

Telephone: 020 7066 9346  
Email: [enquiries@fs-cp.org.uk](mailto:enquiries@fs-cp.org.uk)

Law and Policy Team  
Enforcement and Market Oversight Division  
Financial Conduct Authority  
25 The North Colonnade  
Canary Wharf  
London  
E14 5HS

12 July 2016

Dear Sir/Madam,

## **CP16/10 Proposed Implementation of the Enforcement Review and the Green Report**

The Financial Services Consumer Panel is pleased to respond to the proposals set out in CP16/10.

The Panel has long argued that transparency can be an effective regulatory tool. To act as a deterrent, enforcement must change the behaviour of firms. That means they need to see that bad things happen to firms which break the rules. Firms must be aware of enforcement action against other firms, which may not always be the case, especially with smaller players in the market.

We understand the view that early settlement can benefit consumers by getting compensation to them earlier than enforcement proceedings would have done. However, early settlement means a loss of transparency. Firms' misdemeanours are not made public so cannot be used by consumers to make decisions, and the deterrent effect is lost.

### Transparency

The Panel urges the FCA to publish more information on early intervention whether from specific cases or from thematic reviews. While we understand the sensitivities we do not agree that firm confidentiality should always be maintained. Obviously the firm in the spotlight will always be reluctant to be identified. However, other firms need more information to help them learn lessons. Moreover, consumers may believe a firm's conduct is fine, if information to the contrary is not available.

We believe that deterrence could be increased if the regulator were to harness the power of consumers to 'co-regulate' the market<sup>1</sup>. With better information, consumers could choose not to do business with badly behaved firms, or to switch to better behaved ones. Such action – or the threat of it – could amplify the impact of penalties or other enforcement action, by giving firms a clearer incentive to improve behaviour and to treat customers fairly, thus driving competition. The current lack of transparency about early intervention will only encourage firms to negotiate privately.

### Warning notices

We question the effectiveness of warning notices, which we believe should contain more information and not be anonymised. Warning notices could be aligned more with criminal cases, where the accused is named before being found guilty or not-guilty. As we have

---

<sup>1</sup> [https://www.fs-cp.org.uk/sites/default/files/consumers\\_as\\_co-regulators\\_final\\_0.pdf](https://www.fs-cp.org.uk/sites/default/files/consumers_as_co-regulators_final_0.pdf)

said above, increased transparency can give firms a clearer incentive to improve behaviour and treat customers fairly.

#### Partly contested cases

The Panel agrees with the proposal to allow partly contested cases, where firms are disputing the penalty only, to go to the Regulatory Decisions Committee (RDC). However, we question whether it is right for the level of discount to remain the same for settled cases as for partly contested, which will inevitably use more resource.

#### Option for an expedited route to tribunal

We understand the rationale for introducing this option. The FCA should monitor how often it gets used and the impact on penalties and redress.

#### Effectiveness of enforcement decisions

Finally, we urge the FCA to develop metrics in order to assess the effectiveness of its enforcement decisions. It is impossible to know what longer-term impact penalty and enforcement decisions were having on firm culture and behaviours without some form of evaluation.

Yours sincerely

Sue Lewis  
Chair  
Financial Services Consumer Panel