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Enforcement Guide

Enforcement Guide

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Enforcement Guide

Chapter 1 Introduction

1.1 **Overview** 1.1.1 This guide describes the FCA's approach to exercising the main enforcement powers given to it by the Financial Services and Markets Act 2000 (the Act) and by other legislation. It is broken down into two parts. The first part provides an overview of enforcement policy and process, with chapters about the FCA's approach to enforcement (chapter 2), the use of its main information gathering and investigation powers under the Act and the CRA (chapter 3), the conduct of investigations (chapter 4), settlement (chapter 5) and publicity (chapter 6). The second part contains an explanation of the FCA's policy concerning specific enforcement powers such as its powers to: vary a firm's Part 4A permission and impose requirements on its own initiative (chapter 8); make prohibition orders (chapter 9); prosecute criminal offences (chapter 12); and powers which the FCA has been given under legislation other than the Act (chapter 19). 1.1.2 In the areas set out below, the Act expressly requires the FCA to prepare and publish statements of policy or procedure on the exercise of its enforcement and investigation powers and in relation to the giving of statutory notices. (1) section 63C requires the FCA to publish a statement of its policy on the imposition, and amount, of financial penalties on *persons* that perform a controlled function without approval; (1-A) section 63ZD requires the FCA, among other things, to publish a statement of its policy on the exercise of its power to vary an approval under section 63ZB; (1A) sections 69 and 210 require the FCA to publish statements of policy on the imposition of financial penalties, suspensions, restrictions, conditions or limitations on *firms*, individuals and *unauthorised* persons to whom section 404C applies, the amount of financial penalties imposed, the period for which suspensions, restrictions or conditions are to have effect, and the period for which approvals under section 59 are to have effect as a result of a limitation; (1B) section 88C requires the FCA to publish a statement of policy on the imposition of financial penalties, suspensions or restrictions on sponsors, the amount of financial penalties imposed, and the period for which suspensions or restrictions are to have effect; (1C) section 89S requires the FCA to publish a statement of policy on the imposition of financial penalties, suspensions or restrictions on primary information providers, the amount of financial penalties imposed, the time period for any suspensions or restrictions, and the

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	matters in relation to which, suspensions or restrictions are to have effect;	
(2)	section 93 requires the FCA to publish a statement of its policy on the imposition, and amount, of financial penalties under section 91 of the Act (penalties for breach of Part 6 rules);	
(3)	section 124 requires the FCA to publish a statement of its policy on the type and level or period of administrative sanctions it may impose under Part VIII of the Act;	
(3-A)	section 131FA requires the FCA to publish a statement of its policy on the conduct of certain interviews in response to requests from <i>overseas regulators</i> ; and	
(3A)	section 131J requires the FCA to publish a statement of its policy on the imposition, and amount, of financial penalties imposed under section 131G;	
(4)	section 169 requires the FCA to publish a statement of its policy on the conduct of certain interviews in response to requests from <i>overseas regulators</i> ; and	
(4A)	section 192N requires the FCA to publish a statement of its policy on the imposition, and amount, of financial penalties on qualifying parent undertakings under section 192K of the Act;	
(4B)	section 312J requires the FCA to publish a statement of its policy on the imposition, and amount, of financial penalties on <i>recognised investment exchanges</i> under section 312F of the Act;	
(4C)	section 345D requires the FCA to publish a statement of its policy on the imposition, and amount, of financial penalties on <i>auditors</i> and actuaries under sections 249 and 345 of the Act; and	
(5)	section 395 requires the FCA to issue a statement of procedures relating to:	
	 (a) the giving of supervisory notices, warning notices and decision notices; 	
	(b) the giving of consent to the <i>PRA</i> in respect of applications made to the <i>PRA</i> for <i>Part 4A permission</i> , variation of <i>Part 4A permission</i> and approval to hold <i>controlled functions</i> ; and	
	(c) the publishing of information about matters to which certain warning notices relate.	
These policies are set out in the Decision Procedure and Penalties manual (<i>DEPP</i>), a module of the <i>FCA Handbook</i> . References to the policies are made at appropriate places in the guide.		
This guide includes material on the investigation, disciplinary and criminal prosecution powers that are available to the FCA when it is performing functions as the competent authority under Part VI of the Act (Official listing). The Act provides a separate statutory framework within which the FCA must operate when it acts in that capacity. When determining whether to exercise its powers in its capacity as competent authority under Part VI,		

1.1.3

	the FCA will have regard to the matters and objectives which apply to the competent authority function.
1.1.4	The FCA has a range of enforcement powers, and in any particular enforcement situation, the FCA may need to consider which power to use and whether to use one or more powers. So in any particular case, it may be necessary to refer to a number of chapters of the guide.
1.1.5	Since most of the FCA's enforcement powers are derived from it, this guide contains a large number of references to the Act. Users of the guide should therefore refer to the Act as well as to the guide where necessary. In the event of a discrepancy between the Act, or other relevant legislation, and the description of an enforcement power in the guide, the provisions of the Act or the other relevant legislation prevail. Defined terms used in the text are shown in italic type. Where a word or phrase is in italics, its definition will be the one used for that word or phrase in the glossary to the FCA Handbook.
1.1.6	[deleted]
1.1.7	This guide will be kept under review and amended as appropriate in the light of further experience and developing law and practice.
1.1.8	The material in this guide does not form part of the FCA Handbook and is not guidance on rules, but it is 'general guidance' as defined in section 139B of the Act. If you have any doubt about a legal or other provision or your responsibilities under the Act or other relevant requirements, you should seek appropriate legal advice from your legal adviser.

Enforcement Guide

Chapter 2

The FCA's approach to enforcement

Case selection and the use of 2.1 enforcement powers 2.1.1 The FCA's effective and proportionate use of its enforcement powers plays an important role in the pursuit of its statutory objectives, including its operational objectives of securing an appropriate degree of protection for consumers, protecting and enhancing the integrity of the UK financial system, and promoting effective competition in the interests of consumers. For example, using enforcement helps to contribute to the protection of consumers and to deter future contraventions of FCA and other applicable requirements and *financial crime*. It can also be a particularly effective way, through publication of enforcement outcomes, of raising awareness of regulatory standards. 2.1.2 There are a number of principles underlying the FCA's approach to the exercise of its enforcement powers: (1) The effectiveness of the regulatory regime depends to a significant extent on maintaining an open and co-operative relationship between the FCA and those it regulates. (2) The FCA will seek to exercise its enforcement powers in a manner that is transparent, proportionate, responsive to the issue, and consistent with its publicly stated policies. (3) The FCA will seek to ensure fair treatment when exercising its enforcement powers. (4) The FCA will aim to change the behaviour of the person who is the subject of its action, to deter future non-compliance by others, to eliminate any financial gain or benefit from non-compliance, and where appropriate, to remedy the harm caused by the noncompliance. 2.1.3 Enforcement is only one of a number of regulatory tools available to the FCA. As a risk based regulator with limited resources, throughout its work the FCA prioritises its resources in the areas which pose the biggest threat to its statutory objectives. This applies as much to the enforcement tool as it does to any other tool available to it. The next section of this chapter summarises how in practice the FCA takes a risk based approach towards its use of the enforcement tool, and the subsequent sections comment on other aspects of the FCA's approach to enforcement.

2.1.4 Where a *firm* or other *person* has failed to comply with the requirements of the *Act*, the *rules*, or other relevant legislation, it may be appropriate to deal with this without the need for formal disciplinary or other enforcement action. The proactive supervision and monitoring of *firms*, and an open and cooperative relationship between *firms* and their supervisors, will, in some cases where a contravention has taken place, lead the *FCA* to decide against taking formal disciplinary action. However, in those cases, the *FCA* will expect the *firm* to act promptly in taking 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.

Case selection and referral criteria 2.2 2.2.1 [deleted] EG 2.3.1 2.2.2 The FCA does not have a set of enforcement priorities that are distinct from the priorities of the FCA as a whole. Rather, the FCA consciously uses the enforcement tool to deliver its overall strategic priorities. The areas and issues which the FCA as an organisation regards as priorities at any particular time are therefore key in determining at a strategic level how enforcement resource should be allocated. FCA priorities will influence the use of resources in its supervisory work and as such, make it more likely that the FCA will identify possible breaches in these priority areas. Further, should evidence emerge of potential breaches, these areas are more likely to be supported by enforcement action than non-priority areas. 2.2.3One way in which the FCA focuses on priority areas is through its thematic work. This work involves the FCA looking at a particular issue or set of issues across a sample of firms. Themes are, in general, selected to enable the FCA to improve its understanding of particular industry areas or to assess the validity of concerns the FCA has about risks those areas may present to the statutory objectives. Thematic work does not start with the presumption that it will ultimately lead to enforcement outcomes. But if the FCA finds significant issues, these may become the subject of enforcement investigations as they would if the FCA had discovered them in any other circumstance. Also, by definition, the fact they are in areas that are of importance to the FCA means, following the FCA's risk-based approach through, that they are proportionately more likely to result in the FCA determining that an enforcement investigation should be carried out than issues in lower priority areas. 2.2.4 This does not mean that the FCA will only take enforcement action in priority strategic areas. There will always be particularly serious cases where enforcement action is necessary, ad hoc cases of particular significance in a

markets, *consumer* protection or *financial crime* context, or cases that the *FCA* thinks are necessary to achieve effective deterrence.

- 2.2.5 The combination of the priority given to certain types of misconduct over others and the *FCA*'s risk-based approach to enforcement means that certain cases will be subject to enforcement action and others not, even where they may be similar in nature or impact. The *FCA*'s choice as to the use of the enforcement tool is therefore a question of how the *FCA* uses its resources effectively and efficiently and how it ensures that it is an effective regulator.
- 2.2.6 In all cases, before it proceeds with an investigation, the FCA will satisfy itself that there are grounds to investigate under the statutory provisions that give the FCA powers to appoint investigators. Another consideration will be whether the FCA has any agreements in place regarding taking action on behalf of, or otherwise providing assistance to, other authorities. EG 2.5.1 discusses the position where other authorities may have an interest in a case. If the statutory test is met, the FCA will consider what is the most efficient and effective way of achieving its statutory objectives of protecting consumers, enhancing market integrity and promoting competition. A referral to Enforcement for an investigation will be made if the FCA considers that an investigation, rather than an alternative regulatory response, is the right course of action given all the circumstances. Enforcement action and other regulatory tools can be used together and are not mutually exclusive. To assist in making the decision to refer a matter for investigation, the FCA has developed referral criteria that set out a range of factors it may consider when deciding whether to appoint enforcement investigators. The criteria are not exhaustive, and all the circumstances of a particular case are taken into account. Not all the criteria will be relevant to every case, and additional considerations may apply in certain cases. Any one of the factors alone may warrant the appointment of investigators and in some cases, including cases where breaches are self-reported, the misconduct may be so serious that there is no credible alternative to referral.
- 2.2.7 If a decision to refer an *individual* or *firm* to Enforcement is made, the *FCA* will explain and set out the criteria applied in coming to the decision to refer, and will give a summary of the circumstances and the reason(s) for the referral at the start of the investigation.

Case selection: disciplinary regulatory cases

- The FCA's referral criteria are published on the Enforcement section of the FCA's website: http://www.fca.org.uk/about/enforcement/referral-criteria. In considering whether an enforcement investigation is likely to further the FCA's aims and objectives, the FCA will consider factors that address the following issues:
 - (1) any available supporting evidence and the proportionality and impact of opening an investigation;
 - (2) what purpose or goal would be served if the FCA were to end up taking enforcement action in the case; and
 - (3) relevant factors to assess whether the purposes of enforcement action are likely to be met.

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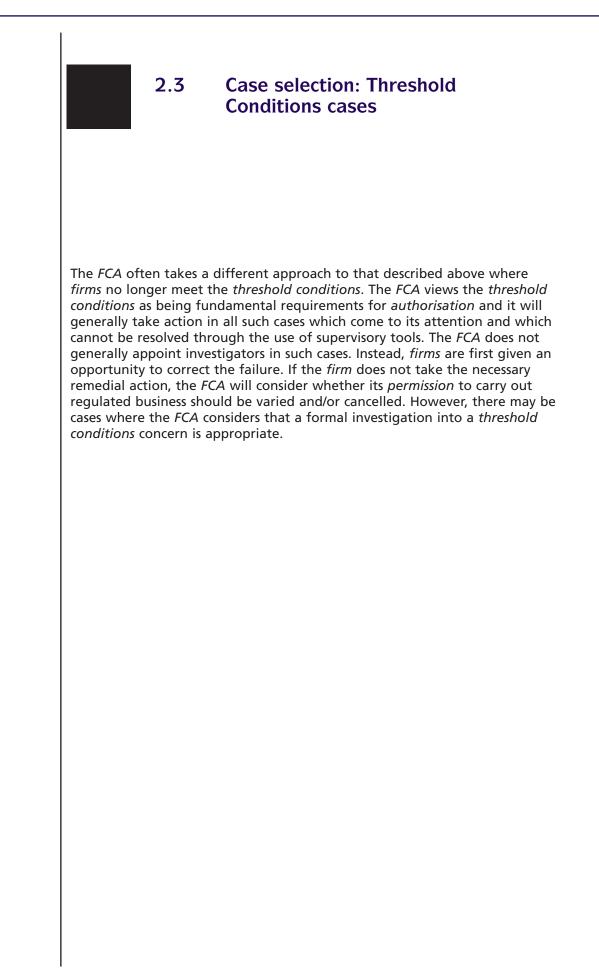
Case selection: markets cases

In relation to non-criminal *market abuse* investigations, the revised referral criteria will be similarly applied in deciding whether to open such an investigation. However, given the often limited alternatives to enforcement action available to address *market abuse* (with many of the subjects typically unauthorised), greater emphasis will be given to the egregiousness and deterrence value of a particular case when making such decisions.

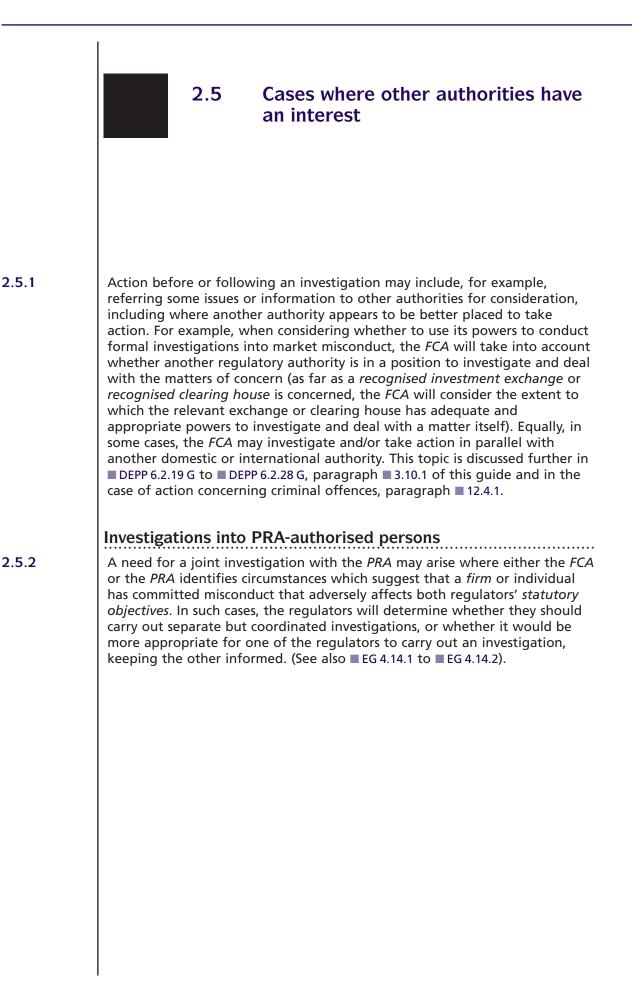
Case selection: listing cases

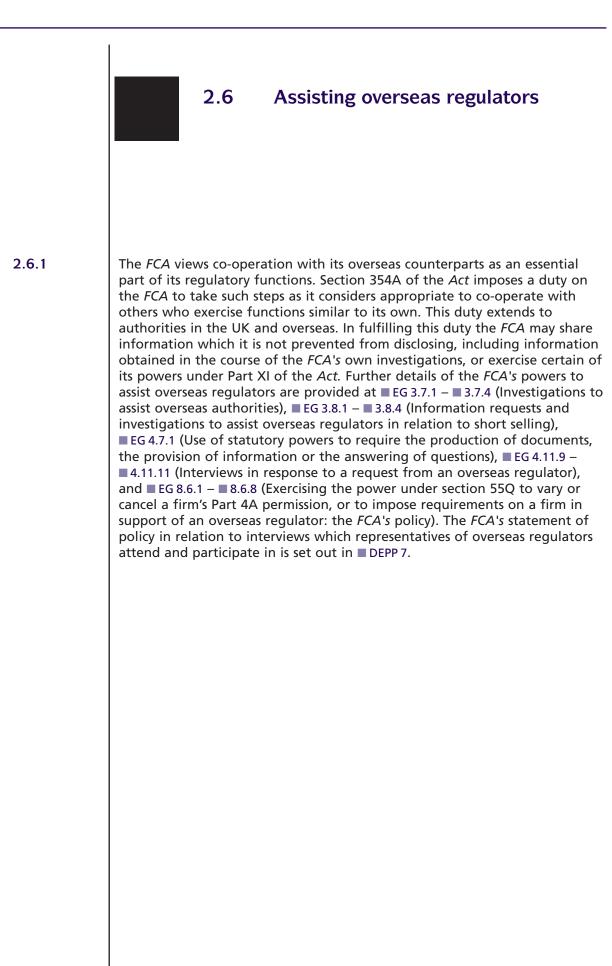
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As with *market abuse* cases, many of the non-enforcement tools are not available for use in cases involving listing regime *breaches*. This is because in many cases (aside from certain areas such as *sponsors* and *primary information providers*), there will be no on-going supervisory relationship with the listed companies in question, and no similar authorisation regime as there is with *authorised persons*, *firms* and *individuals*. As a result, the ability to use many of the early intervention tools or restricting or limiting certain activities is not available and enforcement is likely to be the most effective (and sometimes only) regulatory tool available to address the misconduct.

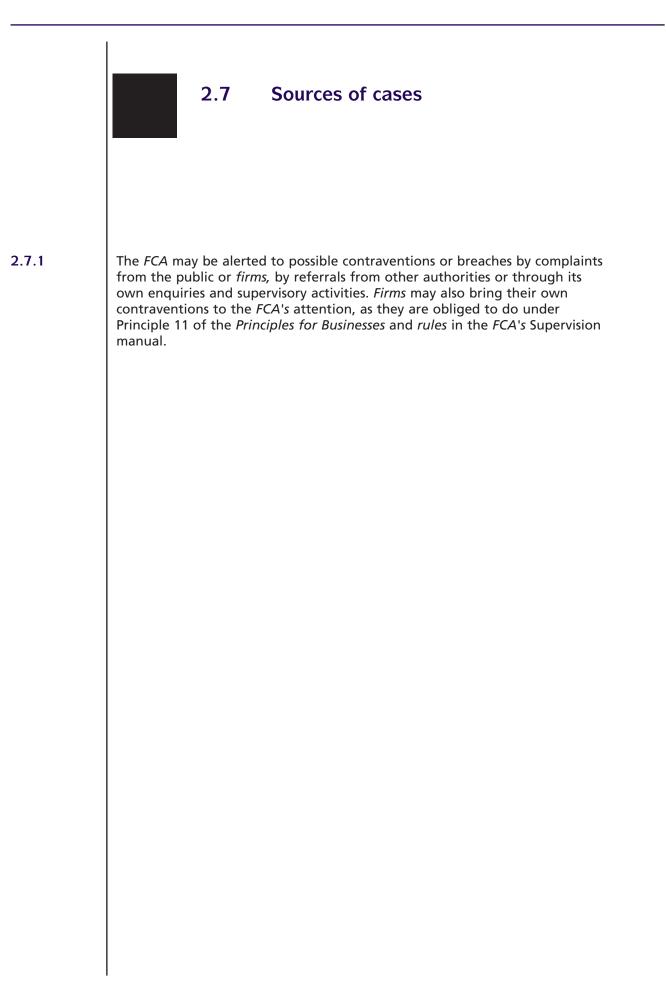


Case selection: Unauthorised 2.4 business 2.4.1Where this poses a significant risk to the *consumer* protection objective or to the FCA's other regulatory objectives, unauthorised activity will be a matter of serious concern for the FCA. The FCA deals with cases of suspected unauthorised activity in a number of ways and it will not use its investigation powers and/or take enforcement action in every single instance. 2.4.2 The FCA's primary aim in using its investigation and enforcement powers in the context of suspected unauthorised activities is to protect the interests of consumers. The FCA's priority will be to confirm whether or not a regulated activity has been carried on in the United Kingdom by someone without authorisation or exemption, and, if so, the extent of that activity and whether other related contraventions have occurred. It will seek to assess the risk to consumers' assets and interests arising from the activity as soon as possible. 2.4.3 The FCA will assess on a case-by-case basis whether to carry out a formal investigation, after considering all the available information. Factors it will take into account include: (1) the elements of the suspected contravention or breach; (2) whether the FCA considers that the persons concerned are willing to co-operate with it; (3) whether obligations of confidentiality inhibit individuals from providing information unless the FCA compels them to do so by using its formal powers; (4) whether the *person* concerned has offered to undertake or undertaken remedial action.





EG 2 : The FCA's approach to enforcement



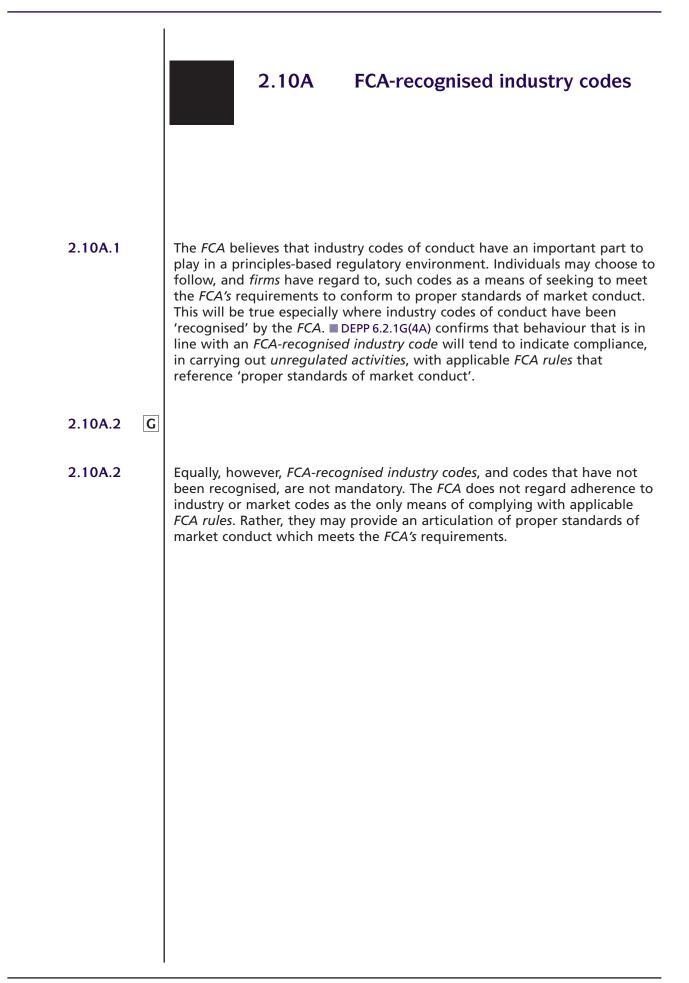
	2.8 Enforcement and the FCA's Principles for Business ('the Principles')
2.8.1	The FCA's approach to regulation involves a combination of high-level principles and detailed <i>rules</i> and <i>guidance</i> .
2.8.2	The FCA will, in appropriate cases, take enforcement action on the basis of the <i>Principles</i> alone (see also DEPP 6.2.14 G). This will have the benefit of providing further clear examples of how the <i>Principles</i> work in practice.
2.8.3	The FCA wishes to encourage firms to exercise judgement about, and take responsibility for, what the <i>Principles</i> mean for them in terms of how they conduct their business. But we also recognise the importance of an environment in which <i>firms</i> understand what is expected of them. So we have indicated that <i>firms</i> must be able reasonably to predict, at the time of the action concerned, whether the conduct would breach the <i>Principles</i> . This has sometimes been described as the "reasonable predictability test" or "condition of predictability", but it would be wrong to think of this as a legal test to be met in deciding whether there has been a breach of <i>FCA rules</i> . Rather, our intention has been to acknowledge that firms may comply with the <i>Principles</i> in different ways; and to indicate that the <i>FCA</i> will not take enforcement action unless it was possible to determine at the time that the relevant conduct fell short of our requirements.
2.8.4	To determine whether there has been a failure to comply with a <i>Principle</i> , the standards we will apply are those required by the <i>Principles</i> at the time the conduct took place. The <i>FCA</i> will not apply later, higher standards to behaviour when deciding whether to take enforcement action for a breach of the <i>Principles</i> . Importantly, however, where conduct falls below expected standards the <i>FCA</i> considers that it is legitimate for consequences to follow, even if the conduct is widespread within the industry or the <i>Principle</i> is expressed in general terms.

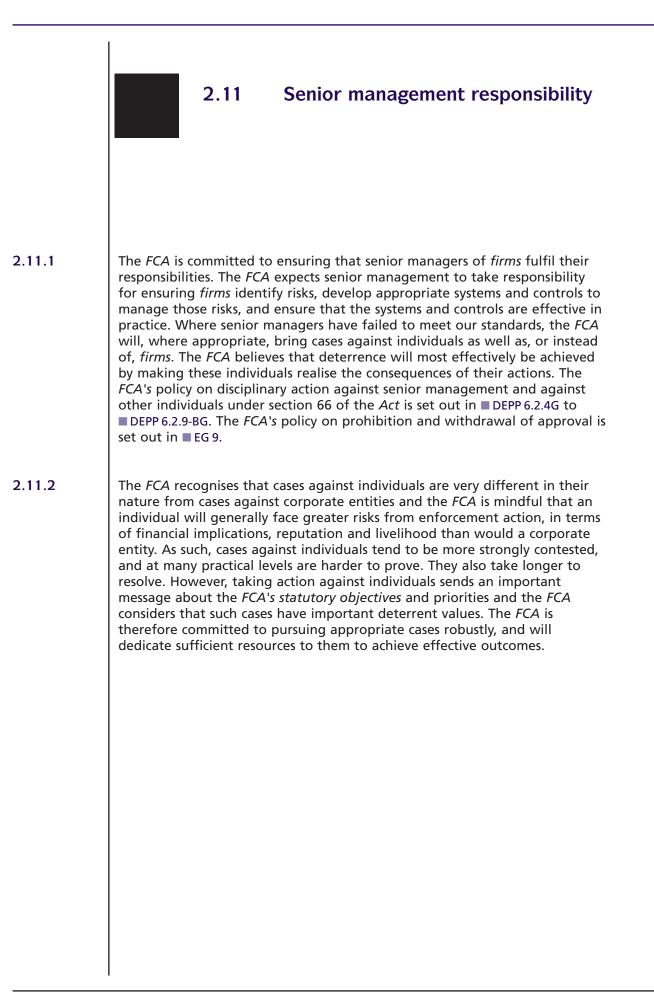
	2.9 FCA guidance and supporting materials
2.9.1	The FCA uses guidance and other materials to supplement the Principles where it considers this would help <i>firms</i> to decide what action they need to take to meet the necessary standard.
2.9.2	<i>Guidance</i> is not binding on those to whom the <i>FCA's rules</i> apply. Nor are the variety of materials (such as case studies showing good or bad practice, <i>FCA</i> speeches, and generic letters written by the <i>FCA</i> to Chief Executives in particular sectors) published to support the <i>rules</i> and <i>guidance</i> 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 <i>rules</i> .
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 <i>FCA</i> 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 <i>firm's</i> defence that the <i>FCA</i> was judging the <i>firm</i> 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 <i>guidance</i> 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 <i>firm</i> 's defence. It is for the decision maker (see paragraphs \blacksquare 2.15.1 to \blacksquare 2.15.3) - whether the <i>RDC</i> , <i>Tribunal</i> 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.

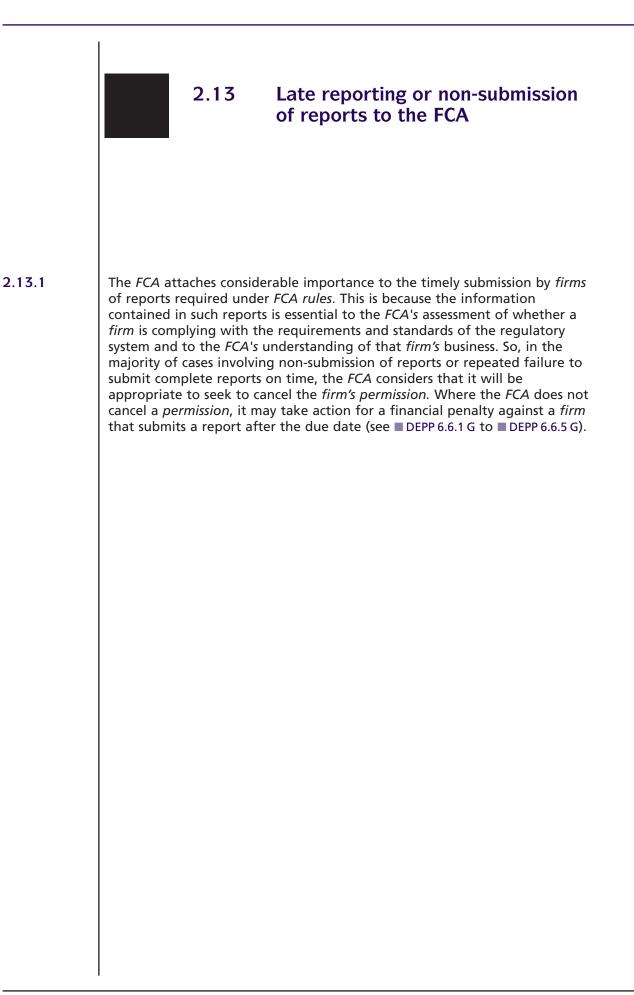
EG 2 : The FCA's approach to enforcement

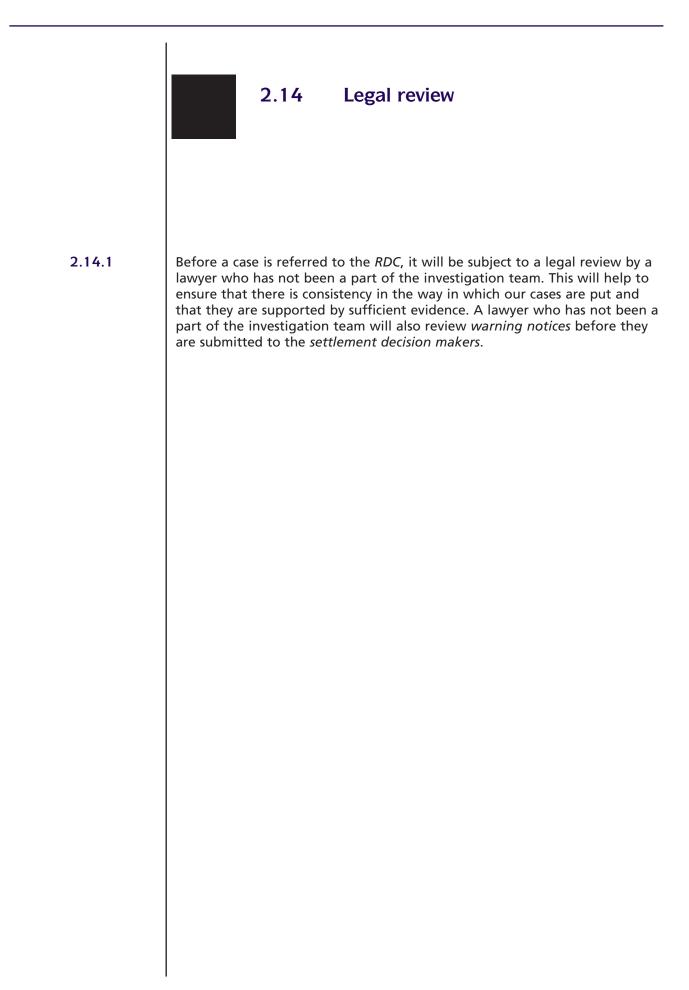
	2.10 Industry guidance
2.10.1	The FCA recognises that Industry Guidance has an important part to play in a principles- based regulatory environment, and that firms may choose to follow such guidance as a means of seeking to meet the FCA's requirements. This will be true especially where Industry Guidance has been 'confirmed' by the FCA. \blacksquare DEPP 6.2.1G(4) confirms that, as with FCA guidance and supporting materials, the FCA will not take action against a firm for behaviour that we consider is in line with FCA-confirmed Industry Guidance that was current when the conduct took place.
2.10.2	Equally, however, FCA-confirmed Industry Guidance is not mandatory. The FCA does not regard adherence to Industry Guidance as the only means of complying with FCA rules and Principles. Rather, it provides examples of behaviour which meets the FCA's requirements; and non-compliance with confirmed Industry Guidance creates no presumption of a breach of those requirements.
2.10.3	Industry Guidance may be relevant to an enforcement case in ways similar to those described at paragraph 2.9.4. But the <i>FCA</i> is aware of the concern that <i>firms</i> must have scope to exercise their own judgement about what <i>FCA rules</i> require, and that Industry Guidance should not become a new prescriptive regime in place of detailed <i>FCA rules</i> . This, and the specific status of <i>FCA</i> -confirmed Industry Guidance, will be taken into account when the <i>FCA</i> makes judgements about the relevance of Industry Guidance in enforcement cases.

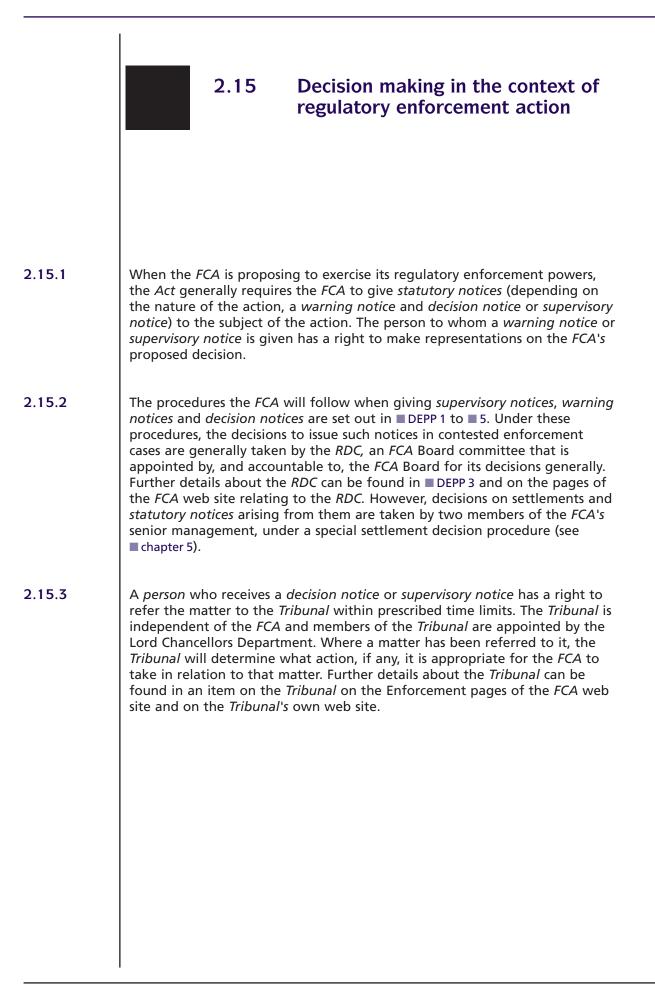




2.12 **Co-operation** 2.12.1 An important consideration before an enforcement investigation and/or enforcement action is taken forward is the nature of a firm's overall relationship with the FCA and whether, against that background, the use of enforcement tools is likely to further the FCA's aims and 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.



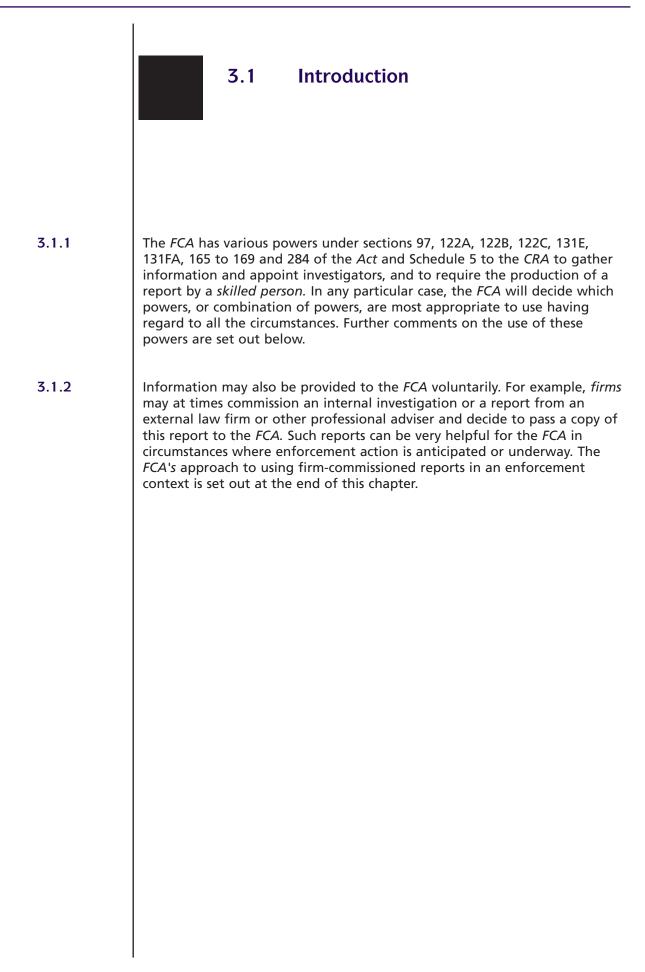




Enforcement Guide

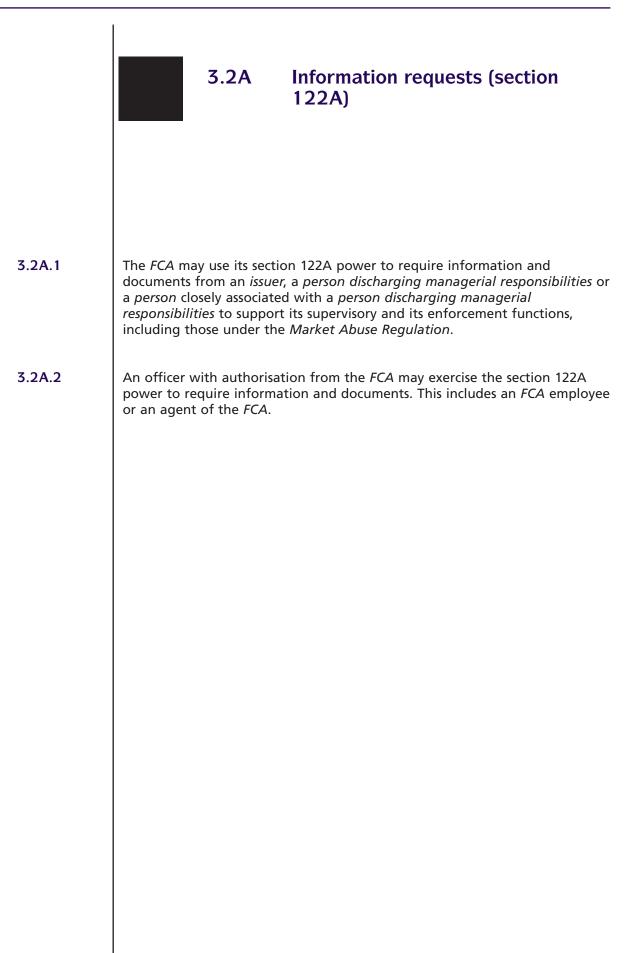
Chapter 3

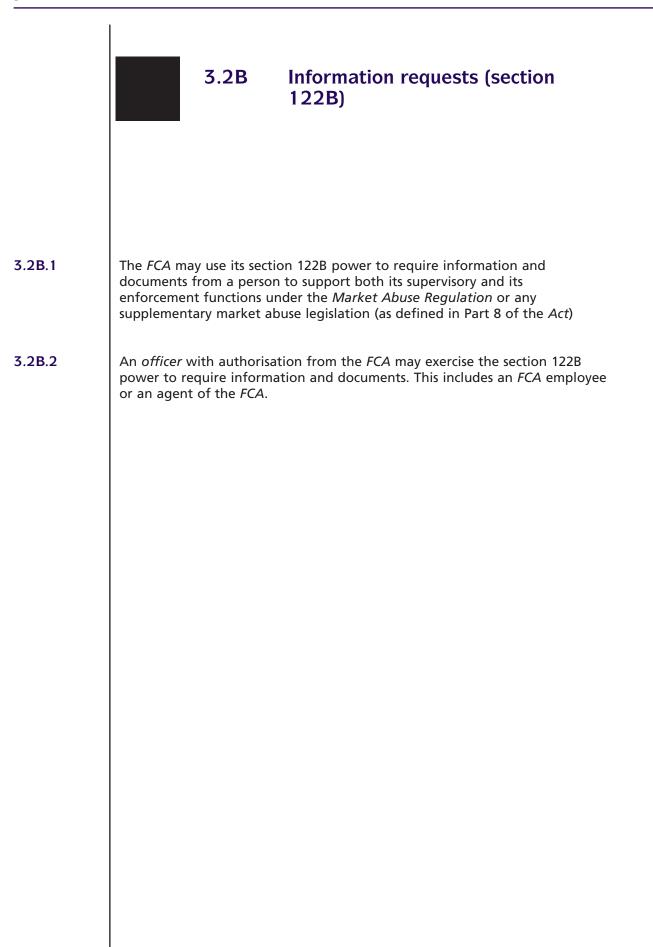
Use of information gathering and investigation powers



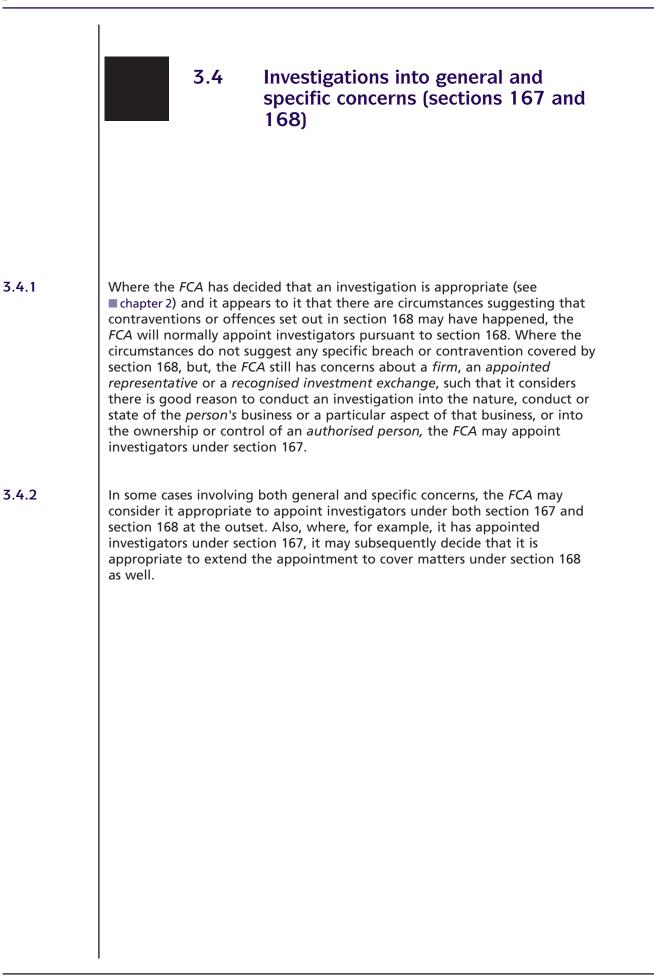
EG 3 : Use of information gathering and investigation powers

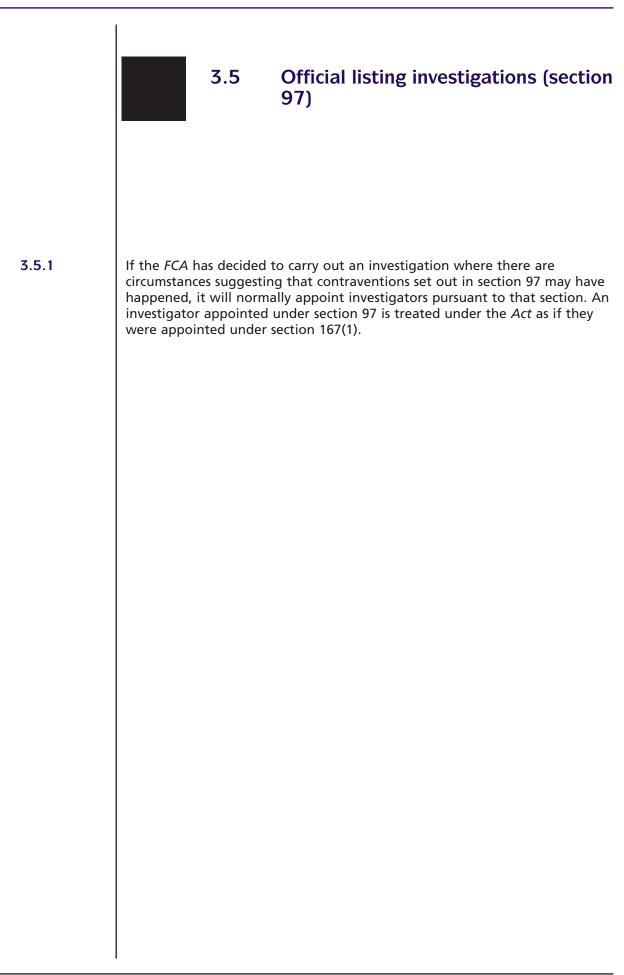
	3.2 Information requests (section 165)
3.2.1	The <i>FCA</i> may use its section 165 power to require information and documents from <i>firms</i> to support both its supervisory and its enforcement functions.
3.2.2	An officer with authorisation from the FCA may exercise the section 165 power to require information and documents from <i>firms</i> . This includes an FCA employee or an agent of the FCA.

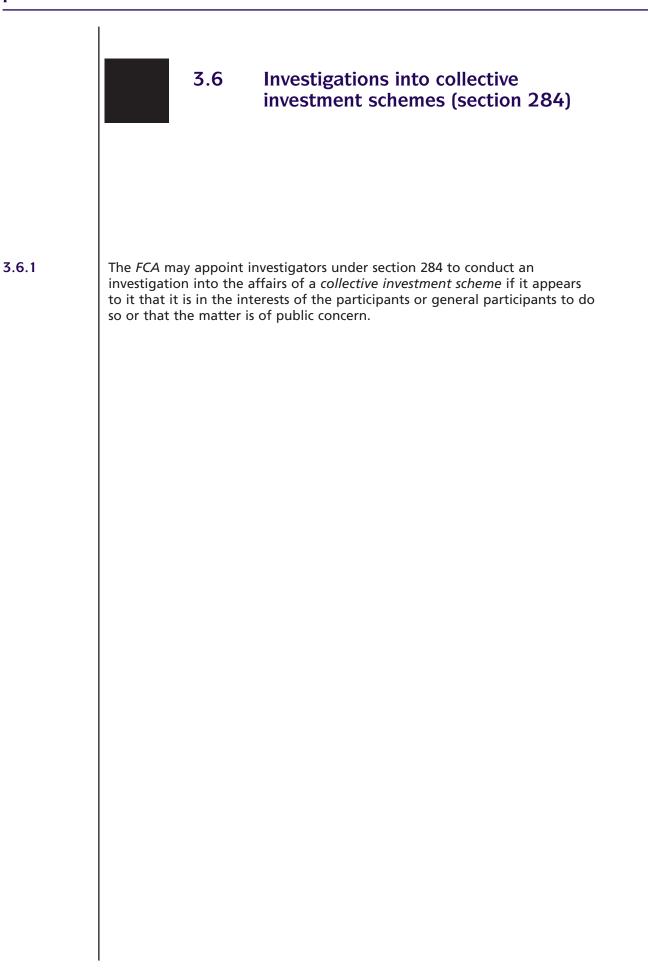


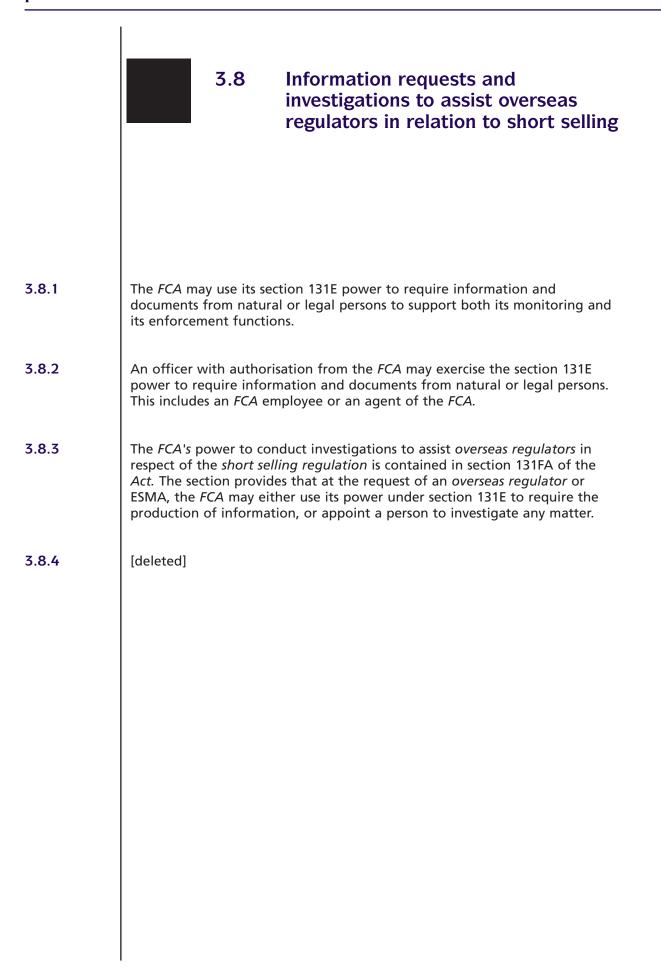


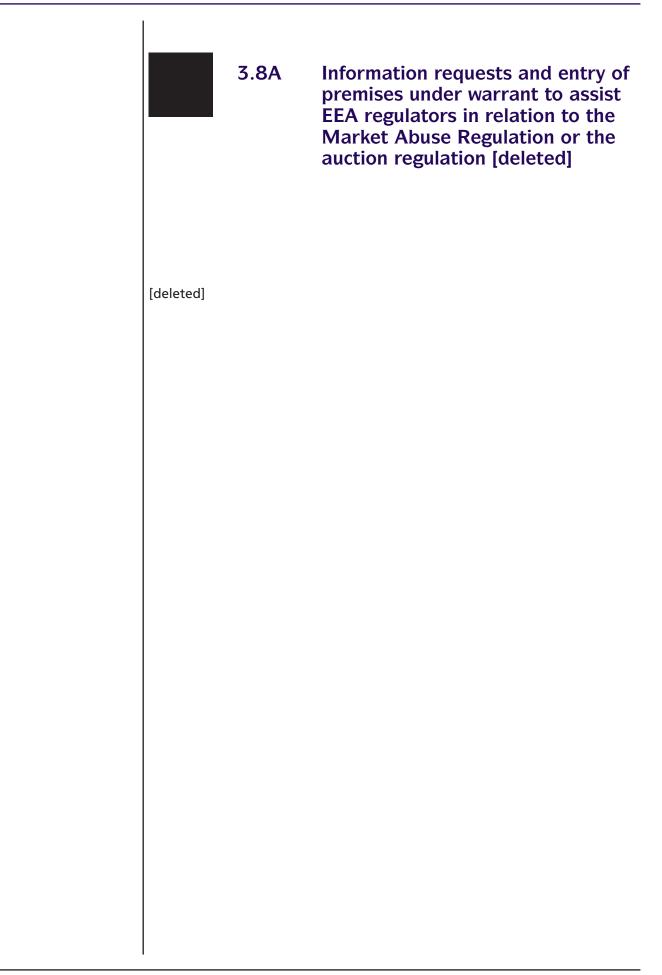
	3.3 Reports by skilled persons (section 166)
3.3.1	Under section 166 of the Act, the FCA has a power to require a firm and certain other persons to provide a report by a skilled person, or itself to appoint a skilled person to produce such a report. The FCA may use its section 166 power to require reports by skilled persons to support both its supervision and enforcement functions.
3.3.2	 The factors the FCA will consider when deciding whether to use the section 166 power include: (1) If the FCA's objectives for making further enquiries are predominantly for the purposes of fact finding i.e. gathering historic information or evidence for determining whether enforcement action may be appropriate, the FCA's information gathering and investigation powers under sections 167 and 168 of the Act are likely to be more effective and more appropriate than the power under section 166. (2) If the FCA's objectives include obtaining expert analysis or recommendations (or both) for, say, the purposes of seeking remedial action, it may be appropriate to use the power under section 166 instead of, or in conjunction with, the FCA's other available powers.
3.3.3	Where it exercises this power, the FCA will make clear both to the <i>firm</i> and to the <i>skilled person</i> the nature of the concerns that led the FCA to decide to appoint a <i>skilled person</i> and the possible uses of the results of the report. But a report the FCA commissions for purely diagnostic purposes could identify issues which could lead to the appointment of an investigator and/or enforcement action.
3.3.4	Under section 166A of the Act, the FCA also has a power to require a firm to appoint a skilled person to collect or update information, or itself to appoint a skilled person to do so, where it considers that the firm has failed to provide information required by the FCA or update information previously provided to the FCA.
3.3.5	■ Chapter 5 of the FCA's Supervision manual (Reports by skilled persons) contains <i>rules</i> and guidance that will apply whenever the FCA uses the section 166 and 166A powers.

