

Supervision

Chapter 9

Individual guidance

9.4 Reliance on individual guidance

Reliance by recipient of individual guidance

- 9.4.1 **G** If a *person* acts in accordance with current individual written *guidance* given to him by the *FCA* in the circumstances contemplated by that *guidance*, then the *FCA* will proceed on the footing that the *person* has complied with the aspects of the *rule* or other requirement to which the *guidance* relates.
- 9.4.2 **G** The extent to which a *person* can rely on individual *guidance* given to him will depend on many factors. These could include, for example, the degree of formality of the original query and the *guidance* given, and whether all relevant information was submitted with the request. Individual *guidance* is usually given in relation to a set of particular circumstances which exist when the *guidance* is given. If the circumstances later change, for example, because of a change in the circumstances of the *person* or a change in the underlying *rule* or other requirement, and the premises upon which individual *guidance* was given no longer apply, the *guidance* will cease to be effective.
- 9.4.3 **G** If the circumstances relating to individual *guidance* change it will be open to a *person* to ask for further *guidance*.

Effect on rights of third parties

- 9.4.4 **G** Rights conferred on third parties (such as a *firm's* clients) cannot be affected by *guidance* given by the *FCA*. *Guidance* on *rules*, the *Act* or other legislation represents the *FCA* view, and does not bind the courts, for example in relation to an action for damages brought by a *private person* for breach of a *rule* (section 138D of the *Act* (Actions for damages)) or in relation to enforceability of a contract if the *general prohibition* is breached (sections 26 and 27 of the *Act* (Enforceability of agreements)). A *person* may need to seek his own legal advice.