ENFORCEMENT GUIDE (AMENDMENT) INSTRUMENT 2026

Powers exercised

A. The Financial Conduct Authority ("the FCA") makes this instrument in the exercise of the powers in section 139A (Power of the FCA to give guidance) of the Financial Services and Markets Act 2000 ("the Act").

Commencement

B. This instrument comes into force on 31 July 2026.

Amendments to material outside the Handbook

C. The Enforcement Guide (ENFG) is amended in accordance with the Annex to this instrument.

Citation

D. This instrument may be cited as the Enforcement Guide (Amendment) Instrument 2026.

By order of the Board
30 July 2026

Annex

Amendments to the Enforcement Guide (ENFG)

In this Annex, underlining indicates new text and striking through indicates deleted text.

2 Conduct of typical enforcement investigations

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2.3 Notifying the person under investigation

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2.3.2 G In certain types of investigations, the *FCA* may not know the identity of the perpetrator or may be looking into market circumstances at the outset of the investigation rather than investigating a particular *person*. These investigations could relate to potential ~~*insider dealing*~~ insider dealing, ~~*market abuse*~~ market abuse, misleading statements and impressions offences, breaches of the *general prohibition*, the restriction on *financial promotion* or the prohibition on promoting *collective investment schemes*. In those circumstances, the *FCA* will give an indication of the nature and subject matter of its investigation to those who are required to provide information to assist with the investigation. As soon as a *person* becomes the focus of the *FCA's* enquiries, the *FCA* will consider whether it is appropriate to notify that *person* that they are under investigation.

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2.6 Use of statutory powers to require the production of documents, the provision of information or the answering of questions

2.6.1 G The *FCA's* standard practice is to use statutory powers to require the production of documents, the provision of information or the answering of questions in interview. This is for reasons of fairness, transparency and efficiency. It will sometimes be appropriate to depart from this standard practice. For example:

(1) For suspects or possible suspects in criminal or ~~*market abuse*~~ market abuse investigations, the *FCA* may prefer to question that *person* on a voluntary basis, possibly under caution. In such a case, the interviewee does not have to answer but, if they do, those answers may be used against them in subsequent proceedings, including criminal or ~~*market abuse*~~ market abuse proceedings.

…

…

2.8 Approach to interviews and interview procedures

…

Interviews under caution

2.8.5 G Individuals suspected of a criminal offence may be interviewed under caution. These interviews will be subject to all the safeguards of the relevant Police and Criminal Evidence Act Codes and are voluntary on the part of the suspect. The *FCA* will warn the suspect at the start of the interview of their right to remain silent (and the consequences of remaining silent) and will inform the suspect that they are entitled to have their own legal adviser present. The *FCA* will also give a cautionary warning in similar terms to interviewees who are the subject of ~~*market abuse*~~ market abuse investigations.

Subsequent interviews

2.8.6 G If a suspect has been interviewed by the *FCA* using statutory powers, before they are re-interviewed on a voluntary basis (under caution or otherwise), the *FCA* will explain the difference between the 2 types of interview. The *FCA* will also tell the individual about the limited use that can be made of their previous answers in criminal proceedings or in proceedings in which the *FCA* seeks a penalty for ~~*market abuse*~~ market abuse under Part VIII of the *Act*.

…

3 Other matters relevant to enforcement investigations

…

3.6 FCA approach to firms conducting their own investigations in anticipation of enforcement action

Firm-commissioned reports: the desirability of early discussion and agreement where enforcement is anticipated

…

3.6.6 G In certain circumstances the *FCA* may prefer that a *firm* does not commission its own investigation (whether an internal audit report or a report by external advisers) because action by the *firm* could itself be damaging to an *FCA* investigation. This is true in particular of criminal investigations, where alerting the suspects could have adverse consequences. For example, where the *FCA* suspects that individuals are abusing positions of trust within financial institutions and that an ~~*insider dealing*~~ insider dealing ring is operating, it might notify the relevant *firm* but would not want the *firm* to embark on its own investigation: to do so would alert those under investigation and prejudice ongoing monitoring of the suspects and other action. *Firms* are therefore encouraged to be alive to the possibility that their own investigations could prejudice or hinder a subsequent *FCA* investigation and, if in doubt, to discuss this with the *FCA*.

The *FCA* recognises that *firms* may be under time and other pressures to establish the relevant facts and implications of possible misconduct, and will have regard to this in discussions with the *firm*.

…

6 Prosecution of criminal offences

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6.3 Criminal prosecutions in cases of market abuse

6.3.1 G In some cases, there will be instances of market misconduct that may arguably involve a breach of the criminal law as well as ~~*market abuse*~~ market abuse. When the *FCA* decides whether to commence criminal proceedings rather than impose a sanction for ~~*market abuse*~~ market abuse in relation to that misconduct, it will apply the basic principles set out in the Code for Crown Prosecutors (https://www.cps.gov.uk/publication/code-crown-prosecutors).