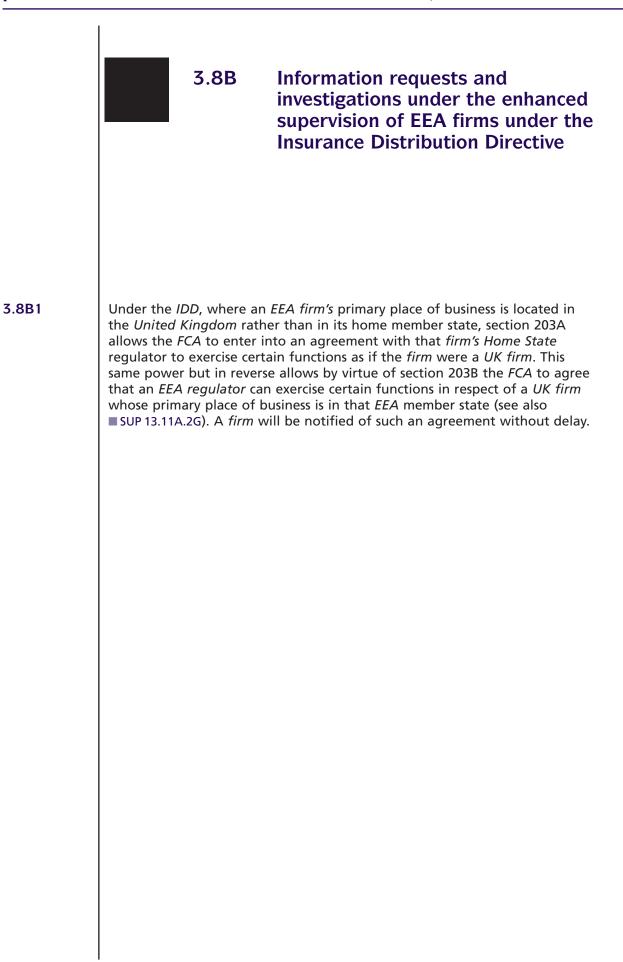


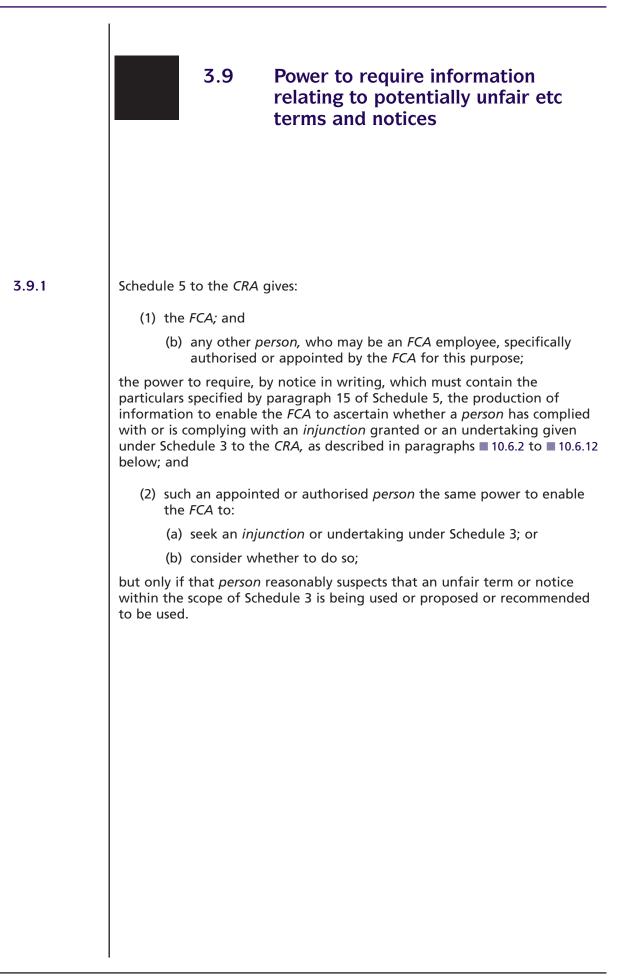




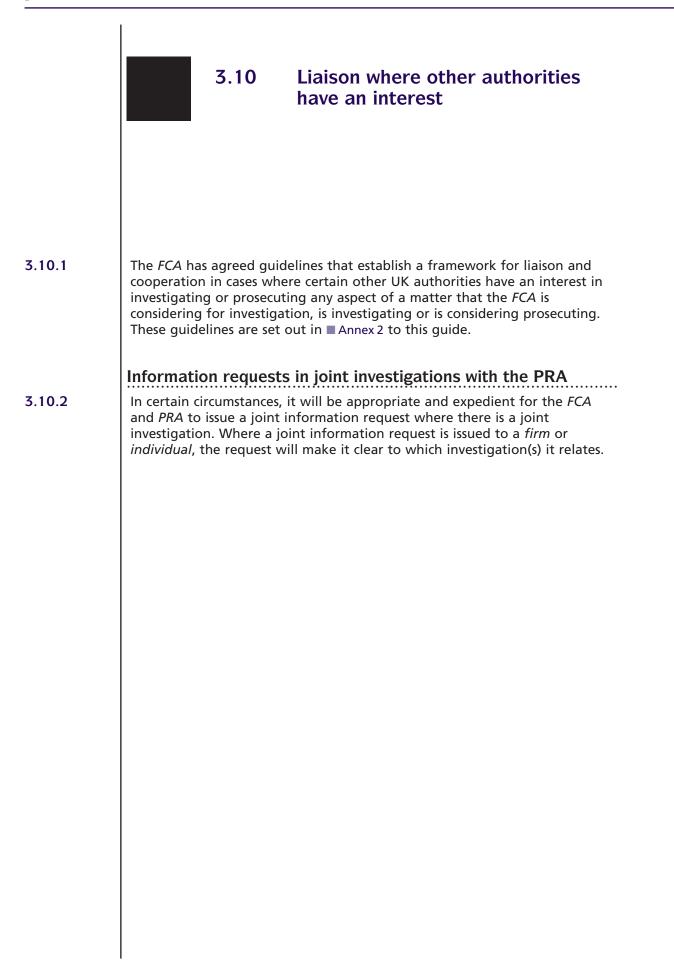








EG 3 : Use of information gathering and investigation powers



	3.11 FCA approach to firms conducting their own investigations in anticipation of enforcement action
	Firm-commissioned reports: the desirability of early discussion and agreement where enforcement is anticipated
3.11.1	The FCA recognises that there are good reasons for <i>firms</i> wishing to carry out their own investigations. This might be for, for example, disciplinary purposes, general good management, or operational and risk control. The <i>firm</i> needs to know the extent of any problem, and it may want advice as to what immediate or short-term measures it needs to take to mitigate or correct any problems identified. The FCA encourages this proactive approach and does not wish to interfere with a <i>firm's</i> legitimate procedures and controls.
3.11.2	A firm's report – produced internally or by an external third party – can clearly assist the firm, but may also be useful to the FCA where there is an issue of regulatory concern. Sharing the outcome of an investigation can potentially save time and resources for both parties, particularly where there is a possibility of the FCA taking enforcement action in relation to a firm's perceived misconduct or failing. This does not mean that firms are under any obligation to share the content of legally privileged reports they are given or advice they receive. It is for the firm to decide whether to provide such material to the FCA. But a firm's willingness to volunteer the results of its own investigation, whether protected by legal privilege or otherwise, is welcomed by the FCA and is something the FCA may take into account when deciding what action to take, if any. (The FCA's approach to deciding whether to take action is described in more detail in DEPP 6.2 and paragraph 2.1.4 of this Guide.)
3.11.3	Work done or commissioned by the <i>firm</i> does not fetter the <i>FCA</i> 's ability to use its statutory powers, for example to require a skilled person's report under section 166 of the <i>Act</i> or to carry out a formal enforcement investigation; nor can a report commissioned by the <i>firm</i> be a substitute for formal regulatory action where this is needed or appropriate. But even if formal action is needed, it may be that a report could be used to help the <i>FCA</i> decide on the appropriate action to take and may narrow the issues or obviate the need for certain work.
3.11.4	The FCA invites <i>firms</i> to consider, in particular, whether to discuss the commissioning and scope of a report with FCA staff where:

3.11.6

- (1) firms have informed the FCA of an issue of potential regulatory concern, as required by SUP 15; or
- (2) the FCA has indicated that an issue or concern has or may result in a referral to Enforcement.
- **3.11.5** The FCA's approach in commenting on the proposed scope and purpose of the report will vary according to the circumstances in which the report is commissioned; it does not follow that the FCA will want to be involved in discussing the scope of a report in every situation. But if the *firm* anticipates that it will proactively disclose a report to the FCA in the context of an ongoing or prospective enforcement investigation, then the potential use and benefit to be derived from the report will be greater if the FCA has had the chance to comment on its proposed scope and purpose.

Some themes or issues are common to any discussion about the potential use or value of a report to the *FCA*. These include:

- (1) to what extent the FCA will be able to rely on the report in any subsequent enforcement proceedings;
- (2) to what extent the *FCA* will have access to the underlying evidence or information that was relied upon in producing the report;
- (3) where legal privilege or other professional confidentiality is claimed over any material gathered or generated in the investigation process, to what extent such material may nevertheless be disclosed to the *FCA*, on what basis and for what purposes the *FCA* may use that material;
- (4) what approach will be adopted to establishing the relevant facts and how evidence will be recorded and retained;
- (5) whether any conflicts of interest have been identified and whether there are proposals to manage them appropriately;
- (6) whether the report will describe the role and responsibilities of identified individuals;
- (7) whether the investigation will be limited to ascertaining facts or will also include advice or opinions about breaches of FCA rules or requirements;
- (8) how the *firm* intends to inform the *FCA* of progress and communicate the results of the investigation; and
- (9) timing.
- **3.11.7** In certain circumstances the *FCA* may prefer that a *firm* does not commission its own investigation (whether an internal audit report or a report by external advisers) because action by the *firm* could itself be damaging to an *FCA* investigation. This is true in particular of criminal investigations, where alerting the suspects could have adverse consequences. For example, where the *FCA* suspects that individuals are abusing positions of trust within financial institutions and that an insider dealing ring is operating, it might

	notify the relevant <i>firm</i> but would not want the <i>firm</i> to embark on its own investigation: to do so would alert those under investigation and prejudice on-going monitoring of the suspects and other action. Firms are therefore encouraged to be alive to the possibility that their own investigations could prejudice or hinder a subsequent <i>FCA</i> investigation, and, if in doubt, to discuss this with the <i>FCA</i> . The <i>FCA</i> recognises that <i>firms</i> may be under time and other pressures to establish the relevant facts and implications of possible misconduct, and will have regard to this in discussions with the <i>firm</i> .
3.11.8	Nothing in \blacksquare paragraphs 3.11.1 to \blacksquare 3.11.7 extends or increases the scope of the existing duty to report facts or issues to the FCA in accordance with \blacksquare SUP 15 or Principle 11.
3.11.9	Firm-commissioned reports: material gathered Where a <i>firm</i> does conduct or commission an investigation, it is very helpful if the <i>firm</i> maintains a proper record of the enquiries made and interviews conducted. This will inform the <i>FCA</i> 's judgment about whether any further work is needed and, if so, where the <i>FCA</i> 's efforts should be focused.
3.11.10	How the results of an investigation are presented to the FCA may differ from case to case; the FCA acknowledges that different circumstances may call for different approaches. In this sense, one size does not fit all. The FCA will take a pragmatic and flexible approach when deciding how to receive the results of an investigation. However, if the FCA is to rely on a report as the basis for taking action, or not taking action, then it is important that the <i>firm</i> should be prepared to give the FCA underlying material on which the report is based as well as the report itself. This includes, for example, notes of interviews conducted by the lawyers, accountants or other professional experts carrying out the investigation.
3.11.11	The FCA is not able to require the production of "protected items", as defined in the Act, but it is not uncommon for there to be disagreement with <i>firms</i> about the scope of this protection. Arguments about whether certain documents attract privilege tend to be time- consuming and delay the progress of an investigation. If a <i>firm</i> decides to give a report to the FCA, then the FCA considers that the greatest mutual benefit is most likely to flow from disclosure of the report itself and any supporting papers. A reluctance to disclose these source materials will, in the FCA's opinion, devalue the usefulness of the report and may require the FCA to undertake additional enquiries.
3.11.12	Firm-commissioned reports: FCA use of reports and the protection of privileged and confidential material For reasons that the <i>FCA</i> can understand, <i>firms</i> may seek to restrict the use to which a report can be put, or assert that any legal privilege is waived only on a limited basis and that the <i>firm</i> retains its right to assert legal privilege as the basis for non-disclosure in civil proceedings against a private litigant.
3.11.13	The FCA understands that the concept of a limited waiver of legal privilege is not one which is recognised in all jurisdictions; the FCA considers that English law does permit such "limited waiver" and that legal privilege could still be

asserted against third parties notwithstanding disclosure of a report to the *FCA*. However, the *FCA* cannot accept any condition or stipulation which would purport to restrict its ability to use the information in the exercise of the *FCA*'s statutory functions. In this sense, the *FCA* cannot 'close its eyes' to information received or accept that information should, say, be used only for the purposes of supervision but not for enforcement.

3.11.14 This does not mean that information provided to the *FCA* is unprotected. The *FCA* is subject to strict statutory restrictions on the disclosure of confidential information (as defined in section 348 of the *Act*), breach of which is a criminal offence (under section 352 of the *Act*). Reports and underlying materials provided voluntarily to the *FCA* by a firm, whether covered by legal privilege or not, are confidential for these purposes and benefit from the statutory protections.

3.11.15

Even in circumstances where disclosure of information would be permitted under the "gateways" set out in the Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations, the FCA will consider carefully whether it would be appropriate to disclose a report provided voluntarily by a *firm*. The FCA appreciates that *firms* feel strongly about the importance of maintaining confidentiality, and that *firms* are more likely to volunteer information to the regulator when they know that the regulator is mindful of this sensitivity and the impact of potential disclosure. Accordingly, if the FCA contemplates disclosing a report voluntarily provided by a *firm*, the *firm* will normally be notified and given the opportunity to make representations about the proposed disclosure. The exceptions to this include circumstances where disclosure is urgently needed, where notification might prejudice an investigation or defeat the purpose for which the information had been requested, or where notification would be inconsistent with the *FCA*'s international obligations.

Enforcement Guide

Chapter 4

Conduct of investigations

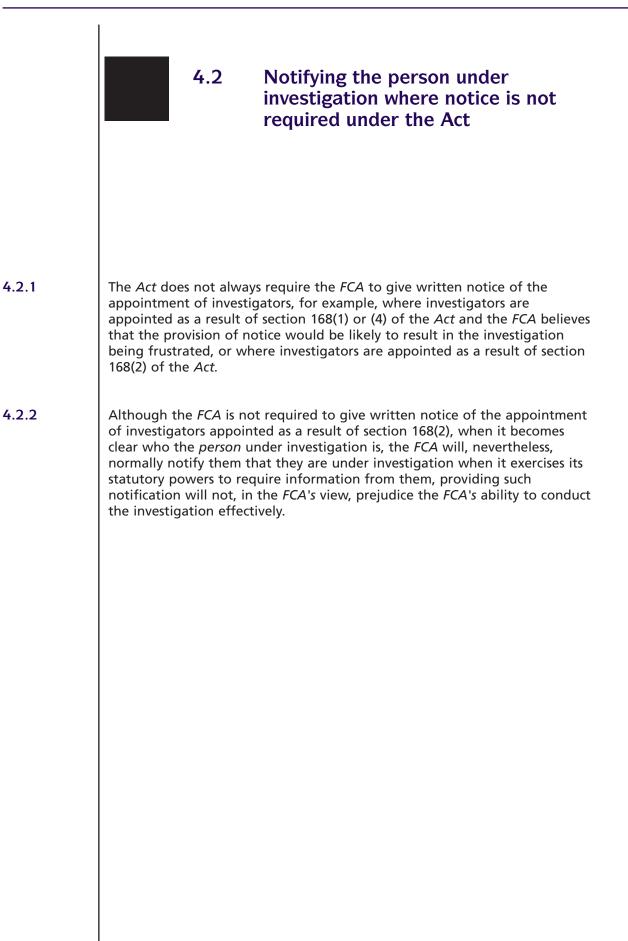
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4.1

Notifying the person under investigation where notice is a requirement under section 170

4.1.1

The FCA will always give written notice of the appointment of investigators to the *person* under investigation if it is required to give such notice under section 170 of the Act. In such cases, if there is a subsequent change in the scope or conduct of the investigation and, in the FCA's opinion, the *person* under investigation is likely to be significantly prejudiced if not made aware of this, that *person* will be given written notice of the change. It is impossible to give a definitive list of the circumstances in which a *person* is likely to be significantly prejudiced by not being made aware of a change in the scope or conduct of an investigation. However, this may include situations where there may be unnecessary costs from dealing with an aspect of an investigation which the FCA no longer intends to pursue.

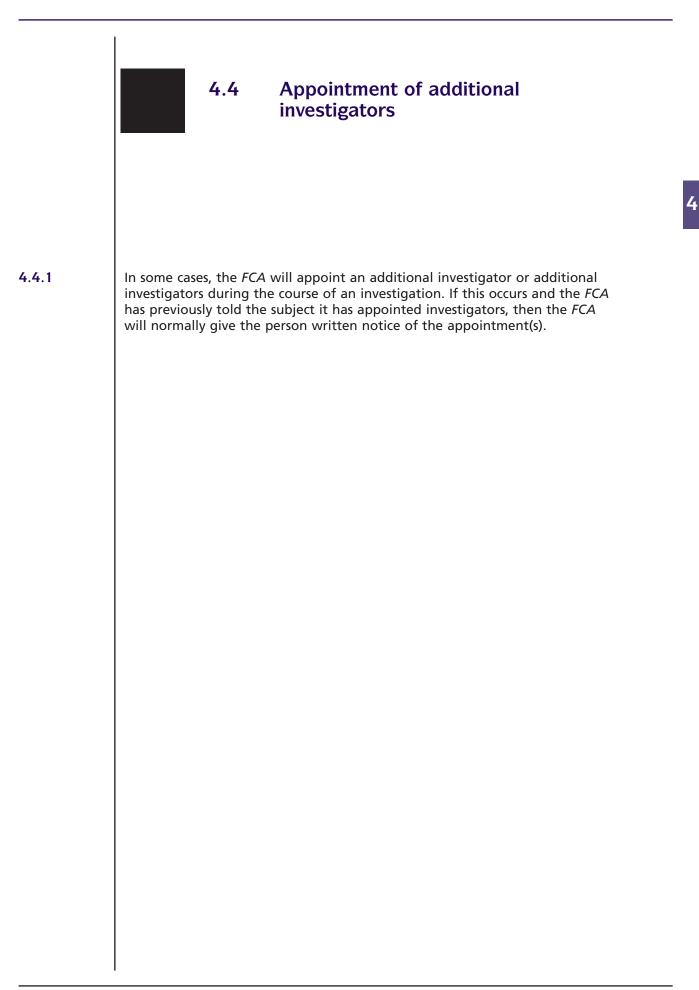


4.3

Notification where a particular person is not yet under investigation

4.3.1

In investigations into possible *insider dealing, market abuse, misleading statements and practices offences*, breaches of the *general prohibition*, the restriction on *financial promotion*, or the prohibition on promoting *collective investment schemes*, the investigator may not know the identity of the perpetrator or may be looking into market circumstances at the outset of the investigation rather than investigating a particular *person*. In those circumstances, the *FCA* will give an indication of the nature and subject matter of its investigation. As soon as a *person* becomes the focus of the *FCA*'s enquiries, the *FCA* will consider whether it is appropriate to notify that *person* that they are under investigation. The *FCA* will usually notify them when it exercises its statutory powers to require information from them unless doing so would prejudice the *FCA*'s ability to conduct the investigation effectively.

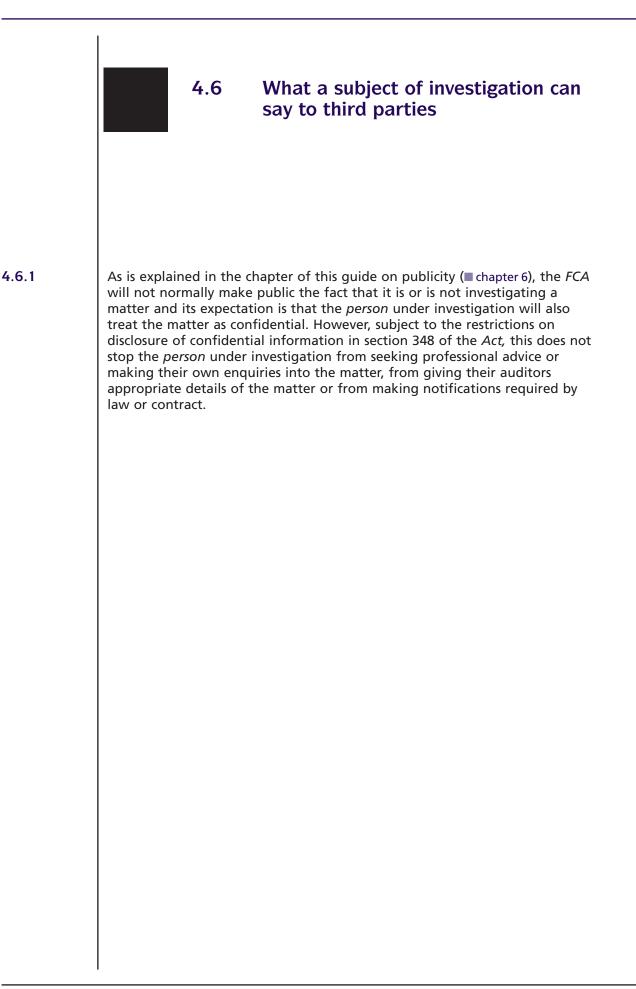


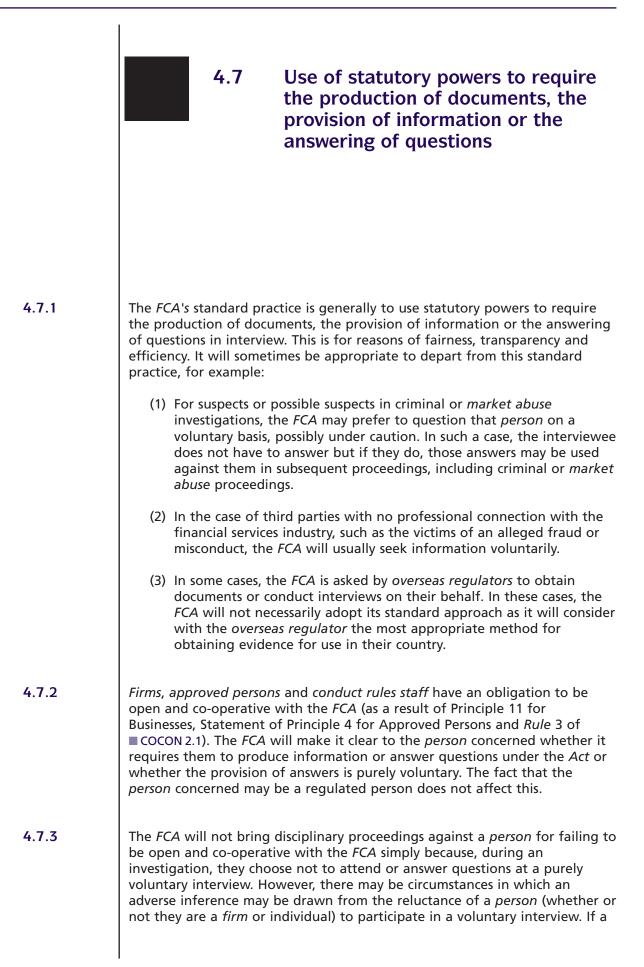


Notice of termination of investigations

4.5.1

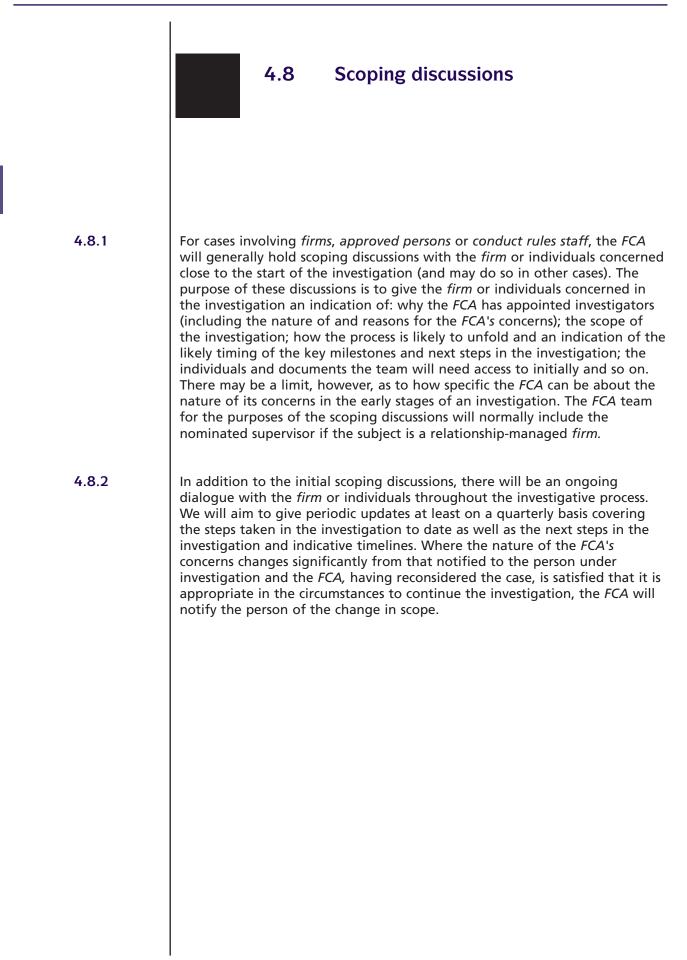
Except where the FCA has issued a *warning notice*, and the FCA has subsequently discontinued the proceedings, the Act does not require the FCA to provide notification of the termination of an investigation or subsequent enforcement action. However, where the FCA has given a *person* written notice that it has appointed an investigator and later decides to discontinue the investigation without any present intention to take further action, it will confirm this to the *person* concerned as soon as it considers it is appropriate to do so, bearing in mind the circumstances of the case.





person provides the *FCA* with misleading or untrue information, the *FCA* may consider taking action against them.

4.7.4 If a *person* does not comply with a requirement imposed by the exercise of statutory powers, they may be held to be in contempt of court. The *FCA* may also choose to bring proceedings for breach of Principle 11, Statement of Principle 4 or COCON 2.1.3R as this is a serious form of non-cooperation.



4.9 Involvement of FCA supervisors during the investigation phase

4.9.1

A clear division between the conduct of the investigation the ongoing supervision of the *firm* means that clarity as to who is carrying out what work in important, so that the focus on the various needs of the investigation and supervisory function are not lost. It is also important that the investigation can benefit from the knowledge of the *firm* or individuals that the supervisors will have built up, or from their general understanding of the *firm*'s business or sector. In most (if not all) cases, assistance from a referring area in informing the investigation team of certain matters (e.g. the firm's business model and market practice issues) will be helpful. Following a referral, the *FCA* takes the following general considerations into account in relation to the potential role of a supervisor in an investigation.

- (1) While it is clearly essential for the day-to-day supervisory relationship to continue during the course of any enforcement action, this need not, of itself, preclude a *firm's* supervisor from assisting in an investigation.
- (2) Such assistance will include: making the case team aware of the *firm*'s business, history and compliance track record; the current supervisory approach to the area concerned; current issues with the *firm*; and acting as a sounding board on questions that emerge from the investigation about industry practices and standards and any market practice issues. Depending on the issues that arise, it may be appropriate for a supervisor to attend a progress meeting with the *firm*.
- (3) Equally, there may be circumstances where someone in the FCA other than the *firm's* supervisor can more effectively and efficiently provide information on the current supervisory approach to the area under investigation or current market standards. In this case it makes good sense for the FCA to draw on that other source of expertise.
- (4) In the event that a *firm*'s supervisor becomes part of the investigation team, the *FCA* will notify the firm of this in the normal way.
- (5) Where a *firm's* supervisor does not become part of the investigation team, the investigation will keep the *firm's* supervisor (or referring area) updated on the progress of the investigation.

4.10

The timeframe for responding to information and document requirements

4.10.1

As delays in the provision of information and/or documents can have a significant impact on the efficient progression of an investigation, the FCA expects *persons* to respond to information and document requests in a timely manner to appropriate deadlines. When an investigation is complex (and the timetable allows), the FCA may decide to issue an information or document requirement in draft, allowing a specified period (of usually no more than three working days) for the *person* to comment on the practicality of providing the information or documentation by the proposed deadline. After considering any comments, the FCA will then confirm or amend the request. The FCA will not, however, send such a draft request where the request is straightforward and the FCA considers that it is reasonable to expect the information or documents to be made available within the FCA's specified timeframe.

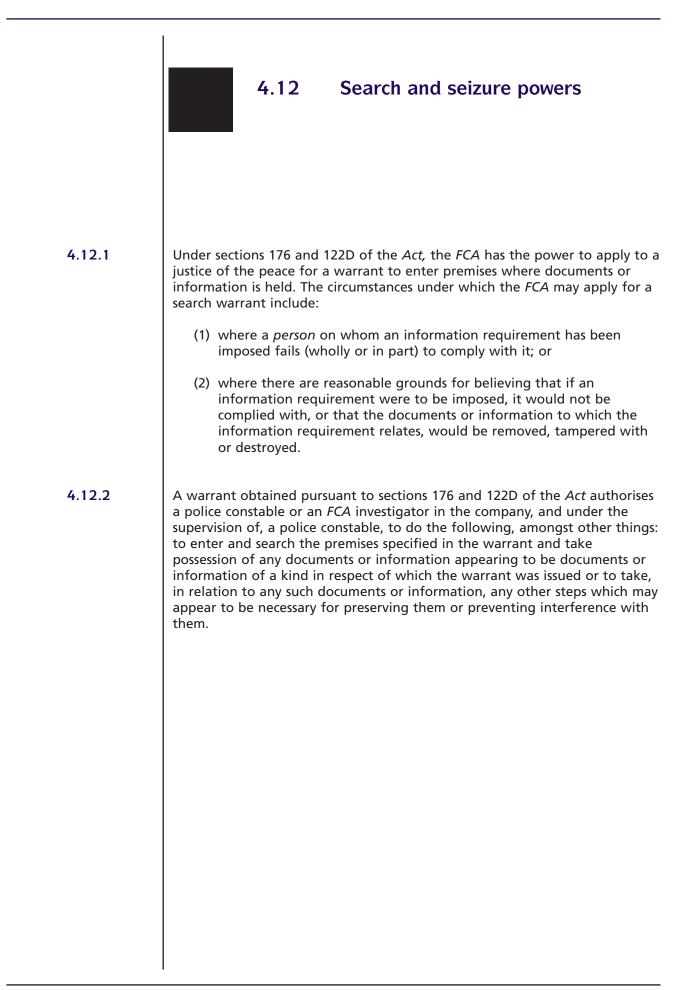
4.10.2

Once it has formally issued a requirement (whether or not this has been preceded by a draft), the *FCA* will not usually agree to an extension of time for complying with the requirement unless compelling reasons are provided to support an extension request.

	4.11 Approach to interviews and interview procedures
4.11.1	Paragraph 4.7.1 explains the FCA's approach to the use of its statutory powers to require, amongst other matters, individuals to be interviewed. The type of interview is a decision for the FCA.
4.11.2	A <i>person</i> required to attend an interview by the use of statutory powers has no entitlement to insist that the interview takes place voluntarily. If someone does not attend an interview required under the <i>Act</i> , then he can be dealt with by the court as if he were in contempt (where the penalties can be a fine, imprisonment or both).
4.11.3	Similarly, a <i>person</i> asked to attend an interview on a purely voluntary basis is not entitled to insist that he be served with a requirement. A <i>person</i> is not obliged to attend a voluntary interview or to answer questions put to them at that time. But they should be aware that in an appropriate case, an adverse inference may be drawn from the failure to attend a voluntary interview, or a refusal to answer any questions at such an interview.
	Interviews generally
4.11.4	Where the FCA interviews a person, it will allow the person to be accompanied by a legal adviser, if they wish. The FCA will also, where appropriate, explain what use can be made of the answers in proceedings against them. Where the interview is tape-recorded, the person will be given a copy of the audio tape of the interview and, where a transcript is made, a copy of the transcript.
4.11.5	Interviews under caution Individuals suspected of a criminal offence may be interviewed under caution. These interviews will be subject to all the safeguards of the relevant Police and Criminal Evidence Act Codes and are voluntary on the part of the suspect. The <i>FCA</i> will warn the suspect at the start of the interview of their right to remain silent (and the consequences of remaining silent) and will inform the suspect that they are entitled to have a legal adviser present. The <i>FCA</i> will also give a cautionary warning in similar terms to interviewees who are the subject of <i>market abuse</i> investigations.

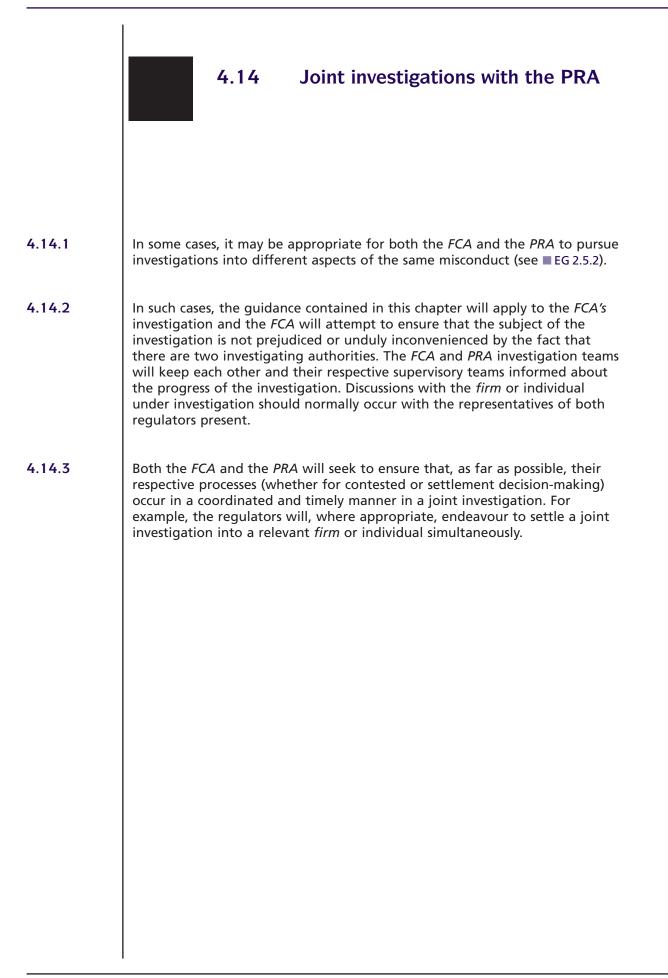
	Subsequent interviews
4.11.6	If a suspect has been interviewed by the FCA using statutory powers, before they are re-interviewed on a voluntary basis (under caution or otherwise), the FCA will explain the difference between the two types of interview. The FCA will also tell the individual about the limited use that can be made of their previous answers in criminal proceedings or in proceedings in which the FCA seeks a penalty for market abuse under Part VIII of the Act.
4.11.7	Conversely, where a suspect has been interviewed under caution, and the <i>FCA</i> later wishes to conduct a compulsory interview with them, the <i>FCA</i> will explain the difference between the two types of interview, and will notify the individual of the limited use that can be made of his answers in the compulsory interview.
	Interviews under arrest
4.11.8	On occasion, where the police have a power of arrest, the FCA may make a request to the police for assistance to arrest the individual for questioning by the FCA (FCA investigators do not have powers of arrest), for example:
	(1) where it appears likely that inviting an individual to attend on a voluntary basis would prejudice an ongoing investigation or risk the destruction of evidence or the dissipation of assets; or
	(2) where a suspect declines an invitation to attend a voluntary interview.
	The procedure the FCA may follow on such occasions in seeking assistance from the police is set out in a Memorandum of Understanding with the Association of Chief Police Officers of England, Wales and Northern Ireland dated 3 August 2005.
	Interviews in response to a request from an overseas regulator or EEA regulator
4.11.9	Where the FCA has appointed an investigator in response to a request from an overseas regulator, it may, under sections 169(7) or 131FA of the Act, direct the investigator to allow a representative of that regulator to attend, and take part in, any interview conducted for the purposes of the investigation. However, the FCA may only use this power if it is satisfied that any information obtained by an overseas regulator as a result of the interview will be subject to safeguards equivalent to those in Part XXIII of the Act (sections 169(8) and 131FA).
4.11.10	The factors that the <i>FCA</i> may take into account when deciding whether to make a direction under section 169(7) include the following:
	(1) the complexity of the case;
	(2) the nature and sensitivity of the information sought;
	(3) the FCA's own interest in the case;

- (4) costs, and the availability of resources; and
- (5) the availability of similar assistance to UK authorities in similar circumstances.
- **4.11.11** Under sections 169(9) and 131FA respectively, the *FCA* is required to prepare a statement of policy with the approval of the Treasury on the conduct of interviews attended by representatives of *overseas regulators*. The statement is set out in DEPP 7.



	4.13 Preliminary findings letters and preliminary investigation reports
4.13.1	In cases where the FCA proposes to submit an investigation report to the RDC with a recommendation for regulatory action, the FCA's usual practice is to send a preliminary findings letter to the subject of an investigation before the matter is referred to the RDC. The letter will normally annex the investigators' preliminary investigation report. Comment will be invited on the contents of the preliminary findings letter and the preliminary investigation report.
4.13.2	 The FCA recognises that preliminary findings letters serve a very useful purpose in focussing decision making on the contentious issues in the case. This in turn makes for better quality and more efficient decision making. However, there are exceptional circumstances in which the FCA may decide it is not appropriate to send out a preliminary findings letter. This includes: (1) where the subject consents to not receiving a preliminary findings letter; or (2) where it is not practicable to send a preliminary findings letter, for example where there is a need for urgent action in the interests of consumer protection, restoring market confidence or reducing <i>financial crime</i> or if the whereabouts of the subject are unknown; or (3) where the FCA believes that no useful purpose would be achieved in sending a preliminary findings letter, for example where it has otherwise already substantially disclosed its case to the subject and the subject has had an opportunity to respond to that case.
4.13.3	In cases where it is sent, the preliminary findings letter will set out the facts which the investigators consider relevant to the matters under investigation (normally, as indicated above, by means of an annexed preliminary investigation report). And it will invite the <i>person</i> concerned to confirm that those facts are complete and accurate, or to provide further comment. <i>FCA</i> staff will allow a reasonable period (normally 28 days) for a response to this letter, and will take into account any response received within the period stated in the letter. They are not obliged to take into account any response received outside that period. If a <i>firm</i> or individual requests an extension to the period for responding to the preliminary findings report, the <i>FCA</i> will take into account all relevant factors, including the legal and factual complexity of the case, and whether there are any factors outside the control of the <i>firm</i> or individual that would materially impact on their ability to respond within the period set out in the preliminary findings letter.

4.13.4	Where the FCA has sent a preliminary findings letter and it then decides not
	to take any further action, the FCA will communicate this decision promptly
	to the person concerned.



Enforcement Guide

Chapter 5

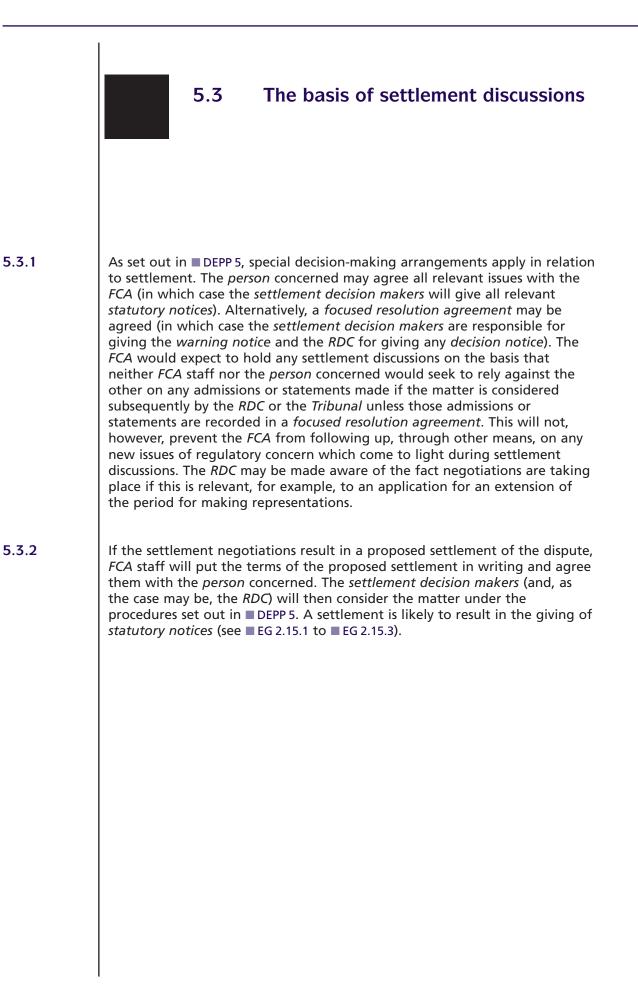
Settlement

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.

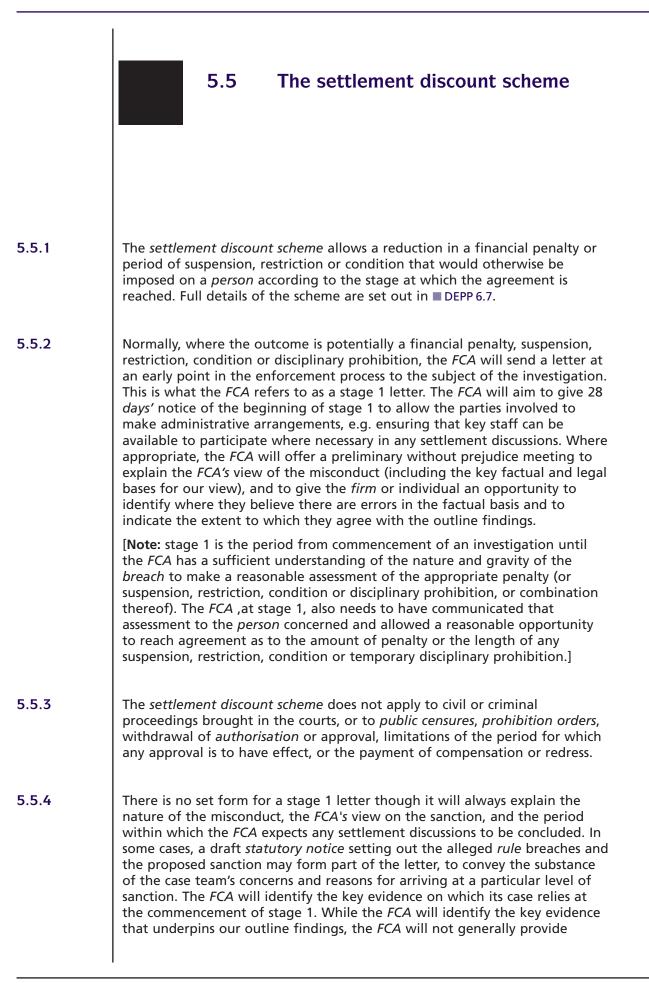
5.1.5

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.

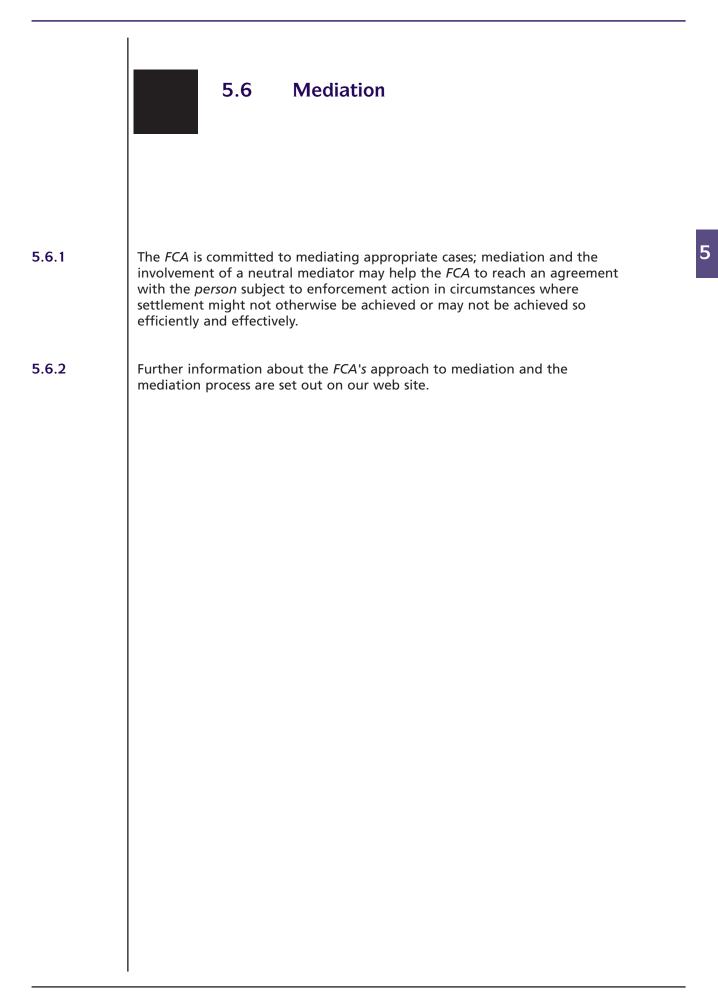
	5.2 When settlement decisions may take place
5.2.1	
5.2.1	Settlement discussions between <i>FCA</i> staff and the <i>person</i> concerned are possible at any stage of the enforcement process if both parties agree.
5.2.2	The FCA considers that in general, the earlier settlement discussions can take place the better this is likely to be from a public interest perspective. However, the FCA will only engage in such discussions once it has a sufficient understanding of the nature and gravity of the suspected misconduct or issue to make a reasonable assessment of the appropriate outcome. At the other end of the spectrum, the FCA expects that settlement discussions following a <i>decision notice</i> or second <i>supervisory notice</i> will be rare.
5.2.3	In the interests of efficiency and effectiveness, the FCA will set clear and challenging timetables for settlement discussions to ensure that they result in a prompt outcome and do not divert resources unnecessarily from progressing a case through the formal process. To this end, the FCA will aim to organise its resources so that the preparation for the formal process continues in parallel with any settlement discussions. The FCA will expect <i>firms</i> and others to give it all reasonable assistance in this regard.
5.2.4	The FCA will engage senior management in discussions (either heads of department or directors), liaising where appropriate with the <i>settlement decision makers</i> , attending a without prejudice meeting during discussions or arranging for the attendance of an appropriately senior FCA representative.



	5.4 Multiple parties and third party rights in enforcement action involving warning and decision notices
5.4.1	Enforcement cases often involve multiple parties, for example a <i>firm</i> and individuals in the <i>firm</i> . Enforcement action may be appropriate against just the <i>firm</i> , just the individuals or both. In some cases, it will not be possible to reach an acceptable settlement unless all parties are able to reach agreement.
5.4.2	Even where action is not taken against connected parties, these parties may have what the Act calls 'third party rights'. Broadly, if any of the reasons contained in a warning notice or decision notice identifies a person (the third party) other than the person to whom the notice is given, and in the opinion of the FCA is prejudicial to the third party, a copy of the notice must be given to the third party unless that person receives a separate warning notice or decision notice at the same time. The third party has the right to make representations and ultimately can refer the matter to the Tribunal. Any representations made by the third party in response to a warning notice or decision notice will be considered by the settlement decision makers, who will also decide whether to give the decision notice or final notice.
5.4.3	In practice, third party rights do not frequently cause undue difficulty for settlement, either because they do not arise at all or because the third party agrees not to exercise such rights.



	evidence where that evidence is already in the possession of the <i>firm</i> or individual.
5.5.5	The timing of the stage 1 letter will vary from case to case. Sufficient investigative work must have taken place for the FCA to be able to satisfy itself that the settlement is the right regulatory outcome. In many cases, the FCA can send out the stage 1 letter substantially before the person concerned is provided with the FCA's preliminary investigation report (see paragraphs \blacksquare 4.13.1 to \blacksquare 4.13.4). The latest point the FCA will send a stage 1 letter is when the person is provided with the preliminary investigation report.
5.5.6	The FCA considers that 28 days following a stage 1 letter will normally be the 'reasonable opportunity to reach agreement as to the amount of penalty' before the expiry of stage 1 contemplated by \blacksquare DEPP 6.7.3G. Extensions to this period will be granted in exceptional circumstances only, and factors that will be taken into account in considering an application will include the extent to which factors outside the <i>firm's</i> or individual's control will have a material impact on their ability to engage in settlement negotiations within the period set out in the stage 1 letter.
5.5.7	The procedure for the <i>settlement discount scheme</i> where the outcome is potentially a financial penalty, described in paragraphs s .5.1 to s .5.6, will also apply where the outcome is potentially a suspension, restriction or condition.



5.7

The relevance of settled cases to subsequent action

5.7.1

Decisions recorded in FCA final notices or supervisory notices will be taken into account in any subsequent case if the later case raises the same or similar issues to those considered by the FCA when it reached its earlier decision. Not to do so would expose the FCA to accusations of arbitrary and inconsistent decision-making. The need to look at earlier cases applies irrespective of whether the decisions were reached following settlement or consideration by the RDC or the Tribunal. This reflects the fact that a person's agreement to the action proposed by the FCA in the earlier case would not have relieved the FCA of the obligation to ensure that the final decision was the right regulatory outcome, both for the person concerned and more generally.

5.7.2

The FCA recognises the importance of consistency in its decision-making and that it must consider the approach previously taken to, say, the application of a particular *rule* or *Principle* in a given context. This applies equally to consideration by the *RDC* or by the *settlement decision makers* when they look at action taken by the *FCA* in earlier, similar, cases. This is not to say that the *FCA* cannot take a different view to that taken in the earlier case: the facts of two enforcement cases are very seldom identical, and it is also important that the *FCA* is able to respond to the demands of a changing and principles–based regulatory environment. But any decision to depart from the earlier approach will be made only after careful consideration of the reasons for doing so.

Enforcement Guide

Chapter 6

Publicity

	6.1 Publicity during FCA investigations
6.1.1	The FCA will not normally make public the fact that it is or is not investigating a particular matter, or any of the findings or conclusions of an investigation except as described in other sections of this chapter. The following paragraphs deal with the exceptional circumstances in which the FCA may make a public announcement that it is or is not investigating a particular matter.
6.1.2	 Where the matter in question has occurred in the context of a <i>takeover bid</i>, and the following circumstances apply, the <i>FCA</i> may make a public announcement that it is not investigating, and does not propose to investigate, the matter. Those circumstances are where the <i>FCA</i>: (1) has not appointed, and does not propose to appoint, investigators; and (2) considers (following discussion with the <i>Takeover Panel</i>) that such an announcement is appropriate in the interests of preventing or eliminating public uncertainty, speculation or rumour.
6.1.3	 Where it is investigating any matter, the FCA will, in exceptional circumstances, make a public announcement that it is doing so if it considers such an announcement is desirable to: maintain public confidence in the <i>financial system</i> or the market; or protect <i>consumers</i> or investors; or prevent widespread malpractice; or help the investigation itself, for example by bringing forward witnesses; or maintain the smooth operation of the market. In deciding whether to make an announcement, the <i>FCA</i> will consider the potential prejudice that it believes may be caused to any <i>persons</i> who are, or who are likely to be, a subject of the investigation.
6.1.4	The exceptional circumstances referred to above may arise where the matters under investigation have become the subject of public concern, speculation or rumour. In this case it may be desirable for the <i>FCA</i> to make public the fact of its investigation in order to allay concern, or contain the speculation

or rumour. Where the matter in question relates to a *takeover bid*, the *FCA* will discuss any announcement beforehand with the *Takeover Panel*. Any announcement will be subject to the restriction on disclosure of confidential information in section 348 of the *Act*.

6.1.5 [deleted]

6.1.6 The FCA will not normally publish details of the information found or conclusions reached during its investigations. In many cases, statutory restrictions on the disclosure of information obtained by the FCA in the course of exercising its functions are likely to prevent publication (see section 348 of the Act). In exceptional circumstances, and where it is not prevented from doing so, the FCA may publish details. Circumstances in which it may do so include those where the fact that the FCA is investigating has been made public, by the FCA or otherwise, and the FCA subsequently concludes that the concerns that prompted the investigation were unwarranted. This is particularly so if the *firm* under investigation wishes the FCA to clarify the matter.

6.2

Publicity during, or upon the conclusion of regulatory action

6.2.1

For supervisory notices (as defined in section 395(13)) which have taken effect, decision notices and final notices, section 391 of the Act requires the FCA to publish, in such manner as it considers appropriate, such information about the matter to which the notice relates as it considers appropriate. Section 391 prevents the FCA from publishing warning notices, but the FCA may publish such information about the matter to which a *warning notice* falling within section 391(1ZB) of the Act relates as it considers appropriate after consulting the *persons* to whom the notice is given or copied. However, section 391(6) provides that the FCA cannot publish information if publication of it would, in its opinion, be unfair to the *person* with respect to whom the action was taken (or was proposed to be taken), prejudicial to the interests of consumers, or detrimental to the stability of the UK financial system.

6.2.2

The FCA's approach to publishing information about warning notices is set out in paragraphs 6.2.3 to 6.2.11 below. This should be contrasted with the FCA's approach to the publication of *decision notices* and *final notices* as set out in paragraphs ■ 6.2.12 to ■ 6.2.15 below. In particular, the considerations that the FCA will take into account when deciding what information to publish about a warning notice, including whether publication would be unfair, recognise that the FCA has a discretion as opposed to a duty to publish and that the recipient of a warning notice has not yet had a formal opportunity to make representations about the action the FCA proposes to take.

Warning notice statements

6.2.3

The FCA may publish information about warning notices which fall within section 391(1ZB) of the Act. These are essentially disciplinary warning notices. for example, where the FCA is proposing to censure, fine, or impose a suspension, restriction, condition or limitation on a *firm* or individual. The power to publish information does not apply, for example, to *warning* notices which only propose to prohibit an individual, withdraw the approval of an individual or cancel the *permission* of a firm.

