

Enforcement Guide

Chapter 5

Settlement

5.1 Settlement and the FCA – an overview

- 5.1.1** The *FCA* resolves many enforcement cases by settlement. Early settlement has many potential advantages as it can result, for example, in *consumers* obtaining compensation earlier than would otherwise be the case, the saving of *FCA* and industry resources, messages getting out to the market sooner and a public perception of timely and effective action. The *FCA* therefore considers it is in the public interest for matters to settle, and settle early, if possible.
- 5.1.2** The possibility of settlement does not, however, change the fact that enforcement action is one of the tools available to the *FCA* to secure our *statutory objectives*. The *FCA* seeks to change the behaviour not only of those subject to the immediate action, but also of others who will be alerted to our concerns in a particular area. There is no distinction here between action taken following agreement with the subject of the enforcement action and action resisted by a firm before the *RDC* (including action taken following a *focused resolution agreement*). In each case, the *FCA* must be satisfied that its decision is the right one, both in terms of the immediate impact on the subject of the enforcement action but also in respect of any broader message conveyed by the action taken.
- 5.1.3** Settlements in the *FCA* context are not the same as ‘out of court’ settlements in the commercial context. An *FCA* settlement is a regulatory decision, taken by the *FCA*, the terms of which are accepted by the *firm* or individual concerned. So, when agreeing the terms of a settlement, the *FCA* will carefully consider its *statutory objectives* and other relevant matters such as the importance of sending clear, consistent messages through enforcement action, and will only settle in appropriate cases where the agreed terms of the decision result in acceptable regulatory outcomes. Redress to *consumers* who may have been disadvantaged by a *firm’s* misconduct may be particularly important in this respect. Other than in exceptional circumstances, *FCA* settlements that give rise to the issue of a *final notice* or *supervisory notice* will result in some degree of publicity (see ■ chapter 6), unlike commercial out of court settlements, which are often confidential.
- 5.1.4** In recognition of the value of early settlement, the *FCA* operates a scheme to award a discount for early settlement of cases involving financial penalties, suspensions, restrictions and disciplinary prohibitions. Details of the scheme, which applies only to settlement of cases where investigators were appointed on or after 20 October 2005, are set out in ■ DEPP 6.7. This chapter provides some commentary on certain practical aspects of the operation of the scheme.

5.1.5

Some decisions on settlements and *statutory notices* arising from them are taken by two members of the FCA's senior management, rather than by the RDC (DEPP refers to these individuals as the '*settlement decision makers*'). Full details of the special decision making *arrangements* for settlements are set out in ■ DEPP 5.