Enforcement Guide

Chapter 7

		7.1 The FCA's use of sanctions
7.1.1	disciplinary However, t many insta address wi and propo the Act, th Persons (A objectives. regulatory financial ci	enalties, suspensions, restrictions, conditions, limitations, prohibitions, and <i>public censures</i> are important regulatory tools. they are not the only tools available to the <i>FCA</i> , and there will be unces of non-compliance which the <i>FCA</i> considers it appropriate to thout the use of formal disciplinary sanctions. Still, the effective rtionate use of the <i>FCA</i> 's powers to enforce the requirements of e <i>rules</i> , <i>COCON</i> and the Statements of Principle for Approved PER) will play an important role in the <i>FCA</i> 's pursuit of its <i>statutory</i> Imposing disciplinary sanctions shows that the <i>FCA</i> is upholding standards and helps to maintain market confidence and deter <i>rime</i> . An increased public awareness of regulatory standards also is to the protection of <i>consumers</i> .
7.1.2	The FCA ha	as the following powers to impose sanctions.
	(1) It m	nay publish a statement:
	(a)	against an <i>approved person</i> or <i>conduct rules staff</i> under section 66 of the <i>Act</i> ;
	(b)	against an <i>issuer</i> under section 87M of the Act;
	(c)	against a <i>sponsor</i> under section 88A of the Act;
	(ca)	against a <i>primary information provider</i> under section 89Q of the <i>Act</i> ;
	(d)	where there has been a contravention of the <i>Part 6 rules</i> , under section 91 of the <i>Act</i> ;
	(e)	against a <i>person</i> under section 123 of the Act;
	(ea)	if a natural or legal person has contravened any provision of the <i>short selling regulation</i> , or any requirement imposed on that person under section 131E or 131F, under section 131G of the <i>Act</i> ;
	(eb)	against a qualifying parent undertaking under section 192K of the <i>Act</i> ;
	(ec)	against an auditor under section 249 of the Act;
	(eca)	against an operator of a scheme recognised under section 272 of the Act;
	(ed)	against a <i>recognised investment exchange</i> under section 312E of the <i>Act</i> ;
	(ee)	against an auditor and/or an <i>actuary</i> under section 345 of the <i>Act</i> ; and
	I	

■ Release 36 ● May 2024

- (f) against a *firm*, or an *unauthorised person* to whom section 404C applies, under section 205 of the *Act*.
- (2) It may impose a financial penalty:
 - (a) on a *person* that performs a *controlled function* without approval, under section 63A of the *Act*;
 - (aa) on an *approved person* or *conduct rules staff*, under section 66 of the *Act*;
 - (ab) on a sponsor under section 88A of the Act;
 - (ac) on a primary information provider under section 89Q of the Act;
 - (b) where there has been a contravention of the *Part 6 rules*, under section 91 of the *Act*;
 - (c) on a person, under section 123 of the Act;
 - (ca) on a natural or legal person who has contravened any provision of the *short selling regulation*, or any requirement imposed on that person under section 131E or 131F, or any natural or legal person who was knowingly concerned in the contravention, under section 131G of the *Act*;
 - (cb) on a qualifying parent undertaking under section 192K of the *Act*;
 - (d) on a *firm*, or an *unauthorised person* to whom section 404C applies, under section 206 of the *Act*;
 - (da) on an auditor under section 249 of the Act;
 - (db) on a *recognised investment exchange* under section 312F of the *Act*; and
 - (dc) on an auditor and/or actuary under section 345 of the Act.
- (3) It may impose a suspension, *limitation* or other restriction:
 - (a) [deleted]
 - (b) on a sponsor under section 88A of the Act;
 - (c) on a primary information provider under section 89Q of the Act;
 - (d) on an *authorised person* under sections 123B or 206A of the *Act*; and
 - (e) on a *non-authorised parent undertaking* under section 143W of the *Act*.
- (4) It may impose a suspension, condition or limitation on an *approved person* under section 66 of the *Act*.
- (5) It may impose a disciplinary prohibition on an individual under section 123A of the *Act*.
- 7.1.3 Section 415B of the *Act* requires the *FCA* to consult with the *PRA* before it takes certain enforcement action in relation to a *PRA-authorised person* or someone who has a qualifying relationship (as defined in section 415B(4) of the *Act*) with a *PRA-authorised person*. Further detail on when the *FCA* is required to consult the *PRA*, and when it has agreed to notify the *PRA* of