6.2.4 The decisions on whether to exercise the power to publish information about a warning notice, and if so what information to publish, will (subject to \blacksquare EG 6.2.4AG) be taken by the *RDC* after it has consulted with the *persons* to whom the *warning notice* has been given or copied. The procedure the FCA will follow when making these decisions is set out in DEPP 3.

6.2.4A	Where the settlement decision makers decide to issue a warning notice, they shall also take the decision on whether to exercise the power to publish information about a warning notice and if so what information to publish. The settlement decision makers will consult with the persons to whom the warning notice has been given or copied. The FCA expects that the settlement decision makers are unlikely to decide it is appropriate to publish information about a warning notice where a focused resolution agreement has been entered into and where it is likely that a final notice will shortly follow, save in exceptional circumstances. The procedure the FCA will follow when making these decisions is set out in DEPP 5.
6.2.5	The principal purpose of this power is to promote the early transparency of enforcement proceedings. This has several benefits, including: consumers, <i>firms</i> and market users will be able to understand the types of behaviour that the <i>FCA</i> considers unacceptable at an earlier stage, which in turn should encourage more compliant behaviour; by showing at an earlier stage that the <i>FCA</i> is taking action, confidence in the <i>FCA</i> and the regulatory system should be enhanced; there will be more openness in respect of the enforcement process, which will generally be in the public interest; and it aligns the stage at which publicity is given in regulatory cases with the stage at which publicity is given in civil and criminal cases.
6.2.6	 The FCA will take the following initial steps in considering whether it is appropriate to exercise this power: (1) It will consider whether it is appropriate to publish details of the <i>warning notice</i> in order to enable consumers, <i>firms</i> and market users to understand the nature of the FCA's concerns. The FCA will consider the circumstances of each case but expects normally to consider it appropriate to publish these details. (2) Where the FCA considers it is appropriate to publish details of the <i>warning notice</i>, it will consider whether it is also appropriate to identify the subject of the <i>warning notice</i>. The FCA will consider the circumstances of each case but expects normally that it will be appropriate to identify a <i>firm</i>, but that it will not be appropriate to identify an individual This is because the FCA considers that the potential harm caused to an individual from publication at this stage of the enforcement proceedings will normally exceed the benefits of early transparency, but that this will not normally be the case in respect of <i>firms</i>. However, there may be circumstances where the FCA considers: it is not possible to describe the nature of its concerns without making it possible to identify the individual; it is necessary to avoid other <i>persons</i> being mistakenly believed to be the individual in breach; it would help to protect <i>consumers</i> or investors; it is necessary to maintain public confidence in the <i>financial system</i> or the market; or

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(3) Where the FCA considers it is appropriate either to publish details of the warning notice without identifying its subject, or to publish details of the warning notice and identify its subject, it will consult the persons to whom the notice is given or copied. It will then consider whether any of the grounds set out in section 391(6) of the Act prohibiting publication apply. These grounds are that publication of that information, or some of that information, would, in the opinion of the FCA, be unfair to the person with respect to whom the action was proposed to be taken, prejudicial to the interests of consumers or detrimental to the stability of the UK financial system. In considering whether publication would be unfair, the FCA will have regard to, amongst other matters, whether the person with respect to whom the action was proposed to be taken is a firm or an individual, the size of a firm, and the extent to which the person has been made aware of the case against him during the course of the investigation.

6.2.7

A person to whom the warning notice is given or copied who seeks to demonstrate potential unfairness from publication must provide clear and convincing evidence of how that unfairness may arise and how he could suffer a disproportionate level of damage. For example, this may be the case if publication could materially affect the *person's* health, result in bankruptcy or insolvency, a loss of livelihood or a significant loss of income, or prejudice criminal proceedings to which he is a party. The FCA is more likely to consider that the negative impact of publication on a person's reputation amounts to unfairness if the person also provides evidence of the harm that they could suffer as a consequence of the damage to their reputation. Arguments made solely on the basis that it is unfair for the FCA to have the power to publish information at this point of the enforcement process will have no effect on the FCA's decision. Similarly, arguments about the merits of the *warning notice* itself will not be material to publication decisions; arguments of this nature should instead be made separately and later in the process by way of representations in response to the warning notice.

6.2.8

If, after consulting the *persons* to whom the notice is given or copied, the *FCA* still considers it is appropriate to publish information about a *warning notice*, it will publish this information in a statement (a warning notice statement). This will ordinarily include a brief summary of the facts which gave rise to the *warning notice* to enable consumers, *firms* and market users to understand the nature of the *FCA*'s concerns. Where the *FCA* considers it appropriate to identify the subject of the *warning notice*, it will also include details of:

- (1) the name of the *firm* or individual;
- (2) additional information to enable the identification of the *firm* or individual; and
- (3) in the case of an *approved person* or *conduct rules staff*, his or her employer at the relevant time.
- 6.2.9 As the FCA may only publish information about disciplinary *warning notices* and not others, it will in many cases not be able to publish details of all of the sanctions it is seeking to impose (for example, the fact that it is proposing to prohibit an individual as well as impose a fine). For this reason,

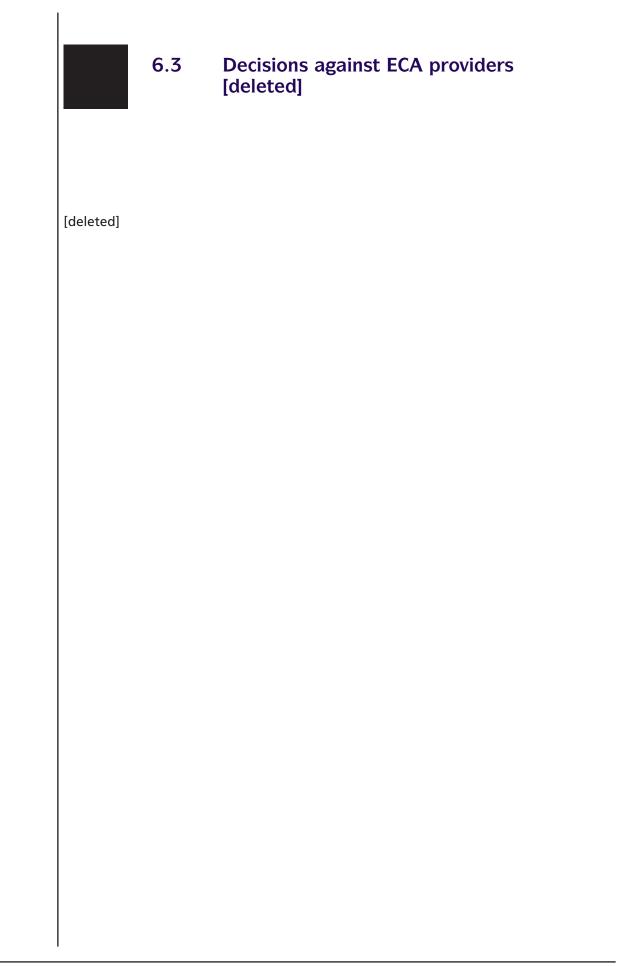
	the FCA will not normally publish the nature and level of the proposed disciplinary sanctions.
6.2.10	Any warning notice statement the FCA publishes will make clear that:
	(a) the <i>warning notice</i> is not the final decision of the FCA;
	(b) the recipient has the right to make representations to the <i>RDC</i> which, in the light of those representations, will decide on the appropriate action and whether to <i>issue</i> a <i>decision notice</i> ; and
	(c) if a <i>decision notice</i> is issued, the subject of the notice will have the right to refer the matter to the <i>Tribunal</i> which will reach an independent decision on the appropriate action for the <i>FCA</i> to take.
6.2.11	Publication will generally include placing the <i>warning notice</i> statement on the <i>FCA</i> website. The <i>FCA</i> will also consider what information about the matter should be included on the <i>Financial Services Register</i> .
	Decision notices and final notices
6.2.12	The FCA will consider the circumstances of each case, but will ordinarily publicise enforcement action where this has led to the issue of a <i>final notice</i> . The FCA may also publicise enforcement action where this has led to the issue of a <i>decision notice</i> . The FCA will decide on a case-by-case basis whether to publish information about the matter to which a <i>decision notice</i> relates, but expects normally to publish a <i>decision notice</i> if the subject of enforcement action decides to refer the matter to the <i>Tribunal</i> . The FCA may also publish a <i>decision notice</i> before a person has decided whether to refer the matter to the <i>Tribunal</i> if the FCA considers there is a compelling reason to do so. For example, the FCA may consider that early publication of the detail of its reasons for taking action is necessary for market confidence reasons or to allow <i>consumers</i> to avoid any potential harm arising from a <i>firm's</i> actions. If a <i>person</i> decides not to refer a matter to the <i>Tribunal</i> , the FCA will generally only publish a <i>final notice</i> .
6.2.13	If the FCA intends to publish a <i>decision notice</i> , it will give advance notice of its intention to the <i>person</i> to whom the <i>decision notice</i> is given and to any third party to whom a copy of the notice is given. The FCA will consider any representations made, but will normally not decide against publication solely because it is claimed that publication could have a negative impact on a person's reputation. The FCA will also not decide against publication solely because a <i>person</i> asks for confidentiality when they refer a matter to the <i>Tribunal</i> .
6.2.14	Publication will generally include placing the <i>decision notice</i> or <i>final notice</i> on the <i>FCA</i> website and this will often be accompanied by a press release. The <i>FCA</i> will also consider what information about the matter should be included on the <i>Financial Services Register</i> . Additional <i>guidance</i> on the <i>FCA</i> 's approach to the publication of information on the <i>Financial Services Register</i> in certain specific types of cases is set out at the end of this chapter.

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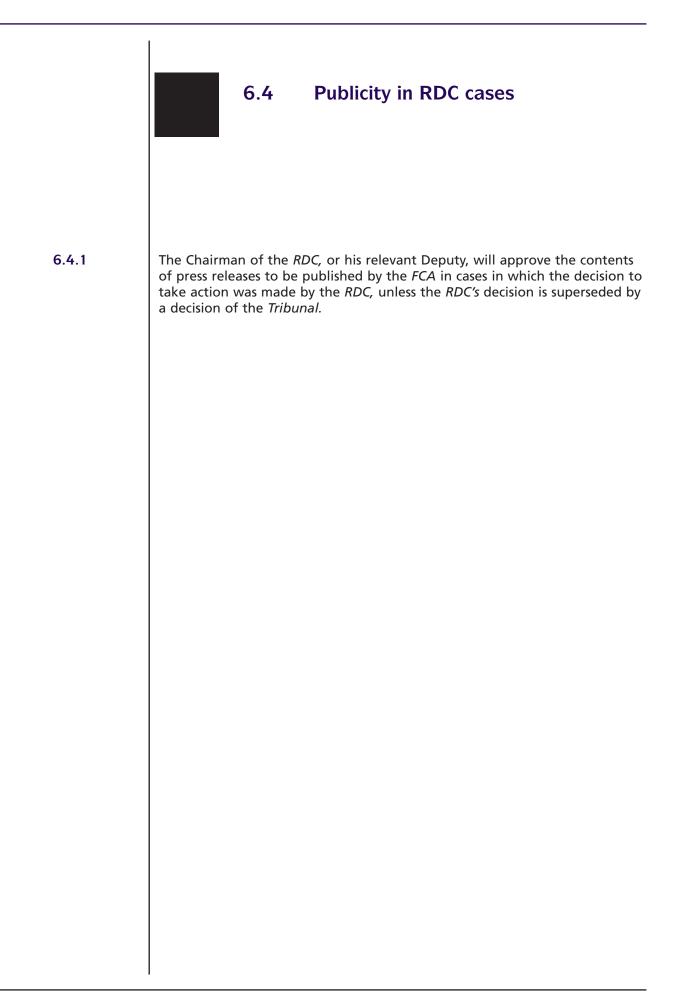
6.2.15	However, as required by the Act (see paragraph 6.2.1 above), the FCA will not publish information if publication of it would, in its opinion, be unfair to the person in respect of whom the action is taken or prejudicial to the interests of consumers, or detrimental to the stability of the UK financial system. It may make that decision where, for example, publication could damage market confidence or undermine market integrity in a way that could be damaging to the interests of consumers.
6.2.16	Publishing notices is important to ensure the transparency of FCA decision- making; it informs the public and helps to maximise the deterrent effect of enforcement action. The FCA will upon request review warning notice statements, <i>decision notices, final notices</i> and related press releases that are published on the FCA's website. The FCA will determine at that time whether continued publication is appropriate, or whether notices and publicity should be removed or amended.
6.2.17	In carrying out its review the FCA will consider all relevant factors. In particular, the FCA will take into account:
	the seriousness of the <i>person's</i> misconduct; the nature of the action taken by the <i>FCA</i> and the level of any sanction imposed on the <i>person</i> ; whether the <i>FCA</i> has continuing concerns in respect of the <i>person</i> and any risk they might pose to the <i>FCA's</i> objectives; whether the <i>person</i> is a <i>firm</i> or an individual; whether the publication sets out the <i>FCA's</i> expectations regarding behaviour in a particular area, and if so, whether that message still has educational value; public interest in the case (both at the time and subsequently); whether continued publication is necessary for deterrence, consumer protection or market confidence reasons; how much time has passed since publication; and any representations made by the person on the continuing impact on them of the publication.
6.2.18	The FCA expects usually to conclude that warning notice statements, notices and related press releases that have been published for less than six years should not be removed from the website, and that notices and related press releases relating to prohibition orders which are still applicable should not be removed from the website regardless of the length of time they have been published.
6.2.19	In cases where the FCA publishes a warning notice statement and the FCA subsequently decides not to take any further action, or where it publishes a <i>decision notice</i> and the subject of enforcement action successfully refers the matter to the <i>Tribunal</i> , the FCA will make it clear on its website that the <i>warning notice</i> or the <i>decision notice</i> no longer applies. The FCA will normally do this by publishing a <i>notice of discontinuance</i> with the consent of the <i>person</i> to whom the <i>notice of discontinuance</i> has been copied.
6.2.19A	In other cases where a case is resolved following the publication of a warning notice statement, the FCA will consider on a case-by-case basis whether to update its website to explain what the outcome was of the case

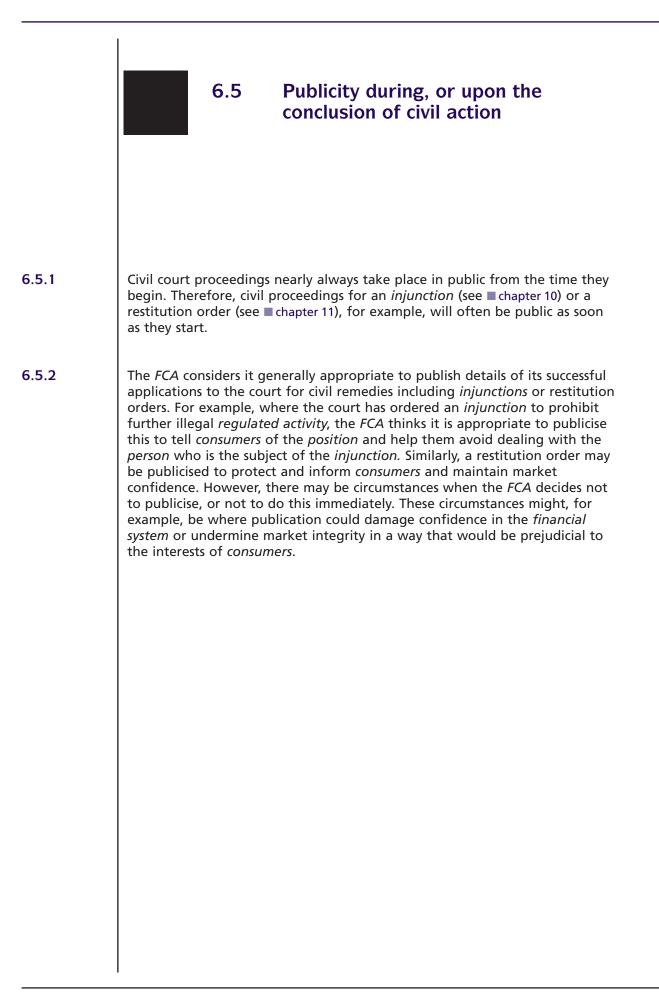
	described in the warning notice statement. Where the warning notice statement was issued on an anonymised basis, the <i>FCA</i> will at the same time consider the extent to which it is appropriate to identify the subject of the statement.
	Supervisory notices varying a firm's Part 4A permission, imposing a requirement or varying an approval on the FCA's own initiative (see EG 8 and DEPP 8) and supervisory notices imposing a direction under regulation 74C of the Money Laundering Regulations on the FCA's own initiative (see EG 19.15)
6.2.20	[deleted]
6.2.21	It is important that the FCA maintains an accurate public record. One of the ways the FCA does this is by publishing the reasons for variations of Part 4A permission, the imposition of requirements, variations of the approval of SMF managers and the imposition and variation of directions under regulation 74C(5) of the Money Laundering Regulations. The FCA will always aim to balance the interests of consumers and the possibility of unfairness to the person subject to the FCA's action. The FCA will publish relevant details of fundamental and non-fundamental variations of Part 4A permission and requirements which it imposes on firms, variations of approval of SMF managers and directions under regulation 74C(5) of the Money Laundering Regulations. But it will use its discretion not to do so if it considers this to be unfair to the person on whom the variation or direction is imposed, prejudicial to the interests of consumers, or detrimental to the stability of the UK financial system. Publication will generally include placing the notice on the FCA website and this may be accompanied by a press release. As with warning notice statements, decision notices and final notices, supervisory notices and related press releases that are published on the FCA's website will be reviewed upon request. The FCA will determine at that time whether continued publication is appropriate, or whether notices and related press releases that have been published for less than six years should not be removed from the website.
6.2.22	The FCA will amend the Financial Services Register to reflect a firm's actual Part 4A permission, the terms of an SMF manager's actual approval under section 59 of the Act following any variation or the terms of a direction imposed under regulation 74C of the Money Laundering Regulations.
6.2.23	Where the FCA publishes a supervisory notice issued under regulation 74C of the Money Laundering Regulations and the FCA subsequently decides to rescind the direction to which a notice relates or the subject of a direction is successful in overturning the direction, the FCA will make it clear on its website that the supervisory notice no longer applies. The FCA will normally do this by publishing a notice of discontinuance with the consent of the person to whom the notice of discontinuance has been copied.
6.2.24	Where the FCA publishes a <i>supervisory notice</i> issued under regulation 74C of the <i>Money Laundering Regulations</i> and the subject of the direction refers

the matter to the *Tribunal*, the *FCA* will make it clear on its website that the supervisory notice has been referred to the *Tribunal*.

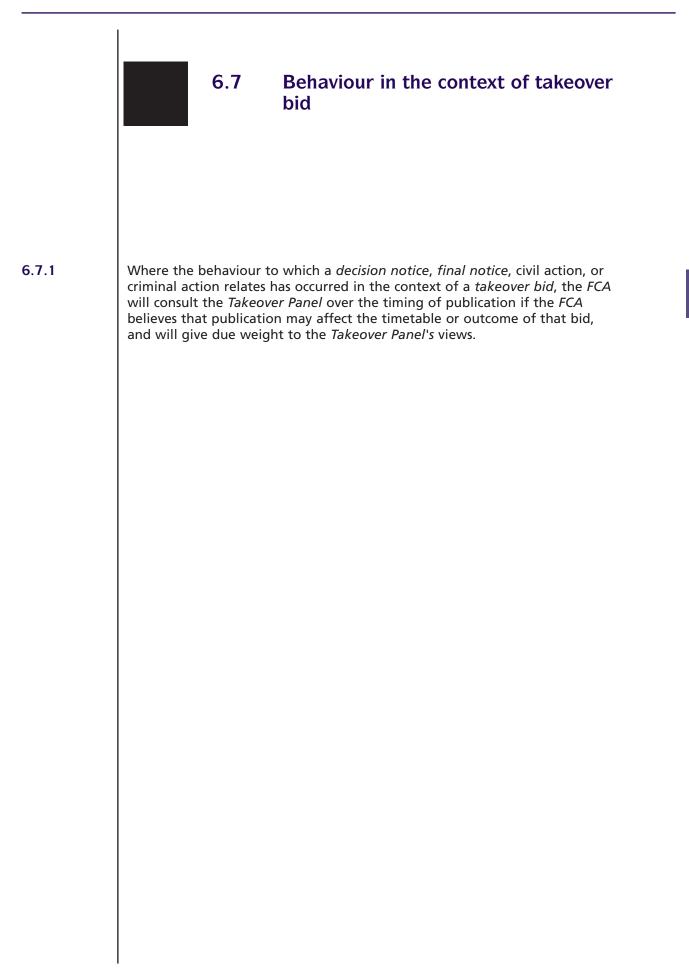


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	6.6 Publicity during, or upon the conclusion of criminal action (see chapter 12)
6.6.1	The FCA will normally publicise the outcome of public hearings in criminal prosecutions.
6.6.2	When conducting a criminal investigation the FCA will generally consider making a public announcement when suspects are arrested, when search warrants are executed and when charges are laid. A public announcement may also be made at other stages of the investigation when this is considered appropriate.
6.6.3	The FCA will always be very careful to ensure that any FCA publicity does not prejudice the fairness of any subsequent trial.



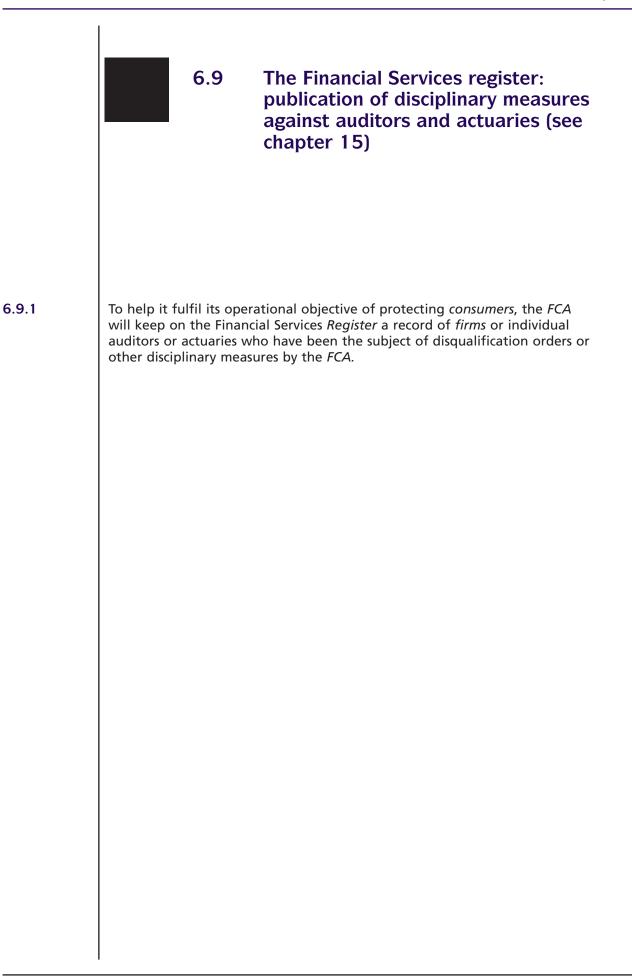
6.8

The Financial Services register: publication of prohibitions of individuals (see chapter 9)

6.8.1

Once the decision to make a *prohibition order* is no longer open to review, the *FCA* will consider what additional information about the circumstances of the *prohibition order* to include on the Financial Services *Register*. The *FCA* will balance any possible prejudice to the *individual* concerned against the interests of *consumer* protection. The *FCA*'s normal approach to maintaining information about a prohibition order on the *Financial Services Register* is as follows:

- (1) The FCA will maintain an entry on the Financial Services Register while a prohibition order is in effect. If the FCA grants an application to vary the order, it will make a note of the variation on the Financial Services Register.
- (2) Where the FCA grants an application to revoke a *prohibition order*, it will make a note on the *Financial Services Register* that the order has been revoked giving reasons for the revocation. The availability to *firms* and *consumers* of a full record of FCA action taken in relation to an *individual's* fitness and propriety will help it in furthering its *statutory objectives*. In particular, it will help with protecting *consumers* and the maintaining of confidence in the *financial system*.
- (3) The FCA will maintain an annotated record of revoked *prohibition orders* for six years from the date of the revocation after which time it will remove the record from the *Financial Services Register*.



	6.10 The Financial Services Register: publication of disapplication orders against members of the professions (see chapter 16)
6.10.1	In general, the FCA considers that publishing relevant information about orders to disapply an exemption in respect of a member of a <i>designated</i> <i>professional body</i> will be in the interests of clients and <i>consumers</i> . The FCA will consider what additional information about the circumstances of the order to include on the record maintained on the <i>Financial Services Register</i> taking into account any prejudice to the <i>person</i> concerned and the interests of <i>consumer</i> protection.
6.10.2	 The FCA's normal approach to maintaining information about a disapplication order on the <i>Financial Services Register</i> is as follows. (1) While a disapplication order is in effect, the FCA will maintain a record of the order on the <i>Financial Services Register</i>. If the FCA grants an application to vary the order, a note of the variation will be made against the relevant entry on the <i>Financial Services Register</i>. (2) The FCA's policy in relation to section 347(4) of the Act is that where an application to revoke an order is granted, it will make a note on the <i>Financial Services Register</i> saying that the order has been revoked giving reasons for its revocation. Having a full record of action the <i>FCA</i> has taken against <i>persons</i> granted an exemption under section 327 of the Act available will help the FCA to fulfil its operational objectives of securing an appropriate degree of protection for <i>consumers</i> and protecting and enhancing the integrity of the UK <i>financial system</i>. (3) This is why the FCA will maintain the annotated record of the disapplication order for a period of six years from the date of the revocation of the order, after which period the record will be removed from the record on the <i>Financial Services Register</i>.

Enforcement Guide

Chapter 7

Financial penalties and other disciplinary sanctions

EG 7 : Financial penalties and other disciplinary sanctions

		7.1 The FCA's use of sanctions
7.1.1	Financial penalties, suspensions, restrictions, conditions, limitations, disciplinary prohibitions, and <i>public censures</i> are important regulatory tools. However, they are not the only tools available to the <i>FCA</i> , and there will be many instances of non-compliance which the <i>FCA</i> considers it appropriate to address without the use of formal disciplinary sanctions. Still, the effective and proportionate use of the <i>FCA</i> 's powers to enforce the requirements of the <i>Act</i> , the <i>rules, COCON</i> and the Statements of Principle for Approved Persons (APER) will play an important role in the <i>FCA</i> 's pursuit of its <i>statutory objectives</i> . Imposing disciplinary sanctions shows that the <i>FCA</i> is upholding regulatory standards and helps to maintain market confidence and deter <i>financial crime</i> . An increased public awareness of regulatory standards also contributes to the protection of <i>consumers</i> .	
7.1.2	The FCA has the following powers to impose sanctions.	
	(1) It may publish a statement:	
	(a)	against an <i>approved person</i> or <i>conduct rules staff</i> under section 66 of the <i>Act</i> ;
	(b)	against an <i>issuer</i> under section 87M of the Act;
	(c)	against a <i>sponsor</i> under section 88A of the Act;
	(ca)	against a <i>primary information provider</i> under section 89Q of the <i>Act</i> ;
	(d)	where there has been a contravention of the <i>Part 6 rules</i> , under section 91 of the <i>Act</i> ;
	(e)	against a <i>person</i> under section 123 of the Act;
	(ea)	if a natural or legal person has contravened any provision of the <i>short selling regulation</i> , or any requirement imposed on that person under section 131E or 131F, under section 131G of the <i>Act</i> ;
	(eb)	against a qualifying parent undertaking under section 192K of the <i>Act</i> ;
	(ec)	against an auditor under section 249 of the Act;
	(eca)	against an <i>operator</i> of a <i>scheme</i> recognised under section 271A or section 272 of the <i>Act</i> ;
	(ed)	against a <i>recognised investment exchange</i> under section 312E of the <i>Act</i> ;
	(ee)	against an auditor and/or an <i>actuary</i> under section 345 of the <i>Act</i> ; and
	l	

- (f) against a *firm*, or an *unauthorised person* to whom section 404C applies, under section 205 of the *Act*.
- (2) It may impose a financial penalty:
 - (a) on a *person* that performs a *controlled function* without approval, under section 63A of the *Act*;
 - (aa) on an *approved person* or *conduct rules staff*, under section 66 of the *Act*;
 - (ab) on a sponsor under section 88A of the Act;
 - (ac) on a primary information provider under section 89Q of the Act;
 - (b) where there has been a contravention of the *Part 6 rules*, under section 91 of the *Act*;
 - (c) on a person, under section 123 of the Act;
 - (ca) on a natural or legal person who has contravened any provision of the *short selling regulation*, or any requirement imposed on that person under section 131E or 131F, or any natural or legal person who was knowingly concerned in the contravention, under section 131G of the *Act*;
 - (cb) on a qualifying parent undertaking under section 192K of the *Act*;
 - (d) on a *firm*, or an *unauthorised person* to whom section 404C applies, under section 206 of the *Act*;
 - (da) on an auditor under section 249 of the Act;
 - (db) on a *recognised investment exchange* under section 312F of the *Act*; and
 - (dc) on an auditor and/or actuary under section 345 of the Act.
- (3) It may impose a suspension, *limitation* or other restriction:
 - (a) [deleted]
 - (b) on a sponsor under section 88A of the Act;
 - (c) on a primary information provider under section 89Q of the Act;
 - (d) on an *authorised person* under sections 123B or 206A of the *Act*; and
 - (e) on a *non-authorised parent undertaking* under section 143W of the *Act*.
- (4) It may impose a suspension, condition or limitation on an *approved person* under section 66 of the *Act*.
- (5) It may impose a disciplinary prohibition on an individual under section 123A of the *Act*.
- 7.1.3 Section 415B of the *Act* requires the *FCA* to consult with the *PRA* before it takes certain enforcement action in relation to a *PRA-authorised person* or someone who has a qualifying relationship (as defined in section 415B(4) of the *Act*) with a *PRA-authorised person*. Further detail on when the *FCA* is required to consult the *PRA*, and when it has agreed to notify the *PRA* of

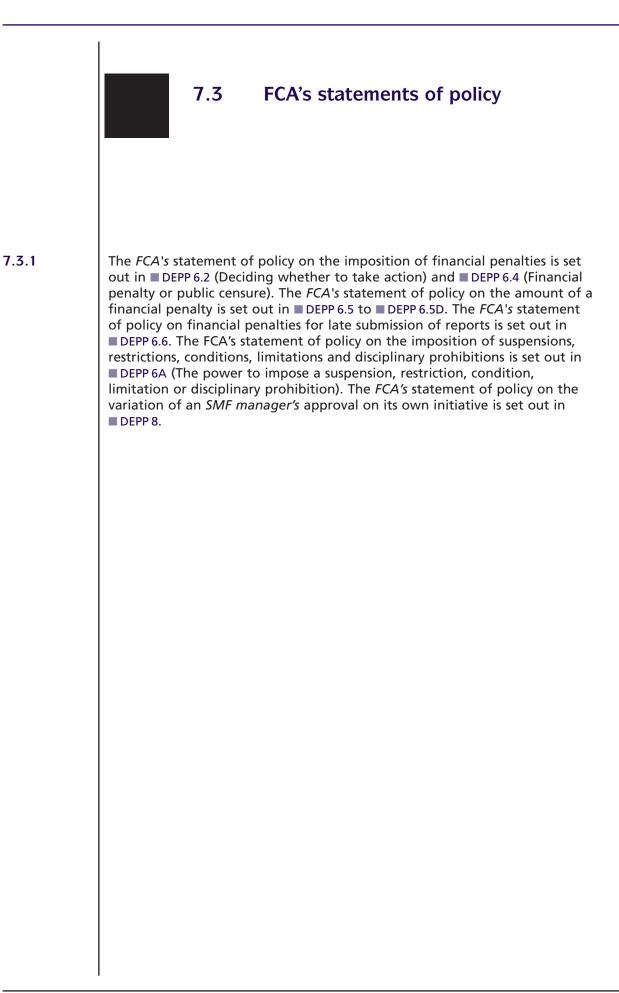
certain matters, is set out in the Memorandum of Understanding between the *PRA* and the *FCA*.

	7.2 Alternatives to sanctions
7.2.1	The <i>FCA</i> also has measures available to it where it considers it is appropriate to take protective or remedial action. These include:
	(1) where a <i>firm</i> 's continuing ability to meet the <i>threshold conditions</i> or where an <i>approved person</i> 's or other individual's fitness and propriety are called into question:
	 (a) varying and/or cancelling of <i>permission</i> and the withdrawal of a <i>firm's</i> authorisation (see ■ chapter 8); and
	 (b) the withdrawal of an individual's status as an approved person and/or the prohibition of an individual from performing a specified function in relation to a regulated activity (see chapter 9).
	(1A) where it is desirable to do so in order to advance one or more of its operational objectives, the FCA may vary the approval of an SMF manager (see DEPP 8);
	(2) where the smooth operation of the market is, or may be, temporarily jeopardised or where protecting investors so requires, the FCA may suspend, with effect from such time as it may determine, the <i>listing</i> of any securities at any time and in such circumstances as it thinks fit (whether or not at the request of the <i>issuer</i> or its <i>sponsor</i> on its behalf);
	(3) when the FCA is satisfied there are special circumstances which preclude normal regular dealings in any <i>listed</i> securities, it may cancel the listing of any <i>security</i> ;
	(4) where the FCA considers it necessary for the purpose of the exercise by it of functions under the <i>Market Abuse Regulation</i> or any supplementary market abuse legislation (as defined in Part 8 of the <i>Act</i>), the FCA may suspend trading in a <i>financial instrument</i> under section 1221 of the <i>Act</i> ;
	(4a) [deleted]
	(4b) where the FCA considers it necessary for the purpose of the exercise by it of functions under the Market Abuse Regulation or any supplementary market abuse legislation (as defined in Part 8 of the Act), the FCA may suspend the auctioning of a relevant auctioned product (as defined in section 122IA of the Act) at an auction conducted by a recognised auction platform under section 122IA of the Act;

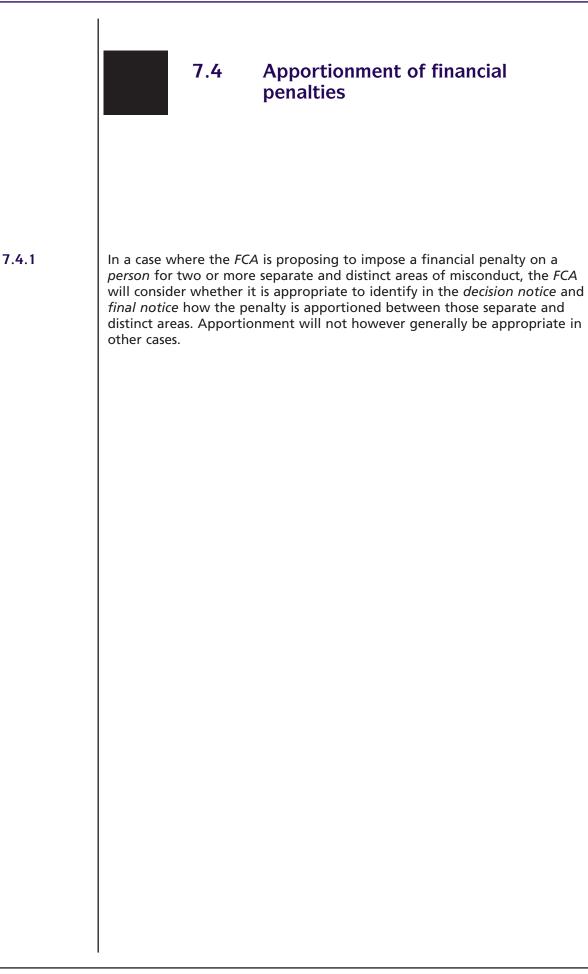
- (5) where there are reasonable grounds for suspecting that a provision of Part VI of the Act, a provision contained in the prospectus rules, or any other provision made in accordance with the Prospectus Regulation has been infringed, the FCA may:
 - (a) suspend, restrict or prohibit the offer to the public of transferable securities as set out in section 87K of the *Act*; or
 - (b) suspend, restrict or prohibit admission of transferable securities to trading on a regulated market or a trading facility as set out in sections 87L and 87LA of the *Act*;
- (6) where the FCA considers it necessary for the purposes set out in section 122G of the Act the FCA may, by notice in writing, require an issuer to publish specified information or a specified statement as set out under section 122G of the Act; and
- (7) where the FCA considers it necessary for the purposes set out in section 122H of the Act the FCA may, by notice in writing, require a person to publish corrective information or a corrective statement as set out under section 122H of the Act.

Where a person who is a shareholder has contravened one or more relevant transparency provisions (as defined in section 89NA(11) of the Act) in respect of shares in a company admitted to trading on a regulated market and the FCA considers the breach to be serious, the FCA may apply to the Court for an order suspending that person's voting rights as set out in section 89NA of the Act.

7.2.2



EG 7 : Financial penalties and other disciplinary sanctions



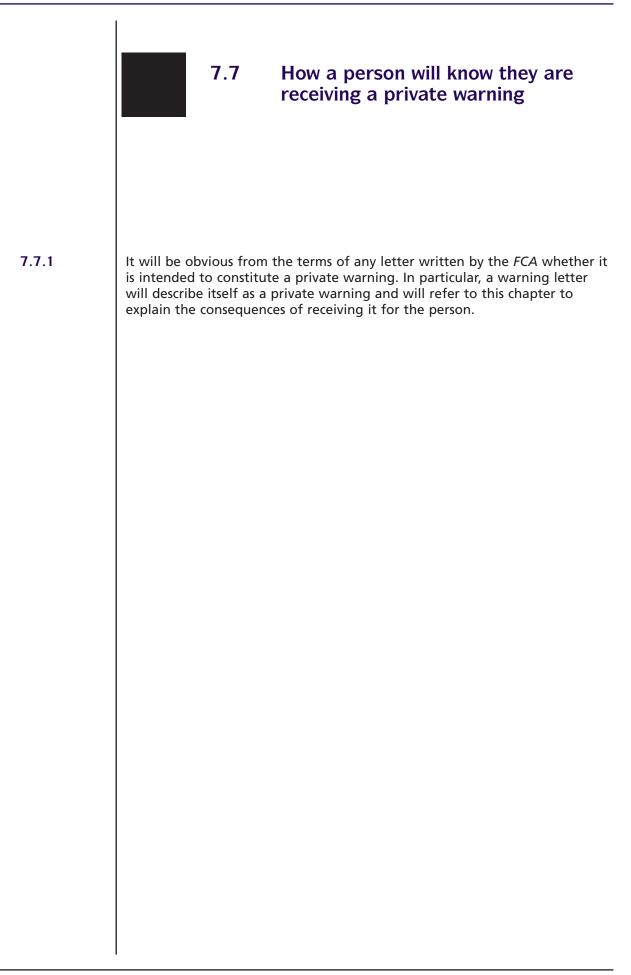
	7.5 Payment of financial penalties
7.5.1	Financial penalties must be paid within the period (usually 14 days) that is stated on the FCA's final notice. The FCA's policy in relation to reducing a penalty because its payment may cause a <i>person</i> serious financial hardship is set out in DEPP 6.5D .
7.5.2	[deleted]
7.5.3	Chapter 6 of the General Provisions module of the FCA Handbook (GEN) contains <i>rules</i> prohibiting a <i>firm</i> or <i>member</i> from entering into, arranging, claiming on or making a payment under a <i>contract of insurance</i> that is intended to have, or has, the effect of indemnifying any <i>person</i> against a financial penalty.
7.5.4	Chapter 6 of the General Provisions of the FCA Handbook (GEN) also contains a <i>rule</i> prohibiting a <i>firm</i> , except a <i>sole trader</i> , from paying a financial penalty imposed by the FCA on a present or former <i>employee</i> , <i>director</i> or <i>partner</i> of the <i>firm</i> or of an <i>affiliated company</i> .
7.5.5	Rule ■ 1.5.33 in the FCA's Prudential Sourcebook for Insurers (INSPRU) prohibits a long- term insurer (including a firm qualifying for authorisation under Schedule 3 or 4 to the Act), which is not a mutual, from paying a financial penalty from a long-term insurance fund.

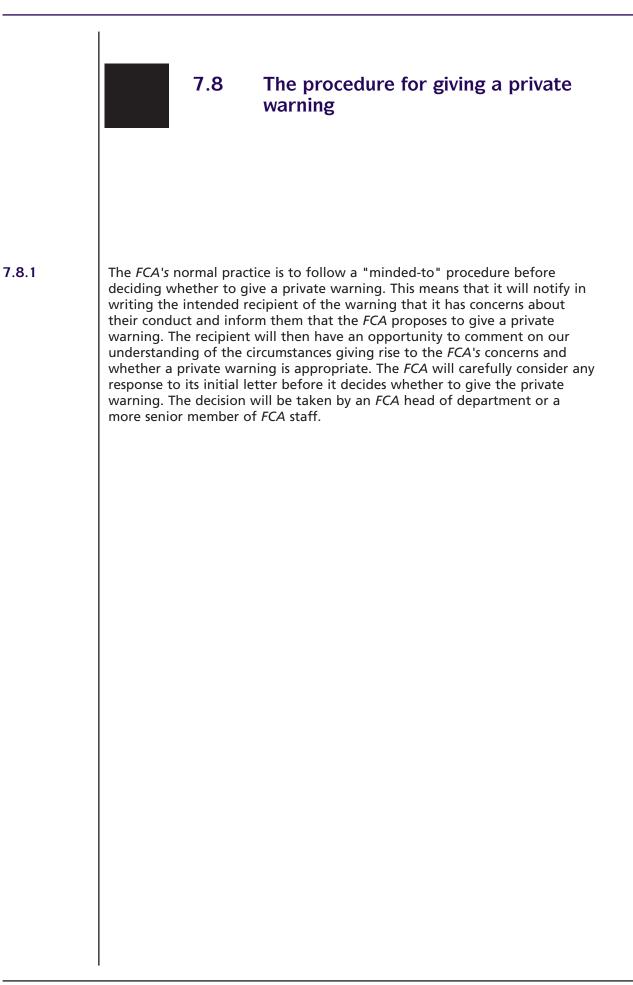
EG 7 : Financial penalties and other disciplinary sanctions

	7.6 Private warnings
7.6.1	In certain cases, despite concerns about a <i>person's</i> behaviour or evidence of a <i>rule</i> breach, the <i>FCA</i> may decide that it is not appropriate, having regard to all the circumstances of the case, to bring formal action for a financial
	penalty or <i>public censure</i> . This is consistent with the <i>FCA</i> 's risk-based approach to enforcement. In such cases, the <i>FCA</i> may give a private warning to make the <i>person</i> aware that they came close to being subject to formal action.
7.6.2	Private warnings are a non-statutory tool. Fundamentally they are no different to any other FCA communication which criticises or expresses concern about a <i>person's</i> conduct. But private warnings are a more serious form of reprimand than would usually be made in the course of ongoing supervisory correspondence. A private warning requires that the FCA identifies and explains its concerns about a <i>person's</i> conduct and/or procedures, and tells the subject of the warning that the FCA has seriously considered formal steps to impose a penalty or censure. They are primarily used by the FCA as an enforcement tool, but they may also be used by other parts of the FCA.
7.6.3	Typically, the FCA might give a private warning rather than take formal action where the matter giving cause for concern is minor in nature or degree, or where the <i>person</i> has taken full and immediate remedial action. But there can be no exhaustive list of the conduct or the circumstances which are likely to lead to a private warning rather than more serious action. The FCA will take into account all the circumstances of the case before deciding whether a private warning is appropriate. Many of the criteria identified in DEPP 6 for determining whether the FCA should take formal action for a financial penalty or <i>public censure</i> will also be relevant to a decision about whether to give a private warning.
7.6.4	Generally, the FCA would expect to use private warnings in the context of <i>firms</i> , <i>approved persons</i> and <i>conduct rules staff</i> . However, the FCA may also issue private warnings in circumstances where the persons involved may not necessarily be authorised or approved. For example, private warnings may be issued in potential cases of <i>market abuse</i> ; cases where the FCA has considered making a <i>prohibition order</i> or a disapplication order; or cases involving breaches of provisions imposed by or under Part VI of the Act (Official Listing).
7.6.5	In each case, the <i>FCA</i> will consider the likely impact of a private warning on the recipient and whether any risk that <i>person</i> poses to the <i>statutory</i>

objectives requires the FCA to take more serious action. Equally, where the FCA gives a private warning to an approved person or conduct rules staff, the FCA will consider whether it would be desirable and appropriate to inform the person's firm (or employer, if different) of the conduct giving rise to the warning and the FCA's response. 7.6.6 A private warning is not intended to be a determination by the FCA as to whether the recipient has breached the FCA's rules. However, private warnings, together with any comments received in response, will form part of the person's compliance history. In this sense they are no different to other FCA correspondence, but the weight the FCA attaches to a private warning is likely to be greater. They may therefore influence the FCA's decision whether to commence action for a penalty or censure in relation to future breaches. Where action is commenced in those circumstances, earlier private warnings will not be relied upon in determining whether a breach has taken place. However, if a person has previously been told about the FCA's concerns in relation to an issue, either by means of a private warning or in supervisory correspondence, then this can be an aggravating factor for the level of a penalty imposed in respect of a similar issue that is the subject of later FCA action. 7.6.7 Where the FCA is assessing the relevance of private warnings in determining whether to commence action for a financial penalty or a public censure, the age of a private warning will be taken into consideration. However, a longstanding private warning may still be relevant. 7.6.8 Private warnings may be considered cumulatively, although they relate to separate areas of a *firm*'s or other *person*'s business, where the concerns which gave rise to those warnings are considered to be indicative of a person's compliance culture. Similarly, private warnings issued to different subsidiaries of the same parent *company* may be considered cumulatively where the concerns which gave rise to those warnings relate to a common management team.

EG 7 : Financial penalties and other disciplinary sanctions





EG 7 : Financial penalties and other disciplinary sanctions

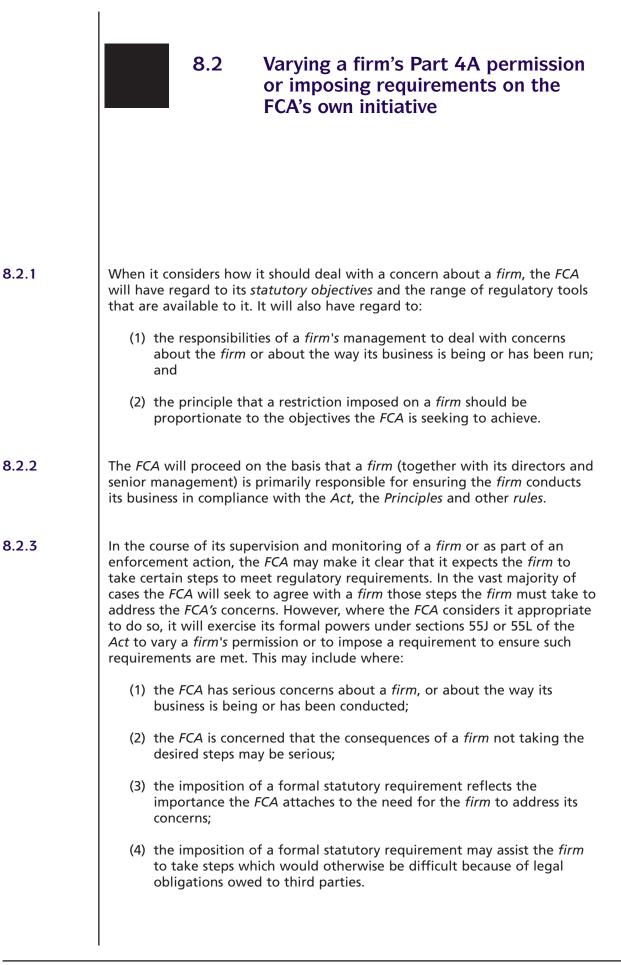
	7.9 Suspensions of voting rights
7.9.1 R	Where a <i>person</i> who is a <i>shareholder</i> has contravened one or more relevant transparency provisions (as defined in section 89NA(11) of the <i>Act</i>) in respect of shares in a company admitted to trading on a <i>regulated market</i> and the <i>FCA</i> considers the breach to be serious, the <i>FCA</i> may apply to the Court for an order suspending that person's voting rights as set out in section 89NA of the <i>Act</i> .
7.9.2	Decisions about whether to apply to the Court for a voting rights suspension order under the <i>Act</i> will be made by the executive director of Enforcement, or in his or her absence, the acting executive director of Enforcement.
7.9.3	In deciding whether to apply for a voting rights suspension order, the FCA will consider all the relevant circumstances of the case, and in particular will have regard to the factors listed in 89NA(4) of the Act.

Enforcement Guide

Chapter 8

Variation and cancellation of permission and imposition of requirements on the FCA's own initiative and intervention against incoming firms

	8.1 Introduction
8.1.1	 The FCA has powers under section 55J of the Act to vary or cancel an authorised person's Part 4A permission and a power under section 55L to impose requirements on an authorised person. The FCA may use these powers where: (1) the person is failing or is likely to fail to satisfy the threshold conditions for which the FCA is responsible; (2) the person has not carried on a regulated activity to which the Part 4A permission relates for a period of at least 12 months (or six months in the case of a full-scope UK AIFM); (3) it is desirable to exercise the power in order to advance one or more of its operational objectives; or
	(4) the person has failed to comply with a requirement in Part 5 of the AIFMD UK regulation (AIFs which acquire control of non-listed companies and issuers), or it is for some other reason desirable to exercise the power for the purposes of ensuring compliance with such a requirement.
8.1.2	The powers under sections 55J and 55L of the Act to vary and cancel a <i>person's Part 4A permission</i> and to impose <i>requirements</i> are exercisable in the same circumstances. However, the statutory procedure for the exercise of the <i>own-initiative powers</i> to vary a <i>permission</i> or impose a <i>requirement</i> is different to the statutory procedure for the exercise of the cancellation power under section 55J and this may determine how the <i>FCA</i> acts in a given case. Certain types of behaviour which may cause the <i>FCA</i> to cancel <i>permission</i> in one case, may lead it to impose <i>requirements</i> , vary, or vary and later cancel, <i>permission</i> in another, depending on the circumstances. The non-exhaustive examples provided below are therefore illustrative but not conclusive of which action the <i>FCA</i> will take in a given case.
8.1.3	 Separately, the FCA has its additional own-initiative variation power, under Schedule 6A to the Act, to vary or cancel the Part 4A permission of a firm that is an FCA-authorised person if: (1) it appears to the FCA that that person is carrying on no regulated activity to which the permission relates; and
	 (2) that <i>person</i> has failed to respond as directed by the FCA to notices served by the FCA on that <i>person</i> under paragraph 2 of Schedule 6A. Guidance on that power, which may be used in an enforcement context, is provided in SUP 7.



8.2.4	■ SUP 7 provides more information about the situations in which the FCA may decide to take formal action in the context of its supervision activities, including the use of its additional own-initiative variation power.
8.2.5	[deleted]
8.2.6	Examples of circumstances in which the FCA will consider varying a firm's Part 4A permission because it has serious concerns about a firm, or about the way its business is being or has been conducted include where:
	(1) in relation to the grounds for exercising the power under section 55J(1)(a) or section 55L(2)(a) of the Act, the firm appears to be failing, or appears likely to fail, to satisfy the threshold conditions relating to one or more, or all, of its regulated activities, because for instance:
	(a) the <i>firm</i> 's material and financial resources appear inappropriate for the scale or type of <i>regulated activity</i> it is carrying on, for example, where it has failed to take <i>account</i> of the need to manage risk professional indemnity insurance or where it is unable to meet its liabilities as they have fallen due; or
	(b) the <i>firm</i> appears not to be a fit and proper <i>person</i> to carry on a regulated activity because:
	 (i) it has not conducted its business in compliance with high standards which may include putting itself at risk of being used for the purposes of <i>financial crime</i> or being otherwise involved in such crime;
	 (ii) it has not been managed soundly and prudently and has not exercised due skill, care, and diligence in carrying on one or more, or all, of its <i>regulated activities</i>;
	(iii) it has breached requirements imposed on it by or under the <i>Act</i> (including the <i>Principles</i> and the <i>rules</i>), for example in respect of its disclosure or notification requirements, and the breaches are material in number or in individual seriousness;
	(c) the <i>firm's</i> business model is not suited to its <i>regulated activities</i> , for example, where the <i>firm's</i> business model is not compatible with its affairs being conducted in a sound and prudent manner;
	(d) the <i>firm</i> is not capable of effective supervision by the FCA, for example, where the way in which its business is organised or its membership of a group is likely to prevent effective supervision;
	 (2) in relation to the grounds for exercising the power under section 55J(1)(c)(i) or section 55L(2)(c), it appears that the interests of consumers are at risk because the firm appears to have breached any of Principles 6 to 10 of the FCA's Principles (see ■ PRIN 2.1.1R) to such an extent that it is desirable that limitations, restrictions, or prohibitions are placed on the firm's regulated activity.

	8.3 Use of the own-initiative powers
8.3.1	The FCA may impose, under sections 55J or 55L of the Act, a variation of <i>permission</i> or a <i>requirement</i> so that it takes effect immediately or on a specified date if it reasonably considers it necessary for the variation or <i>requirement</i> to take effect immediately (or on the date specified), having regard to the ground on which it is exercising its <i>own-initiative powers</i> .
8.3.2	 The FCA will consider exercising its own-initiative power where: (1) the information available to it indicates serious concerns about the firm or its business that need to be addressed immediately; and (2) circumstances indicate that it is appropriate to use statutory powers immediately to require and/or prohibit certain actions by the firm in order to ensure the firm addresses these concerns.
8.3.3	 It is not possible to provide an exhaustive list of the situations that will give rise to such serious concerns, but they are likely to include one or more of the following characteristics: (1) information indicating significant loss, risk of loss or other adverse effects for <i>consumers</i>, where action is necessary to protect their interests; (2) information indicating that a <i>firm</i>'s conduct has put it at risk of being used for the purposes of <i>financial crime</i>, or of being otherwise involved in crime; (3) evidence that the <i>firm</i> has submitted to the <i>FCA</i> inaccurate or misleading information so that the <i>FCA</i> becomes seriously concerned about the <i>firm</i>'s ability to meet its regulatory obligations; (4) circumstances suggesting a serious problem within a <i>firm</i> or with a <i>firm</i>'s controllers that calls into question the <i>firm</i>'s ability to continue to meet the <i>threshold conditions</i>.
8.3.4	 The FCA will consider the full circumstances of each case when it decides whether a variation of Part 4A permission under section 55J of the Act or an imposition of a requirement under section 55L of the Act is appropriate. The following is a non-exhaustive list of factors the FCA may consider. (1) The extent of any loss, or risk of loss, or other adverse effect on consumers. The more serious the loss or potential loss or other

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adverse effect, the more likely it is that the *FCA's* exercise of *own-initiative powers* will be appropriate, to protect the consumers' interests.

