

## Chapter 3

# The FCA's duties and powers

## 3.2 The FCA's power to make a direction

- 3.2.1** **G** Section 328 of the Act (Directions in relation to the general prohibition) gives the FCA power to make a direction that the exemption under section 327 of the Act (see **PROF 2.1.3 G**) does not apply to the extent specified in the direction. Section 328 allows the FCA to make a direction in relation to different classes of *person* or different descriptions of *regulated activity*. Section 325(3) of the Act requires the FCA to keep under review the desirability of exercising its powers under Part XX of the Act (Provision of Financial Services by Members of the Professions), including its direction powers under section 328 of the Act.
- 3.2.2** **G** If the FCA gives a direction in relation to specified classes of *person*, then any *person* within those classes may be in contravention of the *general prohibition* unless:
- (1) it ceases to carry on *regulated activities*; or
  - (2) it is an *authorised person*; or
  - (3) it is an *exempt person*.
- 3.2.3** **G** A direction might also cover classes of *persons* who are *members* of different *designated professional bodies*.
- 3.2.4** **G** Were the FCA to give a direction in relation to a description of *regulated activity* (for example, *dealing in investments as agent*), then that activity could no longer be carried on within the terms of the exemption.
- 3.2.5** **G**
- (1) The FCA may exercise its direction powers under section 328(6) of the Act in two situations, as set out in (2) and (3).
  - (2) First, the FCA may exercise its direction power under section 328(6)(a) of the Act if it is satisfied that it is desirable in order to protect the interests of *clients*. In considering whether it is satisfied, the FCA is required by section 328(7) of the Act to have regard, among other things, to the effectiveness of any arrangements made by a *designated professional body*:
    - (a) for securing compliance with *rules* made under section 332(1) of the Act (see **PROF 4.1.1 G**);

- (b) for dealing with complaints against its *members* in relation to the carrying on by them of *exempt regulated activities* (see ■ PROF 4.1.4 G (2)(d));
- (c) in order to offer redress to *clients* who suffer, or claim to have suffered, loss as a result of misconduct by its *members* in their carrying on of *exempt regulated activities* (see ■ PROF 4.1.4 G (2)(d)); and
- (d) for cooperating with the *FCA* under section 325(4) of the *Act* (see ■ PROF 3.1.2 G).

- (3) Second, the *FCA* may exercise its direction power under section 328(6)(b) of the *Act* if it is satisfied that it is necessary to do so in order to comply with an obligation imposed by the *IDD*. For example, the *FCA* might wish to do so if it was not receiving from a *designated professional body* the information it needs to maintain the *Financial Services Register* (see PROF 7.1).

### 3.2.6

**G** Section 330 of the *Act* (Consultation) sets out procedures which the *FCA* must follow if it wishes to make a direction under section 328(6)(a) or (b). Except as specifically provided in section 330:

- (1) the *FCA* must consult publicly on its proposed direction;
- (2) the *FCA* must have regard to any representations made in response to the consultation; and
- (3) if the *FCA* then gives the proposed direction, it must publish an account of the representations made and its response to them.

### 3.2.7

**G** The directions the *FCA* has made under section 328 (6)(a) are set out in ■ PROF 3 Annex 1 G. Directions made by the *FCA* under section 328(6)(b) of the *Act* are listed in ■ PROF 3 Annex 2 G (The *FCA*'s duties and powers).