

HOUSE OF LORDS

Financial Services Regulation Committee

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1st Report of Session 2024–25

# **Naming and shaming: how not to regulate**

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### *Financial Services Regulation Committee*

The Financial Services Regulation Committee is appointed by the House of Lords to consider the regulation of financial services.

### *Membership*

The Members of the Financial Services Regulation Committee are:

[Baroness Bowles of Berkhamsted](#)

[Lord Kestenbaum](#)

[Baroness Donaghy](#)

[Lord Lilley](#)

[Lord Eatwell](#)

[Baroness Noakes](#)

[Lord Forsyth of Drumlean](#) (Chairman)

[Lord Sharkey](#)

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### *Declaration of interests*

See Appendix 1.

A full list of Members' interests can be found in the Register of Lords' Interests:

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Evidence is published online at <https://committees.parliament.uk/work/8454/fca-enforcement-guidance-consultation/publications/> and available for inspection at the Parliamentary Archives (020 7219 3074).

Q in footnotes refers to a question in oral evidence.

## ABOUT THIS COMMITTEE

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On 4 December 2023 the House of Lords approved the establishment of a new sessional committee to scrutinise consultations notified to it under the Financial Services and Markets Act 2023 (FSMA 2023), and to consider the regulation of financial services generally.<sup>1</sup> On 24 January 2024 the House appointed this new committee, named the Financial Services Regulation Committee, and agreed its membership and powers.<sup>2</sup> Our remit is to consider the regulation of financial services, including consultations notified to us under:

- (a) paragraphs 28 and 29 of Schedule 1ZA to the Financial Services and Markets Act 2000,
- (b) paragraphs 36 and 37 of Schedule 1ZB to the Financial Services and Markets Act 2000,
- (c) paragraph 33B of Schedule 17A to the Financial Services and Markets Act 2000, and
- (d) paragraphs 14A and 14B of Schedule 4 to the Financial Services (Banking Reform) Act 2013.<sup>3</sup>

We held our first meeting on 7 February 2024 and over the past year have scrutinised various consultations as well as launching an inquiry into the secondary international competitiveness and growth objective given to the Financial Conduct Authority (FCA) and the Prudential Regulation Authority (PRA) under FSMA 2023. Where consultations do not raise significant issues, or include only minor changes, we may not take any further action or may enter into correspondence with the regulators or Government. However, where consultations involve more significant issues, or when the Committee conducts more wide-ranging inquiries, we will produce reports to the House. In this, our first report, we outline our findings on two recent consultations published by the FCA.

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1 House of Lords Liaison Committee, *A committee on financial services regulation* (6th Report, Session 2022–23, HL Paper 267); HL Deb, 4 December 2023, [cols 1282–1284](#)

2 HL Deb, 24 January 2024, [cols 752–753](#)

3 *Ibid.*

## SUMMARY

The Financial Conduct Authority (FCA) published its consultation *CP24/2: Our Enforcement Guide and publicising enforcement investigations—a new approach* in February 2024.<sup>4</sup> The consultation set out the FCA’s proposed plans to change the way it publicises enforcement investigations. Currently, the FCA only publicly announces its investigations at an early stage in “exceptional circumstances”<sup>5</sup>. The consultation proposed using a “flexible public interest framework”<sup>6</sup> to allow it to announce more investigations at an earlier stage. It stated that this was “to increase transparency about our enforcement work and its deterrent effect and to disseminate best practice.”<sup>7</sup>

The consultation prompted an immediate and widespread backlash from across the financial services sector and from legal firms, and even drew criticism from the previous Chancellor of the Exchequer.<sup>8</sup> Concerns centred around the fear that announcing an investigation before it had concluded, where ultimately no regulatory action was taken, risked causing undue reputational damage to firms and individuals. The consultation largely excluded any consideration of the potential impact on firms, explicitly ruling out the impact on investigation subjects from the new public interest framework,<sup>9</sup> which the FCA had stated it would use to help determine whether or not to announce its investigations. The consultation also included a proposal that firms would be given just 24 hours’ notice ahead of the public announcement of an investigation.<sup>10</sup> These concerns were apparently compounded by the FCA’s own statistics stating that, historically, around 67 per cent of its investigations were closed with no further action, and that investigations took an average of 43 months to complete.<sup>11</sup>

In light of these concerns, the House of Lords Financial Services Regulation Committee wrote to the FCA in April 2024 seeking further clarification on the justification for these proposals. In the letter, the Chairman of the Committee, Lord Forsyth of Drumlean, warned that the proposals risked having a “disproportionate effect on firms” and asked the FCA for a cost benefit analysis to evidence its proposed changes.<sup>12</sup> The Committee subsequently launched an inquiry to examine the proposals further.

4 FCA, *Consultation Paper CP24/2: Our Enforcement Guide and publicising enforcement investigations—a new approach* (27 February 2024): <https://www.fca.org.uk/publication/consultation/cp24-2.pdf> [accessed 29 January 2025]

5 *Ibid.*, p 6

6 *Ibid.*, p 5

7 FCA, ‘CP24/2: *Our Enforcement Guide and publicising enforcement investigations—a new approach*’: <https://www.fca.org.uk/publications/consultation-papers/cp24-2-enforcement-guide-publicising-enforcement-investigations-new-approach> [accessed 29 January 2025]

8 ‘Jeremy Hunt warns FCA against “naming and shaming” businesses under investigation’, *Financial Times* (30 April 2024), available at: <https://www.ft.com/content/21094236-73d0-4d40-aa64-4c298d0140a7> [accessed 29 January 2025]

9 FCA, *Consultation Paper CP24/2: Our Enforcement Guide and publicising enforcement investigations—a new approach* (27 February 2024), p 14: <https://www.fca.org.uk/publication/consultation/cp24-2.pdf> [accessed 29 January 2025]

10 *Ibid.*, p 16

11 Letter from Therese Chambers and Steve Smart, Joint Executive Directors of Enforcement and Market Oversight at the FCA, to Lord Forsyth of Drumlean, Chairman of the Financial Services Regulation Committee (25 April 2024), pp 10–11: <https://committees.parliament.uk/publications/44575/documents/221409/default/>

12 Letter from Lord Forsyth of Drumlean, Chairman of the Financial Services Regulation Committee, to Nikhil Rathi, Chief Executive of the FCA (18 April 2024): <https://committees.parliament.uk/publications/44344/documents/220473/default/>

Respondents to the Committee's call for evidence highlighted significant failings in the development and communication of these proposals, and suggested that there could be serious potential problems inherent in the FCA's proposed approach. Although the proposals represented a significant shift in FCA policy, we heard that the FCA had not engaged with financial services firms beforehand, either to signal its intentions or to help guide the development of its proposed changes. The FCA also failed to give any prior warning to industry that the consultation was forthcoming, and it did not appear on the Regulatory Initiatives Grid.<sup>13</sup> Both firms and other stakeholders stated that they were taken by surprise by the proposals.<sup>14</sup>

There was widespread concern about the proposed public interest framework, which set out a non-exhaustive list of factors by which the FCA could judge disclosure to be in the public interest. Some felt that this was poorly defined and granted the FCA too much discretion.<sup>15</sup> The FCA was criticised for not setting out clearly how the factors would be weighted or how consistent decision making would be ensured, which some of our respondents felt could cause ambiguity and reduce firms' confidence in their ability to meet the expectations of the FCA.<sup>16</sup>

Within the submissions we received, a number of respondents questioned why the shift from the 'exceptional circumstances' test to the public interest test was required or justified. Many could not understand why the FCA considered the exceptional circumstances test no longer fit for purpose and pointed to the lack of evidence provided by the FCA either to justify the shift or to explain why the exceptional circumstances test could not have been used in historic cases.<sup>17</sup> The FCA was also widely criticised for failing to provide a cost benefit analysis as part of its evidence base for these proposals.<sup>18</sup>

Many were concerned by the proposed 24-hour notice period which, it was suggested, was insufficient,<sup>19</sup> specifically as it was felt that this would not allow any time for firms to prepare a public response or make written representations to the FCA. More broadly, there were concerns about the potential impact of the proposals on the FCA's secondary international competitiveness and growth objective, with fears expressed that they could undermine the UK's attractiveness as a place to invest and position the UK as an international outlier.<sup>20</sup>

Following the overwhelmingly negative feedback it received, the FCA subsequently admitted that the changes could not proceed as originally constituted. The Chief Executive of the FCA, Nikhil Rathi, admitted to the Committee that:

“The range of feedback we have had on a whole range of topics means that, if we move forward, the proposals will be fundamentally reshaped.”<sup>21</sup>

13 [Q 1](#) (Ashley Alder)

14 Written evidence from Innovate Finance ([EGC0035](#))

15 Written evidence from the Electronic Money Association (EMA) ([EGC0010](#))

16 Written evidence from the International Underwriting Association ([EGC0022](#))

17 Written evidence from the Association of British Insurers ([EGC0028](#))

18 Written evidence from Innovate Finance ([EGC0035](#)) and from The Investment Association ([EGC0044](#))

19 Written evidence from TheCityUK ([EGC0027](#))

20 *Ibid.*

21 [Q 3](#) (Nikhil Rathi)

The FCA has since undertaken an extensive programme of engagement with industry and in November 2024 it issued revised proposals. The new proposals represent a significant revision of its original plans. The public interest test for assessing whether investigations should be announced will also now include two additional factors that did not feature in the original proposal: the impact of an announcement on the relevant firm; and the potential for an announcement to seriously disrupt public confidence in the financial system or the market. The notice period has also been extended to 10 days for firms to make representations to the FCA, with a further two days' notice if the FCA decides to announce. However, no change has been made to the core proposal of allowing the FCA to announce more enforcement investigations at an early stage. In addition, the FCA has reiterated that it will not publish a cost benefit analysis for these proposals.<sup>22</sup>

We welcome the FCA's willingness to listen to feedback and to revise its proposals substantially in light of that feedback. The Committee, however, remains deeply concerned about what has happened over the course of this process.

We are clear that we recognise that it is important that consumers are given the information they need to make informed decisions and that it is crucial they are protected from wrongdoing. The FCA clearly felt that a change in its processes was required to enable it to provide greater transparency to consumers about its enforcement investigations. As such, it was incumbent on the FCA to make the case convincingly and clearly for why a change in approach was required, to demonstrate it had properly thought through the potential impacts of such a change, to engage with stakeholders to explain, justify, and develop its proposals, and to set out a robust framework that financial services firms could be confident would enable fair, proportionate, and consistent assessment of whether to announce an enforcement investigation before it is concluded—it has failed to do this.

Although the basic aims of the proposals published in February 2024—increasing transparency and preventing consumer harm—should of course be pursued, the proposals as set out were poorly communicated and insufficiently evidenced. The FCA exercised poor judgement regarding the likely response that these proposals would prompt. It lost control of the narrative and caused undue concern and uncertainty. That industry was taken by surprise by the announcement was unacceptable and the lack of engagement or of proper notification through inclusion in the Regulatory Initiatives Grid represents a concerning lack of judgement on the part of the FCA's senior leadership.

In our view, the FCA has not yet made a convincing case for why a change to its existing powers, which allow it to announce an enforcement investigation early in exceptional circumstances, is required. Furthermore, we are not yet convinced that the FCA's proposed new public interest framework strikes an acceptable balance between realising the potential benefits to consumer protection and transparency, and managing the potential risks to firms, individuals, and market stability.

We are clear that after the current consultation closes, the FCA must be transparent about the feedback that the revised proposals receive. The FCA

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22 FCA, *Consultation Paper CP24/2, Part 2: Greater transparency of our enforcement investigations* (28 November 2024), pp 8–9: <https://www.fca.org.uk/publication/consultation/cp24-2-part-2.pdf> [accessed 29 January 2025]

must be able to demonstrate that the sector has been reassured that its initial concerns have been addressed and that it is willing to set out additional amendments to its proposals if necessary. If the FCA is unable to find an acceptable balance in these proposals between increasing transparency to help prevent consumer harm, and managing the potential risks to firms, individuals, and market stability, it should not proceed with these proposed changes.