- (2) The extent to which customer assets appear to be at risk. Exercise of the FCA's own-initiative power may be appropriate where the information available to the FCA suggests that customer assets held by, or to the order of, the firm may be at risk.
- (3) The nature and extent of any false or inaccurate information provided by the *firm*. Whether false or inaccurate information warrants the *FCA's* exercise of its *own-initiative powers* will depend on matters such as:
 - (a) the impact of the information on the FCA's view of the firm's compliance with the regulatory requirements to which it is subject, the firm's suitability to conduct regulated activities, or the likelihood that the firm's business may be being used in connection with financial crime;
 - (b) whether the information appears to have been provided in an attempt knowingly to mislead the FCA, rather than through inadvertence;
 - (c) whether the matters to which false or inaccurate information relates indicate there is a risk to *customer* assets or to the other interests of the *firm*'s actual or potential *customers*.
- (4) The seriousness of any suspected breach of the requirements of the legislation or the *rules* and the steps that need to be taken to correct that breach.
- (5) The financial resources of the *firm*. Serious concerns may arise where it appears the *firm* may be required to pay significant amounts of compensation to *consumers*. In those cases, the extent to which the *firm* has the financial resources to do so will affect the FCA's decision about whether exercise of the *FCA's own-initiative powers* is appropriate to preserve the *firm's* assets, in the interests of the *consumers*. The *FCA* will take account of any insurance cover held by the *firm*. It will also consider the likelihood of the *firm's* assets being dissipated without the *FCA's* intervention, and whether the exercise of the *FCA's* power to petition for the winding up of the *firm* is more appropriate than the use of its *own-initiative powers* (see achapter 13 of this guide).
- (6) The risk that the *firm's* business may be used or has been used to facilitate *financial crime*, including *money laundering*. The information available to the *FCA*, including information supplied by other law enforcement agencies, may suggest the *firm* is being used for, or is itself involved in, *financial crime*. Where this appears to be the case, and the *firm* appears to be failing to meet the *threshold conditions* or has put its *customers*' interests at risk, the *FCA*'s use of its *own-initiative powers* may well be appropriate.
- (7) The risk that the *firm*'s conduct or business presents to the *financial system* and to confidence in the *financial system*.

- (8) The *firm's* conduct. The FCA will take into account:
 - (a) whether the *firm* identified the issue (and if so whether this was by chance or as a result of the *firm's* normal *controls* and monitoring);
 - (b) whether the *firm* brought the issue promptly to the *FCA*'s attention;
 - (c) the *firm's* past history, management ethos and compliance culture;
 - (d) steps that the *firm* has taken or is taking to address the issue.
- (9) The impact that use of the FCA's own-initiative powers will have on the firm's business and on its customers. The FCA will take into account the (sometimes significant) impact that a variation of permission may have on a firm's business and on its customers' interests, including the effect of variation on the firm's reputation and on market confidence. The FCA will need to be satisfied that the impact of any use of the own-initiative power is likely to be proportionate to the concerns being addressed, in the context of the overall aim of achieving its statutory objectives.

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	8.4 Limitations and requirements that the FCA may impose when exercising its section 55J and 55L powers
8.4.1	When varying Part 4A permission at its own-initiative under its section 55J power (or section 55Q power), the FCA may include in the Part 4A permission as varied any limitation or restriction which it could have imposed if a fresh permission were being given in response to an application under section 55A of the Act.
8.4.2	Examples of the <i>limitations</i> that the FCA may impose when exercising its <i>own-initiative variation power</i> in support of its enforcement function include <i>limitations</i> on: the number, or category, of <i>customers</i> that a <i>firm</i> can deal with; the number of specified investments that a <i>firm</i> can deal in; and the activities of the <i>firm</i> so that they fall within specific regulatory regimes (for example, so that <i>oil market participants, corporate finance advisory firms</i> and service providers are permitted only to carry on those types of activities).
8.4.3	Under its section 55L power (or section 55Q power), the FCA may, at any time and of its own initiative, impose on an <i>authorised person</i> such requirements as it considers appropriate.
8.4.4	Examples of <i>requirements</i> that the <i>FCA</i> may consider imposing when exercising its <i>own-initiative power</i> in support of its enforcement function are: a <i>requirement</i> not to take on new business; a <i>requirement</i> not to hold or control <i>client money</i> ; a <i>requirement</i> not to trade in certain categories of <i>specified investment</i> ; a <i>requirement</i> that prohibits the disposal of, or other dealing with, any of the <i>firm's</i> assets (whether in the United Kingdom or elsewhere) or restricts those disposals or dealings; and a <i>requirement</i> that all or any of the <i>firm's</i> assets, or all or any assets belonging to investors but held by the <i>firm</i> to its order, must be transferred to a <i>trustee</i> approved by the <i>FCA</i> .

	8.5 Cancelling a firm's Part 4A permission on its own initiative
8.5.1	The FCA will consider cancelling a <i>firm's Part 4A permission</i> using its <i>own-initiative powers</i> contained in sections 55J and 55Q respectively of the Act in two main circumstances:
	(1) where the FCA has very serious concerns about a <i>firm</i> , or the way its business is or has been conducted;
	(2) where the <i>firm's regulated activities</i> have come to an end and it has not applied for <i>cancellation</i> of its <i>Part 4A permission</i> .
8.5.2	The grounds on which the FCA may exercise its power to cancel an authorised person's permission under section 55J of the Act are the same as the grounds for variation and for imposition of requirements. They are set out in section 55J(1) and section 55L(2) and described in \blacksquare EG 8.1.1. Examples of the types of circumstances in which the FCA may cancel a firm's Part 4A permission include:
	(1) non-compliance with a <i>Financial Ombudsman Service</i> award against the <i>firm</i> ;
	(2) material non-disclosure in an application for authorisation or approval or material non-notification after authorisation or approval has been granted. The information which is the subject of the non- disclosure or non-notification may also be grounds for cancellation;
	(3) failure to have or maintain adequate financial resources, or a failure to comply with regulatory capital requirements;
	(4) non-submission of, or provision of false information in, regulatory returns, or repeated failure to submit such returns in a timely fashion;
	(5) non-payment of FCA fees or repeated failure to pay FCA fees except under threat of enforcement action; and
	(6) failure to provide the FCA with valid contact details or failure to maintain the details provided, such that the FCA is unable to communicate with the <i>firm</i> ;
	(7) repeated failures to comply with <i>rules</i> or requirements;
	(8) a failure to co-operate with the <i>FCA</i> which is of sufficient seriousness that the <i>FCA</i> ceases to be satisfied that the <i>firm</i> is fit and proper, for example failing without reasonable excuse to:

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	 (a) comply with the material terms of a formal agreement made with the FCA to conclude or avoid disciplinary or other enforcement action; or
	(b) provide material information or take remedial action reasonably required by the <i>FCA</i> .
	Sections 55J(6) and 55K of the Act sets out further grounds on which the FCA may cancel the permission of authorised persons which are investment firms and section 55J(6A) of the Act set out further grounds on which the FCA may cancel the permission of authorised persons who are full-scope UK AIFMs.
8.5.2A	The FCA may also vary or cancel, under Schedule 6A to the Act, the Part 4A permission of a firm that is an FCA-authorised person if:
	(1) it appears to the FCA that that <i>person</i> is carrying on no <i>regulated activity</i> to which the <i>permission</i> relates; and
	(2) that <i>person</i> has failed to respond as directed to notices served by the <i>FCA</i> on that <i>person</i> under paragraph 2 of Schedule 6A.
	Schedule 6A specifies that the FCA may form the view that a <i>firm</i> is carrying on no such <i>regulated activity</i> on the basis of its failure to pay a periodic fee or levy or provide information to the FCA, in each case as required by the <i>Handbook</i> . Further <i>guidance</i> on this power is given in \blacksquare SUP 7.
8.5.3	Depending on the circumstances, the FCA may need to consider whether it should first use its own-initiative powers to impose requirements on a firm or to vary a firm's Part 4A permission before going on to cancel it. Amongst other circumstances, the FCA may use this power where it considers it needs to take immediate action against a firm because of the urgency and seriousness of the situation.
8.5.4	Where the situation appears so urgent and serious that the <i>firm</i> should immediately cease to carry on all <i>regulated activities</i> , the <i>FCA</i> may first vary the <i>firm's Part 4A permission</i> so that there is no longer any <i>regulated activity</i> for which the <i>firm</i> has a <i>Part 4A permission</i> . If it does this, the <i>FCA</i> will then have a duty to cancel the <i>firm's Part 4A permission</i> - once it is satisfied that it is no longer necessary to keep the <i>Part 4A permission</i> in force.
8.5.5	However, where the FCA has cancelled a firm's Part 4A permission, it is required by section 33 of the Act to go on to give a direction withdrawing the firm's authorisation. Accordingly, the FCA may decide to keep a firm's Part 4A permission in force to maintain the firm's status as an authorised person and enable it (the FCA) to monitor the firm's activities. An example is where the FCA needs to supervise an orderly winding down of the firm's regulated business (see SUP 6.4.22 (When will the relevant regulator grant an application for cancellation of permission)). Alternatively, the FCA may decide to keep a firm's status as an authorised person in force to use administrative enforcement powers against the firm.

	8.6 Exercising the power under section 55Q to vary or cancel a firm's Part 4A permission or to impose requirements on a firm in support of an overseas regulator: the FCA's policy
8.6.1	The FCA has a power under section 55Q to vary, or alternatively cancel, a <i>firm's Part 4A permission</i> , or to impose requirements on a <i>firm</i> , in support of an <i>overseas regulator</i> . Section 55Q, (5) and (6) sets out matters the FCA may, or must, take into account when it considers whether to exercise these powers.
8.6.2	[deleted]
8.6.3	[deleted]
8.6.4	The FCA will actively consider requests for assistance from overseas regulators Section 55Q, which sets out matters the FCA may take into account when it decides whether to vary or cancel a firm's Part 4A permission or to impose requirements on a firm in support of the overseas regulator, applies in these circumstances.
8.6.5	 Where section 55Q(5) applies and the FCA is considering whether to vary a firm's Part 4A permission or to impose requirements on a firm, it may take account of all the factors described in paragraphs ■ 8.6.1 to ■ 8.6.8 but may give particular weight to: (1) the matters set out in paragraphs (c) and (d) of section 55Q(5) (seriousness, importance to persons in the United Kingdom, and the public interest); and (2) any specific request made to it by the overseas regulator to impose requirements or to vary, rather than cancel, the firm's Part 4A permission.
8.6.6	The FCA will give careful consideration to whether the relevant authority's concerns would provide grounds for the FCA to exercise its own-initiative powers to vary, impose requirements or cancel if they related to a UK firm. It is not necessary for the FCA to be satisfied that the overseas provisions being

enforced mirror precisely those which apply to UK *firms*. However, the FCA will not assist in the enforcement of regulatory *requirements* or other provisions that appear to extend significantly beyond the purposes of UK *regulatory provisions*.

8.6.7 Similarly, the FCA will not need to be satisfied that precisely the same assistance would be provided to the United Kingdom in precisely the same situation. However, it will wish to be confident that the relevant authorities in the jurisdiction concerned would have powers available to them to provide broadly similar assistance in aid of UK authorities, and would be willing properly to consider exercising those powers. The FCA may decide, under section 55Q(6), not to exercise its *own-initiative powers* to vary or cancel in response to a request unless the regulator concerned undertakes to make whatever contribution towards the cost of its exercise the FCA considers appropriate.

8.6.8

Paragraphs \blacksquare 8.4.2 and \blacksquare 8.4.4 set out some examples of *limitations* and *requirements* the *FCA* may impose when exercising its section 55Q powers.

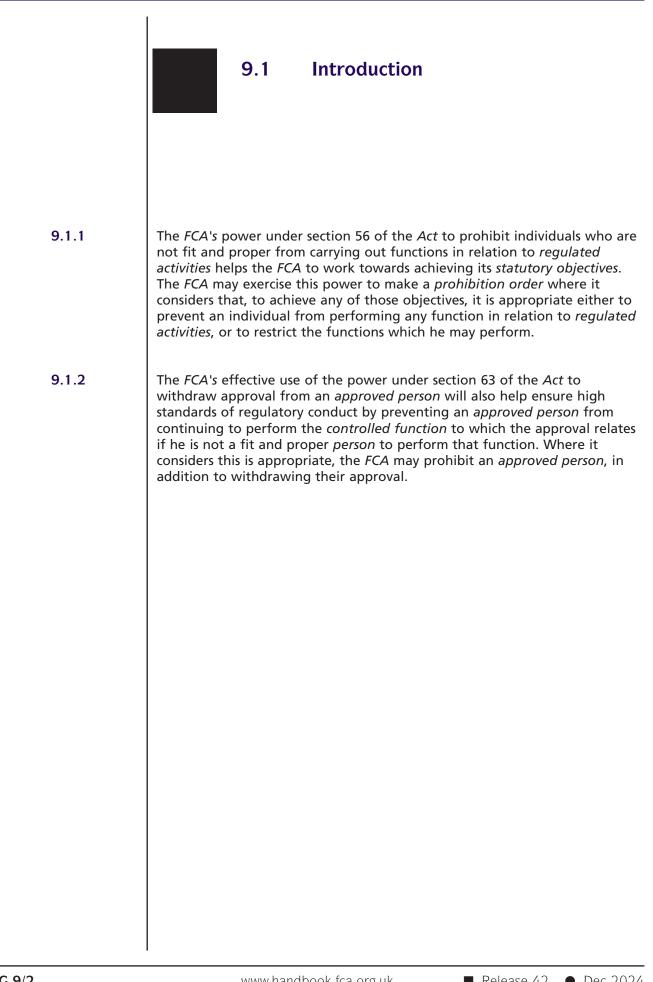
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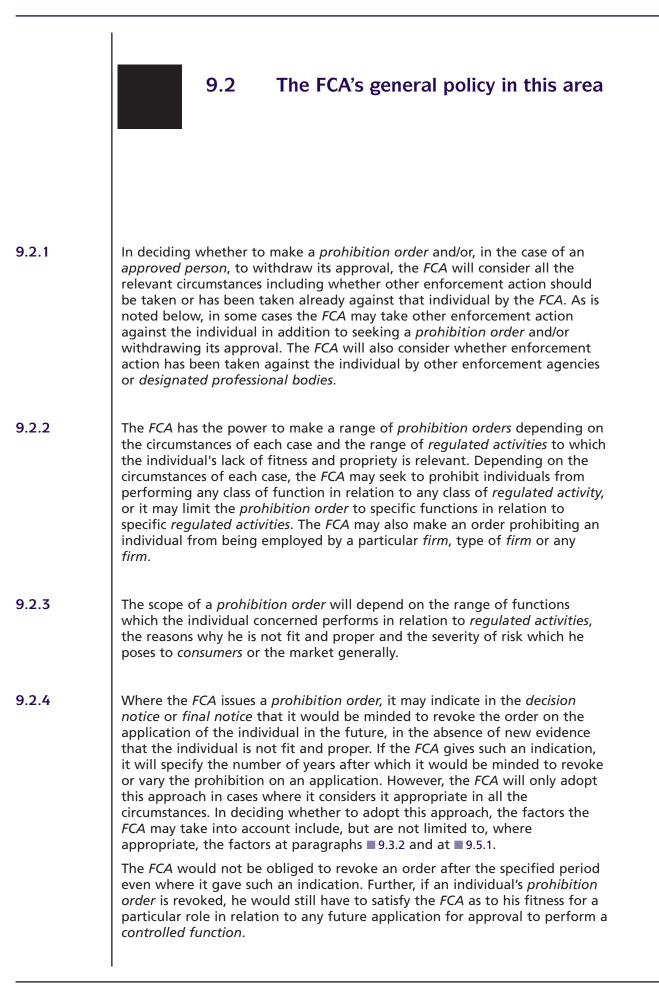
Enforcement Guide

Chapter 9

Prohibition Orders and withdrawal of approval

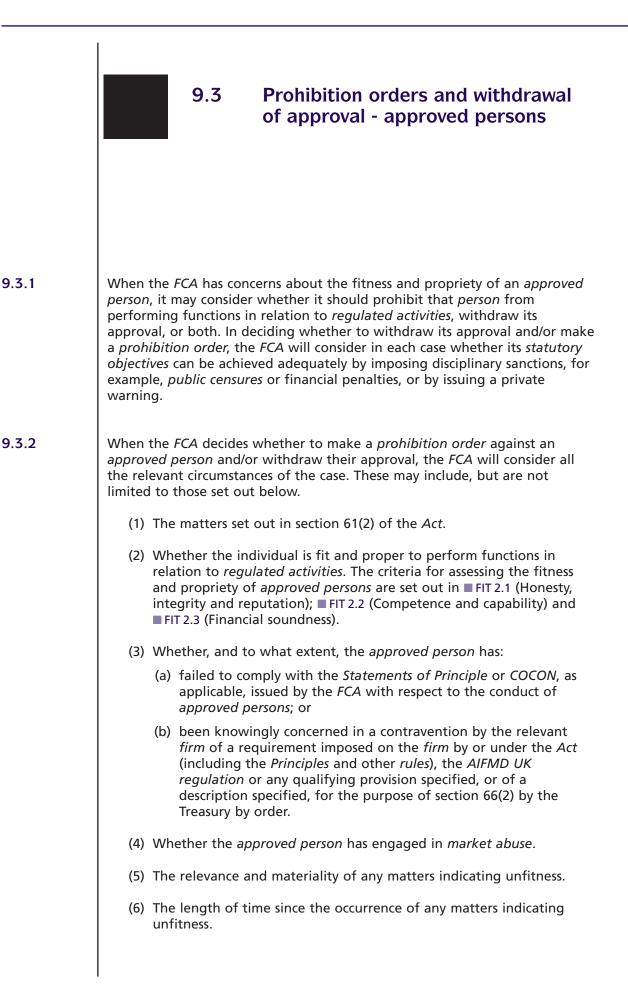
EG 9 : Prohibition Orders and withdrawal of approval





9.2.5

Paragraphs \blacksquare 9.3.1 to \blacksquare 9.3.7 set out additional guidance on the *FCA*'s approach to making *prohibition orders* against *approved persons* and/or withdrawing such persons' approvals. Paragraphs \blacksquare 9.5.1 to \blacksquare 9.5.2 set out additional guidance on the *FCA*'s approach to making *prohibition orders* against other individuals.



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(7)	The particular <i>controlled function</i> the <i>approved person</i> is (or was) performing, the nature and activities of the <i>firm</i> concerned and the markets in which he operates.
(8)	The severity of the risk which the individual poses to <i>consumers</i> and to confidence in the <i>financial system</i> .
(9)	The previous disciplinary record and general compliance history of the individual including whether the FCA, any previous regulator, designated professional body or other domestic or international regulator has previously imposed a disciplinary sanction on the individual.
(10)	Where the <i>approved person</i> is an <i>SMF manager</i> , whether they would be a fit and proper person to perform functions in relation to <i>regulated activities</i> if the <i>FCA</i> varied their approval by imposing one or more conditions. If so, whether it is appropriate for the <i>FCA</i> to exercise its power to impose such conditions, instead of making a prohibition order or withdrawing the <i>approved person's</i> approval.
which, indivic or oth of the for a f	CA may have regard to the cumulative effect of a number of factors when considered in isolation, may not be sufficient to show that the lual is not fit and proper to continue to perform a <i>controlled function</i> er function in relation to <i>regulated activities</i> . It may also take account particular <i>controlled function</i> which an <i>approved person</i> is performing <i>firm</i> , the nature and activities of the <i>firm</i> concerned and the markets which it operates.
regula FCA m a fit aı	the diverse nature of the activities and functions which the FCA tes, it is not possible to produce a definitive list of matters which the ight take into account when considering whether an individual is not nd proper <i>person</i> to perform a particular, or any, function in relation articular, or any, <i>firm</i> .
resulte	llowing are examples of types of behaviour which have previously ed in the FCA the deciding to issue a <i>prohibition order</i> or withdraw the val of an <i>approved person</i> :
(1)	Providing false or misleading information to the FCA; including information relating to identity, ability to work in the United Kingdom, and business arrangements;
(2)	Failure to disclose material considerations on application forms, such as details of County Court Judgments, criminal convictions and dismissal from employment for regulatory or criminal breaches. The nature of the information not disclosed can also be relevant;
(3)	Severe acts of dishonesty, e.g. which may have resulted in financial crime;
(4)	Serious lack of competence; and
(5)	Serious breaches of the <i>APER</i> or <i>COCON</i> , for <i>approved persons</i> , such as failing to make terms of business regarding fees clear or actively misleading clients about fees; acting without regard to

9.3.3

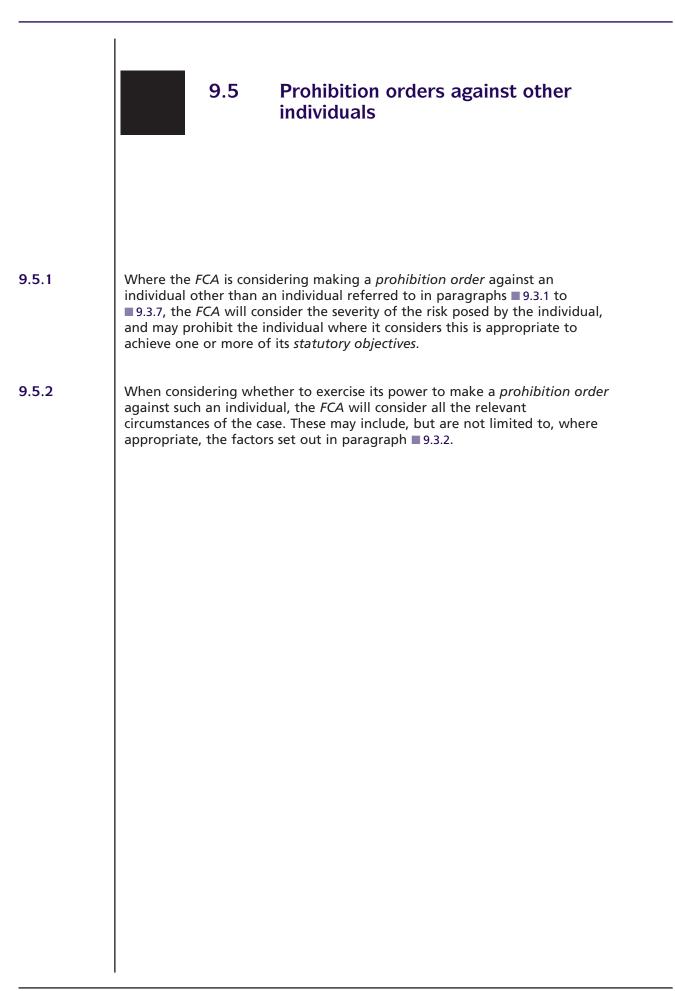
9.3.4

9.3.5

	instructions; providing misleading information to clients; consumers or third parties; giving clients poor or inaccurate advice; using intimidating or threatening behaviour towards clients and former clients; failing to remedy breaches of the general prohibition or to ensure that a <i>firm</i> acted within the scope of its permissions.
9.3.6	Certain matters that do not fit squarely, or at all, within the matters referred to above may also fall to be considered. In these circumstances the FCA will consider whether the conduct or matter in question is relevant to the individual's fitness and propriety.
9.3.7	Where it considers it is appropriate to withdraw an individual's approval to perform a <i>controlled function</i> within a particular <i>firm</i> , it will also consider, at the very least, whether it should prohibit the individual from performing that function more generally. Depending on the circumstances, it may consider that the individual should also be prohibited from performing other functions.
9.3.8	The FCA will consult the PRA before withdrawing an approval given by the PRA.

EG 9 : Prohibition Orders and withdrawal of approval

9.4 Prohibition orders against exempt persons and members of professional firms 9.4.1 In cases where it is considering whether to exercise its power to make a prohibition order against an individual performing functions in relation to exempt regulated activities by virtue of an exemption from the general prohibition under Part XX of the Act, the FCA will consider whether the particular unfitness might be more appropriately dealt with by making an order disapplying the exemption using its power under section 329 of the Act. In most cases where the FCA is concerned about the fitness and propriety of a specific individual in relation to exempt regulated activities by virtue of an exemption under Part XX of the Act, it will be more appropriate to make an order prohibiting the individual from performing functions in relation to exempt regulated activities than to make a disapplication order. 9.4.2 When considering whether to exercise its power to make a prohibition order against an exempt person, the FCA will consider all relevant circumstances including, where appropriate, the factors set out in paragraph \blacksquare 9.3.2.



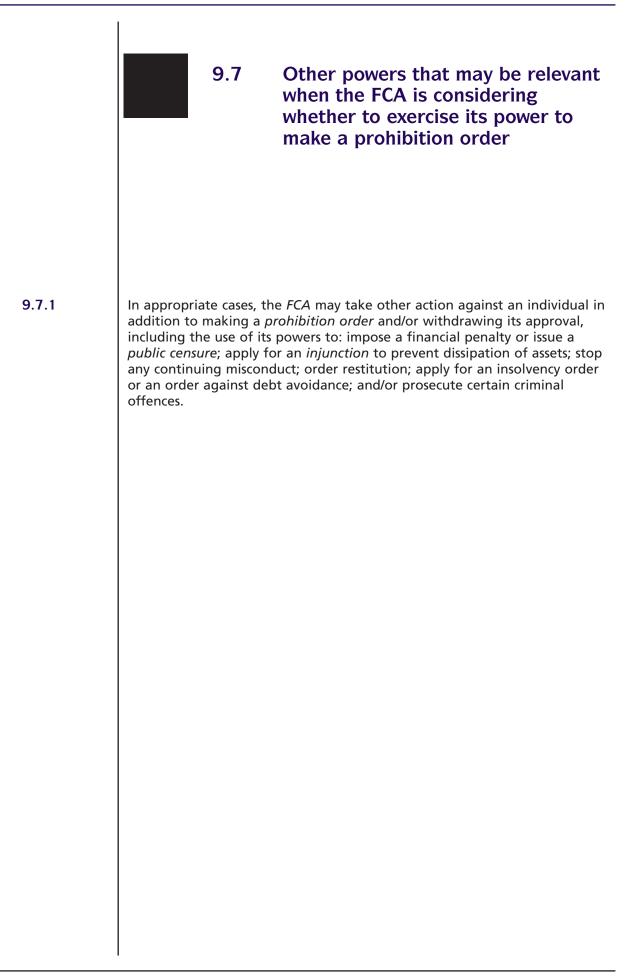
EG 9 : Prohibition Orders and withdrawal of approval

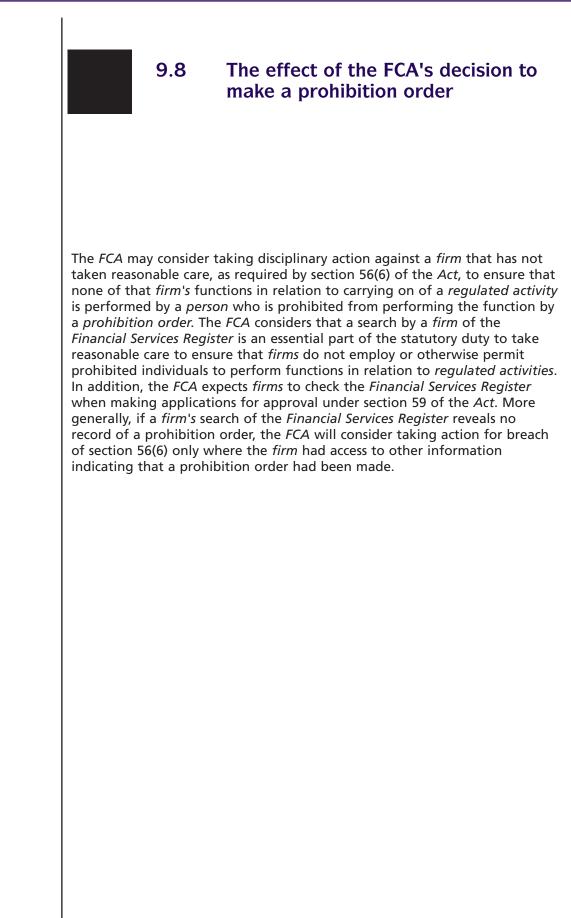
	9.6 Applications for variation or revocation of prohibition orders
9.6.1	When considering whether to grant or refuse an application to revoke or vary a <i>prohibition order</i> , the <i>FCA</i> will consider all the relevant circumstances of a case. These may include, but are not limited to:
	 the seriousness of the misconduct or other unfitness that resulted in the order;
	(2) the amount of time since the original order was made;
	(3) any steps taken subsequently by the individual to remedy the misconduct or other unfitness;
	(4) any evidence which, had it been known to the FCA at the time, would have been relevant to the FCA's decision to make the prohibition order;
	(5) all available information relating to the individual's honesty, integrity or competence since the order was made, including any repetition of the misconduct which resulted in the prohibition order being made;
	(6) where the FCA's finding of unfitness arose from incompetence rather than from dishonesty or lack of integrity, evidence that this unfitness has been or will be remedied; for example, this may be achieved by the satisfactory completion of relevant training and obtaining relevant qualifications, or by supervision of the individual by his employer;
	(7) the financial soundness of the individual concerned; and
	(8) whether the individual will continue to pose the level of risk to consumers or confidence in the financial system which resulted in the original prohibition if it is lifted.
9.6.2	When considering whether to grant or refuse an application to revoke or vary a <i>prohibition order</i> , the <i>FCA</i> will take into account any indication given by the <i>FCA</i> in the <i>final notice</i> that it is minded to revoke or vary the <i>prohibition order</i> on application after a certain number of years (see paragraph \blacksquare 9.2.4).
9.6.3	If the individual applying for a revocation or variation of a prohibition order proposes to take up an offer of employment to perform a <i>controlled</i>

function, the *FCA* will take this into account when considering whether to grant or refuse the application.

- **9.6.4** The FCA will not generally grant an application to vary or revoke a *prohibition order* unless it is satisfied that: the proposed variation will not result in a reoccurrence of the risk to *consumers* or confidence in the *financial system* that resulted in the order being made; and the individual is fit to perform functions in relation to *regulated activities* generally, or to those specific *regulated activities* in relation to which the individual has been prohibited. The FCA will assess the individual's fitness and propriety to perform these functions on the basis of the criteria in **E**FIT 2.1 (Honesty, integrity and reputation), **E**FIT 2.2 (Competence and capability) and **E**FIT 2.3 (Financial soundness).
- **9.6.5** The *FCA* will consult the *PRA* before varying or revoking a prohibition order if, as a result of the variation or revocation, an individual will either be prohibited from, or no longer be prohibited from, a function of interest to the *PRA* as defined at section 56(7B) of the *Act*.

EG 9 : Prohibition Orders and withdrawal of approval





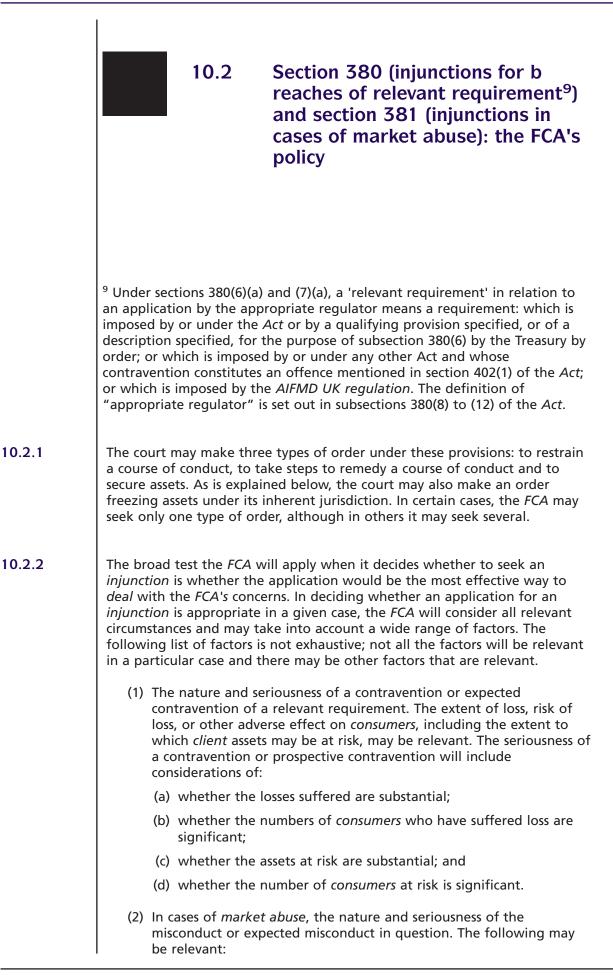
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	9.9 The effect of the FCA's decision to withdraw approval
9.9.1	When the FCA's decision to withdraw an approval has become effective, the position of the <i>firm</i> which applied for that approval depends on whether it directly employs the <i>person</i> concerned, or whether the <i>person</i> is employed by one of its contractors.
9.9.2	Section 59(1) is relevant where the <i>firm</i> directly employs the <i>person</i> concerned. Under the provision, a <i>firm</i> ('A') must take reasonable care to ensure that no <i>person</i> performs a <i>controlled function</i> under an <i>arrangement</i> entered into by A in relation to the carrying on by it of a <i>regulated activity</i> , unless the <i>appropriate regulator</i> (as defined in section 59(4) of the <i>Act</i>) approves the performance by that <i>person</i> of the <i>controlled function</i> to which the approval relates. Therefore, if the <i>firm</i> continues to employ the <i>person</i> concerned to carry out a <i>controlled function</i> , it will be in breach of section 59(1) and the <i>FCA</i> may take enforcement action against it (save where the <i>firm</i> concerned is a <i>PRA-authorised person</i> and the approval concerned falls to be given by the <i>PRA</i>).
9.9.3	Section 59(2) is relevant where the <i>person</i> is employed by a contractor of the <i>firm</i> . It requires a <i>firm</i> ('A') to take reasonable care to ensure that no <i>person</i> performs a <i>controlled function</i> under an arrangement entered into by a contractor of A in relation to the carrying on by A of a <i>regulated activity</i> , unless the <i>appropriate regulator</i> (as defined in section 59(4) of the <i>Act</i>) approves the performance by that <i>person</i> of the <i>controlled function</i> to which the approval relates. Therefore, if a contractor of the <i>firm</i> employs the <i>person</i> concerned, and the contractor continues to employ the <i>person</i> to carry out a <i>controlled function</i> , the <i>firm</i> itself will be in breach of section 59(2) unless it has taken reasonable care to ensure that this does not happen. The <i>FCA</i> may take enforcement action against a <i>firm</i> that breaches this requirement (save where the <i>firm</i> concerned is a <i>PRA-authorised person</i> and the approval concerned falls to be given by the <i>PRA</i>).
9.9.4	<i>Firms</i> should be aware of the potential effect that these provisions may have on their contractual relationships with <i>approved persons</i> employed by them and with contractors engaged by them, and their obligations under those contracts.

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Chapter 10 Injunctions

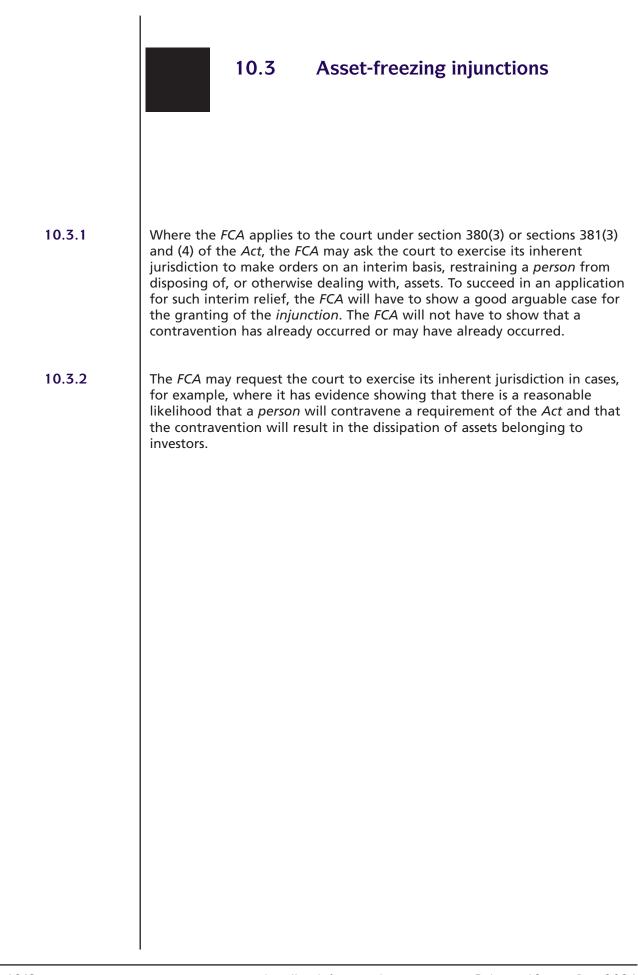
	10.1 Introduction
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10.1.2	The orders the court may make following an application by the FCA und the powers referred to in this chapter are generally known in England a Wales as <i>injunctions</i> , and in Scotland as <i>interdicts</i> . In the chapter, the wor <i>'injunction'</i> and the word 'order' also mean ' <i>interdict'</i> . The FCA's effective use of these powers will help it work towards its <i>operational objectives</i> , particular, those of securing an appropriate degree of protection for <i>consumers</i> , protecting and enhancing the integrity of the UK financial sy and promoting effective competition in the interests of <i>consumers</i> in the markets.
10.1.3	Decisions about whether to apply to the civil courts for injunctions under Act will be made the executive director of Enforcement or, in his or her absence, the acting executive director of Enforcement.



- (a) the impact or potential impact on the *financial system* of the conduct in question. This would include the extent to which it has resulted in distortion or disruption of the markets, or would be likely to do so if it was allowed to take place or to continue;
- (b) the extent and nature of any losses or other costs imposed, or likely to be imposed, on other users of the *financial system*, as a result of the misconduct.
- (3) Whether the conduct in question has stopped or is likely to stop and whether steps have been taken or will be taken by the *person* concerned to ensure that the interests of *consumers* are adequately protected. For example, an application for an *injunction* may be appropriate where the *FCA* has grounds for believing that a contravention of a relevant requirement, *market abuse* or both may continue or be repeated. It is likely to have grounds to believe this where, for example, the *Takeover Panel* has requested that a *person* stop a particular course of conduct and that *person* has not done so.
- (4) Whether there are steps a *person* could take to remedy a contravention of a relevant requirement or market abuse. The steps the FCA may require a person to take will vary according to the circumstances but may include the withdrawal of a misleading financial promotion or publishing a correction, writing to clients or investors to notify them of FCA action, providing financial redress and repatriating funds from an overseas jurisdiction. An application by the FCA to the court under section 380(2) or 381(2) for an order requiring a person to take such steps may not be appropriate if, for example, that person has already taken or proposes to take appropriate remedial steps at his own initiative or under a ruling imposed by another regulatory authority (such as the Takeover Panel or a recognised investment exchange). If another authority has identified the relevant steps and the person concerned has failed to take them, the FCA will take this into account and (subject to all other relevant factors and circumstances) may consider it is appropriate to apply for an injunction. In those cases the FCA may consult with the relevant regulatory authority before applying for an injunction.
- (5) Whether there is a danger of assets being dissipated. The main purpose of an application under section 380(3), sections 381(3) and (4) or pursuant to the court's inherent jurisdiction, is likely to be to safeguard funds containing *client* assets (e.g. *client* accounts) and/or funds and other assets from which restitution may be made. The FCA may seek an *injunction* to secure assets while a suspected contravention is being investigated or where it has information suggesting that a contravention is about to take place.
- (6) The costs the FCA would incur in applying for and enforcing an *injunction* and the benefits that would result. There may be other cases which require the FCA's attention and take a higher priority, due to the nature and seriousness of the breaches concerned. There may, therefore, be occasions on which the FCA considers that time and resources should not be diverted from other cases in order to make an application for an *injunction*. These factors reflect the FCA's duty under the Act to have regard to the need to use its resources in the most efficient and economic way.

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- (7) The disciplinary record and general compliance history of the *person* who is the subject of the possible application. This includes whether the *FCA* (or a *previous regulator*) has taken any previous disciplinary, remedial or protective action against the *person*. It may also be relevant, for example, whether the *person* has previously given any undertakings to the *FCA* (or any *previous regulator*) not to do a particular act or engage in particular behaviour and is in breach of those undertakings.
- (8) Whether the conduct in question can be adequately addressed by other disciplinary powers, for example *public censure* or financial penalties.
- (9) The extent to which another regulatory authority can adequately address the matter. Certain circumstances may give rise not only to possible enforcement action by the *FCA*, but also to action by other regulatory authorities. The *FCA* will examine the circumstances of each case, and consider whether it is appropriate for the *FCA* to take action to address the relevant concern. In most cases the *FCA* will consult with other regulatory authorities before making an application for an order.
- (10) Whether there is information to suggest that the *person* who is the subject of the possible application is involved in *financial crime*.
- (11) In any case where the FCA is of the opinion that any potential exercise of its powers under section 381 may affect the timetable or the outcome of a *takeover bid*, the FCA will consult the *Takeover Panel* before taking any steps to exercise these powers and will give due weight to its views.



	10.4 Other relevant powers
10.4.1	The FCA has a range of powers it can use to take remedial, protective and disciplinary action against a <i>person</i> who has contravened a relevant requirement or engaged in <i>market abuse</i> , as well as its powers to seek injunctions under sections 380 and 381 of the Act and under the courts' inherent jurisdiction. Where appropriate, the FCA may exercise these other powers before, at the same time as, or after it applies for an <i>injunction</i> against a <i>person</i> .
10.4.2	When, in relation to <i>firms</i> , the <i>FCA</i> applies the broad test outlined in paragraph \blacksquare 10.2.2, it will consider the relative effectiveness of the other powers available to it, compared with injunctive relief. For example, where the <i>FCA</i> has concerns about whether a <i>firm</i> will comply with restrictions that the <i>FCA</i> could impose by exercising its <i>own-initiative powers</i> , it may decide it would be more appropriate to seek an <i>injunction</i> . This is because breaching any requirement imposed by the court could be punishable for contempt. Alternatively, where, for example, the <i>FCA</i> has already imposed requirements on a <i>firm</i> by exercising its <i>own-initiative powers</i> and these requirements have not been met, the <i>FCA</i> may seek an <i>injunction</i> to enforce those requirements.
10.4.3	The FCA's own-initiative powers do not apply to unauthorised persons. This means that an application for an <i>injunction</i> is the only power by which the FCA may seek directly to prevent unauthorised persons from actual or threatened breaches or market abuse. The FCA will decide whether an application against an unauthorised person is appropriate, in accordance with the approach discussed in paragraph \blacksquare 10.2.2. The FCA may also seek an <i>injunction</i> to secure assets where it intends to use its insolvency powers against an unauthorised person.
10.4.4	In certain cases, conduct that may be the subject of an <i>injunction</i> application will also be an offence which the FCA has power to prosecute under the Act. In those cases, the FCA will consider whether it is appropriate to prosecute the offence in question, as well as applying for injunctions under section 380, section 381, or both.
10.4.5	Where the FCA exercises its powers under section 380, section 381 and/or invokes the court's inherent jurisdiction to obtain an order restraining the disposal of assets, it may also apply to the court for a restitution order for the distribution of those assets.

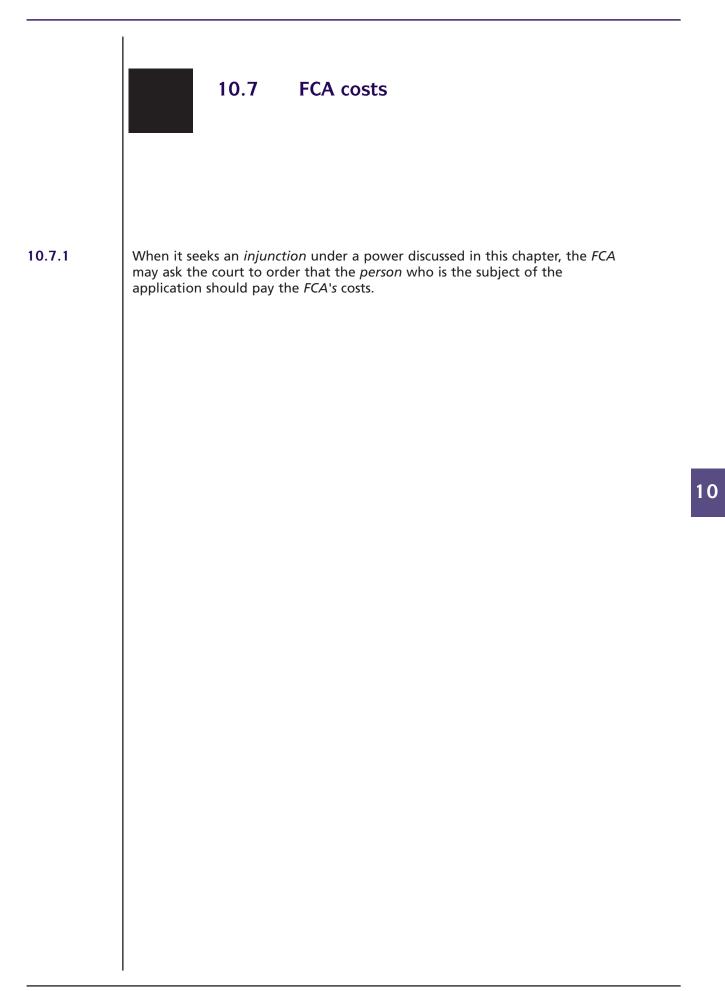
	10.6 Applications for injunctions under regulation 12 of the Unfair Terms Regulations or Schedule 3 to the CRA : the FCA 's policy
10.6.1	The Unfair Terms Regulations still apply to contracts entered into before 1 October 2015. Please read the pre-1 October 2015 version of this guide for the FCA's approach and policy relating to its powers under the Unfair Terms Regulations.
10.6.2	For a consumer contract term, if the FCA decides, after notifying the Competition and Markets Authority (the CMA), to the extent required by Schedule 3 to the CRA, to address issues using its powers under Schedule 3, if the contract term is within the CRA's scope, it will, unless the case is urgent, generally first write to a <i>person</i> using or proposing or recommending the use of that term.
10.6.3	When writing, the FCA will express its concerns about whether the term is or would be unfair within the meaning of sections 62 to 64 of the CRA, or non-transparent within the meaning of section 68 of the CRA, or purports or would purport to exclude or restrict any liability described in the sections of the CRA specified in paragraph 3(2) of Schedule 3 and will invite the person's comments on those concerns.
10.6.4	If the FCA, having considered those comments, remains of the view that the term is or would be unfair or non-transparent or purports, or would purport, to be exclusionary or restrictive, as described above, it will normally ask the person to undertake to stop using, relying on or recommending it or proposing its use. It should be noted that, under paragraphs 2(3), 6(3) and 7(1) of Schedule 3 to the CRA, such an undertaking must be notified by the FCA to the CMA and any relevant complainant and then the CMA is under a duty to publish it.
10.6.5	In relation to a notice to <i>consumers</i> within the <i>CRA</i> 's scope, the <i>FCA</i> will generally, after notifying the CMA, request such an undertaking from the relevant <i>person</i> , if the notice causes the <i>FCA</i> relevant concerns, without first seeking comments. Although the <i>FCA</i> will, unless the case is an urgent one and time does not permit, then have regard to any representations responsive to that request.

- 10.6.6 If, whether in relation to such a notice or such a term, the *person* either declines to give such an undertaking, or gives such an undertaking and fails to follow it, the *FCA* will consider the need to apply to court for an *injunction* under Schedule 3 to the *CRA*. The *FCA* will, again, notify the CMA appropriately at this stage, as required by Schedule 3.
- 10.6.7 In determining whether to seek an *injunction* under Schedule 3 to the *CRA* against a *person*, after or, in an urgent case, instead of requesting such an undertaking, the *FCA* will consider the full circumstances of each case. A number of factors may be relevant for this purpose. The following list is not exhaustive; not all of the factors may be relevant in a particular case, and there may be other factors that are relevant such as:
 - (1) whether the FCA is satisfied that the contract term or notice in question may properly be regarded, if it is used, as unfair, non-transparent and/or purportedly exclusionary and/or restrictive within the meaning of the CRA;
 - (2) the extent and nature of the detriment to *consumers* resulting from the term or notice, or the potential detriment which could result from the term or notice;
 - (3) whether the *person* has, if asked to do so, fully cooperated with the *FCA* in resolving the *FCA*'s concerns about the particular contract term or notice;
 - (4) the likelihood of success of an application for an *injunction*;
 - (5) the costs the FCA would incur in applying for and enforcing an *injunction* and the benefits that would result from that action; the FCA is more likely to be satisfied that an application is appropriate where an *injunction* would not only prevent the use of the particular contract term or notice, but would also be likely, as paragraph 5(3)(b) of Schedule 3 to the CRA envisages, to prevent the use of similar terms or notices, or terms or notices having a similar effect.
- **10.6.8** In an urgent case, the *FCA* may seek a temporary *injunction*, to prevent the continued or potential use of the term or notice until it can be fully considered by the court. An urgent case is one in which the *FCA* considers that the actual or potential detriment is so serious that urgent action is necessary. In deciding whether to apply for a temporary *injunction*, the *FCA* may take into account a number of factors, including one or more of the factors set out in paragraph \blacksquare 10.6.7. In such an urgent case, the *FCA* may seek a temporary *injunction* without first consulting with the *person* or *persons* using or proposing to use, or recommending the use of, the relevant term or notice.
- 10.6.9 In deciding whether to grant an a final *injunction* under Schedule 3 to the *CRA*, the court will decide whether the term or notice in question is unfair, purportedly restrictive or exclusionary or non-transparent within the meaning of the *CRA*. The court may grant an *injunction* on such terms as it sees fit. For example, it may require the *person* to stop including a term in contracts with *consumers* or issuing, publishing, communicating or announcing a notice to *consumers* from the date of the *injunction* and to stop relying on the term in such contracts which have been concluded or on

the notice to the extent that it has already been issued, published, communicated or announced. If the *person* fails to comply with the *injunction*, the *person* will be in contempt of court.

- **10.6.10** The CRA provides that a term or notice that is unfair or a term that excludes or restricts liability in any of the ways specified in the CRA is not binding on the consumer. This is the case irrespective of whether there has been a decision of a court to that effect. To The CRA also provides that, to the extent that it is practicable, the rest of the contract continues in effect.
- **10.6.11** When the *FCA* considers that a case requires enforcement action under the *CRA*, it will take the enforcement action itself, after appropriately notifying the CMA, if the *person* against whom such action will be taken is a *firm* or an *appointed representative*.
- **10.6.12** Where that *person* is not a *firm* or an appointed *representative*, the *FCA* will liaise with the CMA or (as appropriate) another *CRA* regulator.

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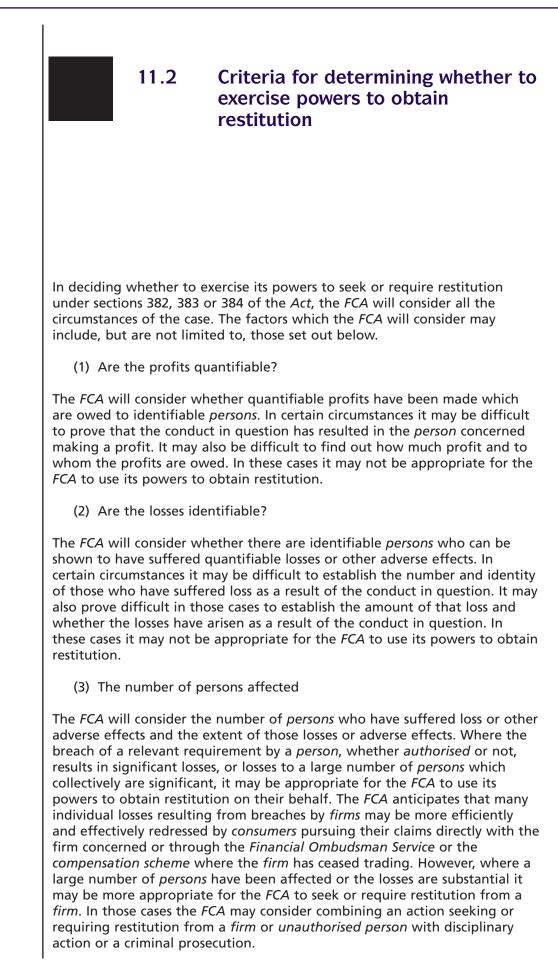
Chapter 11

Restitution and redress

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	11.1 Restitution orders under sections 382, 383 and 384 of the Act: the FCA's general approach
11.1.1	Decisions about whether to apply to the civil courts for restitution orders under the <i>Act</i> will be made by the executive director of Enforcement or, in his or her absence, the acting executive director of Enforcement.
11.1.2	[deleted]
11.1.3	The FCA has power to apply to the court for a restitution order under section 382 of the Act and (in the case of market abuse) under section 383 of the Act. It also has an administrative power to require restitution under section 384 of the Act. When deciding whether to exercise these powers, the FCA will consider whether this would be the best use of the FCA's limited resources taking into account, for example, the likely amount of any recovery and the costs of achieving and distributing any sums. It will also consider, before exercising its powers: other ways that persons might obtain redress, and whether it would be more efficient or cost-effective for them to use these means instead; and any proposals by the person concerned to offer redress to any consumers or other persons who have suffered loss, and the adequacy of those proposals. The FCA expects, therefore, to exercise its formal restitution powers on rare occasions only.
11.1.4	Instances in which the FCA might consider using its powers to obtain restitution for <i>eligible counterparties</i> are likely to be very limited.



