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GLOBAL INVESTIGATIONS BULLETIN

OUT WITH THE OLD: FCA RESHAPES ITS ENFORCEMENT GUIDE //

The FCA has published a revised version of its Enforcement Guide (ENFG), which applies to investigations launched on or after 3 June 2025. This marks the conclusion of a process initiated by the FCA in early 2024, aimed at making its enforcement actions more transparent and efficient. Some of the more controversial proposals originally consulted on - most notably the plan to publicise the names of firms under investigation at an earlier stage (the so-called 'name and shame' proposals) – have not been adopted. Nonetheless, the new ENFG represents a significant overhaul of the previous guide and introduces a number of important changes, which we outline below.

'Name and shame' abandoned

In Policy Statement PS25/5, which accompanied the new ENFG, the FCA confirmed that it is shelving the majority of its 'name and shame' proposals. Instead, it will retain its existing approach of announcing enforcement investigations only in 'exceptional circumstances'. However, the updated ENFG introduces three new scenarios - in addition to the 'exceptional circumstances' test - where the FCA may proactively disclose that an investigation is underway.

- The first scenario permits the FCA to name an individual or entity under investigation for suspected unauthorised activity. This will generally apply where there are concerns about potential consumer harm, but the FCA lacks supervisory or intervention powers to protect those consumers.
- The second will allow the FCA to publicly confirm that it is investigating a subject if they (or an affiliated company or a regulatory body) have already made that fact public.
- The third will allow the FCA to announce that it is investigating a particular matter on an anonymised basis. The FCA may do this where it would be desirable to educate people generally about the types of conduct being investigated or to encourage firms to comply with FCA rules or other requirements.

Overall, the FCA's revised policies, as set out in the new ENFG, are significantly more measured than those originally set out in its consultation. Nonetheless, several areas of uncertainty remain. Under the previous guide, the 'exceptional circumstances' test meant that the FCA rarely made proactive announcements about its investigations. However, the reframed transparency policy - together with its evolution throughout the consultation process - suggests a likely increase in the number of investigations disclosed on a proactive basis. That said, the FCA will need to exercise caution in how it communicates such disclosures. Even anonymised announcements may prompt speculation by the market as to the identity of the firms or individuals involved, potentially causing significant financial and reputational harm - the very concern that ultimately led the FCA to scale back its original proposals.

Other changes in the new guide

Amid the significant media focus on the FCA's 'name and shame' proposals, it is easy to overlook the substantial number of other changes introduced in the revised ENFG. While many of these revisions are more technical in nature, taken together they reflect a material restructuring of the guide.

Several sections have been relocated; for example, content relating to the FCA's powers to impose a variation and cancel a permission - now considered more supervisory than enforcement-focused - will be transferred to the Supervision Manual (SUP). Information on less frequently used powers, such as injunctions, insolvency, collective investment schemes, auditor and actuary disqualification, have been streamlined and moved to appendices. Additionally, content the FCA viewed as duplicative has been removed entirely. Although the result is a shorter and more consolidated document, these changes may present challenges, particularly where reduced detail makes it more difficult to anticipate how the FCA will exercise certain powers in practice.

Other key changes introduced by the ENFG include:

- **Lawyer attendance at compelled interviews:** The updated ENFG introduces a policy allowing the FCA to refuse the attendance of legal advisers at a compelled interview, if their presence is considered likely to prejudice the investigation - for example, where the same lawyer represents both the firm, and the individual involved. While this concern is not new, it remains contentious. During consultation, some stakeholders argued that existing professional conduct rules which require solicitors to manage conflicts of interest, already provide sufficient safeguards and that individuals should be free to choose their legal representative. Despite this, the FCA has retained the updated wording, emphasising that it is for the FCA to assess whether a lawyer's presence could prejudice an investigation. This may lead to more frequent challenges around legal representation at compelled interviews. Similar debates are also common in investigations by the SFO.
- **Privilege in relation to firm-commissioned reports:** The FCA has long recognised the principle of legal professional privilege, including the ability for firms to disclose privileged material on a limited waiver basis. However, the revised ENFG clarifies that the FCA may accept material on the basis that privilege is asserted, but without accepting that privilege applies or agreeing to its scope. While the FCA maintains this does not reflect a change in its position, the updated wording indicates a greater readiness to challenge whether privilege genuinely applies to such material.
- **Scoping meetings:** The FCA will no longer routinely hold scoping meetings - used to discuss the scope of an investigation and the process with the firm or individual concerned. Instead, the decision to hold a scoping meeting will be made on a case-by-case basis. However, the FCA has said it will generally agree to a scoping meeting where it is specifically requested by the subject of the investigation.
- **Private warnings:** The FCA has also confirmed that it has not issued private warnings for some time and, as a result, all references to them are being removed from the ENFG. While the FCA previously considered private warnings a useful means of providing feedback on its expectations to firms and individuals, it now believes that they lack the transparency associated with other enforcement tools.

