ALERTER

R (Claims Protection Agency Limited) v. The Financial Conduct Authority: the FCA's exceptional power to name and shame

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Mr Justice Fordham's decision in R (The Claims Protection Agency) Ltd v The Financial Conduct Authority was handed down in de-anonymised form on 2 January 2026, dismissing a claim for judicial review brought by The Claims Protection Agency – a claims management company – in connection with the FCA's decision to name it in publicity about an investigation into the firm's activities. The judgment offers valuable guidance and insight into the FCA's new powers to publicise its investigations into authorised firms. In this Alerter, Anna Medvinskaia, Thomas Samuels and Benn Sheridan offer their take.

INTRODUCTION

Mr Justice Fordham's two-part judgment in *R (The Claims Protection Agency Ltd) v The Financial Conduct Authority* has now been fully handed down ('**the Judgment**').

The first part ([2025] EWHC 2614 (Admin), '**Part 1**') gave broad reasons for dismissing the claimant's claim for judicial review of the Financial Conduct Authority's decision to name The Claims Protection Agency Limited ('**CPAL**'), exercising its powers under a statutory Enforcement Guide ('**the Guide**') in publicity relating to the FCA's investigations into CPAL's activities. That decision was referred to in the Judgment as the "*Naming Announcement*". However, Part 1 was in an anonymised form to enable CPAL to pursue any appeal without prejudice to its substantive position that the Naming Announcement was unlawful and/or unreasonable.

At the start of this year, all avenues of appeal having been exhausted, the second part of the judgment ([2025] EWHC 2615 (Admin), '**Part 2**') was handed down. It revealed CPAL's identity and set out further details relating to it, thereby completing the Court's reasons for dismissing the claim.

Claims Protection Agency was a significant test of the FCA's powers under the Guide. It includes the first detailed examination of the Guide's provisions relating to publicity.

THE GUIDE

Following consultation in 2024/25, the FCA's new Guide was brought into force in June 2025. In parallel, the FCA published Policy Statement PS 25/5 ('**the Policy Statement**').

Formally entitled "*Our Enforcement Guide and greater transparency of our enforcement investigations*", the Policy Statement emphasised a new era of transparent enforcement against firms within the FCA's purview. As noted in the FCA's March 2025 correspondence with the Chair of the Treasury Select Committee, an approach of greater transparency was "*in line with a recommendation by the Public Accounts Committee*" dating back to July 2022. The FCA's initial proposal was that enforcement action should be publicised subject to a 'public interest' framework. Consumer and industry stakeholders took a starkly different view of this proposed amendment. While consumer groups pushed for ever-greater transparency, industry trade bodies remained largely opposed to it.

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The principal test for publication of an investigation into a regulated firm under the Guide remains the policy of 'exceptional circumstances'. However, that is subject to three important caveats confirmed in the Guide at '**ENFG'** 4.1.2G:

a. **ENFG 4.1.6G**: the FCA may name a firm under investigation for "*suspected unauthorised activity*" or a "*suspected criminal offence in relation to an unregulated activity*" if, in its view, "*an announcement is desirable for the purpose of warning or alerting consumers or investors, or to help the investigation itself – for example, by bringing forward witnesses.*" In deciding whether to do so, the FCA "*will*" take account of the "*potential prejudice it believes may be caused to any persons who are, or are likely to be, the subject of the investigation.*"
b. **ENFG 4.1.7G**: the FCA may name a firm under investigation if the firm or certain other specified persons have already made the fact public.
c. **ENFG 4.1.8G**: the FCA can anonymously publicise the subject matter of the investigation (i.e. without naming the subject) if it "*is desirable to educate people generally about the types of conduct [the FCA] are investigating or to encourage firms to comply with [its] rules or other requirements.*"

The Policy Statement makes clear the FCA's view that being seen to act is as important as taking regulatory action. It expresses the regulator's hope that increased publicity around enforcement will "*support public confidence*" by "*reassuring consumers and market participants that [it is] taking action. That in turn will help build trust in the system…*" (para 1.25). The Policy Statement goes on to state the FCA's intention to "*assess the impact of [its] revised publicity policy by tracking, so far as possible, the reasons for whistleblower disclosures and witnesses coming forward, and public and industry confidence in [its] enforcement work via surveys*" (para 1.28). Such data is to be carefully and proactively monitored.

