The Decision Procedure and Penalties manual
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Chapter 1

Application and Purpose
1.1 Application and Purpose

Application

1.1.1 This manual (DEPP) is relevant to firms, approved persons and other persons, whether or not they are regulated by the FCA. It sets out:

1. the FCA's decision-making procedure for giving statutory notices. These are warning notices, decision notices and supervisory notices (DEPP 1.2 to DEPP 5);

1A. the FCA's decision-making procedure in cases where the PRA is required to seek the FCA's consent before approving an application (a) for Part 4A permission; (b) for the variation of a Part 4A permission; or (c) to perform a controlled function (see DEPP 2.5.7A G);

1B. the FCA's decision-making procedure where it is deciding under section 391(1)(c) of the Act to publish information about the matter to which a warning notice relates (see DEPP 3.2.14A G to DEPP 3.2.14H G and DEPP 5.1.8KG to DEPP 5.1.8QG);

2. the FCA's policy with respect to the imposition and amount of penalties under the Act (see DEPP 6);

2A. the FCA's policy with respect to the imposition of suspensions, restrictions and disciplinary prohibitions, and the period for which those sanctions are to have effect, under the Act (see DEPP 6A);

3. the FCA's policy with respect to the conduct of interviews by investigators appointed in response to a request from an overseas regulator or an EEA regulator (DEPP 7);

4. the FCA’s policy regarding the variation of an SMF manager’s approval on the FCA’s initiative under section 63ZB of the Act (see DEPP 8).

Purpose

1.1.2 The purpose of DEPP is to satisfy the requirements of sections 63C(1), 63ZD(1), 69(1), 88C(1), 89S(1), 93(1), 124(1), 131FA, 131J(1), 169(9), 192N(1), 210(1), 312J(1), 345D(1) and 395 of the Act that the FCA publish the statements of procedure or policy referred to in DEPP 1.1.1 G.
1.2 Introduction to statutory notices

Statutory and related notices

1.2.1 Section 395 of the Act (The FCA’s and PRA’s procedures) requires the FCA to publish a statement of its procedure for the giving of statutory notices. The procedure must be designed to secure, among other things, that the decision which gives rise to the obligation to give a statutory notice is taken by a person not directly involved in establishing the evidence on which that decision is based or by two or more persons who include a person not directly involved in establishing that evidence. The types of statutory notices and related notices, and the principal references to them in the Act and DEPP are set out in ■DEPP 1.2.2.

1.2.2 Table: Summary of statutory and related notices

<table>
<thead>
<tr>
<th>Notice</th>
<th>Description</th>
<th>Act reference</th>
<th>Further information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Warning notice</td>
<td>Gives the recipient details about action that the FCA proposes to take and about the right to make representations.</td>
<td>Section 387</td>
<td>DEPP 2.2</td>
</tr>
<tr>
<td>Decision notice</td>
<td>Gives the recipient details about action that the FCA has decided to take. The FCA may also give a further decision notice if the recipient of the original decision notice consents.</td>
<td>Section 388</td>
<td>DEPP 2.3</td>
</tr>
<tr>
<td>Notice of discontinuance</td>
<td>Identifies proceedings set out in a warning notice or decision notice and which are not being taken or are being discontinued.</td>
<td>Section 389</td>
<td>DEPP 1.2.4 G and DEPP 3.2.26 G</td>
</tr>
<tr>
<td>Final notice</td>
<td>Sets out the terms of the action.</td>
<td>Section 390</td>
<td>DEPP 1.2.4 G</td>
</tr>
</tbody>
</table>
### DEPP 1 : Application and Section 1.2 : Introduction to statutory notices

**Purpose**

<table>
<thead>
<tr>
<th>Notice</th>
<th>Description</th>
<th>Act reference</th>
<th>Further information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supervisory notice</td>
<td>tion that the FCA is taking. Gives the recipient details about action that the FCA has taken or proposes to take, for example to vary a Part 4A permission.</td>
<td>Section 395(13)</td>
<td>DEPP 2.2 and DEPP 2.3</td>
</tr>
</tbody>
</table>

1.2.3 In **DEPP** the supervisory notice about a matter first given to the recipient is referred to as the "first supervisory notice" and the supervisory notice given after consideration of any representations is referred to as the "second supervisory notice".

1.2.4 The requirement in section 395 of the Act to publish a procedure for the giving of notices does not extend to the giving of a notice of discontinuance or a final notice. Neither of these notices is a statutory notice for the purposes of **DEPP**; nor is the decision to give such a notice a statutory notice associated decision.

### Decisions relating to applications for authorisation or approval made to the PRA

1.2.4A Section 395 of the Act also requires the FCA to publish a statement of its procedure for decisions which give rise to an obligation for the PRA to include a statement under section 387(1A) in a warning notice or a statement under section 388(1A) in a decision notice as follows:

1. **Section 387(1A) provides** that where the FCA proposes to refuse consent for the purposes of sections 55F, 55I or 59 of the Act, or to give conditional consent as mentioned in section 55F(5), 55I(8) or 61(2D), the warning notice given by the PRA must (a) state that fact, and (b) give the reasons for the FCA’s proposal.

2. **Section 388(1A) provides** that where the FCA has decided to refuse consent for the purposes of sections 55F, 55I or 59 of the Act, or to give conditional consent as mentioned in section 55F(5), 55I(8) or 61(2D), the decision notice given by the PRA must (a) state that fact, and (b) give the reasons for the FCA’s decision.

1.2.4B Where an application for Part 4A permission is made to the PRA as the appropriate regulator of the Act, the PRA may only give permission with the consent of the FCA. FCA consent can be conditional on the PRA imposing limitations or specifying the permission is for certain regulated activities only.

1.2.4C Where an application to vary a Part 4A permission is made to the PRA as the appropriate regulator, the PRA may only give
permission with the consent of the FCA (section 55I of the Act). The FCA may withhold its consent to a proposed variation if it appears to it that it is desirable to do so in order to advance one or more of its operational objectives. FCA consent can be conditional on the PRA imposing limitations, or the PRA specifying the permission is for certain regulated activities only.

1.2.4D  Where an application to perform a controlled function is made to the PRA as the appropriate regulator, the PRA can only approve a person to perform a controlled function with the consent of the FCA (section 59(4)(b) of the Act). Where the application is a relevant senior management application, the FCA’s consent can be conditional on the PRA imposing conditions, or the PRA giving approval only for a limited period.

1.2.4E  The procedure must be designed to secure, among other things, that the decision is taken by a person not directly involved in establishing the evidence on which that decision is based, or by two or more persons who include a person not directly involved in establishing that evidence.

The decision makers

1.2.5  Decisions on whether to give a statutory notice will be taken by a ‘decision maker’. The FCA’s assessment of who is the appropriate decision maker is subject to the requirements of section 395 of the Act and will depend upon the nature of the decision, including its complexity, importance and urgency. References to the ‘decision maker’ in DEPP are to:

(1) the Regulatory Decisions Committee (RDC); or

(2) FCA staff under executive procedures; or

(3) FCA staff under the settlement decision procedure.

1.2.6  The decision maker will also take decisions associated with a statutory notice (a ‘statutory notice associated decision’). Statutory notice associated decisions include decisions:

(1) to set or extend the period for making representations;

(2) on whether the FCA is required to give a copy of the statutory notice to any third party and, if so, the period for the third party to make representations; and

(3) on whether to refuse access to FCA material, relevant to the relevant statutory notice, under section 394 of the Act.

1.2.6A  Statutory notice associated decisions do not include decisions relating to the publication of a statutory notice.

1.2.7  In each case, the decision maker will make decisions by applying the relevant statutory tests, having regard to the context and nature of the matter, that is, the relevant facts, law, and FCA priorities and policies (including on matters of legal interpretation).
The FCA will make and retain appropriate records of those decisions, including records of meetings and the representations (if any) and materials considered by the decision makers.

*DEPP 2* to *DEPP 5* set out:

1. which decisions require the giving of statutory notices and who takes them (*DEPP 2*);

2. the nature and procedures of the *RDC* (*DEPP 3*);

3. the procedure for decision making by FCA staff under *executive procedures* (*DEPP 4*);

4. the procedure for decision making by FCA staff under the *settlement decision procedure* (*DEPP 5*).
Chapter 2

Statutory notices and the allocation of decision making
2.1 Statutory notices

When statutory notices are required

2.1.1 The circumstances in which the warning notice and decision notice procedure apply are set out in DEPP 2 Annex 1.

2.1.2 The circumstances in which the supervisory notice procedure apply are set out in DEPP 2 Annex 2.

2.1.3 DEPP 2 Annex 1 and DEPP 2 Annex 2 identify the provisions of the Act or other enactment giving rise to the need for the relevant notice, and whether the decision maker is the RDC or FCA staff under executive procedures in each case.

Consistent decision making

2.1.4 FCA staff responsible for the taking of a statutory notice decision under executive procedures may refer the matter to the RDC for the RDC to decide whether to give the statutory notice if:

1) the RDC is already considering, or is shortly to consider, a closely related matter; and

2) the relevant FCA staff believe, having regard to all the circumstances, that the RDC should have responsibility for the decision. The relevant considerations might include:

   (a) the desirability of consistency in FCA decision making;
   (b) potential savings in the time and cost of reaching a decision;
   (c) the factors identified in DEPP 3.3.2 G as relevant to an assessment of whether a decision should be regarded as straightforward.
2.2 Warning notices and first supervisory notices

2.2.1 If FCA staff consider that action requiring a warning notice or first supervisory notice is appropriate, they will recommend to the relevant decision maker that the notice be given.

2.2.2 For first supervisory notices, the FCA staff will recommend whether the action should take effect immediately, on a specified date, or when the matter is no longer open to review (see DEPP 2.2.5 G).

2.2.3 The decision maker will:

   (1) consider whether the material on which the recommendation is based is adequate to support it; the decision maker may seek additional information about or clarification of the recommendation, which may necessitate additional work by the relevant FCA staff;

   (2) satisfy itself that the action recommended is appropriate in all the circumstances;

   (3) decide whether to give the notice and the terms of any notice given.

2.2.4 If the FCA decides to take no further action and the FCA had previously informed the person concerned that it intended to recommend action, the FCA will communicate this decision promptly to the person concerned.

2.2.5 A matter is open to review (as defined in section 391(8) (Publication) of the Act) in relation to a supervisory notice which does not take effect immediately or on a specified date) when:

   (1) the period during which any person may refer a matter to the Tribunal is still running; or

   (2) the matter has been referred to the Tribunal but has not been dealt with; or

   (3) the matter has been referred to the Tribunal and dealt with but the period during which an appeal may be brought against the Tribunal's decision is still running; or

   (4) such an appeal has been brought but has not been determined.
2.3 Decision notices and second supervisory notices

Approach of decision maker

2.3.1 If a decision maker is asked to decide whether to give a decision notice or second supervisory notice, it will:

(1) review the material before it;

(2) consider any representations made (whether written, oral or both) and any comments by FCA staff or others in respect of those representations;

(3) decide whether to give the notice and the terms of any notice given.

Default procedures

2.3.2 If the FCA receives no response or representations within the period specified in a warning notice, the decision maker may regard as undisputed the allegations or matters in that notice and a decision notice will be given accordingly. A person who has received a decision notice and has not previously made any response or representations to the FCA, may nevertheless refer the FCA’s decision to the Tribunal.

2.3.3 If the FCA receives no response or representations within the period specified in a first supervisory notice, the FCA will not give a second supervisory notice. The outcome depends on when the relevant action took or takes effect (as stated in the notice). If the action:

(1) took effect immediately, or on a specified date which has already passed, it continues to have effect (subject to any decision on a referral to the Tribunal); or

(2) was to take effect on a specified date which is still in the future, it takes effect on that date (subject to any decision on a referral to the Tribunal); or

(3) was to take effect when the matter was no longer open for review, it takes effect when the period to make representations (or the period for referral to the Tribunal, if longer) expires, unless the matter has been referred to the Tribunal.
In exceptional cases, the decision maker may permit representations from a person who has received a decision notice (or a second supervisory notice) or against whom action, detailed in a first supervisory notice, has taken effect, and shows on reasonable grounds that he did not receive the warning notice (or first supervisory notice), or that he had reasonable grounds for not responding within the specified period. In these circumstances, the decision maker may decide to give a further decision notice (or a written notice or a supervisory notice).

Further decision notice

Under section 388(3) of the Act, following the giving of a decision notice but before the FCA takes action to which the decision notice relates, the FCA may give the person concerned a further decision notice relating to different action concerning the same matter. Under section 388(4) of the Act, the FCA can only do this if the person receiving the further decision notice gives its consent. In these circumstances the following procedure will apply:

(1) FCA staff will recommend to the decision maker that a further decision notice be given, either before or after obtaining the person's consent;

(2) the decision maker will consider whether the action proposed in the further decision notice is appropriate in the circumstances;

(3) if the decision maker decides that the action proposed is inappropriate, he will decide not to give the further decision notice. In this case, the original decision notice will stand and the person's rights in relation to that notice will be unaffected. If the person's consent has already been obtained, the FCA will notify the person of the decision not to give the further decision notice;

(4) if the decision maker decides that the action proposed is appropriate then, subject to the person's consent being (or having been) obtained, a further decision notice will be given;

(5) a person who had the right to refer the matter to the Tribunal under the original decision notice will have that right under the further decision notice. The time period in which the reference to the Tribunal may be made will begin from the date on which the further decision notice is given.

For the purpose of establishing whether the person receiving the further decision notice gives its consent, the FCA will normally require consent in writing.
2.4 Third party rights and access to FCA material

2.4.1 Sections 393 (Third party rights) and 394 (Access to FCA material) of the Act confer additional procedural rights relating to third parties and to disclosure of FCA material. These rights apply in certain warning notice and decision notice cases referred to in section 392 of the Act (Application of sections 393 and 394). The cases in which these additional rights apply are identified in DEPP 2 Annex 1 by asterisks; these are generally cases in which the warning notice or decision notice is given on the FCA’s own initiative rather than in response to an application or notification made to the FCA.
2.5 Provision for certain categories of decision

Purpose

2.5.1 Some of the decisions referred to in DEPP 2 Annex 1 and DEPP 2 Annex 2 share similar characteristics. For convenience, DEPP 2.5 sets out some of these and the particular features they have.

Different decision makers

2.5.2 The decision to give a warning notice and a decision notice in a particular matter will often not be taken by the same decision maker. Certain types of action require that the warning notice decision be taken by FCA staff under executive procedures and the decision notice decision be taken by the RDC. Similarly, in enforcement cases the RDC might take the decision to give a warning notice, but the decision to give a decision notice could be taken by the settlement decision makers on the basis that the person concerned does not contest the action proposed (see DEPP 5).

Decisions relating to applications for FCA authorisation or approval

2.5.3 FCA staff under executive procedures will take the decision to give a warning notice if the FCA proposes to:

(1) refuse an application for a Part 4A permission or to refuse an application to cancel a Part 4A permission;

(2) impose a limitation or a requirement which was not applied for, or specify a narrower description of regulated activity than that applied for, on the grant of a Part 4A permission;

(3) refuse an application to vary a Part 4A permission, or to restrict a Part 4A permission on the grant of a variation (by imposing a limitation or a requirement which was not applied for or by specifying a narrower description of regulated activity than that applied for);

(3A) refuse an application to vary a requirement imposed under section 55L of the Act, or to impose a new requirement;

(3B) exercise its power under section 55L(1) of the Act in connection with an application to the PRA for a Part 4A permission or the variation of a Part 4A permission;

(4) refuse approved person status;
(4A) grant a relevant senior manager application, subject to any conditions or only for a limited period;

(4B) refuse an application to vary an approval under section 59 of the Act that was granted subject to conditions;

(5) refuse an application for a small e-money issuer certificate (see ELM 8 (Small e-money issuers));

(6) refuse an application for variation or rescission of a requirement imposed on an incoming EEA firm.

2.5.4 [G] If no representations are made in response to a warning notice proposing the action set out at DEPP 2.5.3 G within the period specified, a decision notice will be given accordingly: see DEPP 2.3.2 G (Default procedures).

2.5.5 [G] If representations are made in response to a warning notice proposing the action set out at DEPP 2.5.3G (1), DEPP 2.5.3G (4), DEPP 2.5.3G(4A), DEPP 2.5.3G(4B) or DEPP 2.5.3G (5), then the RDC will take the decision to give a decision notice.

2.5.5A [G] If representations are made in response to a warning notice proposing the action set out at DEPP 2.5.3G (3B), FCA staff under executive procedures will take the decision to give a decision notice.

2.5.6 [G] If representations are made in response to a warning notice proposing the action set out at DEPP 2.5.3G (2), DEPP 2.5.3G (3), DEPP 2.5.3G (3A), or DEPP 2.5.3G (6), then the RDC will take the decision to give a decision notice if the action involves a fundamental variation or requirement (see DEPP 2.5.8 G). Otherwise, the decision to give the decision notice will be taken by FCA staff under executive procedures.

Decisions relating to applications for PRA authorisation or approval

2.5.6A [G] FCA staff under executive procedures will take the decision where the FCA is proposing or deciding to:

(1) refuse its consent to the granting by the PRA of an application for a Part 4A permission, or give its consent subject to conditions;

(2) refuse its consent to the granting by the PRA of an application for the variation of a Part 4A permission, or give its consent subject to conditions; or

(3) refuse its consent to the granting by the PRA of an application to perform a controlled function, or give its consent subject to conditions.

FCA’s own-initiative powers

2.5.7 [G] The RDC will take the decision to give a supervisory notice exercising the FCA’s own-initiative powers (by removing a regulated activity, by imposing a
limitation or requirement or by specifying a narrower description of regulated activity) if the action involves a fundamental variation or requirement (see DEPP 2.5.8 G). Otherwise, the decision to give the supervisory notice will be taken by FCA staff under executive procedures.

2.5.7A  Notwithstanding DEPP 2.5.7 G, FCA staff under executive procedures will be the decision maker whenever a firm agrees not to contest the FCA’s exercise of its own-initiative powers, including where the FCA’s action involves a fundamental variation or requirement.

2.5.8  A fundamental variation or requirement means:

1. removing a type of activity or investment from the firm’s permission;
2. refusing an application to include a type of activity or investment; or
3. [deleted]
4. imposing or varying an assets requirement (as defined in section 55P of the Act (Prohibitions and restrictions)), or refusing an application to vary or cancel such a requirement.

The FCA’s power to vary SMF manager’s approval on its own initiative

2.5.8A  The RDC will take the decision under section 63ZB of the Act to vary an approval given to an SMF manager (by imposing a condition, varying a condition, removing a condition or limiting the period for which the approval is to have effect).

2.5.8B  Notwithstanding DEPP 2.5.7G, FCA staff under executive procedures will be the decision maker whenever all of the interested parties (as defined by section 63ZC(6) of the Act) agree not to contest the FCA’s exercise of its power under section 63ZB of the Act.

2.5.8C  The FCA’s statement of policy on the use of the power to vary an SMF manager’s approval on its own initiative is set out in DEPP 8.

Decisions relating to listing of securities

2.5.9  FCA staff under executive procedures will take the following statutory notice decisions:

1. the refusal of an application for listing of securities;
2. the suspension of listing on the FCA’s own initiative or at the request of the issuer;
3. [deleted]
4. the discontinuance of listing of securities at the issuer’s request;
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(5) the exercise of any of the powers in sections 87K or 87L of the Act in respect of a breach of any applicable provision; and

(6) [deleted]

(7) the refusal of an application by an issuer for cancellation of a suspension of listing made under section 77 of the Act.

2.5.10 The RDC will take statutory notice decisions relating to the discontinuance of listing of securities on the FCA’s own initiative.

2.5.11 If securities have matured or otherwise ceased to exist the FCA will remove any reference to them from the official list. This is a purely administrative process, and not a discontinuance of listing in the sense used in Part 6 of the Act.

Decisions relating to imposition of limitations or other restrictions of sponsors and primary information providers.

Decisions relating to imposition of limitations or other restrictions of sponsors and primary information providers

2.5.11A Under section 88(4)(aa) of the Act, if the FCA proposes to impose limitations or other restrictions on the services to which a sponsor’s approval relates, it must give him a warning notice. If, after considering any representations made in response to the warning notice, the FCA decides to impose limitations or other restrictions on the services to which a sponsor’s approval relates, it must give him a decision notice. Where the sponsor has requested or otherwise agrees to the limitation or other restriction, FCA staff under executive procedures will take the decision to give the warning notice and decision notice. Otherwise, the RDC will take the decision to give the warning notice and decision notice.

2.5.11B If the FCA is proposing or deciding to refuse a sponsor’s application for the withdrawal or variation of a limitation or other restriction on the services to which a sponsor’s approval relates under section 88(8)(d) of the Act, the decision maker will be FCA staff under executive procedures where FCA staff decided to impose the limitation or other restriction. Otherwise, the RDC will take the decision to give the warning notice and decision notice.

2.5.11C Under section 89P(5)(b) of the Act, if the FCA proposes to impose limitations or other restrictions on the dissemination of regulated information to which a primary information provider’s approval relates, it must give him a warning notice. If, after considering any representations made in response to the warning notice, the FCA decides to impose limitations or other restrictions on the dissemination of regulated information to which a primary information provider’s approval relates, it must give him a decision notice. Where the primary information provider has requested or otherwise agrees to the limitation or other restriction, FCA staff under executive procedures will take the decision to give the warning notice and decision notice. Otherwise, the RDC will take the decision to give the warning notice and decision notice.
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2.5.11D  Under section 89P(9)(d) of the Act, if the FCA is proposing or deciding to refuse a primary information provider’s application for the withdrawal or variation of a limitation or other restriction on the dissemination of regulated information to which a primary information provider’s approval relates, the decision maker will be FCA staff under executive procedures where FCA staff decided to impose the limitation or other restriction. Otherwise, the RDC will take the decision to give the warning notice and decision notice.

Modified procedures in collective investment scheme and certain other cases

2.5.12  FCA staff will usually inform or discuss with the person concerned any action they contemplate before they recommend to the RDC that the FCA takes formal action. The FCA may also be invited to exercise certain powers by the persons who would be affected by the exercise of those powers. In these circumstances if the person concerned has agreed to or accepted the action proposed then the decisions referred to in DEPP 2.5.13 G will be taken by FCA staff under executive procedures rather than by the RDC.

2.5.13  The decisions referred to in DEPP 2.5.12 G are:

(1) the decision to give a supervisory notice pursuant to section 259(3), (8) or 9(b) (directions on authorised unit trust schemes); section 268(3), 7(a) or 9(a) (directions in respect of recognised overseas schemes); or section 282(3), (6) or (7)(b) (directions in respect of relevant recognised schemes) of the Act;

(1A) the decision to give a supervisory notice pursuant to section 261Z1(3), (8) or (9)(b) (Procedure on giving directions under section 261X or 261Z and varying them on FCA’s own initiative) of the Act;

(2) the decision to give a warning notice or decision notice pursuant to section 280(1) or (2)(a) (revocation of recognised investment scheme) of the Act;

(3) the decision to give a supervisory notice in accordance with regulation 27(3), (8) or 9(b) of the OEIC Regulations; and

(4) the decision to give a warning notice or decision notice pursuant to regulation 24 or regulation 28 of the OEIC Regulations.

(4A) the decision to give a warning notice or decision notice pursuant to section 255 or 260 of the Act;

(4B) the decision to give a warning notice or decision notice pursuant to section 261V or 261Z2 of the Act;

(5) [deleted]

(6) [deleted]

2.5.14  In determining whether there is agreement to or acceptance of the action proposed, an indication by the following persons will be regarded as conclusive:
(1) in relation to an **authorised unit trust scheme**, the **manager** and **trustee**;

(1A) in relation to an **authorised contractual scheme**, the **authorised contractual scheme manager** and **depository**;

(2) in relation to an **ICVC**, the **directors** and the **depository**;

(3) in relation to a **recognised scheme**, the **operator** and, if any, the **trustee or depository**.

2.5.15 G A decision to give a **warning notice or decision notice** refusing an application for an **authorisation order** declaring a scheme to be an **AUT, ACS or ICVC** or an **AUT, ACS or ICVC** to be a money market fund will be taken by the **RDC** only if the application is by an **authorised fund manager** who is not the **operator** of an existing **AUT, ACS or ICVC**. Otherwise, the decision to give the **warning notice or decision notice** will be taken by **FCA** staff under executive procedures.

2.5.16 G A notice under paragraph 15A(4) of Schedule 3 to the **Act** relating to the application by an **EEA firm** for approval to manage a **UCITS scheme** is not a **warning notice**, but the **FCA** will operate a procedure for this notice which will be similar to the procedure for a **warning notice**.

**Notices under other enactments**

2.5.17 G The **FCA** expects to adopt a procedure in respect of notices under enactments other than the **Act** which is similar to that for **statutory notices** under the **Act**, but which recognises any differences in the legislative framework and requirements. [DEPP 2 Annex 1 and DEPP 2 Annex 2 therefore identify notices to be given pursuant to other enactments and the relevant FCA decision maker.]

2.5.18 G Some of the distinguishing features of notices given under enactments other than the **Act** are as follows:

(1) [deleted]

(2) [deleted]

(3) **Friendly Societies Act 1992**, section 58A: The **warning notice** and **decision notice** must set out the terms of the direction which the **FCA** proposes or has decided to give and any specification of when the friendly society is to comply with it. A **decision notice** given under section 58A(3) must give an indication of the society’s right, given by section 58A(5), to have the matter referred to the **Tribunal**. A **decision notice** under section 58A(3) may only relate to action under the same section of the **Friendly Societies Act 1992** as the action proposed in the **warning notice**. A **final notice** under section 390 of the **Act** must set out the terms of the direction and state the date from which it takes effect. [Section 392 of the **Act** is to be read as if it included references to a **warning notice** given under section 58A(1) and a **decision notice** given under section 58A(3).]
(4) The FCA is only required to give a single supervisory notice under Regulations 28 and 36 of the MiFi Regulations. No representations can be made to the FCA after the issuing of this notice, but the matter can be referred to the Tribunal.

