

Changes to FCA and PRA enforcement processes

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On 1 February 2017 the FCA and the PRA published a joint policy statement setting out a number of changes to their enforcement decision-making processes (the [Policy Statement](#)).

The changes are relevant to all firms and individuals involved in the provision of financial services.

Background to the Policy Statement

The Policy Statement follows two recent reviews of the financial regulators' enforcement decision-making processes (a HM Treasury review on the regulators enforcement decision making, and a report by Andrew Green QC into the FSA's enforcement action following the failure of HBOS plc) (the Reviews). The Reviews made several recommendations as to ways in which the FCA and PRA could improve their processes.

As a result, in April 2014, the FCA and the PRA published a joint consultation paper on proposals to implement several of the recommendations in the Reviews. In the Policy Statement they respond to comments received on the consultation paper, and set out how the recommendations will change their processes.

Key Changes to FCA and PRA processes

The FCA and PRA have made the following key changes to their processes:

They will provide more information about the manner in which they decide whether an issue is referred for investigation.

The FCA has included a new table in its enforcement referral document, which sets out information as to potential subjects, and the circumstances and reasons why a firm or individual would not be referred for investigation. The FCA has also stated that it will try to identify, and publish, examples of circumstances and reasons why firms and individuals have not been referred for investigation, but confirmed its policy of not making public whether or not a firm or individual is under investigation unless there are exceptional circumstances for doing so.

The PRA intends to publish a short guide on its enforcement processes, including its enforcement referral framework, when it implements the other recommendations in 2017, which is expected to contain similar information.

They will provide more information to the subject(s) of an investigation about the circumstances and reasons why they have been referred for the investigation

The FCA will set out in writing (in the Initial Notice of Investigation) a succinct summary of the potential breaches, an explanation of the matters that are said to give rise to those breaches and an explanation of the criteria it has applied in coming to the decision to refer the matter to investigation.

The PRA will include more information about the basis for a subject's referral for investigation (including details of the context in which the breaches occurred) in its Memorandum of Appointment or accompanying documents.

The occurrence of periodic updates by the investigators to the subjects of the investigation and a constructive dialogue between the two

Once the regulators' investigators are ready to share their indicative plans on the direction of the investigation and the timetabling of key milestones a scoping meeting will take place. Investigators will thereafter, in appropriate cases, provide periodic updates to the subjects of the investigation about the progress of that investigation and should reference and update the indicative timeline. Subjects of investigations will also have the right to request a face to face meeting.

Increased transparency and communication in joint FRC and PRA investigations

The regulators' investigation teams will proactively offer information of material interest to each other, and each other's supervisory teams. The investigation teams will also have a responsibility to keep each other, and the respective supervisory teams, regularly updated and informed.

The changes, which have been incorporated into the FCA handbook, are effective as of 31 January 2017.

Main changes to FCA processes only

Additionally, the FCA has announced the following changes to its processes:

The introduction of a process for partly contested cases

The FCA will introduce a process for allowing parties to partly contest cases. In particular, the process will allow for subjects of investigations to: (i) agree all facts relevant to a proposed action, but contest whether the alleged breach arose from those facts, and (ii) agree one or more of the facts, but not all of those relevant to the action, and contest the narrowed down issues only.

The abolition of penalty discounts at stage 2 (20%) and stage 3 (10%) of settlement process

The FCA noted that the Reviews considered that "removing the discounts currently available at stages 2 and 3 will assist in demarcating, at an early stage, between those cases that can be settled, and those that must be contested". A discount of 30% will remain in fully settled cases where agreement is reached during stage 1, and also in cases where a focused settlement agreement to contest penalty only is reached during stage 1.

The changes, which have also been incorporated into the FCA handbook, will take effect from 1 March 2017.

What impact will the changes have?

The changes are aimed at strengthening the transparency and effectiveness of the FCA and PRA enforcement processes.

It is hoped that the changes will help to focus the minds of the investigators at an early stage which in turn will bring some welcome clarity on the direction of enforcement proceedings and, more precisely, the timetable to bring them to conclusion.

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