

Chapter 2

Statutory notices and the allocation of decision making

2.3

Decision notices and second supervisory notices

Approach of decision maker

- 2.3.1
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- 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.

- 2.3.1A
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- Notwithstanding ■ DEPP 2.3.1G(2), *FCA* staff under *executive procedures* who are asked to decide whether to give a *decision notice* or second *supervisory notice* will consider oral representations only in exceptional circumstances where they determine that prohibiting oral representations are likely to impact on the fairness of the decision. This may include (but is not limited to) circumstances where:
- (1)

the subject of the *decision notice* or second *supervisory notice* is not reasonably able to make written representations due to relevant personal circumstances; and/or
- (2)

oral representations are required due to the urgency or complexity of the matter to be decided.

Default procedures

- 2.3.2
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- 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
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- 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*.

2.3.4 G 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

2.3.5 G 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

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For the purpose of establishing whether the *person* receiving the further *decision notice* gives its consent, the *FCA* will normally require consent in writing.

Tribunal may be made will begin from the date on which the further *decision notice* is given.