# Naming and shaming: how not to regulate

## CHAPTER 1: INTRODUCTION

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### The Financial Conduct Authority's consultation CP24/2

1. Under the Financial Services and Markets Act 2000 (FSMA), the Financial Conduct Authority (FCA) has an extensive range of disciplinary, criminal and civil powers to take action against regulated and non-regulated firms and individuals who are failing or have failed to meet the standards it requires.<sup>23</sup> These powers include “imposing financial penalties, prohibiting individuals from carrying out regulated activities, public censure and prosecution.”<sup>24</sup> The FCA has stated that:

“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.”<sup>25</sup>

2. On 27 February 2024, the FCA published its consultation *CP24/2: Our Enforcement Guide and publicising enforcement investigations—a new approach*. In the consultation, the FCA proposed 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.”<sup>26</sup> The consultation stated:

“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.”<sup>27</sup>

3. The change in approach was to be effected by moving from naming firms under investigation in “exceptional circumstances” to using a more flexible public interest test which would guide decision-making. The FCA’s rationale for these proposals as set out in the consultation was: “to increase transparency about our enforcement work and its deterrent effect and to disseminate best practice”<sup>28</sup> with the aim of enabling greater consumer protection and market education. The consultation also set out proposed amendments to the FCA’s Enforcement Guide, aimed at simplifying the document and making it a

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23 FCA, *Enforcement Information Guide* (April 2017), p 1: <https://www.fca.org.uk/publication/corporate/enforcement-information-guide.pdf> [accessed 28 January 2025]

24 FCA, ‘*Enforcement*’ (4 December 2024): <https://www.fca.org.uk/about/how-we-regulate/enforcement> [accessed 28 January 2025]

25 FCA, *Consultation Paper CP24/2: Our Enforcement Guide and publicising enforcement investigations—a new approach* (27 February 2024), p 6: <https://www.fca.org.uk/publication/consultation/cp24-2.pdf> [accessed 29 January 2025]

26 *Ibid.*, p 5

27 *Ibid.*, p 13

28 FCA, ‘*CP24/2: Our Enforcement Guide and publicising enforcement investigations—a new approach*’: <https://www.fca.org.uk/publications/consultation-papers/cp24-2-enforcement-guide-publicising-enforcement-investigations-new-approach> [accessed 31 January 2025]

more “useful and focussed document”.<sup>29</sup> The FCA closed its consultation on 30 April 2024.

4. Although the proposals were received well by some consumer and whistleblower groups, the consultation provoked a backlash from financial services firms, trade associations and the legal community. The Investment Association said:

“We firmly oppose the FCA’s proposal to announce the initiation of investigations by identifying firms, as it could lead to considerable unintended consequences for companies, consumers, and the financial markets, potentially undermining the FCA’s objectives of maintaining market integrity and consumer protection.”<sup>30</sup>

5. Some of the criticism expressed centred around how the proposed changes would impact on the FCA’s statutory secondary international competitiveness and growth objective under FSMA 2023.<sup>31</sup> TheCityUK said that it:

“recognises the importance of enforcement to the FCA’s role in protecting consumers from harm and in meeting its other statutory objectives. However, we do not think that the FCA has shown that its proposals as set out in CP24/2 will advance its objectives. We believe the proposals to announce investigations are fundamentally flawed and undermine the UK’s international competitiveness.”<sup>32</sup>

6. The proposals quickly became known in the media as the “naming and shaming” proposals. As the criticism intensified, the previous Chancellor of the Exchequer, the Rt Hon Jeremy Hunt MP, took the unusual step of commenting directly on policy making by the FCA, stating that: “I hope they re-look at their ‘naming and shaming’ decision because it doesn’t feel consistent with that new secondary growth duty that they have.”<sup>33</sup>
7. The key concern expressed was that in cases where ultimately no regulatory action is taken, naming firms under investigation early in the process could have serious and disproportionate consequences for those involved. There were also fears expressed around the potential impact on financial markets and on the UK’s growth and competitiveness. This concern was apparently compounded by figures previously published by the FCA that stated that during 2023/24, it closed 153 investigations, and that 67 per cent of those closed with no further regulatory action. It also stated that investigations closed in 2023/24 took an average of 43 months from the decision to open an enforcement investigation to closure.<sup>34</sup>

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29 FCA, *Consultation Paper CP24/2: Our Enforcement Guide and publicising enforcement investigations—a new approach* (27 February 2024), p 4: <https://www.fca.org.uk/publication/consultation/cp24-2.pdf> [accessed 29 January 2025]

30 Written evidence from The Investment Association ([EGC0044](#))

31 Financial Services and Markets Act 2023, [section 26](#)

32 Written evidence from TheCityUK ([EGC0027](#))

33 ‘Jeremy Hunt warns FCA against “naming and shaming” businesses under investigation’, *Financial Times* (30 April 2024), available at: <https://www.ft.com/content/21094236-73d0-4d40-aa64-4c298d0140a7> [accessed 29 January 2025]

34 Letter from Therese Chambers and Steve Smart, Joint Executive Directors of Enforcement and Market Oversight at the FCA, to Lord Forsyth of Drumlean, Chairman of the Financial Services Regulation Committee (25 April 2024): <https://committees.parliament.uk/publications/44575/documents/221409/default/>

8. In response to overwhelmingly negative feedback from industry to its consultation, the FCA was forced to rethink its proposals. After an extensive period of engagement with industry and other groups, the FCA published a second consultation, *CP24/2 Part 2: Greater transparency of our enforcement investigations*, on 28 November 2024.
9. *CP24/2 Part 2* reflects “significant changes to our initial proposals”<sup>35</sup> including substantial revisions to the proposed public interest framework with greater emphasis on considering the impact of announcing an investigation on the firms involved and the potential for public confidence in the financial system to be disrupted. Revisions have also been made to the notice period given to firms who are to be named and further detail has been provided by the FCA to support its justification for changing its approach to announcing enforcement investigations. The second consultation closes on 17 February 2025.

### Our inquiry

10. We wrote to the Chief Executive of the FCA, Mr Rathi, on 18 April 2024, expressing our serious concerns about the proposals and seeking further information on a number of issues.<sup>36</sup> This was the first time that we had commented on a consultation, in recognition of the significance of the proposals and the concerns they had provoked.
11. Our letter outlined the key areas that we felt warranted further scrutiny, including the apparent lack of clarity regarding the justification for the proposals and how they would be implemented, the omission within the proposed public interest framework of a requirement to consider the impact of disclosure on firms and individuals, how ‘public interest’ would be defined, concerns that the proposals risked having a disproportionate impact on firms named where no action is taken, and the absence of a cost benefit analysis. In recognition of the serious concerns raised about these proposals, we also signalled that we would take evidence on this issue and asked the FCA to pause any further action until we had had a chance to review the evidence.
12. The FCA issued a response to us on 25 April 2024, in a letter from Therese Chambers and Steve Smart, Joint Executive Directors of Enforcement and Market Oversight at the FCA.<sup>37</sup> The response emphasised that the proposals related predominantly to ensuring an appropriate approach to transparency. In the response, the FCA reiterated its refusal to publish a cost benefit analysis and did not respond directly to the Committee’s request to pause its activities.
13. We launched a call for evidence<sup>38</sup> on 8 May 2024, which was subsequently closed on 24 May 2024 due to the prorogation of Parliament. It reopened again on 5 August 2024 and closed on 11 October 2024. The majority of

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35 FCA, *Consultation Paper CP24/2, Part 2: Greater transparency of our enforcement investigations* (28 November 2024), p 6: <https://www.fca.org.uk/publication/consultation/cp24-2-part-2.pdf> [accessed 29 January 2025]

36 Letter from Lord Forsyth of Drumlean, Chairman of the Financial Services Regulation Committee, to Nikhil Rathi, Chief Executive of the FCA (18 April 2024): <https://committees.parliament.uk/publications/44344/documents/220473/default/>

37 Letter from Therese Chambers and Steve Smart, Joint Executive Directors of Enforcement and Market Oversight at the FCA, to Lord Forsyth of Drumlean, Chairman of the Financial Services Regulation Committee (25 April 2024): <https://committees.parliament.uk/publications/44575/documents/221409/default/>

38 The call for evidence is reprinted in Appendix 3.

the respondents to our call for evidence were from financial services firms and the legal community, although we did receive representations from consumer and whistleblower organisations. The Committee invited Mr Rathi and Ashley Alder, Chair of the FCA Board, to give evidence to the Committee on 13 November 2024. The FCA also wrote to the Committee on 27 November 2024, with written responses to the Committee's follow-up questions.<sup>39</sup>

14. Following this, the FCA published revised proposals on enforcement investigations on 28 November 2024, contained in consultation *CP24/2 Part 2*. This consultation closes on 17 February 2025. We have scrutinised the updated measures against the concerns we received in response to our original call for evidence.
15. Chapter 2 sets out the new proposals and examines the extent to which they address both the Committee's concerns about the original proposals and the key points raised across the submissions we received.
16. Chapter 3 sets out our views on what needs to happen when the second consultation closes, including that the FCA needs to be able to demonstrate that key concerns have been addressed, and that any future action and decision-making on this issue by the FCA will be proportionate and clearly evidenced. Failing that, we believe that the proposed changes should not go ahead.
17. We are grateful to those who submitted written evidence to the inquiry and to Mr Rathi and Mr Alder for providing oral evidence. All those who provided evidence to the inquiry are listed in Appendix 2. A list of Members' interests is contained in Appendix 1. We also want to thank our Specialist Adviser, Michael Raffan, for the support and guidance given throughout the inquiry.

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<sup>39</sup> Letter from Nikhil Rathi, Chief Executive of the FCA, to Lord Forsyth of Drumlean, Chairman of the Financial Services Regulation Committee (27 November 2024): <https://committees.parliament.uk/publications/45883/documents/227691/default/>

## CHAPTER 2: THE ENFORCEMENT PROPOSALS

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### CP24/2: initial engagement and communication

18. Underpinning much of the reaction to the FCA’s first consultation, launched in February 2024, were strong criticisms around the lack of communication and engagement preceding the publication of CP24/2. Respondents to our call for evidence reported that the announcement of the proposed changes, which represented a substantial review of FCA procedures and contained measures that would potentially have a considerable impact on firms, came without the customary notice from the FCA and were not subject to discussion with industry and other groups prior to being published.
19. The Association of Foreign Banks highlighted the “unexpectedness of the FCA’s proposals, and the lack of usual process followed.”<sup>40</sup> Innovate Finance suggested that the proposals were “a surprise to most”<sup>41</sup> and WhistleblowersUK told us that “neither WBUK nor the APPG<sup>42</sup> were invited to consult on the proposals”.<sup>43</sup>
20. The FCA also confirmed to the Committee that it had not discussed the proposals with HM Treasury prior to the publication of the consultation. Mr Rathi told the Committee:
- “Ordinarily on operational enforcement matters, we would not talk about specific details with the Treasury. We had mentioned that we were looking at the questions around enforcement and transparency, but we did not share the consultation document in detail in advance. We would not normally do so.”<sup>44</sup>
21. A number of our respondents made the point that there had been no prior notification of the FCA’s intention to publish these proposals and that the first consultation had not appeared on the FCA’s Regulatory Initiatives Grid,<sup>45</sup> which sets out upcoming regulatory initiatives including consultations on rules and regulations that firms may need to follow. For example, Lloyd’s Market Association said:
- “This initiative is not in the FCA’s business plan or in the regulatory initiatives grid. Unlike other policy changes the FCA has not issued a discussion paper, call for input or occasional paper on the subject to seek views or evidence before issuing the consultation. It is therefore not clear there are sufficient benefits to consumers to outweigh the burden and risks.”<sup>46</sup>
22. The Association for Financial Markets in Europe had a similar criticism, stating that:
- “No notice of such a significant review of enforcement procedures was given (for example via the Regulatory Initiatives Grid, which is an extremely valuable planning tool for the industry). The CP itself was

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40 Written evidence from the Association of Foreign Banks (EGC0017)

41 Written evidence from Innovate Finance (EGC0035)

42 This refers to the All Party Parliamentary Group for Whistleblowing.

43 Written evidence from WhistleblowersUK (EGC0002)

44 Q 2 (Nikhil Rathi)

45 FCA, ‘Regulatory Initiatives Grid’: <https://www.fca.org.uk/publications/corporate-documents/regulatory-initiatives-grid> [accessed 31 January 2025]

46 Written evidence from Lloyd’s Market Association (EGC0026)



marked as “two-star” with only a six week comment period, suggesting that the FCA itself did not consider it to be of the highest impact level, which is surprising given the content.”<sup>47</sup>

