Response by TISA to CP24/2: Part 2: Greater transparency of our enforcement investigations

Lisa Laybourn

Policy Director

February 2025

About TISA

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Supporting the financial journey through life

The Investing and Saving Alliance (TISA) is committed to improving the financial wellbeing of all UK consumers by working collectively with the financial services industry to deliver solutions and champion innovation, for the benefit of people, our industry, and the nation.

We do this by working with our member firms to deliver practical solutions and devise innovative, evidence-based strategic proposals for government, policy makers and regulators that address major consumer issues.

We care about the entire financial life of consumers: from their first savings account opened to ensuring people can age and retire with dignity. TISA believes that savings and investments play a significant role in the lives of people and small businesses. Consumers benefit when they put aside money for their future. Saving and investing can provide a buffer for emergencies; help people achieve big and small goals throughout their lifetime; and give people quality of life in later years.

TISA is a not-for-profit membership organisation and a trusted partner of key industry stakeholders in helping shape the future of the UK financial services and the environment in which we operate. We have approximately 270 member firms involved in the supply and distribution of savings and investment products and associated services.

Our work, your influence

Our policy work reflects TISA's broad scope of interests and aims on meeting the needs of UK consumers, members and our industry. From improving financial education, inclusion and accessibility, right through to savings, investments and retirement planning, the work we do with our members to **influence policy** is crucial in enhancing the industry we operate in and driving positive change.

As part of our commitment to delivering focused and impactful consumer outcomes, TISA's policy working groups have been structured into **four distinct workstreams**:

1. **Consumer Protection -** *Protecting the best interests of UK consumers in their financial journeys.*
2. **Consumer Access -** *Considering issues that could directly impact access to financial products.*
3. **Effective Products -** *Examining key considerations and legislation relating to products across the investing and saving landscape.*
4. **Corporate Responsibility** - *Exploring issues that directly impact society, the environment, and the economy.*

All groups focus on both strategic and technical elements of policy/regulation. We provide a channel for firms to have their say on the policy we develop and present, contribute to our technical and regulatory interpretation work and, importantly, gain insights from other TISA members, policy makers, government and regulators.

Find out more about TISA here: **www.tisa.uk.com/about-tisa**

Question Responses

Q1: If we were to take our proposals forward, we anticipate taking a decision in stages, focusing on what is reasonable and proportionate at each step. Do you have any comments on the proposed staged decision-making process to announce investigations?

The changes proposed are welcome, and in particular the opportunity to make representation within a 10-day timeframe and clarification that the proposals will not be applied retrospectively to investigations that are already ongoing. However, firms will still be required to operate under a significantly shorter timeframe for disclosure announcements than the current standard, potentially leading to governance challenges.

Whilst the consultation has outlined additional factors it will consider when determining the timing of announcements, CP24/2 Part 2 provides insufficient detail to fully understand how this procedure will function in practice.

There is a risk that these changes would introduce greater uncertainty for firms regarding whether, when, and what the FCA would announce—an issue that seldom arises under the current 'exceptional circumstances' regime. By design, the public interest assessment would grant the FCA broader discretion, likely resulting in varying outcomes across cases and creating the perception of inconsistent treatment for firms in similar situations. Secondly, there is a risk that the prospect of publicising an investigation could become a negotiating factor during the process, which is not currently the case.

There is also the risk that a disproportionate impact that public announcements of investigations could be felt by smaller firms, which may have fewer resources to manage the consequences of such disclosures. While the revised consultation paper includes some recognition of the challenges faced by smaller firms, it does not fully address the need for additional safeguards. The revised framework does not provide clear solutions for how smaller firms, with limited management teams and reputations to protect, can avoid undue harm from being named in early-stage investigations. TISA believes the FCA should further consider specific protections or mechanisms that would mitigate the risk to smaller firms, ensuring a fairer process in the enforcement actions that may disproportionately impact them.

The decision to announce will be a crucial stage of any investigation for firms, requiring a clearly defined and reasonably predictable process and will be essential to clarify this during the consultation period.

Q2: We have identified potentially relevant factors to consider when deciding if an announcement could be in the public interest. Do you have any comments on the factors we have identified, or further factors we should consider?