(5) The decision to give a written notice under section 55XA(1) of the Act will be taken by FCA staff under executive procedures. If the applicant decides to seek a review, by the FCA, of that decision, they can make representations to the RDC. If the RDC then decides under section 55XA(5) of the Act to confirm the first decision, or take a different decision of the type described by section 55XA(1) of the Act, it must give the applicant a written notice.
### Warning notices and decision notices under the Act and certain other enactments

Note: Third party rights and access to FCA material apply to the powers listed in this Annex where indicated by an asterisk * (see DEPP 2.4)

<table>
<thead>
<tr>
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<tbody>
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<td>55X(1)(a) and (b)</td>
<td>when the FCA is proposing to grant an application for a Part 4A permission with a limitation or a requirement which was not applied for, or with a narrower description of regulated activity than that applied for</td>
<td>SUP 6</td>
<td>Executive procedures</td>
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<td>55X(1)(c) and (d)</td>
<td>when the FCA is proposing to grant an application to vary a firm’s Part 4A permission but, other than as part of the application, to restrict the Part 4A permission (either by imposing a limitation or requirement which was not applied for or by specifying a narrower description of regulated activity than that applied for)</td>
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<td>Executive procedures</td>
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<tr>
<td>55X(1)(e)</td>
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<td>Executive procedures</td>
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<td>55X(2)</td>
<td>when the FCA is proposing to refuse an application for a Part 4A permission</td>
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<tr>
<td>55X(2)</td>
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<tr>
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<td>RDC or executive procedures See DEPP 2.5.6 G</td>
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<td>RDC or executive procedures See DEPP 2.5.6 G</td>
</tr>
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<tr>
<td>55X(4)(c)</td>
<td>when the FCA is deciding to grant an application to vary a firm’s Part 4A permission but, other than as part of the application, to restrict the Part 4A permission (either by imposing a limitation or requirement which was not applied for or by specifying a narrower description of regulated activity than that applied for)</td>
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<tr>
<td>55X(4)(d)</td>
<td>when the FCA is deciding to exercise its power under section 55L(1) in connection with an application to the PRA for a Part 4A permission or the variation of a Part 4A permission</td>
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</tr>
<tr>
<td>55X(4)(e)</td>
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<td>55X(4)(f)</td>
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<tr>
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<tr>
<td>89P(5)(b)</td>
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<td>89P(5)(c)</td>
<td>when the FCA is proposing or deciding to cancel a person's approval as a primary information provider otherwise than at the primary information provider's request</td>
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<tr>
<td>89P(7)(c)</td>
<td>when the FCA is proposing or deciding to cancel a person's approval as a primary information provider otherwise than at the primary information provider's request</td>
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<td>92(1)/(4)</td>
<td>when the FCA is proposing or deciding to take action against any person under section 91 for breach of Part 6 rules*</td>
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<td>126(1)/127(1)</td>
<td>when the FCA is proposing or deciding to impose a penalty or public censure under section 123 of the Act, a disciplinary prohibition under section 123A of the Act, or a suspension or restriction under section 123B of the Act*</td>
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<td>131H(1)/(4)</td>
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<tr>
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<td>207(1)/208(1)</td>
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<td>255(1)/(2)</td>
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</table>
# DEPP 2 : Statutory notices and the allocation of decision making

<p>| Section of the Act | Description                                                                                                                                                                                                                                                                                                                                 | Handbook reference | Decision maker |
|-------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|----------------|----------------|
| 264(2)/ 265(4)    | 261X, proposes or decides to refuse to revoke or vary the direction or proposes or decides to vary the direction otherwise than in accordance with the application                                                                                                                                                                                    | RDC                 |                |
| 269(1)/(2)        | [deleted]                                                                                                                                                                                                                                                                                                                                |                     |                |
| 269(1)/(2)        | when the FCA, on an application under section 267(4) or (5) by an operator of a section 264 recognised scheme to revoke or vary a direction that the promotion of the scheme be suspended, proposes or decides to refuse the application or to vary the direction otherwise than in accordance with the application                                                                 |                     | RDC            |
| 276(1)/(2)        | when the FCA is proposing or deciding to refuse an application for an order declaring a collective investment scheme to be a recognised scheme under section 272                                                                                                                                                                                    | COLL 9              | Executive procedures |
| 280(1)/(2)        | when the FCA is proposing or deciding to revoke a section 272 order in respect of a recognised scheme *                                                                                                                                                                                                                               |                     | RDC            |
| 301G(3)(b)/(5)    | when the FCA is proposing or deciding to object to a proposed acquisition of a UK RIE following receipt of a section 301A notice .                                                                                                                                                                                                        | REC 4.2C           | Executive procedures |
| 301I(3)/(4)       | when the FCA is proposing or deciding to object to a person who has acquired or increased control in a UK RIE without giving a section 301 notice                                                                                                                                                                                     | REC 4.2C           | Executive procedures |
| 301I(3)/(4)       | when the FCA is proposing or deciding to object to a person's control in a UK RIE on the basis of the approval requirement in section 301F(4)                                                                                                                                                                                                 | REC 4.2C           | Executive procedures |
| 312G(1)           | when the FCA is proposing or deciding to take action against a recognised investment exchange by exercising the disciplinary powers conferred by sections 312E and 312F*                                                                                                                                                                    |                     | RDC            |
| 312H(1)           | [deleted]                                                                                                                                                                                                                                                                                                                               |                     |                |
| 313B(9)           | [deleted]                                                                                                                                                                                                                                                                                                                               |                     |                |
| 313B(10)/(11)     | when, upon the application of an institution, the FCA is proposing or deciding not to revoke a requirement imposed on an institution under section 313A or is proposing or deciding that a requirement imposed on a class of institutions under section 313A will continue to apply to the applicant                                                                                       | REC 4.2D           | Executive procedures |
| 313BB(5)/ 313BC(5)| when, upon the application of an issuer, the FCA is proposing or deciding not to revoke a requirement imposed on an institution or a class of institutions under section 313A or to revoke a requirement imposed on a class of institutions under section 313A in relation to the class                                                                 | REC 4.2D           | Executive procedures |</p>
<table>
<thead>
<tr>
<th>Section of the Act</th>
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<th>Decision maker</th>
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</thead>
<tbody>
<tr>
<td>331(1)/(3)</td>
<td>when the FCA is proposing or deciding to make an order disapplying the exemption from the general prohibition under section 327*</td>
<td>RDC</td>
<td></td>
</tr>
<tr>
<td>331(7)/(8)</td>
<td>when the FCA is proposing or deciding to refuse an application for the variation or revocation of an order made under section 329*</td>
<td>RDC</td>
<td></td>
</tr>
<tr>
<td>345B(1)</td>
<td>when the FCA is proposing or deciding to disqualify an auditor or actuary from being the auditor of, or acting as an actuary for, any authorised person or class of authorised person or from being the auditor of any AUT, ACS or ICVC *</td>
<td>RDC</td>
<td></td>
</tr>
<tr>
<td>345B(1)</td>
<td>when the FCA is proposing or deciding to disqualify an auditor from being the auditor of any recognised investment exchange or any class of recognised investment exchange*</td>
<td>RDC</td>
<td></td>
</tr>
<tr>
<td>345B(4)</td>
<td>when the FCA is proposing or deciding to take action against an auditor or actuary by exercising the disciplinary powers conferred by sections 345(2)(c) or (d)*</td>
<td>RDC</td>
<td></td>
</tr>
<tr>
<td>385(1)/386(1)</td>
<td>when the FCA is proposing or deciding to exercise the power under section 384(5) to require a person to pay restitution*</td>
<td>RDC</td>
<td></td>
</tr>
<tr>
<td>404A(8)(a)</td>
<td>In connection with a consumer redress scheme, when the FCA is proposing to make a determination of whether a failure by a relevant firm has caused (or may cause) loss or damage to a consumer, or what the redress should be in respect of the failure</td>
<td>CONRED</td>
<td>Executive procedures</td>
</tr>
<tr>
<td>404A(8)(a)</td>
<td>In connection with a consumer redress scheme, when the FCA is deciding to make a determination of whether a failure by a relevant firm has caused (or may cause) loss or damage to a consumer, or what the redress should be in respect of the failure</td>
<td>CONRED</td>
<td>Executive procedures</td>
</tr>
<tr>
<td>412B(2)/(3)</td>
<td>when the FCA is proposing/deciding to refuse to approve a relevant system as defined in section 412A(9) of the Act</td>
<td>CONRED</td>
<td>Executive procedures</td>
</tr>
<tr>
<td>412B(4)/(5)</td>
<td>when the FCA is proposing/deciding to suspend or withdraw its approval in relation to a relevant system as defined in section 412A(9) of the Act*</td>
<td>CONRED</td>
<td>Executive procedures</td>
</tr>
<tr>
<td>412B(8)/(9)</td>
<td>when the FCA is proposing/deciding to refuse an application to cancel the suspension of approval in relation to a relevant system as defined in section 412A(9) of the Act</td>
<td>CONRED</td>
<td>Executive procedures</td>
</tr>
</tbody>
</table>
### DEPP 2: Statutory notices and the allocation of decision making

<table>
<thead>
<tr>
<th>Section of the Act</th>
<th>Description</th>
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<th>Decision maker</th>
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</thead>
<tbody>
<tr>
<td>Paragraph 15A(4) of Schedule 3</td>
<td>when the FCA is notifying an EEA firm wishing to manage a UCITS scheme and its Home State regulator that the EEA firm does not comply with the fund application rules, or is not authorised by its Home State regulator to manage the type of collective investment scheme for which authorisation is required, or has not provided the documentation required under article 20(1) of the UCITS Directive</td>
<td>SUP 13A</td>
<td>Executive procedures</td>
</tr>
<tr>
<td>Paragraph 15A(5) of Schedule 3</td>
<td>[deleted]</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Paragraph 15B(2)(a) of Schedule 3</td>
<td>when the FCA is deciding not to withdraw a notice issued to an EEA firm wishing to manage a UCITS scheme and to its Home State regulator that the EEA firm does not comply with the fund application rules, or is not authorised by its Home State regulator to manage the type of collective investment scheme for which authorisation is required, or has not provided the documentation required under article 20(1) of the UCITS Directive</td>
<td>SUP 13A</td>
<td>Executive procedures</td>
</tr>
<tr>
<td>Paragraph 19(8)/(12) of Schedule 3</td>
<td>when the FCA is proposing or deciding to refuse to give a consent notice to a UK firm wishing to establish a branch under an EEA right</td>
<td>SUP 13</td>
<td>RDC</td>
</tr>
</tbody>
</table>

### Co-operative and Community Benefit Societies Act (Northern Ireland) 1969

| Sections 15 and 16 | where the FCA gives at least two months’ notice of the proposed cancellation or suspension of the registration of a registered society | | Executive procedures |
| Sections 15 and 16 | where the FCA is proposing to cancel or suspend the registration of a registered society relying on section 15 (1)(c)(ii) | | Executive procedures |
| Section 65 | where the FCA is proposing to petition for the winding up of a registered society | | RDC |
## Co-operative and Community Benefit Societies Act (Northern Ireland) 1969

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<tr>
<th>Section</th>
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<tr>
<td>75</td>
<td>where the FCA is proposing to prosecute a registered society</td>
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<td>Executive procedures or RDC</td>
</tr>
</tbody>
</table>

## Credit Unions (Northern Ireland) Order 1985

<table>
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<tr>
<th>Articles</th>
<th>Description</th>
<th>Handbook reference</th>
<th>Decision maker</th>
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<tbody>
<tr>
<td>60 and 61</td>
<td>where the FCA gives at least two months’ notice of the proposed cancellation or suspension of the registration of a Northern Ireland credit union</td>
<td></td>
<td>Executive procedures</td>
</tr>
<tr>
<td>60(1) and 61(1)</td>
<td>where the FCA is proposing to cancel or suspend the registration of a Northern Ireland credit union relying on section 60(1)(c)(ii)</td>
<td></td>
<td>Executive procedures where no representations are made in response to a notice of proposed cancellation, otherwise by the RDC</td>
</tr>
<tr>
<td>63</td>
<td>where the FCA is proposing to petition for the winding up of a Northern Ireland credit union</td>
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<td>RDC</td>
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<tr>
<td>76</td>
<td>where the FCA is proposing to prosecute a Northern Ireland credit union</td>
<td></td>
<td>Executive procedures or RDC</td>
</tr>
</tbody>
</table>

## Section of the Friendly Societies Act 1992

| 58A(1)(a)/(3)(a) | when the FCA is proposing or deciding to give a direction under section 54 or section 55 requiring a friendly society to take or refrain from taking steps where certain activities have become disproportionate to those of the friendly society group or, as the case may be, the society, or varying such a direction other than at the request of the society* | See DEPP 2.5.18G (3) | RDC |
| 58A(1)(b)/(3)(b) | when the FCA is proposing or deciding to give a direction under section 90 providing for a transfer of the engagements of a friendly society * | | RDC |
| 85(4A) | when the FCA, on an amalgamation between friendly societies each of which has a Part 4A permission, notifies the successor society of the terms of its Part 4A permission | See DEPP 2.5.12 G | RDC or executive procedures |
# DEPP 2: Statutory notices and the allocation of decision making

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<tr>
<th>OEIC Regulations reference</th>
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<th>Handbook reference</th>
<th>Decision maker</th>
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<tbody>
<tr>
<td>Regulation 16(1)/(2)</td>
<td>when the FCA is proposing or deciding to refuse an application for an authorisation order in respect of a proposed ICVC or an ICVC to be a money market fund</td>
<td>COLL 2</td>
<td>RDC or executive procedures</td>
</tr>
<tr>
<td>Regulation 22(1)/(2)/(4)/(5)</td>
<td>when the FCA is proposing to refuse approval of (or, having given a warning notice, deciding to refuse) a proposal to replace the depositary or director of an ICVC, or any other proposal or decision falling within regulation 21</td>
<td>COLL 2</td>
<td>Executive procedures</td>
</tr>
<tr>
<td>Regulation 22A(5)(b)/(8)(a)</td>
<td>when the FCA is proposing or deciding to refuse approval of a proposal by an ICVC which is a feeder UCITS to make an alteration to its instrument of incorporation to enable it to convert into a UCITS scheme which is not a feeder UCITS</td>
<td>COLL 11</td>
<td>Executive procedures</td>
</tr>
<tr>
<td>Regulation 24(1)/(2)</td>
<td>when the FCA is proposing or deciding to revoke an authorisation order relating to an ICVC under regulation 23(1)*</td>
<td>RDC</td>
<td></td>
</tr>
<tr>
<td>Regulation 28(1)/(2)</td>
<td>when the FCA is proposing or deciding to refuse an application to revoke or vary a direction in accordance with a request under regulation 25(7) or to vary the direction in accordance with the application</td>
<td>RDC</td>
<td></td>
</tr>
<tr>
<td>Paragraph 20 of Schedule 5</td>
<td>when the FCA is proposing or deciding to use the disqualification powers under section 249(1)*</td>
<td>RDC</td>
<td></td>
</tr>
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<thead>
<tr>
<th>Regulated Activities Order</th>
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<tbody>
<tr>
<td>Article 95(2)/(3)</td>
<td>when the FCA is proposing or deciding not to include, or to remove, an appointed representative from the Register*</td>
<td>SUP 12.4.10 G</td>
<td>RDC</td>
</tr>
<tr>
<td>Article 95(7)/(8)</td>
<td>when the FCA is proposing or deciding to refuse an application to revoke a determination not to include, or to remove, an appointed representative from the Register*</td>
<td>SUP 12.4.10 G</td>
<td>RDC</td>
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</table>

<table>
<thead>
<tr>
<th>Payment Services Regulations</th>
<th>Description</th>
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<th>Decision maker</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regulations 9(7), 15 and 19</td>
<td>when the FCA is proposing to refuse an application for authorisation as an authorised payment institution, or for registration as a small payment institution, or for registration as an account information service provider, or to impose a requirement, or to refuse an application to vary an authorisation or existing registration</td>
<td>RDC</td>
<td>Executive procedures</td>
</tr>
<tr>
<td>Regulations</td>
<td>when the FCA is deciding to refuse an application for authorisation as an authorised payment institution, or for registration as a small payment institution, or for registration as an account information service provider, or to impose a requirement, or to refuse an application to vary an authorisation or existing registration</td>
<td>RDC</td>
<td>Executive procedures</td>
</tr>
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<td>Payment Services Regulations</td>
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</tr>
<tr>
<td>9(8)(a), 15 and 19</td>
<td>Application for authorisation as an authorised payment institution, or for registration of a small payment institution, or for registration as an account information service provider, or to impose a requirement, or to refuse an application to vary an authorisation or existing registration</td>
<td></td>
<td>RDC</td>
</tr>
<tr>
<td>Regulations 10(2), 10(3)(a), 15 and 19</td>
<td>when the FCA is proposing or deciding to either cancel an authorised payment institution’s authorisation, or to cancel a small payment institution or account information service provider’s registration, otherwise than at that institution’s own request*</td>
<td></td>
<td>RDC</td>
</tr>
<tr>
<td>Regulations 28(1) and 26</td>
<td>when the FCA is proposing to refuse to register an EEA branch or an EEA registered account information service provider</td>
<td></td>
<td>RDC</td>
</tr>
<tr>
<td>Regulations 28(2)(a) and 26</td>
<td>when the FCA is deciding to refuse to register an EEA branch or an EEA registered account information service provider</td>
<td></td>
<td>RDC</td>
</tr>
<tr>
<td>Regulations 28(1), 28(2)(a) and 26</td>
<td>when the FCA is proposing or deciding to cancel the registration of an EEA branch* or an EEA registered account information service provider</td>
<td></td>
<td>RDC</td>
</tr>
<tr>
<td>Regulation 34(8)</td>
<td>when the FCA is proposing to refuse an application for registration as an agent</td>
<td></td>
<td>RDC</td>
</tr>
<tr>
<td>Regulation 34(9)(a)</td>
<td>when the FCA is deciding to refuse an application for registration as an agent</td>
<td></td>
<td>RDC</td>
</tr>
<tr>
<td>Regulations 35(2) and 35(3)(a)</td>
<td>when the FCA is proposing or deciding to remove an agent from the Financial Services Register otherwise than at the request of a payment institution*</td>
<td></td>
<td>RDC</td>
</tr>
<tr>
<td>Regulations 112(1) and 112(3)</td>
<td>when the FCA is proposing, or deciding, to impose a financial penalty*</td>
<td></td>
<td>RDC</td>
</tr>
<tr>
<td>Regulations 112(1) and 112(3)</td>
<td>when the FCA is proposing, or deciding, to publish a statement that a payment service provider has contravened the Payment Services Regulations*</td>
<td></td>
<td>RDC</td>
</tr>
<tr>
<td>Regulations 115(1) and 115(3)</td>
<td>when the FCA is proposing or deciding to exercise its powers to require restitution*</td>
<td></td>
<td>RDC</td>
</tr>
</tbody>
</table>
## Payment Services Regulations

| Schedule 5 paragraph 5(6) | when the FCA is proposing to refuse an application to vary the period, event or condition of a prohibition, or to remove a prohibition, or to vary or remove a restriction | Executive procedures |
| Schedule 5 paragraph 5(7) | when the FCA is deciding to refuse an application to vary the period, event or condition of a prohibition, or to remove a prohibition, or to vary or remove a restriction | Executive procedures, where no representations are made in response to a warning notice, otherwise by the RDC |
| Schedule 6 paragraph 1 | when the FCA is proposing or deciding to publish a statement that a relevant person has been knowingly concerned with a contravention of the Payment Services Regulations (Note 2) | RDC |
| Schedule 6 paragraph 1 | when the FCA is proposing or deciding to impose a financial penalty against a relevant person (Note 3) | RDC |

**Notes:**

(2) The Payment Services Regulations do not require third party rights and access to FCA material when the FCA exercises this power. However, the FCA generally intends to allow for third party rights and access to material when exercising this power.

(3) The Payment Services Regulations do not require third party rights and access to FCA material when the FCA exercises this power. However, the FCA generally intends to allow for third party rights and access to material when exercising this power.

## The Money Laundering Regulations 2007

| The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 | Description | Handbook reference | Decision maker |
| Regulations 25(6), 25(9) and 25 (10)(b) | when the FCA is exercising its power to give a direction | RDC |
| Regulation 59(3)(b) | when the FCA is proposing to refuse an application for registration | Executive procedures |
| Regulation 59(4)(b) | when the FCA is deciding to refuse an application for registration | RDC or executive procedures |
| Regulations 60(8) and 60(9) | when the FCA is proposing or deciding to suspend or cancel the registration of a person registered under the Money Laundering Regulations | (Note 1) |
| | | RDC |
Regulations 81(2) and 81(6) when the **FCA** is proposing or deciding to impose a civil penalty under regulations 76, 77 or 78*  

**Note:**  
1. The **RDC** will take the decision to give the notice under regulation 59(4)(b) if representations are made in response to the notice under regulation 59(3)(b) proposing to refuse the registration application.

### Regulated Covered Bonds Regulations 2008

<table>
<thead>
<tr>
<th>Description</th>
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<th>Decision maker</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regulation 13(4)/(5)(a) when the <strong>FCA</strong> is proposing or deciding to refuse an application under regulation 8</td>
<td>RCB 6</td>
<td><strong>Executive procedures</strong></td>
</tr>
<tr>
<td>Regulation 20(5)/(6)(a) when the <strong>FCA</strong> is proposing or deciding not to approve a material change</td>
<td>RCB 6</td>
<td><strong>Executive procedures</strong></td>
</tr>
<tr>
<td>Regulation 25(5)/(6)(a) when the <strong>FCA</strong> is proposing or deciding not to approve a change of ownership</td>
<td>RCB 6</td>
<td><strong>Executive procedures</strong></td>
</tr>
<tr>
<td>Regulation 32(1)(a)/(2)(a) before the <strong>FCA</strong> gives a direction under regulation 30 or when it decides to make the direction</td>
<td>RCB 6</td>
<td><strong>Executive procedures</strong></td>
</tr>
<tr>
<td>Regulation 32(1)(b)/(2)(b) before the <strong>FCA</strong> removes an <strong>issuer</strong> from the register of <strong>issuers</strong> under regulation 31 or when it decides to remove the <strong>issuer</strong> from the register of <strong>issuers</strong>*</td>
<td>RCB 6</td>
<td><strong>Executive procedures</strong></td>
</tr>
<tr>
<td>Regulation 35(1)/(3) when the <strong>FCA</strong> is proposing or deciding to impose a penalty on a person under regulation 34*</td>
<td>RCB 6</td>
<td><strong>RDC</strong></td>
</tr>
</tbody>
</table>

### Cross-Border Payments in Euro Regulations 2010

<table>
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<th>Description</th>
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</thead>
<tbody>
<tr>
<td>Regulations 7(1) and 7(3) when the <strong>FCA</strong> is proposing or deciding to impose a financial penalty*</td>
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<tr>
<td>Regulations 7(1) and 7(3) when the <strong>FCA</strong> is proposing or deciding to publish a statement that a <strong>payment service provider</strong> has contravened the <strong>EU Cross-Border Regulation</strong>*</td>
<td>RDC</td>
<td></td>
</tr>
<tr>
<td>Regulations 10(1) and 10(3) when the <strong>FCA</strong> is proposing or deciding to exercise its powers to require restitution*</td>
<td>RDC</td>
<td></td>
</tr>
<tr>
<td>Schedule paragraph 1 when the <strong>FCA</strong> is proposing or deciding to publish a statement that a relevant person has been knowingly concerned with a contravention of the <strong>EU Cross-Border Regulation</strong> (Note 1)</td>
<td>RDC</td>
<td></td>
</tr>
<tr>
<td>Schedule paragraph 1 when the <strong>FCA</strong> is proposing or deciding to impose a financial penalty against a relevant person (Note 1)</td>
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<td></td>
</tr>
</tbody>
</table>

**Note:**  
1. The **Cross-Border Payments in Euro Regulations** do not require third party rights and access to **FCA** material when the **FCA** exercises this power. However, the **FCA** generally intends to allow for third party rights and access to material when exercising this power.
<table>
<thead>
<tr>
<th>Electronic Money Regulations</th>
<th>Description</th>
<th>Handbook reference</th>
<th>Decision maker</th>
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<tbody>
<tr>
<td>Regulations 9(6) and 15</td>
<td>where the FCA is proposing to refuse an application for authorisation as an authorised electronic money institution, or for registration as a small electronic money institution, or impose a requirement, or refuse to vary an authorisation or registration</td>
<td>Executive procedures</td>
<td></td>
</tr>
<tr>
<td>Regulations 9(7)(a) and 15</td>
<td>when the FCA is deciding to refuse an application for authorisation as an authorised electronic money institution, or for registration as a small electronic money institution, or impose a requirement or refuse to vary an authorisation or registration</td>
<td>Executive procedures where no representations are made in response to a warning notice, otherwise by the RDC</td>
<td></td>
</tr>
<tr>
<td>Regulations 10(4), 10(5)(a) and 15</td>
<td>when the FCA is proposing or deciding to either cancel an authorised electronic money institution’s authorisation, or to cancel a small electronic money institution’s registration otherwise than at that institution’s own request *</td>
<td>RDC</td>
<td></td>
</tr>
<tr>
<td>Regulations 11(6), 11(9), 11(10)(b) and 15</td>
<td>when the FCA is exercising its powers to vary an electronic money institution’s authorisation or vary a small electronic money institution’s registration on its own initiative</td>
<td>RDC or Executive procedures (Note 1)</td>
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<tr>
<td>Regulation 29(2)</td>
<td>when the FCA is proposing to refuse to register an EEA branch of an authorised electronic money institution</td>
<td>Executive procedures</td>
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<tr>
<td>Regulation 29(3)(a)</td>
<td>when the FCA is deciding to refuse to register an EEA branch of an authorised electronic money institution</td>
<td>Executive procedures where no representations are made in response to a warning notice, otherwise by the RDC</td>
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<tr>
<td>Regulation 29(2) and Regulation 29(3)(a)</td>
<td>when the FCA is proposing or deciding to cancel the registration of an EEA branch of an authorised electronic money institution*</td>
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<tr>
<td>Regulation 34(9)</td>
<td>when the FCA is proposing to refuse an application for registration as an agent</td>
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<tr>
<td>Regulation 34(10)(a)</td>
<td>when the FCA is deciding to refuse an application for registration as an agent</td>
<td>Executive procedures where no representations are made in response to a warning notice, otherwise by the RDC</td>
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<tr>
<td>Regulations 35(2) and 35(3)(a)</td>
<td>when the FCA is proposing or deciding to remove an agent from the Financial Services Register otherwise than at the request of the electronic money institution *</td>
<td>RDC</td>
<td></td>
</tr>
<tr>
<td>Electronic Money Regulations</td>
<td>Description</td>
<td>Handbook reference</td>
<td>Decision maker</td>
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<tr>
<td>Regulations 53(1) and 53(3)</td>
<td>when the FCA is proposing, or deciding, to publish a statement that an electronic money issuer has contravened the Electronic Money Regulations *</td>
<td></td>
<td>RDC</td>
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<tr>
<td>Regulations 53(1) and 53(3)</td>
<td>when the FCA is proposing or deciding, to impose a financial penalty *</td>
<td></td>
<td>RDC</td>
</tr>
<tr>
<td>Regulations 53(1) and 53(3)</td>
<td>When the FCA is proposing or deciding to suspend the authorisation of an authorised electronic money institution or registration of a small electronic money institution, or to limit or otherwise restrict the carrying on of electronic money issuance or payment services business by an electronic money institution *</td>
<td></td>
<td>RDC</td>
</tr>
<tr>
<td>Regulations 56(1) and 56(3)</td>
<td>when the FCA is proposing or deciding to exercise its powers to require restitution *</td>
<td></td>
<td>RDC</td>
</tr>
<tr>
<td>Regulation 74(7)</td>
<td>when the FCA is proposing to decide not to include a person on the register</td>
<td></td>
<td>Executive procedures</td>
</tr>
<tr>
<td>Regulation 74(8) (a)</td>
<td>when the FCA is deciding not to include a person on the register</td>
<td></td>
<td>Executive procedures</td>
</tr>
</tbody>
</table>

Schedule 2A, paragraph 5(6) when the FCA is proposing to refuse an application to vary the period, event or condition of a prohibition, or to remove a prohibition, or to vary or remove a restriction |  | Executive procedures |

Schedule 2A, paragraph 5(7) when the FCA is deciding to refuse an application to vary the period, event or condition of a prohibition, or to remove a prohibition, or to vary or remove a restriction |  | Executive procedures, where no representations are made in response to a warning notice, otherwise by the RDC |

Schedule 3, paragraph 1 when the FCA is proposing or deciding to publish a statement that a relevant person has been knowingly concerned with a contravention of the Electronic Money Regulations (Note 2) |  | RDC |

Schedule 3, paragraph 1 when the FCA is proposing or deciding to impose a financial penalty against a relevant person (Note 2) |  | RDC |

Notes:

(1) The RDC will take the decision to give the notice exercising the FCA’s own-initiative power if the action involves:

(a) removing a type of activity from an authorisation or registration; or

(b) refusing an application to include a type of activity in an authorisation or registration; or
### Electronic Money Regulations

<table>
<thead>
<tr>
<th>Description</th>
<th>Handbook reference</th>
<th>Decision maker</th>
</tr>
</thead>
<tbody>
<tr>
<td>(c) restricting a person from taking on new business, dealing with a particular category of customer or refusing an application to vary or cancel such a restriction; or (d) imposing or varying a capital requirement, or refusing an application to vary or cancel such a requirement.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(2) The Electronic Money Regulations do not require third party rights and access to FCA material when the FCA exercises this power. However, the FCA generally intends to allow for third party rights and access to material when exercising this power.