11.2.1

(4) FCA costs

The FCA will consider the cost of securing redress and whether these are justified by the benefit to persons that would result from that action. The FCA will consider the costs of exercising its powers to obtain restitution and, in particular, the costs of any application to the court for an order for restitution, together with the size of any sums that might be recovered as a result. The costs of the action will, to a certain extent, depend on the nature and location of assets from which restitution may be made. In certain circumstances it may be possible for the FCA to recover its costs of applying to the court for an order for restitution, or a proportion of those costs, from the party against whom a restitution order is obtained, though this would have the disadvantage of reducing the amount available to pay redress.

(5) Is redress available elsewhere?

The FCA will consider the availability of redress through the Financial Ombudsman Service or the compensation scheme. This will be relevant where the loss has resulted from the conduct of a firm. It will not be relevant where losses have resulted from the conduct of unauthorised persons operating in breach of the general prohibition. The Financial Ombudsman Service and the compensation scheme (where the firm has ceased trading) may be a more efficient and effective method of redress in many cases. The Financial Ombudsman Service provides a way for some consumers to obtain redress. The compensation scheme may provide redress for some consumers and businesses. The FCA's power to obtain restitution is not intended to duplicate the functions of the Ombudsman or compensation schemes in those cases. However, in certain cases it will be more appropriate for the FCA to pursue restitution. Further details of these schemes are set out in COMP.

(6) Is redress available through another regulator?

The FCA will consider the availability of redress through another regulatory authority. Where another regulatory authority, such as the Takeover Panel, is in a position to require appropriate redress, the FCA will not generally exercise its own powers to do so. If the FCA does consider that action is appropriate and the matters in question have happened in the context of a takeover bid, the FCA will only take action during the bid in the circumstances set out in DEPP 6.2.26G if the person concerned has responsibilities under the Takeover Code. If another regulatory body has required redress and a *person* has not met that requirement, the FCA will take this into account and (subject to all other relevant factors and circumstances) may consider it appropriate to take action to ensure that such redress is provided.

(7) Can persons bring their own proceedings?

The FCA will consider whether persons who have suffered losses are able to bring their own civil proceedings. In certain circumstances it may be appropriate for persons to bring their own civil proceedings to recover losses. This might be the case where the person who has suffered loss is a eligible counterparty and so may be expected to have a high degree of financial experience and knowledge. When considering whether this might be a more appropriate method of obtaining redress, the FCA will consider the costs to the *person* of bringing that action and the likelihood of success in relation to the size of any sums that may be recovered.

(8) Is the firm solvent?

The FCA will consider the solvency of the *firm* or *unauthorised person* concerned. Where the solvency of the *firm* or *unauthorised person* would be placed at risk by the payment of restitution, the FCA will consider whether it is appropriate to seek restitution. In those cases, the FCA may consider obtaining a compulsory *insolvency order* against the *firm* or *unauthorised person* rather than restitution. When considering these options, the FCA may also take account of the position of other creditors who may be prejudiced if the assets of the *firm* or *unauthorised person* are used to pay restitution payments prior to insolvency.

(9) What other powers are available to the FCA?

The FCA will consider the availability of its power to obtain a compulsory *insolvency order* against the *firm* or *unauthorised person* concerned or to apply to the court for the appointment of a receiver. In certain circumstances it may be appropriate for the FCA to obtain an administration order, winding up order or bankruptcy order against a *firm* or *unauthorised person* carrying out *regulated activities* in breach of the *general prohibition*.

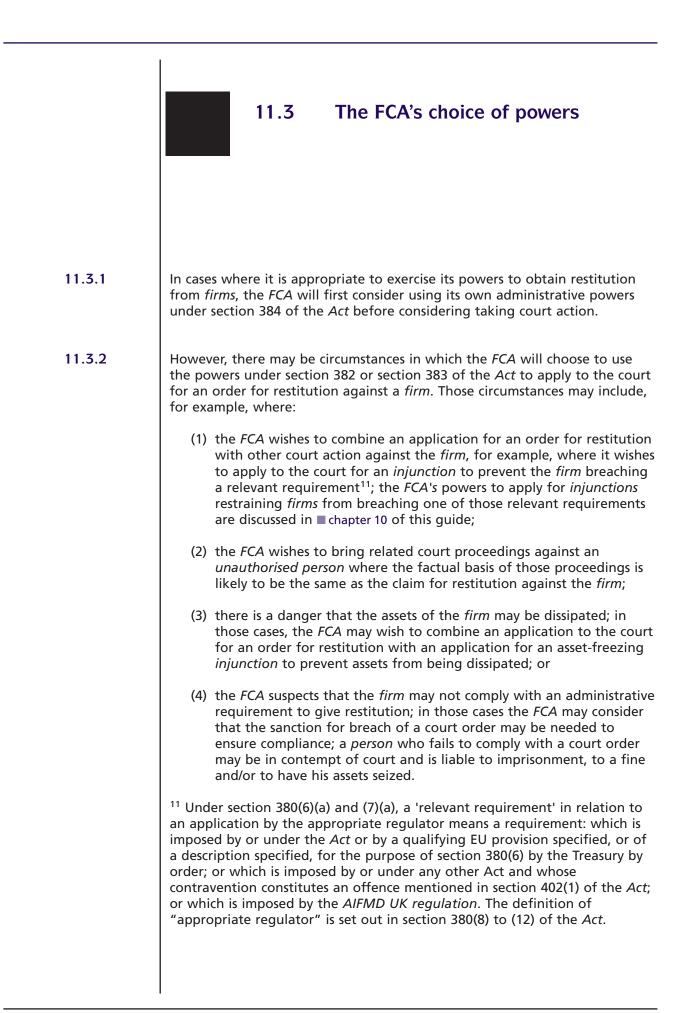
The FCA may decide to exercise its power to obtain a compulsory insolvency order or to apply for the appointment of a receiver rather than to exercise its powers to obtain restitution. This could happen if the FCA has particular concerns about a person's conduct, or financial position and, in particular, whether it is solvent (though the appointment by the court of a receiver is not conditional on the insolvency of the *person* concerned). The FCA may also consider the cost of seeking compulsory insolvency orders which will be paid out of the assets of the *firm*, or of the *unauthorised person* concerned, compared to the cost of seeking restitution. In the case of unauthorised persons operating in breach of the general prohibition, a decision to apply for a compulsory insolvency order rather than restitution will depend on all the circumstances of the case. In particular, the FCA may consider the significance of the unauthorised activities compared to the whole of the business; the nature and conduct of the activities carried on in breach of the general prohibition; and the number and nature of the claims against the person or firm concerned. The FCA's powers to apply for compulsory insolvency orders are discussed in chapter 13 of this guide.

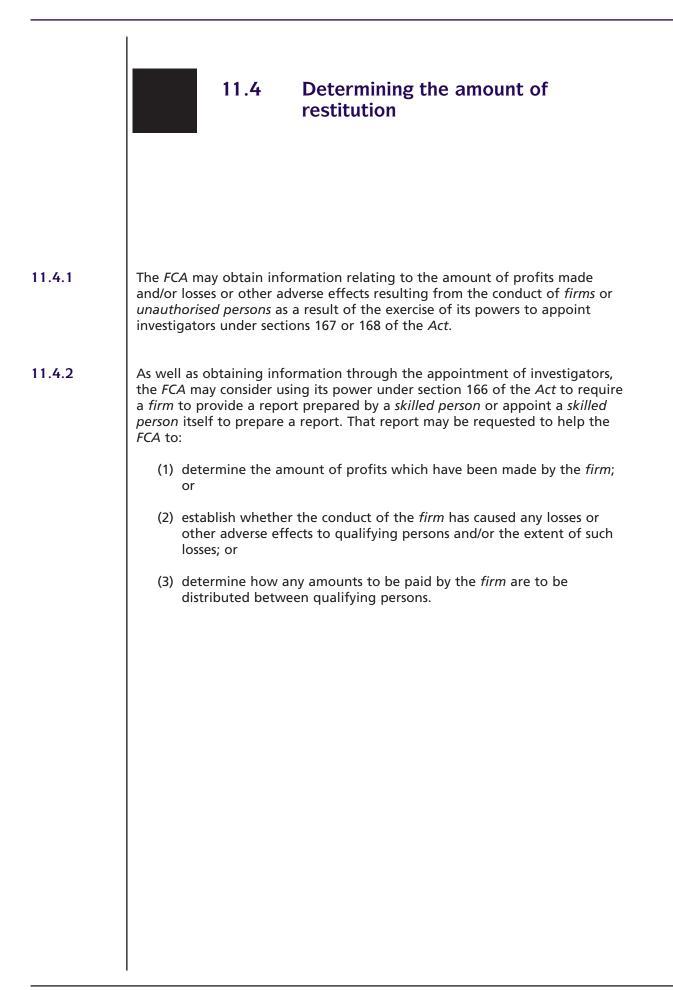
(10) The behaviour of the persons suffering loss

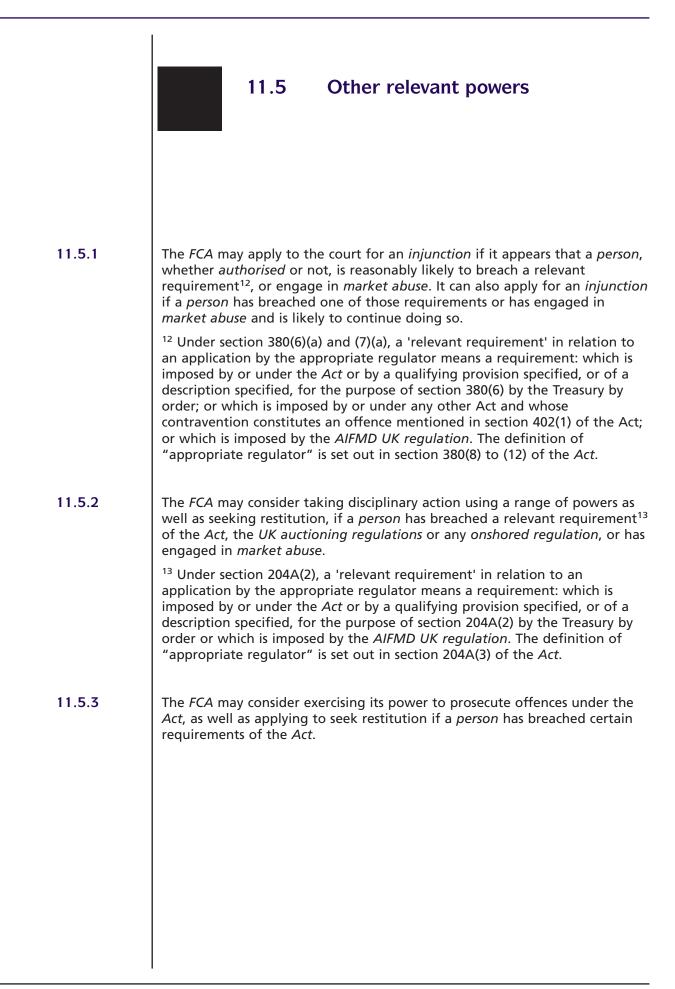
The FCA will consider the conduct of the *persons* who have suffered loss. As part of its operational objective of securing an appropriate degree of protection for *consumers*, the FCA is required to publicise information about the *authorised* status of *persons* and is empowered to give information and guidance about the regulation of financial services. This information should help *consumers* avoid suffering losses. When the FCA considers whether to obtain restitution on behalf of *persons*, it will consider the extent to which those *persons* may have contributed to their own loss or failed to take reasonable steps to protect their own interests.

(11) Other factors which may be relevant

The FCA will consider the context of the conduct in question. In any case where the FCA believes that the exercise of its powers under section 383 or 384 of the Act may affect the timetable or outcome of a *takeover bid*, it will consult the *Takeover Panel* before taking any steps to exercise such powers, and will give due weight to its views.







Enforcement Guide

Chapter 12

Prosecution of Criminal Offences

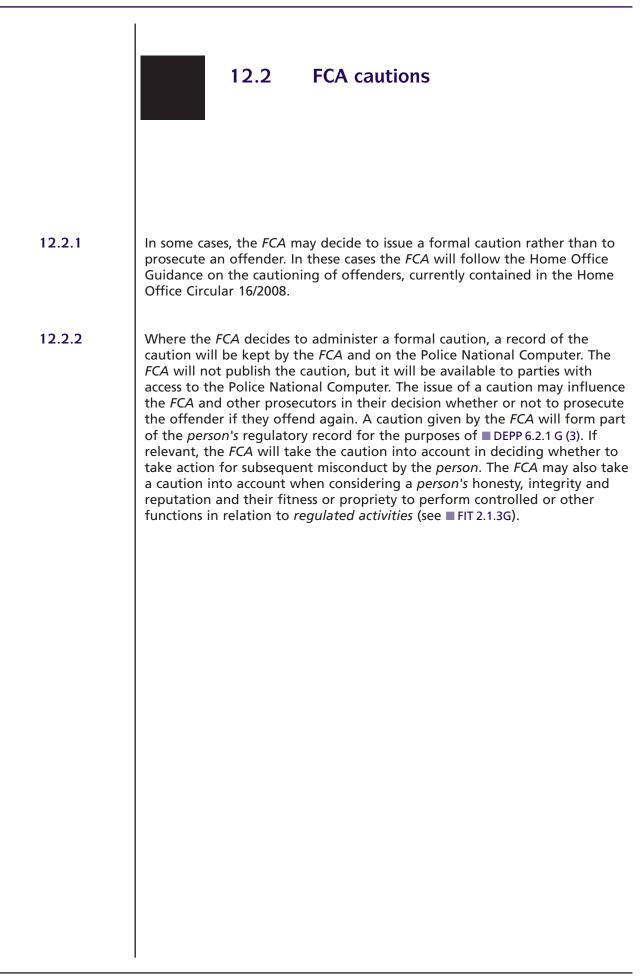
	12.1 The FCA's general approach
12.1.1	The FCA has powers under sections 401 and 402 of the Act to prosecute a range of criminal offences in England, Wales and Northern Ireland. The FCA may also prosecute criminal offences where to do so would be consistent with meeting any of its statutory objectives.
12.1.2	The FCA's general policy is to pursue through the criminal justice system all those cases where criminal prosecution is appropriate. When it decides whether to bring criminal proceedings in England, Wales or Northern Ireland, or to refer the matter to another prosecuting authority in England, Wales or Northern Ireland (see paragraph 12.4.1), it will apply the basic principles set out in the Code for Crown Prosecutors. ¹⁴ When considering whether to prosecute a breach of the <i>Money Laundering Regulations</i> , the <i>FCA</i> will also have regard to whether the person concerned has followed the Guidance for the UK financial sector issued by the Joint Money Laundering Steering Group.
12.1.3	The FCA's approach when deciding whether to commence criminal proceedings for <i>misleading statements and practices offences</i> and <i>insider dealing offences</i> , where the FCA also has power to impose a sanction for <i>market abuse</i> , is discussed further in paragraphs 12.3.1 to 12.3.4 . Commencing criminal proceedings
12.1.4	 In cases where criminal proceedings have commenced or will be commenced, the FCA may consider whether also to take civil or regulatory action (for example where this is appropriate for the protection of <i>consumers</i>) and how such action should be pursued. That action might include: applying to court for an <i>injunction</i>; applying to court for a restitution order; variation and/or cancellation of <i>permission</i>; and prohibition of individuals. The factors the FCA may take into account when deciding whether to take such action, where criminal proceedings are in contemplation, include, but are not limited to the following: (1) whether, in the FCA's opinion, the taking of civil or regulatory action might unfairly prejudice the prosecution, or proposed prosecution, of criminal offences; (2) whether, in the FCA's opinion, the taking of civil or regulatory action might unfairly prejudice the defendants in the criminal proceedings in the conduct of their defence; and

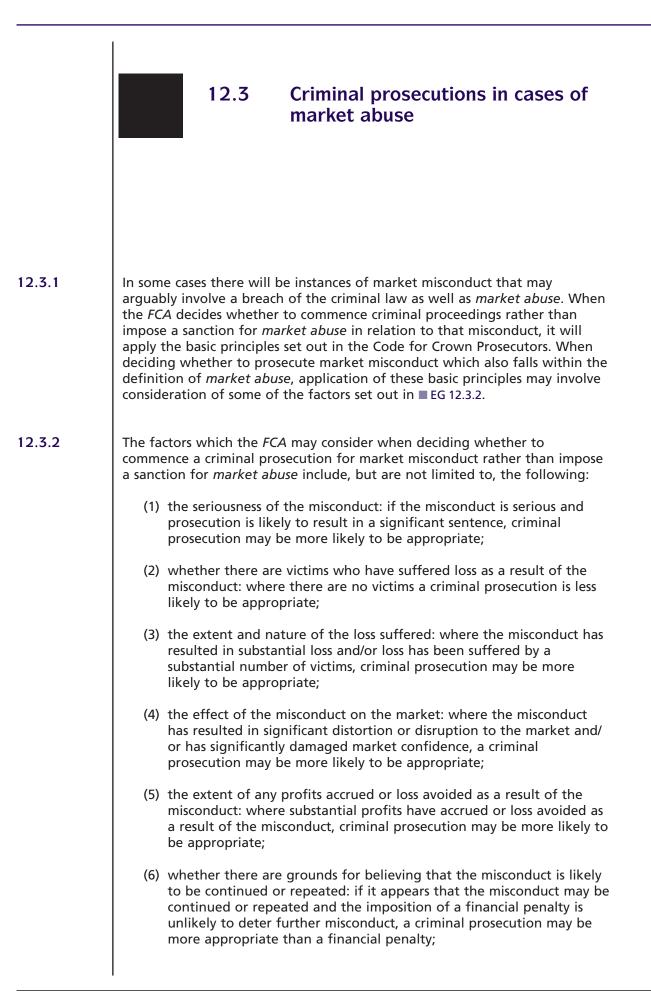
- (3) whether it is appropriate to take civil or regulatory action, having regard to the scope of the criminal proceedings and the powers available to the criminal courts.
- **12.1.5** Subject to 12.4C, a decision to commence criminal proceedings will be made by the executive director of Enforcement or, in his or her absence, the acting executive director of Enforcement.

12.1.6 [deleted]

12.1.7 Decisions about whether to initiate criminal proceedings under the Building Societies Act 1986, the Friendly Societies Acts 1974 and 1992, the Credit Unions Act 1979 and the Co-operative and Community Benefit Societies Act 2014 will be taken by the executive director of Enforcement or, in his or her absence, the acting executive director of Enforcement.

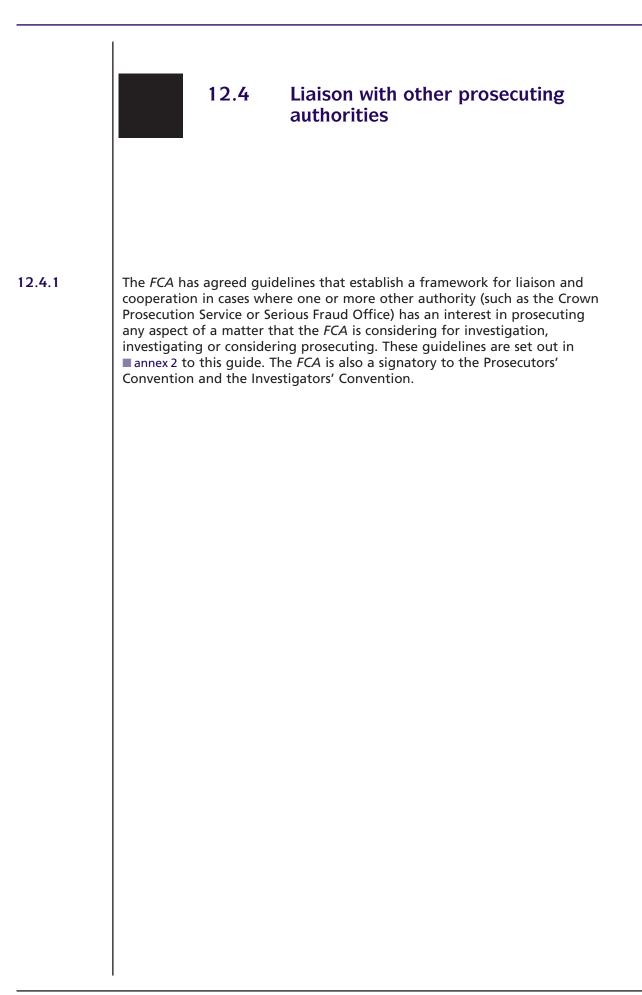
EG 12 : Prosecution of Criminal Offences

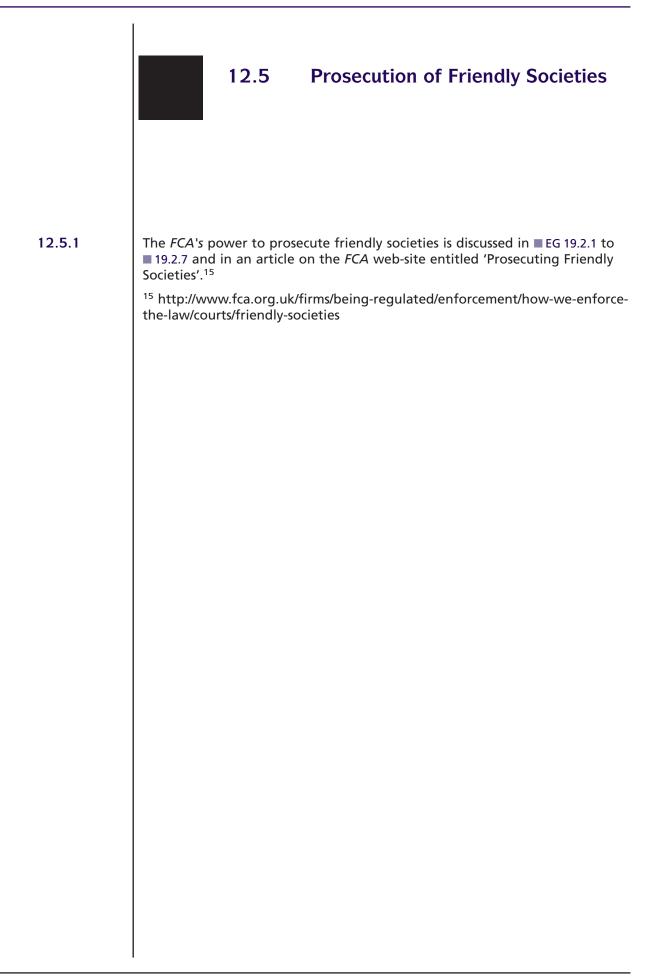




- (7) whether the person has previously been cautioned or convicted in relation to market misconduct or has been subject to civil or regulatory action in respect of market misconduct;
- (8) the extent to which redress has been provided to those who have suffered loss as a result of the misconduct and/or whether steps have been taken to remedy any failures in systems or controls which gave rise to the misconduct: where such steps are taken promptly and voluntarily, criminal prosecution may not be appropriate; however, potential defendants will not avoid prosecution simply because they are able to pay compensation;
- (9) the effect that a criminal prosecution may have on the prospects of securing redress for those who have suffered loss: where a criminal prosecution will have adverse effects on the solvency of a *firm* or individual in circumstances where loss has been suffered by *consumers*, the *FCA* may decide that criminal proceedings are not appropriate;
- (10) whether the *person* is being or has been voluntarily cooperative with the *FCA* in taking corrective measures; however, potential defendants will not avoid prosecution merely by fulfilling a statutory duty to take those measures;
- (11) whether an individual's misconduct involves dishonesty or an abuse of a position of authority or trust;
- (12) where the misconduct in question was carried out by a group, and a particular individual has played a leading role in the commission of the misconduct: in these circumstances, criminal prosecution may be appropriate in relation to that individual;
- (12A) where the misconduct in question was carried out by two or more individuals acting together and one of the individuals provides information and gives full assistance in the *FCA*'s prosecution of the other(s), the *FCA* will take this co-operation into account when deciding whether to prosecute the individual who has assisted the *FCA* or bring market abuse proceedings against him;
- (13) the personal circumstances of an individual may be relevant to a decision whether to commence a criminal prosecution.
- **12.3.3** The importance attached by the *FCA* to these factors will vary from case to case and the factors are not necessarily cumulative or exhaustive.
- 12.3.4 It is the FCA's policy not to impose a sanction for market abuse where a person is being prosecuted for market misconduct or has been finally convicted or acquitted of market misconduct (following the exhaustion of all appeal processes) in a criminal prosecution arising from substantially the same allegations. Similarly, it is the FCA's policy not to commence a prosecution for market misconduct where the FCA has brought or is seeking to bring disciplinary proceedings for market abuse arising from substantially the same allegations.

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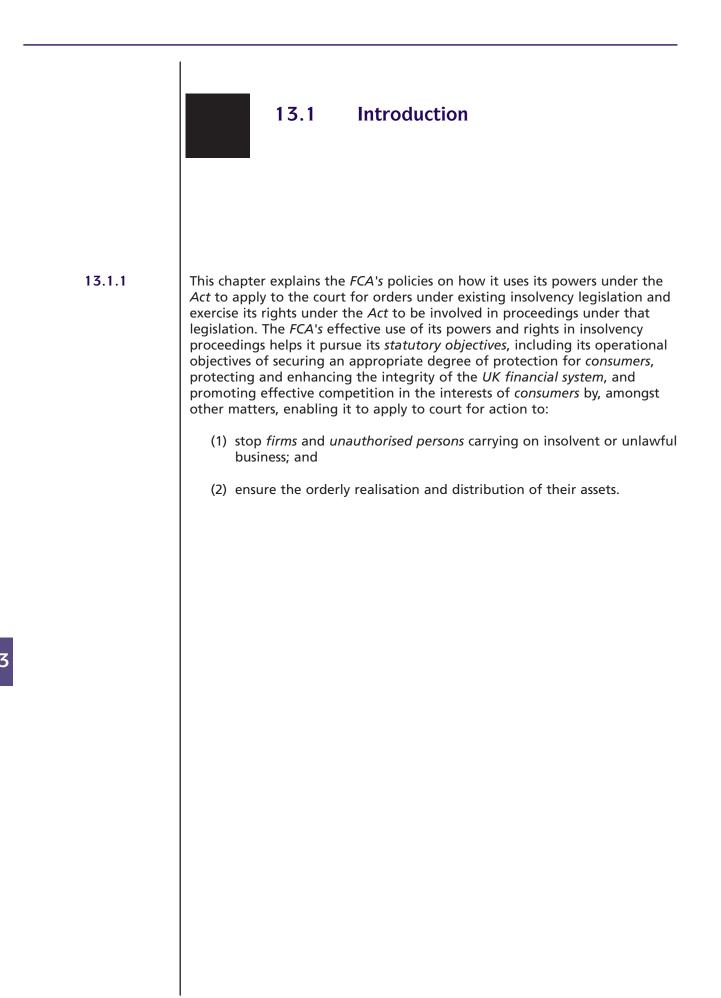


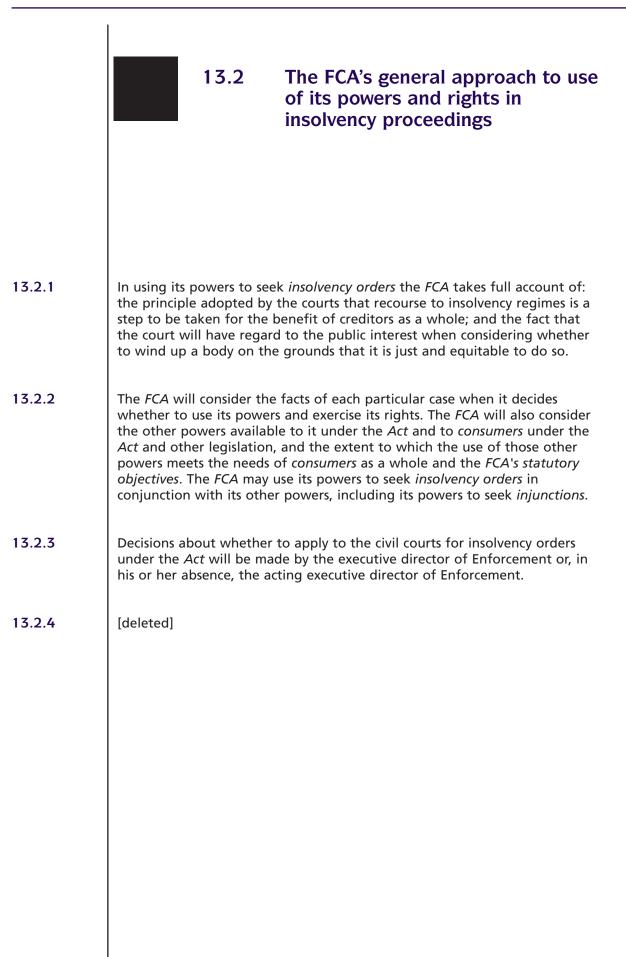
Enforcement Guide

Chapter 13

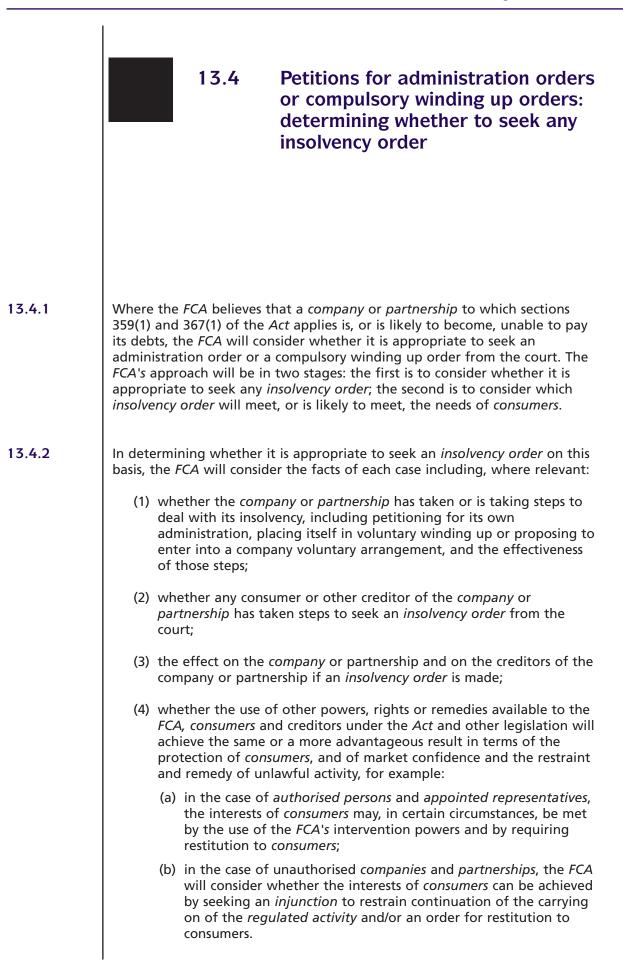
Insolvency

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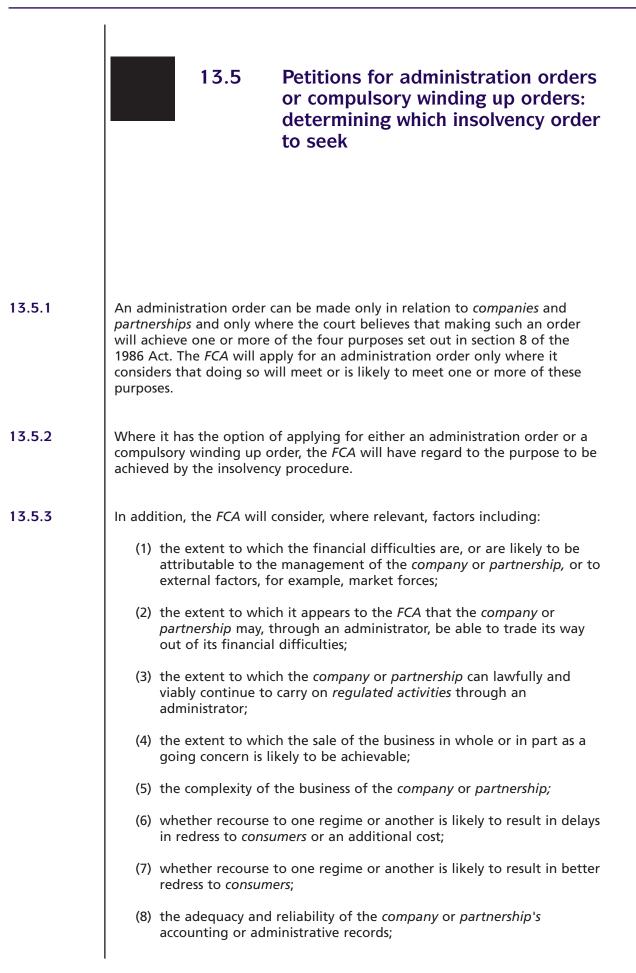


	13.3 Petitions for administration orders or compulsory winding up orders: determining whether a company or partnership is unable to pay its debts
13.3.1	The FCA can petition for an administration order or compulsory winding up order on the grounds that the <i>company</i> or <i>partnership</i> is unable (or, in the case of administration orders, is likely to become unable) to pay its debts. The FCA does not have to be a creditor to petition on these grounds.
13.3.2	Under sections 359 (Petitions) and 367 (Winding up Petitions) of the Act, a company or partnership is deemed to be unable to pay its debts if it is in default on an obligation to pay a sum due and payable under an agreement where the making or performance of the agreement constitutes or is part of a regulated activity which the company or partnership is carrying on.
13.3.3	The FCA would not ordinarily petition for an administration order unless it believes that the <i>company</i> or <i>partnership</i> is, or is likely to become, insolvent. Similarly, the FCA would not ordinarily petition for a compulsory winding up order solely on the ground of inability to pay debts (as provided in the Act), unless it believes that the <i>company</i> or <i>partnership</i> is or is likely to be insolvent.
13.3.4	While a default on a single agreement of the type mentioned in paragraph 13.3.2 is, under the <i>Act</i> , a presumption of an inability to pay debts, the <i>FCA</i> will consider the circumstances surrounding the default. In particular, the <i>FCA</i> will consider whether: (1) the default is the subject of continuing discussion between the
	<i>company</i> or <i>partnership</i> and the creditor, under the relevant agreement, which is likely to lead to a resolution;
	 (2) the default is an isolated incident; (3) in other respects the <i>company</i> or <i>partnership</i> is meeting its
	obligations under agreements of this kind; and (4) the FCA has information to indicate that the <i>company</i> or <i>partnership</i> is able to pay its debts or, alternatively, that in addition to the specific default the <i>company</i> or <i>partnership</i> is in fact unable to pay its debts.



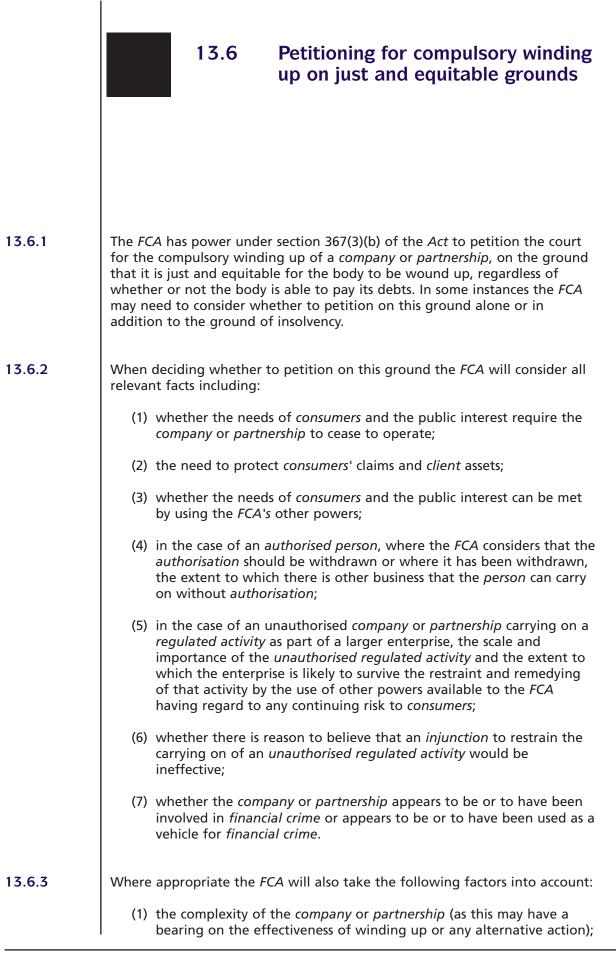
- (5) whether other regulatory authorities or law enforcement agencies propose to take action in respect of the same or a similar issue which would be adequate to address the *FCA*'s concerns or whether it would be appropriate for the *FCA* to take its own action;
- (6) the nature and extent of the *company* or *partnership* assets and liabilities, and in particular whether the *company* or *partnership* holds *client* assets and whether its secured and preferred liabilities are likely to exceed available assets;
- (7) whether there is a significant cross border or international element to the business which the *company* or *partnership* is carrying on and the effect on foreign assets or on the continuation of the business abroad of making an *insolvency order*;
- (8) whether an *insolvency order* is likely to achieve a fair and orderly realisation and distribution of assets; and
- (9) whether there is a risk of creditors being preferred and any advantage in securing a moratorium in relation to proceedings against the *company* or *partnership*.

13.4.3 After the FCA has determined that it is appropriate to seek an *insolvency order*, and there is no moratorium in place under Schedule A1 to the Insolvency Act 1986 (as amended by the Insolvency Act 2000) (hereafter referred to in this chapter as 'the 1986 Act'), it will consider whether this order should be an administration order or a compulsory winding up order.

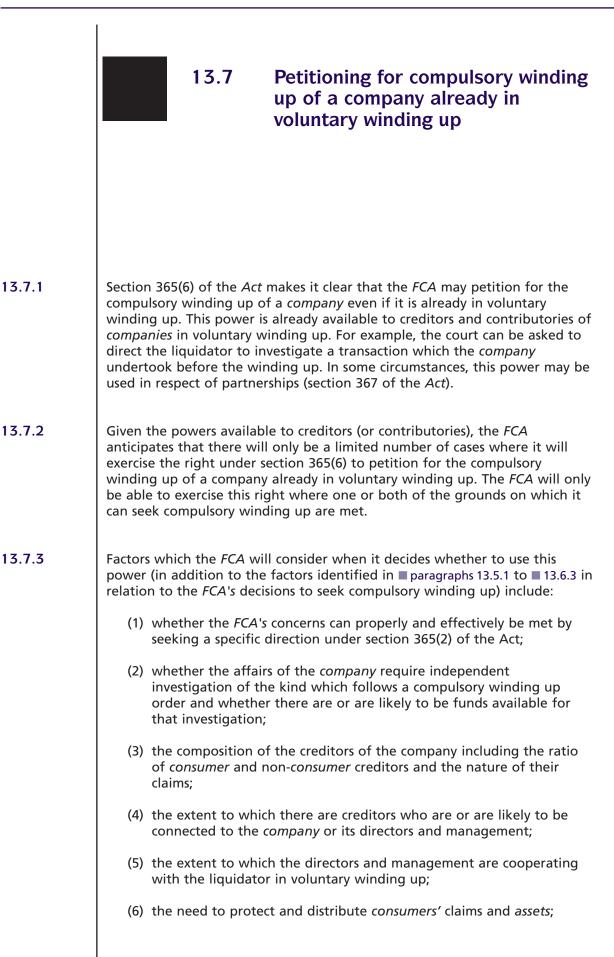


EG 13 : Insolvency

- (9) the extent to which the management of the *company* or *partnership* has co- operated with the *FCA*;
- (10) in the case of an unauthorised company or partnership carrying on a regulated activity as part of a larger enterprise, the scale and importance of the unauthorised activity in relation to the whole of the company's or partnership's business;
- (11) the extent to which the management of the *company* or *partnership* is likely to cooperate in determining whether one or more of the purposes of an administration order can be met;
- (12) in the case of an unauthorised *company* or *partnership* carrying on a *regulated activity* as part of a larger enterprise, the extent to which the *company*'s or *partnership*'s survival can be anticipated without the continuance of the unauthorised *regulated activity*;
- (13) where an administrative receiver is in place, whether the *debenture* holder is likely to agree to an application for an administration order;
- (14) where an administrative receiver is in place, whether the FCA has reason to believe that the *debenture* under which the administrative receiver has been appointed is likely to be released, discharged, avoided or challenged.

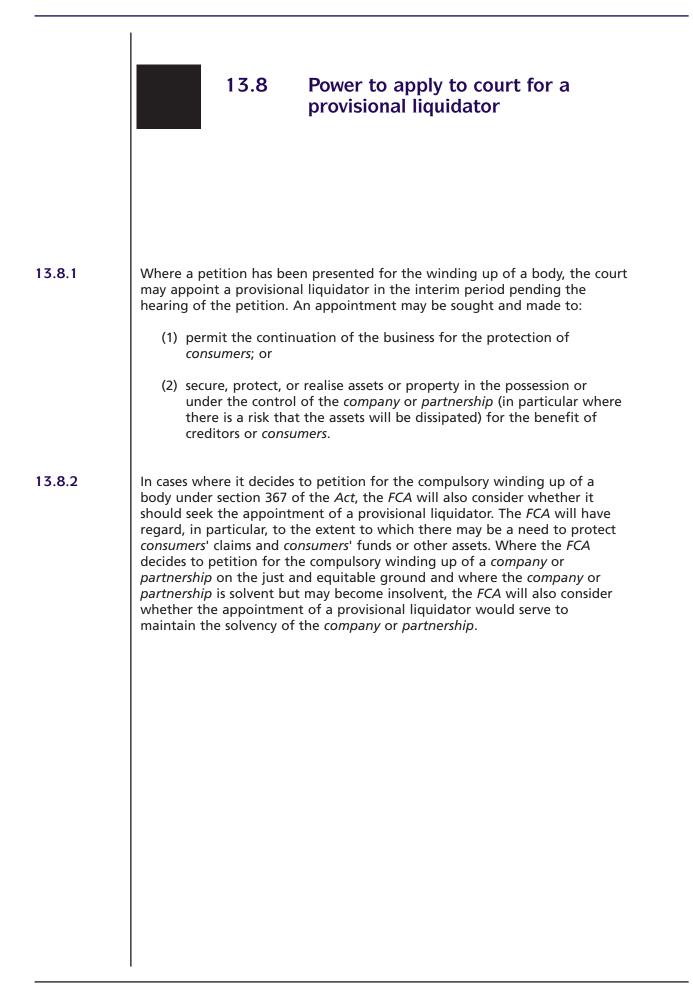


- (2) whether there is a significant cross border or international element to the business being carried on by the *company* or *partnership* and the impact on the business in other jurisdictions;
- (3) the adequacy and reliability of the *company* or *partnership*'s accounting or administrative records;
- (4) the extent to which the *company* or *partnership*'s management has co-operated with the *FCA*.



- (7) whether a petition by the FCA for compulsory winding up is likely to have the support of the majority or a large proportion of the creditors; and
- (8) the extent of any resulting delay and additional costs in seeking a compulsory winding up order.

13.7.4 [deleted]

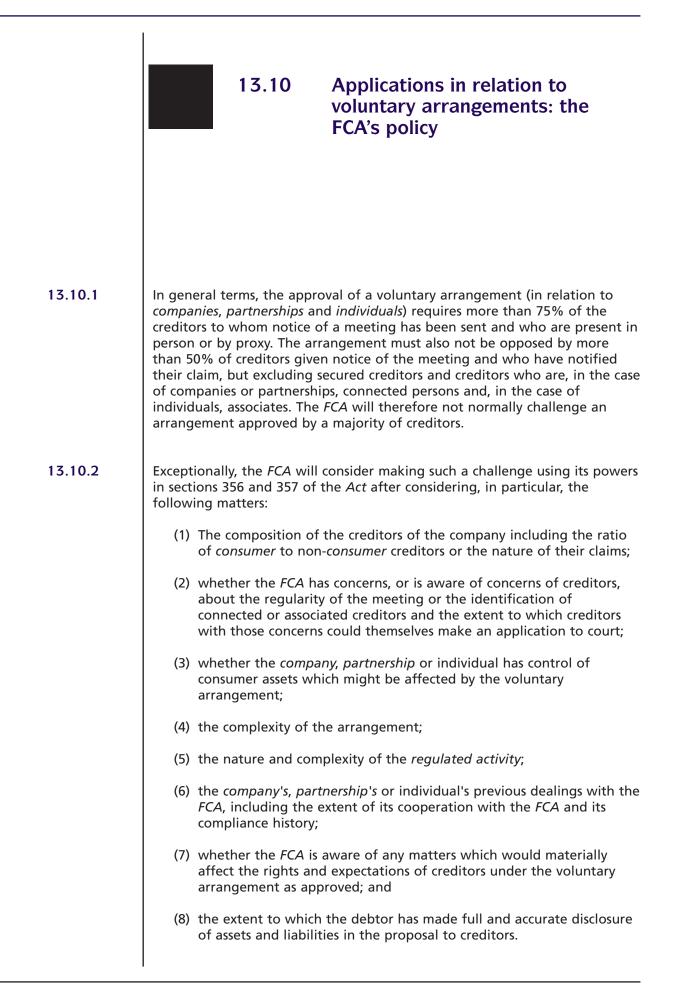


	13.9 The FCA's use of its power to petition for a bankruptcy order of a sequestration award in relation to an individual (section 372 of t Act)	1
13.9.1	The FCA recognises that the bankruptcy of an individual or the sequestrat of an individual's estate are significant measures which may have significa personal and professional implications for the individual involved. In considering whether to present a petition the FCA's principal consideratio will be its <i>statutory objectives</i> including the protection of <i>consumers</i> .	nt
13.9.2	The FCA is also mindful that whilst the winding up of an unauthorised <i>company</i> or <i>partnership</i> should bring an end to any unlawful activity, this not necessarily the effect of bankruptcy or sequestration. The FCA may, in certain cases, consider the use of powers to petition for bankruptcy or sequestration in conjunction with the use of other powers to seek <i>injunctions</i> and other relief from the court. In particular, where the individual controls assets belonging to consumers and holds, or appears to hold, those assets on trust for consumers, those assets will not vest in the insolvency practitioner appointed in the bankruptcy or sequestration. The FCA will in those circumstances consider whether separate action is necess to protect the assets and interests of <i>consumers</i> .	D
13.9.3	If an individual appears to be unable to pay a <i>regulated activity debt</i> , or the have no reasonable prospect of doing so, then section 372 of the <i>Act</i> performs the <i>FCA</i> to petition for the individual's bankruptcy, or in Scotland, for the sequestration of the individual's estate. The <i>FCA</i> will petition for bankrup or sequestration only if it believes that the individual is, in fact, insolvent. determining this, as a general rule, the <i>FCA</i> will serve a demand requiring the individual to establish, to the <i>FCA</i> 's satisfaction, that there is a reasonable prospect that he will be able to pay the <i>regulated activity deb</i>	mits tcy In J
13.9.4	The FCA will consider the response of the individual to that demand on it own facts and in the light of information, if any, available to the FCA. Exceptionally, the FCA may not first proceed to serve a demand if:	S
	(1) the individual is already in default of a <i>regulated activity debt</i> whi has fallen due and payable; and	
	(2) the FCA is satisfied, either because the individual has confirmed it on the information already available to the FCA, that the individua	

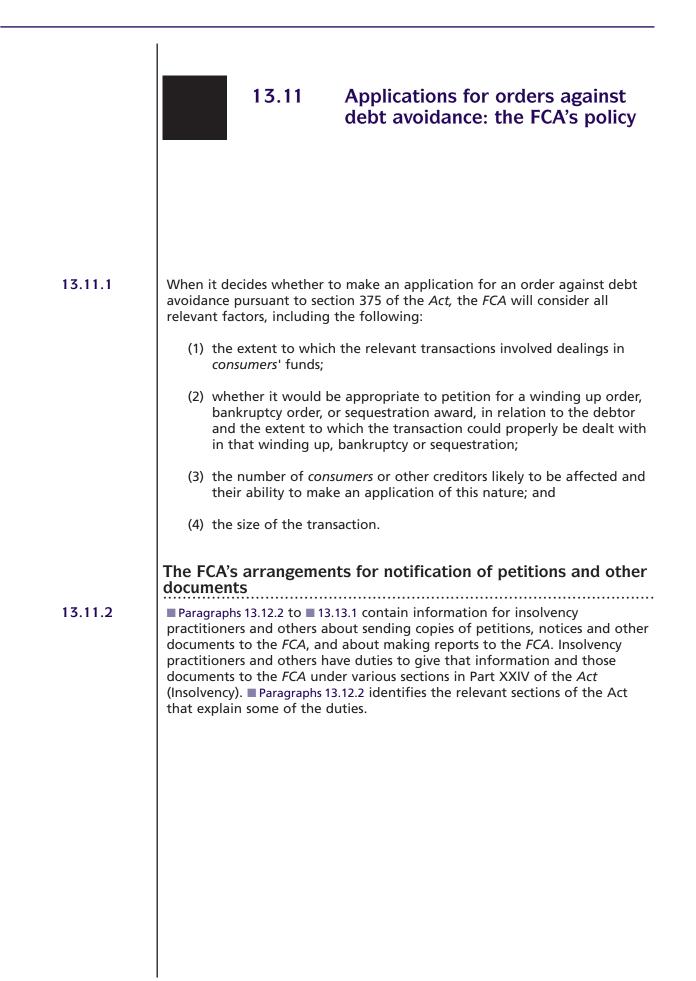
insolvent and has no reasonable prospect of paying another *regulated activity debt* when it falls due.

13.9.5 If the FCA believes that the individual is insolvent, the factors it will consider when it decides whether to seek a bankruptcy order or sequestration award include:

- whether others have taken steps to deal with the individual's insolvency, including a proposal by the individual of a voluntary arrangement, a petition by the individual for his own bankruptcy or sequestration, or a petition by a third party for the individual's bankruptcy or the sequestration of the individual's estate;
- (2) whether the FCA can adequately deal with the individual using other powers available to it under the *Act*, without the need to seek a bankruptcy order or sequestration award;
- (3) the extent of the individual's insolvency or apparent insolvency;
- (4) the number of *consumers* affected and the extent of their claims against the individual;
- (5) whether the individual has control over assets belonging to *consumers*;
- (6) the individual's conduct in his dealings with the FCA, including the extent of his cooperation with the FCA;
- (7) whether the individual appears to be, or to have been, involved in *financial crime*;
- (8) the adequacy of the individual's accounts and administration records;
- (9) in the case of an *unauthorised individual* who is carrying on or who has carried on a *regulated activity*, the nature, scale and importance of that activity and the individual's conduct in carrying on that activity;
- (10) whether there would be an advantage in securing a moratorium in respect of proceedings against the individual; and
- (11) whether there are any special personal or professional implications for that individual if a bankruptcy order or sequestration award is made.



- **13.10.3** Similarly, the *FCA* will not normally use its powers under section 358 of the *Act* to petition for sequestration of a debtor's estate following the grant of a trust deed, if the trust deed has been, or appears likely to be, acceded to by a majority of creditors.:
- 13.10.4 In considering whether to exercise its powers under Schedule A1 to the 1986 Act to make a challenge in relation to acts, omissions or decisions of a nominee during a moratorium, the FCA will have regard to the following matters in particular:
 - whether the FCA is aware of matters indicating that the proposed voluntary arrangement does not have a reasonable prospect of being approved and implemented or that the company is likely to have insufficient funds available to it to carry on its business during the moratorium;
 - (2) whether consumer assets held by the company are or may be placed at risk; and
 - (3) in the case of an unauthorised *company* whether that *company* is able to carry on its business lawfully during the moratorium without undertaking any *regulated activity* in contravention of the *general prohibition*.



		olvency regime and relevant tions of the Act
13.12.1	Insolvency regime	Relevant sections of the Act
	Administration	Sections 361 and 362(3)
	Compulsory winding up	Sections 369, 370, and 371(3)
	Voluntary liquidation	Section 365(4)
	Receivership	Sections 363(4) and 364
	Bankruptcy and sequestration	Sections 373 and 374(3)
	Company moratoria Individual voluntary arrangements	Paragraph 44 of schedule A1 to the 1986 Act Section 357(3) - relates to notices of the result of the creditors' meetings.
	Trust deeds for creditors	Section 358(2)(a) and (b) - relates to copies of trust deeds and copies of certain other documents of information sent to creditors.
		Section 358(4) - relates to notices of any meeting of creditors held in relation to the trust deed.
13.12.2	identified in ■ 13.12.2 should be see Endeavour Square, London, E20 1 person who is subject to the insol authorised person, the informatio	3.1 applies, the information and documents ent to the Financial Conduct Authority, 12 JN marked 'Insolvency Information'. If the vency regime ('the insolvent person') is an on and documents should, in the first olvent person's supervisory contact at the
13.12.3	information or documents knows contact operates from Edinburgh,	orised person and the sender of the that the insolvent person's supervisory information or documents should, in the ncial Conduct Authority, Quayside House, 13 8DJ.

