

FCA Response to the House of Lords Financial Services Regulation Committee Report: CP 24/2 Part I and II

We welcome the Committee's first report of the 2024/2025 Session.

We have continued to increase the pace and focus of our enforcement work to deliver impactful deterrence, securing a record number of outcomes in 2024 and with our largest ever number of criminal cases currently in train. In FY24/25, we issued 37 Final Notices, secured 5 convictions, imposed financial penalties of over £186 million, cancelled the authorisation of 1,453 firms, and brought charges against 19 defendants.

The number of open operations has fallen by well over 35% from 1 April 2023, down from 220 to 128 (as at 1 June 2025). Five recent investigations achieved a public outcome in less than 16 months, compared to an average length of 42 months for investigations closed in 2023/24. We secured an estimated £442.3m for investors and consumers through redress schemes, settlements or Court orders resulting from enforcement action. We will build on this progress into 2025/26.

Further to the update sent to the Committee on 11 March, below is the Financial Conduct Authority's formal response to the recommendations made by the Financial Services Regulation Committee in relation to the FCA's consultation paper 24/2, parts one and two.

The proposals

Efforts to reduce the time taken to complete investigations are clearly working and are welcome. The FCA should consider whether it should focus its efforts on expediting its investigative processes to increase transparency before making substantial changes to the wider enforcement framework.

Following its second consultation, on CP24/2 Part 2, the FCA needs to be able to demonstrate that stakeholders' concerns have been addressed by these new proposals and that the motivations behind the proposals have been clearly articulated and understood. This should include setting out the evidence to support this and, if necessary, additional amendments to its proposals to address any further concerns raised. We ask the FCA to report back to this Committee with its findings before the changes are implemented.

If it is evident after the current consultation that the FCA has not found an acceptable balance between realising the potential benefits for consumer protection, and managing the potential risks to firms, individuals, and to market stability, it should not proceed with these proposed changes.

Before any final decisions are taken to proceed with the proposals, the FCA must be able to demonstrate that its proposed new regime is underpinned by robust, fair and proportionate processes for the assessment of 'public interest'. Further guidance on how the factors contained in the public interest framework will work in practice should be published, before any final decisions are taken.

There was a high degree of support from respondents for the objectives behind the proposals - namely to ensure our enforcement work is as effective as possible. However we could not secure consensus on other elements, in particular those to publicise investigations into regulated firms under a new public interest framework. We are therefore sticking to our existing exceptional circumstances test to determine if we should publicise investigations into regulated firms.

As our Policy Statement sets out in detail, there is broad support for and much less concern in relation to:

- reactively confirming investigations which are officially announced by others, typically market announcements made by firms themselves or sometimes announcements by a partner regulator.
- public notifications which focus on the potentially unlawful activities of unregulated firms and regulated firms operating outside the regulatory perimeter – where desirable to protect consumers or to help the investigation itself.
- publishing greater detail of issues under investigation on an anonymous basis, perhaps via a regular bulletin such as *Enforcement Watch*.

Nine of the largest financial services trade associations expressed their support for these aspects of our proposals earlier this year. We are therefore proceeding with these.

Communicating policy consultations

The FCA should ensure that consultations are properly registered on the Regulatory Initiatives Grid. It should also review its internal processes to ensure that earlier engagement with the sector is carried out when appropriate.

Regardless of the extensive changes which have now been published in CP24/2 Part 2, the initial failures in communication and engagement remain a concern. The FCA should review its internal processes and communication strategies employed throughout this process, including a review of how appropriate its internal processes were for consulting on a change of this scale. The FCA should publish a 'lessons learnt' document from this process, setting out where it went wrong and how it will prevent similar mistakes from occurring in the future.