For firms and individuals subject to FCA enforcement action, the implications of these updates will depend heavily on the specific facts and context of each case. As ever, close attention to the detail of the new guide - and how the FCA apply it in practice - will be key to navigating investigations effectively.

RECENT NEWS //

FCA and PRA Round-up: Lack of Integrity Findings Leads to Bans for Jes Staley and Others; FCA Cracks Down on Financial Crime Control Failures; PRA Fines Vocalink and Barents Reinsurance; FCA Rules on Non-Financial Misconduct Extended

At the end of June, the Upper Tribunal issued its judgment upholding the FCA's findings that former Barclays CEO Jes Staley breached key provisions of the FCA's Handbook. Specifically, the Tribunal found that Staley breached: ICR 1 (the requirement to act with integrity), ICR 3 (the requirement to be open and cooperative with the regulator), and SMCR 4 (the requirement to disclose information of which the Regulator would reasonably expect notice). These breaches related to misleading statements about Staley's relationship with Jeffrey Epstein. The Tribunal concluded that Staley acted recklessly and demonstrated a lack of integrity, justifying the FCA's decision to impose a Prohibition Order on the basis that he is not a fit and proper person to perform senior management functions. The judgment reinforces the importance for senior managers and regulated individuals of fully understanding their obligations under the Conduct Rules and ensuring that any communications with regulators are fair, accurate, and complete. The judgment also highlights the value of confirming verbal exchanges with the Regulator in writing to avoid misunderstandings.

This approach has been echoed in other recent enforcement actions. In July, the FCA fined and banned Mr Alba, former Deputy CEO of H2O AM LLP, for providing false and misleading information during an investigation into inadequate due diligence on investments linked to the Tennor Group—citing a lack of integrity. Similarly, after the Supreme Court refused permission to appeal in *Markou v FCA*, the FCA issued a final notice banning Mr Markou, finding that he acted recklessly and without integrity by allowing unauthorised transactions, failing to address mortgage fraud risks, and inadequately supervising advisers.

The FCA has also imposed significant fines on two banks for failings in their financial crime systems. Monzo was fined £21 million after the FCA concluded that its rapid growth had outpaced its financial crime controls. Specifically, the FCA identified weaknesses in the bank's customer onboarding processes, risk assessments, and transaction monitoring systems which left the bank vulnerable to financial crime - an issue not uncommon among fast-scaling challenger banks.

Barclays Bank UK PLC and Barclays Bank PLC were also jointly fined £42 million for separate AML failings. In one case, Barclays did not conduct certain checks before opening a client money account for WealthTek, which was not authorised to hold client funds - exposing deposits to risk. In the other, the bank failed to fully identify and manage money laundering risks associated with its customer Stunt & Co, which received funds linked to a known money laundering vehicle, Fowler Oldfield.

Separately, the PRA has issued its first fines against both a financial market infrastructure (FMI) firm and a reinsurer. Vocalink Limited was fined £11.9 million for failing to fully implement a 2021 remediation programme, citing poor risk integration and weak governance. Barents Reinsurance S.A.'s London Branch was fined £1.785 million for governance and reporting failures while operating under the Temporary Permissions Regime. The reinsurer is now in Supervised Run-Off and winding down its UK operations.

Also in July, the FCA moved to the next stage in its bid to tackle non-financial misconduct (NFM) in the financial services sector, with the publication of consultation paper CP25/18. With effect from 1 September 2026, the FCA will extend the scope of its conduct rules (COCON) to make it clear that serious misconduct such as bullying, harassment and violence is a matter of regulatory concern at all firms subject to the senior managers and certification regime (SMCR), and not just banks. This change is introduced through a new rule which removes the previous carve-out for non-bank firms. In addition, the FCA has proposed new guidance to help interpret and apply the conduct rules, particularly in relation to fitness and propriety assessments. The FCA invites feedback on the proposals, with responses due by 10 September 2025.