		Rights on petitions by third parties and involvement in creditors meetings: the FCA 's policy
13.13.1	be heard on a third party's p believes it has information th	ts under sections 362, 371 and 374 of the <i>Act</i> to etition or in subsequent hearings only where it nat it considers relevant to the court's or application. These circumstances may
	otherwise be drawn t	levant information which it believes may not o the court's attention; especially where the FCA end for a particular purpose (for example to of its <i>rules</i>);
		es that the <i>insolvency order</i> being sought by a priate to meet the needs of <i>consumers</i> and the
		es that the making of an <i>insolvency order</i> will ise of its other powers under the <i>Act</i> , and pourt aware of this.
13.13.2	in place against the company proceedings being commence Proceedings can continue or the court's permission. This n of its powers to seek <i>injuncti</i> FCA will draw the court's atte	order operates to stay any proceedings already y, partnership or individual, and prevents ed while the <i>insolvency order</i> is in place. be commenced against those <i>persons</i> only with may impact on the effectiveness of the <i>FCA</i> 's use <i>fons</i> and restitution orders from the court. The ention to this potential effect where the <i>FCA</i> deration, but it is a matter for the court to particular case.
13.13.3	entitled to receive in the win voluntary arrangement of an <i>representatives</i> and of <i>person</i> while <i>unauthorised</i> . The FCA representation at any creditor committee meeting taking pl	aceive the same information as creditors are ading up, administration, receivership or a <i>authorised person</i> , of <i>appointed</i> <i>ns</i> who have carried out a <i>regulated activity</i> is also entitled to attend and make ors' meeting or (where relevant) creditors' lace in those regimes. When it decides whether and make representations at meetings the ke into account include:

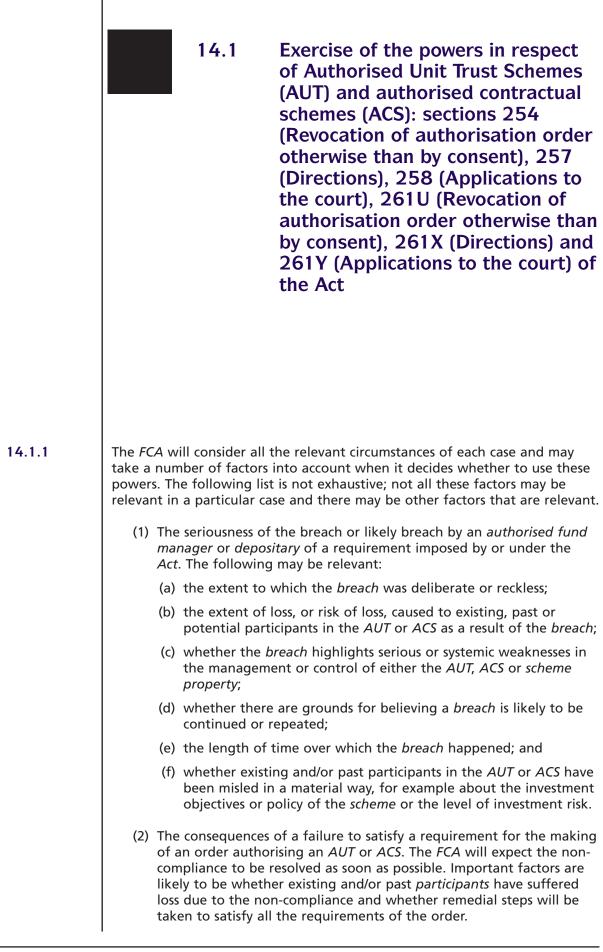
EG 13 : Insolvency

- (1) the extent of claims by consumers upon the body or individual;
- (2) the extent to which *consumer* assets are held by the body or individual;
- (3) the extent to which the *FCA* is aware of concerns of *consumers* (or other creditors or contributories) about the way in which the insolvency regime is proceeding;
- (4) whether the circumstances which gave rise to the insolvency regime might have general implications for others carrying on regulated business;
- (5) whether the creditors include *shareholders*, directors, or other *persons* who have a connection with the management or ownership of the body or are associated with the individual;
- (6) the complexity or specialisation of the business of the body or individual; and
- (7) where there is a significant cross border or international element to the business which the *company*, *partnership* or individual is carrying out.

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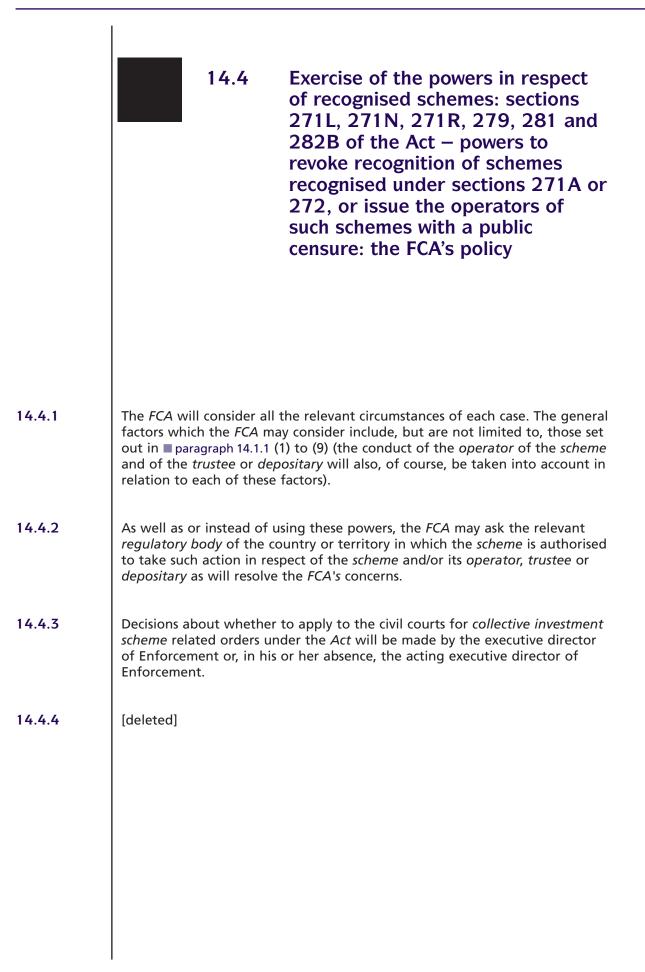
Chapter 14

Collective Investment Schemes



- (3) Whether it is necessary to suspend the issue and redemption of units to protect the interests of existing or potential *participants* in the *AUT* or *ACS*. For example, this may be necessary if:
 - (a) information suggests the current price of units under the AUT or ACS may not accurately reflect the value of *scheme property*; or
 - (b) the scheme property cannot be valued accurately.
- (4) The effect on the interests of *participants* within the scheme of the use of any of its powers under sections 254, 257, 261U and 261X. However, the *FCA* will also consider the interests of past and potential *participants*.
- (5) Whether the FCA's concerns can be resolved by taking enforcement action against the authorised fund manager and/or depositary of the AUT or ACS. In some instances, the FCA may consider it appropriate to deal with a breach by an authorised fund manager or depositary by taking direct enforcement action against the authorised fund manager and/or depositary without using its powers under sections 254, 257, 258, 261U, 261X or 261Y. In other instances, the FCA may combine direct enforcement action against a depositary and/or authorised fund manager with the use of one or more of the powers under sections 254, 257, 258, 261U, 261X, 261X, or 261Y.
- (6) Whether there is information to suggest that a *depositary* or *authorised fund manager* has knowingly or recklessly given the FCA false information. Giving false information is likely to cause very serious concerns, particularly if it shows there is a risk of loss to the *scheme property* or that *participants*' interests have been or may be affected in some other way.
- (7) The conduct of the *authorised fund manager* or *depositary* in relation to, and following the identification of, the issue, for example:
 - (a) whether the *authorised fund manager* or *depositary* discovered the issue or problem affecting the *AUT* or *ACS* and brought it to the *FCA*'s attention promptly;
 - (b) the degree to which the authorised fund manager or depositary is willing to cooperate with the FCA's investigation and to take protective steps, for example by suspending the issue and redemption of units in the AUT or ACS;
 - (c) whether the *authorised fund manager* or *depositary* has compensated past and existing participants who have suffered loss.
- (8) The compliance history of the *depositary* or *authorised fund manager*, including whether the *FCA* has previously taken disciplinary action against the *depositary* or *authorised fund manager* in relation to the *AUT*, *ACS* or any other *collective investment scheme*.
- (9) Whether there is information to suggest that the AUT or ACS is being used for criminal purposes and/or that the *authorised fund manager* or *depositary* is itself involved in *financial crime*.

	14.2 Choice of powers
14.2.1	The FCA may use its powers under sections 254, 257 and 258 (in the case of <i>AUTs</i>) and sections 261U, 261X and 261Y (in the case of <i>ACSs</i>) individually, together, and as well as direct enforcement action against a <i>depositary</i> or <i>authorised fund manager</i> in their capacity as <i>firms</i> .
14.2.2	Where the FCA has a concern about an AUT or ACS that must be dealt with urgently, it will generally use its power to give directions under section 257 (in the case of an AUT) or section 261X (in the case of an ACS) in the first instance.
14.2.3	 The following are examples of situations where the FCA may consider it appropriate to seek a court order under section 258 (in the case of an AUT) or section 261Y (in the case of an ACS) to remove the authorised fund manager or depositary: (1) Where there are grounds for concern over the behaviour of the authorised fund manager or depositary in respect of the management of the scheme or of its assets. (2) Where an authorised fund manager or depositary has breached a requirement imposed on him under the Act or has knowingly or recklessly given the FCA false information.
14.2.4	The FCA recognises that participants in an AUT or ACS have a direct financial interest in the scheme property. It follows that in cases where it considers it appropriate to use its section 254 power (in the case of an AUT) or its section 261U power (in the case of an ACS) to revoke an authorisation order, the FCA will generally first require the authorised fund manager or depositary to wind up the AUT or ACS (or seek a court order for the appointment of a firm to wind up the AUT or ACS).
14.2.5	[deleted]

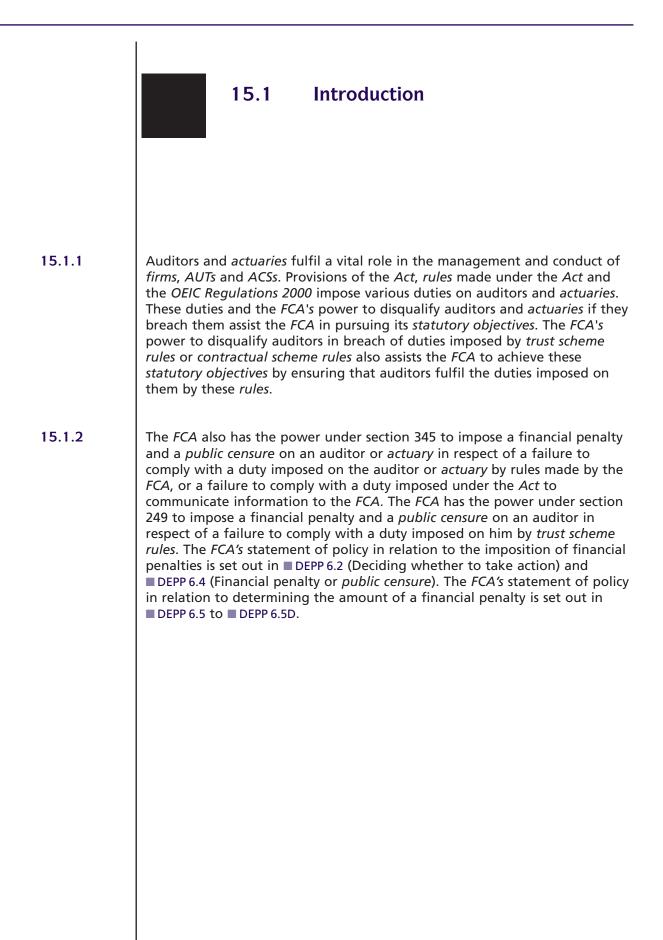


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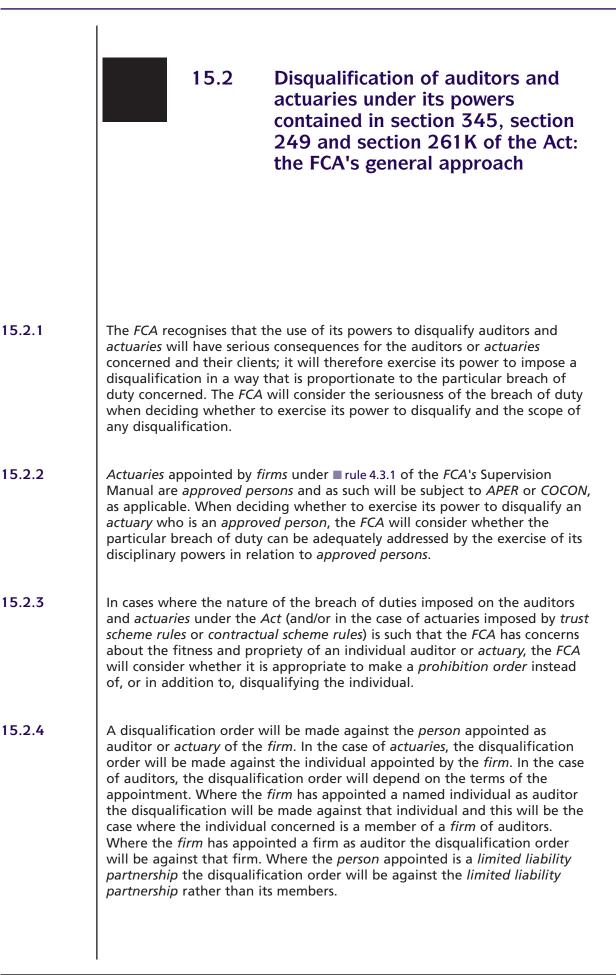
Chapter 15

Disqualification of auditors and actuaries

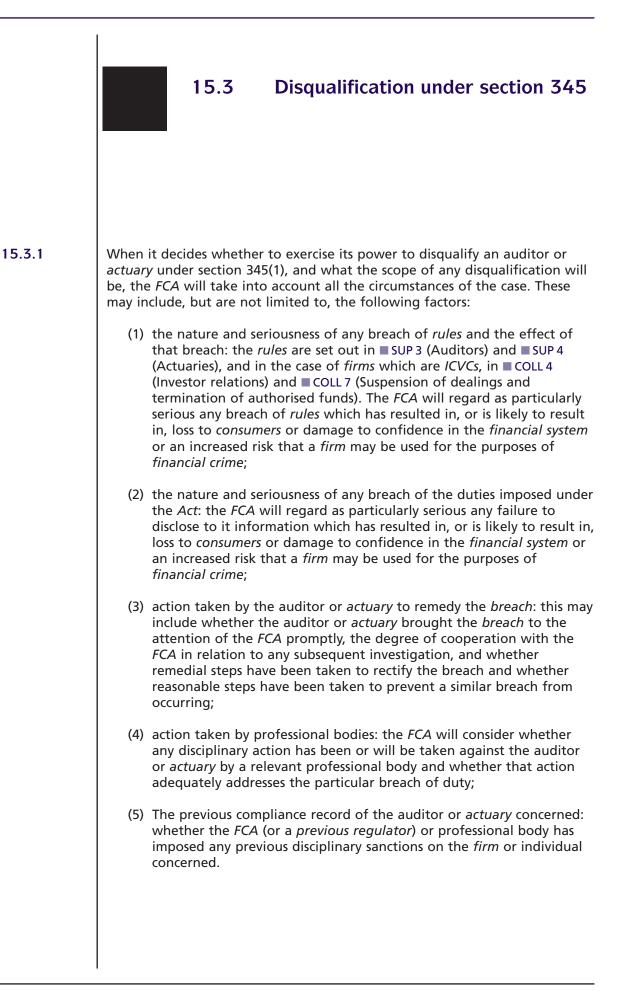
EG 15 : Disqualification of auditors and actuaries



EG 15/2





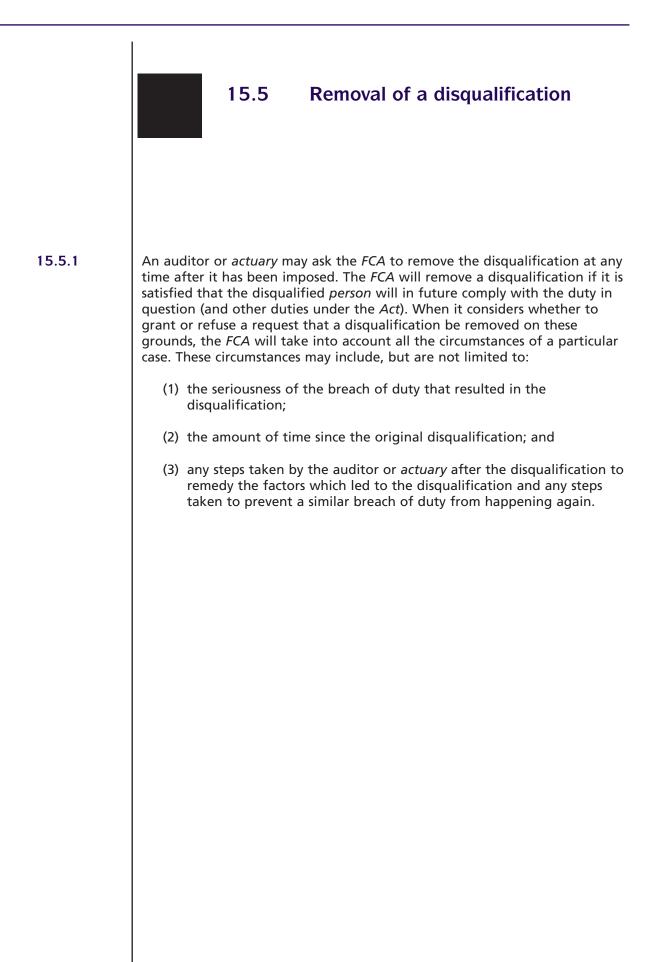




15.4.1

When deciding whether or not to disqualify an auditor under section 249(1) or section 261K(1) of the Act (concerning the power to disqualify an auditor for breach of *trust scheme rules* or *contractual scheme rules*), and in setting the disqualification, the FCA will take into account all the circumstances of the case. These may include, but are not limited to, the following circumstances:

- (1) the effect of the auditor's breach of a duty imposed by *trust scheme rules* or *contractual scheme rules*: the FCA will regard as particularly serious a breach of a duty imposed by *trust scheme rules* or *contractual scheme rules* (set out in COLL 4 (Investor relations) and COLL 7 (Suspension of dealings and termination of authorised funds)) which has resulted in, or is likely to result in, loss to *consumers* or damage to confidence in the *financial system* or an increased risk that a *firm* may be used for the purposes of *financial crime*;
- (2) action taken by the auditor to remedy its breach of a duty imposed by *trust scheme rules* or *contractual scheme rules*: this may include any steps taken by the auditor to bring the breach to the attention of the *FCA* promptly, the degree of co-operation with the *FCA* in relation to any subsequent investigation, and whether any steps have been taken to rectify the breach or prevent a similar breach;
- (3) action taken by a relevant professional body: The FCA will consider whether any disciplinary action has or will be taken against the auditor by a relevant professional body and whether such action adequately addresses the particular breach of a duty imposed by *trust scheme rules* or *contractual scheme rules*;
- (4) the previous compliance record of the auditor concerned: whether the FCA (or a previous regulator) or professional body has imposed any previous disciplinary sanctions on the *firm* or individual concerned.



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Chapter 16

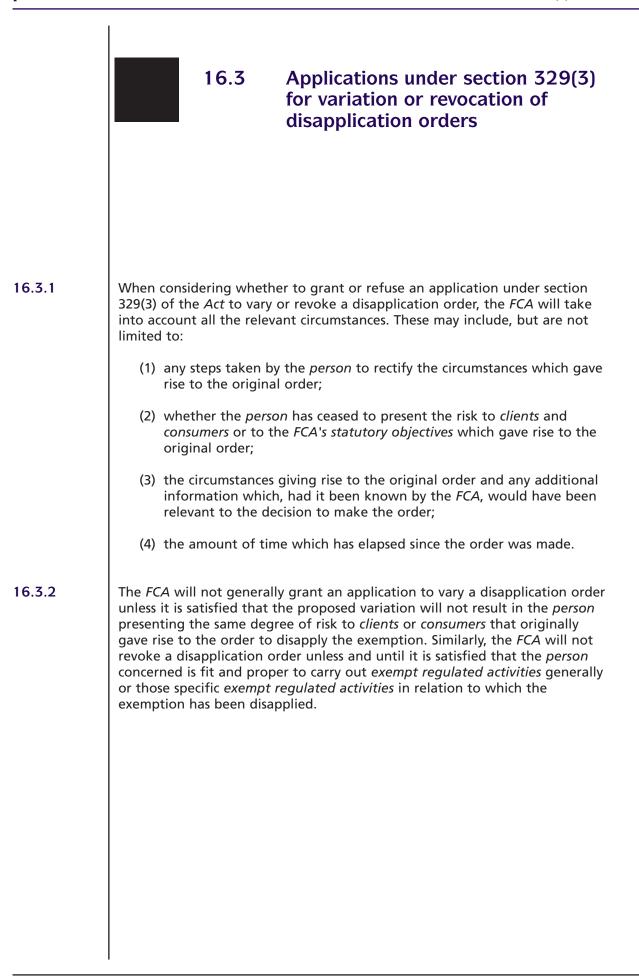
Disapplication orders against members of the professions

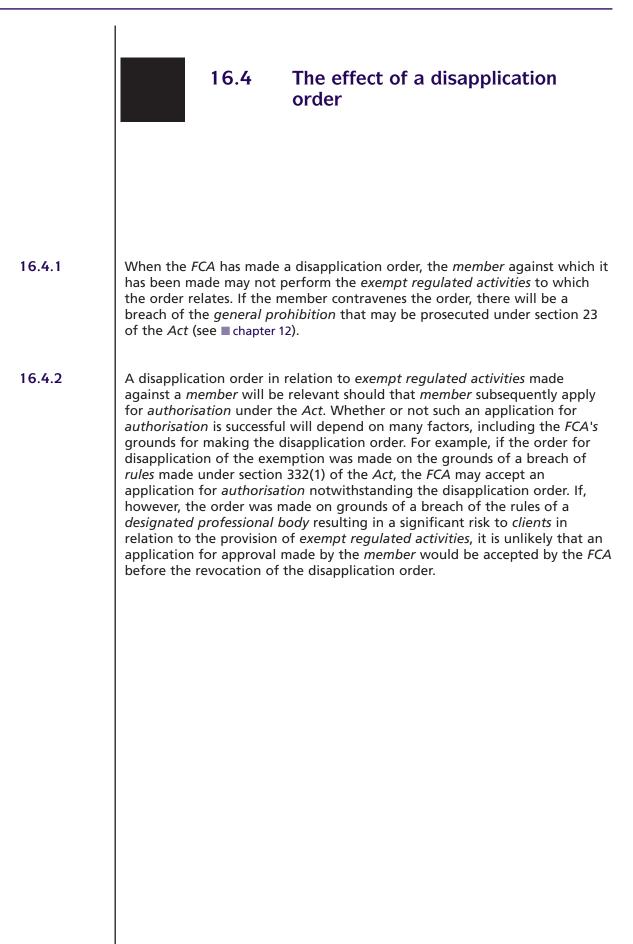
	16.1 The FCA's general approach to making disapplication orders
16.1.1	The FCA's power under section 329 of the Act to make an order disapplying an exemption from the general prohibition in relation to a person who is a member of the professions on the grounds that the member is not a fit and proper person to conduct exempt regulated activities, and to maintain a public record of disapplication orders, will assist the FCA in pursuing its statutory objectives.
16.1.2	The FCA may make a range of disapplication orders depending on the particular circumstances of each case, including the range of <i>exempt</i> regulated activities undertaken and the particular exempt regulated activities to which the person's lack of fitness and propriety in that context is relevant.
16.1.3	The FCA recognises that a decision to make a disapplication order may have serious consequences for a <i>member</i> in relation not only to the conduct by the member of <i>exempt regulated activities</i> , but also in relation to the other business carried on by the <i>member</i> . When it decides whether to exercise its power to make a disapplication order, the FCA will consider all relevant circumstances including whether other action, in particular the making of a <i>prohibition order</i> (see chapter 9 of this guide), would be more appropriate. In general, the FCA is likely to exercise its powers to make an order disapplying an exemption where it considers that a <i>member</i> of a profession presents such a risk to the FCA's <i>statutory objectives</i> that it is appropriate to prevent the <i>member</i> from carrying out the <i>exempt regulated activities</i> . The FCA will also have regard to any disciplinary action taken, or to be taken, against the <i>person</i> by the relevant <i>designated professional body</i> .

EG 16 : Disapplication orders against members of the professions

	16.2 Disapplication orders
16.2.1	When the FCA has concerns about the fitness and propriety of a <i>member</i> to carry out <i>exempt regulated activities</i> , it will consider all the relevant circumstances of the case, including whether those concerns arise from the fitness and propriety of specific individuals engaged to perform the <i>exempt regulated activities</i> carried out by the <i>member</i> or whether its concerns arise from wider concerns about the <i>member</i> itself.
16.2.2	In most cases, where the FCA is concerned about the fitness and propriety of a specific individual, it may be more appropriate for the FCA to consider whether to make an order prohibiting the individual from performing functions in relation to exempt regulated activities rather than a disapplication order in relation to the member concerned. The criteria which the FCA will apply when determining whether to make a prohibition order against an individual who is not regulated by the FCA are set out in paragraphs \blacksquare 9.5.1 to \blacksquare 9.5.2 of this guide (prohibition orders against other individuals). In addition to the factors referred to in these paragraphs, the FCA may also take into consideration any disciplinary action that has been, or will be taken against the individual concerned by the relevant designated professional body, where that disciplinary action reflects on the fitness and propriety of the individual concerned to perform exempt regulated activities.
16.2.3	The FCA will also take into account the potentially more serious consequences that a disapplication of an exemption will have for the <i>member</i> concerned compared with the consequences of a prohibition of a particular individual engaged in <i>exempt regulated activities</i> . However, the FCA may consider it appropriate in some cases to disapply an exemption where it decides that the <i>member</i> concerned is not fit and proper to carry out <i>exempt regulated activities</i> in accordance with section 327 of the Act (Exemption from the general prohibition).
16.2.4	As an alternative to making an order to disapply an exemption, the FCA may consider issuing a private warning. A private warning may be appropriate where the FCA has concerns in relation to a <i>member's</i> fitness and propriety but feels that its concerns in relation to the conduct of <i>exempt regulated activities</i> can be more appropriately addressed by a private warning than by a disapplication of the <i>member's</i> exemption.
16.2.5	When it decides whether to exercise its power to disapply an exemption from the <i>general prohibition</i> in relation to a <i>member</i> , the <i>FCA</i> will take into account all relevant circumstances which may include, but are not limited to, the following factors:

	(1) Disciplinary or other action taken by the relevant <i>designated professional body</i> , where that action relates to the fitness and propriety of the <i>member</i> concerned: where the <i>FCA</i> considers that its concerns in relation to the fitness and propriety of the <i>member</i> concerned may be, or have been adequately addressed by disciplinary or other action taken by the relevant <i>designated professional body</i> it may consider not making a disapplication order in addition to such action; however, where the <i>FCA</i> considers that its concerns, and in particular, any risks presented to the <i>member's clients</i> in respect of its <i>exempt regulated activities</i> , are not adequately addressed by that action, the <i>FCA</i> will consider making a disapplication order;
	(2) The significance of the risk which the <i>member</i> presents to its <i>clients</i> : if the <i>FCA</i> is satisfied that there is a significant risk to <i>clients</i> and <i>consumers</i> it may consider making a disapplication order;
	(3) The extent of the <i>member</i> 's compliance with <i>rules</i> made by the FCA under section 332(1) of the Act (Rules in relation to whom the general prohibition does not apply) or by the relevant <i>designated</i> professional body under section 332(3) of the Act;
16.2.6	Where the FCA is considering whether to exercise its power to make a disapplication order in relation to a <i>member</i> , it will liaise closely with the relevant <i>designated professional body</i> .
16.2.7	Where the FCA is considering making a disapplication order against a <i>member</i> as a result of a breach of <i>rules</i> made by the FCA under section 323(1) of the Act, it will take into account any proposed application by the <i>member</i> concerned for <i>authorisation</i> under the Act. The FCA may refrain from making a disapplication order pending its consideration of the application for <i>authorisation</i> .





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Chapter 17

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Chapter 18

Cancellation of approval as sponsor or primary information provider

	18.1 Cancellation on the FCA's own- initiative
18.1.1	The FCA may cancel a sponsor's approval under section 88 of the Act if it considers that a sponsor has failed to meet the criteria for approval as a sponsor as set out in \blacksquare UKLR 24.4.5R.
18.1.2	 When considering whether to cancel a <i>sponsor's</i> approval on its own initiative, the <i>FCA</i> will take into account all relevant factors, including, but not limited to, the following: the competence of the <i>sponsor</i>; the adequacy of the <i>sponsor's</i> systems and controls; the <i>sponsor's</i> history of compliance with the <i>listing rules</i>; the nature, seriousness and duration of the suspected failure of the <i>sponsor</i> to meet (at all times) the criteria for approval as a <i>sponsor</i> set out in UKLR 24.4.5R; any matter which the <i>FCA</i> could take into account if it were considering an application for approval as a <i>sponsor</i> made under section 88(3)(d) of the <i>Act</i>.
18.1.3	The FCA may also cancel a primary information provider's approval under section 89P of the Act if it considers that a primary information provider has failed to meet the criteria for approval as a primary information provider as set out in DTR 8.3.
18.1.4	 When considering whether to cancel a primary information provider's approval on its own initiative, the FCA will take into account all relevant factors, including, but not limited to, the following: (1) the competence of the primary information provider; (2) the adequacy of the primary information provider's systems and controls; (3) the primary information provider's history of compliance with ■ DTR 8;

EG 18 : Cancellation of approval as sponsor or primary information provider

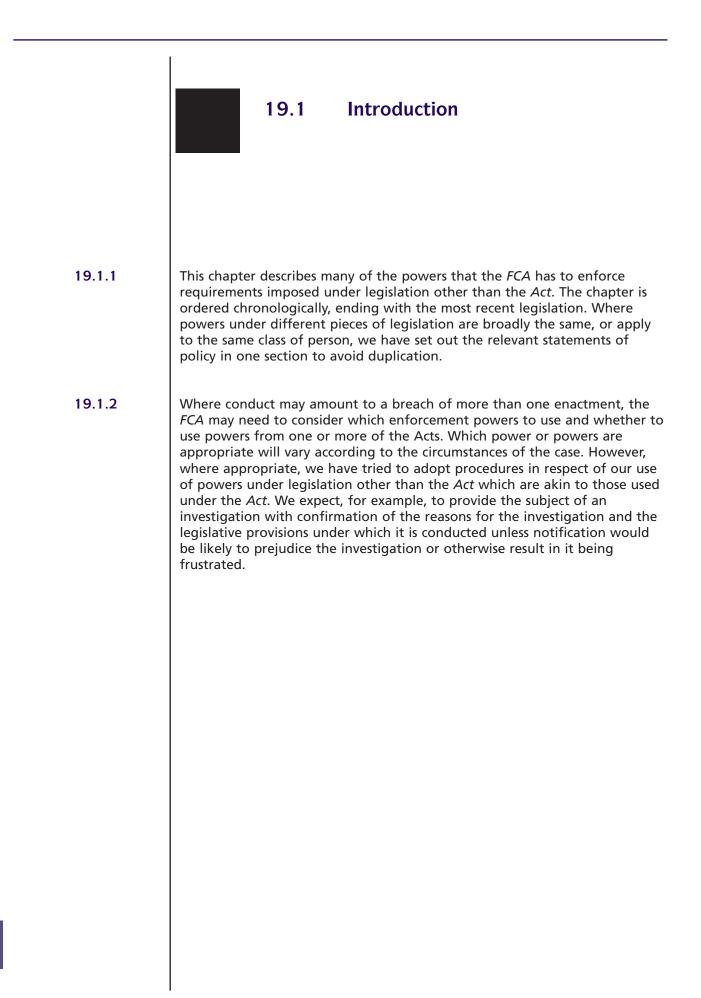
- (4) the nature, seriousness and duration of the suspected failure of the *primary information provider* to meet (at all times) the criteria for approval as a *primary information provider* set out in **DTR 8.3**;
- (5) any matter which the FCA could take into account if it were considering an application for approval as a *primary information provider* made under section 89P(4)(c) of the Act.

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Chapter 19

Non-FSMA powers

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	19.2 Friendly Societies Act 1974 (FSA74), Friendly Societies Act 1992 (FSA92), Co-operative and Community Benefit Societies Act 2014 (CCBSA14) and Co-operative and Community Benefit Societies Act (Northern Ireland) 1969 (CCBSA(NI)69)
19.2.1	The FCA has certain functions in relation to what are described as "registrant-only" mutual societies including <i>registered societies</i> or <i>registered friendly societies</i> . These societies are not regulated or supervised under the Act. Instead, they are subject to the provisions of FSA74, FSA92, CCBSA14 and CCBSA(NI)69 which require them to register with the FCA and fulfil certain other obligations, such as the requirement to submit annual returns.
19.2.1A	The Financial Services Act 2012 (Mutual Societies) Order 2018 is effective from 6 April 2018 and transfers the Northern Ireland registration function to the FCA. The FCA will be therefore registering Northern Ireland's industrial and provident or co-operative and <i>community benefit societies</i> respectively under the CCBSA(NI)69 as modified by the Credit Unions and Co-operative and Community Benefit Societies Act (Northern Ireland) 2016 and the Financial Services Act 2012 (Mutual Societies) Order 2018.
19.2.2	[deleted]
19.2.3	The FCA's enforcement activities in respect of registrant-only societies focus on prosecuting societies that fail to submit annual returns. As registrant-only societies are not subject to the <i>rules</i> imposed by the Act and by the FCA Handbook, the requirement that they submit annual returns provides an important check that the interests and investments of members, potential members, creditors and other interested parties are being safeguarded. The power to prosecute registrant-only societies who fail to meet this requirement is therefore an important tool and one which the FCA is committed to using in appropriate cases.
19.2.4	[deleted]

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- **19.2.5** The FCA may also use its power to petition for the society's winding up where it has prosecuted a society but the society continues to fail to submit the outstanding annual returns or defaults on submitting further returns.
- **19.2.6** The decision whether to initiate criminal and other proceedings under these Acts will be taken in accordance with the procedure described in EG 12.1.7. Under these Acts, a society may appeal certain decisions of the *FCA* relating to the refusal, cancellation or suspension of a society's registration to the High Court or, in Scotland, the Court of Session. Distinguishing features of the procedure for giving statutory notices under the FSA92, including available rights of reference to the *Tribunal*, are set out in DEPP 2.5.18G.
- **19.2.7** Further information about the *FCA*'s powers under these Acts can be found on the *FCA*'s website.

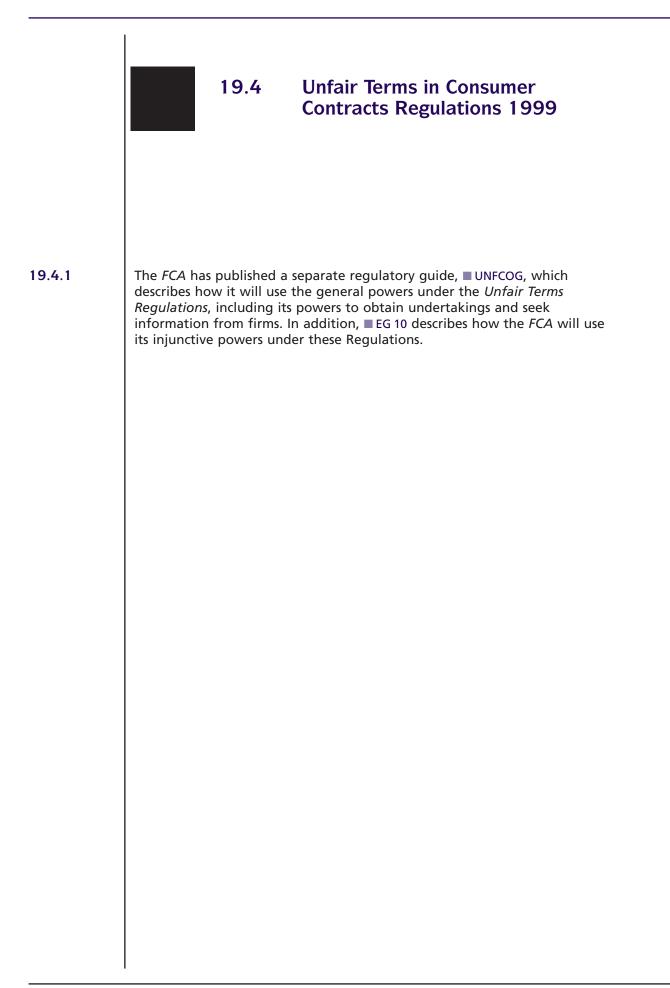
[Note: https://www.fca.org.uk/firms/mutual-societies]

	19.3 Credit Unions Act 1979 (CUA79) and Credit Unions (Northern Ireland) Order 1985 (CU(NI)O85)
19.3.1	 The CUA79 and CU(NI)O85 enable certain societies in Great Britain and Northern Ireland to be registered under CCBSA14 and CU(NI)O85 respectively. CUA79 and CU(NI)O85 also make provisions in respect of these societies. They give the FCA certain powers in addition to the powers that it has under the Act in respect of those credit unions which are authorised persons. The FCA's powers under CUA79, CCBSA14 and CU(NI)O85 include the power to: (1) require the production of books, accounts and other documents in the exercise of certain functions;
	 (2) appoint an investigator or to call a special meeting of the credit union; (3) cancel the registration of the credit union; and (4) petition the High Court to wind up the credit union in particular circumstances.
19.3.1A	The Financial Services Act 2012 (Mutual Societies) Order 2018 is effective from 6 April 2018 and transfers the Northern Ireland registration function to the FCA. The FCA will be therefore registering Northern Ireland's credit unions under the CU(NI)O85 as modified by the Credit Unions and Co- operative and Community benefit Societies Act (Northern Ireland) 2016 and the Financial Services Act 2012 (Mutual Societies) Order 2018.
19.3.2	The FCA will use these powers in a manner consistent with its approach to using the same powers under the Act. Where the FCA decides to cancel or suspend a credit union's registration, the credit union may appeal that decision to the High Court or, in Scotland, the Court of Session.
19.3.3	The CUA79 under CCBSA14 and CU(NI)O85 also extend to credit unions some criminal offences. The FCA will act in accordance with ■ EG 12 when prosecuting these offences.
19.3.4	[deleted]

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[deleted]

19.3.5



	19.5 Regulation of Investigatory Powers Act 2000 (RIPA)
19.5.1	RIPA provides methods of surveillance and information gathering to help the <i>FCA</i> in the prevention and detection of crime. RIPA ensures that, where these methods are used, an individual's rights to privacy under Article 8 of the European Convention of Human Rights are considered and protected.
19.5.2	Under RIPA the FCA is able to: acquire data relating to communications; carry out covert surveillance; make use of covert human intelligence sources (CHIS); and access electronic data protected by encryption or passwords.
19.5.3	The <i>FCA</i> is not able to obtain warrants to intercept communications during the course of transmission.
19.5.4	The <i>FCA</i> is only able to exercise powers available to it under Parts I and II of RIPA where it is necessary for the purpose of preventing or detecting crime. All RIPA authorisations for the acquisition of communications data, the carrying out of directed surveillance and the use of CHIS must be approved by a Head of Department in the Enforcement Division. Authorisation will only be given where the authorising officer believes that the proposed action is necessary and proportionate in the specific circumstances set out in the application. Consideration will be given to any actual or potential infringement of the privacy of individuals who are not the subjects of the investigation or operation (collateral intrusion) and to the steps taken to avoid or minimise any such intrusion. When considering whether the proposed action is necessary and proportionate the following non-exhaustive list of factors is likely to be relevant:
	the seriousness of the offence; the amount of material that might be gathered; the nature of the material that might be gathered; whether there are other less intrusive ways of obtaining the same result; whether the proposed activity is likely to satisfy the objective; and where surveillance is proposed, the location of the surveillance operation.
19.5.5	Encryption Under Part III RIPA the <i>FCA</i> is able to require a person who holds "protected" electronic information (that is, information which is encrypted) to put that information into an intelligible form and, where the person has a

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key to the encrypted information, to require the person to disclose the key so that the data may be put into an intelligible form. The FCA may impose such a requirement where it is necessary for the purpose of preventing or detecting crime or where it is necessary for the purpose of securing the effective exercise or proper performance by the FCA of its statutory powers or statutory duties. In order to serve a notice under Part III RIPA, the FCA must obtain written permission from an appropriate judicial authority. The FCA does not anticipate using powers under Part III very often as it expects firms and individuals to provide information in intelligible format pursuant to requirements to provide information under the Act.

Home Office Codes of Practice

19.5.6

In exercising powers under RIPA the FCA has regard to the relevant RIPA codes of practice. The Codes are available on the Home Office website: https://www.gov.uk/government/collections/ripa-codes.

Complaints and Oversight

..... 19.5.7 RIPA provides for the appointment of Commissioners to oversee the compliance of designated authorities with RIPA requirements, and the establishment of a tribunal with jurisdiction to consider and determine, amongst other things, complaints and referrals about the way in which the FCA and other public bodies use their RIPA powers.

19.6

Regulated Activities Order 2001 (RAO)

19.6.1

The RAO sets out those activities which are regulated for the purposes of the *Act*. Part V of the RAO also requires the *FCA* to maintain a register of all those people who are not authorised by the *FCA* but who carry on insurance distribution activities. Under article 95 RAO, the *FCA* has the power to remove from the register an appointed representative who carries on insurance distribution activities if it considers that he is not fit and proper. The *FCA* will give the person a *warning notice* informing him that it proposes to remove his registration and a *decision notice* if the decision to remove his registration is taken. The decisions to give a *warning notice* or a *decision notice* will be taken under *executive procedures*. A person who receives a decision notice under article 95 RAO may refer the matter to the *Tribunal*.

	19.7 The Open-Ended Investment Companies Regulations 2001
19.7.1	The OEIC Regulations set out requirements relating to the way in which collective investment may be carried on by open-ended investment companies. Under the OEIC Regulations, the FCA has the power, amongst other things, to: revoke an open-ended investment company's authorisation in several situations, including where the firm breaches relevant requirements or provides us with false or misleading information (regulation 23); give, vary and revoke certain directions, including that the affairs of the company be wound up (regulations 25 and 28);
	apply to court for an order that a depositary or director of a company be removed and replaced (regulation 26); appoint one or more competent persons to investigate and report on the affairs of the company and specified others (regulation 30).
19.7.2	Factors that the FCA may take into account when it decides whether to use one or more of these powers include, but are not limited to, factors which are broadly similar to those in \blacksquare EG 14.1.1 in the context of AUTs or ACSs. However, the relevant conduct will be that of the ICVC, the director or directors of the ICVC and its depositary. Another difference is that the FCA is also able to take disciplinary action against the ICVC itself since the ICVC will be an authorised person. When choosing which powers to use, the FCA will adopt an approach which is broadly similar to that described in \blacksquare EG 14.2 to 14.5.
19.7.3	The FCA will give a company a <i>warning notice</i> if it proposes to revoke the company's authorisation and a <i>decision notice</i> if the decision to revoke the company's authorisation is subsequently taken. The decisions to give a <i>warning notice</i> or a <i>decision notice</i> will be taken under <i>executive procedures</i> . A person who receives a decision notice under the <i>OEIC Regulations</i> may refer the matter to the <i>Tribunal</i> .
19.7.4	Under the OEIC Regulations, the FCA may also use its disqualification powers against auditors who fail to comply with a duty imposed on them under FCA rules. The procedure which the FCA will follow when exercising its disqualification powers is set out in \blacksquare EG 15.

	19.10 Enterprise Act 2002
19.10.1	The FCA, together with several other UK authorities, has powers under Part 8 of the Enterprise Act to enforce breaches of consumer protection law. Where a breach has been committed, the FCA will liaise with other authorities, particularly the Competition and Markets Authority (the CMA), to determine which authority is best placed to take enforcement action. The FCA would generally expect to be the most appropriate authority to deal with breaches by authorised firms in relation to regulated activities.
19.10.2	 The Enterprise Act identifies two types of breach which trigger the Part 8 enforcement powers. These are referred to as: (1) "domestic infringements", which are breaches of particular UK enactments or of contractual or tortious duties, in each case if they occur in the course of a business and in relation to goods or services supplied or sought to be supplied: (a) to or for a person in the UK; or (b) by a person with a place of business in the UK; and (2) "Schedule 13 infringements", which are breaches of the legislation listed in Schedule 13 to the Enterprise Act. In both cases the breach must, to trigger those powers, harm the collective interests of <i>consumers</i>.
19.10.3	[deleted]
19.10.4	The FCA has powers under Part 8 of the Enterprise Act both as a "designated enforcer" in relation to domestic and Schedule 13 infringements and as a "Schedule 13 enforcer" which gives the FCA and other Schedule 13 enforcers additional powers in relation to Schedule 13 infringements under the CRA.
19.10.5	 The FCA's powers as a designated enforcer As a designated enforcer, the FCA has the power to apply to the courts for an enforcement order which requires a <i>person</i> who has committed a domestic or Schedule 13 infringement or, as to the latter, is likely to commit such an infringement: (1) not to engage, including through a company and, as to a domestic infringement, whether or not in the course of business, in the conduct which constituted, or is likely to constitute, the infringement;

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	(2) to publish the order and/or a corrective statement;
	(3) to offer compensation or other redress, including the right to terminate relevant contracts, to affected consumers;
	(4) where such consumers cannot be practically identified, to take measures in the collective interests of consumers;
	(5) to take measures intended to prevent or reduce the risk of the relevant conduct occurring or being repeated; and/or
	(6) to take measures intended to enable consumers to choose more effectively between persons supplying or seeking to supply goods or services;
	although it should be noted that the remedies listed under (3) to (6) inclusive are only applicable to conduct taking place or likely to occur after the relevant provisions of the <i>CRA</i> came into force.
19.10.6	The FCA may also apply, if necessary without notice, for interim enforcement orders where immediate temporary prohibition of the relevant conduct is expedient pending full consideration by the court. Such interim orders can also be sought pre-emptively in relation to Schedule 13 infringements, but again only preventing conduct in the course of business.
19.10.7	The FCA's investigative powers in support of its Enterprise Act enforcement powers are set out in Schedule 5 to the CRA. The FCA can, under Schedule 5, require any person to provide it with information which will enable it to (i) exercise or consider exercising its functions as an enforcer; or (ii) determine whether a person is complying with an enforcement order, an interim enforcement order or an undertaking given as described below. If the FCA requires a person to provide it with information, it must give him a notice setting out the information that it requires and specifying the relevant enforcement function and/or any such purpose.
19.10.8	Before the FCA may apply for an enforcement order, including an interim enforcement order, it must:
	(1) give notice to the CMA of its intention to apply for an enforcement order; and
	(2) unless the application relates to breach of an undertaking given to the court (other than one to provide information), consult the <i>person</i> against whom the enforcement order would be made.
19.10.9	The periods for notification and consultation is (both of which can be waived by the CMA) are:
	(1) 14 days before an application for an enforcement order is made unless, just as to consultation, the <i>person</i> to be consulted is a member of or represented by a body operating an approved consumer code, in which case the period is 28 days; or

(2) 7 days in the case of an application for an interim enforcement order, unless the application relates to breach of an undertaking given to the court, in which case the CMA must be notified but not necessarily in advance.
The aim of consultation is to ensure that any action taken is necessary and proportionate, and to ensure that businesses are given a reasonable opportunity to put things right before the courts become involved. The consultation period starts when the <i>person</i> receives the <i>FCA</i> 's request for consultation and runs whether or not that <i>person</i> agrees to be consulted and/or is available for consultation.
The Enterprise Act also makes provision for enforcers and courts to accept undertakings from <i>persons</i> who have committed breaches or, in respect of Schedule 13 infringements, are considered likely to do so. The undertaking confirms that the <i>person</i> will not, amongst other things, commence, continue or repeat the conduct which constituted or, as to a Schedule 13 infringement, would constitute the breach, although, as above, such a pre- emptive prohibition will only apply to conduct in the course of business. The undertaking may also confirm that the <i>person</i> will compensate consumers and/or take the other measures described in paragraph 19.10.5, above. There is a general expectation that, if a breach of applicable legislation or of a relevant duty is committed, or if a Schedule 13 infringement is likely to be committed, enforcers will seek an undertaking from the <i>person</i> in question before applying to court for an enforcement order.
The FCA may take steps to publish the undertakings it receives, and may apply to the court for an enforcement order if a person fails to comply with an undertaking that he has given.
The FCA's powers as a Schedule 13 enforcer
In addition to its powers as a designated enforcer under the Enterprise Act, the FCA also has powers, in its capacity as a "Schedule 13 enforcer" under the CRA and, therefore, only in respect of Schedule 13 infringements, to enter commercial premises with or without a warrant. The FCA must give at least two working days' notice of its intention to enter such premises without a warrant unless that is not reasonably practicable. If the FCA cannot give a notice in advance, it must produce the notice on the day the premises are entered.
Use of enforcement powers under Enterprise Act
The FCA anticipates that its powers under the Act will be adequate to address the majority of breaches which it would also be able to enforce under the Enterprise Act and that there will therefore be limited cases in which it would seek to use its powers as an Enterprise Act enforcer. Where the FCA does use its powers under the Enterprise Act, it will have regard to the enforcement guidelines which are published on the CMA's website. ²³
²³ www.gov.uk/governmentorganisations
[deleted]

	Proceeds of Crime Act 2002 (POCA)
19.10.16	POCA provides the legislative framework for the confiscation from criminals of the proceeds of their crime. Under POCA, the FCA can apply to the Crown Court for a restraint order when it is investigating or prosecuting criminal cases. A restraint order prevents the person(s) named in the order from dealing with the assets it covers for the duration of the order.
19.10.17	The FCA may apply for such an order where a criminal investigation has been started or where proceedings have started but not concluded; in either case there must be reasonable cause to believe that the defendant has benefited from criminal conduct. In this context, a person benefits from criminal conduct if he obtains property or a pecuniary advantage as a result of or in connection with conduct that would be an offence if it took place in England or Wales, regardless of whether he also obtains it in some other connection. The court is required to exercise its powers with a view to securing that the value of realisable assets is not diminished.
19.10.18	Once an order is made, the applicant or anyone affected by the order can apply to the court for it to be varied or discharged. The court must discharge the order if the condition for granting it is no longer satisfied, that is, if the criminal investigation has not led to criminal proceedings being started within a reasonable time or the criminal proceedings have concluded.
19.10.19	A restraint order may apply to any realisable property held by the specified person whether or not described in the order, or to any such property transferred to him after the order is made. The order may contain exceptions for reasonable living and business expenses, but not for legal expenses relating to the offences from which he is suspected to have benefited for the order to be made.
19.10.20	The order can apply to assets wherever they are held, and anyone breaching the order would be guilty of contempt of court in this country. The FCA may request that the court make ancillary orders requiring the person to disclose his assets and/or to repatriate assets held overseas.
19.10.21	POCA also contains various powers of investigation which the FCA may use in specified circumstances. However, where these powers overlap with powers under the Act, the FCA will in most cases consider it more appropriate to rely on its investigation powers under the Act.
	Credit Institutions (reorganisation and Winding Up) Regulations 2004
19.10.22	[deleted]
19.10.23	[deleted]
19.10.24	[deleted]

	19.11 Financial Services (Distance Marketing) Regulations 2004
19.11.1	These Regulations gave effect to the Distance Marketing Directive. ²⁴ Under the Regulations, the <i>FCA</i> can enforce breaches of the Regulations concerning "specified contracts". Specified contracts are certain contracts for the provision of financial services which are made at a distance and do not require the simultaneous physical presence of the parties to the contract. ²⁴ Directive 2002/65/EC
19.11.2	The FCA may apply to the courts for an injunction or interim injunction against a person who appears to it to be responsible for a breach of the Regulations. The FCA may also accept undertakings from the person who committed the breach that he will comply with the Regulations. The FCA must publish details of any applications it makes for injunctions; the terms of any orders that the court subsequently makes; and the terms of any undertakings given to it or to the court.
19.11.3	The FCA may also prosecute offences under the Regulations which relate to specified contracts. It will generally be appropriate for the FCA to seek to resolve the breach by obtaining an undertaking before it applies for an injunction or initiates a prosecution. Where a failure by a firm to meet the requirements of the Regulations also amounts to a breach of the FCA's rules, the FCA will consider all the circumstances of the case when deciding whether to take action for a breach of its rules or under the Regulations. This will include, amongst other things, having regard to appropriate factors set out in DEPP 6 and the considerations in E G 12.

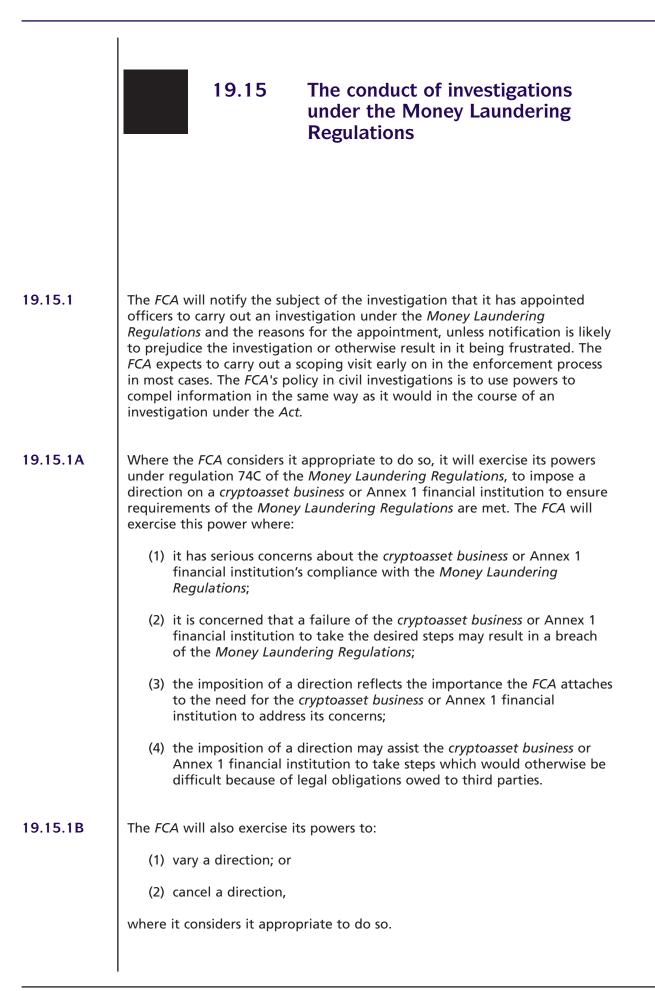
	19.12 Financial Conglomerates and Other Financial Groups Regulations 2004
19.12.1	These Regulations implemented in part the Financial Conglomerates Directive, ²⁵ which imposed certain procedural requirements on the FCA as a competent authority under the Directive. These Regulations also made specific provision about the exercise of certain supervisory powers in relation to financial conglomerates. ²⁵ Directive 2002/87/EC
19.12.2	The FCA's powers to vary a firm's Part 4A permission or to impose requirements under sections 55J and 55L of the Act were extended under these Regulations. The FCA is able to use these powers where it is desirable to do so for the purpose of: supervision in accordance with the Financial Groups Directive Regulations; acting in accordance with specified provisions of the Capital Requirements Regulations 2013; and acting in accordance with specified provisions that implemented or supplemented Solvency II Directive.
19.12.3	The duty imposed by section 55B(3) (The threshold conditions) of the <i>Act</i> does not prevent the <i>FCA</i> from exercising its own-initiative power for these purposes. But subject to that, when exercising this power under the Regulations, the <i>FCA</i> will do so in a manner consistent with its approach generally to variation under the <i>Act</i> .

