

Chapter 6A

The power to impose a suspension, restriction, condition, limitation or disciplinary prohibition

6A.1 Introduction

6A.1.1 **G** ■ 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).

6A.1.2 **G** (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*]

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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.

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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

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restrictions in relation to *sponsors* and *primary information providers* in other circumstances.

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.

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6A.2 Deciding whether to take action

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- 6A.2.1** **G** 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** **G** 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** **G** 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 **G** 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 **G** 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 **G** 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 **G** 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*,

sponsor 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.

6A.3.3 **G** 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.

6A.3.4 **G** 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.



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Determining the appropriate length of the period of limitation for approvals under section 59 of the Act

6A.3A.1 **G** 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.

6A.3A.2 **G** 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** **G** 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** **G** 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.

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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.