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UKSA/Sharesoc reply to “Our Enforcement Guide and publicising enforcement investigations—a new approach”.

<https://www.fca.org.uk/publication/consultation/cp24-2.pdf>

## 1. **About UKSA and ShareSoc**

### ***UKSA (United Kingdom Shareholders' Association)***

UKSA is the oldest shareholder organisation in the UK, with 12,000 members. We are a not-for-profit membership organisation led solely by volunteers. We believe that investors have responsibilities to society, as well as rights, and our interests extend to enabling and encouraging the investors of the future.

UKSA is constituted as a company limited by guarantee, answerable only to our full members. We are resolutely independent of the financial and corporate sectors and funded only by individual donations.

Our Policy Team<sup>1</sup>, all experienced investors, includes individuals with deep practical experience of accounting, taxation, regulation, and corporate management, without personal conflicts of interest, and mostly retired. See [www.uksa.org.uk](http://www.uksa.org.uk)

### ***ShareSoc (UK Individual Shareholders Society)***

ShareSoc, a not-for-profit company, is the UK's largest membership organisation for individual investors with more than 16,000 members and followers. It represents the interests of individual investors to regulators and government, and offers a range of [investor education](#), information and networking services..

As well as lobbying government and regulators, ShareSoc campaigns on specific company issues and on individual investors' wider concerns. It ShareSoc has had notable success in delivering change at a number of companies and has influenced

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<sup>1</sup> The Policy Team members are listed with short biographies at <https://www.uksa.org.uk/sites/default/files/2023-02/PTBIO.pdf>

government policy and legislation. ShareSoc aims to ensure that individual investors have their proper say in the businesses in which they invest.

ShareSoc's [Member Services](#) include in-depth company reports, investor education resources and networking opportunities with other investors. It also promotes Shareholder Engagement with quoted companies through the many events organised for members. And provides online forums for the exchange of views between investors. See [www.sharesoc.org](http://www.sharesoc.org)

## 2. Introduction

ShareSoc and UKSA welcome the FCA's proposals to increase transparency over enforcement actions. A longstanding complaint of our members is the lack of transparency and visibility of the current enforcement process. The absence of feedback when complaints are made about firms and individuals seriously harms the FCA's reputation as an effective regulator.

We note that the proposed changes do not explicitly address directly this issue of providing better feedback to complainants and would urge the FCA also to consider this issue, within the confidentiality constraints that you are subject to, by law.

We are happy for you to name us publicly as a respondent. We would also be delighted to meet with you to discuss our response.

## 3. Responses to your 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.”

We agree in principle with the proposal to announce investigations in the way described. Our reason would be that it would cause firms to focus more carefully on the interpretation boundaries of regulations. Firms will clearly want to avoid any investigation given that (unlike now) its existence will immediately become public. The overall effect may well be to reduce the number of cases where the enforcement is needed. In addition, the announcement of investigations will provide more transparency to those who raise matters of concern regarding firms with the FCA.

To ensure confidence in the fairness of the FCA's enforcement processes, the FCA should provide publicly available information about the processes that it carries out before commencing enforcement action.

**“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.”

The public interest framework is intended to:

- “enable the interests of potentially affected customers, or consumers or investors more generally, to be protected
- help our investigation, for example by encouraging potential witnesses or whistleblowers to come forward
- address public concern or speculation, including by correcting information already in the public domain
- provide reassurance that we are taking appropriate action
- deter future breaches of our rules or other requirements or prohibitions that we are responsible for enforcing, or
- otherwise advance one or more of our statutory objectives, including protecting and enhancing the integrity of the UK financial system”.

The phrase “protecting and enhancing the integrity of the UK financial system” is capable of being misunderstood. If it means having a financial system where customers savings are protected, then we are of course supportive of this objective. If it means protecting the commercial interests of the financial services industry, then we would be very concerned. It would help if the FCA could clarify how it interprets this statutory objective.

We believe the FCA's overriding statutory objective should be to protect consumers from bad conduct. However, we endorse the first five factors listed while, as explained above, seek clarification regarding the sixth.

**“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.”

It is quite feasible for an otherwise well-run firm to recover from enforcement action being announced, especially if the enforcement comes to nothing. But such an announcement could have a catastrophic effect on an individual's life and career. Consider the case where the action is announced, but the enforcement fails.

Thus we do not support naming individuals at the enforcement stage of the investigation, unless the individuals concerned change firms during the process in which case we suggest the FCA notify the firm the person moves to. For the outside world it is the organisation that should be the focus of attention when things go wrong.

Otherwise, we agree with your proposed approach to announcements regarding individuals.

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

We agree with the proposed content of your announcements, except to note as before our reservations about disclosing the identity of individual subjects of investigations.

**“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.”

We note again our reservations about naming individual subjects of investigations. Otherwise, we agree.

**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.

We strongly agree that publishing case closure is a good way of increasing the visibility of completed work and ensuring that you are accountable for the pace and efficiency of enforcement activities. Updates, especially regarding timescales, would be welcomed by our members.

### **Questions 7-16**

We have no strong views on questions 7-16, which are mostly technical matters concerning the revision of your enforcement guide.

### **Whistleblowing**

Although whistleblowing was mentioned, there was little discussion about how they might be protected. We think such protection is currently poor, is a separate and important issue, and should be addressed by the FCA as a matter of the highest priority.