	19.14 The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017
19.14.1	The FCA has investigation and sanctioning powers in relation to both criminal and civil breaches of the <i>Money Laundering Regulations</i> . The <i>Money Laundering Regulations</i> impose requirements including, amongst other things, obligations to apply customer due diligence measures and conduct ongoing monitoring of business relationships on designated types of business.
19.14.2	The FCA is responsible for monitoring and enforcing compliance with the <i>Money Laundering Regulations</i> not only by authorised firms who are within the <i>Money Laundering Regulations'</i> scope, but also by what the Regulations describe as "Annex I financial institutions", and <i>cryptoasset exchange providers</i> and <i>custodian wallet providers</i> . These are businesses which are not otherwise authorised by us but which carry out certain of the activities which were listed in Annex I of the Banking Consolidation Directive ²⁸ , then in Annex I of the Capital Requirements Directive, the relevant text of which is set out in Schedule 2 of the <i>Money Laundering Regulations</i> . The activities include lending (e.g. forfaiters and trade financiers), financial leasing, and safe custody services. Annex I financial institutions are required to register with the <i>FCA</i> .
	[Note: Directive 2013/36/EU]
19.14.2A	The FCA is also responsible for monitoring and enforcing compliance with the Funds Transfer Regulation by payment service providers specified under regulation 62(1) of the <i>Money Laundering Regulations</i> .
	[Note: Regulation (EU) No 2015/847 on information accompanying transfer of funds as amended by the Money Laundering and Transfer of Funds (Information) (Amendment) (EU Exit) Regulations 2018 (SI 2019/253)]
19.14.3	The <i>Money Laundering Regulations</i> add to the range of options available to the <i>FCA</i> for dealing with anti-money laundering and anti-terrorist financing failures. These options include:
	• to prosecute a relevant person, including but not limited to an authorised firm or an Annex I financial institution or an <i>auction platform</i> , a <i>cryptoasset</i>

	<i>exchange provider</i> or a <i>custodian wallet provider</i> , as well as any responsible officer;
	 to fine or censure a relevant person, including but not limited to an authorised firm or an Annex I financial institution or an auction platform, a cryptoasset exchange provider or a custodian wallet provider, as well as any officer knowingly concerned in the breach, under regulation 76 of the Money Laundering Regulations; to cancel, suspend or impose limitations or other restrictions on the authorisation or registration of an authorised person or payment service provider, under regulation 77 of the Money Laundering Regulations; and to impose a temporary or permanent prohibition on an officer knowingly concerned in a breach by a relevant person, including an authorised firm or Annex I financial institution, a payment service provider, a cryptoasset exchange provider or a custodian wallet provider under regulation 78 of the Money Laundering Regulations. In addition to the powers available under the Money Laundering Regulation against authorised firms for failures which breach the FCA's rules and requirements (for example, under Principle 3, SYSC 3.2.6R or SYSC 6.1.1R).
19.14.4	This means that there will be situations in which the FCA has powers to investigate and take action under both the Act and the Money Laundering Regulations. The FCA will consider all the circumstances of the case when deciding what action to take and, if it is appropriate to notify the subject about the investigation, will in doing so inform them about the basis upon which the investigation is being conducted and what powers it is using. The FCA will adopt the approach outlined in \blacksquare EG 12 when prosecuting Money Laundering Regulations offences. In the majority of cases where both the Regulations and the FCA rules apply and regulatory action, as opposed to criminal proceedings, is appropriate, the FCA generally expects to continue to discipline authorised firms under the Act.
19.14.4A	 The FCA also has powers under regulation 74C to impose a direction on a cryptoasset business or Annex 1 financial institution to: •remedy a failure to comply with a requirement under the Money Laundering Regulations; •prevent a failure to comply, or continued non-compliance with a requirement under the Money Laundering Regulations; or • prevent the cryptoasset business or Annex 1 financial institution from being used for money laundering, terrorist financing or proliferation financing. The FCA may impose a direction requiring or prohibiting the taking of specified action. Cryptoasset businesses or Annex 1 financial institutions can also apply for a direction to be imposed, varied or rescinded.
19.14.5	 The Money Laundering Regulations also provide investigation powers that the FCA can use when investigating whether breaches have taken place. These powers include: the power to require information from, and attendance of, relevant persons, payment service providers and connected persons (regulation 66); and powers of entry and inspection without or under warrant (regulations 69 and 70).

The use of these powers will be limited to those cases in which the FCA is exercising functions under the *Money Laundering Regulations*. In addition, the FCA may use its powers to require information or attendance at the request of foreign authorities.

- **19.14.6** The *FCA* will adopt a risk-based approach to its enforcement under the *Money Laundering Regulations*. Failures in anti-money laundering or counter-terrorist financing controls will not automatically result in disciplinary sanctions, although enforcement action is more likely where a firm has not taken adequate steps to identify its risks or put in place appropriate controls to mitigate those risks, and failed to take steps to ensure that controls are being effectively implemented.
- **19.14.7** However, the *Money Laundering Regulations* say little about the way in which investigation and sanctioning powers should be used, so the *FCA* has decided to adopt enforcement and decision making procedures which are broadly akin to those under the *Act.* Key features of the *FCA*'s approach are described in EG 19.15.



19.15.1C	Examples of circumstances in which the FCA will consider imposing a direction on a <i>cryptoasset business</i> and Annex 1 financial institution because it has serious concerns about a <i>cryptoasset business</i> or Annex 1 financial institution, or about the way its business is being or has been conducted include where the <i>cryptoasset business</i> or Annex 1 financial institution appears to be failing, or appears likely to fail, to comply with requirements under the <i>Money Laundering Regulations</i> , because:
	(1) it appears to have consistently failed to comply with requirements of the <i>Money Laundering Regulations</i> and in doing so, it may have put itself at risk of being used for the purposes of <i>money laundering</i> , terrorist financing or proliferation financing;
	(2) its personnel do not appear to have adequate skills and experience to carry on <i>cryptoasset business</i> or an Annex 1 financial institution's business; or
	 (3) it appears to have breached requirements imposed on it by or under the Money Laundering Regulations, for example in respect of disclosure requirements about the applicability of the jurisdiction of the Financial Ombudsman Service to its cryptoasset business, or Annex 1 financial institution, and whether it is subject to FSCS protection.
19.15.1D	The FCA may impose a direction so that it takes effect immediately or on a specified date if it reasonably considers it necessary to do so, having regard to the ground on which it is exercising this power.
19.15.1E	The FCA will consider imposing a direction as a matter of urgency where:
	the information available to it indicates serious concerns about the <i>cryptoasset business</i> or Annex 1 financial institution that need to be addressed immediately; and
	circumstances indicate that it is appropriate to impose a direction immediately to require and/or prohibit certain actions by the <i>cryptoasset business</i> or Annex 1 financial institution to ensure the <i>cryptoasset business</i> or Annex 1 financial institution addresses these concerns.
19.15.1F	The FCA will consider the full circumstances of each case when it decides whether an urgent imposition of a direction is appropriate. The following is a non-exhaustive list of factors the FCA may consider:
	(1) The extent of any loss, or risk of loss, or other adverse effect on consumers caused by the failure to adhere to the <i>Money Laundering</i> <i>Regulations</i> . The more serious the loss or potential loss or other adverse effect, the more likely it is that the urgent imposition of a direction will be appropriate, to protect the <i>consumers</i> ' interests.
	(2) The extent to which <i>customer</i> assets appear to be at risk due to the failure to comply with the <i>Money Laundering Regulations</i> . Urgent imposition of a direction may be appropriate where the information available to the <i>FCA</i> suggests that <i>customer</i> assets held by, or to the order of, the <i>cryptoasset business</i> or Annex 1 financial institution may be at risk.

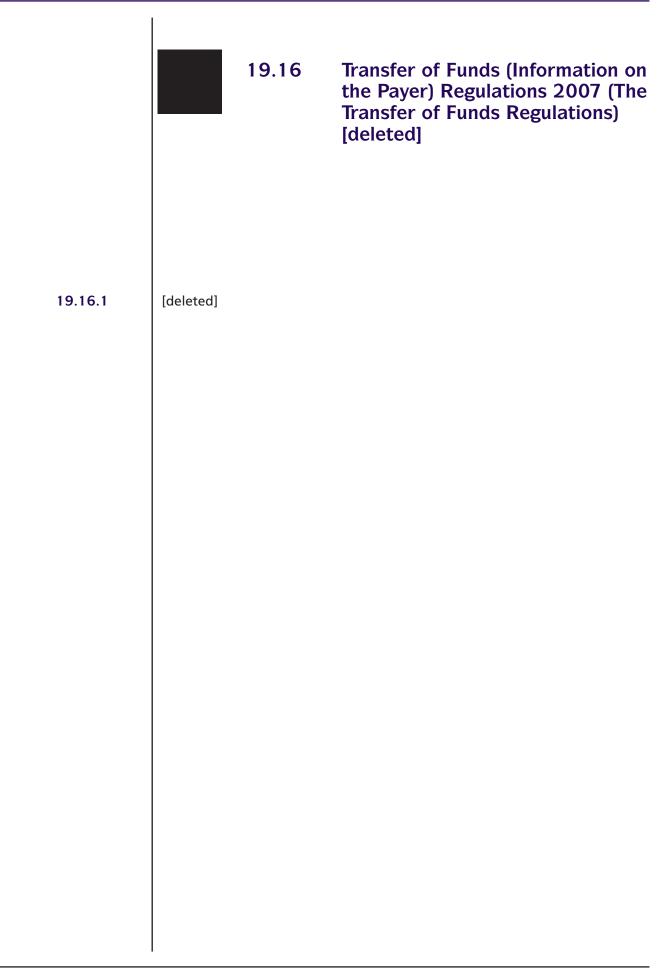
- (13) The nature and extent of any false or inaccurate information provided by the *cryptoasset business* or Annex 1 financial institution. Whether false or inaccurate information warrants the urgent imposition of a direction will depend on matters such as:
 - (a) the impact of the information on the FCA's view of the cryptoasset business or Annex 1 financial institution's compliance with the requirements of the Money Laundering Regulations, or the likelihood that the cryptoasset business or Annex 1 financial institution may be being used in connection with financial crime;
 - (b) whether the information appears to have been provided in an attempt knowingly to mislead the *FCA*, rather than through inadvertence;
 - (c) whether the matters to which false or inaccurate information relates indicate there is a risk to *customer* assets or to the other interests of the *cryptoasset business* or Annex 1 financial institution's actual or potential *customers*.
- (4) The seriousness of any suspected breach of the requirements of the *Money Laundering Regulations* and the steps that need to be taken to correct that breach.
- (5) The financial resources of the *cryptoasset business* or Annex 1 financial institution. Serious concerns may arise where there is a likelihood of the *cryptoasset business* or Annex 1 financial institution's assets being dissipated without the *FCA*'s intervention.
- (6) The risk that the cryptoasset business or Annex 1 financial institution may be used or has been used to facilitate financial crime, especially money laundering, terrorist financing or proliferation financing. The information available to the FCA, including information supplied by other law enforcement agencies may suggest the cryptoasset business or Annex 1 financial institution is being used for, or is itself involved in financial crime. Where this appears to be the case, and the cryptoasset business or Annex 1 financial institution appears to be failing to comply with requirements of the Money Laundering Regulations or has put its customers' interests at risk, the FCA's urgent imposition of a direction may be appropriate.
- (7) The risk that the *cryptoasset business* or Annex 1 financial institution's conduct or business presents to the *UK financial system* and to confidence in the *UK financial system*.
- (8) The *cryptoasset business* or Annex 1 financial institution's conduct. The *FCA* will take into account:
 - (a) whether the cryptoasset business or Annex 1 financial institution identified the issue (and if so whether this was by chance or as a result of the cryptoasset business or Annex 1 financial institution's normal controls and monitoring);
 - (b) whether the *cryptoasset business* or Annex 1 financial institution brought this issue promptly to the *FCA*'s attention;
 - (c) the *cryptoasset business* or Annex 1 financial institution's past history, management ethos and compliance culture;
 - (d) steps that the *cryptoasset business* or Annex 1 financial institution has taken or is taking to address the issue.

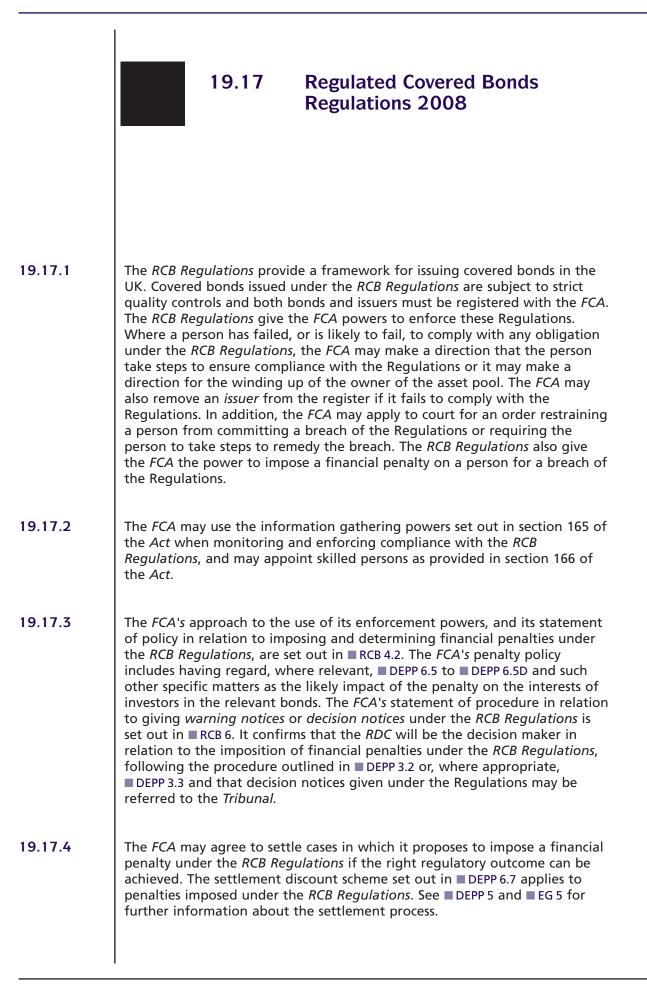
- (9) The impact that the imposition of a direction will have on the cryptoasset business or Annex 1 financial institution's business and on its customers. The FCA will need to be satisfied that the impact of any use of the direction power is likely to be proportionate to the concerns being addressed, in the context of the overall aim of achieving its statutory objectives.
- **19.15.1G** Examples of directions that the *FCA* may consider imposing in support of its enforcement function are: a direction not to take on new business; a direction that prohibits the disposal of, or other dealing with, any of the *cryptoasset business* or Annex 1 financial institution's assets (whether in the *United Kingdom* or elsewhere) or restricts those disposals or dealings; and a direction that all or any of the *cryptoasset business* or Annex 1 financial institution's assets, and a direction that all or any assets belonging to *consumers* but held by the *cryptoasset business* or Annex 1 financial institution to its order, must be transferred to a *trustee* approved by the *FCA*.
- **19.15.2** When the FCA proposes or decides to censure a person, impose a penalty on a person, suspend, cancel or restrict an authorisation or registration or impose a prohibition on a person under the Money Laundering Regulations, it must give the person a warning notice or a decision notice.
- 19.15.3 [deleted]
- 19.15.4 [deleted]
- 19.15.5 When imposing or determining the level of a financial penalty under regulation 76 of the Money Laundering Regulations, the FCA's policy includes having regard, where relevant, to relevant factors in DEPP 6.2.1G and DEPP 6.5 to DEPP 6.5D. The FCA may not impose a penalty where there are reasonable grounds for it to be satisfied that the subject of the proposed action took all reasonable steps and exercised all due diligence to ensure that the relevant requirement of the Money Laundering Regulations would be met. In deciding whether a person has failed to comply with a requirement of the Money Laundering Regulations, the FCA must consider whether he or she followed any relevant guidance which was issued by a European Supervisory Authority in accordance with articles 17, 18.4 or 48.10 of the Fourth Money Laundering Directive, with article 25 of the Funds Transfer Regulation, or with any relevant guidance which was issued at the time by a supervisory authority or other appropriate body, including the Joint Money Laundering Steering Group.
- **19.15.5A** When cancelling, suspending or restricting an authorisation or limitation under regulation 77 of the *Money Laundering Regulations* or determining the duration of any such suspension or restriction, and when imposing or determining the duration of a prohibition under regulation 78 of the *Money Laundering Regulations*, the *FCA's* policy includes having regard, where relevant, to relevant factors in DEPP 6A.

EG 19 : Non-FSMA powers

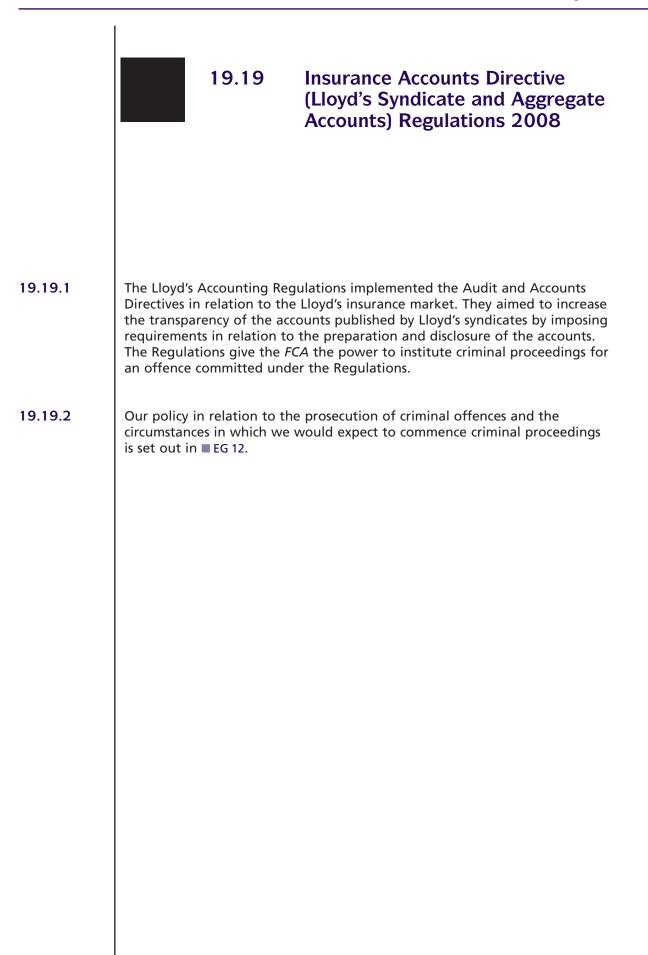
- 19.15.6 As with cases under the *Act*, the *FCA* may settle or mediate appropriate cases involving civil breaches of the *Money Laundering Regulations* or the Funds Transfer Regulation to assist it to exercise its functions under the *Money Laundering Regulations* in the most efficient and economic way. The settlement discount scheme set out in DEPP 6.7 applies to penalties, suspensions, restrictions and temporary prohibitions imposed under regulations 76, 77 and 78 of the *Money Laundering Regulations*.
- **19.15.7** The FCA will apply the approach to publicity that it has outlined in EG 6, read in the light of applicable publicity provisions in regulation 84 of the *Money Laundering Regulations*.

EG 19 : Non-FSMA powers



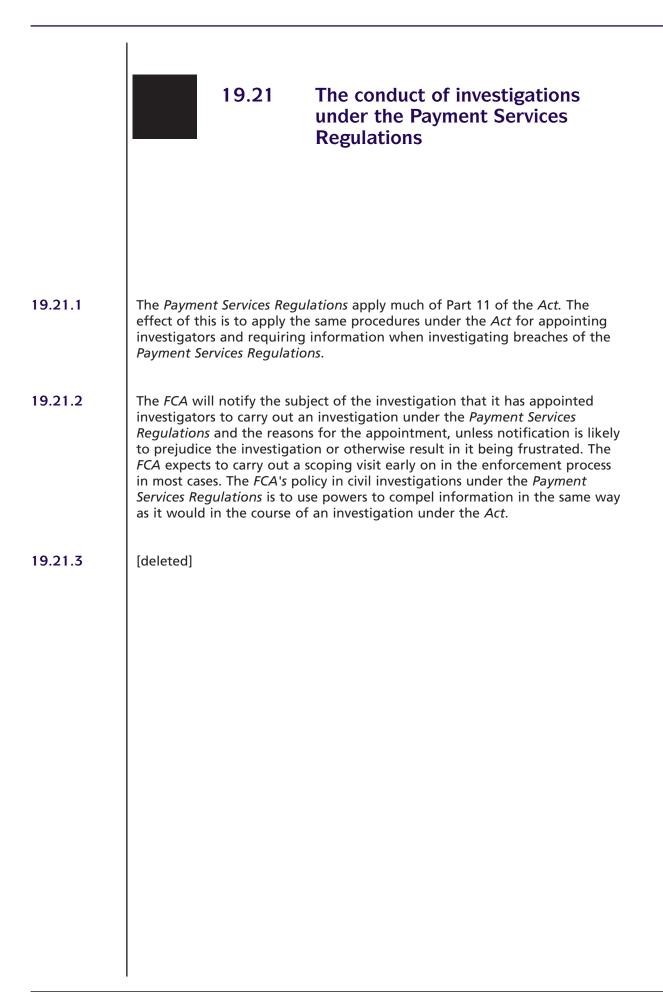


	19.18 Counter-Terrorism Act 2008
19.18.1	The FCA has investigation and sanctioning powers in relation to both criminal and civil breaches of the Counter Terrorism Act 2008 ("the Counter Terrorism Act"). The Counter Terrorism Act allows the Treasury to issue directions imposing requirements on relevant persons in relation to transactions or business relationships with designated persons of a particular country. Relevant persons may be required to take the following action: apply enhanced customer due diligence measures; apply enhanced ongoing monitoring of any business relationship with a designated person; systematically report details of transactions and business relationships with designated person; or limit or cease business with a designated person.
19.18.2	The FCA is responsible for monitoring and enforcing compliance with requirements imposed by the Treasury under the Counter Terrorism Act by 'credit institutions' that are authorised persons and by 'financial institutions' (except money service businesses that are not authorised persons and consumer credit financial institutions). 'Credit institutions' and 'financial institutions' are defined in Part 2 of Schedule 7 to the Counter Terrorism Act.
19.18.3	The investigation and sanctioning powers given to the FCA by the Counter Terrorism Act are similar to those given to the FCA by the Money Laundering Regulations. The FCA's approach to using its powers under the Counter Terrorism Act will be consistent with its approach to using its powers under the <i>Money Laundering Regulations</i> , described in paragraphs = 19.15.1 to = 19.15.7 above.



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	19.20 Payment Services Regulations 2017
19.20.1	The FCA has investigation and sanctioning powers in relation to both criminal and civil breaches of the Payment Services Regulations. The Payment Services Regulations impose requirements including, amongst other things, obligations on payment service providers to provide users with a range of information and various provisions regulating the rights and obligations of payment service users and providers.
19.20.2	The FCA's approach to enforcing the Payment Services Regulations will mirror its general approach to enforcing the Act, as set out in \blacksquare EG 2. It will seek to exercise its enforcement powers in a manner that is transparent, proportionate, responsive to the issue, and consistent with its publicly stated policies. It will also seek to ensure fair treatment when exercising its enforcement powers. Finally, it will aim to change the behaviour of the person who is the subject of its action, to deter future non-compliance by others, to eliminate any financial gain or benefit from non-compliance, and where appropriate, to remedy the harm caused by the non-compliance.
19.20.3	The regulatory powers which the <i>Payment Services Regulations</i> provide to the <i>FCA</i> include: the power to require information; powers of entry and inspection; power of public censure; the power to impose financial penalties; the power to prosecute or fine unauthorised providers; and the power to vary an authorisation on its own initiative.
19.20.4	[deleted]
19.20.5	The Payment Services Regulations, for the most part, mirror the FCA's investigative, sanctioning and regulatory powers under the Act. The FCA has decided to adopt procedures and policies in relation to the use of those powers akin to those it has under the Act. Key features of the FCA's approach are described below.



	19.22 Decision making under the Payment Services Regulations
19.22.1	The <i>RDC</i> is the <i>FCA</i> 's decision maker for some of the decisions under the <i>Payment Services Regulations</i> as set out in DEPP 2 Annex 1G. This builds a layer of separation into the process to help ensure not only that decisions are fair but that they are seen to be fair. The <i>RDC</i> will make its decisions following the procedure set out in DEPP 3.2 or, where appropriate, DEPP 3.3.
19.22.2	For decisions made by <i>executive procedures</i> the procedures to be followed will be those described in DEPP 4.
19.22.3	The <i>Payment Service Regulations</i> do not require the <i>FCA</i> to have published procedures to launch criminal prosecutions. However, in these situations the <i>FCA</i> expects that it will normally follow its decision-making procedures for the equivalent decisions under the <i>Act</i> .
19.22.4	The <i>Payment Service Regulations</i> require the <i>FCA</i> to give third party rights as set out in section 393 of the <i>Act</i> and to give access to certain material as set out in section 394 of the <i>Act</i> .
19.22.5	Certain FCA decisions (for example the cancellation of an authorisation or the imposition of a financial penalty) may be referred to the <i>Tribunal</i> by an aggrieved party.
	Imposition of penalties under the Payment Services Regulations
19.22.6	When imposing a financial penalty the <i>FCA</i> 's policy includes having regard to the relevant factors in \blacksquare DEPP 6.2 and \blacksquare DEPP 6.4. The <i>FCA</i> 's policy in relation to determining the level of a financial penalty includes having regard, where relevant, to \blacksquare DEPP 6.5 to \blacksquare DEPP 6.5D.
19.22.7	As with cases under the <i>Act</i> , the <i>FCA</i> may settle or mediate appropriate cases involving civil breaches of the <i>Payment Services Regulations</i> to assist it to exercise its functions under the Regulations in the most efficient and economic way. See DEPP 5, DEPP 6.7 and EG 5 for further information on the settlement process and the settlement discount scheme.

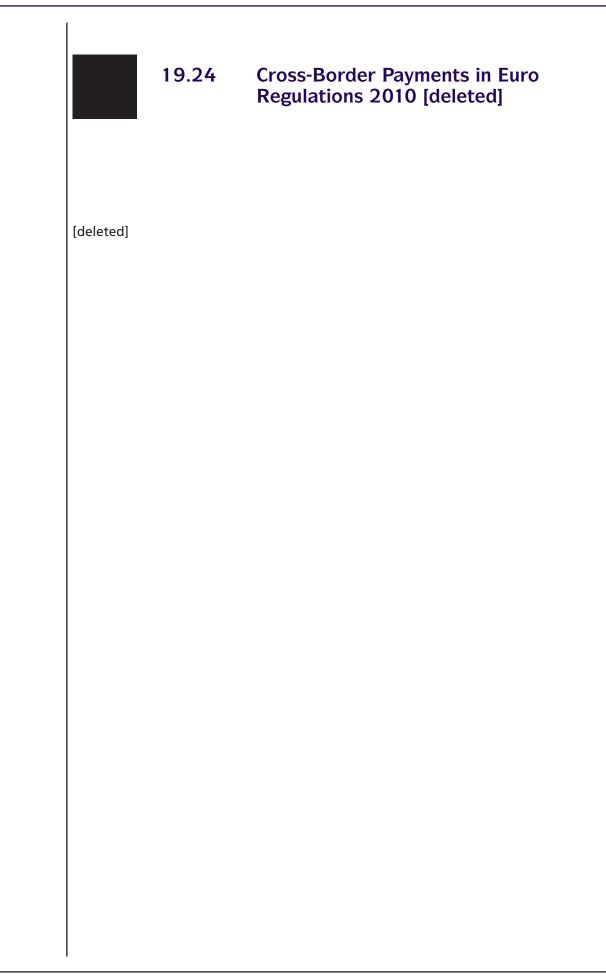
Statement of policy in section 169(7) interviews (as implemented by the Payment Services Regulations)

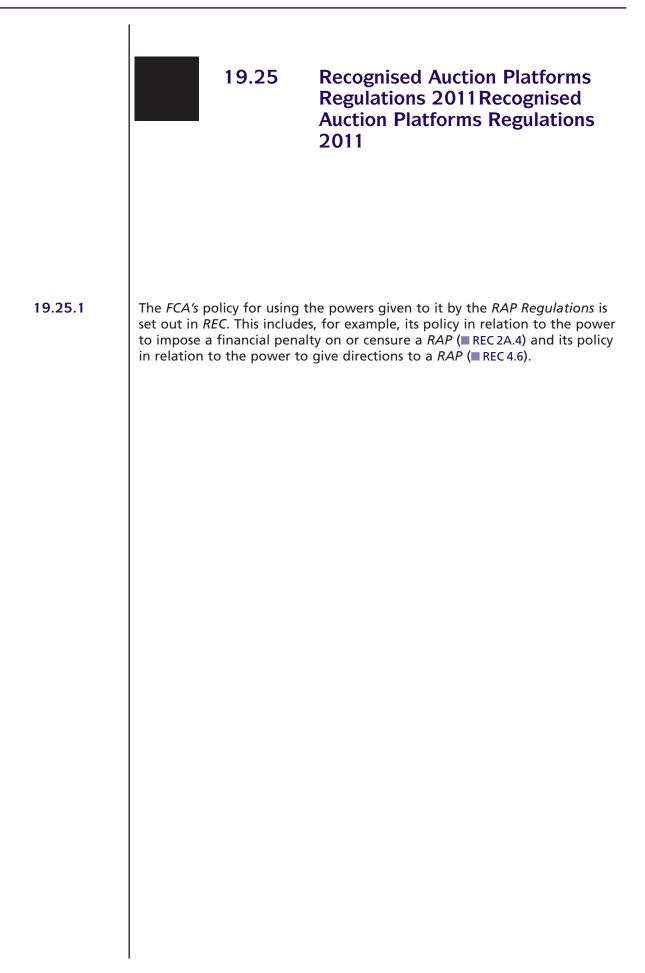
19.22.8 The *Payment Services Regulations* apply section 169 of the *Act* which requires the *FCA* to publish a statement of policy on the conduct of certain interviews in response to requests from overseas regulators. For the purposes of the *Payment Services Regulations* the *FCA* will follow the procedures described in DEPP 7.

	19.23 Electronic Money Regulations 2011
19.23.1	The FCA has investigation and sanctioning powers in relation to both criminal and civil breaches of the <i>Electronic Money Regulations</i> . The <i>Electronic Money Regulations</i> impose requirements including, amongst other things, various provisions regulating the rights and obligations of electronic money institutions.
19.23.2	[deleted]
19.23.3	The FCA's approach to enforcing the Electronic Money Regulations will mirror its general approach to enforcing the Act, as set out in \blacksquare EG 2. It will seek to exercise its enforcement powers in a manner that is transparent, proportionate, responsive to the issue, and consistent with its publicly stated policies. It will also seek to ensure fair treatment when exercising its enforcement powers. Finally, it will aim to change the behaviour of the electronic money issuer or relevant person who is the subject of its action, to deter future non-compliance by others, to eliminate any financial gain or benefit from non-compliance, and where appropriate, to remedy the harm caused by the non-compliance.
19.23.4	The <i>Electronic Money Regulations</i> , for the most part, mirror the <i>FCA</i> 's investigative, sanctioning and regulatory powers under the <i>Act</i> . The <i>FCA</i> has decided to adopt procedures and policies in relation to the use of those powers akin to those it has under the <i>Act</i> . Key features of the <i>FCA</i> 's approach are described below.
19.23.5	Regulations The <i>Electronic Money Regulations</i> apply much of Part 11 of the <i>Act</i> . The effect of this is to apply the same procedures under the <i>Act</i> for appointing investigators and requiring information when investigating breaches of the <i>Electronic Money Regulations</i> .
19.23.6	The FCA will notify the subject of the investigation that it has appointed investigators to carry out an investigation under the <i>Electronic Money Regulations</i> and the reasons for the appointment, unless notification is likely to prejudice the investigation or otherwise result in it being frustrated. The <i>FCA</i> 's policy in civil investigations under the <i>Electronic Money Regulations</i> is

	to use powers to compel information in the same way as it would in the course of an investigation under the <i>Act</i> .
19.23.7	Decision making under the Electronic Money Regulations The <i>RDC</i> is the <i>FCA's</i> decision maker for some of the decisions under the <i>Electronic Money Regulations</i> as set out in DEPP 2 Annex 1G. The <i>RDC</i> will make its decisions following the procedure set out in DEPP 3.2 or, where appropriate, DEPP 3.3.
19.23.8	For decisions made by executive procedures the procedures to be followed will be those described in ■ DEPP 4.
19.23.9	The <i>Electronic Money Regulations</i> do not require the <i>FCA</i> to have published procedures to commence criminal prosecutions. However, in these situations the <i>FCA</i> expects that it will normally follow its decision-making procedures for the equivalent decisions under the <i>Act</i> .
19.23.10	The <i>Electronic Money Regulations</i> require the <i>FCA</i> to give third party rights as set out in section 393 of the <i>Act</i> and to give access to material as set out in section 394 of the <i>Act</i> in certain cases.
19.23.11	Certain <i>FCA</i> decisions (for example the cancellation of an authorisation or the imposition of a financial penalty) may be referred to the <i>Tribunal</i> by an aggrieved party.
	Imposition of penalties under the Electronic Money Regulations
19.23.12	When determining whether to take action to impose a penalty the <i>FCA</i> 's policy includes having regard to the relevant factors in \blacksquare DEPP 6.2 and \blacksquare DEPP 6.4. When determining the level of a financial penalty the <i>FCA</i> 's policy includes having regard to relevant principles and factors in \blacksquare DEPP 6.5 to \blacksquare 6.5D.
19.23.13	When determining whether to suspend the authorisation or, as the case may be, the registration of an electronic money institution or limit or otherwise restrict the carrying on of electronic money issuance or payments services business by an electronic money issuer the FCA 's policy will have regard to the relevant factors in \blacksquare DEPP 6A.
19.23.14	As with cases under the <i>Act</i> , the <i>FCA</i> may settle or mediate appropriate cases involving civil breaches of the <i>Electronic Money Regulations</i> to assist it to exercise its functions under the Regulations in the most efficient and economic way. See DEPP 5, DEPP 6.7 and EG 5 for further information on the settlement process and the settlement discount scheme.

Statement of policy in section 169(7) interviews (as implemented by the Electronic Money Regulations) 19.23.15 The Electronic Money Regulations apply section 169 of the Act which requires the FCA to publish a statement of policy on the conduct of certain interviews in response to requests from overseas regulators. For the purposes of the Electronic Money Regulations the FCA will follow the procedures described in ■ DEPP 7.







OTC Derivatives, Central Counterparties and Trade Repositories Regulations 2013

19.26.1

The FCA has information gathering and sanctioning powers under the Act which are applicable to breaches of EMIR requirements by authorised persons or recognised bodies. The OTC derivatives, CCPs and trade repositories regulation adds to the powers available to the FCA for dealing with breaches of EMIR requirements and sets out information gathering and sanctioning powers enabling the FCA to investigate and take action for breaches of the EMIR requirements by non- authorised counterparties and for certain breaches of the OTC derivatives, CCPs and trade repositories regulation by authorised persons. Such powers under the OTC derivatives, CCPs and trade repositories regulation or the Act do not extend to breaches of article 11(3) and (4) of EMIR by PRA-authorised financial counterparties. The FCA has additional powers in relation to trade repositories under the Over the Counter Derivatives, Central Counterparties and Trade Repositories (Amendment, etc., and Transitional Provision) (EU Exit) Regulations 2018 (see EG 19.40).

Information gathering powers

19.26.2

The FCA may require a non-authorised counterparty that is subject to obligations under EMIR to provide specified information or specified documents so that it can verify whether the non-authorised counterparty has complied with EMIR. The FCA also has the power to require a person to provide specified information or specified documents so that it can verify whether the person is subject to EMIR. The FCA may require the above information to be provided in such form, or to be verified or authenticated in such manner, as is reasonably required in connection with the exercise of the FCA's functions under EMIR.

Sanctioning powers

- 19.26.3
- (1) The FCA has the power to publish a statement or impose a financial penalty of such amount as it considers appropriate on:
 - (a) a financial counterparty who is not an *authorised person*, a nonfinancial counterparty or any other *person* who has breached an *EMIR requirement* or regulation 7 or 8 of the *OTC derivatives*, *CCPs and trade repositories regulation*;
 - (b) a financial counterparty who is an *authorised person* who has breached regulation 8 of the OTC derivatives, CCPs and trade repositories regulation.

EG 19 : Non-FSMA powers

	(2) Where the FCA exercises its power to impose a financial penalty under the OTC derivatives, CCPs and trade repositories regulation or the Act for breaches in relation to EMIR a penalty, it must publish a statement to that effect unless such disclosure would seriously jeopardise the financial markets or cause disproportionate damage to the parties involved.
	[Note: article 12(2) of <i>EMIR</i> and regulation 9(3) of the OTC derivatives, CCPs and trade repositories regulation]
19.26.4	As the power to impose penalties for contravention of an <i>EMIR requirement</i> or regulations \blacksquare 7 or \blacksquare 8 of the <i>OTC derivatives, CCPs and trade repositories regulation</i> mirrors similar powers to that the <i>FCA</i> has under the <i>Act</i> , the <i>FCA</i> will adopt procedures and policies in relation to the use of those powers akin to those it has adopted under the <i>Act</i> , subject to \blacksquare EG 19.26.3(2).
19.26.5	The FCA will use the sanctioning powers where it is appropriate to do so and with regard to the relevant factors listed in DEPP 6.2.1G and DEPP 6.4. In determining the appropriate level of financial penalty, the FCA will have regard to the principles set out in DEPP 6.5, DEPP 6.5A, DEPP 6.5B, DEPP 6.5D and DEPP 6.7.
19.26.6	Where the <i>FCA</i> proposes or decides to take action to publish a statement or impose a financial penalty referred to in \blacksquare EG 19.26.3, it will give the <i>person</i> concerned a <i>warning notice</i> or a <i>decision notice</i> respectively. In the case of a public statement, the <i>warning notice</i> or <i>decision notice</i> will also set out the terms of the statement. In the case of a financial penalty, the <i>warning notice</i> or <i>decision notice</i> will also set out the amount of the penalty. On receiving a <i>warning notice</i> , the <i>person</i> concerned has a right to make representations regarding the <i>FCA</i> 's proposed decision. A <i>person</i> that receives a <i>decision notice</i> may refer the matter to the <i>Tribunal</i> .
19.26.7	If it is proposing to publish a statement or impose a penalty under the OTC derivatives, CCPs and trade repositories regulation, the FCA's decision maker will be the RDC. The RDC will make its decisions following the procedure set out in DEPP 3.2 or where appropriate, DEPP 3.3.
19.26.8	Sections 393 and 394 of the <i>Act</i> apply to notices referred to in this section. See DEPP 2.4 (Third party rights and access to FCA material).
19.26.9	In relation to the notices in this section, the FCA will, subject to ■ EG 19.26.3(2), apply the approach to publicity that is outlined in ■ EG 6.
19.26.10	In relation to <i>authorised persons</i> and <i>recognised bodies</i> which are subject to obligations under <i>EMIR</i> , other information gathering powers and sanctions may also be applicable under the <i>Act</i> .

	19.27 Alternative Investment Fund Managers Regulations 2013
19.27.1	The AIFMD UK regulation transposed AIFMD and made the necessary changes to UK legislation in relation to the implementation of the EuSEF regulation, the EuVECA regulation and the Money Market Funds regulation. It provided new and updated powers in relation to both existing and new managers of AIFs, whether authorised or registered.
19.27.2	The AIFMD UK regulation includes information gathering and sanctioning powers that enable the FCA to investigate and take action for breaches of the regulations and onshored regulations. Specific standalone powers are in the AIFMD UK regulation for unauthorised AIFMs, by applying relevant sections of the Act. Amendments to the Act, including those made under the Financial Services and Markets Act (Qualifying Provisions) Order 2013 (as amended by the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019 (SI 2019/632)), extend certain FCA powers (e.g. disciplinary powers, injunctions and restitution) so that they apply to contraventions of requirements of the AIFMD UK regulation and to contraventions of onshored regulations.
19.27.3	Information gathering and investigation powers The FCA has decided that its approach to enforcing the AIFMD UK regulation requirements will mirror its general approach to enforcing the Act in \blacksquare EG 2. Therefore, the FCA will apply the same procedures and policies under the Act for appointing investigators and requiring information for breaches of the AIFMD UK regulation.
19.27.4	The powers under the AIFMD UK regulation include powers of direction and the power to revoke the registration of <i>small registered UK AIFMs</i> (including a SEF manager or a RVECA manager.
19.27.5	The FCA will respect the principle of proportionality when taking action against SEF managers or RVECA managers for breaches identified in articles 22 and 21 of the SEF regulation or RVECA regulation, respectively. The FCA may take action to ensure compliance with the regulations or prohibit the use of the designation of SEF manager or RVECA manager and revoke registration of such managers. The prohibition route is more likely to apply to serious breaches of the onshored regulations such as in situations where: • registration has been obtained through false statements or any other irregular means; or

	• there are grounds for concern over the behaviour of a SEF manager or a RVECA manager in the management of a SEF or a RVECA, respectively.
19.27.6	Decision making under the AIFMD UK regulation The <i>RDC</i> is the <i>FCA</i> 's decision maker for some decisions under the <i>AIFMD UK regulation</i> , as set out in DEPP 2 Annex 1G. The <i>RDC</i> will make its decisions following the procedure in DEPP 3.2 or, where appropriate, DEPP 3.3. For decisions made by <i>executive procedures</i> , the procedures to be followed are in DEPP 4.
19.27.7	The AIFMD UK regulation does not require the FCA to publish procedures to commence criminal prosecutions. However, the FCA will normally follow its equivalent decision- making procedures for similar decisions under the Act.
19.27.8	The AIFMD UK regulation applies the procedural provisions of Part and Part 26 of the Act for matters that can be referred to the Tribunal and to warning and decision notices under the regulations as it applies to referrals and notices under the Act. The AIFMD UK regulation also applies sections 205 and 206 of the Act to unauthorised AIFMs and, accordingly, the FCA will give third party rights (section 393 of the Act) and access to material (section 394 of the Act).
19.27.9	Imposition of penalties under the AIFMD UK regulation When determining whether to take action to impose a penalty under the <i>AIFMD UK regulation</i> , the <i>FCA</i> 's policy includes having regard to the relevant factors in \blacksquare DEPP 6.2 and \blacksquare DEPP 6.4. When determining the level of financial penalty, the <i>FCA</i> 's policy includes having regard to relevant principles and factors in \blacksquare DEPP 6.5 to \blacksquare 6.5A, \blacksquare DEPP 6.5B, \blacksquare DEPP 6.5D and \blacksquare DEPP 6.7.
19.27.10	As with cases under the <i>Act</i> , the <i>FCA</i> may settle or mediate appropriate cases involving civil breaches of the <i>AIFMD UK regulation</i> to assist it to exercise its functions. \blacksquare DEPP 5, \blacksquare DEPP 6.7 and \blacksquare EG 5 set out information on the <i>FCA</i> 's settlement process and the settlement discount scheme.
19.27.11	The FCA will apply the approach to publicity that is outlined in \blacksquare EG 6.
	Statement of Policy in section 169(7) interviews (as applied by the AIFMD UK regulation)
19.27.12	Regulation 71(2) of the AIFMD UK regulation applies section 169 of the Act in respect of unauthorised AIFMs, which requires the FCA to have a statement of policy on the conduct of certain interviews in response to requests from overseas regulators. The FCA will follow the procedures described in DEPP 7.

	19.28 Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013
19.28.1	The <i>Referral Fees Regulations</i> give the <i>FCA</i> investigation and sanctioning powers in relation to the contravention of the rules against referral fees contained in sections 56 to 60 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (the LASPO Act), as well as the contravention of requirements imposed by, or under, the <i>Referral Fees Regulations</i> .
19.28.2	The FCA's approach to taking enforcement action under the Referral Fees Regulations will mirror its general approach to enforcing the Act, as set out in \blacksquare EG 2. It will seek to exercise its enforcement powers in a manner that is transparent, proportionate and responsive to the issue and consistent with its publicly stated policies. It will also seek to ensure fair treatment when exercising its enforcement powers. Finally, it will aim to change the behaviour of the person who is the subject of its action, to deter future non-compliance by others, to eliminate any financial gain or benefit from non-compliance.
19.28.3	The <i>Referral Fees Regulations</i> , for the most part, mirror the <i>FCA</i> 's investigative and sanctioning powers under the <i>Act</i> . The <i>FCA</i> has adopted procedures and policies for the use of those powers that are akin to those it has under the <i>Act</i> . Key features of the <i>FCA</i> 's approach are described below.
19.28.4	Information gathering and investigation powers The <i>Referral Fees Regulations</i> apply much of Part 11 of the <i>Act</i> . The effect of this is to apply the same procedures under the <i>Act</i> for appointing investigators and requiring information when investigating contraventions of the relevant provisions of the LASPO <i>Act</i> or the <i>Referral Fees Regulations</i> .
19.28.5	The FCA will notify the subject of the investigation that it has appointed investigators to carry out an investigation under the <i>Referral Fees Regulations</i> and the reasons for the appointment, unless notification is likely to result in the investigation being frustrated. In most cases, the FCA expects to carry out a scoping visit early on in the enforcement process. The FCA's policy in civil investigations under the <i>Referral Fees Regulations</i> is to use powers to compel information, in the same way as it would in the course of an investigation under the <i>Act</i> .

19.28.6	Decision making under the Referral Fees Regulations The <i>RDC</i> is the <i>FCA</i> 's decision maker for decisions which require <i>warning</i> <i>notices</i> or <i>decision notices</i> to be given under the <i>Referral Fees Regulations</i> , as set out in DEPP 2 Annex 1G. The <i>RDC</i> will make its decisions following the procedure set out in DEPP 3.2 or, where appropriate, DEPP 3.3.
19.28.7	The <i>Referral Fees Regulations</i> do not require the <i>FCA</i> to publish procedures to commence criminal prosecutions. However, the <i>FCA</i> will normally follow its <i>equivalent</i> decision-making procedures for similar decisions under the <i>Act</i> , as set out in EG 12.
19.28.8	The <i>Referral Fees Regulations</i> do not require the <i>FCA</i> to publish procedures to apply to the court for an injunction or restitution order. However, the <i>FCA</i> will normally follow its equivalent decision-making procedures for similar decisions under the <i>Act</i> , as set out in \blacksquare EG 10 and \blacksquare EG 11.
19.28.9	The Referral Fees Regulations apply sections 393 and 394 of the Act to warning notices and decision notices given under the Referral Fees Regulations and so require the FCA to give third party rights and to give access to material.
19.28.10	The <i>Referral Fees Regulations</i> apply the procedural provisions of Part 9 of the <i>Act</i> , as modified by the <i>Referral Fees Regulations</i> , in respect of matters that can be referred to the <i>Tribunal</i> . Referral to the <i>Tribunal</i> in respect of <i>decision notices</i> given under regulation 26(1) of the <i>Referral Fees Regulations</i> are treated as disciplinary referrals for the purpose of section 133 of the <i>Act</i> .
	Public censures, imposition of penalties and the impositions of suspensions or restrictions under the Referral Fees Regulations
19.28.11	When determining whether to take action to impose a penalty or to issue a public censure under the <i>Referral Fees Regulations</i> , the <i>FCA</i> 's policy includes having regard to the relevant factors in DEPP 6.2 and DEPP 6.4 . When determining the level of financial penalty, the <i>FCA</i> 's policy includes having regard to the relevant principles and factors in DEPP 6.5 to 6.5B , DEPP 6.5D and DEPP 6.7 .
19.28.12	As with cases under the <i>Act</i> , the <i>FCA</i> may settle or mediate appropriate cases involving civil breaches of the <i>Referral Fees Regulations</i> to assist it to exercise its functions. \blacksquare DEPP 5, \blacksquare DEPP 6.7 and \blacksquare EG 5 set out information on the <i>FCA</i> 's settlement process and the settlement discount scheme.
19.28.13	When determining whether to take action to impose a suspension or restriction under the <i>Referral Fees Regulations</i> , the <i>FCA</i> 's policy includes having regard to the relevant factors in DEPP 6A.2 and 6A.4. When determining the length of the period of suspension or restriction, the <i>FCA</i> 's policy includes having regard to the relevant principles and factors in DEPP 6A.3. However, the <i>FCA</i> does not have the power to suspend an <i>authorised person's permission</i> under the <i>Referral Fees Regulations</i> .

19.28.14	The FCA will apply the approach to publicity that is outlined in \blacksquare EG 6.	
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	19.29 Immigration Act 2014 (Bank Account) Regulations 2014
19.29.1	The Immigration Regulations (as amended by the Immigration Act 2014 (Current Accounts) (Excluded Accounts and Notification Requirements) Regulations 2016) give the FCA investigation and sanctioning powers in relation to the contravention of sections 40, 40A, 40B and 40G of the Immigration Act 2014 (as amended by the Immigration Act 2016) (the Immigration Act), as well as the contravention of requirements imposed by, or under, the Immigration Regulations.
19.29.2	The FCA's approach to taking enforcement action under the Immigration Regulations will mirror its general approach to enforcing the Act, as set out in \blacksquare EG 2. It will seek to exercise its enforcement powers in a manner that is transparent, proportionate and responsive to the issue and consistent with its publicly stated policies. It will also seek to ensure fair treatment when exercising its enforcement powers. Finally, it will aim to change the behaviour of the person who is the subject of its action, to deter future non-compliance by others, to eliminate any financial gain or benefit from non-compliance and, where appropriate, to remedy the harm caused by the non-compliance.
19.29.3	The <i>Immigration Regulations</i> , for the most part, mirror the <i>FCA</i> 's investigative and sanctioning powers under the <i>Act</i> . The <i>FCA</i> has adopted procedures and policies for the use of those powers that are akin to those it has under the <i>Act</i> . Key features of the <i>FCA</i> 's approach are described below.
	Information gathering and investigation powers
19.29.4	The <i>Immigration Regulations</i> apply much of Part 11 of the <i>Act</i> . The effect of this is to apply the same procedures under the <i>Act</i> for appointing investigators and requiring information when investigating contraventions of the relevant provisions of the Immigration Act or the <i>Immigration Regulations</i> .
19.29.5	The FCA will notify the subject of the investigation that it has appointed investigators to carry out an investigation under the <i>Immigration Regulations</i> and the reasons for the appointment, unless notification is likely to result in the investigation being frustrated. In most cases, the FCA expects to carry out a scoping visit early on in the enforcement process. The FCA's policy in civil investigations under the <i>Immigration Regulations</i> is to use powers to compel information, in the same way as it would in the course of an investigation under the <i>Act</i> .

19.29.6	Decision making under the Immigration Regulations The <i>RDC</i> is the <i>FCA's</i> decision maker for decisions which require <i>warning</i> <i>notices</i> or <i>decision notices</i> to be given under the <i>Immigration Regulations</i> , as set out in DEPP 2 Annex 1G. The <i>RDC</i> will make its decisions following the procedure set out in DEPP 3.2 or, where appropriate, DEPP 3.3.
19.29.7	The Immigration Regulations do not require the FCA to publish procedures to commence criminal prosecutions. However, the FCA will normally follow its equivalent decision-making procedures for similar decisions under the Act, as set out in \blacksquare EG 12.
19.29.8	The Immigration Regulations apply sections 393 and 394 of the Act to warning notices and decision notices given under the Immigration Regulations and so require the FCA to give third party rights and to give access to material.
19.29.9	The <i>Immigration Regulations</i> apply the procedural provisions of Part 9 of the <i>Act</i> , as modified by the <i>Immigration Regulations</i> , in respect of matters that can be referred to the <i>Tribunal</i> . Referral to the <i>Tribunal</i> in respect of <i>decision notices</i> given under regulation 25(1) of the <i>Immigration Regulations</i> are treated as disciplinary referrals for the purpose of section 133 of the <i>Act</i> .
	Public censures, imposition of penalties and the impositions of suspensions or restrictions under the Immigration Regulations
19.29.10	When determining whether to take action to impose a penalty or to issue a public censure under the <i>Immigration Regulations</i> , the <i>FCA's</i> policy includes having regard to the relevant factors in DEPP 6.2 and DEPP 6.4 . When determining the level of financial penalty, the FCA's policy includes having regard to the relevant principles and factors in DEPP 6.5 to DEPP 6.5B , DEPP 6.5D and DEPP 6.7 .
19.29.11	As with cases under the Act, the FCA may settle or mediate appropriate cases involving civil breaches of the <i>Immigration Regulations</i> to assist it to exercise its functions. \blacksquare DEPP 5, \blacksquare DEPP 6.7 and \blacksquare EG 5 set out information on the FCA's settlement process and the settlement discount scheme.
19.29.12	When determining whether to take action to impose a suspension or restriction under the <i>Immigration Regulations</i> , the <i>FCA</i> 's policy includes having regard to the relevant factors in DEPP 6A.2 and 6A.4. When determining the length of the period of suspension or restriction, the <i>FCA</i> 's policy includes having regard to the relevant principles and factors in DEPP 6A.3.
19.29.13	The FCA will apply the approach to publicity that is outlined in \blacksquare EG 6.