23. UK Finance told us that it was “disappointed by the manner in which the FCA published its new proposals” and that its decision not to signpost its plans via the Regulatory Initiatives Grid “further damages the FCA’s reputation as a predictable and transparent regulator.”<sup>48</sup>
24. The FCA’s own description of the Regulatory Initiatives Grid calls it a “valuable tool for stakeholders” and explains that it is there so that “the financial services industry and other stakeholders can understand—and plan for—the timing of the initiatives that may have a significant operational impact on them.”<sup>49</sup> Mr Alder, however, confirmed to the Committee that the consultation launched in February 2024 “did not appear in the regulatory grid, which is the place in which forthcoming consultations and proposals are normally positioned.” Mr Alder also commented that “all within the organisation acknowledged that it could have been trailed a bit better beforehand.”<sup>50</sup>
25. Mr Alder also told the Committee that he was surprised by the strength of the reaction to the proposals, stating that: “I found some aspects of the reaction a little surprising—for example, raising questions about whether this, if we proceeded, would affect financial stability.”<sup>51</sup>
26. A number of the submissions we received made a clear link between the failure to engage with industry in the development of the proposals, and the widespread concern they provoked. Innovate Finance said: “This case illustrates what can happen when the regulator does not prepare the ground and fails to test proposals and ideas with industry before publication.”<sup>52</sup> The Association of Foreign Banks told us: “This lack of engagement with industry prior to the consultation paper has led to the FCA misjudging the extent of the negative impact on firms, international competitiveness and the markets.”<sup>53</sup> Innovate Finance also suggested that:
 

“Pre-publication discussions and testing would have helped identify some of the issues in advance and helped refine proposals and thinking. Our experience with regulators is that when the policy making process is solely conducted through the formal process of publishing consultation without meaningful and less formal engagement before and during, the process can quickly become more adversarial than it needs to be.”<sup>54</sup>
27. The FCA admitted to the Committee that it felt that the communication and engagement around the initial consultation were poor which had impacted on the way in which the proposals were received and interpreted. Mr Rathi told the Committee:

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47 Written evidence from the Association for Financial Markets in Europe (EGC0029)

48 Written evidence from UK Finance (EGC0045)

49 FCA, ‘Regulatory Initiatives Grid’: <https://www.fca.org.uk/publications/corporate-documents/regulatory-initiatives-grid> [accessed 31 January 2025]

50 Q 1 (Ashley Alder)

51 *Ibid.*

52 Written evidence from Innovate Finance (EGC0035)

53 Written evidence from the Association of Foreign Banks (EGC0017)

54 Written evidence from Innovate Finance (EGC0035)

“I said quite openly, at the Mansion House regulators’ dinner with all the industry representatives there, that on this we fell short of our predictability test and we could have better explained some of the drivers of the proposals.”<sup>55</sup>

He added that: “We acknowledge that the manner in which we communicated this led to some of the misunderstandings.”<sup>56</sup>

28. In CP24/2 Part 2, the FCA stated that:

“Our proposals came as a surprise and we should have introduced them in a better way, including signalling them in the Regulatory Initiatives Grid. That meant initial conversations about these proposals were not as constructive as we had hoped. It also meant that the essence of what we were proposing—of seeking to serve the public interest more effectively in a relatively small number of cases—became obscured.”<sup>57</sup>

29. **The proposals contained in the FCA’s consultation document CP24/2, published in February 2024, represented a major change from the FCA’s previous approach to its enforcement work. The lack of engagement with stakeholders or of proper notification on the Regulatory Initiatives Grid was unacceptable. Furthermore, that the FCA was then surprised by the strength of reaction to its proposals suggests a worrying disconnect with industry on the part of senior FCA leadership.**

30. **Had the FCA conducted adequate engagement in the development stage of these proposals, it could have avoided a lot of unnecessary controversy and damage to the sector’s confidence in the regulator.**

31. *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.*

### CP24/2 Part 2: have the revised proposals addressed the initial concerns?

32. Since the publication of the first consultation and in response to the criticisms it received, the FCA published updated proposals in November 2024 (CP24/2 Part 2)<sup>58</sup> and has undertaken an extensive programme of engagement on them. We recognise that this has been productive, given the substantial revisions made to the original proposals. The FCA’s efforts in engaging with and listening to stakeholders following the publication of the first consultation were also praised by many of the respondents to our call for evidence. The Association of British Insurers told us that they were “appreciative of the FCA’s engagement with us since their proposals were originally published and welcome the opportunity for further discussions over

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55 [Q 2](#) (Nikhil Rathi)

56 [Q 3](#) (Nikhil Rathi)

57 FCA, *Consultation Paper CP24/2, Part 2: Greater transparency of our enforcement investigations* (28 November 2024), p 6: <https://www.fca.org.uk/publication/consultation/cp24-2-part-2.pdf> [accessed 29 January 2025]

58 FCA, *Consultation Paper CP24/2, Part 2: Greater transparency of our enforcement investigations* (28 November 2024): <https://www.fca.org.uk/publication/consultation/cp24-2-part-2.pdf> [accessed 29 January 2025]

the coming months.”<sup>59</sup> Clifford Chance LLP also said that they “welcome that the FCA has engaged and is responding to that engagement.”<sup>60</sup> More recently, David Postings, Chief Executive Officer of UK Finance, welcomed the FCA’s updates and said that UK Finance “welcome the fact the FCA has listened and taken on board industry feedback.”<sup>61</sup>

33. The updated consultation seeks to address some of the key concerns raised by industry and other stakeholders, and those raised by this Committee. These concerns centred around the following issues:
- the extent to which the FCA had convincingly made the case for why the changes to its approach to enforcement announcements were required—namely why its exceptional circumstances test was no longer sufficient;
  - the potential impact on firms, individuals and the markets of announcing investigations when no regulatory action is ultimately taken, and the factors included in the proposed public interest framework for deciding whether the subject and facts of an investigation should be announced at the beginning;
  - the proposed 24-hour notice period given to firms before announcing investigations;
  - the potential impact of the measures on the UK’s competitiveness;
  - the impact on consumers and the extent to which the proposals would support whistleblowers; and
  - the absence of a cost benefit analysis of the proposals.

We explore these issues in more detail below.

*From ‘exceptional circumstances’ to a public interest test*

34. At the core of the FCA’s justification for why changes are required to the way it publishes information about its enforcement investigations is the FCA’s assertion that its current approach—only to make public that it is investigating at an early stage in ‘exceptional circumstances’—was no longer fit for purpose.
35. Within the submissions we received, a number of respondents questioned why the shift from the ‘exceptional circumstances’ test to the public interest test was required or justified. Foot Anstey LLP stated that:
- “The Enforcement Guide already caters for a situation where an investigation can be announced if there are exceptional circumstances and lists under EG 6.1.3 at least three of the factors cited under the newly proposed public interest test.”<sup>62</sup>
36. UK Finance told us that it believed that the FCA’s current approach (the exceptional circumstances test) “strikes the right balance between

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59 Written evidence from the Association of British Insurers (EGC0028)

60 Written evidence from Clifford Chance LLP (EGC0040)

61 ‘City regulator offers to water down “name and shame” rules after pressure’, *The Guardian* (28 November 2024): <https://www.theguardian.com/business/2024/nov/28/city-regulator-offers-to-water-down-name-and-shame-rules-after-pressure> [accessed 30 January 2025]

62 Written evidence from Foot Anstey LLP (EGC0019)



transparency and guarding against the unnecessary impact on firm and individual reputations.”<sup>63</sup> The Association of British Insurers said:

“The FCA already has the means to achieve its objectives—transparency and deterrence—within its current supervisory and enforcement powers (e.g. via public statements and warnings.) It can also already name firms in ‘exceptional circumstances’. Moreover, the FCA has stated in its industry letter ‘that there would be no presumption in favour of announcing. We would review on a case-by-case basis, taking all facts and circumstances into account in reaching a decision on whether or not to announce’. We are therefore unclear how these proposals will further its objectives in the context of what the regulator can already do.”<sup>64</sup>

37. Both the House of Commons Treasury Committee and this Committee asked the FCA for an explanation of why the exceptional circumstances test is no longer considered fit for purpose. Mr Alder told the Treasury Committee in May 2024 that: “The consultation talks about a shift from exceptional circumstances, which basically means hardly ever, to a public interest test.”<sup>65</sup> Mr Rathi also noted that the FCA felt that it could not use its powers under exceptional circumstances to announce a case related to investment fraud “because, sadly, investment fraud is not exceptional.”<sup>66</sup>
38. This Committee also asked why the FCA was unable to use its existing powers to achieve its aims. Mr Rathi said:
- “around 10% to 20% are disclosed under existing powers. We felt it would not be candid with the industry or with Parliament for us to move that number materially as compared to existing practice, and shift the criteria internally—by stealth almost—without coming out and talking about it openly. Here we are talking about confirming another 20 cases which are public already, and another four or five which would take that number between 50% to 60%. Quite a lot of it is disclosed already though. We felt that that is not exceptional in the context of the overall numbers, and we could not defend it as exceptional.”<sup>67</sup>
39. **We are still unclear why—if there is an immediate risk of consumer harm—it would not be considered an ‘exceptional circumstance’ which would demand disclosure of an investigation.**
40. The FCA acknowledged in CP24/2 Part 2 that its consultation responses indicated that: “Firms and industry groups felt strongly that our existing ‘exceptional circumstances’ policy was sufficiently broad to allow us to announce in more cases.”<sup>68</sup> The FCA has now also offered a more detailed explanation of why exceptional circumstances is no longer sufficient, and has stated:

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63 Written evidence from UK Finance ([EGC0045](#))

64 Written evidence from the Association of British Insurers ([EGC0028](#))

65 Oral evidence taken before the Treasury Committee on 8 May 2024 (Session 2023–24), [Q 706](#) (Ashley Alder)

66 Oral evidence taken before the Treasury Committee on 8 May 2024 (Session 2023–24), [Q 710](#) (Nikhil Rathi)

67 [Q 4](#) (Nikhil Rathi)

68 FCA, *Consultation Paper CP24/2, Part 2: Greater transparency of our enforcement investigations* (28 November 2024), p 8: <https://www.fca.org.uk/publication/consultation/cp24-2-part-2.pdf> [accessed 29 January 2025]

“ ... over the 23 years the current policy has been in place, we have rarely announced our investigations. For example, of our open cases as at 28 November 2024 involving regulated and/or listed or publicly traded firms, we have only announced 14% of these. This is typically around 1 or 2 per year. That has created an expectation around how we interpret ‘exceptional’—that we will never announce our investigations, whether proactively or reactively, unless the circumstances are particularly unusual or rare.”<sup>69</sup>

It went on to explain that:

“As well as the ‘exceptional’ factor, our current publicity policy sets out a narrower set of reasons for announcing compared to our proposed public interest framework.”<sup>70</sup>

41. The FCA emphasised, however, that the shift from ‘exceptional circumstances’ to the public interest framework will not involve a significant increase in numbers but it also says that it would double the amount of announcements they might make. The second consultation states:

“While we anticipate that we would only increase the number of proactive announcements into regulated firms by a small amount, that could potentially double the small number of proactive announcements we currently make. This would take us significantly beyond our current approach to ‘exceptional circumstances’.”<sup>71</sup>

42. During the oral evidence session with the Committee in November 2024, Mr Rathi said that the FCA would set out a number of case studies “where, if the new framework had been in place one or two years ago, we think it might have been announced so that people can test whether we are getting that right.”<sup>72</sup> The FCA listed four case studies in CP24/2 Part 2, where it believed that “there may have been a public interest in announcing and naming the firm under investigation.”<sup>73</sup> The cases were: the British Steel Pension Scheme, Citigroup Global Markets Limited, PricewaterhouseCoopers LLP, and CB Payments Limited.<sup>74</sup>
43. Herbert Smith Freehills LLP noted that while the FCA stated that its current tools, where it can announce investigations under exceptional circumstances, do not allow it to achieve its outcomes, it is now “suggesting that the changes will only result in a small incremental change in the numbers.”<sup>75</sup> It added that “the FCA has adopted an unnecessarily restrictive interpretation of what constitutes ‘exceptional circumstances’.”<sup>76</sup>

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69 FCA, *Consultation Paper CP24/2, Part 2: Greater transparency of our enforcement investigations* (28 November 2024), p 13: <https://www.fca.org.uk/publication/consultation/cp24-2-part-2.pdf> [accessed 29 January 2025]