THE FCA'S INVESTIGATION INTO CPAL

As confirmed by Part 2 of the Judgment, CPAL is a claims management company operating in connection with motor finance claims (as recently examined in *Hopcraft & Ors v Close Brothers Ltd* [2025] UKSC 33). It engaged in the marketing of such claims and signed up prospective claimants and, in so doing, was subject to the Claims Management: Conduct of Business Sourcebook in the FCA Handbook.

In advance of the FCA's proposed motor finance consumer redress scheme, the FCA has sought to tackle misleading advertising and inadequate information provided by some CMCs and law firms to prospective claimants. In particular, as to exaggerated or misleading statements about sums that might reasonably be recovered by consumers and the availability of alternative free routes of claim. As confirmed by a press release dated 6 October 2025, the FCA's work has been undertaken in parallel with other regulators, including the Solicitors Regulatory Authority ('**SRA**'), Information Commissioner's Office and Advertising Standards Authority.

On 31 July 2025 the FCA therefore took two actions. First, it wrote an eight-page "Dear Firm" letter to 18 regulated CMCs. Included amongst these was CPAL. The letter asked the firms to review their financial promotions to ensure compliance with relevant rules and standards in light of the concerns identified. Secondly, the FCA issued a joint press release with the SRA warning law firms and CMCs about the proper handling of claims relating to motor finance commissions. The press release again identified specific concerns around misleading information about the value of claims and the availability of free routes to claim.

In parallel to the above, CPAL received a bespoke letter from the FCA on the same day ('**the FCA Letter**') identifying a number of areas of concern. As recorded in the second part of the Judgment, they were: (1) specific claims made by CPAL as to "*average*" and "*per vehicle*" potential refund amounts; (2) excessive chasing of (potential) clients; (3) insufficiency of CPAL's processes to identify and protect vulnerable customers; and (4) wider concerns about routine failure to inform customers of their free to claim alternatives.
Enclosed with the FCA Letter was a draft set of voluntary requirements, for which CPAL was invited to apply to the FCA pursuant to s. 55L of the Financial Services and Markets Act 2000. CPAL made the voluntary requirement application on 11 August. The application was granted by the FCA the following day and published on the FCA Register.

On the same day, the FCA notified CPAL that an investigation into its conduct was proceeding in relation to each of the four matters described in the FCA Letter, and that it would be naming CPAL as the subject of an investigation ('**the Naming Announcement**').

The Naming Announcement decision was reached following internal discussions between the FCA's decision-maker and members of its case team. An initial internal memo ('**the First Memo**') recommended

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that only an anonymised announcement be made, as the "*exceptional circumstances*" test in ENFG 4.1.4G and 4.1.5G was not satisfied: the alleged misconduct was widespread across the CMC industry and not exclusive to CPAL. Further, naming CPAL could have adverse consequences for it. Thus, it was considered, there was no obvious benefit to naming CPAL. The FCA's decision-maker asked the case team to consider a number of further matters which had either not been addressed at all or had been underplayed in the First Memo. One of the further matters was that naming CPAL would mean being able to warn customers that they may have signed up on an overstated basis. Doing so would afford them an opportunity to withdraw, rather than losing (by way of contingency fees) 30% of a much smaller sum of money than they had been led to believe would be available.

This was addressed in a second memo from the case team to the decision-maker ('**the Second Memo**'), which concluded that CPAL should in fact be named by the FCA in its publicity about the investigation. The claim for judicial review was a challenge to the reasoning contained within the Second Memo. There was no challenge to the fact that issues were revisited in the Second Memo, but it formed part of the context for Mr Justice Fordham's decision (Part 1, para 28).