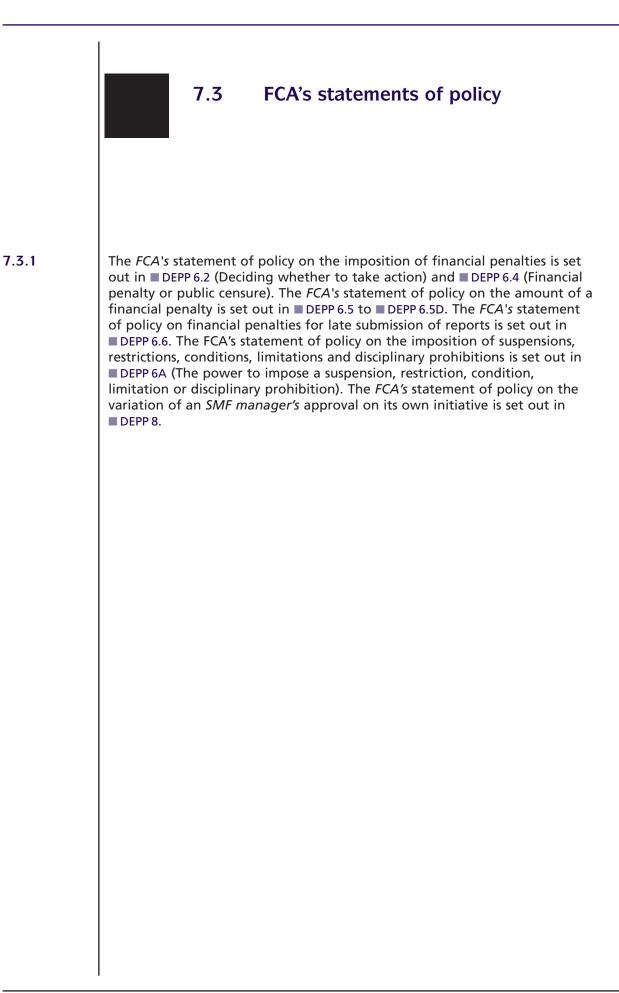
certain matters, is set out in the Memorandum of Understanding between the *PRA* and the *FCA*.

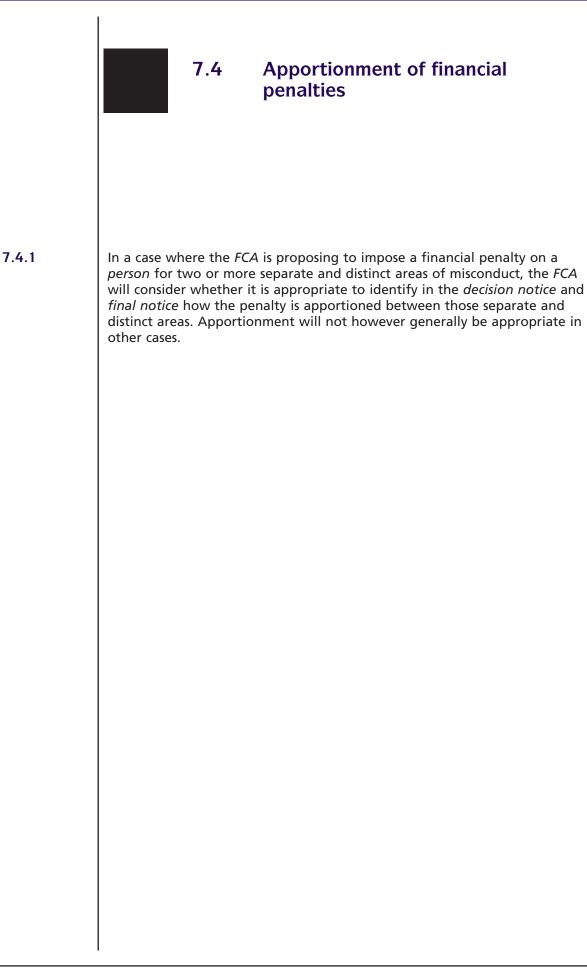
	7.2 Alternatives to sanctions
7.2.1	The <i>FCA</i> also has measures available to it where it considers it is appropriate to take protective or remedial action. These include:
	(1) where a <i>firm's</i> continuing ability to meet the <i>threshold conditions</i> or where an <i>approved person's</i> or other individual's fitness and propriety are called into question:
	 (a) varying and/or cancelling of <i>permission</i> and the withdrawal of a <i>firm's</i> authorisation (see ■ chapter 8); and
	 (b) the withdrawal of an individual's status as an approved person and/or the prohibition of an individual from performing a specified function in relation to a regulated activity (see chapter 9).
	(1A) where it is desirable to do so in order to advance one or more of its operational objectives, the FCA may vary the approval of an SMF manager (see DEPP 8);
	(2) where the smooth operation of the market is, or may be, temporarily jeopardised or where protecting investors so requires, the FCA may suspend, with effect from such time as it may determine, the <i>listing</i> of any <i>securities</i> at any time and in such circumstances as it thinks fit (whether or not at the request of the <i>issuer</i> or its <i>sponsor</i> on its behalf);
	(3) when the FCA is satisfied there are special circumstances which preclude normal regular dealings in any <i>listed</i> securities, it may cancel the listing of any <i>security</i> ;
	(4) where the FCA considers it necessary for the purpose of the exercise by it of functions under the <i>Market Abuse Regulation</i> or any supplementary market abuse legislation (as defined in Part 8 of the <i>Act</i>), the FCA may suspend trading in a <i>financial instrument</i> under section 1221 of the <i>Act</i> ;
	(4a) [deleted]
	(4b) where the FCA considers it necessary for the purpose of the exercise by it of functions under the Market Abuse Regulation or any supplementary market abuse legislation (as defined in Part 8 of the Act), the FCA may suspend the auctioning of a relevant auctioned product (as defined in section 122IA of the Act) at an auction conducted by a recognised auction platform under section 122IA of the Act;