70 *Ibid.*

71 *Ibid.*

72 Q 3 (Nikhil Rathi)

73 FCA, *Consultation Paper CP24/2, Part 2: Greater transparency of our enforcement investigations* (28 November 2024), p 19: <https://www.fca.org.uk/publication/consultation/cp24-2-part-2.pdf> [accessed 29 January 2025]

74 *Ibid.*, pp 19–24

75 Herbert Smith Freehills LLP, *CP24/2 Part 2: Have the FCA done enough?* (20 December 2024): <https://www.herbertsmithfreehills.com/notes/fsrandcorprcrime/2024-posts/cp24-2-part-2-have-the-fca-done-enough> [accessed 30 January 2025]

76 *Ibid.*

44. **In the context of its existing powers, the FCA’s explanation for how these proposals will further its objectives is unconvincing. It remains unclear why a broader interpretation of ‘exceptional circumstances’ could not be considered in place of the proposed public interest test, particularly where there is an immediate risk to consumers. The FCA have provided additional detail in the second consultation about other uses of the disclosure power. Following the closure of the second consultation, the FCA must be able to demonstrate that the additional detail it has provided to justify this shift in approach has reassured stakeholders that this change is both proportionate and necessary.**

*Impact on firms, the public interest framework and notice period*

45. One of the most prominent concerns expressed about the proposals in the first consultation was that announcing investigations at the point when they are opened but where no regulatory action was subsequently taken, could cause unnecessary damage both to the firms under scrutiny, and to the markets. This concern was apparently compounded by the fact that the original consultation appeared to rule out accounting for the impact of disclosure on the subject of an investigation. In both sets of proposals, the FCA stated that decisions about whether to publish details of investigations would be supported by a new public interest framework.
46. The first iteration of the proposed public interest framework contained a number of factors that the FCA said it would consider when assessing whether an announcement would be in the public interest, which included: enabling the interests of potentially affected customers, consumers, or investors to be protected; encouraging potential witnesses to come forward; addressing public concern or speculation; providing reassurance that the FCA is taking action; and preventing further breaches and protecting the integrity of the UK’s financial system.<sup>77</sup>
47. The FCA stated that the factors it would consider against announcing an investigation were those that would likely have an adverse impact on: the conduct of its investigation or an investigation by another body; the interests of consumers; or the stability of the UK financial system or the ability of the FCA to carry out its own statutory functions.<sup>78</sup>
48. The original public interest framework, however, did not include explicit consideration of the impact of disclosure on the individual firm. The first consultation in fact dismissed such a consideration and stated:

“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

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77 FCA, *Consultation Paper CP24/2: Our Enforcement Guide and publicising enforcement investigations—a new approach* (27 February 2024), pp 13–14: <https://www.fca.org.uk/publication/consultation/cp24-2.pdf> [accessed 29 January 2025]

78 *Ibid.*, p 14

public reassurance that we are acting in the interests of consumers and investors.”<sup>79</sup>

The first consultation went on to state that the FCA believed that announcing the closures of investigations that do not lead to further action would “increase the effectiveness and accountability of our enforcement activities.”<sup>80</sup>

49. We note that previously, the FCA had stated that it recognised the potential reputational risk to a firm from the early disclosure of an enforcement investigation. In response to the Complaints Commissioner’s Annual Report 2022/23, which stated that the FCA could have resolved complaints earlier through improved communication and information-sharing with complainants, the FCA said that:

“There are also occasions where we don’t think it’s appropriate to share information publicly. For example, we don’t normally share publicly that a firm has been referred to Enforcement for investigation because such information could inappropriately damage a firm’s reputation if our investigation does not substantiate our concerns.”<sup>81</sup>

50. Many were critical of the apparent lack of reflection on the potential impact on firms within the first set of proposals. TheCityUK suggested that the proposals risked “doing substantial harm to businesses under investigation, who may not have committed any wrongdoing and who should benefit from a presumption of innocence”.<sup>82</sup> The British Insurance Brokers’ Association told us that: “Publicly announcing an investigation without adequate evidence of wrongdoing will undoubtedly cause, at the very least, reputational damage to both firms and individuals.” They stated that this could be “exceptionally damaging in financial services and broking specifically, which is extremely reliant on trust-based relationships and reputation.”<sup>83</sup>
51. The Personal Investment Management and Financial Advice Association told us that: “Public announcements will be to the severe detriment of firms and also damage the reputation of the broader financial services sector.”<sup>84</sup> It noted that the reputational damage to firms, their staff, and customers would be “enormous, particularly if it is exacerbated by press speculation.”<sup>85</sup> Clifford Chance LLP stated that in order for the FCA to promote its statutory objectives—to ensure that relevant markets function well—it must take proper account of the potential impact on firms. It noted that the process of announcing investigations was “unnecessarily unfair when the outcome of its decision will amount to public criticism and lasting reputational harm to the named subject.”<sup>86</sup>
52. There was agreement among submissions that smaller firms could suffer the impacts of reputational damage to a greater extent than larger firms. ClearBank told us that reputational damage “has a disproportionate impact

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79 *Ibid.*

80 *Ibid.*, p 10

81 FCA, *The Financial Conduct Authority’s Response to the Complaints Commissioner’s Annual Report 2022/23* (13 July 2023), p 17: <https://www.fca.org.uk/publication/corporate/fca-response-complaints-commissioner-annual-report-2022-23.pdf> [accessed 30 January 2025]

82 Written evidence from TheCityUK (EGC0027)

83 Written evidence from the British Insurance Brokers’ Association (EGC0041)

84 Written evidence from the Personal Investment Management and Financial Advice Association (PIMFA) (EGC0013)

85 *Ibid.*

86 Written evidence from Clifford Chance LLP (EGC0040)

on new and smaller firms and may be irrecoverable under some circumstances for any firm.”<sup>87</sup> The Alternative Investment Management Association also noted that: “Smaller firms would suffer more from the FCA’s proposed approach to publicising investigation updates, outcomes and closures due to the limited resources available to cope with such an event”.<sup>88</sup> Clifford Chance LLP said in their submission that “smaller firms could fail”<sup>89</sup> as a result of the potential reputational harm. TheCityUK said that: “The reputational damage to small firms and start-ups, in particular, could be fatal to the business if customer or investor confidence in the business is irreparably damaged.”<sup>90</sup>

53. Another key concern was that in its first consultation, the FCA proposed giving firms 24 hours’ notice before publicly announcing an investigation. Respondents to the initial consultation felt that 24 hours’ notice was insufficient, specifically as this would not allow any time for firms to inform their customers, prepare press releases, or make representations to the FCA. TheCityUK told us: “We do not believe that the proposal to give the subject of an announcement one business day’s notice is remotely sufficient.”<sup>91</sup>
54. Concerns were also expressed about the impact on individuals, which again, the FCA seemed to have downplayed as an issue in the first consultation. Despite the FCA stating that it would not name individuals when announcing the investigations, it was unclear how firms could be named without individuals who are associated with the firm being identified. The Lloyd’s Market Association said in their submission that: “It is not apparent how anonymity will be maintained when a firm is named.”<sup>92</sup> Linklaters LLP told us that: “the Senior Managers & Certification Regime and publicly accessible information on the FCA Register will make it easy for the media and public to identify which Senior Manager oversees the business line/function where the suspected misconduct has occurred”.<sup>93</sup> It added that this could risk leading to widespread speculation about whether individuals are under investigation. The Futures Industry Association (FIA) also suggested that “the senior managers at a firm, who are publicly identified on the FCA’s website, may suffer individual reputational damage with limited ability to defend themselves.”<sup>94</sup>
55. A few submissions suggested that an individual firm’s share price could be affected by the announcement of an investigation. The Association of Foreign Banks told us that: “The FCA also lacks a reliable dataset to assess how its proposed approach would likely impact the share prices of firms named.”<sup>95</sup> In our letter to the FCA in April 2024, we asked the FCA whether they had performed any analysis of the likely impact of their proposals on share price.<sup>96</sup> The FCA said that “we are often interacting with some of the largest global firms and the likelihood of an FCA investigation impacting

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87 Written Evidence from ClearBank Limited ([EGC0008](#))

88 Written Evidence from the Alternative Investment Management Association ([EGC0033](#))

89 Written Evidence from Clifford Chance LLP ([EGC0040](#))

90 Written Evidence from TheCityUK ([EGC0027](#))

91 *Ibid.*

92 Written evidence from the Lloyd’s Market Association ([EGC0026](#))

93 Written evidence from Linklaters LLP ([EGC0042](#))

94 Written evidence from the Futures Industry Association (FIA) ([EGC0023](#))

95 Written evidence from the Association of Foreign Banks ([EGC0017](#))

96 Letter from Lord Forsyth of Drumlean, Chairman of the Financial Services Regulation Committee, to Nikhil Rathi, Chief Executive of the FCA (18 April 2024): <https://committees.parliament.uk/publications/44344/documents/220473/default/>



their share price materially, given the scale of their market capitalisation is limited.”<sup>97</sup> Following this, Mr Rathi told us during the evidence session on 13 November that the FCA would “engage with the feedback that we have had on share price impact and on the investment climate”.<sup>98</sup>

56. The original public interest framework was criticised for lacking clarity on how it would be used to inform decision making. The Electronic Money Association said that ‘public interest’ was “insufficiently defined and that the factors that indicate whether something is in the public interest grant the FCA too much discretion especially in the absence [of] any formal requirement to consider the impact on the firm.”<sup>99</sup> The International Underwriting Association said: “the use of a non-exhaustive list of factors that the FCA would use to determine the public interest framework suggests that it would be open to amendment and regulatory discretion which creates ambiguity and reduces firm confidence in their ability to navigate the expectations of the FCA.”<sup>100</sup> Innovate Finance suggested that it was “not clear how these factors would be weighted or how a consistent approach would be applied” which it was concerned could “lead to inconsistent outcomes”.<sup>101</sup>
57. Many submissions suggested they felt their fears over the potential for unreasonable harm to firms, individuals and the markets were justified by the FCA’s own statistics which stated that 67 per cent of the FCA’s investigations conclude with no further action taken,<sup>102</sup> and that the average duration of investigations is around three to four years.<sup>103</sup> During the public evidence session the FCA told us that this percentage “has now come down to around 56%.”<sup>104</sup> Mr Rathi also said that the FCA was making “good progress” reducing that percentage and “would expect that to come down to around a third.”<sup>105</sup> In CP24/2 Part 2, the FCA stated that in relation to the pace of investigations: “Many more recently opened operations will take far less time and, in some cases, less than half that time.”<sup>106</sup> Although the FCA should be commended for the progress made in this area, it should be noted that these figures were not included in the first consultation.
58. The FCA has acknowledged these concerns and admitted that the first set of proposals for the public interest framework was not adequate. Referring to the original public interest framework, the FCA stated that “the criteria we consulted on were too high level and lacked specificity.”<sup>107</sup> Mr Alder

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97 Letter from Therese Chambers and Steve Smart, Joint Executive Directors of Enforcement and Market Oversight at the FCA, to Lord Forsyth of Drumlean, Chairman of the Financial Services Regulation Committee (25 April 2024) p 7: <https://committees.parliament.uk/publications/44575/documents/221409/default/>

98 Q 3 (Nikhil Rathi)

99 Written evidence from the Electronic Money Association (EMA) (EGC0010)

100 Written evidence from the International Underwriting Association (EGC0022)

101 Written evidence from Innovate Finance (EGC0035)

102 Written evidence from Bryan Cave Leighton Paisner LLP (EGC0016), Foot Anstey LLP (EGC0019), Freshfields Bruckhaus Deringer LLP (EGC0037), the British Insurance Brokers’ Association (EGC0041), and UK Finance (EGC0045)

103 Written evidence from the International Underwriting Association (EGC0022) and the Association of Foreign Banks (EGC0017)

104 Q 2 (Nikhil Rathi)

105 *Ibid.*

106 FCA, *Consultation Paper CP24/2, Part 2 Greater transparency of our enforcement investigations* (28 November 2024), p 10: <https://www.fca.org.uk/publication/consultation/cp24-2-part-2.pdf> [accessed 29 January 2025]

