

Insights

CLARITY ON THE FCA'S APPROACH TO NAMING FIRMS UNDER INVESTIGATION

5 KEY TAKEAWAYS FROM THE RECENT JUDGMENT IN *R (CIT) v FCA*

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SUMMARY

The High Court's recent judgment in *R (CIT) v FCA [2025] EWHC 2614 (Admin)* provides critical clarity on the FCA's powers to name firms under investigation. Upholding the regulator's decision to publicise its probe into a yet unnamed firm, referred to as "CIT", the court reaffirmed the legitimacy of the FCA's "exceptional circumstances" test, rejecting arguments that the regulator had misapplied its Enforcement Guide. This ruling comes amid heightened scrutiny of the FCA's enforcement transparency, following its abandoned proposal to adopt a broader "public interest" test. The judgment not only reinforces the high threshold for naming firms but also delineates the boundaries of judicial oversight, confirming that decisions on exceptionality and desirability rest primarily with the FCA, subject to reasonableness review. For firms navigating regulatory risk, the decision signals a more assertive, but still constrained, approach to public disclosures by the FCA.

OVERVIEW OF THE JUDGMENT

In *R (CIT) v FCA*, the High Court (Fordham J) considered a challenge to the FCA's decision to publicly announce that it was investigating a firm, CIT, and to name that firm in the announcement. CIT accepted that the FCA could lawfully disclose the fact of an investigation in anonymised terms but objected to being named before any findings had been made. It argued that the FCA had misinterpreted its Enforcement Guide and acted unreasonably.

The case arose from an investigation initiated by the FCA in August 2025 and the facts unfolded over a two-month timeline. Initially, the FCA case team recommended an anonymous announcement. However, following further internal deliberation, a second memo was submitted recommending that the firm be named, on the basis that the desirability of a naming announcement outweighed the potential prejudice to the firm. A key reason was to ensure that the

firm's customers received a clear message from the regulator – one that might be diluted if the firm were unnamed or left to communicate with customers privately.

The FCA adopted the second recommendation and gave the firm 24 hours' notice of its intention to publish. CIT sought judicial review, arguing that the FCA's decision-making process was flawed and that it had misapplied its own policy. The FCA agreed to defer publication pending the outcome of the challenge.

The High Court granted permission for judicial review but ultimately dismissed the claim. The Court confirmed that its role was not to substitute its own reasoning but to assess whether the FCA had properly applied its Enforcement Guide and whether its decision was reasonable. While acknowledging that the FCA's internal memo could have been more structured, the Court found that the regulator had conducted a "composite analysis" of the relevant factors – including consumer protection, market integrity, and public confidence – and had reasonably concluded that naming the firm was justified under the "exceptional circumstances" test (ENF 4.1.4G).

THE FCA "EXCEPTIONAL CIRCUMSTANCES" TEST – A 4-PART FRAMEWORK

The FCA's Enforcement Guide sets a high bar for naming firms under investigation, requiring a structured assessment across four interlinked components. The judgment provides important judicial interpretation of how this test should be applied in practice.

1. Exceptionality

The circumstances must be exceptional relative to other investigations—not merely serious enough to justify regulatory scrutiny. Fordham J confirmed that the correct baseline is the FCA's default position of no publicity during investigations. The key question is whether the case stands out from others in a way that justifies departure from that norm.

2. Desirability

The FCA must determine that an announcement is desirable to achieve one or more of five regulatory objectives:

- Maintaining public confidence in the UK financial system or market.
- Protecting consumers or investors.
- Preventing widespread malpractice.
- Assisting the investigation (e.g., by encouraging witnesses to come forward).
- Maintaining the smooth operation of the market.

3. Potential Prejudice

The regulator must weigh any potential prejudice to the firm against the benefits of publicity. This includes reputational harm, commercial impact, and fairness considerations.

4. Judgment Against Alternatives

For a Naming Announcement, the FCA must assess both exceptionality and desirability in comparison to two alternatives: making no announcement at all, or issuing an anonymised announcement. The Enforcement Guide (ENF 4.1.8G) permits anonymised announcements where publicity is desirable for general education or to encourage compliance. In CIT's case, the FCA considered anonymisation but concluded that naming was necessary to communicate effectively with the firm's customers and ensure they received a clear message from the regulator.

