

Money and Mental Health’s submission to the FCA’s consultation on “Our Enforcement Guide and publicising enforcement investigations—a new approach”

Introduction

The Money and Mental Health Policy Institute is a research charity established by Martin Lewis to break the vicious cycle of money and mental health problems. We aim to be a world-class centre of expertise developing practical policy solutions, working in partnership with those providing services, those who shape them, and those using them, to find out what really works. Everything we do is rooted in the lived experience of our Research Community, a group of around 5,000 people with personal experience of mental health problems.

Background

- In any given year, one in four people will experience a mental health problem which affects their cognitive and psychological functioning.¹ Over a lifetime, this proportion rises to nearly half the population.² However, we do not always know when we are unwell or receive treatment. Over a third (36%) of people with a common mental disorder have never received a diagnosis, and 62% are not currently receiving treatment.³
- Common symptoms of mental health problems, like low motivation, unreliable memory, limited concentration and reduced planning and problem-solving abilities, can make managing money and interacting with essential service providers significantly harder.⁴ As a result, it is estimated that people with mental health problems pay up to £1,550 more per year for essential services than people without mental health problems.⁵

The proposed new approach to publicising enforcement investigations

In this section, we answer questions 1-6.

We support the FCA’s proposed new approach to publicising enforcement investigations, including the announcement of investigations and providing relevant updates. We agree with the public interest framework and believe that the publication of enforcement investigations will have a benefit to consumers. As the FCA acknowledges in the consultation document, the current process can cause concern for affected customers who are unsure of what action the FCA is taking. Such customers would likely already have been negatively affected by the firm’s actions, and a lack of transparency could cause more distress. The proposed new approach

¹ McManus S et al. Adult psychiatric morbidity in England, 2007. Results of a household survey. NHS Information Centre for Health and Social Care. 2009.

² Mental Health Foundation. Fundamental facts about mental health. 2016.

³ McManus S et al. Mental health and wellbeing in England: Adult Psychiatric Morbidity Survey 2014. NHS Digital. 2016.

⁴ Holkar M. Seeing through the fog. Money and Mental Health Policy Institute. 2017; Holkar M, Evans K and Langston K. Access Essentials. Money and Mental Health Policy Institute. 2018.

⁵ Rogers C, Poll H and Isaksen M. The mental health premium. Citizens Advice. 2019.

would provide more reassurance to affected customers that the FCA is taking the issue seriously. This would be further boosted by the FCA's proposal to provide updates on the case.

We believe that it's important that the FCA is transparent about when investigations don't lead to enforcement action as proposed in the consultation document. However, we think the FCA should ensure it is clear when making this announcement about the reasons for not taking action. We also think the FCA should go further by considering how to make sure that any updates, especially related to the taking or not taking of action, are communicated to affected customers. While it is helpful for the information to be on the website, it's unlikely that many consumers will regularly check this. The FCA could work with organisations representing affected customers to get the message across. This could include established consumer bodies like Which? or Money Saving Expert, or campaign groups set up with the sole aim of representing affected consumers.

We also agree with the FCA that publicising the investigation could deter further breaches of FCA rules. Such an announcement would send clear signals to regulated firms that any breaches will be dealt with.

Greater transparency on enforcement action would also help organisations representing consumers to better understand poor practice in the financial services sector and what the FCA considers to be a breach of the rules. The proposed inclusion of the summary of the suspected breach, failing or other misconduct would be very beneficial. We regularly survey or speak with our Research Community about their experiences of financial services, as well as working closely with the firms themselves. Knowing what the FCA prioritises would allow us to focus our research and raise relevant concerns with the FCA about where we feel practice in the sector is falling short of expectations.

We acknowledge the counter-argument raised by the industry that greater transparency could lead consumers to take more risks in their financial decisions as they may feel protected by the FCA's investigations. However, as the FCA clarifies in the consultation document, it will be clear that an investigation announcement does not mean that there is enforcement action. There are many factors that impact the decisions consumers take, and while research has shown that we regularly make decisions that are not in our best interest,⁶ it is unlikely that most consumers will be impacted by, let alone even know about, the publication of investigations by the FCA.

⁶ Behavioural Economics is a concept that combines psychology and economics to understand people's decisions. See, for example, Thaler R and Sunstein C. NUDGE: Improving Decisions About Health, Wealth, and Happiness. Yale University Press. 2008.

7. Do you agree with our proposal that moving our strategic policy information to the website will make information more accessible? Please give reasons if you do not agree.

We support the proposal to move information about the broader strategic approach to enforcement from the Enforcement Guide to the relevant pages of the FCA website. Having top-level information in one place will make it easier for organisations such as ourselves to understand the FCA's approach.