107 FCA, *Change for the better: the FCA’s evolving approach to enforcement* (24 September 2024): <https://www.fca.org.uk/news/speeches/change-better-evolving-approach-enforcement> [accessed 30 January 2025]

acknowledged the confusion over what the proposals would mean in practice for the number of investigations that it would announce and told us that:

“there was a degree of miscommunication as we were moving from very rarely to sometimes; the question then was how we articulate what we mean by sometimes.”<sup>108</sup>

*Key changes and remaining concerns*

59. The revised public interest framework outlined in the Part 2 consultation contains significantly more detail than the previous iteration, expanding on certain factors and adding in new ones. The most obvious change is the inclusion of a specific factor to consider the impact on the firms involved. The FCA said that:
 

“Under our revised public interest framework we would also always consider whether an announcement would be likely to have a severe impact on a firm, for example resulting in loss of clients or damage to contractual relationships. In assessing this we would, among other things, consider the size and stage of development of a firm, recognising that the impact on smaller firms or more newly established firms could be greater.”<sup>109</sup>
60. The other significant change included in the new proposals is that the FCA will now “always consider whether publishing could cause serious market or sector impact, financial instability, wider systemic disruption or impact, or seriously disrupt public confidence in the financial system or the market.”<sup>110</sup>
61. The FCA has now also provided more detail on how it would weigh the public interest to help stakeholders understand when it would be likely to announce an investigation. It outlines that decisions will be made in stages (whether an announcement would be in the public interest, when it might make an announcement, and what it might announce). The list of the factors it will consider are set out under “factors in favour” and “factors mitigating against” publication or naming.<sup>111</sup> The FCA states it will “engage further” on how this process might work.<sup>112</sup>
62. The FCA has also significantly amended its position on what notice will be given to firms, ahead of a potential announcement of an investigation. It will now provide firms with 10 business days’ notice to make their representations to the FCA, with a further two business days’ notice prior to the publication of any announcement, if it decides to proceed after taking a firm’s representations into account.
63. **The original proposal giving firms 24 hours’ notice of the announcement of an investigation was insufficient given the amount of activity required to prepare for such an announcement. The revised proposal, to give firms 10 business days to make representations, is a sensible change but we expect the FCA to consider carefully any**

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108 Q1 (Ashley Alder)

109 FCA, *Consultation Paper CP24/2, Part 2: Greater transparency of our enforcement investigations* (28 November 2024), p 28: <https://www.fca.org.uk/publication/consultation/cp24-2-part-2.pdf> [accessed 29 January 2025]

110 *Ibid.*

111 *Ibid.*, pp 16–17

112 *Ibid.*, p 15

**consultation responses on whether the two days’ notice of publication of any announcement is sufficient for firms.**

64. Regarding concerns around the FCA’s approach to maintaining the anonymity of individuals involved in investigations, the second consultation states: “As we said in February, given the specific legal considerations regarding information about individuals, we are not proposing to change our existing approach. That means we will not generally announce when we have opened an investigation into a named individual.”<sup>113</sup>
65. The second consultation does not, however, contain any proposed measures to address the concern that senior managers connected to firms where investigations are announced could be identified through the Senior Managers and Certification Regime or otherwise.
66. **We recognise that the proposals do not extend to naming individuals under investigation publicly. We believe, however that there is a serious risk inherent in the FCA’s proposals that senior managers and other key individuals involved in a firm under investigation can be readily identified through the FCA’s register (or otherwise). This potentially exposes those individuals to reputational damage regardless of the outcome of the investigation.**
67. Although the new factors added to the public interest framework provide more clarity on how decision-making would progress, the second consultation contains little information on how the factors would be applied in practice and what guardrails would be put in place to ensure fairness and consistency over time in the process of selecting investigations for publication.
68. The second consultation details measures intended to provide some safeguards within the proposed new approach. These are that the FCA will take decisions on whether to announce an investigation only when it has considered the firm’s representations along with any legal issues, and that decisions will always be made at Executive Director level. It states that the “decision maker will be provided with information about any representations received, along with legal advice from an FCA lawyer who has not been part of the investigation team” and that the “Board will keep the implementation of any revised policy under review.” The FCA has also asserted that: “The proposed notice periods of 10 and 2 days would provide ample opportunity for a firm to raise a legal challenge if it wished to. This would typically be heard in private.”<sup>114</sup>
69. Despite the addition of further detail to the public interest framework, questions have already surfaced around how the factors would be applied in practice. Herbert Smith Freehills LLP highlighted that: “Part 2 provides little by way of details of how this factor [potential damage to firms] might be considered in practice by the FCA”.<sup>115</sup> Addleshaw Goddard LLP said:
- “As the FCA recognises in the second consultation, further work would need to be done to understand how its public interest assessment would work in practice. In the meantime, two key criticisms might be made of

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113 *Ibid.*, p 6

114 *Ibid.*, p 18

115 Herbert Smith Freehills LLP, *CP24/2 Part 2: Have the FCA done enough?* (20 December 2024): <https://www.herbertsmithfreehills.com/notes/fsrandcorprime/2024-posts/cp24-2-part-2-have-the-fca-done-enough> [accessed 30 January 2025]



this aspect of the proposals. First, they would create more uncertainty for firms as to whether, when and what the FCA would announce (matters rarely in issue under the current ‘exceptional circumstances’ regime). By its nature, this test would afford the FCA a wide discretion, and would be likely to produce different outcomes in different cases, leading to the appearance (if not the existence) of different treatment between firms in similar positions. Secondly, there is at least a risk that the issue of publicity over the investigation would become an additional dynamic in any negotiations during the investigation process, in a way that is not currently the case.”<sup>116</sup>

It added that: “Much would depend on the FCA’s assessment of the public interest, a firm’s ability to persuade it to keep a matter confidential, and the political environment in which the investigation was taking place.”<sup>117</sup>

70. Herbert Smith Freehills LLP also suggested that moving from the current exceptional circumstances test to a public interest framework provided scope for the regulator to be “unduly influenced by, for example, public outrage or political influence.”<sup>118</sup>
71. **It is clear that the FCA has modified its proposals on announcing its enforcement investigations significantly between its first and second consultations. The FCA’s revised proposals demonstrate a clearer commitment to safeguarding both market integrity and the legitimate interests of firms. This is a welcome development reflecting a more balanced approach, and goes some way to address stakeholders’ concerns.**
72. **It remains unclear, however, what specific criteria would guide the FCA’s assessment of ‘public interest’ or how the FCA would evaluate the impact that it now recognises the announcements may have on firms and financial markets. Questions persist around the levels of discretion the public interest test affords the FCA, how consistency in decision making can be assured and how inconsistent outcomes would be avoided. Greater transparency in these processes is essential to ensure that firms and stakeholders have confidence in the fairness and consistency of the regulatory framework.**
73. *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.*

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116 Addleshaw Goddard LLP, *CP24/2 Part 2—The FCA’s revised proposals for publicity over enforcement investigations* (2 December 2024): <https://www.addleshawgoddard.com/en/insights/insights-briefings/2024/financial-services/cp242-part-2-fcas-revised-proposals-publicity-enforcement-investigations/> [accessed 30 January 2025]

117 *Ibid.*

118 Herbert Smith Freehills LLP, *CP24/2 Part 2: Have the FCA done enough?* (20 December 2024): <https://www.herbertsmithfreehills.com/notes/fsrandcorpcrime/2024-posts/cp24-2-part-2-have-the-fca-done-enough> [accessed 30 January 2025]

*Secondary international competitiveness and growth objective*

74. A number of submissions questioned the FCA's assertion that the original proposals aligned with its secondary international competitiveness and growth objective and suggested that the proposals could risk positioning the UK as an international outlier. Clifford Chance LLP told us that naming firms under investigation could "harm the competitiveness and reputation of the UK financial services market".<sup>119</sup> TheCityUK also suggested that "the proposals do not align with the FCA's new secondary objective on international competitiveness and growth and are not in keeping with the approach taken by the Bank of England (BoE) and Prudential Regulatory Authority (PRA), nor in other major financial centres around the world."<sup>120</sup> It added that the FCA's assertion that the proposals did align with its secondary objective "does not appear to be evidence-based."<sup>121</sup>
75. Other submissions highlighted concerns that the proposals could make the UK a less desirable place to invest and conduct business. The Association of British Insurers noted that the "proposals could damage the UK's regulatory standing and add to an emerging narrative of overly interventionist regulation within the UK."<sup>122</sup> Innovate Finance suggested that both the FCA's proposal and its approach taken to develop these proposals were "at odds with the FCA's secondary objective of advancing the international competitiveness of the UK economy and its growth in the medium to long-term."<sup>123</sup>
76. During the Committee's evidence session, Mr Rathi confirmed: "we have a second objective [and] we take it seriously".<sup>124</sup> The second consultation, however, does not set out a detailed assessment of the impact of the proposals on the FCA's secondary objective. The FCA said that its proposals could encourage greater competitiveness as: "It could allow firms not subject to investigations to consider their own conduct, allowing them to act to reduce their regulatory and financial risk."<sup>125</sup> In addition, it explained that it believed that the educational benefit that these announcements could have to smaller firms may lead to establishing "a better competitive environment by creating a more even playing ground".<sup>126</sup>
77. The FCA noted that it would "continue to carefully consider evidence on growth and competitiveness as we decide on our approach and welcome further feedback."<sup>127</sup>
78. **We remained unconvinced by the explanation offered by the FCA on how the proposals align with its secondary international competitiveness and growth objective. The FCA should carefully consider the ways in which its proposals might adversely impact its secondary objective before it proceeds with implementing any changes to its enforcement regime.**

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119 Written evidence from Clifford Chance LLP ([EGC0040](#))

120 Written evidence from TheCityUK ([EGC0027](#))

121 *Ibid.*

122 Written evidence from the Association of British Insurers ([EGC0028](#))

123 Written evidence from Innovate Finance ([EGC0035](#))

124 [Q 8](#) (Nikhil Rathi)

125 FCA, *Consultation Paper CP24/2, Part 2: Greater transparency of our enforcement investigations* (28 November 2024), p 29: <https://www.fca.org.uk/publication/consultation/cp24-2-part-2.pdf> [accessed 29 January 2025]

126 *Ibid.*

127 *Ibid.*, p 30

*Comparisons with international and domestic regulators*

79. In the first consultation document, the FCA asserted that:
- “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.”<sup>128</sup>
80. In the second consultation, the FCA stated:
- “We recognise that while a number of other UK regulators announce their investigations, internationally few financial services regulators do. However, no other regulator around the world has the same breadth of responsibilities we have.”<sup>129</sup>
81. A number of submissions expressed scepticism over these comparisons made in the first consultation. CMS Cameron McKenna Olswang LLP told us that the Monetary Authority of Singapore “rarely announces investigations”<sup>130</sup> and added that:
- “In the ten years from January 2014, MAS announced the start of nine separate investigations into individual firms, groups or connected individuals via its News webpage. None of these nine investigations is solely MAS-led but is a joint investigation with the Singapore Police Force or with the Commercial Affairs Department of the Singapore Police Force.”<sup>131</sup>
82. CMS Cameron McKenna Olswang LLP stated that from the period between January 2022 and June 2023, 136 cases were opened by the MAS, of which only one was announced. They also told us that they had contacted their colleagues in 26 jurisdictions to enquire into whether their financial regulators routinely announced details of investigations. They suggested, based on their own research, that “no jurisdiction routinely makes such announcements in the way the FCA proposes.” However, they said that Spain, South Africa, and Singapore occasionally made such announcements.<sup>132</sup>
83. The FCA told us in their follow up letter on 26 November 2024 that “the Monetary Authority of Singapore has a policy<sup>133</sup> 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.”<sup>134</sup>
84. Others highlighted the approach of other international regulators. TheCityUK said that in the United States, the Securities and Exchange Commission (SEC) has a general policy to conduct investigations “on

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128 *Ibid.*, p 11

129 *Ibid.*, p 29

130 Written evidence from CMS Cameron McKenna Olswang LLP ([EGC0012](#))

131 *Ibid.*

132 Written evidence from CMS Cameron McKenna Olswang LLP ([EGC0012](#))

133 Monetary Authority of Singapore, *Enforcement Monograph* (April 2022): <https://www.mas.gov.sg/-/media/mas/news-and-publications/monographs-and-information-papers/enforcement-monograph-final-revised-apr-20221.pdf> [accessed 30 January 2025]

