

Chapter 19

Non-FSMA powers



19.28 Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013

19.28.1 The *Referral Fees Regulations* give the *FCA* investigation and sanctioning powers in relation to the contravention of the rules against referral fees contained in sections 56 to 60 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (the *LASPO Act*), as well as the contravention of requirements imposed by, or under, the *Referral Fees Regulations*.

19.28.2 The *FCA's* approach to taking enforcement action under the *Referral Fees Regulations* will mirror its general approach to enforcing the *Act*, as set out in ■ EG 2. It will seek to exercise its enforcement powers in a manner that is transparent, proportionate and responsive to the issue and consistent with its publicly stated policies. It will also seek to ensure fair treatment when exercising its enforcement powers. Finally, it will aim to change the behaviour of the person who is the subject of its action, to deter future non-compliance by others, to eliminate any financial gain or benefit from non-compliance and, where appropriate, to remedy the harm caused by the non-compliance.

19.28.3 The *Referral Fees Regulations*, for the most part, mirror the *FCA's* investigative and sanctioning powers under the *Act*. The *FCA* has adopted procedures and policies for the use of those powers that are akin to those it has under the *Act*. Key features of the *FCA's* approach are described below.

Information gathering and investigation powers

19.28.4 The *Referral Fees Regulations* apply much of Part 11 of the *Act*. The effect of this is to apply the same procedures under the *Act* for appointing investigators and requiring information when investigating contraventions of the relevant provisions of the *LASPO Act* or the *Referral Fees Regulations*.

19.28.5 The *FCA* will notify the subject of the investigation that it has appointed investigators to carry out an investigation under the *Referral Fees Regulations* and the reasons for the appointment, unless notification is likely to result in the investigation being frustrated. In most cases, the *FCA* expects to carry out a scoping visit early on in the enforcement process. The *FCA's* policy in civil investigations under the *Referral Fees Regulations* is to use powers to compel information, in the same way as it would in the course of an investigation under the *Act*.

Decision making under the Referral Fees Regulations

- 19.28.6** The *RDC* is the *FCA*'s decision maker for decisions which require *warning notices* or *decision notices* to be given under the *Referral Fees Regulations*, as set out in ■ DEPP 2 Annex 1G. The *RDC* will make its decisions following the procedure set out in ■ DEPP 3.2 or, where appropriate, ■ DEPP 3.3.
- 19.28.7** The *Referral Fees Regulations* do not require the *FCA* to publish procedures to commence criminal prosecutions. However, the *FCA* will normally follow its *equivalent* decision-making procedures for similar decisions under the *Act*, as set out in ■ EG 12.
- 19.28.8** The *Referral Fees Regulations* do not require the *FCA* to publish procedures to apply to the court for an injunction or restitution order. However, the *FCA* will normally follow its equivalent decision-making procedures for similar decisions under the *Act*, as set out in ■ EG 10 and ■ EG 11.
- 19.28.9** The *Referral Fees Regulations* apply sections 393 and 394 of the *Act* to *warning notices* and *decision notices* given under the *Referral Fees Regulations* and so require the *FCA* to give third party rights and to give access to material.
- 19.28.10** The *Referral Fees Regulations* apply the procedural provisions of Part 9 of the *Act*, as modified by the *Referral Fees Regulations*, in respect of matters that can be referred to the *Tribunal*. Referral to the *Tribunal* in respect of *decision notices* given under regulation 26(1) of the *Referral Fees Regulations* are treated as disciplinary referrals for the purpose of section 133 of the *Act*.

Public censures, imposition of penalties and the impositions of suspensions or restrictions under the Referral Fees Regulations

- 19.28.11** When determining whether to take action to impose a penalty or to issue a public censure under the *Referral Fees Regulations*, the *FCA*'s policy includes having regard to the relevant factors in ■ DEPP 6.2 and ■ DEPP 6.4. When determining the level of financial penalty, the *FCA*'s policy includes having regard to the relevant principles and factors in ■ DEPP 6.5 to ■ 6.5B, ■ DEPP 6.5D and ■ DEPP 6.7.
- 19.28.12** As with cases under the *Act*, the *FCA* may settle or mediate appropriate cases involving civil breaches of the *Referral Fees Regulations* to assist it to exercise its functions. ■ DEPP 5, ■ DEPP 6.7 and ■ EG 5 set out information on the *FCA*'s settlement process and the settlement discount scheme.
- 19.28.13** When determining whether to take action to impose a suspension or restriction under the *Referral Fees Regulations*, the *FCA*'s policy includes having regard to the relevant factors in ■ DEPP 6A.2 and ■ 6A.4. When determining the length of the period of suspension or restriction, the *FCA*'s

policy includes having regard to the relevant principles and factors in ■ DEPP 6A.3. However, the *FCA* does not have the power to suspend an *authorised person's permission* under the *Referral Fees Regulations*.

19.28.14

The *FCA* will apply the approach to publicity that is outlined in ■ EG 6.