announcement, for example because it would not be possible to understand the nature of the matters under investigation without doing so; |

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| | | • where the identity of the person is already a matter of public knowledge;<br>• where the identity of the person is obvious from the description of the matter; or<br>• there are other circumstances which, in the opinion of the Committee, make it appropriate to identify individuals under investigation.<br>Save where the Committee decides that a lesser period is appropriate (e.g. more urgent publication is desirable to safeguard the public interest), any Member or Member Firm and, where appropriate, any other party named or identifiable in an announcement will be given a copy of its proposed terms a minimum of seven days before its intended publication. Where any comments are received in response to such advance notice and to enable the FRC to give due consideration to the comments received, the announcement will not usually be published before the expiry of a further seven days from the original intended publication date unless otherwise agreed or where the FRC considers earlier publication to be in the public interest. |
| **The Water Services Regulation Authority ("Ofwat")** | Ofwat refers to investigation publicity in two public policy documents.<br>One is its Approach to Enforcement, which is linked here and applies to its enforcement under the Water Industry Act 1991.<br>The other is its guidance on its approach to its application of the Competition Act 1998 (its "CA98 Guidance"), which is linked here.<br>In the year to the end of March 2024, Ofwat publicly named three firms as | **Approach to Enforcement**:<br>Through our approach to enforcement, we want to promote trust and confidence in the water sector by making sure our decisions are consistent, and by being transparent about the decisions we have taken. … We will, and do already, publish information on any investigations and actions we take.<br>…<br>We will also make our decisions public to ensure that our aims and expectations are transparent, and that we are accountable for our decisions. We will publish information regularly on where we have carried out investigations and any action we have taken. … |

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| | newly under misconduct investigation, via the following announcements:<br>South East Water<br>Welsh Water<br>South West Water | **CA98 Guidance:**<br>• We may in some circumstances publish basic information about the investigation in accordance with our powers under section 25A CA98 (for example, if we consider that it may assist us in our investigation or is necessary for market stability). If we publish information identifying a party whose activities (including being a party to a particular agreement) are being investigated, and subsequently decide to terminate the investigation, we will publish a notice stating that the activities of that party are no longer being investigated, in compliance with our statutory obligations. |