134 Letter from Nikhil Rathi, Chief Executive of the FCA, to Lord Forsyth of Drumlean, Chairman of the Financial Services Regulation Committee (27 November 2024) pp 6–7: <https://committees.parliament.uk/publications/45883/documents/227691/default/>

a confidential basis to preserve the integrity of its investigative process as well as to protect persons against whom unfounded charges may be made or where the SEC determines that enforcement action is not necessary or appropriate”.<sup>135</sup> TheCityUK also said that it understood that the European Securities and Markets Authority “does not disclose information about the start of an individual investigation.”<sup>136</sup>

85. Several submissions also questioned the FCA’s reference to domestic regulators. CMS Cameron McKenna Olswang LLP said that: “the approach taken by most regulators in the UK [ ... ] is to only announce investigations in very limited circumstances.”<sup>137</sup> Some respondents highlighted that it was the normal practice of regulators such as Ofcom, Ofgem, and Ofwat to announce investigations routinely.<sup>138</sup> Herbert Smith Freehills LLP, however, suggested that: “the approach adopted by other UK regulators is largely irrelevant to the assessment of the FCA’s secondary objective to advance the international competitiveness of the UK economy and its growth in the medium to long-term.”<sup>139</sup> The London and International Insurance Brokers’ Association said:

“We are not convinced that [the] FCA’s comparisons to UK utility regulators, which oversee localised monopoly markets, are relevant to the way in which it regulates an open and competitive market for financial services. Notably, firms in the utilities market face no immediate competition and so customers are unable to switch suppliers in the immediate aftermath of an investigation announcement.”<sup>140</sup>

86. In addition, the Financial Services Lawyers Association said that:

“This misalignment with the approach of international regulators is relevant to assessing international competitiveness because a perception that firms and individuals could be subjected to reputational damage through the publication of information about investigations as a matter of course may discourage firms from choosing to operate in the UK when other financial regulators do not adopt the same approach.”<sup>141</sup>

87. The Committee highlighted these points to the FCA when it gave oral evidence. Mr Rathi responded by saying that: “No other regulator around the world has the breadth of responsibilities we have” and that the FCA had “a different supervisory practice.”<sup>142</sup> Further, Mr Rathi emphasised that: “The frequency and regularity with which I get asked by committees, indeed by the former Chancellor himself, or indeed by MPs, about specific investigations, there is an intensity and a regularity about that, which is not seen or felt by my counterparts in the G7”.<sup>143</sup> The FCA also noted in their letter to the Committee, following the oral evidence session that “unlike

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135 Written evidence from TheCityUK (EGC0027). The submission quotes from U.S. Securities and Exchange Commission, ‘Filing Guidance and Confidentiality’: <https://www.sec.gov/submit-tip-or-complaint/tips-complaints-resources/filing-guidance-confidentiality> [accessed 31 January 2025].

136 Written evidence from TheCityUK (EGC0027)

137 Written evidence from CMS Cameron McKenna Olswang LLP (EGC0012)

138 Written evidence from the UK Individual Shareholders Society (ShareSoc) and the UK Shareholders’ Association (UKSA) (EGC0007) and CMS Cameron McKenna Olswang LLP (EGC0012)

139 Written evidence from Herbert Smith Freehills LLP (EGC0030)

140 Written evidence from the London and International Insurance Brokers’ Association (LIIBA) (EGC0043)

141 Written evidence from the Financial Services Lawyers Association (EGC0038)

142 Q 8 (Nikhil Rathi)

143 *Ibid.*

some other jurisdictions, we typically open investigations into those we regulate only after extensive supervisory engagement, generally giving firms considerable time to resolve issues before moving to enforcement.”<sup>144</sup>

88. **The FCA’s assertion in its first consultation that its proposals would be consistent with approaches taken by other international regulators was misplaced and misleading. It is notable that it has changed the narrative on this, from emphasising commonality with other regulators in its first consultation, to highlighting the uniqueness of their remit in the second. Concerns that announcing investigations at the outset will impact on the UK’s competitiveness and risk positioning the UK as an outlier are warranted, and the FCA must be transparent about the further feedback it receives on these issues.**

### *Consumers*

89. In its first consultation, the FCA said that: “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.”<sup>145</sup> Citizens Advice Scotland supported this assertion, stating that the proposed changes would provide “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.”<sup>146</sup> It added that as it stands, the FCA publishes “very little information about their investigations” which “undermines public confidence, not only in the FCA as a regulator but also wider financial markets.”<sup>147</sup>
90. Some of our submissions, however, questioned the extent to which publicising an investigation at an early stage would improve the information available to consumers, including that there was potential for announcements to cause public confusion. Linklaters LLP told us that the public is less likely to distinguish between “a suspicion that requires an open-minded investigation and a conclusion that a breach must have occurred”.<sup>148</sup> The Investment Association suggested that the announcements could cause “confusion and misunderstanding, leading to a loss of trust or confidence in the firm or the sector, or prompting them to act rashly or irrationally, such as redeeming from a fund or switching providers before the outcome of the investigation.”<sup>149</sup>
91. The Electronic Money Association suggested that: “an increase in the number of announcements of investigations into firms will result in UK consumers forming a negative view of the financial (and payments) services industry or certain sectors within the industry.”<sup>150</sup> NEDs in FS suggested

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144 Letter from Nikhil Rathi, Chief Executive of the FCA, to Lord Forsyth of Drumlean, Chairman of the Financial Services Regulation Committee (27 November 2024), p 5: <https://committees.parliament.uk/publications/45883/documents/227691/default/>

145 FCA, *Consultation Paper CP24/2: Our Enforcement Guide and publicising enforcement investigations—a new approach* (27 February 2024), p 5: <https://www.fca.org.uk/publication/consultation/cp24-2.pdf> [accessed 29 January 2025]

146 Written evidence from Citizens Advice Scotland (EGC0015)

147 *Ibid.*

148 Written evidence from Linklaters LLP (EGC0042)

149 Written evidence from The Investment Association (EGC0044)

150 Written evidence from the Electronic Money Association (EMA) (EGC0010)



that publicising enforcement investigations “may cause a knee jerk reaction” from consumers.<sup>151</sup>

92. Citizens Advice Scotland was supportive of the FCA’s efforts to create a more transparent culture around its investigation process, saying that it was “encouraged by this commitment in being open with the wider sector and the public on the FCA’s enforcement activities.”<sup>152</sup> However, it did suggest that: “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.”<sup>153</sup>
93. The FCA’s updated consultation, CP24/2 Part 2, reiterated that: “Earlier public information can support effective mitigation, enabling more effective protection of consumers while supporting public, consumer and investor confidence in UK markets.”<sup>154</sup> It stated that if consumers know about an investigation, they will be “in a better position to consider their options.”<sup>155</sup> The second consultation did not specifically address how the FCA would ensure that the information provided at the point of announcing an investigation would be set out in a way that made it clear to consumers what the likely implications would be.

### *Whistleblowers*

94. We received mixed views on whether increasing the number of proactive announcements of investigations would encourage more whistleblowers to come forward. In its first consultation, the FCA stated that being open about its enforcement activities “encourages witnesses and whistleblowers to inform our enforcement and supervisory work.”<sup>156</sup> Citizens Advice Scotland said that announcing the investigations would “encourage other witnesses and whistleblowers of bad practice to come forward and inform the FCA.”<sup>157</sup> Protect also said that announcing investigations would “increase the FCA’s regulatory effectiveness by increasing whistleblower confidence in the process and by encouraging more people to come forward.”<sup>158</sup> It added that: “Futility—the fear that blowing the whistle will not achieve any meaningful results—is one of the key reasons why potential whistleblowers stay silent.”<sup>159</sup>
95. However, WhistleblowersUK told us that: “Whistleblowing is being used by [the] FCA to promote public interest as the rationale for publication of these investigations, in the wrongful belief it will resolve the concerns arising from within the financial services sector.”<sup>160</sup> It added that announcing enforcement investigations: “is not the silver bullet to encourage potential witnesses and whistleblowers to come forward to support criminal and civil investigations.”<sup>161</sup>

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151 Written evidence from NEDs in FS ([EGC0005](#))

152 Written evidence from Citizens Advice Scotland ([EGC0015](#))

153 *Ibid.*

154 FCA, *Consultation Paper CP24/2, Part 2: Greater transparency of our enforcement investigations* (28 November 2024), p 29: <https://www.fca.org.uk/publication/consultation/cp24-2-part-2.pdf> [accessed 29 January 2025]

155 *Ibid.*, p 5

156 *Ibid.*

157 Written evidence from Citizens Advice Scotland ([EGC0015](#))

158 Written evidence from Protect ([EGC0011](#))

159 *Ibid.*

160 Written evidence from WhistleblowersUK ([EGC0002](#))

161 *Ibid.*

96. Some of the responses we received suggested that the FCA had not properly evidenced its assertion that these proposals could encourage whistleblowers to come forward. Foot Anstey LLP said that: “No external evidence is provided to support the assertion that an announcement of the investigation will encourage witnesses or whistleblowers to come forward”.<sup>162</sup> During our oral evidence session, we asked the FCA what analysis they had undertaken to support the idea that publicising investigations would encourage whistleblowers to come forward. Mr Rathi told the Committee: “First, our whistleblower survey, which we published, flagged that whistleblowers who had interacted with us said that our non-communication with them was a drain on their confidence in the overall whistleblowing framework. As I said, that communication may be that we are opening an investigation, or indeed, it may be that we are not investigating.”<sup>163</sup> In the letter to the Committee following the oral evidence session in November 2024, the FCA again cited their internal whistleblower survey, and stated that:

“Some whistleblowers who responded to our survey said that they would not make whistleblowing reports to the FCA in future, for reasons including a ‘failure to engage’, because they had ‘no idea what has been done’, [and because] there was ‘no report of the outcome’”.<sup>164</sup>

97. The second consultation excludes any reference to the whistleblower survey, which the FCA had previously identified to the Committee as a key basis for its belief that the measures would encourage greater participation from whistleblowers. The second consultation states that the proposed shift in its approach “may encourage witnesses and whistleblowers to come forward.”<sup>165</sup>

#### *Cost benefit analysis*

98. As previously noted, from the submissions we received it is apparent that the justification for the FCA’s proposed changes to the way it publicises its enforcement investigations was not initially widely understood or accepted.
99. We were clear in April 2024 that it would be helpful to the Committee, and the wider financial services community, for the FCA to publish a cost benefit analysis (CBA) of these proposals. At the time, the Committee noted the FCA’s February 2024 statement of policy on cost benefit analysis:

“it is our policy to produce a [cost benefit analysis] for general guidance about rules if a high-level assessment of the impact of the proposal identifies an element of novelty, which may be in effect prescriptive or prohibitive, that may result in significant costs being incurred.”<sup>166</sup>

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162 Written evidence from Foot Anstey LLP ([EGC0019](#))

163 [Q 5](#) (Nikhil Rathi)

164 Letter from Nikhil Rathi, Chief Executive of the FCA, to Lord Forsyth of Drumlean, Chairman of the Financial Services Regulation Committee (27 November 2024) p 3: <https://committees.parliament.uk/publications/45883/documents/227691/default/>

165 FCA, *Consultation Paper CP24/2, Part 2: Greater transparency of our enforcement investigations* (28 November 2024), p 5: <https://www.fca.org.uk/publication/consultation/cp24-2-part-2.pdf> [accessed 29 January 2025]

166 FCA, *How we analyse the costs and benefits of our policies* (6 February 2024), p 6: <https://www.fca.org.uk/publication/corporate/how-we-analyse-costs-benefits-policies-2024.pdf> [accessed 30 January 2025]. We note that this was updated in July 2024.