The Court accepted that the FCA had conducted a "composite analysis" of these factors, even if its internal memo lacked formal structure. This reinforces the principle that the regulator's evaluative judgment will stand unless it is clearly unreasonable or procedurally flawed.

5 KEY TAKEAWAYS

1. Reputational Risk Is Immediate

The judgment confirms that being named by the FCA is no longer reserved for post-investigation outcomes. Firms may be publicly identified at the outset, even before any findings have been made. This presents serious reputational implications, particularly for consumer-facing businesses. As Fordham J observed at paragraph 37 of his judgment, the FCA considered that "the public interest regulatory objectives outweigh the prejudice" to the firm. The case illustrates that the FCA is willing to act decisively where it believes consumer protection and market integrity are at stake.

2. Consumer Protection Drives Publicity

The FCA's rationale for naming CIT was not punitive; it was rooted in consumer protection. The regulator assessed that an anonymised announcement would fail to alert the firm's customers effectively. The Court accepted that the FCA reasonably concluded that only a naming announcement would ensure customers were properly informed and able to consider their options. This reflects a shift in regulatory strategy from reactive enforcement to proactive transparency, especially where consumer harm is a concern.

3. Anonymised Announcements Are Not a Safe Default

While the Enforcement Guide permits anonymous announcements, this case shows that naming may be preferred where the FCA believes it better serves the public interest. The Court confirmed that the FCA is entitled to weigh the benefits of naming against the potential prejudice to the firm.

Even though the internal memo supporting the decision was not perfectly structured, the Court found the FCA's "composite analysis" sufficient. This suggests that firms cannot rely on anonymity as a default and should anticipate the possibility of early public disclosure.

4. Judicial Review Is a Narrow Path

Fordham J reiterated that the Court's role is supervisory, not to re-make regulatory decisions. Unless there is a clear misinterpretation of guidance or irrational reasoning, the FCA's evaluative judgments will stand. The judgment underscores the difficulty of challenging FCA decisions, even where internal reasoning may be imperfect. It also highlights the importance of clear, methodical internal documentation within the FCA to withstand scrutiny.

5. Prepare for Publicity

This judgment is a clear signal that the FCA is willing to use its publicity powers to protect consumers, even at the cost of reputational harm to firms. Transparency is becoming the norm, and regulated businesses must be ready to respond. Regulated firms should consider the following actions if they are at risk of, or subject to, investigation by the FCA:

- Review internal protocols for handling FCA investigations, including media and stakeholder communications.
- Engage early with the FCA to understand its intentions around publicity and explore alternatives where appropriate.
- Consider legal options if naming is proposed, but be aware that challenges will face a high bar and require strong grounds.
- Proactively assess consumer impact of the matters under investigation. If the FCA believes customers need to be informed, it may act swiftly and publicly.

WHAT HAPPENS NOW?

The judgment in *R (CIT) v FCA* is a clear and significant development in the FCA's approach to enforcement publicity. It confirms that the regulator can name firms under investigation at an early stage, provided it meets the high threshold of "exceptional circumstances." It also illustrates the difficulty of challenging such decisions, even where the FCA's internal reasoning may be imperfect. For firms, the case underscores the importance of anticipating how the FCA might assess the balance between transparency and prejudice, and of considering proactive consumer communication strategies that might mitigate the need for public naming.

This case offers a further glimpse into the regulator's evolving use of its publicity powers and insight into how it frames consumer protection concerns in practice.

In addition, the second part of the judgment, which is yet to be released, may provide deeper judicial analysis of the FCA's internal decision-making process, including how it weighed competing interests and applied its Enforcement Guide. This next phase will be informative for firms navigating regulatory risk, particularly in understanding how the FCA justifies early publicity and how courts assess the regulator's discretion. We will continue to monitor developments closely and provide updates as further information becomes available.

RELATED CAPABILITIES

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