

Citizens Advice Scotland – Written evidence (EGC0015)

Introduction

Citizens Advice Scotland (CAS) responded to the Financial Conduct Authority's (FCA) consultation in agreement with their proposed amendments to the Enforcement and introducing a new approach, in particular, the new Public Interest Framework on how investigations will be publicised as it enforces clarity, transparency and accountability within the consumer market.

CAS are encouraged by this commitment in being open with the wider sector and the public on the FCA's enforcement activities. Not only does this reassure the public and consumer bodies, such as ourselves, that the FCA are taking appropriate action, the intention of publishing information about their enforcement investigations, using their new flexible public interest framework will have multiple benefits. This would include providing the public, consumer bodies and wider financial markets with a greater understanding of the types of suspected misconduct and other failings the FCA consider should be investigated.

Currently the FCA publish very little information about their investigations and as such it can feel as if bad practice and behaviour goes under the radar or is not being investigated. This undermines public confidence, not only in the FCA as a regulator but also wider financial markets.

A key cornerstone of legal jurisprudence is the doctrine that Justice is done but also Justice is seen to be done. This new approach and framework enshrine this legal doctrine. Moreover, in being more transparent about enforcement activities and investigations, CAS agrees it should ensure faster dissemination of best practice, increase deterrence by informing financial firms of the FCA's expectations, drive positive behaviour changes as well as encourage other witnesses and whistleblowers of bad practice to come forward and inform the FCA.

Public Interest Framework

CAS fully support the FCA's proposed Public Interest Framework, specifically that it will enable potentially affected consumers to be protected and help address any public concerns by providing reassurance that the FCA have acted.

Whilst CAS welcomes the FCA's efforts in creating a transparent culture about its investigation process, it must be done in a way that only implies investigation into potential misconduct and not insinuate guilt or culpability until a decision has been made, similar to the criminal and civil

court processes. By doing so will support the advancement of the FCA's statutory obligations on protecting and enhancing the UK financial system.

On that note, CAS agree with the proposed set of factors within the Framework on whether an announcement is not in the public interest and whilst this is not an exhaustive list, and other factors may be considered, those proposed should assist the FCA to assess whether to publish and what this announcement should contain.

CAS agrees that it will increase accountability of not only the firms under investigation and the wider market, but also the FCA themselves in providing public reassurance that they are acting in the interests of consumers.

Announcements and Updates, including Publishing Updates, Outcomes and Closures

Whilst CAS agree with proposed content of how the FCA will deal with their announcements, we emphasise that these must be made plain, simple and clear that it is an investigation and not a conclusion.

CAS would suggest using recognised phrases such as "routine" or "business as normal" to highlight when their investigations are part of the FCA's day-to-day duties and make it clear that firms are not being targeted unfairly or unjustly but rather it is part of their monitoring to ensure financial firms are following prescribed rules and responsibilities.

This also extends to the proposed methods of publicising announcements and updates. CAS agrees in the most part with the proposals but would caution against such a tight timeframe in terms of period of notice to firms.

In light of this, we would recommend changing this wording to "no less than one day" as there may be cases which require the FCA to exercise discretion on notice and provide more than one day's notice to affected firms.

Whilst most large financial institutions would have the capacity and staff to respond to any FCA announcement in terms of an investigation within a day and in fact, where many firms are likely to take steps to reassure their consumer base that they are working with the FCA, this narrow timeframe of one day may not be achievable for smaller firms and sole-trader businesses. Smaller firms may struggle to respond to such an announcement in a timely manner and if the investigation concludes with no breach found, the reputational damage to the firm could still be significant.

Therefore, by simply changing the wording to “no less than one day” in the Guidance would afford the FCA this discretion and leniency for those exceptional circumstances where more than one day’s notice is required.

This can be extended to having a caveat which allows the exception of no notice, should the FCA determine, based on the particular facts and complexities of the investigation, that the matter is urgent, and notice cannot be given.

As stated in the consultation document, publicising announcements and updates will increase visibility and have a positive impact on the market and consumers alike but it must have a balanced and open approach to ensure these are done in a timely and orderly fashion.

Publishing Investigation Updates, Outcomes and Closures

CAS fully agree with the proposed approach for publicising investigation updates, outcomes, and closures. CAS believe that the FCA should announce or update their original announcement once it has concluded.

In cases when no misconduct or breach has been found and in essence the firm under investigation has complied with the rules and their responsibilities, then it should be made clear in any further update. Additionally, even where no misconduct has been found but there has been agreement between the firm and FCA to amend certain behaviours or policies, this should be noted as well to highlight the work firms do in making improvements and supporting consumers.

As stated, publishing such case closure announcements will increase visibility of the work the FCA undertake as well as making them accountable for the pace and efficiency of their enforcement activity.

Private Warnings & Future Consultation

Given there are numerous opportunities for firms to discuss issues with the FCA as well as for firms to respond to FCA communications on improvements and rule changes, CAS agree with the FCA’s proposal to not use private warnings as an alternative to taking formal action and remove any reference within the Enforcement Guidance.

There is ample interaction between financial institutions and the FCA as well as sufficient information on what is expected from firms in terms of Principles of Business and their responsibilities of being FCA-authorized.

Therefore, Private Warnings are not a necessary component within the Enforcement Guidance. The FCA have worked hard to establish an open

door and open dialogue with all key stakeholders, meaning firms should be able to approach the FCA when Private Warnings are issued. Private Warnings are meant to be seen as a tool for providing useful feedback on the FCA's expectations and do not impose any disciplinary sanctions. Quite simply, they are not an enforcement tool and should not be publicly available.

This will still allow the FCA to strike a balance between their commitment for transparency as well as providing appropriate information on regulatory decisions to firms. Given private warnings were never intended to be treated as a determination, they are not part of the formal enforcement activity that the Guidance focuses on and therefore FCA should delete EG 7.6.

10 October 2024