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DEBTLINE

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Consultation Response:

FCA Our Enforcement Guide and publicising enforcement investigations

Response by the Money Advice Trust

Date: April 2024

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Introduction

About the Money Advice Trust

The Money Advice Trust is a charity founded in 1991 to help people across the UK tackle their debts and manage their money with confidence.

The Trust's main activities are giving advice, supporting advisers and improving the UK's money and debt environment.

In 2023, our National Debtline and Business Debtline advisers provided help to 127,390 people by phone, webchat and our digital advice tool with 2.38 million visits to our advice websites. In addition to these frontline services, our Wiseradviser service provides training to free-to-client advice organisations across the UK and in 2023 we delivered this free training to 800 organisations.

We use the intelligence and insight gained from these activities to improve the UK's money and debt environment by contributing to policy developments and public debate around these issues.

Find out more at www.moneyadvicetrust.org.

Public disclosure

Please note that we consent to public disclosure of this response.

Introductory comment

We very much welcome the new proposals in the consultation paper for the FCA approach to publicising enforcement investigations and the Enforcement Guide (EG). Announcing investigations, and individual subject names, and the outcomes will help to promote transparency and accountability. It will also hopefully assist with any perceptions of delay or indecision by the regulator in tackling specific harms.

We would hope that this will strengthen consumer protections and help to protect vulnerable consumers from future harm and decrease the likelihood of ongoing consumer detriment in current cases.

It is vital that the FCA prioritises investigation and enforcement in areas of consumer detriment that affect the most vulnerable consumers the most.

We have raised our concerns in previous consultations that the FCA needs to be able to provide feedback to consumer bodies in relation to decisions on what enforcement action to take in relation to breaches of FCA rules. In our response to the FCA “*Our approach to enforcement*” consultation in 2018, we said that this means the public are not aware of the identity of “rogue” companies and cannot take their business elsewhere. It also has the effect of discouraging complaints to the FCA who can neither confirm nor deny that they are dealing with a firm or respond to the individual complaint. This is not a reporting regime that helps consumers to “do the right thing” and does not incentivise action by consumers or consumer groups.

Amongst other suggestions we urged the FCA to “*publish a public notice once an investigation is opened, following a certain threshold of concern being reached.*”

We are very pleased to see that the FCA has decided to take action in this regard.

Responses to individual questions

Question 1: Do you agree with our proposal to announce our investigations, including the names of the subjects, and publish updates on those investigations, when in the public interest? Please give reasons for your answer.

Yes, we very much agree with the proposals to announce investigations, name firms and publish updates on investigations. As a debt advice charity, it can be very difficult to repeatedly report instances of consumer harm without any obvious outcome to the cases we raise.

We would hope that the FCA does not take too cautious an approach when assessing the “public interest” of publication in these cases. It is vital that the FCA prioritises investigation and enforcement in areas of consumer detriment that affect the most vulnerable consumers the most.

Where there is high relative detriment experienced by those in vulnerable circumstances where they are on the lowest incomes, then this should be the FCA’s first consideration. Such consumers are least likely to be able to deal with the detriment caused, and be the least resilient. They are also most likely to be targeted by less-reputable companies. We believe that this approach should also be adopted in the FCA’s approach to enforcement. This means that the FCA should prioritise tackling issues that are not necessarily the most widespread, but have the greatest detrimental impact on the people affected.

Question 2: Do you agree with the structure and content of our proposed new public interest framework, including the factors proposed, and the other features of our proposed new policy described in paragraphs 3.5 to 3.12 above? Please give reasons for your answer if you do not agree.

We very much support the proposals for a public interest framework. The factors that will be considered appear to be reasonable and we are particularly pleased to see the interests of potentially affected consumers are to be taken into account. It will also be very helpful for the FCA to provide reassurance that it is taking appropriate action.

It can sometimes be difficult to see issues in the public domain without any comment from the regulator. This can make it appear that either the FCA is not concerned, nor taking any timely action even though work is being undertaken behind the scenes. This must also be challenging for FCA staff to witness.

Question 3: Do you agree with our approach to announcements and updates where the subject is an individual? Please give reasons for your answer if you do not agree.

The approach to announcements and updates on individual subject cases appears to be reasonable, given the restraints imposed by GDPR and the DPA 2018. However, we would urge the FCA to be bold where such an announcement would be in the public interest, such as to encourage witnesses or whistleblowers to come forward.

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

The proposals for the content of announcements appear to be reasonable, especially given the proposed caveat that all announcements will make it clear that opening an investigation does not imply a conclusion of misconduct.

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

The proposed methods of publicising the announcements and updates should be sufficient. A press release will be more effective than just publishing an update on the FCA website as this will be circulated and would presumably form part of the “Daily news and publications alert”.

However, we would also expect the FCA to be monitoring social media and be able to share links to the press release where necessary to allay speculation, or misinformation.

Question 6: Do you agree with our proposed approach to publicising investigation updates, outcomes and closures? Please give reasons for your answer if you do not agree.

The approach suggested in the proposals seem reasonable. It is important that case closure announcements (where there is no enforcement outcome) are made publicly and added to the original announcement on the FCA website.

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

We would agree with proposals that will assist in making enforcement policy more transparent and accessible. However, we would suggest there are limitations on how easy it is to locate information on the FCA website and more needs to be done to enhance the navigation and prominence of vital consumer information.

It is important that the FCA makes this content as understandable as possible for consumers and ensure that there are links from consumer sections of the FCA website to the relevant sections on enforcement powers.

Questions 8 to 14 on the Enforcement Guide

We have not made any comments on the detailed content within the enforcement guide.

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

We agree that private warnings should not be used as an enforcement tool. We agree with the FCA approach to this.

We would agree that it is not appropriate to use a private warning as this is not transparent. It is not helpful in providing wider industry feedback, guidance or particular warnings about broader industry behaviour. However, we would expect that an increase in formal discussions with firms in that particular sector about lessons learned should help improve regulatory outcomes. These discussions should take place even where there is insufficient evidence to take further action.

It is vital that these lessons are shared beyond the firm in question where these could have a broader regulatory impact on practices in that particular sector. We would expect broader good practice to be disseminated across the relevant firms.

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

We would generally consider it good practice to consult publicly on changes to guidance. However, if this would delay swift improvements to the EG, then we are happy with this approach.

For more information on our response, please contact:

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