

Chapter 6

Penalties

6.4 Financial penalty or public censure

6.4.1 **G** 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 **G** 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.