



THE DEPUTY LEADER OF THE HOUSE OF LORDS

The Rt Hon Baroness Kramer
House of Lords
London
SW1A 0PW

22 March 2021

Dear Baroness Kramer,

In the Grand Committee debate on the Financial Services Bill on 10 March, I committed to write to you to clarify the requirements of the Ministerial Code, so far as they relate to Ministers intervening in FCA investigations.

The Ministerial Code requires Government Ministers to act in accordance with the highest standards set out in the Seven Principles of Public Life: Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership.

The very first requirement of the Code states that 'Ministers of the Crown are expected to maintain high standards of behaviour and to behave in a way that upholds the highest standards of propriety'. In addition, the Principles of Public Life require Ministers to act with integrity and openness in carrying out their duties. I would particularly point to the requirements under this latter principle for Ministers to 'act and take decisions in an open and transparent manner.'

I am therefore confident that adherence to the Ministerial Code and Principles of Public Life would prevent a Minister from intervening in, or seeking to intervene in, an FCA investigation in an improper way.

However, there are, as I set out in the debate, statutory mechanisms that allow the Treasury to require the regulator to undertake an investigation, and to make direction as to the scope and conduct of the investigation, the time period during which the investigation is carried out, and the production of a report following the investigation.

I would also like to take this opportunity to clarify comments that I made in the debate with regard to the Treasury's powers under section 77 of the Financial Services Act 2012. I stated that under section 77, the Treasury can require regulators to conduct an investigation into relevant events where the Treasury considers there to be public interest. Furthermore, I said that Ministers cannot use a section 77 for any other matters, and specifically to stop the FCA doing anything else. This remains true.

However, I should also have made clear that there is a provision under section 78 of the Financial Services Act 2012 to order a discontinuance or suspension of an investigation, and to otherwise make directions as to its conduct. There are several reasons why the Treasury might postpone or pause an investigation, such as to avoid conflict with a concurrent Serious

Fraud Office investigation, or to avoid prejudging the result of criminal proceedings. However, it should be noted that, since the introduction of the Financial Services Act 2012 , the powers under section 77 have been used on three occasions, but neither the discontinuation nor suspension powers under section 78 have ever been used, because no situation has arisen where its use would have been appropriate.

I hope that you find this information helpful, and I look forward to further engagement with you on the Bill. I am copying this letter to all those who spoke in the Committee debate on Wednesday, and I am placing a copy of this letter in the Library.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Howe', with a long horizontal line extending to the right below it.

EARL HOWE

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