Overall, is an enforcement investigation likely to further the FCA's aims and statutory objectives?

This is the overarching question that the FCA will ask when determining whether to launch an enforcement investigation into a firm or an individual.

The FCA has emphasised that its new criteria 'are not intended to be exhaustive and all the circumstances of a particular case are taken into account' and that 'not all the criteria will be relevant to every case and additional considerations may apply in certain cases'.

To help answer this question, the FCA will consider the following factors.

The strength of the evidence and the proportionality and impact of opening an investigation.

When considering this factor, the FCA will consider:
- The strength of the evidence and what other evidence is or may be available.
- Whether an enforcement investigation is proportionate, both as regards the seriousness of the failings in question, and the amount and availability of resource that will be required to investigate the matter fully and deliver an appropriate outcome.
- Prioritisation of a case against other cases that could be referred to FCA Enforcement.
- Any action already taken, or to be taken, by another authority or agency (in the UK or abroad) in relation to the same firm or individuals.
- The impact that opening an investigation might have, especially where the subject is an individual.

What purpose or goal would be served if the FCA were to end up taking enforcement action in the case.

The reasons why the FCA might take enforcement action include the following:
- Deterring wrongdoers from repeating their behaviour (specific deterrence).
- The wider deterrent value of taking action to serve as a strong reminder to a range of different firms and individuals of what will happen if they breach the FCA's rules and to change behaviour and raise standards in the broader financial services industry. Enforcement action has a strategic purpose in publicly reinforcing the regulatory requirements in priority areas (general deterrence).
- Holding those responsible for very serious breaches to account with proportionate penalties and sanctions (justice).
- Removing wrongdoers from the industry or imposing other restrictions where appropriate (protection).

Having gone through this process, the FCA may refer a matter to its Enforcement Division and launch an enforcement investigation using its powers under the Financial Services and Markets Act 2000. Alternatively, the FCA may conclude that no action is required or that one or more of its supervisory tools may be used in lieu of an enforcement investigation.

Relevant factors to assess whether the purposes of enforcement action are likely to be met.

Factors that the FCA may use to assess whether the purposes of enforcement action are likely to be met are as follows:
- Deterring wrongdoers from repeating their behaviour (specific deterrence). For example, what was the reaction of the specific firm or individual to the breach in question?
- Changing behaviour and raising standards in the industry (general deterrence). For example, is the issue in question relevant to an FCA strategic priority or otherwise widespread in the market?
- Holding those responsible for very serious breaches to account with proportionate penalties and sanctions (justice). For example, has there been widespread harm or potential harm, to consumers, market integrity or competition or did the firm/individual fail to bring the issue to the attention of the FCA?
- Removing wrongdoers from the industry or imposing other restrictions where appropriate (protection). For example, is the individual a UK approved person or were they based in the UK? Is the individual still in the industry and, if so, at what level of seniority?

Considerable overlap between these two categories.

The information set out in this document does not constitute definitive advice and should not be used as the basis for giving definitive legal advice without checking primary sources.