100. In its response to the Committee’s letter, in April the FCA said that a “formal cost benefit analysis is not required because we are not proposing new rules.”<sup>167</sup>

101. A number of the submissions we received echoed our calls for a cost benefit analysis. Innovate Finance said: “Given the major change in approach that the updated guidance signals and that it will likely have a demonstrable impact on markets and company valuations, it seems unwise to carry out such far reaching action without a strong evidence base”.<sup>168</sup> The Investment Association said:

“It is unhelpful to propose these changes without assessing their impact. Although a cost-benefit analysis is not required under section 139A of FSMA, the FCA’s February 2024 policy states that one should be produced for general guidance if a high-level assessment identifies significant costs, which we strongly believe will be considerable in this scenario. The FCA has not conducted any impact assessment or consulted with relevant stakeholders to understand their views and the underlying costs to their proposals.”<sup>169</sup>

102. During our evidence session in November 2024, when pushed on whether the FCA would conduct a CBA, Mr Rathi again refused to commit to undertaking one, only agreeing to provide more detail on the potential benefits of the proposals. He said:

“We will articulate the benefits, the numbers and the costs as we see them. What I am saying to you is that trying to articulate the benefits in a quantitative fashion on a policy like this is more challenging, but we will certainly articulate the benefits as we see them more broadly.”<sup>170</sup>

103. In the second consultation, the FCA has reiterated and expanded on its justification for not providing a cost benefit analysis. It stated that:

“A number of stakeholders requested a cost benefit analysis (CBA) of the proposals. Legislation requires us to provide CBAs for new rules, and it is our policy to produce a CBA for guidance on rules. These proposals do not relate to rules or guidance on rules.”<sup>171</sup>

104. The FCA goes on to explain that, while it does not intend to publish a cost benefit analysis:

“We have however included information in this document to understand the potential implications of our proposals. This includes analysis of the number of firms impacted and information about the likely number of proactive announcements under our proposals. We also provide evidence about the proportion of FCA investigations already in the public domain

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167 Letter from Therese Chambers and Steve Smart, Joint Executive Directors of Enforcement and Market Oversight at the FCA, to Lord Forsyth of Drumlean, Chairman of the Financial Services Regulation Committee (25 April 2024), p 8: <https://committees.parliament.uk/publications/44575/documents/221409/default/>

168 Written evidence from Innovate Finance ([EGC0035](#))

169 Written evidence from The Investment Association ([EGC0044](#))

170 [Q 3](#) (Nikhil Rathi)

171 FCA, *Consultation Paper CP24/2, Part 2: Greater transparency of our enforcement investigations* (28 November 2024), p 8: <https://www.fca.org.uk/publication/consultation/cp24-2-part-2.pdf> [accessed 29 January 2025]



together with information on how share prices move following regulatory announcements.”<sup>172</sup>

105. We note that, since the second consultation was published, the Financial Conduct Authority Cost Benefit Analysis Panel, which provides review and advice to the FCA and the Payment Systems Regulator (PSR) on their use of CBA, has published its interim annual report (10 January 2025). In it, the Panel states that: “The FCA’s use of CBA is currently designed closely around meeting its minimum statutory obligations.”<sup>173</sup> It states that: “This results in some important differences between the FCA’s policy on the use of CBA and the guidance set out by HM Treasury in its Green Book”<sup>174</sup> and that “the resulting approach does not take full advantage of CBA’s potential to improve the quality and credibility of policy-making.”<sup>175</sup> The Panel recommends that:

“the FCA develop its use of CBA to build from the minimum specification set out in statute towards UK and international best practice. The Panel recommends that the FCA view its statutory requirements as a starting point, and then designs and adopts a policy which best enable its use of CBA to improve the quality and credibility of policy-making. This will enable the FCA to use the full potential of CBA as a practical tool to ensure that it is evidence-based, proportionate, and accountable to stakeholders.”<sup>176</sup>

106. **The lack of a cost benefit analysis has contributed to industry concern that the full impact of the proposals on firms and markets was not being suitably considered. Although there is no obligation for the FCA to provide cost benefit analysis on these proposals, the significance of the changes warrants one. Assessment of these proposals cannot simply be a case of ‘articulating the benefits’—it is incumbent on the FCA to demonstrate that a robust and detailed analysis of the costs form part of its evidence base for these proposals.**
107. *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.*
108. *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.*

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172 *Ibid.*, p 9

173 FCA Cost Benefit Analysis Panel, *Interim Annual Report: May-September 2024* (10 January 2025), p 17: <https://www.fca.org.uk/panels/cost-benefit-analysis-panel/publication/cba-panel-annual-report-2024.pdf> [accessed 30 January 2025]

174 *Ibid.*

175 *Ibid.*, p 18

176 *Ibid.*

### CHAPTER 3: NEXT STEPS

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109. During our oral evidence session, we asked the FCA whether it was fair to say that the consultation on and development of these proposals had not been the FCA’s “finest hour”.<sup>177</sup> Mr Alder said that “the way in which it was communicated and how that then played into the reaction were probably not.”<sup>178</sup> In light of the response the first consultation provoked, the FCA recognised that it could not “move forward with the proposals as constituted.”<sup>179</sup> The FCA has, however, demonstrated its willingness to listen carefully to the concerns and criticisms expressed about its initial proposals, and to enact substantial changes and clarifications. Mr Rathi also emphasised the FCA’s desire “to make sure that something like this is not repeated” and noted that as Chief Executive he wanted to ensure that the regulator was “out there engaging, listening and explaining what we are doing”.
110. We are supportive of efforts to ensure that consumers are properly informed, and to increase transparency where it can have a demonstrably positive impact on consumer protection. Within the submissions we received, there was some clear support for the intention to increase transparency around enforcement investigations. The UK Individual Shareholders Society (ShareSoc) and the UK Shareholders’ Association (UKSA) said that they:
- “welcome the FCA’s proposals to increase the transparency of their investigations, which should improve confidence in their effectiveness and hence that the financial services industry is well regulated and can be trusted.”<sup>180</sup>
111. Citizens Advice Scotland told us that:
- “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.”<sup>181</sup>
- It went on to say:
- “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.”<sup>182</sup>
112. The FCA clearly feels its previous approach of only announcing investigations in ‘exceptional circumstances’ is now insufficient for providing the levels of transparency it needs to protect consumers. We recognise the tension that the FCA is trying to address here: consumers should be protected from financial wrongdoing, and when investigations into worrying conduct take a long

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177 [Q 1](#) (Lord Forsyth of Drumlean)

178 [Q 1](#) (Ashley Alder)

179 [Q 3](#) (Nikhil Rathi)

180 Written evidence from the UK Individual Shareholders Society (ShareSoc) and the UK Shareholders’ Association (UKSA) ([EGC0007](#))

181 Written evidence from Citizens Advice Scotland ([EGC0015](#))

182 *Ibid.*

time to conclude, the risk is that consumers are exposed to that wrongdoing for longer. However, waiting for an investigation to conclude ensures that any further action is taken on the basis of a conclusive and evidence-based judgement of wrongdoing on the part of the firm.

113. We were disappointed that no quantifiable evidence of the benefits or costs of the proposal was supplied to the Committee. We were told by Mr Rathi that “around 10% to 20% [of cases] are disclosed under existing powers”<sup>183</sup>. Yet no examination of the consequences of these disclosures was offered in evidence.
114. **Our key concern following the publication of the first consultation was that the FCA had not found an acceptable balance between realising the potential benefits of increasing transparency to help prevent consumer harm, and managing the potential risks to firms, individuals and market stability. The revised proposals contained in CP24/2 Part 2, in particular the inclusion of a consideration of the ramifications of an announcement on firms and the markets, and the improved mechanisms for allowing firms more time to make representations to the FCA, correct some significant gaps in the original consultation.**
115. **The revised proposals, however, do not resolve the fundamental issue that by broadening the justification for proactively announcing investigations, it could increase the risk that investigations could be announced, reputational damage to firms could occur, media speculation could arise, but no regulatory action is ultimately taken. We remain unconvinced that the proposed public interest framework will allow for proportionate and consistent decision making over whether to announce an enforcement investigation early.**
116. In our evidence session in November, Mr Rathi told the Committee that: “The proposals, if we go forward with them, will be subject to the board making a decision in quarter one.”<sup>184</sup> This timeline is confirmed in the second consultation document,<sup>185</sup> which would mean that a decision is expected in the second quarter of 2025.
117. **These proposals should only be taken forward if the FCA can demonstrate that it has taken stakeholders’ concerns into consideration. We agree with Mr Rathi that the FCA should ensure that something like this is not repeated. The FCA should respond to the recommendations for further clarifications made in this report, and to the list of recommendations set out below.**
118. *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*

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183 Q 4 (Nikhil Rathi)

184 Q 3 (Nikhil Rathi)

185 FCA, *Consultation Paper CP24/2, Part 2: Greater transparency of our enforcement investigations* (28 November 2024), p 7: <https://www.fca.org.uk/publication/consultation/cp24-2-part-2.pdf> [accessed 29 January 2025]

*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.*

119. *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.*
120. *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.*
121. *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.*
122. **We remain unconvinced that the FCA has adequately demonstrated how the proposals contained in CP24/2 Part 2 align with its secondary international competitiveness and growth objective. The FCA would have been wise to have consulted with the Government on the initial development of these proposals—that the previous Chancellor had to question whether the proposals were consistent with the secondary objective was deeply concerning.**
123. *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.*

## SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

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### The enforcement proposals

1. The proposals contained in the FCA's consultation document CP24/2, published in February 2024, represented a major change from the FCA's previous approach to its enforcement work. The lack of engagement with stakeholders or of proper notification on the Regulatory Initiatives Grid was unacceptable. Furthermore, that the FCA was then surprised by the strength of reaction to its proposals suggests a worrying disconnect with industry on the part of senior FCA leadership. (Paragraph 29)
2. Had the FCA conducted adequate engagement in the development stage of these proposals, it could have avoided a lot of unnecessary controversy and damage to the sector's confidence in the regulator. (Paragraph 30)
3. *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.* (Paragraph 31)
4. We are still unclear why—if there is an immediate risk of consumer harm—it would not be considered an 'exceptional circumstance' which would demand disclosure of an investigation. (Paragraph 39)
5. In the context of its existing powers, the FCA's explanation for how these proposals will further its objectives is unconvincing. It remains unclear why a broader interpretation of 'exceptional circumstances' could not be considered in place of the proposed public interest test, particularly where there is an immediate risk to consumers. The FCA have provided additional detail in the second consultation about other uses of the disclosure power. Following the closure of the second consultation, the FCA must be able to demonstrate that the additional detail it has provided to justify this shift in approach has reassured stakeholders that this change is both proportionate and necessary. (Paragraph 44)
6. The original proposal giving firms 24 hours' notice of the announcement of an investigation was insufficient given the amount of activity required to prepare for such an announcement. The revised proposal, to give firms 10 business days to make representations, is a sensible change but we expect the FCA to consider carefully any consultation responses on whether the two days' notice of publication of any announcement is sufficient for firms. (Paragraph 63)
7. We recognise that the proposals do not extend to naming individuals under investigation publicly. We believe, however that there is a serious risk inherent in the FCA's proposals that senior managers and other key individuals involved in a firm under investigation can be readily identified through the FCA's register (or otherwise). This potentially exposes those individuals to reputational damage regardless of the outcome of the investigation. (Paragraph 66)
8. It is clear that the FCA has modified its proposals on announcing its enforcement investigations significantly between its first and second consultations. The FCA's revised proposals demonstrate a clearer commitment to safeguarding both market integrity and the legitimate interests of firms. This is a welcome

development reflecting a more balanced approach, and goes some way to address stakeholders' concerns. (Paragraph 71)

9. It remains unclear, however, what specific criteria would guide the FCA's assessment of 'public interest' or how the FCA would evaluate the impact that it now recognises the announcements may have on firms and financial markets. Questions persist around the levels of discretion the public interest test affords the FCA, how consistency in decision making can be assured and how inconsistent outcomes would be avoided. Greater transparency in these processes is essential to ensure that firms and stakeholders have confidence in the fairness and consistency of the regulatory framework. (Paragraph 72)
10. *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.* (Paragraph 73)
11. We remained unconvinced by the explanation offered by the FCA on how the proposals align with its secondary international competitiveness and growth objective. The FCA should carefully consider the ways in which its proposals might adversely impact its secondary objective before it proceeds with implementing any changes to its enforcement regime. (Paragraph 78)
12. The FCA's assertion in its first consultation that its proposals would be consistent with approaches taken by other international regulators was misplaced and misleading. It is notable that it has changed the narrative on this, from emphasising commonality with other regulators in its first consultation, to highlighting the uniqueness of their remit in the second. Concerns that announcing investigations at the outset will impact on the UK's competitiveness and risk positioning the UK as an outlier are warranted, and the FCA must be transparent about the further feedback it receives on these issues. (Paragraph 88)
13. The lack of a cost benefit analysis has contributed to industry concern that the full impact of the proposals on firms and markets was not being suitably considered. Although there is no obligation for the FCA to provide cost benefit analysis on these proposals, the significance of the changes warrants one. Assessment of these proposals cannot simply be a case of 'articulating the benefits'—it is incumbent on the FCA to demonstrate that a robust and detailed analysis of the costs form part of its evidence base for these proposals. (Paragraph 106)
14. *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.* (Paragraph 107)
15. *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. (Paragraph 108)*