As set out in evidence to the Committee, we acknowledge that we should have engaged with stakeholders during the policy development and better communicated our proposals when we announced them, including providing more data. In particular:

- We should have done **more pre-announcement engagement**, including with industry, consumer and whistleblower groups and our statutory panels. This may have surfaced the level of interest and concerns about the proposals. While pre-announcement engagement is not always possible (for example where proposals are market sensitive or where we need to move quickly) we could have done more in this case.
- Some of our policy intentions could have been more clearly set out in our original consultation paper. Pre-announcement engagement may have helped us identify and **flush out these areas of possible confusion and concern** at an earlier stage. This could have helped us avoid confusion or address potentially controversial issues better in our first consultation paper.
- If we had publicly engaged on our proposals before launching the consultation, we would have been able to refer to them in the **Regulatory Initiatives Grid (RIG)** before launching the consultation. To be included, something must have been previously publicly announced. We have ensured the latest RIG, published in April, is comprehensive.¹

Our priority has been to finalise the policy statement and enforcement guide so we can provide the certainty and clarity industry has asked for.

¹ <https://www.fca.org.uk/publication/corporate/regulatory-initiatives-grid-apr-2025.pdf>

We will undertake a 'lessons learned' exercise, which we will share within a year of the new enforcement guide being in place. This will cover both how the revised guide was brought in and experience of how it is working in practice.

Given that the enforcement investigation proposals represent a significant departure from the FCA's previous approach, it remains our firm view that proposed changes of this extent necessitate a robust and detailed analysis of the direct costs to the sector. Wider factors in the UK's growth and competitiveness should form part of this analysis. The need for such an assessment will be underscored if, as happened following the publication of the first consultation, the feedback the FCA receives on its second consultation reiterates the call for a cost benefit analysis—the FCA must be transparent about the views expressed on this issue.

In light of the questions raised over the absence of a cost benefit analysis for the enforcement investigation proposals, and following the recommendations made in the Financial Conduct Authority Cost Benefit Analysis Panel's report, the FCA should change its policy of producing a cost benefit analysis only for rules and guidance on rules.

In our second consultation, we set out significant data including analysis of possible share price impact stemming from the announcement of an enforcement investigation.

We looked at investigations opened into listed or traded firms in 2021 to the end of April 2024 and identified 6 instances where there was a firm disclosure of the investigation 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 4, on the day of all but 1 of those announcements, the relevant firm's share price did not move negatively by more than 1%.

As we set out in the second consultation, a very small number of firms were likely to be affected by the original proposals each year; we open between 10-12 investigations into regulated firms each year (out of a population of 42,000). In addition, not all cases would have met the proposed public interest test.

The Financial Services and Markets Act gives a specific definition of how we should apply Cost Benefit Analysis (CBA), and we follow the legislation closely.

We recognise the CBA Panel would like us to go beyond statutory requirements and will always consider the Panel's suggestions carefully.

However, we are also being urged to significantly accelerate our regulatory processes and have done so in a number of cases recently, delivering reforms to simplify regulation at considerable pace. We therefore don't think it would be proportionate to mandate CBA in all other scenarios, when this might restrict our ability to deliver at speed.

Government engagement

The FCA should engage with the Treasury over any future developments relating to its enforcement investigations proposals to ensure that they are aligned with the Government's view of the secondary international competitiveness and growth objective.

We are in regular dialogue with the Government on the breadth of our work and policy initiatives. As set out when giving evidence to you, ordinarily on operational enforcement matters we wouldn't discuss specific details with HM Treasury.

As we have noted previously, HM Treasury has encouraged more transparency in the past in relation to specific enforcement matters as has the Public Accounts Committee, other select committees and groups of parliamentarians.

Since the publication of the first consultation, we have extensively engaged Government on the proposals and have taken their view into account alongside those of others as we settled on a final policy position.

It is worth noting that improving the pace and impact of our enforcement investigations, should support growth and competitiveness by providing certainty more quickly to those involved in these investigations and increasing consumer and investor trust in the UK's financial services sector. By changing the way that we supervise and with a more rigorous authorisations gateway and more proactive use of data and intelligence, we have already reduced the number of cases which go to enforcement. We are committed to going further, by working with industry to address harms more quickly. Some of the benefits of this approach can be seen, for example, in the fact that the Financial Services Compensation Scheme levy (one proxy for harm in some of the markets we regulate) has been at a ten year low in recent years. This is good for consumers and good for market participants, the overwhelming majority of whom seek to do the right thing.