

Chapter 19

Non-FSMA powers

19.22 Decision making under the Payment Services Regulations

- 19.22.1** The *RDC* is the *FCA's* decision maker for some of the decisions under the *Payment Services Regulations* as set out in ■ DEPP 2 Annex 1G. This builds a layer of separation into the process to help ensure not only that decisions are fair but that they are seen to be fair. The *RDC* will make its decisions following the procedure set out in ■ DEPP 3.2 or, where appropriate, ■ DEPP 3.3 and ■ 3.4. ■ DEPP 3.4 applies for urgent notices under regulations 12(6), 12(9), and 12(10)(b) (including as applied by regulations 15 and 19).
- 19.22.2** For decisions made by *executive procedures* the procedures to be followed will be those described in ■ DEPP 4.
- 19.22.3** The *Payment Service Regulations* do not require the *FCA* to have published procedures to launch criminal prosecutions. However, in these situations the *FCA* expects that it will normally follow its decision-making procedures for the equivalent decisions under the *Act*.
- 19.22.4** The *Payment Service Regulations* require the *FCA* to give third party rights as set out in section 393 of the *Act* and to give access to certain material as set out in section 394 of the *Act*.
- 19.22.5** Certain *FCA* decisions (for example the cancellation of an authorisation or the imposition of a financial penalty) may be referred to the *Tribunal* by an aggrieved party.
- Imposition of penalties under the Payment Services Regulations**
- 19.22.6** When imposing a financial penalty the *FCA's* policy includes having regard to the relevant factors in ■ DEPP 6.2 and ■ DEPP 6.4. The *FCA's* policy in relation to determining the level of a financial penalty includes having regard, where relevant, to ■ DEPP 6.5 to ■ DEPP 6.5D.
- 19.22.7** As with cases under the *Act*, the *FCA* may settle or mediate appropriate cases involving civil breaches of the *Payment Services Regulations* to assist it to exercise its functions under the Regulations in the most efficient and economic way. See ■ DEPP 5, ■ DEPP 6.7 and ■ EG 5 for further information on the settlement process and the settlement discount scheme.

Statement of policy in section 169(7) interviews (as implemented by the Payment Services Regulations)

19.22.8

The *Payment Services Regulations* apply section 169 of the *Act* which requires the *FCA* to publish a statement of policy on the conduct of certain interviews in response to requests from overseas regulators. For the purposes of the *Payment Services Regulations* the *FCA* will follow the procedures described in ■ DEPP 7.