### Next steps

16. Our key concern following the publication of the first consultation was that the FCA had not found an acceptable balance between realising the potential benefits of increasing transparency to help prevent consumer harm, and managing the potential risks to firms, individuals and market stability. The revised proposals contained in CP24/2 Part 2, in particular the inclusion of a consideration of the ramifications of an announcement on firms and the markets, and the improved mechanisms for allowing firms more time to make representations to the FCA, correct some significant gaps in the original consultation. (Paragraph 114)
17. The revised proposals, however, do not resolve the fundamental issue that by broadening the justification for proactively announcing investigations, it could increase the risk that investigations could be announced, reputational damage to firms could occur, media speculation could arise, but no regulatory action is ultimately taken. We remain unconvinced that the proposed public interest framework will allow for proportionate and consistent decision making over whether to announce an enforcement investigation early. (Paragraph 115)
18. These proposals should only be taken forward if the FCA can demonstrate that it has taken stakeholders' concerns into consideration. We agree with Mr Rathi that the FCA should ensure that something like this is not repeated. The FCA should respond to the recommendations for further clarifications made in this report, and to the list of recommendations set out below. (Paragraph 117)
19. *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. (Paragraph 118)*
20. *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. (Paragraph 119)*
21. *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. (Paragraph 120)*
22. *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. (Paragraph 121)*

23. We remain unconvinced that the FCA has adequately demonstrated how the proposals contained in CP24/2 Part 2 align with its secondary international competitiveness and growth objective. The FCA would have been wise to have consulted with the Government on the initial development of these proposals—that the previous Chancellor had to question whether the proposals were consistent with the secondary objective was deeply concerning. (Paragraph 122)
24. *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.* (Paragraph 123)



## APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

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### Members

Baroness Bowles of Berkhamsted  
 Baroness Donaghy  
 Lord Eatwell  
 Lord Forsyth of Drumlean (Chairman)  
 Lord Grabiner  
 Lord Hill of Oareford  
 Lord Hollick  
 Lord Kestenbaum  
 Lord Lilley  
 Baroness Noakes  
 Lord Sharkey  
 Lord Smith of Kelvin  
 Lord Vaux of Harrowden

### Declarations of interest

Baroness Bowles of Berkhamsted  
*Non-Executive Director, London Stock Exchange Plc, regulated investment exchange supervised by the FCA*  
*Shareholder and Non-Executive Director, Valloop Holdings Limited*  
*Non-Executive Director, Valloop Investment Management Limited*  
*Investor in collective investment undertakings*

Baroness Donaghy  
*No relevant interests to declare*

Lord Eatwell  
*Member of the advisory committee, and partner, Palamon Capital Partners LLP*  
*Investments via collective investment funds*

Lord Forsyth of Drumlean (Chairman)  
*Chairman and Non-Executive Director, Secure Trust Bank Plc (interest ceased 16 May 2024)*

Lord Grabiner  
*Non-Executive Director, Goldman Sachs (Goldman Sachs International and Goldman Sachs International Bank), 2014–22, then regulated under the Senior Managers Regime by the FSA/FCA and the PRA; chaired the Remuneration Committee and the Nominations Committee*  
*Conducted two inquiries for the Bank of England on Forex and Liquidity Auctions in 2015*  
*In practice as a barrister in several regulated areas*  
*Investments disclosed in the Register of Interests*

Lord Hill of Oareford  
*Lead Non-Executive Director, HM Treasury (interest ceased 5 September 2024)*  
*Adviser, Santander SA*  
*Adviser, VISA Europe*  
*Adviser, Intercontinental Exchange Inc*  
*Member of Advisory Board, VISA Economic Empowerment Institute*

Lord Hollick

*Shareholder, G.P. Bullhound (a technology corporate adviser and fund manager)*

*Shareholder and adviser, Hambro Perks (a technology fund manager)*

*Other interests as recorded in the Register of Interests*

Lord Kestenbaum

*Director, Windmill Hill Asset Management (investment manager)*

*Director, JPMorgan Japanese Investment Trust Plc (Investment Company)*

*RIT Capital Partners Plc (consultant)*

Lord Lilley

*Member of Advisory Board, YiMei Capital, Shanghai*

Baroness Noakes

*Shares in listed financial services companies as recorded in the Register of Interests*

Lord Sharkey

*No relevant interests to declare*

Lord Smith of Kelvin

*No relevant interests to declare*

Lord Vaux of Harrowden

*Non-practising member, Institute of Chartered Accountants in England and Wales*

*Shareholding in Fidelity National Information Services Inc*

A full list of Members' interests can be found in the Register of Lords' Interests: <https://members.parliament.uk/members/lords/interests/register-of-lords-interests>.

### Specialist Adviser

Michael Raffan

*Partner, Freshfields LLP*

*Member of HM Treasury's Banking Liaison Panel*

*Member of TheCityUK's Long-Term Competitiveness Group*

*Member of TheCityUK's US Market Advisory Group Technical Working Group*

*Member of the Advisory Board, Financial Services Lawyers Association*

*Investments in various collective investment vehicles*

## APPENDIX 2: LIST OF WITNESSES

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Evidence is published online at <https://committees.parliament.uk/work/8454/fca-enforcement-guidance-consultation/publications/> and available for inspection at the Parliamentary Archives (020 7219 3074).

Evidence received by the Committee is listed below in chronological order of oral evidence session and in alphabetical order. Those marked with \* gave oral evidence and did not submit any written evidence. All other witnesses submitted written evidence only.

### Oral evidence in chronological order

- |   |  |                               |
|---|--|-------------------------------|
| * | Ashley Alder, Chair, Financial Conduct Authority (FCA)           | <a href="#"><u>QQ 1–9</u></a> |
| * | Nikhil Rathi, Chief Executive, Financial Conduct Authority (FCA) | <a href="#"><u>QQ 1–9</u></a> |

### Alphabetical list of witnesses

- |   |  |                                |
|---|--|--------------------------------|
|   | Wala Al-Daraji   | <a href="#"><u>EGC0014</u></a> |
|   | Alternative Investment Management Association  | <a href="#"><u>EGC0033</u></a> |
|   | Anonymous  | <a href="#"><u>EGC0004</u></a> |
|   | Anonymous  | <a href="#"><u>EGC0039</u></a> |
|   | ASC Advisors LLC   | <a href="#"><u>EGC0031</u></a> |
|   | Association of British Insurers  | <a href="#"><u>EGC0028</u></a> |
|   | Association for Financial Markets in Europe  | <a href="#"><u>EGC0029</u></a> |
|   | Association of Foreign Banks   | <a href="#"><u>EGC0017</u></a> |
|   | British Insurance Brokers' Association   | <a href="#"><u>EGC0041</u></a> |
|   | Bryan Cave Leighton Paisner LLP  | <a href="#"><u>EGC0016</u></a> |
|   | Paul Carlier   | <a href="#"><u>EGC0024</u></a> |
|   | Citizens Advice Scotland   | <a href="#"><u>EGC0015</u></a> |
|   | City of London Law Society Regulatory Law Committee  | <a href="#"><u>EGC0018</u></a> |
|   | ClearBank Limited  | <a href="#"><u>EGC0008</u></a> |
|   | Clifford Chance LLP  | <a href="#"><u>EGC0040</u></a> |
|   | CMS Cameron McKenna Olswang LLP  | <a href="#"><u>EGC0012</u></a> |
|   | Electronic Money Association (EMA)   | <a href="#"><u>EGC0010</u></a> |
| * | Ashley Alder, Chair, Financial Conduct Authority (FCA) ( <a href="#"><u>QQ 1–9</u></a> )           |                                |
| * | Nikhil Rathi, Chief Executive, Financial Conduct Authority (FCA) ( <a href="#"><u>QQ 1–9</u></a> ) |                                |
|   | Financial Services Lawyers Association   | <a href="#"><u>EGC0038</u></a> |
|   | Foot Anstey LLP  | <a href="#"><u>EGC0019</u></a> |

Freshfields Bruckhaus Deringer LLP	<a href="#"><u>EGC0037</u></a>
Futures Industry Association (FIA)	<a href="#"><u>EGC0023</u></a>
Herbert Smith Freehills LLP	<a href="#"><u>EGC0030</u></a>
Innovate Finance	<a href="#"><u>EGC0035</u></a>
International Underwriting Association	<a href="#"><u>EGC0022</u></a>
The Investment Association	<a href="#"><u>EGC0044</u></a>
Anthony Kell	<a href="#"><u>EGC0020</u></a>
Linklaters LLP	<a href="#"><u>EGC0042</u></a>
Lloyd's of London	<a href="#"><u>EGC0025</u></a>
Lloyd's Market Association	<a href="#"><u>EGC0026</u></a>
London and International Insurance Brokers' Association (LIIBA)	<a href="#"><u>EGC0043</u></a>
Dr Kevin A. Moss	<a href="#"><u>EGC0001</u></a>
NEDs in FS	<a href="#"><u>EGC0005</u></a>
Personal Investment Management and Financial Advice Association (PIMFA)	<a href="#"><u>EGC0013</u></a>
Protect	<a href="#"><u>EGC0011</u></a>
TheCityUK	<a href="#"><u>EGC0027</u></a>
Transparency Task Force	<a href="#"><u>EGC0021</u></a>
UK Finance	<a href="#"><u>EGC0045</u></a>
UK Individual Shareholders Society (ShareSoc) and UK Shareholders' Association (UKSA)	<a href="#"><u>EGC0007</u></a>
WhistleblowersUK	<a href="#"><u>EGC0002</u></a>

## APPENDIX 3: CALL FOR EVIDENCE

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### Scope

The Financial Services Regulation Committee is taking evidence on the FCA's consultation paper CP24/2: *Our Enforcement Guide and publicising enforcement investigations—a new approach*. The Committee has issued a call for written evidence and will invite the FCA to provide oral evidence to the Committee at a later date. This call for evidence was reopened on 5 August 2024 following the Committee's reappointment on 29 July 2024.

### Background

In February 2024 the Financial Conduct Authority (FCA) published consultation paper CP24/2: *Our Enforcement Guide and publicising enforcement investigations—a new approach*. The consultation included proposals around how the FCA will “publicise our enforcement investigations to increase transparency about our enforcement work and its deterrent effect and to disseminate best practice.” The consultation closed on 30 April.

The Financial Services Regulation Committee, chaired by Lord Forsyth of Drumlean, wrote to the FCA on 18 April to express a number of concerns about the proposals contained in the consultation. The letter stated that: “the Committee intends to take evidence on this proposal and asks that you do not take further steps to implement this change until it has had the opportunity to do so and reach a final conclusion.”

- A copy of this letter can be found on the Committee's website: <https://committees.parliament.uk/publications/44344/documents/220473/default/>
- The FCA responded to the Committee's letter on 25 April: <https://committees.parliament.uk/publications/44575/documents/221409/default/>
- The Committee issued a further letter to the FCA on 1 May: <https://committees.parliament.uk/publications/44587/documents/221454/default/>
- The FCA responded to the Committee's second letter on 7 May: <https://committees.parliament.uk/publications/44678/documents/221942/default/>

### Call for evidence

The Financial Services Regulation Committee is seeking views on the proposals contained in the FCA's consultation paper CP24/2: *Our Enforcement Guide and publicising enforcement investigations—a new approach*.

This call for evidence was originally opened on 8 May 2024, and was closed following the prorogation of Parliament on 24 May. It has been reopened, as of 5 August, following the reappointment of the Financial Services Regulation Committee on 29 July.

We invite anyone with expertise in or experience of the matters relating to consultation CP24/2 to share their views with the Committee, including views in favour of the proposals or concerns about the proposed changes.

Please note: The Committee cannot accept any submissions that have not been prepared specifically in response to this call for evidence, or that have been published elsewhere. Submissions made prior to the suspension of the call for evidence have been retained and do not need to be resubmitted.

This is a public call for written evidence to be submitted to the Committee. The deadline for submissions is 11.59pm on Friday 11 October 2024.