

Enforcement Guide

Chapter 5

Settlement

5.7 The relevance of settled cases to subsequent action

5.7.1

Decisions recorded in *FCA final notices* or *supervisory notices* will be taken into account in any subsequent case if the later case raises the same or similar issues to those considered by the *FCA* when it reached its earlier decision. Not to do so would expose the *FCA* to accusations of arbitrary and inconsistent decision-making. The need to look at earlier cases applies irrespective of whether the decisions were reached following settlement or consideration by the *RDC* or the *Tribunal*. This reflects the fact that a person's agreement to the action proposed by the *FCA* in the earlier case would not have relieved the *FCA* of the obligation to ensure that the final decision was the right regulatory outcome, both for the person concerned and more generally.

5.7.2

The *FCA* recognises the importance of consistency in its decision-making and that it must consider the approach previously taken to, say, the application of a particular *rule* or *Principle* in a given context. This applies equally to consideration by the *RDC* or by the *settlement decision makers* when they look at action taken by the *FCA* in earlier, similar, cases. This is not to say that the *FCA* cannot take a different view to that taken in the earlier case: the facts of two enforcement cases are very seldom identical, and it is also important that the *FCA* is able to respond to the demands of a changing and principles-based regulatory environment. But any decision to depart from the earlier approach will be made only after careful consideration of the reasons for doing so.