The FCA's decision to explicitly include potential harm to firms as a factor in the public interest assessment is a positive step, and we welcome the acknowledgment that it must consider this factor as part of the overall circumstances in each case. However, the significance of this factor should not be underestimated, particularly in light of the potential risks of unjust public scrutiny, as well as the potential for an announcement to have severe impact on third parties (including individuals such as a firm's directors or employees. The revised proposals do not fully address how it intends to manage public perception and speculation once an investigation is announced. TISA's concern is that

speculative reporting may be driven by insufficient detail on the investigation, leading to misinformation or inaccurate public conclusions about firms.

The significant shift from an "exceptional circumstances" test to a "public interest" standard makes the decision-making process more susceptible to external pressures, such as public outrage or political influence. As a result, it raises concerns about fairness for firms and the UK's appeal as a destination for financial services investment.

The revised paper makes some adjustments, but we feel it still lacks a robust legal basis for its proposals. While the paper recognises the importance of considering the impact on firms, TISA's concern remains that the FCA has not sufficiently explored the legal implications of naming firms, particularly given the existing confidentiality provisions under the Financial Services and Markets Act 2000 (FSMA). Without a comprehensive legal framework that balances regulatory transparency with the legitimate interests of firms, the risk of legal challenges and reputational harm remains unaddressed.

We note that the FCA has been the subject of criticism by Parliament (and in particular, the Treasury Select Committee) for being unable to share details of its ongoing enforcement action as a result of restrictions imposed under Financial Services and Markets Act 2000 ("FSMA"), which we believe has led to the introduction of the additional factor, "Publishing would help improve our accountability to parliamentary committees by enabling us to share more information in response to significant queries about our involvement in particular issues".

We consider that interest shown by members of parliament should not form the sole basis for naming firms under investigation where the regulator would otherwise retain confidentiality. This approach arguably stands in contrast to the FCAs secondary objective. We consider that there are more appropriate mechanisms for the FCA to inform parliament of the effectiveness of its enforcement activities.

If Parliament requires the FCA to disclose specific matters, established parliamentary powers and procedures are available to facilitate this. In our view, the Transparency Proposal is unlikely to eliminate the risk of unfair criticism and may instead create pressure for further, more detailed disclosures.

Q3: We are amending our proposals to make clear that we would only announce or update on existing investigations where the announcement would be reactive. Do you have any comments on this suggested change?

We welcome the clarification that the FCA does not intend to announce existing investigations as standard. More generally in relation to reactive announcements, an FCA announcement is likely to generate far more publicity than a firm disclosure and the potential reputational impact is likely to be significantly more damaging.

Q4: We would generally share a copy of the proposed announcement and provide firms with at least 10 business days to make any representations to us. This may also give firms time to consider whether they want, or may be required, to make an announcement themselves. If, after considering the firm's representations, we still decide to publish an announcement, we would share our reasons

and give firms a copy of the final text at least 2 business days before we publish it. Do you have any comments on these proposals?

As stated in response to Q1, firms will be required to operate under a significantly shorter timeframe for disclosure announcements than the current standard, potentially leading to governance challenges, and potentially less time to plan mitigating strategies to limit reputational damage and potential impact a firm's market value.

Q5: We have provided detail on our process when deciding whether to announce. Do you have any comments on these proposals?

The consultation sets out a table weighing in favour and against making more general (anonymous) announcements about investigation work and naming the firm that is under investigation. It is stated that making an announcement on an anonymised basis "would provide an educational benefit for firms and market users to understand the types of conduct the FCA are investigating and could drive better compliance with its rules or other requirements". There is a risk that making an announcement which names the firm and as a result contains no other substance, will not provide the same benefit. The examples in the case studies seem to indicate that the announcements are likely to be so high-level that they provide limited educational benefit. The industry may not be informed of the precise types of conduct that the FCA is concerned with and so there would be minimal benefit in terms of education and driving compliance. It is arguable that, where this factor is applicable, it would weigh in favour of not naming the firm because the FCA may be able to provide more detail in an anonymised disclosure.

Q6: We welcome feedback on these case studies, including on whether the public interest would be served in naming these firms while under investigation when we have indicated we might do so.

Case Study 1 – British Steel Penson Scheme (see para 5.4 – 5.12)- Do you have any comments on this case study?

