

Chapter 12

Prosecution of Criminal Offences



12.1 The FCA's general approach

12.1.1 The FCA has powers under sections 401 and 402 of the Act to prosecute a range of criminal offences in England, Wales and Northern Ireland. The FCA may also prosecute criminal offences where to do so would be consistent with meeting any of its statutory objectives.

12.1.2 The FCA's general policy is to pursue through the criminal justice system all those cases where criminal prosecution is appropriate. When it decides whether to bring criminal proceedings in England, Wales or Northern Ireland, or to refer the matter to another prosecuting authority in England, Wales or Northern Ireland (see paragraph 12.4.1), it will apply the basic principles set out in the Code for Crown Prosecutors.¹⁴ When considering whether to prosecute a breach of the Money Laundering Regulations, the FCA will also have regard to whether the person concerned has followed the Guidance for the UK financial sector issued by the Joint Money Laundering Steering Group.

¹⁴ http://www.cps.gov.uk/publications/code_for_crown_prosecutors/

12.1.3 The FCA's approach when deciding whether to commence criminal proceedings for *misleading statements and practices offences* and *insider dealing offences*, where the FCA also has power to impose a sanction for *market abuse*, is discussed further in paragraphs 12.3.1 to 12.3.4.

Commencing criminal proceedings

12.1.4 In cases where criminal proceedings have commenced or will be commenced, the FCA may consider whether also to take civil or regulatory action (for example where this is appropriate for the protection of consumers) and how such action should be pursued. That action might include: applying to court for an *injunction*; applying to court for a restitution order; variation and/or cancellation of *permission*; and prohibition of individuals. The factors the FCA may take into account when deciding whether to take such action, where criminal proceedings are in contemplation, include, but are not limited to the following:

- (1) whether, in the FCA's opinion, the taking of civil or regulatory action might unfairly prejudice the prosecution, or proposed prosecution, of criminal offences;
- (2) whether, in the FCA's opinion, the taking of civil or regulatory action might unfairly prejudice the defendants in the criminal proceedings in the conduct of their defence; and

- (3) whether it is appropriate to take civil or regulatory action, having regard to the scope of the criminal proceedings and the powers available to the criminal courts.

12.1.5 Subject to 12.4C, a decision to commence criminal proceedings will be made by the executive director of Enforcement or, in his or her absence, the acting executive director of Enforcement.

12.1.6 [deleted]

12.1.7 Decisions about whether to initiate criminal proceedings under the Building Societies Act 1986, the Friendly Societies Acts 1974 and 1992, the Credit Unions Act 1979 and the Co-operative and Community Benefit Societies Act 2014 will be taken by the executive director of Enforcement or, in his or her absence, the acting executive director of Enforcement.