

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.

4.1.6 **G** 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

4.1.7 **G** *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).

4.1.8 **G** 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.

4.1.9 **G** 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.

4.1.10 **G** 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

4.1.11 **G** (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 G 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 G 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

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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 *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 *statutory notice* decisions.

4.2 Urgent statutory notice cases

4.2.1

- G** 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.

4.2.2

- G** 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.