The poor advice had already been given to the British Steel Workers by the time the FCA commenced their investigations, and we understand that the FCA had already used its existing supervisory powers to prevent further poor advice being given. We also understand that the FCA undertook the decision not to commence investigation on all the firms that they were concerned about, and that a redress scheme was put into place.

Therefore, we would conclude that the consumer harm was addressed by the FCA, operating within its existing powers, and announcing the investigation would not have provided any further benefit to the consumers affected by the issue. Furthermore, there may have been a negative perception of the FCA in relation to consumers that received poor advice from firms that the FCA decided not to investigate further and pursue the redress route.

We believe that a general announcement on the nature of the investigation and that a redress scheme was being explored would have had the most benefit and given reassurance to potentially impacted consumers.

Q7: Case Study 2 – Citigroup Global Markets Limited (see para 5.13 – 5.20)- Do you have any comments on this case study?

Since this incident was already in the public domain following an announcement of the error by CGML, there appears to be little harm in the FCA being able to confirm its investigation into the matter.

However, the case study recognises that "Flash crashes are not particularly rare, this one was brief and CGML almost immediately announced its trading error". The incident was brief and there was no string evidence that there was a loss of confidence in the market as a result. Therefore, we are not certain as to the extent of any additional benefit an announcement would have made to the public interest.

Q8: Case study 3 – PricewaterhouseCoopers LLP (see para 5.21 – 5.28)- Do you have any comments on this case study?

Since the primary regulator for auditors is the Financial Reporting Council, we are unclear as to the benefit and validity of such an announcement, other than to publicise the extent of the FCAs involvement in the London Capital & Finance case. We acknowledge that this in itself has some merit, since it may improve public confidence in the regulator, but it is difficult to see that it meets the public interest test.

Q9: Case Study 4 – CB Payments Limited (see para 5.29 – 5.40)- Do you have any comments on this case study?

We do not believe that a high-level announcement such as the specimen statement included in the case study would have achieved the aim of educating the market. The aim would be better achieved by providing more general communication and detailed guidance to the market through existing mechanisms such as the Dear CEO letters.

Q10: Where we might announce but not name the firm (see paras 5.41 – 5.48)- Do you have any comments on the examples provided of when we might announce but not name the firm?

We support any changes that are required to enable the FCA to make anonymised announcements where such an announcement is of educational benefit to the public or the industry, or it can be demonstrated that such an announcement may improve public and market confidence in the regulator. In line with our response to Q.2 regarding factors that should be considered in deciding whether to name a firm, we do not believe that parliamentary scrutiny should be a driving factor in deciding whether to make an announcement, regardless of whether the firm is being named or not.

We particularly support the concept of a regular 'Enforcement Watch' style communication to the market to achieve some of the aims set out in the consultation.

Q11: We propose including impact as a factor in our public interest framework with a 10-day window for representations. Do you have any comments, data or evidence on the potential impact of our proposals on firms?

No further comments.

Q12: We will continue to consider carefully evidence on growth and competitiveness as we decide on our approach and welcome further feedback. Do you have any comments, data or evidence on the potential impact of our proposals on growth and competitiveness?

No further comments.

Q13: Do you have any other comments in response to our paper?

We welcome the opportunity to respond to this consultation, and fully support and align with the FCA's objectives to reduce consumer harm and create a clean market in which compliant firms can operate. We would also acknowledge and appreciate the FCA's efforts to address industry concerns raised in response to the CP 24/2 part 1.

We also would like to acknowledge that the proposals address the issue that currently 60% of the FCA's enforcement portfolio is in respect of unregulated firms. We agree that the FCA should have adequate powers to reduce consumer harm where a firm sits outside of the regulatory perimeter, and the proposals will go some way to achieving that objective. However, we feel it is difficult to apply the same public interest test to regulated firms and unregulated firms that may, for example, be under investigation for fraud activity, and a different test should be considered.

In the case of regulated firms, we believe the FCA can achieve the objectives set out in the consultation by exercising its existing powers. This could include reviewing its interpretation of the 'exceptional circumstances' test, making smaller, less substantial changes to the Enforcement Guidance, considering its ongoing communication strategy in relation to investigations and themes, and continuing the valuable work to leverage technology, data and efficient processes to improve the effectiveness and timely conclusion of investigations.