THE JUDGMENT

Procedure and Principles

CPAL's case before Mr Justice Fordham was put on two bases: first, that the decision contained in the Second Memo involved a material misdirection as to the objectively correct interpretation of the Guide ('**the legality challenge**'). Second, that the decision involved unreasonableness as to outcome and/or reasoning process ('**the reasonableness challenge**').

It was common ground between the parties, and accepted by Mr Justice Fordham, that the legality challenge depended upon an objective interpretation by the judge (as primary decision-maker) of the meaning of the Guide. If the FCA had misinterpreted the Guide, then it had acted unlawfully. Under the reasonableness challenge, what was in issue was the FCA's application of the Guide (as primary decision maker), and whether that application was reasonable. In this respect, the court bore a supervisory role. Mr Justice Fordham noted that he was not permitted to step into the shoes of the regulator to answer the *"ultimate question: … [what] is the appropriate regulatory response?"* (Part 1, para 23).

Mr Justice Fordham expressly bore in mind *"the distance between the evaluative merits questions for the primary decision-maker and the secondary supervisory questions of reasonableness."* He also *"recognise[d] the institutional advantages which the FCA has, as a regulator entrusted with public interest responsibilities…"*.

Objective Analysis of the Guide

Described as being "*[i]mportant features*" of the Guide at ENFG 4 are that the "*baseline position*" is that the FCA "*will not normally*" make public the fact of an investigation. The "*principal*" basis to depart from that baseline is that there are "*exceptional circumstances*" which make it "*desirable*" to make such an announcement in light of the five objectives specified in ENFG 4.1.4G, subject to potential prejudice to a person who is an actual or likely subject of investigation.

Thus, the FCA has three essential options as to how to proceed: (1) no announcement of investigation (the "*baseline*" position); (2) an anonymised announcement which publicises the investigation "*without naming… the subject of the investigation*" (ENFG 4.1.8G); and (3) a naming announcement. As Mr Justice Fordham observed, option (3) is "*more intrusive for the subject of the investigation. And it involves the greatest potential prejudice… It follows… that any decision to take one option involves judging the appropriateness of that course against the other two alternatives*" (Part 1, para 20). In undertaking that comparison, "*an Anonymised Announcement would always be a less intrusive measure to a Naming Announcement…*" (Part 1, para 21). In those circumstances a question arises as to whether an anonymised announcement must be justified before the FCA can go on to consider a naming announcement. Mr Justice Fordham declined to answer this question as being "*academic in the present case*" where it sufficed to observe that "*an Anonymised Announcement was a recognised, live alternative to a Naming Announcement…*" (Part 1, para 21).

Further as to the interpretation of the Guide, the following matters were common ground and endorsed by Mr Justice Fordham (Part 1, paras 25-6):

a. First, in considering whether there are "*exceptional circumstances*" justifying any announcement under ENFG 4.1.4G, the test is whether this is an exceptional investigation. This means that the investigation must be exceptional relative to investigated situations (referred to in the judgment as *"the investigation cohort"*), rather than being exceptional relative to regulated situations. As explained by the Court, *"it would be a mistake to say: this is exceptional because it is so serious as to warrant investigation*."

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b. Secondly, the desirability of a naming announcement under ENFG 4.1.8G is to be judged against the alternatives, i.e. either no announcement or an anonymised announcement.
c. Thirdly, exceptionality under ENFG 4.1.4G "*involves reasons relevant to naming, and not just reasons relevant to announcing*."

Thus, the "*essential insight*" from the second and third matters taken together is (Part 1, para 26):

To justify as reasonable a Naming Announcement, exceptionality and desirability of the Naming Announcement need to be for reasons relevant to naming, judged against the alternative of Anonymised Announcement, and so not just judged against the alternative of No Announcement. It would therefore have been an error of interpretation – a misdirection as to the Guide – for the FCA to have approached exceptionality or desirability by reference only to No Announcement, or for reasons relevant only to announcement of the investigation rather than naming the Claimant.

The legality challenge

CPAL's essential submissions on legality, summarised at para 30 of Part 1, were that the FCA had erred in its decision to make the Naming Announcement by failing to judge its desirability against both other alternatives (i.e. the baseline option of not announcing or the Anonymous Announcement option). Further, while it had addressed factors relevant to exceptionality, it had failed to appreciate the need for exceptionality to be assessed by reference to the investigation cohort. Those points were considered sufficiently arguable for the grant of permission.

