

Chapter 2

The FCA's approach to enforcement

2.12 Co-operation

2.12.1

An important consideration before an enforcement investigation and/or enforcement action is taken forward is the nature of a *firm's* overall relationship with the *FCA* and whether, against that background, the use of enforcement tools is likely to further the *FCA's* aims and objectives. So, for any similar set of facts, using enforcement tools will be less likely if a *firm* has built up over time a strong track record of taking its senior management responsibilities seriously and been open and communicative with the *FCA*. In addition, a *firm's* conduct in response to the specific issue which has given rise to the question of whether enforcement tools should be used will also be relevant. In this respect, relevant matters may include whether the *person* has self-reported, helped the *FCA* establish the facts and/or taken remedial action such as addressing any systems and controls issues and compensating any consumers who have lost out. Such matters will not, however, necessarily mean that enforcement tools will not be used. The *FCA* has to consider each case on its merits and in the wider regulatory context, and any such steps cannot automatically lead to no enforcement sanction. However, they may in any event be factors which will mitigate the penalty.

2.12.2

On its web site, the *FCA* gives anonymous examples of where it has decided not to investigate or take enforcement action in relation to a possible *rule* breach because of the way in which the *firm* has conducted itself when putting the matter right. This is part of an article entitled 'The benefits to firms and individuals of co-operating with the *FCA*'. However, in those cases where enforcement action is not taken and/or a formal investigation is not commenced, the *FCA* will expect the *firm* to act promptly to take the necessary remedial action agreed with its supervisors to deal with the *FCA's* concerns. If the *firm* does not do this, the *FCA* may take disciplinary or other enforcement action in respect of the original contravention.