FOS Reform

On 15 July, the Government published a wide-ranging package of financial regulatory reforms (the Leeds Reforms), which included a formal consultation on reforming the Financial Ombudsman Service (FOS). The consultation follows a Treasury-led review, launched in response to concerns over inconsistent outcomes between FOS and FCA decisions, as well as a sharp rise in FOS complaints - especially in the motor finance and consumer credit

sectors. The Government proposes legislative changes to better align the FOS with FCA standards, clarify its role, and deliver a more coherent and predictable redress framework for firms and consumers. Key Government proposals include:

- Amending the FOS' 'fair and reasonable' test to better align with FCA rules – meaning the FOS will be required to find that a firm's conduct is fair and reasonable where it has complied with relevant FCA rules, in accordance with the FCA's intent for those rules.
- Introducing a mechanism for the FOS to seek the FCA's view on the interpretation of its rules.
- Allowing firms and complainants to refer an issue to the FCA, for clarity on its rules, before the FOS issues a final decision.
- Giving the FCA more flexibility to manage and intervene quickly on mass redress events, including pausing complaints handling without industry consultation.
- Introducing an absolute time limit for bringing cases to the FOS of 10 years, subject to exceptions, for example, for longer-term products.

While legislative change will be required to implement many of the Government's proposals, both the FCA and the FOS are expected to begin adopting some of the proposed reforms in advance.

Accompanying the Government's consultation, the FCA and FOS also jointly published a response to their earlier Call for Input (which was launched last year to explore ways to recalibrate and modernise the consumer redress landscape). The FOS and the FCA are together, consulting on several complementary changes aimed at helping firms identify and resolve issues before complaints escalate and giving firms and customers greater predictability. The joint FCA/FOS consultation proposals include:

- Gatekeeping of FOS complaints at a "pre-registration" stage to resolve fundamental deficiencies or wait for FCA guidance.
- Criteria for treating an issue as a mass redress event (e.g. volume and cost, impact on firms and the market) with the FCA then to actively manage the issue.
- An ability for firms to ask the FOS to consider a representative sample of "lead complaints" first.

Both consultations close on 8 October 2025.

LIBOR Traders' Convictions Overturned by Supreme Court

The Supreme Court has overturned the convictions of Tom Hayes and Carlo Palombo, previously found guilty in 2015 and 2019, respectively, for conspiring to manipulate benchmark interest rates—LIBOR and EURIBOR. The cases reached the Supreme Court following a referral by the Criminal Cases Review Commission, which was prompted by the collapse of similar prosecutions in the US.

At the heart of the appeal was the question of whether the traders' submissions were "false or misleading" under the relevant benchmark definitions. The Supreme Court determined the following two issues of general public importance:

1. That a LIBOR or EURIBOR submission influenced by trading motives is not automatically dishonest, and such influence does not, in itself, render a submission false or misleading; and
2. That a submission need not reflect the absolute lowest rate at which a bank could borrow - it may instead fall within a range of legitimate borrowing rates.

The Court unanimously held that determining benchmark rates involves an element of subjective judgment, and that a submission may still be genuine even if influenced by trading considerations - provided it reflects the submitter's honest opinion. Whether that threshold is met is ultimately a matter for the jury.

Critically, the trial judges in both cases had misdirected the juries by instructing them that any influence from trading advantage automatically rendered the submissions dishonest. This, the Supreme Court found, deprived the juries of the opportunity to determine whether the defendants intended to make false or misleading submissions, rendering the trials unfair. The Court stressed that it was for the jury, not the judge, to assess whether such influence amounted to dishonesty.

The ruling represents a setback for the Serious Fraud Office (SFO), which brought the original prosecutions and has confirmed it will not seek a retrial. It may also have wider implications for the convictions of seven other individuals found guilty of similar conduct. Some of those individuals have already stated their intention to appeal.

SFO Round-Up: Annual Report Released; Six Charged in Pension Fraud Investigation; Arrest in Timeshare Fraud Probe; New Investigation into Rockfire; First Crypto Freezing Order Under New Powers; and Ongoing Push for International Collaboration

The Serious Fraud Office (SFO) has published its 2024-2025 Annual Report, marking the first full year under its new five-year strategy aimed at strengthening its workforce, harnessing technology, and expanding international collaboration. The report confirms that in the year ending March 2025, the SFO opened eight new investigations, conducted four multisite operations to seize materials, and charged 11 individuals, including in the Glencore and Axiom matters. It secured over £1.3 million in proceeds of crime (a decrease from £1.7 million the previous year) and made use of its first Unexplained Wealth Order. The report also highlights the agency's ongoing efforts to improve whistleblower incentivisation.

Operational metrics showed modest improvement, with the average time from case opening to first outcome falling slightly from 4.4 to 4.3 years.

