

## Chapter 6A

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

## 6A.2 Deciding whether to take action

- 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*.