6.3.2 G The factors which the *FCA* may consider when deciding whether to commence a criminal prosecution for market misconduct rather than impose a sanction for ~~*market abuse*~~ market abuse include, but are not limited to, the following:

…

…

6.3.4 G It is the *FCA's* policy not to impose a sanction for ~~*market abuse*~~ market abuse where a *person* is being prosecuted for market misconduct or has been finally convicted or acquitted of market misconduct (following the exhaustion of all appeal processes) in a criminal prosecution arising from substantially the same allegations. Similarly, it is the *FCA's* policy not to commence a prosecution for market misconduct where the *FCA* has brought or is seeking to bring enforcement proceedings for ~~*market abuse*~~ market abuse arising from substantially the same allegations.

App 1 FSMA and other powers

App 1.1 Injunctions

Injunctions (or in Scotland, interdicts)

1.1.1 G The *FCA* has powers under the *Act* to seek *injunctions* for breaches of a relevant requirement or in cases of ~~*market abuse*~~ market abuse. It also has powers under the courts' inherent jurisdiction – for example, to apply for asset freezing *injunctions*. The broad test the *FCA* will apply when it decides whether to seek an *injunction* is whether the application would be the most effective way to deal with the *FCA's* concerns.

…

App 1.8 Restitution orders

1.8.1 G The *FCA* has power to apply to the court for a restitution order under section 382 of the *Act* and (in the case of ~~*market abuse*~~ market abuse) under section 383 of the *Act*. It also has an administrative power to require restitution under section 384 of the *Act*.

…

App 2 Non-FSMA powers

App 2.1 Statements of policy

App 2.1.1 G This appendix identifies legislation other than the *Act* which gives the *FCA* investigation and enforcement powers. This is set out in 2 tables at App 2.1 and App 2.2.

The table at App 2.1 identifies legislation which requires the *FCA* to make a statement of policy. Where a statement of policy is required, it sets out that statement of policy.

The table at App 2.2 identifies other legislation which gives the *FCA* investigation and enforcement powers other than the *Act*.

The table below identifies the statements of policy which the *FCA* is required to make under legislation other than the *Act*.

In each case, references in *DEPP* to the *Act*, provisions of the *Act* and *persons* regulated under or otherwise subject to the *Act* are to be read as references to that other legislation, equivalent or otherwise applicable provisions of that other legislation and *persons* regulated under or otherwise subject to that other legislation, as appropriate.

App 2.1.2 G The *FCA's* approach to the ~~exercise of the powers~~ use of powers under the legislation listed in the table below is consistent with the use of powers under the *Act* and the *FCA's* general policy outlined in this guide, unless stated otherwise. Where the legislation gives the *FCA* powers equivalent to those in the *Act* to cancel, vary or impose a requirement on a *person's* authorisation or registration, the *FCA's* approach is consistent with that outlined in *SUP* 6B.

Legislation	Description	Statement of Policy
…		
The Payment Services Regulations 2017 (www.legislation.gov.uk/uksi/2017/752/contents)	The *FCA* has investigation and sanctioning powers in relation to both criminal and civil	**Penalty policy** *DEPP* 6.2 and *DEPP* 6.4 (relevant factors) and *DEPP* 6.5 to *DEPP*

	breaches of the *Payment Services Regulations*. ~~[**Note**: *ENFG* App 2.2 sets out the *FCA's* general approach to the exercise of powers under the *Payment Services Regulations*.]~~	6.5D (regarding level of a financial penalty). The *RDC* is the *FCA's* decision maker for some of the decisions under the *Payment Services Regulations* as set out in *DEPP* 2 Annex 1G. **Conduct of interviews in response to overseas requests** Procedures in *DEPP* 7 (as required by section 169 of the *Act* for the purposes of the *Payment Services Regulations*).
…		

App 2.2 Other general policy

App 2.2.1 G The table below sets out the *FCA's* general policy on the exercise of powers under the legislation listed.