Key case developments included the conviction of former Ministry of Defence official Jeffrey Cook, the closure of the Bombardier investigation, and the launch of a joint bribery investigation with France's PNF into Thales. The report also notes the agency's novel action against Güralp Systems for alleged breaches of its 2019 Deferred Prosecution Agreement.

In addition, the report highlights modest progress in its digital capabilities, including its pilot of Technology Assisted Review to support disclosure and the procurement of a new case management system to improve efficiency.

With the SFO's updated corporate cooperation guidance (published in April 2025) now in effect, next year's report may offer a clearer picture of whether these reforms result in a return to corporate settlements (none having been concluded since 2021) and more meaningful reductions in case timelines.

Other recent developments at the SFO include charges brought against six individuals for conspiracy to defraud and money laundering offences, following a long-running investigation into a pension scheme. It has also made an arrest in connection with its ongoing investigation into a fraudulent timeshare services scheme.

In a separate development, the SFO has opened a new investigation into Rockfire Investment Finance Limited, following the issuance of several Section 2 notices. This investigation concerns suspected fraud against Thurrock Council involving investments in renewable energy bonds.

The SFO also recently made its first use of new statutory powers to freeze cryptocurrency assets. This was in connection with its ongoing investigation into the collapsed broadcast company Arena TV. The SFO froze over £10,000 in cryptoassets belonging to the company's CEO. These assets will be held for up to nine months as part of an investigation that has already led to three arrests and multiple property searches.

The SFO also continues to advance its international cooperation agenda. In June, Director Nick Ephgrave met with the head of the Criminal Division at the U.S. Department of Justice, underscoring the agency's commitment to cross-border collaboration. The meeting followed the DOJ's release of its new white-collar crime enforcement plan. That same month, the SFO also formally joined the International Anti-Corruption Coordination Centre (IACCC), with the objective of further strengthening the UK's ability to address corruption and illicit finance globally. This move builds on recent efforts to foster closer ties with international partners, including the creation of a joint anti-corruption taskforce with authorities in France and Switzerland.

Bribery Trial Collapses Over CPS Disclosure Failures

The bribery case against former Union Bank executive Dolapo Alao, oil executive Kase Lawal, and his associate Gabriel Airewele has been dropped due to disclosure failures by the Crown Prosecution Service (CPS). The case, which was scheduled for trial in September, was abandoned after the CPS admitted "it had not fully met its disclosure obligations". All charges have now been formally discontinued. This outcome reflects broader concerns across the UK legal system, as disclosure failures have affected not only CPS-led prosecutions but also high-profile Serious Fraud Office (SFO) cases in recent years.

Leveson Review of the Criminal Courts

On 9 July 2025, Part 1 of the Independent Review of the Criminal Courts, led by Sir Brian Leveson, was published. Commissioned by the Ministry of Justice, the review addresses the deepening crisis in the UK criminal justice system, including a backlog of over 77,000 Crown Court cases, with some trials listed as far out as 2029. The report calls for an overhaul of criminal procedure and structures, stating that neither increased funding nor improved efficiency alone will resolve the crisis. It puts forward 45 recommendations, some requiring new legislation. Key proposals include:

- Judge-only trials for serious and complex fraud cases.
- Giving defendants the option of judge-only trials in the Crown Court.
- Creating a jury-free division of the Crown Court for either-way offences.
- Removing the right to elect a Crown Court trial for less serious offences.
- Limiting automatic appeals from the Magistrates to the Crown Court.
- Increasing sentence reductions for early guilty pleas to 40%.
- Expanding out-of-court disposals for low-level offences.

While many proposals appear sensible and pragmatic, removing the right to a jury trial in serious fraud cases is one of the more contentious proposals, and raises more questions than it answers about its ability to meaningfully reduce the backlog.

Supreme Court upholds Sanctions Designation

The Supreme Court has dismissed appeals by Mr Shvidler and Dalston Projects challenging UK sanctions imposed under the Russia (Sanctions) (EU Exit) Regulations 2019. The Court upheld the sanctions as proportionate interferences with their human rights, aimed at deterring Russian aggression in Ukraine. A majority found the measures rationally connected to legitimate aims, granting the government a wide margin of appreciation. However, Lord Leggatt dissented in Shvidler's case, calling the indefinite freezing of a British citizen's assets oppressive and disproportionate.