- (5) where there are reasonable grounds for suspecting that a provision of Part VI of the Act, a provision contained in the prospectus rules, or any other provision made in accordance with the Prospectus Regulation has been infringed, the FCA may:
 - (a) suspend, restrict or prohibit the offer to the public of transferable securities as set out in section 87K of the *Act*; or
 - (b) suspend, restrict or prohibit admission of transferable securities to trading on a regulated market or a trading facility as set out in sections 87L and 87LA of the *Act*;
- (6) where the FCA considers it necessary for the purposes set out in section 122G of the Act the FCA may, by notice in writing, require an issuer to publish specified information or a specified statement as set out under section 122G of the Act; and
- (7) where the FCA considers it necessary for the purposes set out in section 122H of the Act the FCA may, by notice in writing, require a person to publish corrective information or a corrective statement as set out under section 122H of the Act.

Where a person who is a shareholder has contravened one or more relevant transparency provisions (as defined in section 89NA(11) of the Act) in respect of shares in a company admitted to trading on a regulated market and the FCA considers the breach to be serious, the FCA may apply to the Court for an order suspending that person's voting rights as set out in section 89NA of the Act.

7.2.2

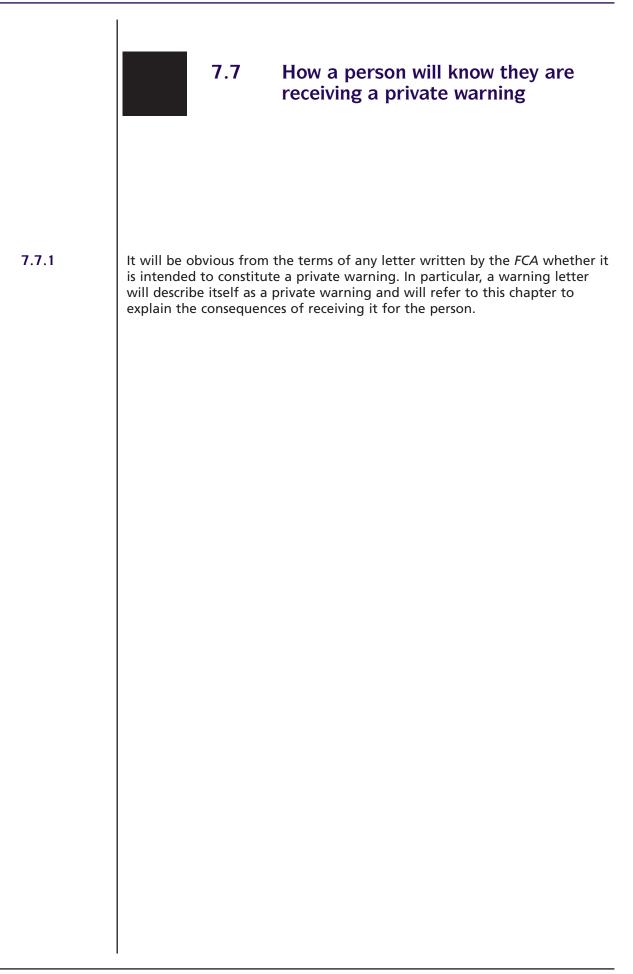


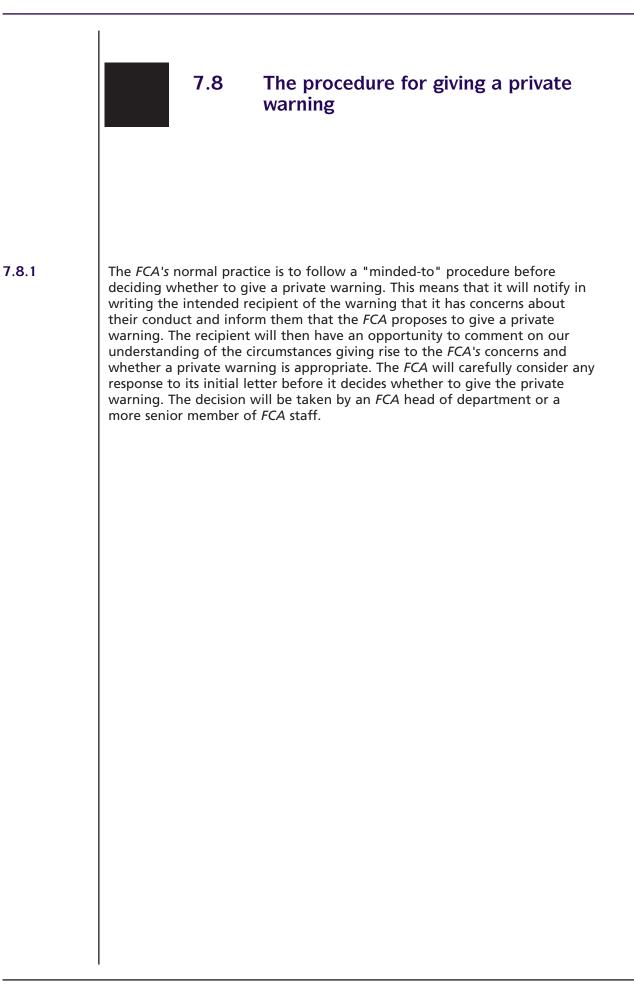


	7.5 Payment of financial penalties
7.5.1	Financial penalties must be paid within the period (usually 14 days) that is stated on the FCA's final notice. The FCA's policy in relation to reducing a penalty because its payment may cause a <i>person</i> serious financial hardship is set out in DEPP 6.5D .
7.5.2	[deleted]
7.5.3	Chapter 6 of the General Provisions module of the FCA Handbook (GEN) contains <i>rules</i> prohibiting a <i>firm</i> or <i>member</i> from entering into, arranging, claiming on or making a payment under a <i>contract of insurance</i> that is intended to have, or has, the effect of indemnifying any <i>person</i> against a financial penalty.
7.5.4	Chapter 6 of the General Provisions of the FCA Handbook (GEN) also contains a <i>rule</i> prohibiting a <i>firm</i> , except a <i>sole trader</i> , from paying a financial penalty imposed by the FCA on a present or former <i>employee</i> , <i>director</i> or <i>partner</i> of the <i>firm</i> or of an <i>affiliated company</i> .
7.5.5	Rule ■ 1.5.33 in the FCA's Prudential Sourcebook for Insurers (INSPRU) prohibits a long- term insurer (including a firm qualifying for authorisation under Schedule 3 or 4 to the Act), which is not a mutual, from paying a financial penalty from a long-term insurance fund.