### Recognised Auction Platforms Handbook 2011

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<tr>
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<tbody>
<tr>
<td>Regulation 5A where the FCA is proposing or deciding to publish a statement censuring an RAP, or to impose a financial penalty on an RAP</td>
<td>REC 2A.4</td>
<td>RDC</td>
</tr>
</tbody>
</table>

### Alternative Investment Fund Managers Regulations 2013

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<thead>
<tr>
<th>Description</th>
<th>Handbook reference</th>
<th>Decision maker</th>
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</thead>
<tbody>
<tr>
<td>Regulation 13(1) where the FCA proposes to refuse an application for entry on the register of small registered UK AIFMs</td>
<td>Executive procedures</td>
<td></td>
</tr>
<tr>
<td>Regulation 13(2)(a), article 14b of the EuVECA regulation and article 15b of the EuSEF regulation where the FCA decides to refuse an application for entry on the register of small registered UK AIFMs</td>
<td>Executive procedures where no representations are made in response to a warning notice otherwise by the RDC</td>
<td>RDC</td>
</tr>
<tr>
<td>Regulation 18(1) where the FCA proposes to revoke the registration of a small registered UK AIFM including, where applicable, its registration as a EuSEF manager or EuVECA manager</td>
<td>RDC</td>
<td></td>
</tr>
<tr>
<td>Regulation 18(2)(a) where the FCA decides to revoke the registration of a small registered UK AIFM including where applicable its registration as a EuSEF manager or EuVECA manager</td>
<td>RDC</td>
<td></td>
</tr>
<tr>
<td>Regulation 23B(1) where the FCA proposes to refuse an application made by a UK AIF for authorisation as a UK ELTIF</td>
<td>Executive procedures</td>
<td></td>
</tr>
<tr>
<td>Regulation 23B(2)(a) where the FCA decides to refuse an application made by a UK AIF for</td>
<td>Executive procedures where no representations are made in re-</td>
<td></td>
</tr>
<tr>
<td>Regulation</td>
<td>Description</td>
<td>Handbook reference</td>
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<tr>
<td>23C(1)</td>
<td>authorisation as a UK ELTIF where the FCA proposes to revoke the authorisation of a UK ELTIF</td>
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</tr>
<tr>
<td>23C(2)(a)</td>
<td>where the FCA decides to revoke the authorisation of a UK ELTIF</td>
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<tr>
<td>23E(1)</td>
<td>where the FCA proposes to refuse an application for registration as a qualifying social entrepreneurship fund or a qualifying venture capital fund</td>
<td></td>
</tr>
<tr>
<td>23E(2)(a)</td>
<td>where the FCA decides to refuse an application for registration as a qualifying social entrepreneurship fund or a qualifying venture capital fund</td>
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</tr>
<tr>
<td>23F(1)</td>
<td>where the FCA proposes to revoke the registration of a qualifying social entrepreneurship fund or a qualifying venture capital fund</td>
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</tr>
<tr>
<td>23F(2)(a)</td>
<td>where the FCA decides to revoke the registration of a qualifying social entrepreneurship fund or a qualifying venture capital fund</td>
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<td>23H(1)</td>
<td>where the FCA proposes to refuse an application for authorisation as a money market fund</td>
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</tr>
<tr>
<td>23H(2)(a)</td>
<td>where the FCA decides to refuse an application for authorisation as a money market fund</td>
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<tr>
<td>23I(1)</td>
<td>where the FCA proposes to revoke the authorisation of a money market fund</td>
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<tr>
<td>23I(2)(a)</td>
<td>where the FCA decides to revoke the authorisation</td>
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</tr>
<tr>
<td>Regulation</td>
<td>Description</td>
<td>Handbook reference</td>
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<tr>
<td>------------</td>
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<tr>
<td>Regulation 25(2)</td>
<td>where the FCA proposes to disqualify an external valuer</td>
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<tr>
<td>Regulation 25(3)(a)</td>
<td>where the FCA decides to disqualify an external valuer</td>
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<tr>
<td>Regulation 27(2)</td>
<td>where the FCA proposes to revoke approval given to a full-scope UK AIFM for the delegation of functions of portfolio or risk management</td>
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<tr>
<td>Regulation 27(3)(a)</td>
<td>where the FCA decides to revoke approval given to a full-scope UK AIFM for the delegation of functions of portfolio management or risk management</td>
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<tr>
<td>Regulation 56</td>
<td>where the FCA is proposing to revoke a full-scope UK AIFM’s approval to market an AIF under regulation 54</td>
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<tr>
<td>Regulation 56</td>
<td>where the FCA is deciding to revoke a full-scope UK AIFM’s approval to market an AIF under regulation 54</td>
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<tr>
<td>Regulation 62(2)</td>
<td>where the FCA proposes to revoke an AIFM’s entitlement to market an AIF</td>
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<tr>
<td>Regulation 62(3)</td>
<td>where the FCA decides to revoke the entitlement of an AIFM to market an AIF</td>
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</tr>
<tr>
<td>Regulation 71(1)(e)</td>
<td>where the FCA is proposing or deciding to publish a statement that an unauthorised AIFM has contravened the regulations or directly applicable EuSEF regulation or EuVECA regulation</td>
<td></td>
</tr>
<tr>
<td>Regulation 71(1)(f)</td>
<td>where the FCA is proposing or deciding to impose a financial penalty on an unauthorised AIFM that has contravened the regulations</td>
<td></td>
</tr>
</tbody>
</table>
### Alternative Investment Fund Managers Regulations 2013

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<tr>
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<tr>
<td>or directly applicable EuSEF regulation or EuVECA regulation</td>
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### Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Fees) Regulations 2013

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<tr>
<th>Regulation 24(1) and 24(6)</th>
<th>when the FCA is proposing or deciding to exercise its powers to require restitution*</th>
<th>RDC</th>
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</thead>
<tbody>
<tr>
<td>Regulation 25(1) and 26(1)</td>
<td>when the FCA is proposing or deciding to publish a statement (under regulations 14 or 15) or impose a financial penalty (under regulation 16) or impose a restriction on permission (under regulation 17) or suspend or restrict an approval (under regulation 18)*</td>
<td>RDC</td>
</tr>
</tbody>
</table>

### The Financial Services Act 2012 (Consumer Credit) Order 2013

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<thead>
<tr>
<th>Article 3(3)</th>
<th>when the FCA is proposing or deciding to take action against an approved person for being knowingly concerned in a contravention of a CCA Requirement by an authorised person, by exercising the disciplinary powers conferred by section 66*</th>
<th>RDC</th>
</tr>
</thead>
<tbody>
<tr>
<td>Article 3(7)</td>
<td>when the FCA is proposing or deciding to publish a statement (under section 205) or impose a financial penalty (under section 206) or suspend a permission or impose a restriction in relation to the carrying on of a regulated activity (under section 206A) for the contravention of a CCA Requirement. This applies in respect of an authorised person, or an unauthorised</td>
<td>RDC</td>
</tr>
</tbody>
</table>
### The Financial Services Act 2012 (Consumer Credit) Order 2013

<table>
<thead>
<tr>
<th>Article 3(10)</th>
<th>Description</th>
<th>Handbook reference</th>
<th>Decision maker</th>
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<tbody>
<tr>
<td>person to whom section 404C applies*</td>
<td>when the FCA is proposing or deciding to exercise the power under section 384(5) to require a person to pay restitution in relation to the contravention of a CCA Requirement*</td>
<td></td>
<td>RDC</td>
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</tbody>
</table>

### The Co-operative and Community Benefit Societies Act 2014

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<tr>
<th>Sections 6 and 8</th>
<th>Description</th>
<th>Handbook reference</th>
<th>Decision maker</th>
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<tbody>
<tr>
<td>where the FCA gives at least two months’ notice of the proposed cancellation or suspension of the registration of a registered society</td>
<td></td>
<td>Executive procedures</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Sections 6 to 8</th>
<th>Description</th>
<th>Handbook reference</th>
<th>Decision maker</th>
</tr>
</thead>
<tbody>
<tr>
<td>where the FCA is proposing to cancel or suspend the registration of a registered society relying on condition C, D or E in section 5</td>
<td></td>
<td>Executive procedures where no representations are made in response to a notice of proposed cancellation, otherwise by the RDC</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Section 123</th>
<th>Description</th>
<th>Handbook reference</th>
<th>Decision maker</th>
</tr>
</thead>
<tbody>
<tr>
<td>where the FCA is proposing to petition for the winding up of a registered society</td>
<td></td>
<td>RDC</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Section 132</th>
<th>Description</th>
<th>Handbook reference</th>
<th>Decision maker</th>
</tr>
</thead>
<tbody>
<tr>
<td>where the FCA is proposing to prosecute a registered society</td>
<td></td>
<td>Executive procedures or RDC</td>
<td></td>
</tr>
</tbody>
</table>

### The Immigration Act 2014 (Bank Accounts) Regulations 2014

<table>
<thead>
<tr>
<th>Regulation 24 and 25</th>
<th>Description</th>
<th>Handbook reference</th>
<th>Decision maker</th>
</tr>
</thead>
<tbody>
<tr>
<td>where the FCA is proposing or deciding to publish a statement (under regulations 15 or 16) or impose a financial penalty (under regulation 17) or impose a restriction on permission (under regulation 18) or suspend or restrict an approval (under regulation 19)*</td>
<td></td>
<td>RDC</td>
<td></td>
</tr>
</tbody>
</table>

### The Mortgage Credit Directive Order 2015

<table>
<thead>
<tr>
<th>Article 11(1)</th>
<th>Description</th>
<th>Handbook reference</th>
<th>Decision maker</th>
</tr>
</thead>
<tbody>
<tr>
<td>when the FCA is proposing to refuse an application for entry on the register or variation of an</td>
<td></td>
<td>Executive procedures</td>
<td></td>
</tr>
</tbody>
</table>
### DEPP 2: Statutory notices and the allocation of decision making

#### Article 11(2)
Existing entry on the register when the FCA is deciding to refuse an application for entry on the register or variation of an existing entry on the register. **Executive procedures** where no representations are made in response to a *warning notice*, otherwise by the **RDC**.

#### Articles 14(1), 14(2), 16(3) and 16(4)
When the FCA is proposing or deciding to revoke or suspend the registration of a registered *CBTL firm* other than at the firm’s request or with the firm’s consent.* **RDC**

#### Article 23(4)
When the FCA is proposing or deciding to publish a statement (under section 205 of the Act) or impose a financial penalty (under section 206 of the Act)* **RDC**

| The Small and Medium Sized Business (Credit Information) Regulations 2015 |
| Description | Handbook reference | Decision maker |
| Regulations 39 and 40 | When the FCA is proposing or deciding to publish a statement (under regulation 28), or impose a financial penalty (under regulation 29), or impose a limitation or restriction (under regulation 30), or exercise the power to require restitution (under regulation 32(2)) | **RDC** |

| Markets in Financial Instruments Regulations 2017 |
| Description | Handbook reference | Decision maker |
| Paragraphs 12(1)(a) and 13(1)(a) of Schedule 1 | When the FCA is proposing or deciding to publish a statement | **RDC** |
| Paragraphs 12(1)(b) and 13(1)(b) of Schedule 1 | When the FCA is proposing or deciding to impose a penalty | **RDC** |
| Paragraph 21(1) and 21(7) of Schedule 1 | When the FCA is proposing or deciding to require restitution | **RDC** |

<p>| Data Reporting Services Regulations 2017 |
| Description | Handbook reference | Decision maker |
| Regulation 10(8)(a) | When the FCA is proposing to impose a restriction on the applicant | <em>Executive procedures</em> |</p>
<table>
<thead>
<tr>
<th>Data Reporting Services Regulations 2017</th>
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<th>Handbook reference</th>
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<tbody>
<tr>
<td>Regulation 10(9)(b)</td>
<td>when the FCA is deciding to impose a restriction on the applicant for authorisation as a data reporting services provider</td>
<td>RDC or executive procedures (see Note 1)</td>
<td></td>
</tr>
<tr>
<td>Regulations 8(5) and 10(8)(b)</td>
<td>when the FCA is proposing to refuse an application for verification or authorisation as a data reporting services provider</td>
<td>Executive procedures</td>
<td></td>
</tr>
<tr>
<td>Regulations 8(6)(b) and 10(9)(c)</td>
<td>when the FCA is deciding to refuse an application for verification or authorisation as a data reporting services provider</td>
<td>RDC or executive procedures (see Note 2)</td>
<td></td>
</tr>
<tr>
<td>Regulations 8(9), 11(4)(a) and 11(5)(b)(i)</td>
<td>when the FCA is proposing or deciding to cancel a verification or the authorisation of a data reporting services provider other than at its request</td>
<td>RDC</td>
<td></td>
</tr>
<tr>
<td>Regulations 8(9), 11(4)(a) and 11(5)(b)(i)</td>
<td>when the FCA is proposing to refuse a request to cancel a verification or authorisation of a data reporting services provider</td>
<td>Executive procedures</td>
<td></td>
</tr>
<tr>
<td>Regulations 8(9) and 11(5)(b)(ii)</td>
<td>when the FCA is deciding to refuse a request to cancel a verification authorisation of a data reporting services provider</td>
<td>RDC or executive procedures (see Note 2)</td>
<td></td>
</tr>
<tr>
<td>Regulations 8(10) and 12(3)</td>
<td>when the FCA is proposing to refuse a request to vary a verification or the authorisation of a data reporting services provider</td>
<td>Executive procedures</td>
<td></td>
</tr>
<tr>
<td>Regulations 8(10) and 12(4)</td>
<td>when the FCA is deciding to refuse a request to vary a verification or the authorisation of a data reporting services provider</td>
<td>RDC or executive procedures (see Note 1)</td>
<td></td>
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</table>
### Data Reporting Services Regulations 2017

<table>
<thead>
<tr>
<th>Regulations 25(1)(a) and 26(1)(a)</th>
<th>Description</th>
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<tbody>
<tr>
<td></td>
<td>when the FCA is proposing or deciding to publish a statement</td>
<td></td>
<td>RDC</td>
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<table>
<thead>
<tr>
<th>Regulations 25(1)(b) and 26(1)(b)</th>
<th>Description</th>
<th>Handbook reference</th>
<th>Decision maker</th>
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<tbody>
<tr>
<td></td>
<td>when the FCA is proposing or deciding to impose a financial penalty</td>
<td></td>
<td>RDC</td>
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<table>
<thead>
<tr>
<th>Regulation 36(1) and 36(7)</th>
<th>Description</th>
<th>Handbook reference</th>
<th>Decision maker</th>
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<tbody>
<tr>
<td></td>
<td>when the FCA is proposing or deciding to require restitution</td>
<td></td>
<td>RDC</td>
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</tbody>
</table>

**Notes:**

1) If representations are made in response to a warning notice, then the RDC will take the decision to give a decision notice if the action proposed involves:

   (a) restricting a person from providing a data reporting service; or

   (b) refusing an application to include a type of activity in a verification or authorisation.

In all other cases, the decision to give a decision notice will be taken by FCA staff under executive procedures.

2) If representations are made in response to a warning notice then the RDC will take the decision to give a decision notice. Otherwise the decision to give a decision notice will be taken by FCA staff under executive procedures.

### The Payment Accounts Regulations 2015

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<tr>
<th>Regulation 34 and Regulation 35(4)(a)</th>
<th>Description</th>
<th>Handbook reference</th>
<th>Decision maker</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>when the FCA is proposing or deciding to publish a statement or impose a financial penalty*</td>
<td></td>
<td>RDC</td>
</tr>
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</table>

### The Small and Medium Sized Business (Finance Platforms) Regulations 2015

<table>
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<tr>
<th>Regulations 36 and 37</th>
<th>Description</th>
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<tr>
<td></td>
<td>when the FCA is proposing or deciding to publish a statement (under regulation 25), or impose a financial penalty (under regulation 26), or impose a limitation or restriction (under regulation 27), or exercise the power to require restitution (under regulation 29(2)).</td>
<td></td>
<td>RDC</td>
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</table>

### The Risk Transformation Regulations 2017

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<th>Regulation 22</th>
<th>Description</th>
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<td></td>
<td>when the FCA is proposing or deciding to refuse an application to register a protected cell company</td>
<td>Not applicable</td>
<td>Executive procedures</td>
</tr>
<tr>
<td><strong>The Risk Transformation Regulations 2017</strong></td>
<td>Description</td>
<td>Handbook reference</td>
<td>Decision maker</td>
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</tr>
<tr>
<td>Regulation 28</td>
<td>when the FCA is proposing or deciding to refuse approval of a proposed amendment to a protected cell company’s instrument of incorporation</td>
<td>Not applicable</td>
<td>Executive procedures</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Packaged Retail and Insurance-based Investment Products Regulations 2017</strong></th>
<th>Description</th>
<th>Handbook reference</th>
<th>Decision maker</th>
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<tbody>
<tr>
<td>Regulations 10(1) and 10(4)</td>
<td>when the FCA is proposing or deciding to take action against a person under regulation 6*</td>
<td>RDC</td>
<td></td>
</tr>
<tr>
<td>Paragraph 5(7) of Schedule 1</td>
<td>when the FCA is proposing or deciding to exercise the power under section 384(5) of the Act to require a person to pay restitution*</td>
<td>RDC</td>
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</tr>
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<tr>
<th><strong>UK Benchmarks Regulations 2018</strong></th>
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<td>Regulation 6(5)</td>
<td>when the FCA is proposing or deciding to refuse an application for the imposition of a requirement under regulation 6 or for the variation or cancellation of a requirement imposed under regulation 6</td>
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<tr>
<td>Regulations 12(1)(a) and 13(1)(a)</td>
<td>when the FCA is proposing or deciding to publish a statement under regulation 10</td>
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<tr>
<td>Regulations 12(1)(b) and 13(1)(b)</td>
<td>when the FCA is proposing or deciding to impose a financial penalty under regulation 11</td>
<td>RDC</td>
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<tr>
<td>Regulations 22(1), 22(2) and 22(7)</td>
<td>when the FCA is proposing or deciding to require restitution under regulation 22</td>
<td>RDC</td>
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<tr>
<th><strong>UK Securitisation Regulations</strong></th>
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<td>Regulation 19(1)(a) and 20(1)(a)</td>
<td>when the FCA is proposing or deciding to impose a temporary prohibition relating to management functions under regulation 5</td>
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<tr>
<td>UK Securitisation Regulations</td>
<td>Description</td>
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<tr>
<td>Regulation 19(1)(b) and 20(1)(b)</td>
<td>when the FCA is proposing or deciding to publish a statement under regulation 7</td>
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<td>Regulation 19(1)(c) and 20(1)(c)</td>
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<tr>
<td>Regulation 19(1)(d) and 20(1)(d)</td>
<td>when the FCA is proposing or deciding to refuse an application under regulation 13</td>
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<tr>
<td>Regulation 19(1)(e) and 20(1)(e)</td>
<td>when the FCA is proposing or deciding to cancel the authorisation of a third-party verification service otherwise than at its request under regulation 16</td>
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<td>RDC</td>
</tr>
<tr>
<td>Regulation 19(1)(f) and 20(1)(f)</td>
<td>when the FCA is proposing or deciding to refuse a request to cancel the authorisation of a third-party verification service under regulation 17</td>
<td>RDC or executive procedures (see Note)</td>
<td></td>
</tr>
<tr>
<td>Paragraph 1 of Schedule 1</td>
<td>when the FCA is proposing or deciding to take action against an individual by exercising the disciplinary powers conferred by section 66*, as applied by paragraph 1 of schedule 1</td>
<td></td>
<td>RDC</td>
</tr>
<tr>
<td>Paragraph 4 of Schedule 1</td>
<td>when the FCA is proposing or deciding to publish a statement (under section 205), impose a financial penalty (under section 206), or suspend a permission or impose a restriction in relation to the carrying on of a regulated activity (under section 206A) as applied by paragraph 4 of schedule 1</td>
<td></td>
<td>RDC</td>
</tr>
<tr>
<td>Paragraph 6 of Schedule 1</td>
<td>when the FCA is proposing or deciding to require restitution</td>
<td></td>
<td>RDC</td>
</tr>
</tbody>
</table>

Note:
The decision to give a warning notice will be taken by FCA staff under executive procedures. If representations are made in response to a warning notice then the RDC will take the decision to give a...
**UK Securitisation Regulations**

<table>
<thead>
<tr>
<th>Description</th>
<th>Handbook reference</th>
<th>Decision maker</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>decision notice</em>. Otherwise the decision to give a <em>decision notice</em> will be taken by FCA staff under executive procedures.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Proxy Advisors (Shareholders’ Rights) Regulations**

<table>
<thead>
<tr>
<th>Regulation</th>
<th>Description</th>
<th>Decision maker</th>
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</thead>
<tbody>
<tr>
<td>Regulation 11</td>
<td>when the FCA is proposing or deciding to publish a statement under regulation 11</td>
<td>RDC or executive procedures</td>
</tr>
<tr>
<td>Regulation 12</td>
<td>when the FCA is proposing or deciding to impose a financial penalty under regulation 12</td>
<td>RDC or executive procedures</td>
</tr>
<tr>
<td>Regulation 25</td>
<td>when the FCA is proposing or deciding to require restitution under regulation 25</td>
<td>RDC</td>
</tr>
<tr>
<td>Regulation 32</td>
<td>when the FCA is proposing or deciding to remove a proxy advisor from the public list.</td>
<td>Executive procedures</td>
</tr>
</tbody>
</table>
### Supervisory notices

<table>
<thead>
<tr>
<th>Section of the Act</th>
<th>Description</th>
<th>Handbook reference</th>
<th>Decision maker</th>
</tr>
</thead>
<tbody>
<tr>
<td>55XA(1)(a) and 55XA(1)(b)</td>
<td>when the FCA is deciding to grant an application for a Part 4A permission to carry on the regulated activity specified in article 63S of the Regulated Activities Order with a limitation or a requirement which was not applied for, or with a narrower or wider description of regulated activity than that applied for</td>
<td>RDC or executive procedures&lt;br&gt;See DEPP 2.5.18G(5)</td>
<td></td>
</tr>
<tr>
<td>55XA(1)(c) and 55XA(1)(d)</td>
<td>when the FCA is deciding to grant an application to vary a firm’s Part 4A permission to carry on the regulated activity specified in article 63S of the Regulated Activities Order but, other than as part of the application, to restrict the Part 4A permission either by imposing a limitation or requirement which was not applied for or by specifying a narrower or wider description of regulated activity than that applied for</td>
<td>RDC or executive procedures&lt;br&gt;See DEPP 2.5.18G(5)</td>
<td></td>
</tr>
<tr>
<td>55XA(1)(e)</td>
<td>when the FCA is deciding to refuse an application for a Part 4A permission to carry on the regulated activity specified in article 63S of the Regulated Activities Order</td>
<td>RDC or executive procedures&lt;br&gt;See DEPP 2.5.18G(5)</td>
<td></td>
</tr>
<tr>
<td>55XA(1)(f)</td>
<td>when the FCA is deciding to refuse an application to vary a firm’s Part 4A permission to carry on the regulated activity specified in article 63S of the Regulated Activities Order</td>
<td>RDC or executive procedures&lt;br&gt;See DEPP 2.5.18G(5)</td>
<td></td>
</tr>
<tr>
<td>55Y(4)</td>
<td>when the FCA is exercising its own-initiative variation power to vary a firm’s Part 4A permission</td>
<td>SUP 7</td>
<td></td>
</tr>
<tr>
<td>55Y(7)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>55Y(8)(b)</td>
<td>when the FCA is exercising its power to vary, on its own initiative, an approval granted to an SMF manager</td>
<td>RDC or executive procedures&lt;br&gt;See DEPP 2.5.7 G</td>
<td></td>
</tr>
<tr>
<td>63ZC(4)</td>
<td>when the FCA is exercising its power to vary the terms of appointment of a temporary manager under section 71C(1)</td>
<td>RDC</td>
<td></td>
</tr>
<tr>
<td>63ZC(8)</td>
<td></td>
<td>RDC or executive procedures&lt;br&gt;See DEPP 2.5.8AG and DEPP 2.5.8BG</td>
<td></td>
</tr>
<tr>
<td>63ZC(9)(b)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>71H(2), (3), (4), (9) or (11)(a)</td>
<td>where the FCA is proposing or deciding to impose or vary a requirement in relation to a director or senior executive under section 71B or 71C(2) or (8) or to appoint or vary the terms of appointment of a temporary manager under section 71C(1)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Section of the Act</td>
<td>Description</td>
<td>Handbook reference</td>
<td>Decision maker</td>
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</tr>
<tr>
<td>55Y(4) 55Y(7) 55Y(8)(b)</td>
<td>when the FCA is exercising its own-initiative requirement power</td>
<td></td>
<td>RDC or executive procedures</td>
</tr>
<tr>
<td>78(2)/(5)</td>
<td>when the FCA is proposing to discontinue or discontinues the listing of a security</td>
<td>LR 5</td>
<td>RDC or executive procedures</td>
</tr>
<tr>
<td>78(2)/(5)</td>
<td>when the FCA is proposing to suspend or suspends the listing of a security</td>
<td>LR 5</td>
<td>Executive procedures</td>
</tr>
<tr>
<td>78A(2)/(8)(b)</td>
<td>when the FCA discontinues or suspends the listing of a security on the application of the issuer of the security</td>
<td>LR 5</td>
<td>Executive procedures</td>
</tr>
<tr>
<td>87O(2)/(5)</td>
<td>when the FCA is proposing or deciding to exercise or deciding to maintain, vary or revoke any of the powers in sections 87K or 87L in respect of an infringement of any applicable provision.</td>
<td>PR 5</td>
<td>Executive procedures</td>
</tr>
<tr>
<td>88F(2)/(5)/(6)(b)</td>
<td>when the FCA is proposing or deciding to take action to suspend, limit or restrict a sponsor's approval under section 88E</td>
<td></td>
<td>Executive procedures</td>
</tr>
<tr>
<td>89V(2) 89V(5) 89 V(6)(b)</td>
<td>when the FCA is proposing or deciding to take action to suspend, limit or restrict a primary information provider's approval under section 89U</td>
<td></td>
<td>Executive procedures</td>
</tr>
<tr>
<td>122I</td>
<td>when the FCA is proposing to suspend or suspends trading in a financial instrument</td>
<td>DTR</td>
<td>Executive procedures</td>
</tr>
<tr>
<td>137S(5) 137S(8)(a)</td>
<td>when the FCA gives a direction under section 137S</td>
<td></td>
<td>Executive procedures</td>
</tr>
<tr>
<td>191B(1)</td>
<td>when the FCA gives a restriction notice under section 191B</td>
<td></td>
<td>Executive procedures</td>
</tr>
<tr>
<td>197(3)/(6)/(7)(b)</td>
<td>when the FCA is exercising its power of intervention in respect of an incoming firm</td>
<td>SUP 14</td>
<td>RDC or executive procedures</td>
</tr>
<tr>
<td>259(3)/(8) (9) (b)</td>
<td>when the FCA is exercising its power to give or, on its own initiative, to vary a direction to the manager and trustee of an AUT</td>
<td>COLL</td>
<td>RDC</td>
</tr>
<tr>
<td>261Z1</td>
<td>when the FCA gives a direction under section 261X or section 261Z</td>
<td>COLL</td>
<td>RDC</td>
</tr>
<tr>
<td>268(3)/(7)(a) or (9)(a) (as a result of (8)(b)/(13))</td>
<td>when the FCA is proposing or deciding to give or, on its own initiative, to vary a direction to the operator of a recognised scheme</td>
<td>COLL</td>
<td>RDC</td>
</tr>
<tr>
<td>282 (3)/(6)/(7)(b)</td>
<td>when the FCA is exercising its power to give a direction to an operator, trustee or depositary of a recognised scheme</td>
<td>COLL</td>
<td>RDC</td>
</tr>
</tbody>
</table>
## Section of the Act

<table>
<thead>
<tr>
<th>Description</th>
<th>Handbook reference</th>
<th>Decision maker</th>
</tr>
</thead>
<tbody>
<tr>
<td>when the FCA gives a restriction notice under section 301J</td>
<td></td>
<td>Executive procedures</td>
</tr>
<tr>
<td>when the FCA is exercising its power to impose a requirement on a former underwriting member of Lloyd’s</td>
<td></td>
<td>RDC</td>
</tr>
</tbody>
</table>

## OEIC Regulations reference

<table>
<thead>
<tr>
<th>Description</th>
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<th>Decision maker</th>
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</thead>
<tbody>
<tr>
<td>when the FCA is exercising its power to give or, on its own initiative, to vary a direction to an ICVC and its depositary</td>
<td>COLL</td>
<td>RDC</td>
</tr>
</tbody>
</table>

## Payment Services Regulations

<table>
<thead>
<tr>
<th>Description</th>
<th>Handbook reference</th>
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</tr>
</thead>
<tbody>
<tr>
<td>when the FCA is exercising its powers to vary a person’s authorisation on its own initiative</td>
<td></td>
<td>RDC or Executive procedures</td>
</tr>
<tr>
<td>when the FCA is exercising its power to impose a prohibition or restriction, or to vary a restriction</td>
<td></td>
<td>RDC or executive procedures (Note 2)</td>
</tr>
</tbody>
</table>

Notes:

1. The RDC will take the decision to give a notice exercising the FCA’s own initiative power if the action involves:
   (a) removing a type of activity from an authorisation or registration; or
   (b) refusing an application to include a type of activity in an authorisation or registration; or
   (c) restricting a person from taking on new business, dealing with a particular category of customer or refusing an application to vary or cancel such a restriction; or
   d) imposing or varying a capital requirement, or refusing an application to vary or cancel such a requirement.

For all other types of action the decision to give a notice will be taken by FCA staff under executive procedures.

2. The RDC will take the decision to give a notice imposing a prohibition or imposing or varying a restriction under Schedule 4A paragraphs 1(1), 1(2), 2(2)(a), 2(2)(b), 2(3), 4(6) and 4(7). However, FCA staff under executive procedures will be the decision maker whenever a firm agrees not to contest the imposition of a prohibition or imposition or variation of a restriction.

## Alternative Investment Fund Managers Regulations 2013

<table>
<thead>
<tr>
<th>Description</th>
<th>Handbook reference</th>
<th>Decision maker</th>
</tr>
</thead>
<tbody>
<tr>
<td>where the FCA is exercising its power on its own initiative to give or vary a direction under regulation 22(1) to a small registered UK AIFM, a EuSEF manager or EuVECA manager</td>
<td></td>
<td>RDC or executive procedures</td>
</tr>
</tbody>
</table>

See DEPP 2.5.7 G to DEPP 2.5.8 G
<table>
<thead>
<tr>
<th>Description</th>
<th>Handbook reference</th>
<th>Decision maker</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regulation 22(4) where the FCA is exercising its power on its own initiative to give or vary a direction under regulation 22(2) to a small registered UK AIFM with its registered office in an EEA State other than the UK in accordance with article 19.3 of the EuSEF regulation or article 18.3 of the EuVECA regulation</td>
<td>DEPP 2.5.7 G to DEPP 2.5.8 G</td>
<td>RDC or executive procedures See also DEPP 2.5.7 G</td>
</tr>
<tr>
<td>Schedule 2A, paragraphs 1(1), 1(2), 2(2)(a), 2(2)(b), 2(3), 4(6) and 4(7) when exercising its power to impose a prohibition or restriction, or to vary a restriction</td>
<td>DEPP 3.4</td>
<td>RDC or executive procedures (Note 1) See also DEPP 3.4</td>
</tr>
<tr>
<td>Notes: (1) The RDC will take the decision to give a notice imposing a prohibition or imposing or varying a restriction under Schedule 2A paragraphs 1(1), 1(2), 2(2)(a), 2(2)(b), 2(3), 4(6) and 4(7). However, FCA staff under executive procedures will be the decision maker whenever a firm agrees not to contest the imposition of a prohibition or imposition or variation of a restriction.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Article 3(6) when the FCA is exercising its power of intervention in respect of an incoming firm by reference to the contravention or likely contravention of a CCA Requirement</td>
<td>SUP 14</td>
<td>RDC or executive procedures See DEPP 2.5.7 G and DEPP 2.5.7A G</td>
</tr>
<tr>
<td>Regulation 24 and 25 where the FCA is proposing or deciding to publish a statement (under regulations 15 or 16) or impose a financial penalty (under regulation 17) or impose a restriction on permission (under regulation 18) or suspend or restrict an approval (under regulation 19)*</td>
<td></td>
<td>RDC</td>
</tr>
</tbody>
</table>

Notes:

(1) The RDC will take the decision to give a notice imposing a prohibition or imposing or varying a restriction under Schedule 2A paragraphs 1(1), 1(2), 2(2)(a), 2(2)(b), 2(3), 4(6) and 4(7). However, FCA staff under executive procedures will be the decision maker whenever a firm agrees not to contest the imposition of a prohibition or imposition or variation of a restriction.