OTSI/OFSI Round-up: Proposed Civil Enforcement Reforms

HM Treasury has launched a consultation on proposed reforms to the Office of Financial Sanctions Implementation (OFSI) civil enforcement processes, aiming to enhance the efficiency, transparency, and effectiveness of UK financial sanctions enforcement. Key proposals include:

- A settlement scheme for monetary penalties.
- An Early Account Scheme (EAS) to allow subjects to provide a full account early in investigations, in exchange for an increased discount on fines.
- A streamlined process with indicative penalties for minor breaches (e.g. reporting or licensing offences).
- Updated public guidance on case assessments and penalty reductions for voluntary disclosure and cooperation.
- Changes to statutory penalty maximums.

These reforms apply only to OFSI's civil enforcement powers related to financial sanctions, the UK Maritime Services Ban, and the Oil Price Cap - they do not affect criminal enforcement or non-financial sanctions. The consultation will close on 13 October 2025.

FRC Round-up: Annual Enforcement Review; New Audit Investigations into Deloitte; and Sanctions for KPMG

On 24 July, the Financial Reporting Council (FRC) published its Annual Enforcement Review for the year ending March 2025. The report outlines the FRC's enforcement activity over the period, including:

- Nine investigations concluded by settlement.
- Two cases closed with no further action.
- Twelve matters resolved through constructive engagement.
- Financial sanctions totalling £14.5 million imposed.

According to the report, 90% of applicable investigations were completed or resolved within two years - exceeding both the FRC's KPI and past performance. The report also highlights the FRC's ongoing End-to-End (E2E) Review of its enforcement process, including governance and key decision making. This includes plans to introduce a graduated range of regulatory responses to enhance its enforcement toolkit.

Also in July, the FRC launched an investigation into Deloitte's audits of Glencore plc and Glencore Energy UK Limited, examining whether adequate consideration was given to legal and regulatory risks at the companies, in light of now resolved bribery investigations. Deloitte is also under investigation, alongside Azets Audit Services for its audit of Stenn International and Stenn UK. Stenn, an invoice financing firm, collapsed in December 2024 after a lender flagged suspicious transactions.

Separately, KPMG and one of its audit partners have been sanctioned for breaching independence rules in their audit of Carr's Group plc. KPMG was found to have relied inappropriately on the work of another firm.

Home Office Responds to Ransomware Consultation

The Home Office has published its response to the 2025 consultation on legislative proposals to tackle ransomware, which it identifies as the UK's most serious organised cybercrime threat. The feedback was broadly supportive and emphasised the need for clarity, proportionate penalties, and improved support for victims.

Key Measures and Next Steps:

- **Targeted Ban on Payments:** the government plans to introduce a ban on ransomware payments for public sector bodies and regulated CNI operators.
- **Payment Prevention:** A mechanism requiring victims to report their intent to pay a ransom is under development.
- **Mandatory Reporting:** Victims will be required to submit an initial report within 72 hours and a full report within 28 days.

If progressed, this package of proposals would be the first specific measures in UK law to counter ransomware.

POCA Threshold Raised to £3,000

Coming into force on 31 July 2025, a new statutory instrument (SI 2025/877) raises the financial threshold for two exemptions under the Proceeds of Crime Act 2002 (POCA) from £1,000 to £3,000. The updated limits apply to circumstances in which firms may be exempt from committing certain money laundering offences - specifically, when operating an account or returning funds in order to terminate a business relationship, where criminal activity is suspected.

Raising the threshold aims to free up law enforcement to focus on higher-impact asset denial and disruption of criminal activity. It is also expected to ease the reporting burden on businesses by reducing the number of defence against money laundering suspicious activity reports submitted to the UK Financial Intelligence Unit, allowing firms to reallocate resources to higher-value tasks. The change should also reduce disruption for legitimate banking customers by limiting unnecessary account freezes where no further action is taken.

HORIZON SCANNING //

What to look out for:

- **New Corporate Offence Coming into Force:** The countdown is nearly complete: the new "failure to prevent fraud" offence under the *Economic Crime and Corporate Transparency Act 2023* will take effect on 1 September 2025. For detailed analysis and practical guidance on preparing for the new offence, see our client briefings: *Two Steps Forward, No Steps Back* and *Countdown to Compliance*.
- **Next Phase in the Motor Finance Dispute:** The much-anticipated Supreme Court judgment in *Johnson v FirstRand Bank Ltd, Wrench v FirstRand Bank Ltd, and Hopcroft v Close Brothers* is expected imminently, and the FCA has committed to announcing its decision on any potential redress scheme within six weeks of the ruling.
- **Passage of the Crime and Policing Bill:** which received its first reading in the House of Lords on 19 June 2025 and is set to progress with cross-party backing. The Bill proposes to extend the new senior manager test for attributing liability to corporates, in section 196 of the *Economic Crime and Corporate Transparency Act*, to all criminal offences - not just economic crimes.

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