

Chapter 3

The nature and procedure of the RDC



3.2 The operation of the RDC

RDC meetings and composition of panels

- 3.2.1 **G** 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 **G** 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 **G** 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 **G** 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 **G**
 - (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 **G** 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 **G** 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 **G** 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 **G** 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 **G** 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 **G** 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.

3.2.11A **G** 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

- 3.2.12 **G** 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.
- 3.2.13 **G** In accordance with ■ DEPP 2.2 the *RDC* will consider whether it is right in all the circumstances to give the statutory notice.
- 3.2.14 **G** 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.
- 3.2.14A **G** 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 and given by the *RDC Act* relates, they will make a recommendation to the *RDC* that such information should be published.
- 3.2.14B **G** 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.
- 3.2.14C **G** 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 G 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 G 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 G 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 G 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 G 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 G (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 14days.

- (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.

3.2.16 G (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.

3.2.17

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(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.

3.2.18

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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.

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The recipient of the *warning notice* or *supervisory notice* may wish to be legally represented at the meeting, but this is not a requirement.

3.2.20

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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.

3.2.21 **G** 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

3.2.22 **G** 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.

3.2.22A **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).

3.2.23 **G** 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).

3.2.24 **G** 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.

3.2.25 **G** 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

3.2.26 **G** 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

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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*.