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**Alternative Investment Fund Managers Regulations 2013**

**Electronic Money Regulations**

**The Financial Services Act 2012 (Consumer Credit) Order 2013**

**The Immigration Act 2014 (Bank Account) Regulations 2014**
### DEPP 2: Statutory notices and the allocation of decision making

<table>
<thead>
<tr>
<th>Description</th>
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<th>Decision maker</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>The Mortgage Credit Directive Order 2015</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Article 19(6)</td>
<td></td>
<td>RDC or executive procedures See DEPP 2.5.7G and DEPP 2.5.7AG</td>
</tr>
<tr>
<td><strong>The Payment Accounts Regulations 2015</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Regulation 30</td>
<td></td>
<td>RDC or executive procedures (Note) See DEPP 2.5.17G</td>
</tr>
<tr>
<td>Note: The RDC will take the decision to give a notice imposing a direction.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The FCA is exercising its own-initiative power to impose a direction.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Markets in Financial Instruments Regulations 2017</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Regulations 10(2) and 12(2)</td>
<td></td>
<td>RDC or executive procedures (see DEPP 2.5.7G and DEPP 2.5.7AG)</td>
</tr>
<tr>
<td>Regulation 28(4)</td>
<td></td>
<td>Executive procedures (see DEPP 2.5.18G)</td>
</tr>
<tr>
<td>Regulation 36(4)</td>
<td></td>
<td>Executive procedures (see DEPP 2.5.18G)</td>
</tr>
<tr>
<td>Regulations 40(3) and 40(6)</td>
<td></td>
<td>RDC</td>
</tr>
<tr>
<td><strong>Data Reporting Services Regulations 2017</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Regulation 22(6)</td>
<td></td>
<td>RDC or executive procedures (see Note)</td>
</tr>
<tr>
<td>Note: The RDC will take the decision to give a notice imposing a restriction or limitation if it involves restricting a person from providing a data reporting service. Otherwise the decision to give a notice will be taken by FCA staff under executive procedures.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>The FCA is imposing a limitation or other restriction under regulation 22</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Packaged Retail and Insurance-based Investment Products Regulations 2017</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Regulations 9(3)(a) and (c)</td>
<td></td>
<td>RDC</td>
</tr>
<tr>
<td>The FCA is proposing to make an order under regulation 4 or makes an order under regulation 22</td>
<td></td>
<td></td>
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</tbody>
</table>
### Packaged Retail and Insurance-based Investment Products Regulations 2017

<table>
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<tr>
<th>Description</th>
<th>Handbook reference</th>
<th>Decision maker</th>
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</thead>
<tbody>
<tr>
<td>When the FCA is proposing to increase the period of a suspension under regulation 5(2) or increases the period of a suspension under regulation 5(2) with immediate effect</td>
<td></td>
<td>RDC</td>
</tr>
<tr>
<td>When the FCA is deciding to make or vary an order made under regulations 4 or 5(2) in the way proposed</td>
<td></td>
<td>RDC</td>
</tr>
<tr>
<td>When the FCA is deciding not to revoke an order made under regulations 4 and 5(2) or not to rescind the variation of an order made under regulations 4 and 5(2)</td>
<td></td>
<td>RDC</td>
</tr>
<tr>
<td>When the FCA is deciding to make an order under regulations 4 or 5(2) in different terms or to vary an order made under regulations 4 or 5(2) in a different way</td>
<td></td>
<td>RDC</td>
</tr>
</tbody>
</table>

### UK Benchmarks Regulations 2018

<table>
<thead>
<tr>
<th>Description</th>
<th>Handbook reference</th>
<th>Decision maker</th>
</tr>
</thead>
<tbody>
<tr>
<td>When the FCA is exercising its power under regulation 6(2) to impose, vary or cancel a requirement on its own initiative</td>
<td></td>
<td>Executive procedures</td>
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</table>

### UK Securitisation Regulations

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<tr>
<th>Description</th>
<th>Handbook reference</th>
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<tbody>
<tr>
<td>When the FCA is exercising its powers under regulation 14 to temporarily withdraw authorisation, vary the period for which a temporary withdrawal has effect or revoke the temporary withdrawal to provide a third-party verification service</td>
<td></td>
<td>Executive procedures</td>
</tr>
<tr>
<td>UK Securitisation Regulations</td>
<td>Description</td>
<td>Handbook reference</td>
</tr>
<tr>
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</tr>
<tr>
<td>Regulation 22(3) and (6)</td>
<td>when the FCA is exercising its powers under regulation 21 to impose a temporary ban, vary the period for which a temporary ban has effect or revoke a temporary ban to provide simple, transparent and standardised (STS) notifications</td>
<td>Executive procedures</td>
</tr>
</tbody>
</table>
Chapter 3

The nature and procedure of the RDC
3.1 The Regulatory Decisions Committee

3.1.1 The Regulatory Decisions Committee (RDC) is a committee of the FCA Board. It is part of the FCA and exercises certain regulatory powers on behalf of the FCA and is accountable to the FCA Board for its decisions generally.

3.1.2 (1) The RDC is separate from the FCA’s executive management structure. Apart from its Chairman, none of the members of the RDC is an FCA employee.

(2) All members of the RDC are appointed for fixed periods by the FCA Board. The FCA Board may remove a member of the RDC, but only in the event of that member’s misconduct or incapacity.

3.1.3 The RDC has its own legal advisers and support staff. The RDC staff are separate from the FCA staff involved in conducting investigations and making recommendations to the RDC.
3.2 The operation of the RDC

RDC meetings and composition of panels

3.2.1 The RDC meets as often as necessary to discharge its functions. It may do so, in appropriate cases, in writing or by telephone or email or other electronic means. The RDC meets in private.

3.2.2 The RDC may meet as a full committee, but will ordinarily meet in panels. Each meeting of the RDC will generally include:

(1) its Chairman or a Deputy Chairman (who will chair the meeting); and

(2) at least two other members.

3.2.3 The composition and size of panels of the RDC may vary depending on the nature of the particular matter under consideration. It will be usual for the panel that is to consider the representations and decide whether to give a decision notice to comprise the same members of the RDC who previously considered the matter. In particularly complex cases, or those raising novel points of law or practice, it might be appropriate for a larger panel to consider the case at both the warning notice and representations stage, and there may still be cases where it is appropriate that the panel is enlarged to include additional RDC members at the decision notice stage.

Conflicts of interest

3.2.4 The RDC will seek not to invite a member to join a panel to consider a matter in which he has a potential conflict of interest.

3.2.5 (1) If a member of the RDC has a potential conflict of interest in any matter in which he is asked to participate he will disclose the conflict to the RDC Office, and disclose it:

(a) in the case of the Chairman of the RDC, to the Chairman or Deputy Chairman of the FCA; or

(b) in the case of a Deputy Chairman of the RDC, to the Chairman of the RDC, or if he is unavailable to the Chairman or Deputy Chairman of the FCA; or

(c) in the case of any other member, to the Chairman or a Deputy Chairman of the RDC.
(2) If the person to whom a conflict has been disclosed in accordance with (1)(a) to (c) considers it reasonable and appropriate, he will require the member of the RDC to stand down from consideration of that matter. He may ask another member of the RDC to assist him in considering the potential conflict.

3.2.6 The RDC Office will record and document all disclosures of potential conflicts of interest and the steps taken to manage them.

Procedure: general

3.2.7 The RDC will follow the procedure described in this section, but subject to that it will conduct itself in the manner the RDC Chairman or a Deputy Chairman considers suitable in order to enable the RDC to determine fairly and expeditiously the matter which it is considering.

3.2.8 Each member of the RDC present is entitled to vote on the matter under consideration. The chairman of the meeting will have a vote as a member of the RDC and will have the casting vote in a tie.

3.2.9 The RDC Chairman or a Deputy Chairman may, acting alone, decide:

(1) matters relating to the arrangements for an RDC meeting, including its timing; and

(2) the composition of the panel to consider a particular matter.

3.2.10 If the RDC considers it relevant to its consideration, it may ask FCA staff to explain or provide any or all of the following:

(1) additional information about the matter (which FCA staff may seek by further investigation); or

(2) further explanation of any aspect of the FCA staff recommendation or accompanying papers; or

(3) information about FCA priorities and policies (including as to the FCA's view on the law or on the correct legal interpretation of provisions of the Act).

3.2.11 The RDC has no power under the Act to require persons to attend before it or provide information. It is not a tribunal and will make a decision based on all the relevant information available to it, which may include views of FCA staff about the relative quality of witness and other evidence.
Where a warning notice is given on the basis of a focused resolution agreement, the RDC shall accept and not in any circumstances depart from the agreed position on the issues set out in that agreement.

**Procedure: warning notices and first supervisory notices**

If FCA staff consider that action is appropriate in a matter for which the RDC is the decision maker, they will make a recommendation to the RDC that a warning notice or a supervisory notice should be given.

In accordance with DEPP 2.2 the RDC will consider whether it is right in all the circumstances to give the statutory notice.

If the RDC decides that the FCA should give a warning notice or a first supervisory notice:

1. the RDC will settle the wording of the warning notice or first supervisory notice, and will ensure that the notice complies with the relevant provisions of the Act;

2. the RDC will make any relevant statutory notice associated decisions;

3. the RDC staff will make appropriate arrangements for the notice to be given; and

4. the RDC staff will make appropriate arrangements for the disclosure of the substantive communications between the RDC and the FCA staff who made the recommendation on which the RDC’s decision is based. This may include providing copies in electronic format.

If FCA staff consider that it is appropriate to publish information about the matter to which a warning notice falling within section 391(1ZB) of the Act and given by the RDC relates, they will make a recommendation to the RDC that such information should be published.

The RDC will then consider whether it is appropriate in all the circumstances to publish information about the matter to which the warning notice falling within section 391(1ZB) of the Act relates. The FCA’s policy on publishing such information is set out in EG 6.

If the RDC proposes that the FCA should publish information about the matter to which a warning notice falling within section 391(1ZB) of the Act relates:

1. the RDC will settle the wording of the statement it proposes the FCA should publish (warning notice statement);

2. the RDC staff will make appropriate arrangements for the warning notice statement it proposes the FCA should publish to be given to the persons to whom the warning notice was given or copied;
(3) the proposed warning notice statement will specify the time allowed for the recipient to respond in writing to the RDC. This will normally be 14 days;

(4) the recipient of a proposed warning notice statement may request an extension of the time allowed for its response. Such a request must normally be made within seven days of the proposed warning notice statement being given; and

(5) the RDC will not normally grant a request by a person to whom the warning notice statement was given to make his response in person.

3.2.14D If no response to the proposed warning notice statement is received, the FCA will make appropriate arrangements to publish the warning notice statement.

3.2.14E However, if the RDC receives a response from the person to whom the proposed warning notice statement was given, the RDC will consider their response and decide whether it is appropriate in all the circumstances to publish information about the matter to which the warning notice relates.

3.2.14F If the RDC decides that the FCA should publish a warning notice statement:

   (1) the RDC will notify the relevant parties (including the relevant FCA staff) in writing of that decision;

   (2) the RDC will settle the wording of the warning notice statement; and

   (3) the FCA will make appropriate arrangements for the warning notice statement to be published.

3.2.14G If the RDC decides that the FCA should not publish a warning notice statement the RDC staff will notify the relevant parties (including the relevant FCA staff) in writing of that decision.

3.2.14H References to the RDC in DEPP 3.2.14A G to DEPP 3.2.14G G are to the Chairman of the RDC panel which issued the warning notice or, if he is unavailable, either the Chairman of the RDC or a Deputy Chairman of the RDC.

Procedure: representations

3.2.15 (1) A warning notice or a first supervisory notice will (as required by the Act) specify the time allowed for making representations. This will not be less than 14 days.

   (2) The FCA will also, when giving a warning notice or a first supervisory notice, specify a time within which the recipient is required to indicate whether he wishes to make oral representations.
(1) The recipient of a warning notice or a first supervisory notice may request an extension of the time allowed for making representations. Such a request must normally be made within seven days of the notice being given.

(2) If a request is made, the Chairman or a Deputy Chairman of the RDC will decide whether to allow an extension, and, if so, how much additional time is to be allowed for making representations. In reaching their decision they will take into account all relevant factors including the legal and factual complexity of the case, as well as whether there are any factors outside the control of the firm or individual that would materially impact on their ability to respond within the period set out in the warning notice or first supervisory notice. They may also take account of any relevant comments from the FCA staff responsible for the matter.

(3) The RDC staff will notify the relevant party and the FCA staff responsible for the matter of the decision in writing.

(1) If the recipient of a warning notice or a first supervisory notice indicates that he wishes to make oral representations, the RDC staff, in conjunction with the Chairman or a Deputy Chairman of the RDC, will fix a date or dates for a meeting at which the relevant RDC members will receive those representations.

(2) In making those arrangements the RDC staff will draw the Chairman's or Deputy Chairman's attention to any particular issues about the timing of the meeting which have been raised by the recipient of the notice or the relevant FCA staff.

The chairman of the relevant meeting will ensure that the meeting is conducted so as to enable:

(1) the recipient of the warning notice or first supervisory notice to make representations;

(2) the relevant FCA staff to respond to those representations;

(3) the RDC members to raise with those present any points or questions about the matter (whether in response to particular representations or more generally about the matter); and

(4) the recipient of the notice to respond to points made by FCA staff or the RDC;

but the chairman may ask the recipient of the notice or FCA staff to limit their representations or response in length or to particular issues arising from the warning notice or first supervisory notice. If the warning notice was given on the basis of a focused resolution agreement, the recipient will be required to limit their representations to the issues that remain in dispute.

The recipient of the warning notice or supervisory notice may wish to be legally represented at the meeting, but this is not a requirement.
In appropriate cases, the chairman of a meeting for oral representations may ask those present to provide additional information in writing after the meeting. If he does so, he will specify the time within which that information is to be provided.

The RDC will not, after the FCA has given a warning notice or a first supervisory notice, meet with or discuss the matter whilst it is still ongoing with the FCA staff responsible for the case without other relevant parties being present or otherwise having the opportunity to respond.

### Procedure: decision notices and second supervisory notices

If no representations are made in response to the warning notice or first supervisory notice, the FCA will regard as undisputed the allegations or matters set out in the notice and the default procedure will apply: see DEPP 2.3.2 G to DEPP 2.3.4 G.

If the person subject to enforcement action notifies the RDC that they wish to make an expedited reference to the Tribunal under DEPP 5.1.8GG, the RDC shall decide whether to give a decision notice in the light of any representations by any third party under section 393 of the Act and any other interested party under section 63 or 67 of the Act (see DEPP 5.1.8IG).

In any case in which representations are made, in accordance with DEPP 2.3.1 G, the RDC will consider whether it is right in all the circumstances to give the decision notice or a second supervisory notice (as appropriate).

If the RDC decides that the FCA should give a decision notice or a second supervisory notice:

1. the RDC will settle the wording of the notice which will include a brief summary of the key representations made and how they have been dealt with, and will ensure that the notice complies with the relevant provisions of the Act;

2. the RDC will make any relevant statutory notice associated decisions, including whether the FCA is required to give a copy of the notice to a third party; and

3. the RDC staff will make appropriate arrangements for the notice to be given.

If the RDC decides that the FCA should not give a decision notice or a second supervisory notice the RDC staff will notify the relevant parties (including the relevant FCA staff) in writing of that decision.

Discontinuance of FCA action

FCA staff responsible for recommending action to the RDC will continue to assess the appropriateness of the proposed action in the light of new information or representations they receive and any material change in the
facts or circumstances relating to a particular matter. It may be therefore that they decide to give a notice of discontinuance to a person to whom a warning notice or decision notice has been given. The decision to give a notice of discontinuance does not require the agreement of the RDC, but FCA staff will inform the RDC of the discontinuance of the proceedings.

Tribunal proceedings

3.2.27 A decision by the RDC to give a decision notice or supervisory notice may lead to a reference to the Tribunal under the Act. The conduct of proceedings before the Tribunal is not however a matter for the RDC.
3.3 Straightforward decisions

3.3.1 In statutory notice cases for which the RDC is the decision-maker, the Chairman or a Deputy Chairman of the RDC may take a straightforward decision to give the statutory notice.

3.3.2 The Chairman or, if he is unavailable, a Deputy Chairman will decide whether a decision is straightforward. In doing so he will have regard to all the circumstances. These may include:

(1) the significance of the decision to those who would be affected by it;
(2) its novelty in the light of stated policy and established practice;
(3) the complexity of the relevant considerations, including whether representations have been made;
(4) the range of alternative options;
(5) the extent to which the facts relating to the decision are or may be disputed.

3.3.3 The RDC Chairman or a Deputy Chairman may, notwithstanding the fact that a decision is straightforward, take the decision to give the statutory notice jointly with one or more other members of the RDC if he considers it appropriate to do so.
3.4 Urgent supervisory notice cases

3.4.1 In urgent supervisory notice cases for which the RDC is the decision maker, the decision to give the supervisory notice may be taken by the RDC Chairman or, if he is unavailable, a Deputy Chairman, and, if it is practicable, one or more other RDC members.

3.4.2 The RDC Chairman or Deputy Chairman will take such a decision only if satisfied that the action proposed should occur before it is practicable to convene an RDC panel.

3.4.3 In an exceptionally urgent case the decision to give a supervisory notice may be taken by a member of the FCA’s executive of at least director of division level if:

(1) FCA staff consider that the action should be taken before a recommendation to the Chairman or a Deputy Chairman of the RDC can be made; and

(2) an urgent decision on the proposed action is necessary to protect the interests of consumers.

3.4.4 In the circumstances described in DEPP 3.4.3, the FCA considers that it may be necessary for an FCA director of division to take the decision to give the supervisory notice even if he has been involved in establishing the evidence on which the decision is based, as permitted by section 395(3) of the Act. Where practicable, however, FCA staff will seek to ensure that the FCA director has not been so involved.
Chapter 4

Decisions by FCA staff under executive procedures
4.1 Executive decision maker

Who takes the decision

4.1.1 G All statutory notice decisions under executive procedures and decisions referred to in ■ DEPP 2.5.6A G will be taken either by a senior staff committee or by an individual FCA staff member.

4.1.2 G In the case of a senior staff committee, the decision will be taken by FCA staff who have not been directly involved in establishing the evidence on which the decision is based or by two or more FCA staff who include a person not directly involved in establishing that evidence, except in accordance with section 395(3) of the Act.

4.1.2A G In the case of an individual FCA staff member, the decision will be taken by someone who has not been directly involved in establishing the evidence on which the decision is based, except in accordance with section 395(3) of the Act.

Decisions by senior staff committee

4.1.3 G An FCA senior executive committee will from time to time determine that particular categories of statutory notice decision to be taken under executive procedures and decisions referred to in ■ DEPP 2.5.6A G will be taken by a senior staff committee.

4.1.4 G A senior staff committee will consist of such FCA staff members as an FCA senior executive committee may from time to time determine. An FCA senior executive committee may authorise the chairman of a senior staff committee to select its other members. A senior staff committee is accountable for its decisions to an FCA senior executive committee and, through it, to the FCA Board.

4.1.5 G A senior staff committee may operate through standing or specific sub-committees to consider particular decisions or classes of decision, for which accountability will lie through the committee. Each meeting of a senior staff committee, or sub-committee, will include:

1) an individual with authority to act as its chairman; and

2) at least two other members.
A senior staff committee will operate on the basis of a recommendation from an FCA staff member of at least the level of associate, and with the benefit of legal advice from an FCA staff member of at least the level of associate.

### Decisions by individual FCA staff members

Statutory notice decisions to be taken under executive procedures and decisions referred to in DEPP 2.5.6A G, and not falling within the responsibility of a senior staff committee, will be taken by an individual FCA staff member. The decision will be:

1. made by an executive director of the FCA Board or his delegate (who will be of at least the level of associate);
2. on the recommendation of an FCA staff member of at least the level of associate; and
3. with the benefit of legal advice from an FCA staff member of at least the level of associate.

except for decisions made in relation to consumer redress schemes pursuant to provisions of the Consumer Redress Schemes sourcebook (CONRED), where (1) will apply, but not (2) or (3).

The individual who takes a decision under executive procedures is accountable to the FCA Board directly (if an executive director) or otherwise through line management responsible for the decision concerned.

An FCA staff member who considers that a statutory notice decision or a decision referred to in DEPP 2.5.6A G should be taken above his own level is free to refer that decision to a more senior level. If an FCA staff member consults another staff member about a decision, the decision remains the independent decision of the FCA staff member who consults his colleague, unless it is agreed that the decision should instead be taken by the colleague, and the colleague has the delegated authority to do so.

If an individual responsible for a decision under executive procedures (or a more senior FCA staff member with responsibilities in relation to the decision concerned) considers that it warrants collective consideration, the individual may:

1. take the decision himself, following consultation with other FCA staff members, as above; or
2. refer it to a senior staff committee, which will take the decision itself.

### Conflicts of interest

(1) FCA staff are required by their contract of employment to comply with a code of conduct which imposes strict rules to cover the handling of conflicts of interest which may arise from personal interests or associations. FCA staff subject to a conflict of interest must declare
that interest to the person to whom they are immediately responsible for a decision.

(2) If a member of a senior staff committee has a potential conflict of interest in any matter in which they are asked to participate they will disclose the conflict to the secretariat of the senior staff committee, and disclose it:

(a) in the case of the chairman of the senior staff committee, to a member of an FCA senior executive committee or, if the person with the conflict is the chairman of an FCA senior executive committee, to the Chairman of the FCA;

(b) in the case of the deputy chairman of the senior staff committee, to the chairman of the committee, or if they are unavailable, to a member of an FCA senior executive committee;

(c) in the case of any other member to the chairman or deputy chairman of the senior staff committee.

(3) If the person to whom the conflict has been disclosed in accordance with DEPP 4.1.11 G (2) considers it reasonable and appropriate, they will require the member of the senior staff committee to stand down from consideration of the matter.

4.1.12 The secretariat to the senior staff committee will record and document all disclosures of potential conflicts of interest and the steps taken to manage them.

Procedure

4.1.13 The procedure for taking decisions under executive procedures will generally be less formal and structured than that for decisions by the RDC. Broadly, however, FCA staff responsible for taking statutory notice decisions under executive procedures will follow a procedure similar to that described at DEPP 3.2.7 G to DEPP 3.2.27 G for the RDC except that:

(1) in a case where the decision will be taken by a senior staff committee:

(a) the chairman or deputy chairman of the senior staff committee will perform the role of the Chairman of the RDC; and

(b) the secretariat to the senior staff committee will perform the role of the RDC staff;

(2) in a case where the decision will be taken by individual members of FCA staff, the distinction between the role of the RDC, its Chairman and the RDC staff has no application;

(3) the FCA staff responsible for taking the statutory notice decision may be advised by legal advisers who have also advised FCA staff recommending action by the FCA;

(4) the FCA will not normally disclose the communications between the FCA staff recommending that action be taken and those responsible for the decision to give the statutory notice unless the FCA has stated publicly that it will adopt a practice of disclosing such communications, or a class of communications, in respect of particular
categories of decision taken by FCA staff under *executive procedures*; and

(5) ■ DEPP 3.2.11 G and ■ DEPP 3.2.21 G will not apply.

4.1.14 \[G\] Broadly, FCA staff responsible for taking decisions referred to in ■ DEPP 2.5.6A G will follow a procedure similar to that described at ■ DEPP 3.2.7 G to ■ DEPP 3.2.27 G for the \textit{RDC} (subject to the exceptions in ■ DEPP 4.1.13 G (1) to ■ DEPP 4.1.13 G (5) which also reflects that these decisions are not \textit{statutory notice} decisions.
If FCA staff recommend that action be taken and they consider that the decision falls within the responsibility of a senior staff committee:

(1) in general the FCA staff’s recommendation will go before the senior staff committee;

(2) in urgent statutory notice cases for which a senior staff committee is responsible, the decision to give the statutory notice may be taken by the chairman or, if he is unavailable, a deputy chairman of the senior staff committee, and, if it is practicable, one or more other members of the committee;

(3) the chairman or deputy chairman of the senior staff committee will take such a decision only if satisfied that the action proposed should occur before it is practicable to convene a meeting of the senior staff committee;

(4) in an exceptionally urgent statutory notice case, if in the FCA staff’s opinion:
   (a) the action should be taken before a recommendation to the chairman or a deputy chairman of the senior staff committee could be made; and
   (b) an urgent decision on the proposed action is necessary to protect the interests of consumers;

the decision may be taken by a member of the FCA’s executive of at least director of division level (which may include an acting director) or, in the case of a senior staff committee which reports directly to the FCA’s senior executive committee, by a member of that committee.

In the circumstances described in DEPP 4.2.1 G (4) the FCA considers that it may be necessary for an FCA director of division or member of a senior staff committee to take the decision to give a supervisory notice even if he has been involved in establishing the evidence on which the decision is based, as permitted by section 395(3) of the Act. Where practicable, however, FCA staff will seek to ensure that the FCA director or committee member has not been so involved.
5.1 Settlement decision makers

Introduction

(1) A person subject to enforcement action may agree to a financial penalty or other outcome rather than contest formal action by the FCA.

Alternatively, they may enter into a focused resolution agreement and in this way partly contest the proposed action (see DEPP 5.1.8AG to DEPP 5.1.8DG).

(1A) Further, even if the person subject to enforcement action wishes to fully contest the proposed enforcement action, they may choose to do so by (i) agreeing to the FCA issuing the required statutory notices and (ii) then making an expedited reference of the matter to the Tribunal (see DEPP 5.1.8EG to DEPP 5.1.8JG).

(2) The fact that a person does any of these things will not usually obviate the need for statutory notices recording the FCA's proposal and decision to take action. As set out in this chapter, senior FCA staff have a role to play in giving the requisite statutory notices:

(a) where a person enters into a settlement agreement (other than a focused resolution agreement), senior FCA staff will give both the warning notice and decision notice;

(b) where a person enters into a focused resolution agreement, senior FCA staff will give the warning notice and the RDC will decide whether to give a decision notice and the terms of any notice given; and

(c) where a person elects to make an expedited reference to the Tribunal before a warning notice has been issued, senior FCA staff will then give the warning notice and decision notice.

(3) These decisions by senior FCA staff will be taken jointly by two members of the FCA's senior management, one of whom will be of at least director of division level (which may include an acting director) and the other of whom will be of at least head of department level (the "settlement decision makers").

(4) At least one of the settlement decision makers will not be from the Enforcement and Financial Crime Division. The other settlement decision maker will usually be, but need not be, from the Enforcement and Financial Crime Division. A settlement decision maker will not have been directly involved in establishing the evidence on which the decision is based.
(5) "Statutory notice" for these purposes:
   (a) means any statutory notice the giving of which would otherwise require a decision by the RDC;
   (b) includes a statutory notice associated decision.

Procedure: general

5.1.2 A person who is or may be subject to enforcement action may wish to discuss the proposed action with FCA staff through settlement discussions.

5.1.3 Settlement discussions may take place at any time during the enforcement process if both parties agree. This might be before the giving of a warning notice, before a decision notice, or even after referral of the matter to the Tribunal. But the FCA would not normally agree to detailed settlement discussions until it has a sufficient understanding of the nature and gravity of the suspected misconduct or issue to make a reasonable assessment of the appropriate outcome. Settlement after a decision notice will be rare.

5.1.4 FCA staff and the person concerned may agree that neither the FCA nor the person concerned would seek to rely against the other on any admissions or statements made in the course of their settlement discussions if the matter is considered subsequently by the RDC or the Tribunal.

Procedure: participation of decision makers in discussions

5.1.5 (1) The settlement decision makers may, but need not, participate in the discussions exploring possible settlement.

   (2) If the settlement decision makers have not been involved in the discussions, but an agreement has been reached, they may ask to meet the relevant FCA staff or the person concerned in order to assist in the consideration of the proposed settlement.

5.1.6 The terms of any proposed settlement:

   (1) will be put in writing and be agreed by FCA staff and the person concerned;

   (2) may refer to a draft of the proposed statutory notices setting out the facts of the matter and the FCA’s conclusions;

   (3) may, depending upon the stage in the enforcement process at which agreement is reached, include an agreement by the person concerned to:

       (a) waive and not exercise any rights under sections 387 (Warning notices) and 394 (Access to Authority material) of the Act to notice of, or access to, material relied upon by the FCA and any secondary material which might undermine the FCA decision to give the statutory notice;

       (b) waive and not exercise any rights under section 387 of the Act or otherwise to make representations to the RDC in respect of a warning notice or first supervisory notice;
(c) not object to the giving of a decision notice before the expiry of the 14 day period after the giving of a warning notice specified under section 387 of the Act;

(d) not dispute with the FCA the facts and matters set out in a warning notice, decision notice, supervisory notice or final notice and to waive and not exercise any right under section 208 (Decision notice) of the Act to refer the matter to the Tribunal.

The settlement decision makers may:

(1) accept the proposed settlement by deciding to give a statutory notice based on the terms of the settlement; or

(2) decline the proposed settlement;

whether or not the settlement decision makers have met with the relevant FCA staff or the person concerned.

(1) Where the settlement decision makers decline to issue a statutory notice despite the proposed settlement, they may invite FCA staff and the person concerned to enter into further discussions to try to achieve an outcome the settlement decision makers would be prepared to endorse.

(2) However, if the proposed action by the FCA has been submitted to the RDC for consideration, it will be for the RDC to decide:

(a) whether to extend the period for representations in response to a warning notice or first supervisory notice; or

(b) if representations have been made in response to a warning notice or first supervisory notice, whether to proceed to give a decision notice or second supervisory notice.

The issues which may be agreed under a focused resolution agreement include, but are not limited to:

(1) questions of fact;

(2) whether specified facts amount to a breach (or more than one breach);

(3) whether action for a financial penalty and/or public censure is warranted;

(4) the appropriate level of a financial penalty;

(5) whether action for a suspension, restriction, condition or limitation (as defined for the purposes of DEPP 6A) is warranted;

(6) the appropriate length of a suspension, restriction, condition or limitation (as defined for the purposes of DEPP 6A);
(7) whether a prohibition order is warranted; and/or

(8) the appropriate scope of such a prohibition order.

