

## Chapter 2

# The FCA's approach to enforcement

## 2.9 FCA guidance and supporting materials

- 2.9.1** The *FCA* uses *guidance* and other materials to supplement the *Principles* where it considers this would help *firms* to decide what action they need to take to meet the necessary standard.
- 2.9.2** *Guidance* is not binding on those to whom the *FCA's rules* apply. Nor are the variety of materials (such as case studies showing good or bad practice, *FCA* speeches, and generic letters written by the *FCA* to Chief Executives in particular sectors) published to support the *rules* and *guidance* in the Handbook. Rather, such materials are intended to illustrate ways (but not the only ways) in which a person can comply with the relevant *rules*.
- 2.9.3** ■ DEPP 6.2.1G(4) explains that the *FCA* will not take action against someone where we consider that they have acted in accordance with what we have said. However, *guidance* does not set out the minimum standard of conduct needed to comply with a *rule*, nor is there any presumption that departing from *guidance* indicates a breach of a *rule*. If a *firm* has complied with the *Principles* and other *rules*, then it does not matter whether it has also complied with other material the *FCA* has issued.
- 2.9.4** *Guidance* and supporting materials are, however, potentially relevant to an enforcement case and a decision maker may take them into account in considering the matter. Examples of the ways in which the *FCA* may seek to use *guidance* and supporting materials in an enforcement context include:
- (1) To help assess whether it could reasonably have been understood or predicted at the time that the conduct in question fell below the standards required by the *Principles*.
  - (2) To explain the regulatory context.
  - (3) To inform a view of the overall seriousness of the breaches e.g. the decision maker could decide that the breach warranted a higher penalty in circumstances where the *FCA* had written to chief executives in the sector in question to reiterate the importance of ensuring a particular aspect of its business complied with relevant regulatory standards.
  - (4) To inform the consideration of a *firm's* defence that the *FCA* was judging the *firm* on the basis of retrospective standards.

- (5) To be considered as part of expert or supervisory statements in relation to the relevant standards at the time.

### 2.9.5

The extent to which *guidance* and supporting materials are relevant will depend on all the circumstances of the case, including the type and accessibility of the statement and the nature of the *firm's* defence. It is for the decision maker (see paragraphs ■ 2.15.1 to ■ 2.15.3) - whether the *RDC, Tribunal* or an executive decision maker - to determine this on a case- by-case basis.

### 2.9.6

The *FCA* may take action in areas in which it has not issued *guidance* or supporting materials.