However, the claim was ultimately rejected for the reasons in para 31 of Part 1. The Court observed that all of the points raised by CPAL went to the reasonableness of the decision rather than the correctness of the FCA's interpretation of the Guide. Whilst the FCA did not adopt a sequenced 'route-to-verdict' type approach, in that it did not separate out distinct stages with distinct questions, the reasoning in the Second Memo was "*composite*" and was to be read and considered as a whole. When read as a whole, the points made on desirability and exceptionality did not "*betray errors of interpretation…*"

The reasonableness challenge

Further and alternatively, it was submitted that the overarching decision was an unreasonable one. Mr Justice Fordham accepted that at least "*[s]ome of the reasoning can be said to be weak, when viewed in terms of a Naming Announcement rather than an Anonymised Announcement*" (Part 1, para 32). Ultimately, however, it was held not to have been an unreasonable decision either as to outcome or rationale.

The Court identified a "*key theme*" from the Second Memo: there were specific justifications for the FCA wanting to alert CPAL's customers in particular so as to allow them to consider their options. While there was a wider regulatory concern about the sector, the FCA's case team clearly considered why CPAL's customers were a special case. The Naming Announcement was assessed as being the most desirable course of action to achieve the objectives identified at ENFG 4.1.4G. Further detail about the key theme, as set out in relevant quotations from the Second Memo, are given in Part 2 at paras 48-51.

Ultimately that "*key theme*" was said to be "*fatal*" to CPAL's reasonableness challenge. The FCA's reasoning related specifically to it and its customers and illustrated how the desirability and exceptionality criteria were viewed against the alternative (No Announcement/Anonymised Announcement) options. Mr Justice Fordham tested his conclusion by asking whether CPAL's customers would have been suitably protected by those other options. The FCA's view was that they would not, which could not be properly characterised as an unreasonable regulatory response: Part 1, paras 35-7.

SOME CONCLUDING THOUGHTS

So-called "naming and shaming" powers of the kind considered by the Judgment have been enjoyed and exercised by other regulatory bodies for many years. Most notably, the Competition and Markets Authority has power to publicise investigations, including naming persons under investigation for alleged consumer law breaches under Chapter 4, Part 3 of the Digital Markets, Competition and Consumers Act 2024 and, in the competition context, naming undertakings under investigation under s. 25A of the Competition Act 1998.

However, the Judgment emphasises the exceptionality of publicity in an FCA investigation. The obvious reason for this is that the need for transparency, and the importance of being seen to act, must be balanced against the FCA's statutory objective to ensure market stability. Any announcement of an investigation, whether anonymised or named, risks having an impact on this. Nonetheless, the Judgment confirms that the Administrative Court will give due weight to the FCA's "*distinct institutional advantages as a regulator with public interest responsibilities*" (Part 1, para 23).

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Authorised firms are rightly anxious about the risks to them of being associated with a regulatory investigation. As is implicit from the FCA's internal discussions in relation to CPAL, the FCA appears keen to make use of its new powers to publicise investigations. It seems likely that it will be an assessment which FCA decision-makers will be expected to make as a matter of course in all investigations and, in consequence, firms may expect to see more regular use of these powers. After all, exceptionality is not necessarily the same as rarity. That being so, the Judgment is a useful aide memoir to the proper approach to the Guide at ENFG 4. Firms and their representatives would be well-advised to bear it in mind in any pre-investigation discussions with the regulator.

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Anna specialises in commercial, consumer, and regulatory law. Her practice encompasses e-commerce, advertising and pricing, and financial services. Her clients include the Government, regulators and businesses. Anna is consistently ranked as a leading junior in Chambers & Partners and The Legal 500, where she is described as "a fantastic advocate", with "great attention to detail" and "excellent legal acumen". She was named the Group Litigation and Consumer Junior of the Year in the 2023 Legal 500 Bar awards.
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