5.1.8B The terms of any proposed focused resolution agreement:

(1) will be put in writing and be agreed by FCA staff and the person concerned;

(2) may refer to a draft of the proposed warning notice; and

(3) may, depending upon the stage in the enforcement process at which agreement is reached, include an agreement by the person concerned to:

(a) waive and not exercise any rights under sections 387 (Warning notices) and 394 (Access to Authority material) of the Act to notice of, or access to, material relied upon by the FCA and any secondary material which might undermine the FCA decision to give the statutory notice, except in relation to material that is relevant to issues which remain in dispute; and

(b) not dispute the issues agreed with the FCA when:

(i) making representations to the RDC in respect of a warning notice (whether in exercise of rights under section 387 of the Act or otherwise); or

(ii) on any subsequent reference of the matter to the Tribunal under (except where the Tribunal decides of its own motion to reopen an issue or issues).

Where the proposed settlement is on the basis of a focused resolution agreement, the role of the settlement decision makers shall be as follows:

(1) The settlement decision makers will decide whether or not to give a warning notice. (For the avoidance of doubt, the settlement decision makers may meet the relevant FCA staff or the person concerned in accordance with DEPP 5.1.5G and any such meeting shall not affect the settlement decision makers’ ability to decide whether or not to give a warning notice).

(2) If the settlement decision makers decline to give a warning notice based on the proposed focused resolution agreement, they may invite FCA staff and the person concerned to enter into further discussions to try to achieve an outcome the settlement decision makers would be prepared to endorse.

(3) If the settlement decision makers are satisfied with the proposed focused resolution agreement, they shall give a warning notice based on the proposed resolution agreement which records the agreed position on the agreed issues and the position of the FCA on those issues which remain in dispute.

(4) Where the settlement decision makers give a warning notice, the notice will specify the time allowed for making representations. This will not be less than 14 days.
(5) The settlement decision makers will promptly inform the RDC that a warning notice has been given. The FCA will then specify a time within which the recipient of the notice is required to indicate whether they wish to make oral representations.

(6) It will then be for the RDC to decide whether to give a decision notice under the procedure set out in DEPP 3.2.16G to DEPP 3.2.25G.

5.1.8D For the avoidance of doubt, the decision whether to agree a proposed focused resolution agreement is entirely within the discretion of the settlement decision makers.

Procedure: expedited references to the Tribunal

5.1.8E (1) The purpose of this section is to define a procedure (the “expedited reference procedure”) enabling a person subject to enforcement action to challenge the proposed action before the Tribunal without engaging with the FCA’s internal decision-making process.

(2) DEPP 5.1.8FG to DEPP 5.1.8IG set out the circumstances in which the expedited reference procedure is available, the steps a person must take to make use of the procedure, and how the procedure operates, depending on whether it is invoked before or after the warning notice is given.

5.1.8F The expedited reference procedure is available only if:

(1) the proposed action requires the FCA to issue a warning notice;

(2) the FCA considers that it has a sufficient understanding of the nature and gravity of the breach to make a reasonable assessment of the appropriate penalty or other outcome; and

(3) the FCA has communicated that assessment to the person concerned.

5.1.8G To use the expedited reference procedure, the person subject to enforcement action must notify the FCA that they:

(1) wish to make an expedited reference to the Tribunal; and

(2) waive and will not exercise any rights under section 387(2) of the Act in respect of the warning notice given (or to be given) in relation to the proposed action.

5.1.8H To use the expedited reference procedure before a warning notice has been given:

(1) the notification set out in DEPP 5.1.8GG must be given to FCA staff;

(2) the decision to issue a warning notice will then be taken by the settlement decision makers; and
(3) the decision to issue a *decision notice* will also be taken by the *settlement decision makers*, taking into consideration any representations by any third party under section 393 of the Act or any interested party under section 63 or 67 of the Act.

5.1.8I To use the expedited reference procedure after a *warning notice* has been given:

(1) the notification set out in DEPP 5.1.8GG must be given to the *RDC*; and

(2) the decision to issue a *decision notice* will then be taken by the *RDC* in light of any representations by any third party under section 393 of the Act and any interested party under section 63 or 67 of the Act.

5.1.8J Once a *decision notice* has been given as part of the expedited reference procedure (whether by the *settlement decision makers* or the *RDC*), it is the responsibility of the *person* subject to enforcement action to seek to refer the matter to the *Tribunal* under the Act if they so wish. If the matter is not referred to the *Tribunal* within the time required under section 390(1) of the Act, the *FCA* will, on taking the action to which the *decision notice* relates, give a *final notice*.

**Procedure: warning notice statements**

5.1.8K If FCA staff consider that it is appropriate to publish information about the matter to which a *warning notice* falling within section 391(1ZB) of the Act relates and is given by the *settlement decision makers*, they will make a recommendation to the *settlement decision makers* that such information should be published.

5.1.8L The *settlement decision makers* will then consider whether it is appropriate in all the circumstances to publish information about the matter to which the *warning notice* falling within section 391(1ZB) of the Act relates. The *FCA*’s policy on publishing such information is set out in EG 6.

5.1.8M If the *settlement decision makers* propose that the *FCA* should publish information about the matter to which a *warning notice* falling within section 391(1ZB) of the Act relates:

(1) the *settlement decision makers* will settle the wording of the statement it proposes the *FCA* should publish (warning notice statement);

(2) the *FCA* staff will make appropriate arrangements for the warning notice statement that the *settlement decisions makers* propose the *FCA* should publish to be given to the *persons* to whom the *warning notice* was given or copied;

(3) the proposed warning notice statement will specify the time allowed for the *recipient* to respond in writing to the *settlement decision makers*. This will normally be 14 days;
(4) the recipient of a proposed warning notice statement may request the settlement decision makers to grant an extension of the time allowed for its response. Such a request must normally be made within seven days of the proposed warning notice statement being given; and

(5) the settlement decision makers will not normally grant a request by a person to whom the warning notice statement was given to make their response in person.

- **5.1.8N** If no response to the proposed warning notice statement is received, the FCA will make appropriate arrangements to publish the warning notice statement.

- **5.1.8O** If the settlement decision makers receive a response from the person to whom the proposed warning notice statement was given, the settlement decision makers will consider their response and decide whether it is appropriate in all the circumstances to publish information about the matter to which the warning notice relates.

- **5.1.8P** If the settlement decision makers decide that the FCA should publish a warning notice statement:
  1. the settlement decision makers will notify the relevant parties (including the relevant FCA staff) in writing of that decision;
  2. the settlement decision makers will settle the wording of the warning notice statement; and
  3. the FCA will make appropriate arrangements for the warning notice statement to be published.

- **5.1.8Q** If the settlement decision makers decide that the FCA should not publish a warning notice statement they will notify the relevant parties (including the relevant FCA staff) in writing of that decision.

### Settlement by mediation

The FCA and other parties may agree to mediation as a way of facilitating settlement in appropriate cases.

### Third party rights

1. DEPP 2.4 sets out the FCA’s approach to giving third parties copies of statutory notices pursuant to section 393 (Third party rights) of the Act.

2. The decision to give a warning notice or a decision notice to a third party is a statutory notice associated decision.

3. In cases therefore where the decision to give a warning notice or decision notice is taken by settlement decision makers, those decision makers will decide whether a copy of the notice should be given to a
third party in accordance with section 393 of the Act. Any representations made by the third party in response to a warning notice will be considered by the settlement decision makers.
Chapter 6

Penalties
6.1 Introduction

6.1.1 DEPP 6 includes the FCA’s statement of policy with respect to the imposition and amount of penalties under the Act, as required by sections 63C(1), 69(1), 88C, 89S, 93(1), 124(1), 131J(1), 192N, 210(1), 312J and 345D of the Act.

6.1.2 The principal purpose of imposing a financial penalty or issuing a public censure is to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches, and demonstrating generally the benefits of compliant behaviour. Financial penalties and public censures are therefore tools that the FCA may employ to help it to achieve its statutory objectives.
Deciding whether to take action

The FCA will consider the full circumstances of each case when determining whether or not to take action for a financial penalty or public censure. Set out below is a list of factors that may be relevant for this purpose. The list is not exhaustive: not all of these factors may be applicable in a particular case, and there may be other factors, not listed, that are relevant.

1. The nature, seriousness and impact of the suspected breach, including:
   a. whether the breach was deliberate or reckless;
   b. the duration and frequency of the breach;
   c. the amount of any benefit gained or loss avoided as a result of the breach;
   d. whether the breach reveals serious or systemic weaknesses of the management systems or internal controls relating to all or part of a person’s business;
   e. the impact or potential impact of the breach on the orderliness of markets including whether confidence in those markets has been damaged or put at risk;
   f. the loss or risk of loss caused to consumers or other market users;
   g. the nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the breach; and
   h. whether there are a number of smaller issues, which individually may not justify disciplinary action, but which do so when taken collectively.

2. The conduct of the person after the breach, including the following:
   a. how quickly, effectively and completely the person brought the breach to the attention of the FCA or another relevant regulatory authority;
   b. the degree of co-operation the person showed during the investigation of the breach;
   c. any remedial steps the person has taken in respect of the breach;
   d. the likelihood that the same type of breach (whether on the part of the person under investigation or others) will recur if no action is taken;
   e. whether the person concerned has complied with any requirements or rulings of another regulatory authority relating to his behaviour (for example, where relevant, those of the Takeover Panel or an RIE); and
(f) the nature and extent of any false or inaccurate information given by the person and whether the information appears to have been given in an attempt to knowingly mislead the FCA.

(3) The previous disciplinary record and compliance history of the person including:
   (a) whether the FCA (or any previous regulator) has taken any previous disciplinary action resulting in adverse findings against the person;
   (b) whether the person has previously undertaken not to do a particular act or engage in particular behaviour;
   (c) whether the FCA (or any previous regulator) has previously taken protective action in respect of a firm, using its own initiative powers, by means of a variation of a Part 4A permission or otherwise, or has previously requested the firm to take remedial action, and the extent to which such action has been taken; and
   (d) the general compliance history of the person, including whether the FCA (or any previous regulator) has previously issued the person with a private warning.

(4) FCA guidance and other published materials:

   The FCA will not take action against a person for behaviour that it considers to be in line with guidance, other materials published by the FCA in support of the Handbook or FCA-confirmed Industry Guidance which were current at the time of the behaviour in question. (The manner in which guidance and other published materials may otherwise be relevant to an enforcement case is described in EG 2.)

(4A) FCA-recognised industry codes:

   Behaviour that is in line with a FCA-recognised industry code will tend to indicate compliance, in carrying out unregulated activities, with applicable FCA rules that reference ‘proper standards of market conduct’. In such cases, the FCA will usually not take action against a person for behaviour, in relation to unregulated activities, that it considers to be in line with the relevant FCA-recognised industry code.

(5) Action taken by the FSA or FCA in previous similar cases.

(6) Action taken by other domestic or international regulatory authorities:

   Where other regulatory authorities propose to take action in respect of the breach which is under consideration by the FCA, or one similar to it, the FCA will consider whether the other authority’s action would be adequate to address the FCA’s concerns, or whether it would be appropriate for the FCA to take its own action.

When deciding whether to take action for market abuse, the FCA may consider the following additional factors:

(1) The degree of sophistication of the users of the market in question, the size and liquidity of the market, and the susceptibility of the market to market abuse.

(2) The impact, having regard to the nature of the behaviour, that any financial penalty or public censure may have on the financial markets or on the interests of consumers:
DEPP 6 : Penalties
Section 6.2 : Deciding whether to take action

(a) a penalty may show that high standards of market conduct are being enforced in the financial markets, and may bolster market confidence;

(b) a penalty may protect the interests of consumers by deterring future market abuse and improving standards of conduct in a market;

(c) in the context of a takeover bid, the FCA may consider that the impact of the use of its powers is likely to have an adverse effect on the timing or outcome of that bid, and therefore it would not be in the interests of financial markets or consumers to take action for market abuse during the takeover bid. If the FCA considers that the proposed use of its powers may have that effect, it will consult the Takeover Panel and give due weight to its views.

6.2.2A The factors to which the FCA will have regard when deciding whether to impose a penalty under regulation 34 of the RCB Regulations are set out in RCB 4.2.3 G.

Discipline for breaches of FCA rules on systems and controls against money laundering

6.2.3 The FCA’s rules on systems and controls against money laundering are set out in SYSC 3.2 and SYSC 6.3. The FCA, when considering whether to take action for a financial penalty or censure in respect of a breach of those rules, will have regard to whether a firm has followed relevant provisions in the Guidance for the UK financial sector issued by the Joint Money Laundering Steering Group.

Action against individuals under section 66 of the Act

6.2.4 Disciplinary action against senior managers of firms and other individuals is one of the FCA’s key tools in deterring firms and individuals from committing breaches.

6.2.5 In some cases it may not be appropriate to take disciplinary measures against a firm for the actions of an individual (an example might be where the firm can show that it took all reasonable steps to prevent the breach). In other cases, it may be appropriate for the FCA to take action against both the firm and the individual. For example, a firm may have breached the rule requiring it to take reasonable care to establish and maintain such systems and controls as are appropriate to its business (SYSC 3.1.1 R or SYSC 4.1.10R or article 21(5) of the MiFID Org Regulation (as applied in accordance with SYSC 1 Annex 1 2.8AR, SYSC 1 Annex 1 3.2-AR, SYSC 1 Annex 1 3.2-AR, SYSC 1 Annex 1 3.2CR and SYSC 1 Annex 1 3.3R), and an individual may have taken advantage of those deficiencies to front run orders or misappropriate assets.

6.2.6 In addition to the general factors outlined in DEPP 6.2.1 G, there are some additional considerations that may be relevant when deciding whether to take action against an individual under section 66 of the Act. This list of those considerations is non-exhaustive. Not all considerations below may be
relevant in every case, and there may be other considerations, not listed, that are relevant.

(1) The individual’s position and responsibilities. The FCA may take into account the responsibility of those exercising significant influence functions or designated senior management functions in the firm for the conduct of the firm. The more senior the individual responsible for the misconduct, the more seriously the FCA is likely to view the misconduct, and therefore the more likely it is to take action against the individual.

(2) Whether the most appropriate regulatory response would be disciplinary action against the firm, the individual or both.

(3) Whether disciplinary action would be a proportionate response to the nature and seriousness of the misconduct by the individual.

The FCA may take disciplinary action against an individual where there is evidence of personal culpability on the part of that individual. Personal culpability arises if the individual’s behaviour was deliberate or below the standard which would be reasonable in all the circumstances at the time of the conduct concerned.

The FCA will not discipline individuals on the basis of vicarious liability (that is, holding them responsible for the acts of others), provided appropriate delegation and supervision has taken place (see APER 4.6.13G, APER 4.6.14G, COCON 4.1.8G and COCON 4.2.17G to COCON 4.2.24G). In particular, disciplinary action will not be taken against an approved person performing a significant influence function or a senior conduct rules staff member simply because a regulatory failure has occurred in an area of business for which they are responsible. The FCA will consider that an approved person performing a significant influence function or a senior conduct rules staff member may have breached Statements of Principle 5 to 7, or that a senior conduct rules staff member may have breached rules SC1 to SC4 in COCON 2.2, only if their conduct was below the standard which would be reasonable in all the circumstances at the time of the conduct concerned (see also APER 3.1.8AG and COCON 3.1.6G, as applicable).

An individual will not be in breach if they have exercised due and reasonable care when assessing the information available to them, have reached a reasonable conclusion and have acted on it.

Where disciplinary action is taken against an individual the onus will be on the FCA to show that the individual has been guilty of misconduct.
Action against an SMF manager under section 66A(5) of the Act

The FCA is able to take action against an SMF manager under section 66A(5) of the Act where:

1. there has been (or continues to be) a contravention of a relevant requirement by the SMF manager’s firm;

2. at the time of the contravention, the SMF manager was responsible for the management of any of the firm’s activities in relation to which the contravention occurred; and

3. the SMF manager did not take such steps as a person in their position could reasonably be expected to take to avoid the contravention by the firm occurring (or continuing).

In such an action, an SMF manager is not bound by a finding of the RDC, a court or a tribunal, which he or she was not privy nor party to.

When deciding whether to take action further to section 66A(5) of the Act, the FCA will follow the approach in ■ DEPP 6.2.1G and ■ DEPP 6.2.6G.

When determining, for the purposes of section 66A(5) of the Act, whether an SMF manager was responsible for the management of any of the firm’s activities in relation to which a contravention of a relevant requirement by the firm occurred, the FCA will consider the full circumstances of each case. A list of considerations that may be relevant for this purpose is set out below. This list is not exhaustive.

1. The SMF manager’s statement of responsibilities, including whether the SMF manager was performing an executive or non-executive role.

2. The firm’s management responsibilities map.

3. How the firm operated, and how responsibilities were allocated in the firm in practice.

4. The SMF manager’s actual role and responsibilities in the firm, to be determined by reference to, among other things, minutes of meetings, emails, regulatory interviews, telephone recordings and organisational charts.

5. The relationship between the SMF manager’s responsibilities and the responsibilities of other SMF managers in the firm (including any joint responsibilities or matrix management structures).

Under section 66A(5)(d) of the Act, such steps as a person in the position of the SMF manager could reasonably be expected to take to avoid the firm’s contravention of a relevant requirement occurring (or continuing) are:

1. such steps as a competent SMF manager would have taken:
   (a) at that time;
   (b) in that specific individual’s position;
(c) with that individual’s role and responsibilities; and
(d) in all the circumstances.

When determining under section 66A(5)(d) of the Act whether or not an SMF manager has taken such steps as a person in their position could reasonably be expected to take to avoid the contravention of a relevant requirement by the firm occurring (or continuing), additional considerations to which the FCA would expect to have regard include, but are not limited to:

(1) the role and responsibilities of the SMF manager (for example, such steps as an SMF manager in a non-executive role could reasonably be expected to take may differ, depending on the circumstances, from those reasonably expected of an SMF manager in an executive role: see, for example, the guidance on the role and responsibilities of non-executive directors for SMCR firms in COCON 1 Annex 1G);

(2) whether the SMF manager exercised reasonable care when considering the information available to them;

(3) whether the SMF manager reached a reasonable conclusion on which to act;

(4) the nature, scale and complexity of the firm’s business;

(5) the knowledge the SMF manager had, or should have had, of regulatory concerns, if any, relating to their role and responsibilities;

(6) whether the SMF manager (where they were aware of, or should have been aware of, actual or suspected issues that involved possible breaches by their firm of relevant requirements relating to their role and responsibilities) took reasonable steps to ensure that the issues were dealt with in a timely and appropriate manner;

(7) whether the SMF manager acted in accordance with their statutory, common law and other legal obligations, including, but not limited to, those set out in the Companies Act 2006, the Handbook (including COCON), and, if the firm had a premium listing, the UK Corporate Governance Code and related guidance;

(8) whether the SMF manager took reasonable steps to ensure that any delegation of their responsibilities, where this was itself reasonable, was to an appropriate person with the necessary capacity, competence, knowledge, seniority and skill, and whether the SMF manager took reasonable steps to oversee the discharge of the delegated responsibility effectively;

(9) whether the SMF manager took reasonable steps to ensure that the reporting lines, whether in the UK or overseas, in relation to the firm’s activities for which they were responsible, were clear to staff and operated effectively;

(10) whether the SMF manager took reasonable steps to satisfy themselves, on reasonable grounds, that, for the activities for which they were responsible, the firm had appropriate policies and procedures for reviewing the competence, knowledge, skills and
performance of each individual member of staff to assess their suitability to fulfil their duties;

(11) whether the SMF manager took reasonable steps (including in relation to SYSC 4.9) to assess, on taking up each of their responsibilities, and monitor, where reasonable, the governance, operational and risk management arrangements in place for the firm’s activities for which they were responsible (including, where appropriate, corroborating, challenging and considering the wider implications of the information available to them), and whether they took reasonable steps to deal with any actual or suspected issues identified as a result in a timely and appropriate manner;

(12) whether the SMF manager took reasonable steps to ensure an orderly transition when another SMF manager under their oversight or responsibility was replaced in the performance of that function by someone else;

(13) whether the SMF manager took reasonable steps to ensure an orderly transition when they were replaced in the performance of their function by someone else;

(14) whether the SMF manager failed to take reasonable steps to understand and inform themselves about the firm’s activities for which they were responsible, including, but not limited to, whether they:

(a) failed to ensure adequate reporting or seek an adequate explanation of issues within a business area, whether from people within that business area, or elsewhere within or outside the firm, if they were not an expert in that area; or

(b) failed to maintain an appropriate level of understanding about an issue or a responsibility that they delegated to an individual or individuals; or

(c) failed to obtain independent, expert opinion where appropriate from within or outside the firm as appropriate; or

(d) permitted the expansion or restructuring of the business without reasonably assessing the potential risks; or

(e) inadequately monitored highly profitable transactions, business practices, unusual transactions, or individuals who contributed significantly to the profitability of a business area or who had significant influence over the operation of a business area;

(15) whether the SMF manager took reasonable steps to ensure that, where they were involved in a collective decision affecting the firm’s activities for which they were responsible, and it was reasonable for the decision to be taken collectively, they informed themselves of the relevant matters before taking part in the decision, and exercised reasonable care, skill and diligence in contributing to it;

(16) whether the SMF manager took reasonable steps to follow the firm’s procedures, where this was itself appropriate;

(17) how long the SMF manager had been in role with their responsibilities and whether there was an orderly transition and handover when they took up the role and responsibilities;
(18) whether the SMF manager took reasonable steps to implement (either personally or through a compliance department or other departments) adequate and appropriate systems and controls to comply with the relevant requirements and standards of the regulatory system for the activities of the firm.

Where action is taken against an SMF manager under section 66A(5) of the Act the onus will be on the FCA to show that the SMF manager has been guilty of misconduct.

Action under section 63A of the Act against persons that perform a controlled function without approval

In addition to the general factors outlined in DEPP 6.2.1 G, there are some additional considerations that the FCA will have regard to when deciding whether to take action against a person that performs a controlled function without approval contrary to section 63A of the Act.

(1) The conduct of the person. The FCA will take into consideration whether, while performing controlled functions without approval, the person committed misconduct in respect of which, if he had been approved, the FCA could have taken action pursuant to section 66 of the Act and, if so, the seriousness of that misconduct.

(2) The extent to which the person could reasonably be expected to have known that they were performing a controlled function without approval. The circumstances in which the FCA would expect to be satisfied that a person could reasonably be expected to have known that they were performing a controlled function without approval include:

(a) the person had previously performed a similar role at the same or another firm for which he had been approved;

(b) the person’s firm or another firm had previously applied for approval for the person to perform the same or a similar controlled function;

(c) the person’s seniority or experience was such that he could reasonably be expected to have known that he was performing a controlled function without approval; and

(d) the person’s firm had clearly apportioned responsibilities so that the person’s role, and the responsibilities associated with it, were clear;

(e) the person’s approval was subject to a condition or was granted for a limited period, and they failed to act in accordance with that condition or time limitation.

(3) The length of the period during which the person performed a controlled function without approval.

(4) Whether the person is an individual.

(5) The appropriateness of taking action against the person instead of, or in addition to, taking action against an authorised person. In assessing this, the FCA will take into consideration the extent of the culpability of an authorised person for the person performing a
controlled function without approval. For example, a relevant factor may be that an authorised person decided that the person did not need to obtain approval and it was reasonable for the person to rely on the authorised person’s judgment.

(6) The person’s position and responsibilities. The more senior the person that performs a controlled function without approval, the more seriously the FCA is likely to view his behaviour, and therefore the more likely it is to take action against the person.

Action against directors, former directors and persons discharging managerial responsibilities for breaches under Part VI of the Act

6.2.10 G The primary responsibility for ensuring compliance with Part VI of the Act, the Part 6 rules, the prospectus rules or a provision of the Prospectus Regulation or a requirement imposed under such provision rests with the persons identified in section 91(1) and section 91(1A) (Penalties for breach of Part 6 rules) of the Act respectively. Normally therefore, any disciplinary action taken by the FCA for contraventions of these obligations will in the first instance be against those persons.

6.2.11 G However, in the case of a contravention by a person referred to in section 91(1)(a) or section 91(1)(b) or section 91(1A) of the Act (“P”), where the FCA considers that another person who was at the material time a director of P was knowingly concerned in the contravention, the FCA may take disciplinary action against that person. In circumstances where the FCA does not consider it appropriate to seek a disciplinary sanction against P (notwithstanding a breach of relevant requirements by such person), the FCA may nonetheless seek a disciplinary sanction against any other person who was at the material time a director of P and was knowingly concerned in the contravention.

6.2.12 G [deleted]

6.2.13 G In deciding whether to take action, the FCA will consider the full circumstances of each case. Factors that may be relevant for this purpose include, but are not limited to, the factors at DEPP 6.2.1 G.

Discipline for breaches of the Principles for Businesses

6.2.14 G The Principles are set out in PRIN 2.1.1 R. The Principles are a general statement of the fundamental obligations of firms under the regulatory system. The Principles derive their authority from the FCA’s rule-making powers set out in section 137A (General rule-making power) of the Act. A breach of a Principle will make a firm liable to disciplinary action. Where the FCA considers this is appropriate, it will discipline a firm on the basis of the Principles alone.

6.2.15 G In determining whether a Principle has been breached, it is necessary to look to the standard of conduct required by the Principle in question at the time. Under each of the Principles, the onus will be on the FCA to show that a firm has been at fault in some way.
Discipline for breaches of the Listing Principles and Premium Listing Principles

6.2.16 The Listing Principles and Premium Listing Principles are set out in LR 7. The Listing Principles set out in LR 7.2.1 R are a general statement of the fundamental obligations of all listed companies. In addition to the Listing Principles, the Premium Listing Principles set out in LR 7.2.1A R are a general statement of the fundamental obligations of all listed companies with a premium listing. The Listing Principles and Premium Listing Principles derive their authority from the FCA’s rule making powers set out in section 73A(1) (Part 6 Rules) of the Act. A breach of a Listing Principle or, if applicable, a Premium Listing Principle, will make a listed company liable to disciplinary action by the FCA.

6.2.17 In determining whether a Listing Principle or Premium Listing Principle has been broken, it is necessary to look to the standard of conduct required by the Listing Principle or Premium Listing Principle in question. Under each of the Listing Principles and Premium Listing Principles, the onus will be on the FCA to show that a listed company has been at fault in some way. This requirement will differ depending upon the relevant Listing Principle or Premium Listing Principle.

6.2.18 In certain cases, it may be appropriate to discipline a listed company on the basis of the a Listing Principle or, if applicable, a Premium Listing Principle, alone. Examples include the following:

1. where there is no detailed listing rule which prohibits the behaviour in question, but the behaviour clearly contravenes a Listing Principle or, if applicable, a Premium Listing Principle;

2. where a listed company has committed a number of breaches of detailed rules which individually may not merit disciplinary action, but the cumulative effect of which indicates the breach of a Listing Principle or, if applicable, a Premium Listing Principle.

Action involving other regulatory authorities or enforcement agencies

6.2.19 Some types of breach may potentially result not only in action by the FCA, but also action by other domestic or overseas regulatory authorities or enforcement agencies.

6.2.20 When deciding how to proceed in such cases, the FCA will examine the circumstances of the case, and consider, in the light of the relevant investigation, disciplinary and enforcement powers, whether it is appropriate for the FCA or another authority to take action to address the breach. The FCA will have regard to all the circumstances of the case including whether the other authority has adequate powers to address the breach in question.

6.2.21 In some cases, it may be appropriate for both the FCA and another authority to be involved, and for both to take action in a particular case arising from the same facts. For example, a breach of RIE rules may be so serious as to justify the FCA varying or cancelling the firm’s Part IV permission, or withdrawing approval from approved persons, as well as action taken by the
6.2.22 In relation to behaviour which may have happened or be happening in the context of a takeover bid, the FCA will refer to the Takeover Panel and give due weight to its views. Where the Takeover Code has procedures for complaint about any behaviour, the FCA expects parties to exhaust those procedures. The FCA will not, save in exceptional circumstances, take action under any of section 123 (FCA's power to impose penalties), section 123A (Power to prohibit individuals from managing or dealing), section 123B (Suspending permission to carry on regulated activities etc.), section 129 (Power of court to impose penalties), section 381 (Injunctions), sections 383 or 384 (Restitution) in respect of behaviour to which the Takeover Code is relevant before the conclusion of the procedures available under the Takeover Code.

6.2.23 The FCA will not take action against a person over behaviour which does not amount to market abuse. Behaviour is less likely to amount to market abuse where it (a) conforms with the Takeover Code or rules of an RIE and (b) falls within the terms of ■ MAR 1.10.4G to ■ 1.10.6G which state that behaviour so conforming is unlikely to, of itself, amount to market abuse. The FCA will seek the Takeover Panel’s or relevant RIE's views on whether behaviour complies with the Takeover Code or RIE rules and will attach considerable weight to its views.

6.2.24 If any of the circumstances in ■ DEPP 6.2.26 G apply, and the FCA considers that the use of its disciplinary powers under section 123 or section 129, or of its injunctive powers under section 381 or of its powers relating to restitution under section 383 or 384 is appropriate, it will not take action during an offer to which the Takeover Code applies except in the circumstances set out in ■ DEPP 6.2.27 G.

6.2.25 In any case where the FCA considers that the use of its powers under any of sections 123, 123A, 123B, 129, 381, 383 or 384 of the Act may be appropriate, if that use may affect the timetable or outcome of a takeover bid or where it is appropriate in the context of any exercise by the Takeover Panel of its powers and authority, the FCA will consult the Takeover Panel before using any of those powers.