	7.6 Private warnings
7.6.1	In certain cases, despite concerns about a <i>person's</i> behaviour or evidence of a <i>rule</i> breach, the <i>FCA</i> may decide that it is not appropriate, having regard to all the circumstances of the case, to bring formal action for a financial penalty or <i>public censure</i> . This is consistent with the <i>FCA</i> 's risk-based approach to enforcement. In such cases, the <i>FCA</i> may give a private warning to make the <i>person</i> aware that they came close to being subject to formal
7.6.2	action. Private warnings are a non-statutory tool. Fundamentally they are no different to any other FCA communication which criticises or expresses concern about a <i>person's</i> conduct. But private warnings are a more serious form of reprimand than would usually be made in the course of ongoing supervisory correspondence. A private warning requires that the FCA identifies and explains its concerns about a <i>person's</i> conduct and/or procedures, and tells the subject of the warning that the FCA has seriously considered formal steps to impose a penalty or censure. They are primarily used by the FCA as an enforcement tool, but they may also be used by other
7.6.3	parts of the FCA. Typically, the FCA might give a private warning rather than take formal action where the matter giving cause for concern is minor in nature or degree, or where the <i>person</i> has taken full and immediate remedial action. But there can be no exhaustive list of the conduct or the circumstances which are likely to lead to a private warning rather than more serious action. The FCA will take into account all the circumstances of the case before deciding whether a private warning is appropriate. Many of the criteria identified in DEPP 6 for determining whether the FCA should take formal action for a
7.6.4	financial penalty or <i>public censure</i> will also be relevant to a decision about whether to give a private warning. Generally, the <i>FCA</i> would expect to use private warnings in the context of <i>firms</i> , <i>approved persons</i> and <i>conduct rules staff</i> . However, the <i>FCA</i> may also issue private warnings in circumstances where the persons involved may not necessarily be authorised or approved. For example, private warnings may be issued in potential cases of <i>market abuse</i> ; cases where the <i>FCA</i> has considered making a <i>prohibition order</i> or a disapplication order; or cases involving breaches of provisions imposed by or under Part VI of the <i>Act</i> (Official Listing).
7.6.5	In each case, the FCA will consider the likely impact of a private warning on the recipient and whether any risk that <i>person</i> poses to the <i>statutory</i>

objectives requires the FCA to take more serious action. Equally, where the FCA gives a private warning to an approved person or conduct rules staff, the FCA will consider whether it would be desirable and appropriate to inform the person's firm (or employer, if different) of the conduct giving rise to the warning and the FCA's response. 7.6.6 A private warning is not intended to be a determination by the FCA as to whether the recipient has breached the FCA's rules. However, private warnings, together with any comments received in response, will form part of the person's compliance history. In this sense they are no different to other FCA correspondence, but the weight the FCA attaches to a private warning is likely to be greater. They may therefore influence the FCA's decision whether to commence action for a penalty or censure in relation to future breaches. Where action is commenced in those circumstances, earlier private warnings will not be relied upon in determining whether a breach has taken place. However, if a person has previously been told about the FCA's concerns in relation to an issue, either by means of a private warning or in supervisory correspondence, then this can be an aggravating factor for the level of a penalty imposed in respect of a similar issue that is the subject of later FCA action. 7.6.7 Where the FCA is assessing the relevance of private warnings in determining whether to commence action for a financial penalty or a public censure, the age of a private warning will be taken into consideration. However, a longstanding private warning may still be relevant. 7.6.8 Private warnings may be considered cumulatively, although they relate to separate areas of a *firm*'s or other *person*'s business, where the concerns which gave rise to those warnings are considered to be indicative of a person's compliance culture. Similarly, private warnings issued to different subsidiaries of the same parent *company* may be considered cumulatively where the concerns which gave rise to those warnings relate to a common management team.





	7.9 Suspensions of voting rights
7.9.1 R	Where a <i>person</i> who is a <i>shareholder</i> has contravened one or more relevant transparency provisions (as defined in section 89NA(11) of the <i>Act</i>) in respect of shares in a company admitted to trading on a <i>regulated market</i> and the <i>FCA</i> considers the breach to be serious, the <i>FCA</i> may apply to the Court for an order suspending that person's voting rights as set out in section 89NA of the <i>Act</i> .
7.9.2	Decisions about whether to apply to the Court for a voting rights suspension order under the <i>Act</i> will be made by the executive director of Enforcement, or in his or her absence, the acting executive director of Enforcement.
7.9.3	In deciding whether to apply for a voting rights suspension order, the FCA will consider all the relevant circumstances of the case, and in particular will have regard to the factors listed in 89NA(4) of the Act.