App 2.2.2 G The *FCA's* approach to the ~~exercise of the powers~~ <u>use of powers under the legislation</u> listed in the table below is consistent with the use of powers under the *Act* and the *FCA's* general policy outlined in this guide, unless stated otherwise. <u>Where the legislation gives the *FCA* powers equivalent to those in the *Act* to cancel, vary or impose a restriction on a *person's permission*, the *FCA's* approach is consistent with that outlined in *SUP* 6B.</u>

Legislation	Description	Policy
…		
Enterprise Act 2002 (www.legislation.gov.uk/ukpga/2002/40/contents)	The *FCA* has powers under Part 8 of the Enterprise Act to enforce breaches of consumer protection law <u>which occurred prior to 6 April 2025</u>. The Enterprise Act identifies 2 types of breach which trigger the Part 8 enforcement powers. These are referred to as:	Where a <u>suspected</u> breach has been committed, the *FCA* will liaise with other authorities, particularly the Competition and Markets Authority (CMA), to determine which authority is best placed to take enforcement action. The *FCA* would generally

	• ‘domestic infringements’, which are breaches of particular *UK* enactments or of contractual or tortious duties, in each case if they occur in the course of a business and in relation to goods or services supplied or sought to be supplied: ◦ to or for a person in the *UK*; or ◦ by a person with a place of business in the *UK*; and • ‘Schedule 13 infringements’, which are breaches of the legislation listed in Schedule 13 to the Enterprise Act. In both cases the breach must, to trigger those powers, harm the collective interests of *consumers*. The *FCA* has powers under Part 8 of the Enterprise Act both as a ‘designated enforcer’ in relation to domestic and Schedule 13 infringements and as a ‘Schedule 13 enforcer’ which gives the *FCA* additional powers in relation to Schedule 13 infringements under the *CRA*. The *FCA’s* investigative powers in support of its Enterprise Act enforcement powers are set out in Schedule 5 to the *CRA*.	expect to be the most appropriate authority to deal with breaches by authorised firms in relation to *regulated activities*. The *FCA* anticipates that its powers under the *Act* will be adequate to address the majority of breaches which it would also be able to enforce under the Enterprise Act and that there will therefore be limited cases in which it would seek to use its powers as an Enterprise Act enforcer. Where the *FCA* does use its powers under the Enterprise Act, it will have regard to the enforcement guidelines which are published on the CMA’s website: www.gov.uk/government/organisations/competition-and-markets-authority.
…		
~~The Payment Services Regulations 2017 (www.legislation.~~	~~The *FCA* has investigation and sanctioning powers in relation to both criminal and civil breaches of the~~	~~The *FCA’s* approach to the exercise of these powers is consistent with the use of powers under~~

~~gov.uk/uksi/2017/752/contents)~~	~~*Payment Services Regulations*.~~ ~~The regulatory powers which the *Payment Services Regulations* provide to the *FCA* include:~~ ~~• the power to require information;~~ ~~• powers of entry and inspection;~~ ~~• power of public censure;~~ ~~• the power to impose financial penalties;~~ ~~• the power to prosecute or fine unauthorised providers; and~~ ~~• the power to vary an authorisation on its own initiative.~~ ~~[**Note:** *ENFG* App 2.1 identifies the *FCA's* statements of policy in relation to financial penalties, and conduct of interviews in response to *overseas regulators'* requests, which the *FCA* is required to make under the *Payment Services Regulations*.]~~	~~the *Act* and the *FCA's* general policy as explained in *ENFG*.~~ ~~The *Payment Service Regulations* do not require the *FCA* to have published procedures to launch criminal prosecutions. However, in these situations, the *FCA* expects that it will normally follow its decision-making procedures for the equivalent decisions under the *Act*.~~
The EEA Passport Rights (Amendment, etc, and Transitional Provisions) (EU Exit) Regulations 2018 (www.legislation.gov.uk/uksi/2018/1149/contents)	…	…
<u>Digital Markets, Competition and Consumers Act</u>	<u>Since April 2025, the *DMCCA* establishes a reformed consumer protection enforcement</u>	<u>Where a suspected breach has been committed, the *FCA* will notify and coordinate</u>

2024 (https://www.legislation.gov.uk/ukpga/2024/13/contents)	regime. Under Part 3, the *FCA* is a 'public designated enforcer' of consumer protection legislation. The *FCA* may take court-based enforcement action in respect of a 'relevant infringement' under Part 3 and under Chapter 1 of Part 4. The *FCA* may apply for enforcement orders, online interface orders, interim orders, seek enhanced consumer measures, or may accept undertakings directly from *firms*. The *DMCCA* also gives the *FCA* enhanced information-gathering powers, including court-enforceable information notices which could result in court-ordered monetary penalties for non-compliance. These powers support the *FCA*'s ability to investigate suspected infringements. The investigative powers in support of its *DMCCA* enforcement powers are set out in Schedule 5 to the *CRA*.	with the Competition and Markets Authority (CMA) before taking court action under the *DMCCA*. The CMA may elect to take over proceedings. The *FCA* would generally expect to be the most appropriate authority to deal with suspected consumer protection breaches by authorised *firms* in relation to *regulated activities.* Where the *FCA* does use its *DMCCA* powers, it will have regard to the enforcement guidelines which are published on the CMA's website: (https://assets.publishing.service.gov.uk/media/6808ca0d8c1316be7978e74b/CMA_200_Direct_consumer_enforcement_guidance.pdf).