6.2.26 Where the behaviour of a person which amounts to market abuse is behaviour to which the Takeover Code is relevant, the use of the Takeover Panel’s powers will often be sufficient to address the relevant concerns. In cases where this is not so, the FCA will need to consider whether it is appropriate to use any of its own powers under the market abuse regime. The principal circumstances in which the FCA is likely to consider such exercise are:

1. where the behaviour falls within the prohibition in article 14 of the Market Abuse Regulation;
(2) where the FCA’s approach in previous similar cases (which may have happened otherwise than in the context of a takeover bid) suggests that a sanction should be imposed;

(3) where the behaviour extends to securities or a class of securities which may be outside the Takeover Panel’s jurisdiction;

(4) where the behaviour threatens or has threatened the stability of the financial system; and

(5) where for any other reason the Takeover Panel asks the FCA to consider the use of any of its powers referred to in DEPP 6.2.22 G.

[Note: In this section, ‘securities’ has the same meaning given in subsection (1) of the definition of ‘security’ in the Handbook Glossary]

6.2.27 The exceptional circumstances in which the FCA will consider the use of powers during a takeover bid are listed in DEPP 6.2.26G (1), DEPP 6.2.26G (3) and DEPP 6.2.26G (4), and, depending on the circumstances, DEPP 6.2.26G (5).

6.2.28 [deleted]
6.3 Penalties for market abuse

6.3.1 [deleted]

6.3.2 [deleted]
6.4 Financial penalty or public censure

6.4.1 The FCA will consider all the relevant circumstances of the case when deciding whether to impose a penalty or issue a public censure. As such, the factors set out in DEPP 6.4.2 G are not exhaustive. Not all of the factors may be relevant in a particular case and there may be other factors, not listed, that are relevant.

6.4.2 The criteria for determining whether it is appropriate to issue a public censure rather than impose a financial penalty include those factors that the FCA will consider in determining the amount of penalty set out in DEPP 6.5 A to DEPP 6.5 D. Some particular considerations that may be relevant when the FCA determines whether to issue a public censure rather than impose a financial penalty are:

(1) whether or not deterrence may be effectively achieved by issuing a public censure;

(2) if the person has made a profit or avoided a loss as a result of the breach, this may be a factor in favour of a financial penalty, on the basis that a person should not be permitted to benefit from its breach;

(3) if the breach is more serious in nature or degree, this may be a factor in favour of a financial penalty, on the basis that the sanction should reflect the seriousness of the breach; other things being equal, the more serious the breach, the more likely the FCA is to impose a financial penalty;

(4) if the person has brought the breach to the attention of the FCA, this may be a factor in favour of a public censure, depending upon the nature and seriousness of the breach;

(5) if the person has admitted the breach and provides full and immediate co-operation to the FCA, and takes steps to ensure that those who have suffered loss due to the breach are fully compensated for those losses, this may be a factor in favour of a public censure, rather than a financial penalty, depending upon the nature and seriousness of the breach;

(6) if the person has a poor disciplinary record or compliance history (for example, where the FSA or FCA has previously brought disciplinary action resulting in adverse findings in relation to the same or similar behaviour), this may be a factor in favour of a financial penalty, on the basis that it may be particularly important to deter future cases;
(7) the FSA’s or FCA’s approach in similar previous cases: the FCA will seek to achieve a consistent approach to its decisions on whether to impose a financial penalty or issue a public censure; and

(8) the impact on the person concerned. It would only be in an exceptional case that the FCA would be prepared to agree to issue a public censure rather than impose a financial penalty if a financial penalty would otherwise be the appropriate sanction. Examples of such exceptional cases could include:

(a) where the application of the FCA’s policy on serious financial hardship (set out in DEPP 6.5D) results in a financial penalty being reduced to zero;

(b) where there is verifiable evidence that the person would be unable to meet other regulatory requirements, particularly financial resource requirements, if the FCA imposed a financial penalty at an appropriate level; or

(c) in Part VI cases in which the FCA may impose a financial penalty, where there is the likelihood of a severe adverse impact on a person’s shareholders or a consequential impact on market confidence or market stability if a financial penalty was imposed. However, this does not exclude the imposition of a financial penalty even though this may have an impact on a person’s shareholders.
6.5 Determining the appropriate level of financial penalty

6.5.1 For the purpose of DEPP 6.5 to DEPP 6.5D and DEPP 6.6.2 G, the term “firm” means firms, sponsors, primary information providers, recognised investment exchanges, qualifying parent undertakings, actuaries, auditors and those unauthorised persons who are not individuals.

6.5.2 The FCA’s penalty-setting regime is based on the following principles:

1. Disgorgement - a firm or individual should not benefit from any breach;
2. Discipline - a firm or individual should be penalised for wrongdoing; and
3. Deterrence - any penalty imposed should deter the firm or individual who committed the breach, and others, from committing further or similar breaches.

6.5.3 The total amount payable by a person subject to enforcement action may be made up of two elements: (i) disgorgement of the benefit received as a result of the breach; and (ii) a financial penalty reflecting the seriousness of the breach. These elements are incorporated in a five-step framework, which can be summarised as follows:

(a) Step 1: the removal of any financial benefit derived directly from the breach;
(b) Step 2: the determination of a figure which reflects the seriousness of the breach;
(c) Step 3: an adjustment made to the Step 2 figure to take account of any aggravating and mitigating circumstances;
(d) Step 4: an upwards adjustment made to the amount arrived at after Steps 2 and 3, where appropriate, to ensure that the penalty has an appropriate deterrent effect; and
(e) Step 5: if applicable, a settlement discount will be applied. This discount does not apply to disgorgement of any financial benefit derived directly from the breach.

These steps will apply in all cases, although the details of Steps 1 to 4 will differ for cases against firms (DEPP 6.5A), cases against
individuals (DEPP 6.5B) and market abuse cases against individuals (DEPP 6.5C).

(3) The FCA recognises that a penalty must be proportionate to the breach. The FCA may decrease the level of the penalty arrived at after applying Step 2 of the framework if it considers that the penalty is disproportionately high for the breach concerned. For cases against firms, the FCA will have regard to whether the firm is also an individual (for example, a sole trader) in determining whether the figure arrived at after applying Step 2 is disproportionate.

(4) The lists of factors and circumstances in DEPP 6.5A to DEPP 6.5D are not exhaustive. Not all of the factors or circumstances listed will necessarily be relevant in a particular case and there may be other factors or circumstances not listed which are relevant.

(5) The FCA may decide to impose a financial penalty on a mutual (such as a building society), even though this may have a direct impact on that mutual’s customers. This reflects the fact that a significant proportion of a mutual’s customers are shareholder-members; to that extent, their position involves an assumption of risk that is not assumed by customers of a firm that is not a mutual. Whether a firm is a mutual will not, by itself, increase or decrease the level of a financial penalty.

(6) Part III (Penalties and Fees) of Schedule 1ZA to the Act specifically provides that the FCA may not, in determining its policy with respect to the amount of penalties, take account of expenses which it incurs, or expects to incur, in discharging its functions.
Step 1 - disgorgement

6.5A.1 (1) The FCA will seek to deprive a firm of the financial benefit derived directly from the breach (which may include the profit made or loss avoided) where it is practicable to quantify this. The FCA will ordinarily also charge interest on the benefit.

(2) Where the success of a firm’s entire business model is dependent on breaching FCA rules or other requirements of the regulatory system and the breach is at the core of the firm’s regulated activities, the FCA will seek to deprive the firm of all the financial benefit derived from such activities. Where a firm agrees to carry out a redress programme to compensate those who have suffered loss as a result of the breach, or where the FCA decides to impose a redress programme, the FCA will take this into consideration. In such cases the final penalty might not include a disgorgement element, or the disgorgement element might be reduced.

[Note: For the purposes of DEPP 6.5A, “firm” has the special meaning given to it in DEPP 6.5.1 G]

Step 2 - the seriousness of the breach

6.5A.2 (1) The FCA will determine a figure that reflects the seriousness of the breach. In many cases, the amount of revenue generated by a firm from a particular product line or business area is indicative of the harm or potential harm that its breach may cause, and in such cases the FCA will determine a figure which will be based on a percentage of the firm’s revenue from the relevant products or business areas. The FCA also believes that the amount of revenue generated by a firm from a particular product or business area is relevant in terms of the size of the financial penalty necessary to act as a credible deterrent. However, the FCA recognises that there may be cases where revenue is not an appropriate indicator of the harm or potential harm that a firm’s breach may cause, and in those cases the FCA will use an appropriate alternative.

(2) In those cases where the FCA considers that revenue is an appropriate indicator of the harm or potential harm that a firm’s breach may cause, the FCA will determine a figure which will be based on a percentage of the firm’s “relevant revenue”. “Relevant revenue” will be the revenue derived by the firm during the period of the breach from the products or business areas to which the breach relates.
Where the *breach* lasted less than 12 *months*, or was a one-off event, the relevant revenue will be that derived by the firm in the 12 months preceding the end of the *breach*. Where the firm was in existence for less than 12 *months*, its relevant revenue will be calculated on a pro rata basis to the equivalent of 12 *months’* relevant revenue.

(3) Having determined the relevant revenue, the FCA will then decide on the percentage of that revenue which will form the basis of the penalty. In making this determination the FCA will consider the seriousness of the *breach* and choose a percentage between 0% and 20%. This range is divided into five fixed levels which represent, on a sliding scale, the seriousness of the *breach*. The more serious the *breach*, the higher the level. For penalties imposed on firms there are the following five levels:

(a) level 1 - 0%;
(b) level 2 - 5%;
(c) level 3 - 10%;
(d) level 4 - 15%; and
(e) level 5 - 20%.

(4) The FCA will assess the seriousness of a *breach* to determine which level is most appropriate to the case.

(5) In deciding which level is most appropriate to a case involving a firm, the FCA will take into account various factors, which will usually fall into the following four categories:

(a) factors relating to the impact of the *breach*;
(b) factors relating to the nature of the *breach*;
(c) factors tending to show whether the *breach* was deliberate; and
(d) factors tending to show whether the *breach* was reckless.

(6) Factors relating to the impact of a *breach* committed by a firm include:

(a) the level of benefit gained or loss avoided, or intended to be gained or avoided, by the firm from the *breach*, either directly or indirectly;
(b) the loss or risk of loss, as a whole, caused to consumers, investors or other market users in general;
(c) the loss or risk of loss caused to individual consumers, investors or other market users;
(d) whether the *breach* had an effect on particularly vulnerable people, whether intentionally or otherwise;
(e) the inconvenience or distress caused to consumers; and
(f) whether the *breach* had an adverse effect on markets and, if so, how serious that effect was. This may include having regard to whether the orderliness of, or confidence in, the markets in question has been damaged or put at risk.

(7) Factors relating to the nature of a *breach* by a firm include:
(a) the nature of the rules, requirements or provisions breached;
(b) the frequency of the breach;
(c) whether the breach revealed serious or systemic weaknesses in the firm’s procedures or in the management systems or internal controls relating to all or part of the firm’s business;
(d) whether the firm’s senior management were aware of the breach;
(e) the nature and extent of any financial crime facilitated, occasioned or otherwise attributable to the breach;
(f) the scope for any potential financial crime to be facilitated, occasioned or otherwise occur as a result of the breach;
(g) whether the firm failed to conduct its business with integrity;
(h) whether the firm, in committing the breach, took any steps to comply with FSA rules, and the adequacy of those steps; and
(i) in the context of contraventions of Part VI of the Act, the extent to which the behaviour which constitutes the contravention departs from current market practice.

(8) Factors tending to show the breach was deliberate include:

(a) the breach was intentional, in that the firm’s senior management, or a responsible individual, intended or foresaw that the likely or actual consequences of their actions or inaction would result in a breach;
(b) the firm’s senior management, or a responsible individual, knew that their actions were not in accordance with the firm’s internal procedures;
(c) the firm’s senior management, or a responsible individual, sought to conceal their misconduct;
(d) the firm’s senior management, or a responsible individual, committed the breach in such a way as to avoid or reduce the risk that the breach would be discovered;
(e) the firm’s senior management, or a responsible individual, were influenced to commit the breach by the belief that it would be difficult to detect;
(f) the breach was repeated; and
(g) in the context of a contravention of any rule or requirement imposed by or under Part VI of the Act, the firm obtained reasonable professional advice before the contravention occurred and failed to follow that advice. Obtaining professional advice does not remove a person’s responsibility for compliance with applicable rules and requirements.

(9) Factors tending to show the breach was reckless include:

(a) the firm’s senior management, or a responsible individual, appreciated there was a risk that their actions or inaction could result in a breach and failed adequately to mitigate that risk; and
(b) the firm’s senior management, or a responsible individual, were aware there was a risk that their actions or inaction could result
in a breach but failed to check if they were acting in accordance with the firm's internal procedures.

(10) Additional factors to which the FCA will have regard when determining the appropriate level of financial penalty to be imposed under regulation 34 of the RCB Regulations are set out in RCB 4.2.5 G.

(11) In following this approach factors which are likely to be considered ‘level 4 factors’ or ‘level 5 factors’ include:

(a) the breach caused a significant loss or risk of loss to individual consumers, investors or other market users;

(b) the breach revealed serious or systemic weaknesses in the firm's procedures or in the management systems or internal controls relating to all or part of the firm's business;

(c) financial crime was facilitated, occasioned or otherwise attributable to the breach;

(d) the breach created a significant risk that financial crime would be facilitated, occasioned or otherwise occur;

(e) the firm failed to conduct its business with integrity; and

(f) the breach was committed deliberately or recklessly.

(12) Factors which are likely to be considered ‘level 1 factors’, ‘level 2 factors’ or ‘level 3 factors’ include:

(a) little, or no, profits were made or losses avoided as a result of the breach, either directly or indirectly;

(b) there was no or little loss or risk of loss to consumers, investors or other market users individually and in general;

(c) there was no, or limited, actual or potential effect on the orderliness of, or confidence in, markets as a result of the breach;

(d) there is no evidence that the breach indicates a widespread problem or weakness at the firm; and

(e) the breach was committed negligently or inadvertently.

(13) In those cases where revenue is not an appropriate indicator of the harm or potential harm that a firm’s breach may cause, the FCA will adopt a similar approach, and so will determine the appropriate Step 2 amount for a particular breach by taking into account relevant factors, including those listed above. In these cases the FCA may not use the percentage levels that are applied in those cases in which revenue is an appropriate indicator of the harm or potential harm that a firm’s breach may cause.

**Step 3 - mitigating and aggravating factors**

(1) The FCA may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the breach. Any such adjustments will be made by way of a percentage adjustment to the figure determined at Step 2.
(2) The following list of factors may have the effect of aggravating or mitigating the breach:

(a) the conduct of the firm in bringing (or failing to bring) quickly, effectively and completely the breach to the FCA’s attention (or the attention of other regulatory authorities, where relevant);

(b) the degree of cooperation the firm showed during the investigation of the breach by the FCA, or any other regulatory authority allowed to share information with the FCA;

(c) where the firm’s senior management were aware of the breach or of the potential for a breach, whether they took any steps to stop the breach, and when these steps were taken;

(d) any remedial steps taken since the breach was identified, including whether these were taken on the firm’s own initiative or that of the FCA or another regulatory authority; for example, identifying whether consumers or investors or other market users suffered loss and compensating them where they have; correcting any misleading statement or impression; taking disciplinary action against staff involved (if appropriate); and taking steps to ensure that similar problems cannot arise in the future. The size and resources of the firm may be relevant to assessing the reasonableness of the steps taken;

(e) whether the firm has arranged its resources in such a way as to allow or avoid disgorgement and/or payment of a financial penalty;

(f) whether the firm had previously been told about the FCA’s concerns in relation to the issue, either by means of a private warning or in supervisory correspondence;

(g) whether the firm had previously undertaken not to perform a particular act or engage in particular behaviour;

(h) whether the firm concerned has complied with any requirements or rulings of another regulatory authority relating to the breach;

(i) the previous disciplinary record and general compliance history of the firm;

(j) action taken against the firm by other domestic or international regulatory authorities that is relevant to the breach in question;

(k) whether FCA guidance or other published materials had already raised relevant concerns, and the nature and accessibility of such materials; and

(l) whether the FCA publicly called for an improvement in standards in relation to the behaviour constituting the breach or similar behaviour before or during the occurrence of the breach.

Step 4 - adjustment for deterrence

(1) If the FCA considers the figure arrived at after Step 3 is insufficient to deter the firm who committed the breach, or others, from committing further or similar breaches then the FCA may increase the penalty. Circumstances where the FCA may do this include:

(a) where the FCA considers the absolute value of the penalty too small in relation to the breach to meet its objective of credible deterrence;
(b) where previous FCA action in respect of similar breaches has failed to improve industry standards. This may include similar breaches relating to different products (for example, action for mis-selling or claims handling failures in respect of ‘x’ product may be relevant to a case for mis-selling or claims handling failures in respect of ‘y’ product);

(c) where the FCA considers it is likely that similar breaches will be committed by the firm or by other firms in the future in the absence of such an increase to the penalty; and

(d) where the FCA considers that the likelihood of the detection of such a breach is low.

**Step 5 - settlement discount**

The FCA and the firm on whom a penalty is to be imposed may seek to agree the amount of any financial penalty and other terms. In recognition of the benefits of such agreements, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the FCA and the firm concerned reached an agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.
6.5B The five steps for penalties imposed on individuals in non-market abuse cases

Step 1 - disgorgement

6.5B.1 The FCA will seek to deprive an individual of the financial benefit derived directly from the breach (which may include the profit made or loss avoided) where it is practicable to quantify this. The FCA will ordinarily also charge interest on the benefit. Where the success of a firm’s entire business model is dependent on breaching FCA rules or other requirements of the regulatory system and the individual’s breach is at the core of the firm’s regulated activities, the FCA will seek to deprive the individual of all the financial benefit he has derived from such activities.

[Note: For the purposes of DEPP 6.5B, “firm” has the special meaning given to it in DEPP 6.5.1 G.]

Step 2 - the seriousness of the breach

6.5B.2 (1) The FCA will determine a figure which will be based on a percentage of an individual’s “relevant income”. “Relevant income” will be the gross amount of all benefits received by the individual from the employment in connection with which the breach occurred (the “relevant employment”), and for the period of the breach. In determining an individual’s relevant income, “benefits” includes, but is not limited to, salary, bonus, pension contributions, share options and share schemes; and “employment” includes, but is not limited to, employment as an adviser, director, partner or contractor.

(2) Where the breach lasted less than 12 months, or was a one-off event, the relevant income will be that earned by the individual in the 12 months preceding the end of the breach. Where the individual was in the relevant employment for less than 12 months, his relevant income will be calculated on a pro rata basis to the equivalent of 12 months’ relevant income.

(3) This approach reflects the FCA’s view that an individual receives remuneration commensurate with his responsibilities, and so it is reasonable to base the amount of penalty for failure to discharge his duties properly on his remuneration. The FCA also believes that the extent of the financial benefit earned by an individual is relevant in terms of the size of the financial penalty necessary to act as a credible deterrent. The FCA recognises that in some cases an individual may be approved for only a small part of the work he carries out on a day-to-day basis. However, in these circumstances the FCA still considers it
appropriate to base the relevant income figure on all of the benefit that an individual gains from the relevant employment, even if their employment is not totally related to a controlled function.

(4) Having determined the relevant income the FCA will then decide on the percentage of that income which will form the basis of the penalty. In making this determination the FCA will consider the seriousness of the breach and choose a percentage between 0% and 40%.

(5) This range is divided into five fixed levels which reflect, on a sliding scale, the seriousness of the breach. The more serious the breach, the higher the level. For penalties imposed on individuals there are the following five levels:

(a) level 1 - 0%;
(b) level 2 - 10%;
(c) level 3 - 20%;
(d) level 4 - 30%; and
(e) level 5 - 40%.

(6) The FCA will assess the seriousness of a breach to determine which level is most appropriate to the case.

(7) In deciding which level is most appropriate to a case against an individual, the FCA will take into account various factors which will usually fall into the following four categories:

(a) factors relating to the impact of the breach;
(b) factors relating to the nature of the breach;
(c) factors tending to show whether the breach was deliberate; and
(d) factors tending to show whether the breach was reckless.

(8) Factors relating to the impact of a breach committed by an individual include:

(a) the level of benefit gained or loss avoided, or intended to be gained or avoided, by the individual from the breach, either directly or indirectly;
(b) the loss or risk of loss, as a whole, caused to consumers, investors or other market users in general;
(c) the loss or risk of loss caused to individual consumers, investors or other market users;
(d) whether the breach had an effect on particularly vulnerable people, whether intentionally or otherwise;
(e) the inconvenience or distress caused to consumers; and
(f) whether the breach had an adverse effect on markets and, if so, how serious that effect was. This may include having regard to whether the orderliness of, or confidence in, the markets in question has been damaged or put at risk.

(9) Factors relating to the nature of a breach by an individual include:

(a) the nature of the rules, requirements or provisions breached;
(b) the frequency of the *breach*;
(c) the nature and extent of any *financial crime* facilitated, occasioned or otherwise attributable to the *breach*;
(d) the scope for any potential *financial crime* to be facilitated, occasioned or otherwise occur as a result of the *breach*;
(e) whether the individual failed to act with integrity;
(f) whether the individual abused a position of trust;
(g) whether the individual committed a breach of any professional code of conduct;
(h) whether the individual caused or encouraged other individuals to commit breaches;
(i) whether the individual held a prominent position within the industry;
(j) whether the individual is an experienced industry professional;
(k) whether the individual held a senior position with the firm;
(l) the extent of the responsibility of the individual for the product or business areas affected by the *breach*, and for the particular matter that was the subject of the *breach*;
(m) whether the individual acted under duress;
(n) whether the individual took any steps to comply with FCA rules, and the adequacy of those steps;
(o) in the context of contraventions of Part VI of the Act, the extent to which the *behaviour* which constitutes the contravention departs from current market practice;
(p) in relation to a contravention of section 63A of the Act, whether the individual’s only misconduct was to perform a *controlled function* without approval;
(q) in relation to a contravention of section 63A of the Act, whether the individual performed controlled functions without approval and, while doing so, committed misconduct in respect of which, if the individual had been an approved person, the FCA would have been empowered to take action pursuant to section 66 of the Act; and
(r) in relation to a contravention of section 63A of the Act, the extent to which the individual could reasonably be expected to have known that they were performing a controlled function without approval. The circumstances in which the FCA would expect to be satisfied that a person could reasonably be expected to have known that they were performing a controlled function without approval include:
   (i) the person had previously performed a similar role at the same or another firm for which he had been approved;
   (ii) the person’s firm or another firm had previously applied for approval for the person to perform the same or a similar controlled function;
   (iii) the person’s seniority or experience was such that he could reasonably be expected to have known that he was performing a controlled function without approval; and
(iv) the person’s firm had clearly apportioned responsibilities so the person’s role, and the responsibilities associated with it, were clear.

(v) the person’s approval was subject to a condition or was granted for a limited period, and they failed to act in accordance with that condition or time limitation.

(10) Factors tending to show the breach was deliberate include:

(a) the breach was intentional, in that the individual intended or foresaw that the likely or actual consequences of his actions or inaction would result in a breach;

(b) the individual intended to benefit financially from the breach, either directly or indirectly;

(c) the individual knew that his actions were not in accordance with his firm’s internal procedures;

(d) the individual sought to conceal his misconduct;

(e) the individual committed the breach in such a way as to avoid or reduce the risk that the breach would be discovered;

(f) the individual was influenced to commit the breach by the belief that it would be difficult to detect;

(g) the individual knowingly took decisions relating to the breach beyond his field of competence; and

(h) the individual’s actions were repeated.

(11) Factors tending to show the breach was reckless include:

(a) the individual appreciated there was a risk that his actions or inaction could result in a breach and failed adequately to mitigate that risk; and

(b) the individual was aware there was a risk that his actions or inaction could result in a breach but failed to check if he was acting in accordance with internal procedures.

(12) In following this approach factors which are likely to be considered ‘level 4 factors’ or ‘level 5 factors’ include:

(a) the breach caused a significant loss or risk of loss to individual consumers, investors or other market users;

(b) financial crime was facilitated, occasioned or otherwise attributable to the breach;

(c) the breach created a significant risk that financial crime would be facilitated, occasioned or otherwise occur;

(d) the individual failed to act with integrity;

(e) the individual abused a position of trust;

(f) the individual held a prominent position within the industry; and

(g) the breach was committed deliberately or recklessly.

(13) Factors which are likely to be considered ‘level 1 factors’, ‘level 2 factors’ or ‘level 3 factors’ include:
(a) little, or no, profits were made or losses avoided as a result of the breach, either directly or indirectly;
(b) there was no or little loss or risk of loss to consumers, investors or other market users individually and in general;
(c) there was no, or limited, actual or potential effect on the orderliness of, or confidence in, markets as a result of the breach;
(d) the breach was committed negligently or inadvertently; and
(e) in relation to a contravention of section 63A of the Act, the individual’s only misconduct was to perform a controlled function without approval.

Step 3 - mitigating and aggravating factors

(1) The FCA may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the breach. Any such adjustments will be made by way of a percentage adjustment to the figure determined at Step 2.

(2) The following list of factors may have the effect of aggravating or mitigating the breach:

(a) the conduct of the individual in bringing (or failing to bring) quickly, effectively and completely the breach to the FCA’s attention (or the attention of other regulatory authorities, where relevant);
(b) the degree of cooperation the individual showed during the investigation of the breach by the FCA, or any other regulatory authority allowed to share information with the FCA;
(c) whether the individual took any steps to stop the breach, and when these steps were taken;
(d) any remedial steps taken since the breach was identified, including whether these were taken on the individual’s own initiative or that of the FCA or another regulatory authority;
(e) whether the individual has arranged his resources in such a way as to allow or avoid disgorgement and/or payment of a financial penalty;
(f) whether the individual had previously been told about the FCA’s concerns in relation to the issue, either by means of a private warning or in supervisory correspondence;
(g) whether the individual had previously undertaken not to perform a particular act or engage in particular behaviour;
(h) whether the individual has complied with any requirements or rulings of another regulatory authority relating to the breach;
(i) the previous disciplinary record and general compliance history of the individual;
(j) action taken against the individual by other domestic or international regulatory authorities that is relevant to the breach in question;
(k) whether FCA guidance or other published materials had already raised relevant concerns, and the nature and accessibility of such materials;

(l) whether the FCA publicly called for an improvement in standards in relation to the behaviour constituting the breach or similar behaviour before or during the occurrence of the breach;

(m) whether the individual agreed to undertake training subsequent to the breach; and

(n) in relation to a contravention of section 63A of the Act, whether the person’s firm or another firm has previously withdrawn an application for the person to perform the same or a similar controlled function or has had such an application rejected by the FCA.

**Step 4 - adjustment for deterrence**

6.5B.4

(1) If the FCA considers the figure arrived at after Step 3 is insufficient to deter the individual who committed the breach, or others, from committing further or similar breaches then the FCA may increase the penalty. Circumstances where the FCA may do this include:

(a) where the FCA considers the absolute value of the penalty too small in relation to the breach to meet its objective of credible deterrence;

(b) where previous FCA action in respect of similar breaches has failed to improve industry standards. This may include similar breaches relating to different products (for example, action for mis-selling or claims handling failures in respect of ‘x’ product may be relevant to a case for mis-selling or claims handling failures in respect of ‘y’ product);

(c) where the FCA considers it is likely that similar breaches will be committed by the individual or by other individuals in the future;

(d) where the FCA considers that the likelihood of the detection of such a breach is low; and

(e) where a penalty based on an individual’s income may not act as a deterrent, for example, if an individual has a small or zero income but owns assets of high value.

**Step 5 - settlement discount**

6.5B.5

The FCA and the individual on whom a penalty is to be imposed may seek to agree the amount of any financial penalty and other terms. In recognition of the benefits of such agreements, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the FCA and the individual concerned reached an agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.
6.5C The five steps for penalties imposed on individuals in market abuse cases

Step 1 - disgorgement

6.5C.1 The FCA will seek to deprive an individual of the financial benefit derived as a direct result of the market abuse (which may include the profit made or loss avoided) where it is practicable to quantify this. The FCA will ordinarily also charge interest on the benefit.

Step 2 - the seriousness of the market abuse

6.5C.2 (1) The FCA will determine a figure dependent on the seriousness of the market abuse and whether or not it was referable to the individual’s employment. This reflects the FCA’s view that where an individual has been put into a position where he can commit market abuse because of his employment the fine imposed should reflect this by reference to the gross amount of all benefits derived from that employment.

(2) In cases where the market abuse was referable to the individual’s employment, the figure for the purpose of Step 2 will be the greater of:

(a) a figure based on a percentage of the individual’s “relevant income”. The percentage of relevant income which will apply is explained in paragraphs (6) and (8) to (16) below;

(b) a multiple of the profit made or loss avoided by the individual for his own benefit, or for the benefit of other individuals where the individual has been instrumental in achieving that benefit, as a direct result of the market abuse (the “profit multiple”). The profit multiple which will apply is explained in paragraphs (6) and (8) to (16) below; and

(c) for market abuse cases which the FCA assesses to be seriousness level 4 or 5, £100,000. How the FCA will assess the seriousness level of the market abuse is explained in paragraphs (9) to (16) below. The FCA usually expects to assess market abuse committed deliberately as seriousness level 4 or 5.

(3) In cases where the market abuse was not referable to the individual’s employment, the figure for the purpose of Step 2 will be the greater of:

(a) a multiple of the profit made or loss avoided by the individual for his own benefit, or for the benefit of other individuals where the individual has been instrumental in achieving that benefit, as a
Section 6.5C: The five steps for penalties imposed on individuals in market abuse cases

direct result of the *market abuse* (the “profit multiple”). The profit multiple which will apply is explained in paragraphs (7) to (16) below; and

(b) for *market abuse* cases which the FCA assesses to be seriousness level 4 or 5, £100,000. How the FCA will assess the seriousness level of the *market abuse* is explained in paragraphs (9) to (16) below. The FCA usually expects to assess *market abuse* committed deliberately as seriousness level 4 or 5.

(4) An individual’s “relevant income” will be the gross amount of all benefits received by the individual from the employment in connection with which the *market abuse* occurred (the “relevant employment”) for the period of the *market abuse*. In determining an individual’s relevant income, “benefits” includes, but is not limited to, salary, bonus, pension contributions, *share* options and *share* schemes; and “employment” includes, but is not limited to, employment as an adviser, *director*, partner or contractor.

(5) Where the *market abuse* lasted less than 12 *months*, or was a one-off event, the relevant income will be that earned by the individual in the 12 *months* preceding the final *market abuse*. Where the individual was in the relevant employment for less than 12 *months*, his relevant income will be calculated on a pro rata basis to the equivalent of 12 *months’* relevant income.

(6) In cases where the *market abuse* was referable to the individual’s employment:

(a) the FCA will determine the percentage of relevant income which will apply by considering the seriousness of the *market abuse* and choosing a percentage between 0% and 40%; and

(b) the FCA will determine the profit multiple which will apply by considering the seriousness of the *market abuse* and choosing a multiple between 0 and 4.

(7) In cases where the *market abuse* was not referable to the individual’s employment the FCA will determine the profit multiple which will apply by considering the seriousness of the *market abuse* and choosing a multiple between 0 and 4.

(8) The percentage range (where the *market abuse* was referable to the individual’s employment) and profit multiple range (in all cases) are divided into five fixed levels which reflect, on a sliding scale, the seriousness of the *market abuse*. The more serious the *market abuse*, the higher the level. For penalties imposed on individuals for *market abuse* there are the following five levels (the percentage figures only apply where the *market abuse* was referable to the individual’s employment):

(a) level 1 - 0%, profit multiple of 0;

(b) level 2 - 10%, profit multiple of 1;

(c) level 3 - 20%, profit multiple of 2;

(d) level 4 - 30%, profit multiple of 3; and

(e) level 5 - 40%, profit multiple of 4.
(9) The FCA will assess the seriousness of the market abuse to determine which level is most appropriate to the case.

(10) In deciding which level is most appropriate to a market abuse case, the FCA will take into account various factors which will usually fall into the following four categories:

(a) factors relating to the impact of the market abuse;
(b) factors relating to the nature of the market abuse;
(c) factors tending to show whether the market abuse was deliberate; and
(d) factors tending to show whether the market abuse was reckless.

(11) Factors relating to the impact of the market abuse include:

(a) the level of benefit gained or loss avoided, or intended to be gained or avoided, by the individual from the market abuse, either directly or indirectly;
(b) whether the market abuse had an adverse effect on markets and, if so, how serious that effect was. This may include having regard to whether the orderliness of, or confidence in, the markets in question has been damaged or put at risk; and
(c) whether the market abuse had a significant impact on the price of shares or other investments.

(12) Factors relating to the nature of the market abuse include:

(a) the frequency of the market abuse;
(b) whether the individual abused a position of trust;
(c) whether the individual caused or encouraged other individuals to commit market abuse;
(d) whether the individual has a prominent position in the market;
(e) whether the individual is an experienced industry professional;
(f) whether the individual held a senior position with the firm; and
(g) whether the individual acted under duress.

(13) Factors tending to show the market abuse was deliberate include:

(a) the market abuse was intentional, in that the individual intended or foresaw that the likely or actual consequences of his actions would result in market abuse;
(b) the individual intended to benefit financially from the market abuse, either directly or indirectly;
(c) the individual knew that his actions were not in accordance with exchange rules, share dealing rules and/or the firm’s internal procedures;
(d) the individual sought to conceal his misconduct;
(e) the individual committed the market abuse in such a way as to avoid or reduce the risk that the market abuse would be discovered;
(f) the individual was influenced to commit the market abuse by the belief that it would be difficult to detect;
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(g) the individual’s actions were repeated; and
(h) for market abuse falling within the prohibition in article 14(a) of the Market Abuse Regulation, the individual knew or recognised that the information on which the dealing was based was inside information.

(14) Factors tending to show the market abuse was reckless include:

(a) the individual appreciated there was a risk that his actions could result in market abuse and failed adequately to mitigate that risk; and
(b) the individual was aware there was a risk that his actions could result in market abuse but failed to check if he was acting in accordance with internal procedures.

(15) In following this approach factors which are likely to be considered ‘level 4 factors’ or ‘level 5 factors’ include:

(a) the level of benefit gained or loss avoided, or intended to be gained or avoided, directly by the individual from the market abuse was significant;
(b) the market abuse had a serious adverse effect on the orderliness of, or confidence in, markets;
(c) the market abuse was committed on multiple occasions;
(d) the individual breached a position of trust;
(e) the individual has a prominent position in the market; and
(f) the market abuse was committed deliberately or recklessly.

(16) In following this approach factors which are likely to be considered ‘level 1 factors’, ‘level 2 factors’ or ‘level 3 factors’ include:

(a) little, or no, profits were made or losses avoided as a result of the market abuse, either directly or indirectly;
(b) there was no, or limited, actual or potential effect on the orderliness of, or confidence in, markets as a result of the market abuse; and
(c) the market abuse was committed negligently or inadvertently.

[Note: For the purposes of DEPP 6.5C, “firm” has the special meaning given to it in DEPP 6.5.1 G.]

Step 3 - mitigating and aggravating factors

(1) The FCA may increase or decrease the amount of the financial penalty arrived at after Step 2, but not including any amount to be disgorged as set out in Step 1, to take into account factors which aggravate or mitigate the market abuse. Any such adjustments will be made by way of a percentage adjustment to the figure determined at Step 2.

(2) The following list of factors may have the effect of aggravating or mitigating the market abuse:

(a) the conduct of the individual in bringing (or failing to bring) quickly, effectively and completely the market abuse to the FCA’s
attention (or the attention of other regulatory authorities, where relevant);

(b) the degree of cooperation the individual showed during the investigation of the market abuse by the FCA, or any other regulatory authority allowed to share information with the FCA;

(c) whether the individual assists the FCA in action taken against other individuals for market abuse and/or in criminal proceedings;

(d) whether the individual has arranged his resources in such a way as to allow or avoid disgorgement and/or payment of a financial penalty;

(e) whether the individual had previously been told about the FCA’s concerns in relation to the issue, either by means of a private warning or in supervisory correspondence;

(f) the previous disciplinary record and general compliance history of the individual;

(g) action taken against the individual by other domestic or international regulatory authorities that is relevant to the market abuse in question;

(h) whether FCA guidance or other published materials had already raised relevant concerns, and the nature and accessibility of such materials; and

(i) whether the individual agreed to undertake training subsequent to the market abuse.

**Step 4 - adjustment for deterrence**

(1) If the FCA considers the figure arrived at after Step 3 is insufficient to deter the individual who committed the market abuse, or others, from committing further or similar abuse then the FCA may increase the penalty. Circumstances where the FCA may do this include:

(a) where the FCA considers the absolute value of the penalty too small in relation to the market abuse to meet its objective of credible deterrence;

(b) where previous FCA action in respect of similar market abuse has failed to improve industry standards; and

(c) where the penalty may not act as a deterrent in light of the size of the individual’s income or net assets.

**Step 5 - settlement discount**

The FCA and the individual on whom a penalty is to be imposed may seek to agree the amount of any financial penalty and other terms. In recognition of the benefits of such agreements, DEPP 6.7 provides that the amount of the financial penalty which might otherwise have been payable will be reduced to reflect the stage at which the FCA and the individual concerned reached an agreement. The settlement discount does not apply to the disgorgement of any benefit calculated at Step 1.
6.5D Serious financial hardship

6.5D.1

(1) The FCA's approach to determining penalties described in DEPP 6.5 to DEPP 6.5C is intended to ensure that financial penalties are proportionate to the breach. The FCA recognises that penalties may affect persons differently, and that the FCA should consider whether a reduction in the proposed penalty is appropriate if the penalty would cause the subject of enforcement action serious financial hardship.

(2) Where an individual or firm claims that payment of the penalty proposed by the FCA will cause them serious financial hardship, the FCA will consider whether to reduce the proposed penalty only if:

(a) the individual or firm provides verifiable evidence that payment of the penalty will cause them serious financial hardship; and

(b) the individual or firm provides full, frank and timely disclosure of the verifiable evidence, and cooperates fully in answering any questions asked by the FCA about their financial position.

(3) The onus is on the individual or firm to satisfy the FCA that payment of the penalty will cause them serious financial hardship.

[Note: For the purposes of DEPP 6.5D, “firm” has the special meaning given to it in DEPP 6.5.1 G.]

Individiuals

6.5D.2

(1) In assessing whether a penalty would cause an individual serious financial hardship, the FCA will consider the individual's ability to pay the penalty over a reasonable period (normally no greater than three years). The FCA's starting point is that an individual will suffer serious financial hardship only if during that period his net annual income will fall below £14,000 and his capital will fall below £16,000 as a result of payment of the penalty. Unless the FCA believes that both the individual's income and capital will fall below these respective thresholds as a result of payment of the penalty, the FCA is unlikely to be satisfied that the penalty will result in serious financial hardship.

(2) The FCA will consider all relevant circumstances in determining whether the income and capital threshold levels should be increased in a particular case.
(3) The FCA will consider agreeing to payment of the penalty by instalments where the individual requires time to realise his assets, for example by waiting for payment of a salary or by selling property.

(4) For the purposes of considering whether an individual will suffer serious financial hardship, the FCA will consider as capital anything that could provide the individual with a source of income, including savings, property (including personal possessions), investments and land. The FCA will normally consider as capital the equity that an individual has in the home in which he lives, but will consider any representations by the individual about this; for example, as to the exceptionally severe impact a sale of the property might have upon other occupants of the property or the impracticability of remortgaging or selling the property within a reasonable period.

(5) The FCA may also consider the extent to which the individual has access to other means of financial support in determining whether he is able to pay the penalty without being caused serious financial hardship.

(6) Where a penalty is reduced it will be reduced to an amount which the individual can pay without going below the threshold levels that apply in that case. If an individual has no income, any reduction in the penalty will be to an amount that the individual can pay without going below the capital threshold.

(7) There may be cases where, even though the individual has satisfied the FCA that payment of the financial penalty would cause him serious financial hardship, the FCA considers the breach to be so serious that it is not appropriate to reduce the penalty. The FCA will consider all the circumstances of the case in determining whether this course of action is appropriate, including whether:
   (a) the individual directly derived a financial benefit from the breach and, if so, the extent of that financial benefit;
   (b) the individual acted fraudulently or dishonestly with a view to personal gain;
   (c) previous FCA action in respect of similar breaches has failed to improve industry standards; or
   (d) the individual has spent money or dissipated assets in anticipation of FCA or other enforcement action with a view to frustrating or limiting the impact of action taken by the FCA or other authorities.

Prohibition orders and withdrawal of approval

In cases against individuals, including market abuse cases, the FCA may make a prohibition order under section 56 of the Act or withdraw an individual's approval under section 63 of the Act, as well as impose a financial penalty. Such action by the FCA reflects the FCA's assessment of the individual's fitness to perform regulated activity or suitability for a particular role, and does not affect the FCA's assessment of the appropriate financial penalty in relation to a breach. However, the fact that the FCA has made a prohibition order against an individual or withdrawn his approval, as a result of which the individual may have less earning potential, may be relevant in assessing whether the penalty will cause the individual serious financial hardship.
(1) The FCA will consider reducing the amount of a penalty if a firm will suffer serious financial hardship as a result of having to pay the entire penalty. In deciding whether it is appropriate to reduce the penalty, the FCA will take into consideration the firm’s financial circumstances, including whether the penalty would render the firm insolvent or threaten the firm’s solvency. The FCA will also take into account its statutory objectives, for example in situations where consumers would be harmed or market confidence would suffer, the FCA may consider it appropriate to reduce a penalty in order to allow a firm to continue in business and/or pay redress.

(2) There may be cases where, even though the firm has satisfied the FCA that payment of the financial penalty would cause it serious financial hardship, the FCA considers the breach to be so serious that it is not appropriate to reduce the penalty. The FCA will consider all the circumstances of the case in determining whether this course of action is appropriate, including whether:

(a) the firm directly derived a financial benefit from the breach and, if so, the extent of that financial benefit;
(b) the firm acted fraudulently or dishonestly in order to benefit financially;
(c) previous FCA action in respect of similar breaches has failed to improve industry standards; or
(d) the firm has spent money or dissipated assets in anticipation of FCA or other enforcement action with a view to frustrating or limiting the impact of action taken by the FCA or other authorities.

Withdrawal of authorisation

The FCA may withdraw a firm’s authorisation under section 33 of the Act, as well as impose a financial penalty. Such action by the FCA does not affect the FCA’s assessment of the appropriate financial penalty in relation to a breach. However, the fact that the FCA has withdrawn a firm’s authorisation, as a result of which the firm may have less earning potential, may be relevant in assessing whether the penalty will cause the firm serious financial hardship.

Transfers of assets

Where the FCA considers that, following commencement of an FCA investigation, an individual or firm has reduced their solvency in order to reduce the amount of any disgorgement or financial penalty payable, for example by transferring assets to third parties, the FCA will normally take account of those assets when determining whether the individual or firm would suffer serious financial hardship as a result of the disgorgement and financial penalty.
6.6 Financial penalties for late and incomplete submission of reports

6.6.1 (1) The FCA attaches considerable importance to the timely submission by firms of reports. This is because the information that they contain is essential to the FCA’s assessment of whether a firm is complying with the requirements and standards of the regulatory system and to the FCA understanding of that firm’s business.

(2) DEPP 6.6.1 G to DEPP 6.6.5 G set out the FCA’s policy in relation to financial penalties for late submission of reports and is in addition to the FCA’s policy relating to financial penalties as set out in DEPP 6.5 to DEPP 6.5D.

6.6.2 In addition to the factors considered in Step 2 for cases against firms (DEPP 6.5A) and cases against individuals (DEPP 6.5B), the following considerations are relevant.

(1) In general, the FCA’s approach to disciplinary action arising from the late submission of a report will depend upon the length of time after the due date that the report in question is submitted.

(2) If the person concerned is an individual, it is open to him to make representations to the FCA as to why he should not be the subject of a financial penalty, or why a lower penalty should be imposed. If he does so, the matters to which the FCA will have regard will include the matters set out in DEPP 6.5B. It should be noted that an administrative difficulty such as pressure of work does not, in itself, constitute a relevant circumstance for this purpose.

(3) The FCA will have regard to repeated failures to submit reports on time. In the majority of cases involving such repeated failure, the FCA considers that it will be appropriate to seek more serious disciplinary sanctions or other enforcement action, including seeking to apply for the cancellation of the firm’s permission.

(4) The FCA will also have regard to the submission frequency of the late report when assessing the seriousness of the contravention. For example, a short delay in submitting a weekly or monthly report can have serious implications for the supervision of the firm in question. Such a delay may therefore be subject to a higher penalty than might otherwise be the case.

[Note: For the purposes of DEPP 6.6.2 G, “firm” has the special meaning given to it in DEPP 6.5.1.]
6.6.3 G In addition, in appropriate cases, the FCA may bring disciplinary action against the individuals within the firm’s management who are ultimately responsible for ensuring that the firm’s reports are completed and returned to the FCA.

6.6.4 G In applying the guidance in this section, the FCA may treat a report which is materially incomplete or inaccurate as not received until it has been submitted in a form which is materially complete and accurate. For the purposes of the guidance, the FCA may also treat a report as not received where the method by which it is submitted to the FCA does not comply with the prescribed method of submission.

6.6.5 G In most late reporting cases, it will not be necessary for the FCA to appoint an investigator since the fact of the breach will be clear. It follows that the FCA will not usually send the firm concerned a preliminary findings letter for late-reporting disciplinary action.
6.7 Discount for early settlement

6.7.1 Persons subject to enforcement action may be prepared to agree the amount of any financial penalty, or the length of any period of suspension, restriction, condition, limitation or disciplinary prohibition (see DEPP 6A), and other conditions which the FCA seeks to impose by way of such action. These conditions might include, for example, the amount or mechanism for the payment of compensation to consumers. The FCA recognises the benefits of such agreements, as they offer the potential for securing earlier redress or protection for consumers and a cost saving to the person concerned and to the FCA in contesting the financial penalty or other disciplinary action. The penalty that might otherwise be payable, or the length of the period of suspension, restriction, condition or disciplinary prohibition that might be imposed, for a breach by the person concerned will therefore be reduced to reflect the timing of any settlement agreement.

The settlement discount scheme applied to financial penalties

6.7.2 In appropriate cases the FCA’s approach will be to negotiate with the person concerned to agree in principle the amount of a financial penalty having regard to the FCA’s statement of policy as set out in DEPP 6.5 to DEPP 6.5D and DEPP 6.6. (This starting figure will take no account of the existence of the settlement discount scheme described in this section.) Such amount (“A”) will then be reduced by a percentage of A according to the scheme set out in DEPP 6.7.3G to DEPP 6.7.3CG. The resulting figure (“B”) will be the amount actually payable by the person concerned in respect of the breach. However, where part of a proposed financial penalty specifically equates to the disgorgement of profit accrued or loss avoided then the percentage reduction will not apply to that part of the penalty.

6.7.3 (1) Subject to DEPP 6.7.3G(4) a settlement discount is available only in cases where a settlement agreement (which may be a focused resolution agreement) is reached during the period from commencement of an investigation until the FCA has:

(a) a sufficient understanding of the nature and gravity of the breach to make a reasonable assessment of the appropriate penalty; and

(b) communicated that assessment to the person concerned and given them reasonable opportunity to reach agreement as to the amount of the penalty (“stage 1”).

(2) The communication of the FCA’s assessment of the appropriate penalty for the purposes of DEPP 6.7.3G(1)(b) need not be in a
prescribed form but will include an indication of the breaches alleged by the FCA. It may include the provision of a draft warning notice.

(3) Subject to DEPP 6.7.3.G(4), in relation to any settlement agreement other than a focused resolution agreement the reduction in penalty will be as follows:
   (a) 30% if the agreement is concluded during stage 1; and
   (b) 0% in any other case.

(4) Where stage 1 has been started but no settlement agreement has been agreed before 1 March 2017:
   (a) if any agreement is reached to settle the case between the period from the end of stage 1 until the expiry of the period for making representations, or, if sooner, the date on which the representations are sent in response to the giving of a warning notice, there will be a reduction of 20% in the penalty; and
   (b) if any agreement is reached to settle the case between the expiry of the period of making representations, or, if sooner, the date on which representations are sent in response to the giving of a warning notice and the giving of a decision notice, there will be a reduction of 10% in the penalty.

6.7.3A The reductions in penalty in cases involving a focused resolution agreement will be as follows.

(1) Where agreement is reached in relation to all relevant facts and all issues as to whether those facts constitute a breach (or more than one breach):
   (a) 30% if the agreement is concluded during stage 1; and
   (b) 0% in any other case.

(2) Where agreement is reached in relation to all relevant facts:
   (a) 15 to 30% if the agreement is concluded during stage 1; and
   (b) 0% in any other case.

(3) Where the agreement reached does not fall within either DEPP 6.7.3AG(1) or DEPP 6.7.3AG(2):
   (a) 0 to 30% if the agreement is concluded during stage 1; and
   (b) 0% in any other case.

(4) Where a focused resolution agreement is followed:
   (a) before the end of stage 1, by a complete settlement agreement, the reduction is determined under DEPP 6.7.3G and not DEPP 6.7.3AG.
   (b) after the end of stage 1, by a complete settlement agreement, the reduction is determined under DEPP 6.7.3AG and not DEPP 6.7.3G.
The decision maker responsible for applying DEPP 6.7.3AG is:

1. The settlement decision makers in cases in which the focused resolution agreement is followed, after stage 1 has ended, by a complete settlement agreement.

2. The RDC in all other cases.

Where DEPP 6.7.3AG specifies that the reduction will be within a range, the decision maker identified by DEPP 6.7.3BG will determine the appropriate figure within the range. Factors relevant to this determination may include:

1. The extent to which the position taken by the person subject to enforcement action on the disputed issues at the time the focused resolution agreement is entered into is reflected in the terms of the decision notice.

2. Any saving of time or public resources as a result of the focused resolution agreement.

Any settlement agreement between the FCA and the person concerned will therefore need to include a statement as to the appropriate penalty discount in accordance with this procedure.

In certain circumstances the person concerned may consider that it would have been possible to reach a settlement at an earlier stage in the action, and argue that it should be entitled to a greater percentage reduction in penalty than is suggested by the table at DEPP 6.7.3G (3). It may be, for example, that the FCA no longer wishes to pursue its action in respect of all of the acts or omissions previously alleged to give rise to the breach. In such cases, the person concerned might argue that it would have been prepared to agree an appropriate penalty at an earlier stage and should therefore benefit from the discount which would have been available at that time.

Equally, FCA staff may consider that greater openness from the person concerned could have resulted in an earlier settlement.

Arguments of this nature risk compromising the goals of greater clarity and transparency in respect of the benefits of early settlement, and invite dispute in each case as to when an agreement might have been possible. It will not usually be appropriate therefore to argue for a greater reduction in the amount of penalty on the basis that settlement could have been achieved earlier.

However, in exceptional cases the FCA may accept that there has been a substantial change in the nature or seriousness of the action being taken against the person concerned, and that an agreement would have been possible at an earlier stage if the action had commenced on a different footing. In such cases the FCA and person concerned may agree that the amount of the reduction in penalty should reflect the stage at which a settlement might otherwise have been possible or, where the settlement agreement is a focused resolution agreement, the decision maker identified by DEPP 6.7.3BG may take this into account when determining the appropriate figure within the applicable range.
6.7.5 In cases in which the settlement discount scheme is applied, the fact of settlement and the level of the discount to the financial penalty imposed by the FCA will be set out in the final notice.

The settlement discount scheme applied to suspensions, restrictions and conditions

6.7.6 The settlement discount scheme which applies to the amount of a financial penalty, described in DEPP 6.7.2 G to DEPP 6.7.5 G, also applies to the length of the period of a suspension, restriction, condition or disciplinary prohibition (other than a permanent disciplinary prohibition), having regard to the FCA’s statement of policy as set out in DEPP 6A.3. No settlement discount is available with respect to a permanent disciplinary prohibition. The settlement discount scheme does not apply to the length of the period for which approvals under section 59 of the Act have effect as a result of a limitation, as different considerations apply to determining the appropriate length of this period: see DEPP 6A.1.5G and DEPP 6A.3AG. However, the FCA will take into account that the approved person is willing to enter into a settlement agreement when determining the appropriate period.
Chapter 6A

The power to impose a suspension, restriction, condition, limitation or disciplinary prohibition
6A.1 Introduction

DEPP 6A sets out the FCA’s statement of policy with respect to:

1. the imposition of suspensions or restrictions under sections 88A, 89Q and 206A of the Act, and the period for which those suspensions or restrictions are to have effect, as required by sections 88C(1), 89S(1) and 210(1) of the Act;

2. the imposition of suspensions, conditions or limitations under section 66 of the Act, the period for which suspensions or conditions are to have effect, and the period for which approvals under section 59 have effect as a result of a limitation, as required by section 69(1); and

3. the imposition of disciplinary prohibitions, suspensions or restrictions under sections 123A and 123B of the Act, as required by section 124(1).

(1) For the purposes of DEPP 6A, "suspension" refers to the suspension of:

(a) any permission which an authorised person has to carry on a regulated activity (under sections 123B or 206A of the Act),

(b) any approval of the performance by an approved person of any function to which the approval relates (under section 66 of the Act),

(c) a sponsor's approval (under section 88A(2)(b) of the Act),

(d) and a primary information provider's approval (under section 89Q(2)(b) of the Act);

(2) "restriction" refers to limitations or other restrictions in relation to:

(a) the carrying on of a regulated activity by an authorised person (under sections 123B or 206A of the Act),

(b) [deleted]

(c) the performance of services to which a sponsor's approval relates (under section 88A(2)(c) of the Act), and

(d) the dissemination of regulated information by a primary information provider (under section 89Q(2)(c) of the Act);

(3) "condition" refers to a condition imposed in relation to any approval of the performance by an approved person of any function to which the approval relates (under section 66 of the Act);
(4) “limitation” refers, apart from in DEPP 6A.1.2G(2), to a limitation of the period for which any approval of the performance by an approved person of any function to which the approval relates is to have effect (under section 66 of the Act); and

(5) “disciplinary prohibition” refers to a temporary or permanent prohibition on an individual holding an office or position involving responsibility for taking decisions about the management of a MiFID investment firm (under section 123A(2)(a) and (3) of the Act) or a temporary prohibition on an individual directly or indirectly acquiring or disposing of financial instruments (or emission auction products) on his or her own account or the account of a third party, (under section 123A(2)(b) of the Act) or a temporary prohibition on an individual directly or indirectly making a bid at an auction conducted by a recognised auction platform, on his or her own account or the account of a third party (under section 123A(2)(c) of the Act).

[Note: see Regulation 6 and Schedule 1 to the RAP Regulations for application of the powers to contraventions of the auction regulation]

6A.3 The power to impose a suspension, restriction, condition, limitation or disciplinary prohibition is a disciplinary measure which the FCA may use in addition to, or instead of, imposing a financial penalty or issuing a public censure. The principal purpose of imposing such a measure is to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches, helping to deter other persons from committing similar breaches, and demonstrating generally the benefits of compliant behaviour. These measures are tools that the FCA may employ to help it to achieve its statutory objectives. Examples of measures that we may impose include:

1. we may restrict an authorised person’s carrying on of a regulated activity so that they can only sell certain products or provide certain services;

2. we may place a condition on an approved person’s performance of their controlled functions so that they can only give advice to consumers or deal in certain products if they are appropriately supervised.

6A.4 The powers to impose a suspension, restriction, condition or limitation in relation to authorised persons and approved persons, and to impose a disciplinary prohibition in relation to individuals, are disciplinary measures; where the FCA considers it necessary to take action, for example, to protect consumers from an authorised person, the FCA will seek to cancel or vary the authorised person’s permissions. If the FCA has concerns with a person’s fitness to be approved, and considers it necessary to take action, the FCA will seek to prohibit the approved person or withdraw their approval. For an SMF manager, the FCA may instead vary their approval by imposing one or more conditions, if the FCA is satisfied that they would be a fit and proper person to perform functions in relation to regulated activities if the conditions are imposed, and that it is appropriate to do so. While the powers to impose a suspension or a restriction in relation to sponsors and primary information providers under sections 88A(2)(b)/(c) and 89Q(2)(b)/(c) of the Act are disciplinary measures, the FCA can impose suspensions, limitations or other
restrictions in relation to sponsors and primary information providers in other circumstances.

6A.1.5  

The FCA expects to impose a limitation in two situations. The FCA may impose a limitation where it considers it appropriate for an approval to cease to have effect:

(1) after a certain period, unless the approved person demonstrates during the period of limitation that it is appropriate for them to be reapproved without the limitation;

(2) after a short period, without giving the approved person the opportunity to demonstrate that they should be re-approved.

The imposition of a limitation in (2) is equivalent to a withdrawal of approval, apart from that it is carried out for disciplinary reasons and the FCA will have made no finding of lack of fitness or propriety. The FCA recognises that the use of this power will have serious consequences for the approved person concerned; therefore, it will exercise its power in a proportionate manner. The FCA’s policy on determining the length of the limitation is set out in DEPP 6A.3AG.
6A.2 Deciding whether to take action

6A.2.1 The FCA will consider the full circumstances of each case and determine whether it is appropriate to impose a suspension, restriction, condition, limitation or disciplinary prohibition. The FCA will usually make this decision at the same time as it determines whether or not to impose a financial penalty or a public censure.

6A.2.2 The FCA will take into account relevant factors in deciding whether it is appropriate to impose a suspension, restriction, condition, limitation or disciplinary prohibition. These may include factors listed in DEPP 6.2. There may also be other factors, not listed in DEPP 6.2, that are relevant.

6A.2.3 The FCA will consider it appropriate to impose a suspension, restriction, condition, limitation or disciplinary prohibition where it believes that such action will be a more effective and persuasive deterrent than the imposition of a financial penalty alone. This is likely to be the case where the FCA considers that direct and visible action in relation to a particular breach is necessary. Examples of circumstances where the FCA may consider it appropriate to take such action include:

1. where the FCA (or any previous regulator) has taken any previous disciplinary action resulting in adverse findings against the person;
2. where the FCA has previously taken action in respect of similar breaches and has failed to improve industry standards;
3. where the person has failed properly to carry out an agreed redress package or other agreed remedial measures;
4. where the misconduct appears to be widespread across a number of individuals across a particular business area (suggesting a poor compliance culture);
5. where the person’s competitive position in the market has improved as a result of the breach;
6. if, in accordance with DEPP 6.5D, the FCA considers that a proposed penalty would cause the subject of enforcement action serious financial hardship and that it is appropriate to reduce the proposed penalty;
7. where, in view of the nature and seriousness of an approved person’s misconduct, the FCA considers it appropriate to impose a limitation on part or all of their approval; and
(8) where, in view of the nature and seriousness of an individual’s misconduct, the FCA considers it appropriate to impose a disciplinary prohibition.

6A.2.4 The FCA expects usually to impose a suspension, restriction, condition or limitation in relation to activities directly linked to the breach. However, in certain circumstances the FCA may also impose a suspension, restriction, condition or limitation in relation to activities that are not directly linked to the breach, for example, where an authorised person’s relevant business area no longer exists or has been restructured.

6A.2.5 For the purposes of section 89S(1)(d) of the Act, the FCA expects usually to suspend the approval of a primary information provider.
6A.3 Determining the appropriate length of the period of suspension, restriction, condition or disciplinary prohibition

6A.3.1 The FCA will consider all the relevant circumstances of a case when it determines the length of the period of suspension, restriction, condition or disciplinary prohibition (if any) that is appropriate for the breach concerned, and is also a sufficient deterrent. Set out below is a list of factors that may be relevant for this purpose. The list is not exhaustive: not all of these factors may be applicable in a particular case, and there may be other factors, not listed, that are relevant.

6A.3.2 The following factors may be relevant to determining the appropriate length of the period of suspension, restriction, condition or disciplinary prohibition to be imposed on a person under the Act:

1. Deterrence

   When determining the appropriate length of the period of suspension, restriction, condition or disciplinary prohibition the FCA will have regard to the principal purpose for which it imposes sanctions, namely to promote high standards of regulatory and/or market conduct by deterring persons who have committed breaches from committing further breaches and helping to deter other persons from committing similar breaches, as well as demonstrating generally the benefits of compliant business.

2. The seriousness of the breach

   The FCA will have regard to the seriousness of the breach. In assessing this, it will consider the impact and nature of the breach, and whether it was committed deliberately or recklessly. Where the breach was committed by an authorised person, relevant factors may include those listed in DEPP 6.5A.2 G (6) to (9). Where the breach was committed by an individual in a non-market abuse case, relevant factors may include those listed in DEPP 6.5B.2 G (8) to (11). Where the breach was committed by an individual in a market abuse case, relevant factors may include those listed in DEPP 6.5C.2G (11) to (14). There may also be other factors, not listed in these sections, that are relevant.

3. Aggravating and mitigating factors

   The FCA will have regard to factors that may aggravate or mitigate a breach. Where the breach was committed by an authorised person,
sponsoring or primary information provider, relevant factors may include those listed in DEPP 6.5A.3 G (2). Where the breach was committed by an individual in a non-market abuse case, relevant factors may include those listed in DEPP 6.5B.3 G (2). Where the breach was committed by an individual in a market abuse case, relevant factors may include those listed in DEPP 6.5C.3G(2). There may also be other factors, not listed in these sections, that are relevant.

(4) The impact of suspension, restriction, condition or disciplinary prohibition on the person in breach

The following considerations may be relevant to the assessment of the impact of suspension or restriction on an authorised person, sponsor or primary information provider:

(a) the authorised person’s, sponsor’s or primary information provider’s expected lost revenue and profits from not being able to carry out the suspended or restricted activity;

(b) the cost of any measures the authorised person, sponsor or primary information provider must undertake to comply with the suspension or restriction;

(c) potential economic costs, for example, the payment of salaries to employees who will not work during the period of suspension or restriction or the payment of compensation to consumers who will suffer loss as a result of the suspension or restriction;

(d) the effect on other areas of the authorised person’s, sponsor’s or primary information provider’s business; and

(e) whether the suspension or restriction would cause the authorised person, sponsor or primary information provider serious financial hardship.

The following considerations may be relevant to the assessment of the impact of suspension or condition on an approved person or the impact of a disciplinary prohibition on an individual:

(f) the person’s expected lost earnings from not being able to carry out the suspended, restricted or prohibited activity; and

(g) whether the suspension, restriction or disciplinary prohibition would cause the person serious financial hardship.

(5) The impact of suspension, restriction or disciplinary prohibition on persons other than the person in breach

The following considerations may be relevant to the assessment of the impact of suspension, restriction or disciplinary prohibition on persons other than the person in breach:

(a) the extent to which consumers may suffer loss or inconvenience as a result of the suspension or restriction. For example, if it is difficult for consumers to switch to a competitor, a longer period of suspension or restriction is likely to have more impact; and

(b) the impact of the suspension, restriction or disciplinary prohibition on markets.
The FCA may delay the commencement of the period of suspension, restriction or disciplinary prohibition. In deciding whether this is appropriate, the FCA will take into account all the circumstances of a case. Considerations that may be relevant in respect of an authorised person, sponsor or primary information provider include:

1. the impact of the suspension or restriction on consumers;

2. any practical measures the authorised person, sponsor or primary information provider needs to take before the period of suspension or restriction begins, for example, changes to its systems and controls to enable it to stop or limit the activity in question;

3. the impact of the suspension or restriction on other costs incurred by the authorised person, sponsor or primary information provider, for example, cancelling suppliers or suspending employees.

The FCA and the person on whom a suspension, restriction or disciplinary prohibition is to be imposed may seek to agree the length of the period of suspension, restriction or disciplinary prohibition and other terms. In recognition of the benefits of such agreements, DEPP 6.7 provides that the length of a period of suspension, restriction or disciplinary prohibition (other than a permanent disciplinary prohibition) which might otherwise have been imposed will be reduced to reflect the stage at which the FCA and the person concerned reached an agreement.
The FCA will consider all the relevant circumstances when it determines the period of limitation. Set out below is a list of factors that may be relevant for this purpose. The list is not exhaustive: not all of these factors may be applicable and there may be other factors, not listed, that are relevant.

The following factors may be relevant when determining the period of limitation:

1. whether the FCA may be minded to reapprove the approved person in the future, for example if the approved person takes action specified by the FCA during the period of limitation;

2. the approved person's expected lost earnings if the FCA imposes a short period of limitation;

3. whether imposing a short period of limitation would cause the approved person serious financial hardship.
6A.4 The interaction between the power to impose suspensions, restrictions, conditions, limitations or disciplinary prohibitions and the power to impose penalties or public censures

6A.4.1 The deterrent effect and impact on a person of a combination of sanctions may be greater than where only a single sanction is imposed. The FCA will consider the overall impact and deterrent effect of the sanctions it imposes when determining the level of any penalty and the length of suspension, restriction, condition, limitation or disciplinary prohibition.

6A.4.2 The FCA expects usually to take the following approach in respect of the interaction between sanctions:

1. The FCA will determine which sanction, or combination of sanctions, is appropriate for the breach.

2. If the FCA, following the approach set out in DEPP 6.2, considers it appropriate to impose a financial penalty, it will calculate the appropriate level of the financial penalty, following the approach set out in DEPP 6.5 to DEPP 6.5D.

3. If the FCA, following the approach set out in DEPP 6A.2, considers it appropriate to impose a suspension, restriction, condition, limitation or disciplinary prohibition (or some combination of these), it will calculate the appropriate length of the period (or periods) of sanction, following the approach set out in DEPP 6A.3 or DEPP 6A.3A, as appropriate.

4. Where the FCA considers it appropriate to impose a combination of sanctions, it will decide whether the combined impact on the person is likely to be disproportionate in respect to the breach and the deterrent effect of the sanctions.

5. If the FCA considers the combined impact on the person is likely to be disproportionate, it will decide whether to reduce the period of suspension, restriction, condition, or disciplinary prohibition, and the amount of any financial penalty or both, so that the combined impact of the sanctions is proportionate in relation to the breach and the deterrent effect of the sanctions. The FCA will decide which sanction or sanctions to reduce after considering all the circumstances of the case.
(6) In deciding the final level of any financial penalty and the length of any period of suspension, restriction, condition, limitation or disciplinary prohibition, the FCA will also take into account any representations by the person that the combined impact will cause them serious financial hardship. The FCA will take the approach set out in DEPP 6.5D in assessing this.

6A.4.3 The FCA may depart from the approach set out in DEPP 6A.4.2 G. For example, the FCA may at the outset consider that a financial penalty is the only appropriate sanction for a breach but, having determined the appropriate level of financial penalty, may consider it appropriate to reduce the amount of the financial penalty for serious financial hardship reasons. In such a situation, the FCA may consider it appropriate to impose a suspension, restriction, condition, limitation or disciplinary prohibition even if the FCA at the outset did not consider such a sanction to be appropriate. The FCA will take into account whether the person would suffer serious financial hardship in deciding the length of the period of suspension, restriction, condition, limitation or disciplinary prohibition and may decide not to impose such a measure if it considers such action would result in serious financial hardship.
Chapter 7

Statement of policy on interviews conducted on behalf of overseas and EEA regulators
7.1 Application and purpose

Application

7.1.1 DEPP 7 applies when the FCA:

(1) has appointed an investigator at the request of an overseas regulator, under section 169(1)(b) (Assistance to overseas regulators) or of an EEA regulator under section 131FA of the Act; and

(2) has directed, or is considering directing, the investigator, under section 169(7) or section 131FA of the Act, to permit a representative of the overseas regulator or of the EEA regulator to attend, and take part in, any interview conducted for the purposes of the investigation.

7.1.2 In DEPP 7, a "requested interview" means any interview conducted for the purposes of an investigation under section 169(1)(b) or section 131FA of the Act in relation to which the FCA has given a direction under section 169(7) or section 131FA of the Act.

Purpose

7.1.3 The purpose of DEPP 7 is to set out the FCA’s statement of policy on the conduct of interviews to which a direction under section 169(7) or section 131FA has been given or the FCA is considering giving. The FCA is required to prepare and publish this statement of policy by section 169(9) and (11) and section 131FA of the Act. As required by section 169(10) and section 131FA of the Act, the Treasury has approved the statement of policy.

7.1.4 The FCA is keen to promote co-operation with overseas regulators and EEA regulators. It views provision of assistance to overseas regulators and EEA regulators as an essential part of discharging its general functions.
7.2 Interviews

Appointment of investigator and confidentiality of information

7.2.1 Under section 169(1)(b) and section 131FA of the Act, the FCA may appoint an investigator to investigate any matter at the request of an overseas regulator or EEA regulator. The powers of the investigator appointed by the FCA (referred to here as the ‘FCA’s investigator’) include the power to require persons to attend at a specified time and place and answer questions (the compulsory interview power).

7.2.2 Where the FCA appoints an investigator in response to a request from an overseas regulator or EEA regulator it may, under section 169(7) or section 131FA of the Act, direct him to permit a representative of that regulator to attend and take part in any interviews conducted for the purposes of the investigation. The FCA may only give a direction under section 169(7) or section 131FA if it is satisfied that any information obtained by an overseas regulator or EEA regulator as a result of the interview will be subject to the safeguards equivalent to those contained in Part XXIII (Public Record, Disclosure of Information and Cooperation) of the Act.

7.2.3 Part XXIII of the Act contains restrictions on the disclosure of confidential information. The restrictions are subject to exceptions contained in regulations made by the Treasury under section 349.

Policy on use of investigative powers

7.2.4 The FCA’s policy on how it will use its investigative powers, including its power to appoint investigators, in support of overseas regulators and EEA regulators, is set out in the FCA’s Enforcement Guide (EG).

Use of direction powers

7.2.5 The FCA may need to consider whether to use its direction power at two stages of an investigation:

(1) at the same time that it considers the request from the overseas regulator or EEA regulator to appoint investigators;

(2) after it has appointed investigators, either at the request of the overseas regulator or EEA regulator or on the recommendation of the investigators.
Before making a direction under section 169(7) or section 131FA the FCA will discuss and determine with the overseas regulator or EEA regulator how this statement of policy will apply to the conduct of the interview, taking into account all the circumstances of the case. Amongst other matters, the FCA will at this stage determine the extent to which the representative of the overseas regulator or EEA regulator will be able to participate in the interview. The overseas regulator or EEA regulator will be notified of this determination on the issuing of the direction.

The direction will contain the identity of the representative of the overseas regulator or EEA regulator that is permitted to attend any interview and the role that he will play in the interview. If the FCA envisages that there will be more than one interview in the course of the investigation, the direction may also specify which interview(s) the representative is allowed to attend.

Conduct of interview

In circumstances where an interview is to be conducted as part of the investigation, the FCA’s investigator will have conduct of the interview. In general, the FCA’s investigators will be employees of the FCA, but in appropriate cases the FCA may appoint persons who are not its employees. In those cases, the FCA may choose to require that an FCA employee is present at the interview and may choose to appoint that person as an investigator.

The FCA’s investigator will act on behalf of the FCA and under its control. He may be instructed to permit the representative of the overseas regulator or EEA regulator to assist in the preparation of the interview. Where the FCA considers it appropriate, it may permit the representative to attend and ask questions of the interviewee in the course of the interview. The interview will be conducted according to the terms of the direction and the notification referred to in DEPP 7.2.6.

If the direction does permit the representative of an overseas regulator or EEA regulator to attend the interview and ask the interviewee questions, the FCA’s investigator will retain control of the interview throughout. Control of the interview means the following will apply:

(1) The FCA’s investigator instigates and concludes the interview, introduces everyone present and explains the procedure of the interview. He warns the interviewee of the possible consequences of refusing to answer questions and the uses to which any answers that are given can and cannot be put. The FCA’s investigator will always ask preliminary questions, such as those establishing the identity of the interviewee.

(2) The FCA’s investigator determines the duration of the interview and when, if at all, there should be any breaks in the course of it.

(3) The FCA’s investigator has responsibility for making a record of the interview. The record should note the times and duration of any breaks in the interview and any periods when the representative of the overseas regulator or EEA regulator was either present or not present.
(4) Where the FCA’s investigator considers it appropriate, he may either suspend the interview, ask the overseas representative to leave the interview, or terminate the interview and reschedule it for another occasion. In making that decision he will bear in mind the terms of the direction, any agreement made with the overseas regulator or EEA regulator as to the conduct of the interview and the contents of this statement of policy.

7.2.11 The FCA will in general provide written notice of the appointment of an investigator to the person under investigation pursuant to the request of an overseas regulator or EEA regulator. Whether or not the interviewee is the person under investigation, the FCA’s investigator will inform the interviewee of the provisions under which he has been appointed, the identity of the requesting authority and general nature of the matter under investigation. The interviewee will also normally be informed if a representative of the overseas regulator or EEA regulator is to attend and take part in the interview. Notification of any of these matters may not be provided in advance of the interview if the FCA believes that the circumstances are such that notification would be likely to result in the investigation being frustrated.

7.2.12 The interviewee will normally be given a copy of the direction issued under section 169(7) or section 131FA in advance of the interview unless to do so would be likely to result in the investigation being frustrated. The interviewee will also be provided with a copy of this statement of policy.

7.2.13 The FCA’s investigator will determine the venue and timing of the interview. The interviewee will be notified of the venue and timing of the interview in advance and in writing.

7.2.14 When the FCA's investigator has exercised the compulsory interview power, at the outset of the interview the interviewee will be given an appropriate warning. The warning, amongst other things, must state that the interviewee is obliged to answer all questions put to them during the interview, including any put by the representative of the overseas regulator or EEA regulator. It will also state that in criminal proceedings or proceedings for market abuse the FCA will not use as evidence against the interviewee any information obtained under compulsion during the interview.

7.2.15 The FCA’s investigator may decide which documents or other information may be put to the interviewee, and whether it is appropriate to give the interviewee sight of the documents before the interview takes place. Where the overseas regulator or EEA regulator wishes to ask questions about documents during the interview and the FCA’s investigator wishes to inspect those documents before the interview, he will be given the opportunity to do so. If the FCA’s investigator wishes to inspect them and has not been able to do so before the interview, he may suspend the interview until he has had an opportunity to inspect them.

7.2.16 When the FCA’s investigator has exercised the compulsory interview power, the FCA’s investigator will require the person attending the interview to
answer questions. Where appropriate, questions may also be posed by the representative of the overseas regulator or EEA regulator. The interviewee will also be required to answer these questions. The FCA's investigator may intervene at any stage during questioning by the representative of the overseas regulator or EEA regulator.

7.2.17 Language

Interviews will, in general, be conducted in English. Where the interviewee's first language is not English, at the request of the interviewee arrangements will be made for the questions to be translated into the interviewee's first language and for his answers to be translated back into English. If a translator is employed at the request of the representative of the overseas regulator or EEA regulator then the translation costs will normally be met by the overseas regulator or EEA regulator. Where interviews are being conducted in pursuance of an EU law obligation these costs will be met by the FCA. In any event, the meeting of costs in relation to translators and, where applicable, the translation of documents will always be agreed in advance with the overseas regulator or EEA regulator.

7.2.18 Tape-recording

All compulsory interviews will be tape-recorded. The method of recording will be decided on and arranged by the FCA's investigator. Costs will be addressed similarly to that set out in the preceding paragraph. The FCA will not provide the overseas regulator or EEA regulator with transcripts of the tapes of interviews unless specifically agreed to, but copies of the tapes will normally be provided where requested. The interviewee will be provided with a copy of tapes of the interview but will only be provided with transcripts of the tapes or translations of any transcripts if he agrees to meet the cost of producing them.

7.2.19 Representation

The interviewee may be accompanied at the interview by a legal adviser or a non-legally qualified observer of his choice. The costs of any representation will not be met by the FCA. The presence at the interview of a representative of the overseas regulator or EEA regulator may mean that the interviewee wishes to be represented or accompanied by a person either from or familiar with that regulator’s jurisdiction. As far as practical the arrangements for the interview should accommodate this wish. However, the FCA reserves the right to proceed with the interview if it is not possible to find such a person within a reasonable time or no such person is able to attend at a suitable venue.

7.2.20 In relation to the publication of investigations by overseas regulators or EEA regulators, the FCA will pursue a policy similar to the policy that relates to its own investigations.
Section 8.1: Introduction

8.1 Introduction

8.1.1 DEPP 8 sets out the FCA’s statement of policy on the exercise of its power under section 63ZB of the Act to vary, on its own initiative, an approval given by the FCA or the PRA for the performance of a designated senior management function in relation to the carrying on of a regulated activity by an SMCR firm. The FCA is required to publish this statement of policy by section 63ZD of the Act.

[Note: the FCA’s statement of policy on the exercise of its power under section 63ZA of the Act to vary an approval at the request of an SMCR firm is set out in SUP 10C.]

8.1.2 In DEPP 8, the power under section 63ZB of the Act described in DEPP 8.1.1G is referred to as the FCA’s “own-initiative variation of approval power”.
8.2 Use of the own-initiative variation of approval power: general

8.2.1 The FCA may use the own-initiative variation of approval power where it considers that it is desirable to do so to advance one or more of its operational objectives. The FCA will assess this on a case-by-case basis, taking into account the specific circumstances of the firm and the SMF manager.

8.2.2 When considering the use of this power to deal with a particular concern, the FCA will have regard to the range of regulatory tools that are available. The FCA will consider dealing with any concerns informally through discussion and agreement with the firm and the SMF manager, instead of using the own-initiative variation of approval power.

8.2.3 The power to impose a conditional or time-limited approval does not depend on the SMF manager being unfit without that condition or time limitation. The FCA can impose a condition or time limitation even if the candidate would still be fit and proper without it. Conversely, where an SMF manager is not fit and proper but might be if a condition or time limitation is imposed, the FCA is not obliged to impose a condition or time limitation, and may take the view that a prohibition order or withdrawal of approval is the appropriate course of action.

8.2.4 The FCA may vary an approval by:

(1) imposing a condition;

(2) varying a condition;

(3) removing a condition; or

(4) limiting the period for which the approval is to have effect.

8.2.5 The FCA may use the own-initiative variation of approval power in a wide range of circumstances. A number of examples are set out in DEPP 8.3. These are not exhaustive.

8.2.6 The circumstances which will lead to a condition or time limitation being imposed on a candidate for an SMF manager role will, where appropriate, also lead to an existing SMF manager's approval being varied. SUP 10C is therefore relevant to the FCA's use of the own-initiative variation of approval power.
8.3 Use of the own-initiative variation of approval power: specific examples

8.3.1 Examples of situations where the FCA may use the own-initiative variation of approval power include where:

1. it has concerns about an SMF manager’s fitness to remain approved in relation to the performance of a designated senior management function but, in all the circumstances, it considers it appropriate to vary their approval by imposing one or more conditions or a time limitation, rather than making a prohibition order or withdrawing approval;

2. the nature or scope of the SMF manager’s role has changed, for example where they have taken on additional or different responsibilities. In this situation, the FCA may consider it appropriate to impose a condition that they undertake training to enhance their competency and capability regarding their new responsibilities, or a condition that they receive mentoring;

3. the size, nature, scope or complexity of the firm’s activities has significantly changed since the SMF manager was first approved;

4. the SMF manager is required to personally support supervisory action in relation to the firm. For example, where a firm is running a remedial programme the FCA may impose a condition that the SMF manager take responsibility for managing or overseeing delivery of aspects of that programme;

5. it is appropriate to use the own-initiative variation of approval power as a matter of urgency (see DEPP 8.4);

6. the SMF manager’s approval is subject to an existing condition but the FCA considers that condition is insufficient to mitigate the risk in respect of which it was imposed. In this case, the FCA will vary the condition to make it more effective. The FCA may also, or instead, limit the period of the approval;

7. the SMF manager’s firm applies to the FCA to remove a condition, or vary a condition to make it less onerous, where the condition was imposed by the FCA on its own initiative, and the FCA considers that it is desirable to remove or vary the condition in order to advance one or more of its operational objectives. The FCA expects that such a removal or variation would normally occur on the application of the firm.
8.4 Use of the own-initiative variation of approval power in urgent cases

8.4.1 The FCA may impose a variation of approval to take effect immediately, or on a specified date, if it reasonably considers that this is necessary having regard to the reasons for which it is exercising the own-initiative variation of approval power.

8.4.2 The FCA will consider exercising its own-initiative variation of approval power as a matter of urgency where:

1. the information available to it indicates serious concerns about the SMF manager or their firm that need to be addressed immediately; and

2. circumstances indicate that it is appropriate to use statutory powers immediately to require and/or prohibit certain actions by the SMF manager to ensure these concerns are addressed.
8.5 Effects of a breach of condition or time limitation

8.5.1 The effects of breaching a condition or time limitation are set out in SUP 10C and DEPP 6.2.9A.
# The Decision Procedure and Penalties manual

## DEPP TP 1
Transitional provisions applying to the Decision Procedure and Penalties Manual

1. Table DEPP TP 1

<table>
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<tr>
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<th>Material to which the transitional provision applies</th>
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Decision Procedure and Penalties Manual

Schedule 1
Record keeping requirements

Sch 1.1 G

There are no record-keeping requirements in DEPP.
Schedule 2
Notification requirements

Sch 2.1 G
There are no notification requirements in DEPP.
Sch 3.1 G

There are no requirements for fees in *DEPP*.

Sch 3.2 G

The FCA’s power to impose financial penalties is contained in:

- Section 63A (Power to impose penalties) of the *Act*
- Section 66 (Disciplinary powers) of the *Act*
- Section 88A (Disciplinary powers: contravention of s.88(3)(c) or (e)) of the *Act*
- Section 89Q (Disciplinary powers: contravention of s.89P(4)(b) or (d)) of the *Act*
- Section 91 (Penalties for breach of Part 6 Rules) of the *Act*
- Section 123 (Power to impose penalties in cases of market abuse) of the *Act*
- Section 131G (Power to impose penalty or issue censure) of the *Act*
- Section 192K (Power to impose penalty or issue censure) of the *Act*
- Section 206 (Financial penalties) of the *Act*
- Section 249 (Disciplinary measures) of the *Act*
- Section 312F (Financial penalties) of the *Act*
- Section 345 (Disciplinary measures) of the *Act*
- Part III of Schedule 1ZA (The Financial Conduct Authority) to the *Act*
- the *Money Laundering Regulations*
- the *Transfer of Funds (Information on the Payer) Regulations 2007* [SI 2007/3298)]
- the *RCB Regulations*
- the *Payment Services Regulations*
- the *Cross-Border Payments in Euro Regulations*
- the *OTC derivatives, CCPs and trade repositories regulation*
- the *AIFMD UK regulation*
- the *Referral Fees Regulations*
- the *CCA Order*
- the *Immigration Regulations*
- the *MCD Order*
- the *Small and Medium Sized Business (Credit Information) Regulations*
- the *MiFi Regulations*
- the *UK Benchmarks Regulations 2018*
the UK Securitisation Regulations
the DRS Regulations
the Payment Accounts Regulations
the Small and Medium Sized Business (Finance Platforms) Regulations
the Proxy Advisors (Shareholders’ Rights) Regulations
The following powers and related provisions in or under the Act have been exercised by the FCA to make the statements of policy in DEPP:

Section 63C (Statement of policy)
Section 63ZD (Statement of policy relating to conditional approval and variation)
Section 69 (Statement of policy) (including as applied by paragraph 1 of Schedule 5 to the Payment Services Regulations and by paragraph 1 of the Schedule to the Cross-Border Payments in Euro Regulations)
Section 88C (Action under s.88A: statement of policy)
Section 89S (Action under s. 89Q: statement of policy)
Section 93(1) (Statement of policy)
Section 124(1) (Statement of policy)
Section 131J (Impositions of penalties under section 131G: statement of policy)
Section 139A (Power of the FCA to give guidance)
Section 169(9) (Investigations etc in support of overseas regulator) (including as applied by paragraph 3 of Schedule 5 to the Payment Services Regulations)
Section 192N (Imposition of penalties under section 192K: statement of policy)
Section 210(1) (Statements of policy) (including as applied by regulation 86(6) of the Payment Services Regulations, by paragraph 3 of the Schedule to the Cross-Border Payments in Euro Regulations, by article 23(4) of the MCD Order, regulation 43 of the Small and Medium Sized Business (Credit Information) Regulations, by regulation 36(6) of the Payment Accounts Regulations and by regulation 40 of the Small and Medium Sized Business (Finance Platforms) Regulations)
Section 249 (Disciplinary measures)
Section 312J (Statement of policy)
Section 345D (Imposition of penalties on auditors or actuaries: statement of policy)
Section 395 (The Authority's procedures) (including as applied by paragraph 7 of Schedule 5 to the Payment Services Regulations, by paragraph 5 of the Schedule to the Cross-Border Payments in Euro Regulations, by article 24(2) of the MCD Order, regulation 44 of the Small and Medium Sized Business (Credit Information) Regulations, by paragraph 4 of Schedule 7 of the Payment Accounts Regulations and by regulation 41 of the Small and Medium Sized Business (Finance Platforms) Regulations)
Paragraph 16 (Penalties) of Schedule 1 (The Financial Services Authority)
The following additional powers and related provisions have been exercised by the FCA to make the statements of policy in DEPP:

- Regulation 42 (Guidance) of the RCB Regulations
- Regulation 44 (Warning notices and decision notices) of the RCB Regulations
- Regulation 86 (Proposal to take disciplinary measures) of the Payment Services Regulations
- Regulation 93 (Guidance) of the Payment Services Regulations
- Regulation 14 (Guidance) of the Cross-Border Payments in Euro Regulations
- Regulation 70 (Warning Notices, Decision Notices and Supervisory Notices) of the AIFMD UK regulation
- Regulation 71 (Application of Act to unauthorised AIFs) of the AIFMD UK regulation
- Regulation 29 (Statements of policy) of the Referral Fees Regulations
- Regulation 30 (Application of Part 26 of the 2000 Act) of the Referral Fees Regulations
- Article 3(11) (Application of provisions of FSMA 2000 in connection with failure to comply with the 1974 Act) of the CCA Order
- Article 4 (Statement of policy) of the CCA Order
- Regulation 28 (Statements of policy) of the Immigration Regulations
- Regulation 29 (Application of Part 26 of the 2000 Act) of the Immigration Regulations
- Paragraph 7 of Schedule 1 (Guidance) of the MiFI Regulations
- Paragraph 14 of Schedule 1 (Statements of Policy) of the MiFI Regulations
- Paragraph 22 of Schedule 1 (Application of Part 26 of the Act) of the MiFI Regulations
- Regulation 20 (Guidance) of the DRS Regulations
- Regulation 27 (Statements of Policy) of the DRS Regulations
- Regulation 37 (Application of Part 26 of the Act) of the DRS Regulations
- Regulation 82 (The FCA: procedure (general)) of the Money Laundering Regulations
- Paragraph 3 (Statements of Policy) of Schedule 1 of the Packaged Retail and Insurance-based Investment Products Regulations
- Paragraph 6 (Application of Part 26 of the Act) of Schedule 1 to the Packaged Retail and Insurance-based Investment Products Regulations
- Regulation 14 (Statements of Policy) of the UK Benchmarks Regulations 2018
- Regulation 19 (Application of Part 11 of the Act (information gathering and investigations)) of the UK Benchmarks Regulations 2018
- Regulation 23 (Application of Part 26 of the Act (notices)) of the UK Benchmarks Regulations 2018
- Regulation 9 (Statements of Policy) of the UK Securitisation Regulations
- Paragraph 1 of Schedule 1 (Application of sections 66 to 70 of the Act) of the UK Securitisation Regulations
- Paragraph 3 of Schedule 1 (Application of Part 11 of the Act (information gathering and investigation)) of the UK Securitisation Regulations
- Paragraph 4 of Schedule 1 (Application of Part 14 of the Act (disciplinary measures)) of the UK Securitisation Regulations
- Application of Part 26 of the Act (notices) of the UK Securitisation Regulations
Regulation 16 (Statement of policy on imposition of penalties) of the *Proxy Advisors (Shareholders' Rights) Regulations*

Regulation 22 (Application of Part 11 of the Act (information gathering and investigations)) of the *Proxy Advisors (Shareholders' Rights) Regulations*

Regulation 26 (Application of Part 26 of the Act (notices)) of the *Proxy Advisors (Shareholders' Rights) Regulations*
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Schedule 5
Rights of action for damages

Sch 5.1 G
There are no rules in DEPP.
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Schedule 6
Rules that can be waived

Sch 6.1 G
There are no rules in DEPP.
Schedule 6
Rules that can be waived