	19.30 The Mortgage Credit Directive Order
19.30.1	The Mortgage Credit Directive (MCD) allowed for an exemption not to apply the MCD to buy-to-let lending if there was in place an appropriate framework for the regulation of these mortgages. The Mortgage Credit Directive Order 2015 (MCDO) is the vehicle through which the framework for "consumer buy-to-let" (CBTL) mortgages was established in order to comply with the MCD.
19.30.2	The MCDO requires that a firm acting as a lender, intermediary or carrying out advisory services in relation to CBTL from 21 March 2016 must be registered by the <i>FCA</i> to do so. It provides for the <i>FCA</i> to determine applications to be registered, as well as powers to suspend or revoke registration.
19.30.3	It also imposes obligations on registered firms to comply with conduct requirements set out in the Schedule to the MCDO, retain relevant information and to deal with the FCA in an open and co-operative manner. The FCA also has the power to give directions to a registered firm to secure compliance with the requirements set out in the Schedule. In addition, the FCA has investigation and sanctioning powers in relation to the framework.
19.30.4	The FCA's approach to taking enforcement action under the MCDO will mirror its general approach to enforcing the Act, as set out in \blacksquare EG 2. It will seek to exercise its enforcement powers in a manner that is transparent, proportionate and responsive to the issue and consistent with its publicly stated policies. It will also seek to ensure fair treatment when exercising its enforcement powers. Finally, it will aim to change the behaviour of the person who is the subject of its action, to deter future non-compliance by others, to eliminate any financial gain or benefit from non-compliance and, where appropriate, to remedy the harm caused by the non-compliance.
19.30.5	The MCDO, for the most part, applies or mirrors the FCA's investigative and sanctioning powers under the Act. The FCA has adopted procedures and policies for the use of those powers that are akin to those it has under the Act. Key features of the FCA's approach are described below.
19.30.6	Information gathering and investigation powers Article 23 of the MCDO applies many of the provisions of the <i>Act</i> in relation to the <i>FCA's</i> investigation and information-gathering powers in respect of a

	registered firm. The effect of this is to apply the same procedures under the <i>Act</i> for appointing investigators and requiring information when investigating contraventions of the MCDO.
19.30.7	For example, the FCA will notify the subject of the investigation that it hasappointed investigators to carry out an investigation under the MCDO and the reasons for the appointment, unless notification is likely to result in the investigation being frustrated. In most cases, the FCA expects to carry out a scoping visit early on in the enforcement process. The FCA's policy in regulatory investigations under the MCDO is to use powers to compel information, in the same way as it would in the course of an investigation under the Act.
	Decision making under the MCDO
19.30.8	The <i>RDC</i> is the <i>FCA</i> 's decision maker for some decisions which require warning notices or decision notices to be given under the MCDO as set out in DEPP 2 Annex 1G. The <i>RDC</i> will make its decisions following the procedure set out in DEPP 3.2 or, where appropriate, DEPP 3.3 .
19.30.9	For decisions made by <i>executive procedures</i> , the procedure to be followed will be those described in DEPP 4.
19.30.10	Article 18(3) applies sections 393 and 394 of the <i>Act</i> to <i>warning notices</i> and <i>decision notices</i> given under the MCDO and so require the <i>FCA</i> to give third party rights and to give access to material as set out under the <i>Act</i> . Article 24(1) applies the procedural provisions of Part 9 of the <i>Act</i> , in respect of matters that can be referred to the Tribunal, and article 24(2) applies Part 26 of the <i>Act</i> to warning and decision notices given under the MCDO.
	Public censures, imposition of penalties and the impositions of suspensions under the MCDO
19.30.11	When determining whether to take action to impose a penalty or to issue a public censure under the MCDO, the <i>FCA's</i> policy includes having regard to the relevant factors in \blacksquare DEPP 6.2 and \blacksquare DEPP 6.4. When determining the level of financial penalty, the <i>FCA's</i> policy includes having regard to the relevant principles and factors in \blacksquare DEPP 6.5, \blacksquare DEPP 6.5A, \blacksquare DEPP 6.5D and \blacksquare DEPP 6.7.
19.30.12	As with cases under the <i>Act</i> , the <i>FCA</i> may settle or mediate appropriate cases involving breaches of the MCDO to assist it to exercise its functions. ■ DEPP 5, ■ DEPP 6.7 and ■ EG 5 set out information on the <i>FCA's</i> settlement process and the settlement discount scheme.
19.30.13	When determining whether to take action to impose a suspension under the MCDO, the FCA's policy includes having regard to the relevant factors in DEPP 6A.2 and 6A.4. When determining the length of the period of suspension, the FCA's policy includes having regard to the relevant principles and factors in DEPP 6A.3.
19.30.14	The FCA will apply the approach to publicity that is outlined in \blacksquare EG 6.

	19.31 The Small and Medium Sized Business (Credit Information) Regulations
19.31.1	The Small and Medium Sized Business (Credit Information) Regulations were made under the Small Business, Enterprise and Employment Act. The Small and Medium Sized Business (Credit Information) Regulations impose a duty on designated banks to provide information about their small and medium sized business customers (with the consent of those businesses) to designated credit reference agencies. The Treasury is the body that has the power to designate a bank or credit reference agency and may revoke such a designation.
19.31.2	As the provision of credit data on companies is not a regulated activity under the Act, the Regulations create a separate monitoring and enforcement regime but apply, or make provision corresponding to, certain aspects of the Act. The FCA's approach to taking enforcement action under the Regulations will reflect its general approach to enforcing the Act, as set out in \blacksquare EG 2. It will seek to exercise its enforcement powers in a manner that is transparent, proportionate and responsive to the issue and consistent with its publicly stated policies. It will also seek to ensure fair treatment when exercising its enforcement powers.
	Information gathering and investigation powers
19.31.3	Regulation 26 of the Small and Medium Sized Business (Credit Information) Regulations applies many of the provisions of the Act regarding the FCA's investigation and information-gathering powers to designated banks and designated credit reference agencies. The effect is to apply the same procedures under the Act for appointing investigators and requiring information when investigating any breaches of the Small and Medium Sized Business (Credit Information) Regulations.
19.31.4	For example, the FCA will notify the subject of the investigation that it has appointed investigators to carry out an investigation and the reasons for the appointment. The FCA's policy in regulatory investigations under the Small and Medium Sized Business (Credit Information) Regulations is to use powers to compel information, in the same way as it would in the course of an investigation under the Act.

	Decision making under the Small and Medium Sized Business (Credit Information) Regulations
19.31.5	The <i>RDC</i> is the <i>FCA's</i> decision maker for some decisions which require warning notices or decision notices to be given under the <i>Small and Medium Sized Business</i> (<i>Credit Information</i>) <i>Regulations</i> , as set out in DEPP 2 Annex 1G. The <i>RDC</i> will make its decisions following the procedure in DEPP 3.2 or, where appropriate, DEPP 3.3 . For decisions made by executive procedures, the procedure to be followed will be those described in DEPP 4 .
19.31.6	Regulation 46 of the Small and Medium Sized Business (Credit Information) Regulations applies the procedural provisions of Part 9 of the Act, in respect of matters that can be referred to the Tribunal, and regulation 44 of the Small and Medium Sized Business (Credit Information) Regulations applies Part 26 of the Act to warning and decision notices given under the Regulations.
	Public censures, imposition of penalties and the impositions of restrictions under the Small and Medium Sized Business (Credit Information) Regulations
19.31.7	When determining whether to take action to impose a penalty or to issue a public censure under the <i>Small and Medium Sized Business (Credit Information) Regulations</i> , the <i>FCA's</i> policy includes having regard to the relevant factors in DEPP 6.2 and DEPP 6.4 . When determining the level of financial penalty, the <i>FCA's</i> policy includes having regard to the relevant principles and factors in DEPP 6.5 , DEPP 6.5A , DEPP 6.5D and DEPP 6.7 .
19.31.8	As with cases under the Act, the FCA may settle or mediate appropriate cases involving breaches of the Small and Medium Sized Business (Credit Information) Regulations to assist it to exercise its functions. DEPP 5, DEPP 6.7 and EG 5 set out information on the FCA's settlement process and the settlement discount scheme.
19.31.9	When determining whether to take action to impose a restriction under regulation 30 of the <i>Small and Medium Sized Business (Credit Information) Regulations</i> , the <i>FCA's</i> policy includes having regard to the relevant factors in DEPP 6A.2 and DEPP 6A.4. When determining the length of the period of restriction, the <i>FCA's</i> policy includes having regard to the relevant principles and factors in DEPP 6A.3.
19.31.10	The FCA will apply the approach to publicity that is outlined in \blacksquare EG 6.

	19.32 The Payment Accounts Regulations 2015
19.32.1	The Payment Accounts Regulations 2015 ("the PARs") implemented the Payment Accounts Directive. They entitle consumers who hold a payment account (such as a current account) to receive certain information about the fees and charges applied to that account. They also entitle consumers to use a switching service which meets certain minimum standards, if they wish to change their payment account to another provider.
19.32.2	The <i>PARs</i> impose various obligations on payment account providers, such as a duty to disclose certain information when offering a packaged account to a <i>consumer</i> (i.e. the costs and fees of the products or services included in the package). They also introduce an obligation to offer a switching service between payment accounts. The <i>PARs</i> also require <i>credit institutions</i> designated by Her Majesty's Treasury to provide eligible <i>consumers</i> with access to basic banking services.
19.32.3	As the requirements arise under the <i>PARs</i> and not under the <i>Act</i> , the <i>PARs</i> create a separate monitoring and enforcement regime but apply, or make provision corresponding to, certain aspects of the <i>Act</i> .
19.32.4	The FCA's approach to taking enforcement action under the PARs will reflect its general approach to enforcing the Act, as set out in EG 2. It will seek to exercise its enforcement powers in a manner that is transparent, proportionate and responsive to the issue and consistent with its publicly stated policies. It will also seek to ensure fair treatment of subjects under investigation when exercising its enforcement powers.
19.32.5	Information gathering and investigation powers Part 1 of Schedule 7 to the <i>PARs</i> applies many of the provisions of the <i>Act</i> in relation to the <i>FCA's</i> investigation and information-gathering powers to the <i>FCA's</i> functions under the <i>PARs</i> . The effect of this is to apply the same procedures under the <i>Act</i> for appointing investigators and requiring information when investigating any breaches of the <i>PARs</i> .
19.32.6	For example, the FCA will, if appropriate, notify the subject of the investigation that it has appointed investigators to carry out an investigation and the reasons for the appointment. The FCA's policy in regulatory investigations under the PARs is to use powers to compel information, in the same way as it would in the course of an investigation under the Act.

	Decision making under the PARs
19.32.7	The <i>RDC</i> is the <i>FCA's</i> decision maker for some decisions which require <i>warning notices, decision notices</i> or other written notices to be given under the <i>PARs</i> as set out in DEPP 2 Annex 1 and DEPP 2 Annex 2. The <i>RDC</i> will make its decisions following the procedure set out in DEPP 3.2 or, where appropriate, DEPP 3.3 .
19.32.8	For decisions made by <i>executive procedures</i> , the procedures to be followed will be those described in ■ DEPP 4.
19.32.9	Paragraph 1 of Schedule 7 to the <i>PARs</i> applies the procedural provisions of Part 9 of the <i>Act</i> (with some modifications), in respect of matters that can be referred to the <i>Tribunal</i> , and Paragraph 4 of Schedule 7 to the <i>PARs</i> applies Part 26 of the <i>Act</i> to <i>warning notices</i> and <i>decision notices</i> given under the <i>PARs</i> .
	Public censures and the imposition of penalties
19.32.10	When determining whether to take action to impose a penalty or to issue a public censure under the <i>PARs</i> , the <i>FCA's</i> policy includes having regard to the relevant factors in \blacksquare DEPP 6.2 and \blacksquare DEPP 6.4. When determining the level of financial penalty, the <i>FCA's</i> policy includes having regard to the relevant principles and factors in \blacksquare DEPP 6.5, \blacksquare DEPP 6.5A, \blacksquare DEPP 6.5D and \blacksquare DEPP 6.7.
19.32.11	As with cases under the Act, the FCA may settle or mediate appropriate cases involving breaches of the PARs to assist it to exercise its functions. ■ DEPP 5, ■ DEPP 6.7 and ■ EG 5 set out information on the FCA's settlement process and the settlement discount scheme.
19.32.12	The FCA will apply the approach to publicity that is outlined in \blacksquare EG 6.

19.33 The Small and Medium Sized **Business (Finance Platforms) Regulations 2015** 19.33.1 The Small and Medium Sized Business (Finance Platforms) Regulations were made under the Small Business, Enterprise and Employment Act. The Small and Medium Sized Business (Finance Platforms) Regulations require designated banks to provide specified information about rejected loan applications made by small and medium sized business customers (with their consent) to designated finance platforms which must then provide such information to finance providers on request. The Treasury is the body that has the power to designate a bank or finance platform and may revoke such a designation. 19.33.2 As the provision of credit data on companies is not a *regulated activity* under the Act, the Regulations create a separate monitoring and enforcement regime but apply, or make provision corresponding to, certain aspects of the Act. The FCA's approach to taking enforcement action under the Regulations will reflect its general approach to enforcing the Act, as set out in EG 2. It will seek to exercise its enforcement powers in a manner that is transparent, proportionate and responsive to the issue and consistent with its publicly stated policies. It will also seek to ensure fair treatment when exercising its enforcement powers. Information gathering and investigation powers 19.33.3 Regulation 23 of the Small and Medium Sized Business (Finance Platforms) Regulations applies many of the provisions of the Act in relation to the FCA's investigation and information-gathering powers in respect of designated banks and designated finance platforms. The effect of this is to apply the same procedures under the Act for appointing investigators and requiring information when investigating any breaches of the Small and Medium Sized Business (Finance Platforms) Regulations. 19.33.4 For example, the FCA will notify the subject of the investigation that it hasappointed investigators to carry out an investigation and the reasons for the appointment. The FCA's policy in regulatory investigations under the Regulations is to use powers to compel information, in the same way as it would in the course of an investigation under the Act.

	Decision making under the Small and Medium Sized Business (Finance Platforms) Regulations
19.33.5	The <i>RDC</i> is the <i>FCA's</i> decision maker for some decisions which require warning notices or decision notices to be given under the <i>Small and Medium Sized Business</i> (<i>Finance Platforms</i>) <i>Regulations</i> as set out in DEPP 2 Annex 1G. The <i>RDC</i> will make its decisions following the procedure in DEPP 3.2 or, where appropriate, DEPP 3.3. For decisions made by <i>executive procedures</i> , the procedure to be followed will be those described in DEPP 4.
19.33.6	Regulation 43 of the Small and Medium Sized Business (Finance Platforms) Regulations applies to the procedural provisions of Part 9 of the Act, in respect of matters that can be referred to the Tribunal, and regulation 41 of the Small and Medium Sized Business (Finance Platforms) Regulations applies to Part 26 of the Act to warning and decision notices given under the Small and Medium Sized Business (Finance Platforms) Regulations.
	Public censures, imposition of penalties and the impositions of restrictions under the Small and Medium Sized Business (Finance Platforms) Regulations
19.33.7	When determining whether to take action to impose a penalty or to issue a public censure under the <i>Small and Medium Sized Business (Finance Platforms) Regulations</i> , the <i>FCA's</i> policy includes having regard to the relevant factors in DEPP 6.2 and DEPP 6.4. When determining the level of financial penalty, the <i>FCA's</i> policy includes having regard to the relevant principles and factors in DEPP 6.5, DEPP 6.5A, DEPP 6.5D and DEPP 6.7.
19.33.8	As with cases under the Act, the FCA may settle or mediate appropriate cases involving breaches of the Small and Medium Sized Business (Finance Platforms) Regulations to assist it to exercise its functions. \blacksquare DEPP 5, \blacksquare DEPP 6.7 and \blacksquare EG 5 set out information on the FCA's settlement process and the settlement discount scheme.
19.33.9	When determining whether to take action to impose a restriction under regulation 27 of the <i>Small and Medium Sized Business (Finance Platforms) Regulations</i> , the <i>FCA's</i> policy includes having regard to the relevant factors in DEPP 6A.2 and 6A.4. When determining the length of the period of restriction, the <i>FCA's</i> policy includes having regard to the relevant principles and factors in DEPP 6A.3.
19.33.10	The FCA will apply the approach to publicity that is outlined in \blacksquare EG 6.

	19.34 Markets in Financial Instruments Regulations 2017
19.34.1	 The MiFI Regulations in part implemented MiFID. The FCA has investigative and enforcement powers in relation to both criminal and non-criminal breaches of the MiFI Regulations (including requirements imposed on persons subject to the MiFI Regulations by MiFIR and any onshored regulation which was an EU regulation made under MiFIR or MiFID). The MiFI Regulations impose requirements on: (1) persons holding positions in relevant contracts for commodity derivatives trading on trading venues and for economically equivalent OTC contracts, whether or not the persons are authorised; and (2) exempt investment firms providing services in algorithmic trading, direct electronic access or acting as a general clearing member or in relation to the synchronisation of business clocks.
	The <i>MiFI Regulations</i> also give the <i>FCA</i> the powers to investigate and enforce breaches of article 28 of <i>MiFIR</i> and any <i>onshored regulation</i> which was an <i>EU regulation</i> made under <i>MiFIR</i> .
19.34.2	The FCA's approach to enforcing under the <i>MiFI Regulations</i> , whether the <i>person</i> is authorised or not, will mirror our general approach to enforcing the <i>Act</i> , as set out in \blacksquare EG 2. We will seek to exercise our enforcement powers in a manner that is transparent, proportionate, responsive to the issue and consistent with our publicly stated policies. We will also seek to ensure fair treatment when exercising our enforcement powers. Finally, we will aim to change the behaviour of the <i>person</i> who is the subject of our action, to deter future non-compliance by others, to eliminate any financial gain or benefit from non-compliance.
19.34.3	The regulatory powers which the <i>MiFI Regulations</i> provide to the <i>FCA</i> include:
	(1) the power to require information and appoint investigators;
	(2) powers of entry and inspection;
	 (3) the power to publicly censure; (4) the power to impose financial popultion;
	(4) the power to impose financial penalties;(5) the power to apply for an injunction or restitution order.
	l (5) the power to apply for an injunction or restitution order;

	(4) the power to require restitution;
	(7) the power to impose limitation, restriction or requirement; and
	(8) the power to prosecute relevant offences.
19.34.4	In addition, the <i>MiFI Regulations</i> provide the power to require the removal of persons from the management board of an <i>investment firm</i> , a <i>credit institution</i> or a <i>recognised investment exchange</i> . This is a supervisory power, rather than a disciplinary one, and it may be exercised whenever the <i>FCA</i> deems it necessary for the purpose of any of our functions under <i>MiFID</i> or <i>MiFIR</i> .
19.34.5	The <i>MiFI Regulations</i> , for the most part, mirror the <i>FCA's</i> investigative, sanctioning and regulatory powers under the <i>Act</i> . The <i>FCA</i> has decided to adopt procedures and policies in relation to the use of those powers akin to those we have under the <i>Act</i> . Key features of the <i>FCA's</i> approach are described below.
	The conduct of investigations under the MiFI Regulations
19.34.6	The <i>MiFI Regulations</i> apply much of Part 11 of the <i>Act</i> . The effect of this is to apply the same procedures under the <i>Act</i> for appointing investigators and requiring information when investigating breaches of the <i>MiFI Regulations</i> .
19.34.7	The FCA will notify the subject of the investigation that we have appointed investigators to carry out an investigation under the <i>MiFI Regulations</i> and the reasons for the appointment, unless notification is likely to prejudice the investigation or otherwise result in it being frustrated. The FCA expects to carry out a scoping visit early on in the enforcement process in most cases. The FCA's policy in non-criminal investigations under the <i>MiFI Regulations</i> is to use powers to compel the provision of information in the same way as we would in the course of an investigation under the <i>Act</i> .
	Decision making under the MiFI Regulations
19.34.8	The decision making procedures for those decisions under the <i>MiFI</i> <i>Regulations</i> requiring the giving of a <i>warning notice</i> , <i>decision notice</i> or a <i>supervisory notice</i> are dealt with in <i>DEPP</i> .
19.34.9	The <i>MiFI Regulations</i> do not require the <i>FCA</i> to have published procedures for commencing criminal prosecutions. However, in these situations the <i>FCA</i> expects that we will normally follow our decision making procedures for the equivalent decisions under the <i>Act</i> , as set out in \blacksquare EG 12.
19.34.10	The <i>MiFI Regulations</i> do not require the <i>FCA</i> to have published procedures to apply to the court for an <i>injunction</i> or restitution order. However, the <i>FCA</i> will normally follow our decision making procedures for the equivalent decisions under the <i>Act</i> , as set out in \blacksquare EG 10 and \blacksquare EG 11.

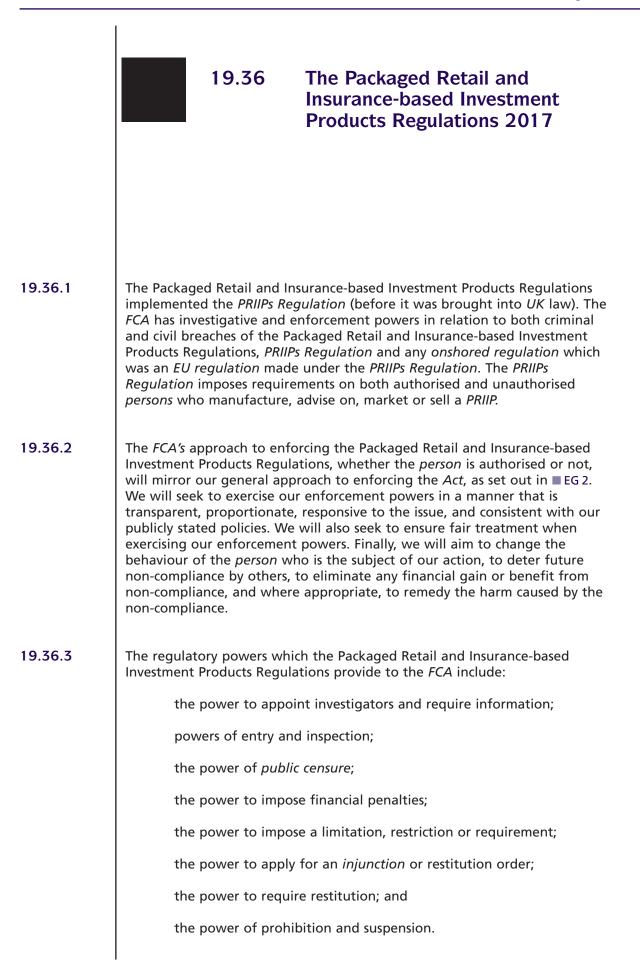
19.34.11	The <i>MiFI Regulations</i> require the <i>FCA</i> to give third party rights as set out in section 393 of the <i>Act</i> and to give access to certain material as set out in section 394 of the <i>Act</i> .
19.34.12	Certain FCA decisions (for example a requirement to reduce the size of a position, publication of a statement and the imposition of a penalty) may be referred to the <i>Tribunal</i> by an aggrieved party.
	Imposition of penalties under the MiFI Regulations
19.34.13	When determining whether to take action to impose a penalty or to issue a public censure under the <i>MiFI Regulations</i> the <i>FCA's</i> policy includes having regard to the relevant factors in \blacksquare DEPP 6.2 and \blacksquare DEPP 6.4. The <i>FCA's</i> policy in relation to determining the level of a financial penalty includes having regard, where relevant, to \blacksquare DEPP 6.5 to \blacksquare DEPP 6.5D.
19.34.14	As with cases under the <i>Act</i> , the <i>FCA</i> may settle or mediate appropriate cases involving non-criminal breaches of the <i>MiFI Regulations</i> to assist us to exercise our functions under the <i>MiFI Regulations</i> in the most efficient and economic way. See DEPP 5 , DEPP 6.7 and EG 5 for further information on the settlement process and the <i>settlement discount scheme</i> .
19.34.15	The FCA will apply the approach to publicity that is outlined in EG 6, read in light of the applicable publicity provisions in section 391D of the Act.
	Removal of persons from management boards under the MiFl Regulations
19.34.16	
19.34.16 19.34.17	Regulations The power under Part 5 of the <i>MiFI Regulations</i> to remove a person from a management board may be used in respect of an <i>investment firm</i> , a <i>credit</i>
	RegulationsThe power under Part 5 of the MiFI Regulations to remove a person from a management board may be used in respect of an investment firm, a credit institution or a recognised investment exchange.This power may be used where the FCA considers that the removal is necessary for the purpose of exercising functions under MiFID or MiFIR. Examples of where this power may be used include, but are not limited to,
	RegulationsThe power under Part 5 of the MiFI Regulations to remove a person from a management board may be used in respect of an investment firm, a credit institution or a recognised investment exchange.This power may be used where the FCA considers that the removal is necessary for the purpose of exercising functions under MiFID or MiFIR. Examples of where this power may be used include, but are not limited to, ensuring that all members of the management body:
	RegulationsThe power under Part 5 of the MiFI Regulations to remove a person from a management board may be used in respect of an investment firm, a credit institution or a recognised investment exchange.This power may be used where the FCA considers that the removal is necessary for the purpose of exercising functions under MiFID or MiFIR. Examples of where this power may be used include, but are not limited to, ensuring that all members of the management body:(1) are of sufficiently good repute; (2) possess sufficient knowledge, skills and experience to perform their
	 Regulations The power under Part 5 of the <i>MiFI Regulations</i> to remove a person from a management board may be used in respect of an <i>investment firm</i>, a <i>credit institution</i> or a <i>recognised investment exchange</i>. This power may be used where the <i>FCA</i> considers that the removal is necessary for the purpose of exercising functions under <i>MiFID</i> or <i>MiFIR</i>. Examples of where this power may be used include, but are not limited to, ensuring that all members of the management body: (1) are of sufficiently good repute; (2) possess sufficient knowledge, skills and experience to perform their duties;
	 Regulations The power under Part 5 of the MiFI Regulations to remove a person from a management board may be used in respect of an investment firm, a credit institution or a recognised investment exchange. This power may be used where the FCA considers that the removal is necessary for the purpose of exercising functions under MiFID or MiFIR. Examples of where this power may be used include, but are not limited to, ensuring that all members of the management body: (1) are of sufficiently good repute; (2) possess sufficient knowledge, skills and experience to perform their duties; (3) commit sufficient time to perform their functions;
	 Regulations The power under Part 5 of the <i>MiFI Regulations</i> to remove a person from a management board may be used in respect of an <i>investment firm</i>, a <i>credit institution</i> or a <i>recognised investment exchange</i>. This power may be used where the <i>FCA</i> considers that the removal is necessary for the purpose of exercising functions under <i>MiFID</i> or <i>MiFIR</i>. Examples of where this power may be used include, but are not limited to, ensuring that all members of the management body: (1) are of sufficiently good repute; (2) possess sufficient knowledge, skills and experience to perform their duties; (3) commit sufficient time to perform their functions; (4) do not hold too many directorships;

	<i>credit institution</i> or <i>recognised investment exchange</i> and the member of the management board. The <i>FCA</i> will exercise this power fairly and proportionately.
19.34.19	It should be noted that, while the FCA will have regard to the range of regulatory tools at its disposal, we are not required to exhaust all other options before imposing the requirement to remove a person from the management board.
19.34.20	The FCA will take into account all relevant circumstances when considering whether to require the removal to occur immediately or on a specified date.
	Statement of policy in section 169(7) (as implemented by the MiFI Regulations)
19.34.21	The <i>MiFI Regulations</i> apply section 169 of the <i>Act</i> which requires the <i>FCA</i> to publish a statement of policy on the conduct of certain interviews in response to requests from overseas regulators. For the purposes of the <i>MiFI Regulations</i> the <i>FCA</i> will follow the procedures described in DEPP 7.

	19.35 Data Reporting Services Regulations 2024
19.35.1	The FCA has investigation and enforcement powers in relation to both criminal and non-criminal breaches of the DRS Regulations (including requirements imposed on persons subject to the DRS Regulations by MiFIR and any onshored regulation which was an EU regulation made under MiFIR or MiFID). The DRS Regulations impose requirements on data reporting services providers ("DRSPs") which are entities authorised or verified to provide services of:
	 (1) publishing trade reports ("APA"); (2) reporting details of transactions ("ARM"); and (3) collecting trade reports ("CTP").
19.35.2	The FCA's approach to enforcing the DRS Regulations will mirror our general approach to enforcing the Act, as set out in \blacksquare EG 2. We will seek to exercise our enforcement powers in a manner that is transparent, proportionate, responsive to the issue, and consistent with our publicly stated policies. We will also seek to ensure fair treatment when exercising our enforcement powers. Finally, we will aim to change the behaviour of the person who is the subject of our action, to deter future non-compliance by others, to eliminate any financial gain or benefit from non-compliance, and where appropriate, to remedy the harm caused by the non-compliance.
19.35.3	The regulatory powers which the <i>DRS Regulations</i> provide to the <i>FCA</i> include:
	(1) the power to require information and appoint investigators;
	(2) powers of entry and inspection;
	(3) the power of public censure;
	(4) the power to impose financial penalties;
	(5) the power to impose a limitation or other restrictions;
	(6) the power to apply for an <i>injunction</i> ;
	(7) the power to require restitution; and
	(8) the power to prosecute unauthorised providers.

19.35.4	In addition, the <i>DRS Regulations</i> provide the power for the <i>FCA</i> to take criminal or non-criminal action for misleading the <i>FCA</i> .
19.35.5	The DRS Regulations, for the most part, mirror the FCA's investigative, sanctioning and regulatory powers under the Act. The FCA has decided to adopt procedures and policies in relation to the use of those powers akin to those we have under the Act. Key features of the FCA's approach are described below.
	The conduct of investigations under the DRS Regulations
19.35.6	The <i>DRS Regulations</i> apply much of Part 11 of the <i>Act</i> . The effect of this is to apply the same procedures under the <i>Act</i> for appointing investigators and requiring information when investigating breaches of the <i>DRS Regulations</i> .
19.35.7	The FCA will notify the subject of the investigation that we have appointed investigators to carry out an investigation under the DRS Regulations and the reasons for the appointment, unless notification is likely to prejudice the investigation or otherwise result in it being frustrated. The FCA expects to carry out a scoping visit early on in the enforcement process in most cases. The FCA's policy in non-criminal investigations under the DRS Regulations is to use powers to compel the provision of information in the same way as we would in the course of an investigation under the Act.
	Decision making under the DRS Regulations
19.35.8	The decision making procedures for those decisions under the DRS Regulations requiring the giving of a warning notice, decision notice or a supervisory notice are dealt with in DEPP.
19.35.9	For decisions made by <i>executive procedures</i> the procedures to be followed will be those described in ■ DEPP 4.
19.35.10	The DRS Regulations do not require the FCA to have published procedures for commencing criminal prosecutions. However, in these situations the FCA expects that we will normally follow our decision making procedures for the equivalent decisions under the Act, as set out in EG 12.
19.35.11	The DRS Regulations do not require the FCA to have published procedures to apply to the court for an <i>injunction</i> or restitution order. However, the FCA will normally follow our decision making procedure for the equivalent decisions under the Act, as set out in \blacksquare EG 10 and \blacksquare EG 11.
19.35.12	The <i>DRS Regulations</i> require the <i>FCA</i> to give third party rights as set out in section 393 of the <i>Act</i> and to give access to certain material as set out in section 394 of the <i>Act</i> .
19.35.13	Certain <i>FCA</i> decisions (for example the publication of a statement and the imposition of a penalty) may be referred to the <i>Tribunal</i> by an aggrieved party.

	Imposition of penalties under the DRS Regulations
19.35.14	When determining whether to take action to impose a penalty or to issue a public censure under the <i>DRS Regulations</i> the <i>FCA's</i> policy includes having regard to the relevant factors in \blacksquare DEPP 6.2 and \blacksquare DEPP 6.4. The <i>FCA's</i> policy in relation to determining the level of a financial penalty includes having regard, where relevant, to \blacksquare DEPP 6.5 to \blacksquare DEPP 6.5D.
19.35.15	As with cases under the <i>Act</i> , the <i>FCA</i> may settle or mediate appropriate cases involving non-criminal breaches of the <i>DRS Regulations</i> to assist us to exercise our functions under the <i>DRS Regulations</i> in the most efficient and economic way. [Note: See DEPP 5, DEPP 6.7 and EG 5 for further information on the
	settlement process and the settlement discount scheme.]
19.35.16	The FCA will apply the approach to publicity that is outlined in EG 6, read in light of applicable publicity provisions in section 391D of the <i>Act</i> .
	Statement of policy in section 169(7) (as implemented by the DRS Regulations)
19.35.17	The DRS Regulations apply section 169 of the Act which requires the FCA to publish a statement of policy on the conduct of certain interviews in response to requests from overseas regulators. For the purposes of the DRS Regulations the FCA will follow the procedures described in \blacksquare DEPP 7.



19.36.4	In addition, the <i>PRIIPs Regulation</i> imposes requirements directly on <i>appointed representatives</i> for, amongst other things, regulated activity which their <i>principal</i> may have accepted responsibility. We would expect to usually take enforcement action against the <i>principal</i> , rather than the <i>appointed representative</i> , in these circumstances.
19.36.5	The Packaged Retail and Insurance-based Investment Products Regulations, for the most part, mirror the FCA's investigative, sanctioning and regulatory powers under the Act. The FCA has decided to adopt procedures and policies in relation to the use of those powers akin to those it has under the Act. Key features of the FCA's approach are described below.
	Conduct of investigations under the Packaged Retail and Insurance-based Investment Products Regulations
19.36.6	The Packaged Retail and Insurance-based Investment Products Regulations apply to much of Part 11 of the <i>Act</i> . The effect of this is to apply the same procedures under the <i>Act</i> for appointing investigators and requiring information when investigating breaches of the Packaged Retail and Insurance-based Investment Products Regulations.
19.36.7	For example, the FCA will notify the subject of the investigation that we have appointed investigators to carry out an investigation under the Packaged Retail and Insurance-based Investment Products Regulations and the reasons for the appointment, unless notification is likely to prejudice the investigation or otherwise result in it being frustrated. The FCA expects to carry out a scoping visit early on in the enforcement process in most cases. The FCA's policy in civil investigations under the Packaged Retail and Insurance-based Investment Products Regulations is to use powers to compel information in the same way as it would in the course of an investigation under the Act.
	Decision-making under the Packaged Retail and Insurance- based Investment Products Regulations
19.36.8	The decision making procedure for those decisions under the Packaged Retail and Insurance-based Investment Products Regulations requiring the giving of a <i>warning notice</i> , <i>decision notice</i> or a <i>supervisory notice</i> are dealt with in <i>DEPP</i> .
19.36.9	The Packaged Retail and Insurance-based Investment Products Regulations do not require the FCA to have published procedures for commencing criminal prosecutions. However, in these situations the FCA expects that it will normally follow its decision-making procedures for the equivalent decisions under the Act, as set out in EG 12.
19.36.10	The Packaged Retail and Insurance-based Investment Products Regulations do not require the <i>FCA</i> to have published procedures to apply to the court for an <i>injunction</i> or restitution order. However, the <i>FCA</i> will normally follow its decision-making procedure for the equivalent decisions under the <i>Act</i> , as set out in \blacksquare EG 10 and \blacksquare EG 11.

The Packaged Retail and Insurance-based Investment Products Regulations require the <i>FCA</i> to give third party rights as set out in section 393 of the <i>Act</i> and to give access to certain material as set out in section 394 of the <i>Act</i> .
Certain FCA decisions (for example making an order prohibiting a <i>person</i> from marketing a <i>PRIIP</i> ; making an order requiring a <i>person</i> to suspend the marketing of a <i>PRIIP</i>) may be referred to the <i>Tribunal</i> by an aggrieved party.
Imposition of penalties under the Packaged Retail and Insurance-based Investment Products Regulations
When determining whether to take action to impose a penalty or to issue a public censure under the Packaged Retail and Insurance-based Investment Products Regulations the FCA will have regard to the relevant factors in DEPP 6.2 and DEPP 6.4. The FCA's policy in relation to determining the level of financial penalty includes having regard, where relevant, to DEPP 6.5 to DEPP 6.5D.
As with cases under the <i>Act</i> , the <i>FCA</i> may settle or mediate appropriate cases involving civil breaches of the Packaged Retail and Insurance-based Investment Products Regulations to assist it exercise its functions under the Packaged Retail and Insurance-based Investment Products Regulations in the most efficient and economic way.
[Note: See ■ DEPP 5, ■ DEPP 6.7 and ■ EG 5 for further information on the settlement process and the settlement discount scheme.]
The FCA will apply the approach to publicity that is outlined in \blacksquare EG 6.
Statement of policy in section 169(9) (as implemented by the Packaged Retail and Insurance-based Investment Products Regulations)
The Packaged Retail and Insurance-based Investment Products Regulations apply section 169 of the Act which requires the FCA to publish a statement of policy on the conduct of certain interviews in response to requests from overseas regulators. For the purposes of the Packaged Retail and Insurance- based Investment Products Regulations the FCA will follow the procedures described in DEPP 7.

	19.37 UK Benchmarks Regulations 2018
19.37.1	The UK Benchmarks Regulations 2018 in part implemented the benchmarks regulation (before it was brought into UK law). The FCA has investigative and enforcement powers in relation to both criminal and non-criminal breaches of the UK Benchmarks Regulations 2018 (including requirements imposed on persons subject to the UK Benchmarks Regulation 2018 by the benchmarks regulation and any onshored regulation which was an EU regulation made under the benchmarks regulation). Our powers in relation to Miscellaneous BM persons are set in the UK Benchmarks Regulations 2018.
19.37.2	The FCA's approach to enforcing the UK Benchmarks Regulations 2018 will mirror our general approach to enforcing the Act, as set out in \blacksquare EG 2. We will seek to exercise our enforcement powers in a manner that is transparent, proportionate, responsive to the issue and consistent with our publicly stated policies. We will also seek to ensure fair treatment when exercising our enforcement powers. Finally, we will aim to change the behaviour of the <i>person</i> who is the subject of our action, to deter future non-compliance by others, to eliminate any financial gain or benefit from non-compliance.
19.37.3	The powers which the UK Benchmarks Regulations 2018 provide to the FCA include: the power to require information and appoint investigators; powers of entry and inspection; the power to publicly censure; the power to impose financial penalties; the power to apply for an injunction or restitution order; the power to require restitution; the power to impose and vary requirements; and the power to prosecute relevant offences.
19.37.4	The UK Benchmarks Regulations 2018, for the most part, mirror the FCA's investigative, sanctioning and regulatory powers under the Act. The FCA has

	decided to adopt procedures and policies in relation to the use of those powers akin to those we have under the <i>Act</i> . Key features of the <i>FCA</i> 's approach are described below and in SUP 15B.5.
	The conduct of investigations under the UK Benchmarks Regulations 2018
19.37.5	The UK Benchmarks Regulations 2018 apply much of Part 11 of the Act. The effect of this is to apply the same procedures under the Act for appointing investigators and requiring information when investigating breaches of the UK Benchmarks Regulations 2018.
19.37.6	The FCA will notify the subject of the investigation that we have appointed investigators to carry out an investigation under the UK Benchmarks Regulations 2018 and the reasons for the appointment, unless notification is likely to prejudice the investigation or otherwise result in it being frustrated. The FCA expects to carry out a scoping visit early on in the enforcement process in most cases. The FCA's policy in non-criminal investigations under the UK Benchmarks Regulations 2018 is to use powers to compel the provision of information in the same way as we would in the course of an investigation under the Act.
	Decision making under the UK Benchmarks Regulations 2018
19.37.7	The decision making procedures for those decisions under the UK Benchmarks Regulations 2018 requiring the giving of a warning notice, decision notice or a supervisory notice are dealt with within DEPP.
19.37.8	The UK Benchmarks Regulations 2018 do not require the FCA to have published procedures for commencing criminal prosecutions. However, in these situations the FCA expects that we will normally follow our decision making procedures for the equivalent decisions under the Act, as set out in EG 12.
19.37.9	The UK Benchmarks Regulations 2018 do not require the FCA to have published procedures to apply to the court for an <i>injunction</i> or restitution order. However, the FCA will normally follow our decision making procedures for the equivalent decisions under the Act, as set out in EG 10 and EG 11.
19.37.10	The UK Benchmarks Regulations 2018 require the FCA to give third party rights as set out in section 393 of the Act and to give access to certain material as set out in section 394 of the Act as applied by the UK Benchmarks Regulations 2018.
19.37.11	Certain <i>FCA</i> decisions (for example an imposition of a requirement) may be referred to the <i>Tribunal</i> by an aggrieved party.

	Imposition of penalties under the UK Benchmarks Regulations 2018
19.37.12	When determining whether to take action to impose a penalty or to issue a <i>public censure</i> under the <i>UK Benchmarks Regulations 2018</i> the <i>FCA's</i> policy includes having regard to the relevant factors in \blacksquare DEPP 6.2 and \blacksquare DEPP 6.4. The <i>FCA's</i> policy in relation to determining the level of a financial penalty includes having regard, where relevant, to \blacksquare DEPP 6.5 to \blacksquare DEPP 6.5D.
19.37.13	As with cases under the Act, the FCA may settle or mediate appropriate cases involving non-criminal breaches of the UK Benchmarks Regulations 2018 to assist us to exercise our functions under the UK Benchmarks Regulations 2018 in the most efficient and economic way. See DEPP 5, DEPP 6.7 and EG 5 for further information on the settlement process and the settlement discount scheme.
19.37.14	The <i>FCA</i> will apply the approach to publicity that is outlined in ■ EG 6, read in light of Article 45 of the <i>benchmarks regulation</i> .
	Statement of policy in section 169(7) (as applied by the UK Benchmarks Regulations 2018)
19.37.15	The UK Benchmarks Regulations 2018 apply section 169 of the Act which requires the FCA to publish a statement of policy on the conduct of certain interviews in response to requests from overseas regulators. For the purposes of the UK Benchmarks Regulations 2018 the FCA will follow the procedures described in DEPP 7.

	19.37A Proxy Advisors (Shareholders' Rights) Regulations 2019
19.37A.1	The Proxy Advisors (Shareholders' Rights) Regulations in part implement the revised Shareholders Rights Directive (SRD). The FCA has investigative and sanctioning powers in relation to breaches of the Proxy Advisors (Shareholders' Rights) Regulations.
19.37A.2	The Proxy Advisors (Shareholders' Rights) Regulations establish a new regulatory framework for proxy advisors. This framework imposes requirements on proxy advisors that are subject to the Proxy Advisors (Shareholders' Rights) Regulations, including, amongst other things, to provide a range of information to proxy advisors' clients and the public with the aim of providing greater transparency. The Regulations will ensure that where proxy advisor services are provided in accordance with or by reference to a Code of Conduct it is made public together with a report on the way it has been applied. They will also ensure that information is made public by which the quality and reliability of the proxy advisor's services and recommendations can be assessed and the proxy advisor will ensure that conflicts of interests and the management thereof are identified and disclosed appropriately. This framework will help to increase transparency in proxy advisor services and reduce the harm from investors relying on their services including their voting recommendations, without having the necessary information to assess the approach taken.
19.37A.3	The FCA's approach to enforcement under the Proxy Advisors (Shareholders' Rights) Regulations will mirror its general approach to enforcing the Act, as set out in \blacksquare EG 2. The FCA will seek to exercise its enforcement powers in a manner that is transparent, proportionate, responsive to the issue and consistent with its publicly stated policies. It will also seek to ensure fair treatment when exercising its enforcement powers. Finally, it will aim to change the behaviour of the person who is the subject of its action, to deter future non-compliance by others, to eliminate any financial gain or benefit from non-compliance.
19.37A.4	The regulatory powers which the <i>Proxy Advisors (Shareholders' Rights)</i> <i>Regulations</i> provide to the <i>FCA</i> include:
	 the power to require information and appoint investigators; powers of entry and inspection;
	•power of public censure;
	•the power to impose financial penalties;

	•the power to apply for an injunction or restitution order;
	•the power to require restitution;
	 the power to remove a proxy advisor from the public list; and
	•the power to prosecute relevant offences.
19.37A.5	The <i>Proxy Advisors (Shareholders' Rights) Regulations</i> , for the most part, mirror the <i>FCA's</i> investigative, sanctioning and regulatory powers under the <i>Act</i> . The <i>FCA</i> has decided to adopt procedures and policies in relation to the use of those powers akin to those it has under the <i>Act</i> . Key features of the <i>FCA's</i> approach are described below.
	The conduct of investigations under the Proxy Advisors (Shareholders' Rights) Regulations
19.37A.6	The <i>Proxy Advisors (Shareholders' Rights) Regulations</i> apply much of Part 11 of the <i>Act</i> . The effect of this is to apply the same procedures under the <i>Act</i> for appointing investigators and requiring information when investigating breaches of the <i>Proxy Advisors (Shareholders' Rights) Regulations</i> .
19.37A.7	The FCA will notify the subject of the investigation that it has appointed
	investigators to carry out an investigation unless notification is likely to prejudice the investigation or otherwise result in it being frustrated. The FCA expects to carry out a scoping visit early on in the enforcement process in most cases. The FCA's policy when investigating under the Proxy Advisors (Shareholders' Rights) Regulations is to use powers to compel information in the same way as it would in the course of an investigation under the Act.
	Decision making under the Proxy Advisors (Shareholders' Rights) Regulations
19.37A.8	The RDC is the FCA's decision maker for most of the decisions under the Proxy Advisors (Shareholders' Rights) Regulations as set out in DEPP 2 Annex 1G. This includes the decision to publish a censure and the decision to impose a financial penalty. For the purposes of the Proxy Advisors (Shareholders' Rights) Regulations, the FCA will follow the procedure for issuing a warning notice and decision notice as set out in DEPP 2.
19.37A.9	For decisions made by <i>executive procedures</i> i.e. settlement decisions under Regulation 11 and 12 or proposals or decisions under Regulation 32, the procedures to be followed will be those described in DEPP 4.
19.37A.10	The Proxy Advisors (Shareholders' Rights) Regulations do not require the FCA to have published procedures for commencing criminal prosecutions. However, in these situations the FCA expects that we will normally follow our decision-making procedures for the equivalent decisions under the Act, as set out in \blacksquare EG 12.
19.37A.11	The <i>Proxy Advisors (Shareholders' Rights) Regulations</i> do not require the <i>FCA</i> to have published procedures to apply to the court for an injunction or restitution order. However, the <i>FCA</i> will normally follow its decision-making

procedures for the equivalent decisions under the Act, as set out in EG 10 and EG 11. 19.37A.12 The Proxy Advisors (Shareholders' Rights) Regulations require the FCA to give third party rights as set out in section 393 of the Act and to give access to certain material as set out in section 394 of the Act. 19.37A.13 Certain FCA decisions (for example the imposition of a financial penalty) may be referred to the Tribunal by an aggrieved party. Imposition of penalties under the Proxy Advisors (Shareholders' Rights) Regulations 19.37A.14 The Proxy Advisors (Shareholders' Rights) Regulations do not require the FCA to issue a statement of policy with respect to the imposition and amount of penalties under the Proxy Advisors (Shareholders' Rights) Regulations. However, the FCA has decided to issue a statement of policy for the imposition of a financial penalty under the Regulations. The FCA's policy includes having regard to the relevant factors in DEPP 6.2 and DEPP 6.4 in addition to those set out in the Proxy Advisors (Shareholders' Rights) Regulations, where appropriate. The FCA's policy in relation to determining the level of a financial penalty includes having regard, where relevant, to DEPP 6.5 to DEPP 6.5D in addition to the factors set out in the Proxy Advisors (Shareholders' Rights) Regulations, where appropriate. 19.37A.15 As with cases under the Act, the FCA may settle or mediate appropriate cases involving breaches of the Proxy Advisors (Shareholders' Rights) Regulations to assist it to exercise its functions under the Regulations in the most efficient and economical way. See ■ DEPP 5, ■ DEPP 6.7 and ■ EG 5 for further information on the settlement process and the settlement discount scheme. Statement of policy in section 169(7) interviews (as applied by the Proxy Advisors (Shareholders' Rights) Regulations) 19.37A.16 The Proxy Advisors (Shareholders' Rights) Regulations apply section 169 of the Act which requires the FCA to publish a statement of policy on the conduct of certain interviews in response to requests from overseas regulators. For the purposes of the Proxy Advisors (Shareholders' Rights) *Regulations* the *FCA* will follow the procedures described in **DEPP** 7.

	19.38 UK Securitisation Regulations
19.38.1	The UK Securitisation Regulations implemented the Securitisation Regulation (before it was brought into UK law). The FCA has investigative and enforcement powers in relation to both criminal and non-criminal breaches of the UK Securitisation Regulations, Securitisation Regulation and any onshored regulation which was an EU regulation made under the Securitisation Regulation.
19.38.2	The Securitisation Regulation and the UK Securitisation Regulations seek to make the securitisation market work more effectively. They aim to address some of the harms to investors identified in these markets following the financial crisis, including the lack of adequate disclosure, and the misalignment between issuers' and investors' interests. The new framework consolidates existing requirements and strengthens the legislation on securitisation. The Securitisation Regulation and the UK Securitisation Regulations promote transparency and appropriate due diligence by investors for securitisation investments. They create a framework for simple, transparent and standardised (STS) securitisations. This framework will help to reduce the harm from investors making badly-informed decisions because they fail to understand and appropriately analyse the risks in their securitisation investments.
19.38.3	The FCA's approach to enforcement under the UK Securitisation Regulations, whether the person is authorised or not, will mirror our general approach to enforcing the Act, as set out in E G2. We will seek to exercise our enforcement powers in a manner that is transparent, proportionate, responsive to the issue and consistent with our publicly stated policies. We will also seek to ensure fair treatment when exercising our enforcement powers. Finally we will aim to change the behaviour of the person who is the subject of our action in order to: (1) deter future non-compliance by others; (2) eliminate any financial gain or benefit from non-compliance; and
19.38.4	 (3) remedy the harm caused by the non-compliance. (3) The regulatory powers which the UK Securitisation Regulations provide to the FCA include the power: (1) to require information and appoint investigators; (2) of entry and inspection;

	(3) to publicly censure;
	(4) to impose financial penalties;
	(5) to apply for an injunction or restitution order;
	(6) to require restitution;
	(7) to impose temporary prohibitions on individuals holding management functions; and
	(8) to impose a suspension, condition, limitation or other restriction.
19.38.5	In addition, the UK Securitisation Regulations provide the power for the FCA to take criminal or non-criminal action for misleading the FCA.
19.38.6	The UK Securitisation Regulations, for the most part, mirror the FCA's investigative, sanctioning and regulatory powers under the Act. The FCA has decided to adopt procedures and policies in relation to the use of those powers akin to those we have under the Act. Key features of the FCA's approach are described below.
	The conduct of investigations under the UK Securitisation Regulations
19.38.7	The UK Securitisation Regulations apply much of Part 11 of the Act. The effect of this is to apply the same procedures under the Act for appointing investigators and requiring information when investigating breaches of the Securitisation Regulation and the UK Securitisation Regulations.
19.38.8	The FCA will notify the subject of the investigation that we have appointed investigators to carry out an investigation under the UK Securitisation Regulations and the reasons for the appointment, unless notification is likely to prejudice the investigation or otherwise result in it being frustrated. The FCA expects to carry out a scoping visit early on in the enforcement process in most cases. The FCA's policy in non-criminal investigations under the UK Securitisation of information in the same way as we would in the course of an investigation under the Act.
	Decision making under the UK Securitisation Regulations
19.38.9	The decision-making procedures for those decisions under the UK Securitisation Regulations requiring the giving of a warning notice, decision notice or a supervisory notice are dealt with in DEPP.
19.38.10	The UK Securitisation Regulations do not require the FCA to have published procedures for commencing criminal prosecutions. However, in these situations the FCA expects that we will normally follow our decision-making procedures for the equivalent decisions under the Act, as set out in EG 12.

19.38.11	The UK Securitisation Regulations do not require the FCA to have published procedures to apply to the court for an injunction or restitution order. However, the FCA will normally follow our decision-making procedures for the equivalent decisions under the Act, as set out in \blacksquare EG 10 and \blacksquare EG 11.
19.38.12	The UK Securitisation Regulations require the FCA to give third party rights as set out in section 393 of the Act and to give access to certain material as set out in section 394 of the Act as applied by the UK Securitisation Regulations.
19.38.13	Certain FCA decisions may be referred to the Tribunal by an aggrieved party.
	Imposition of penalties under the UK Securitisation Regulations
19.38.14	When determining whether to take action to impose a penalty or to issue a public censure under the <i>UK Securitisation Regulations</i> the <i>FCA's</i> policy includes having regard to the relevant factors in \blacksquare DEPP 6.2 and \blacksquare DEPP 6.4. The <i>FCA's</i> policy in relation to determining the level of a financial penalty includes having regard, where relevant, to \blacksquare DEPP 6.5 to \blacksquare DEPP 6.5B and \blacksquare DEPP 6.5D.
19.38.15	As with cases under the <i>Act</i> , the <i>FCA</i> may settle or mediate appropriate cases involving non-criminal breaches of the <i>UK Securitisation Regulations</i> to assist us to exercise our functions under the <i>UK Securitisation Regulations</i> in the most efficient and economic way. See DEPP 5, DEPP 6.7 and EG 5 for further information on the settlement process and the <i>settlement discount scheme</i> .
	Imposition of disciplinary prohibitions under the UK Securitisation Regulations
19.38.16	The FCA may impose under the UK Securitisation Regulations a temporary prohibition in respect of an individual holding an office or position involving responsibility for taking decisions about the management of an originator, sponsor or SSPE. When determining whether to impose a temporary prohibition and what the length of any temporary prohibition would be the FCA will have regard to the factors set out in DEPP 6A.
	Statement of policy in section 169(7) (as implemented by the UK Securitisation Regulations)
19.38.17	The UK Securitisation Regulations apply section 169 of the Act which requires the FCA to publish a statement of policy on the conduct of certain interviews in response to request from overseas regulators. For the purposes of the UK Securitisation Regulations the FCA will follow the procedures described in DEPP 7.

	19.38A Securitisation (Amendment) (EU Exit) Regulations 2019
19.38A.1	Supervisory and enforcement functions in respect of securitisation repositories under the Securitisation Regulation were transferred from ESMA to the FCA through the Securitisation (Amendment) (EU Exit) Regulations on IP completion day. The Securitisation (Amendment) (EU Exit) Regulations amend the Securitisation Regulation to, amongst other reasons, apply the Trade Repositories (EU Exit) Regulations. In places, these regulations in turn apply provisions of the Act.
19.38A.2	The FCA's approach to enforcement under the Securitisation Regulation in relation to securitisation repositories will mirror our general approach to enforcing the Act, as set out in EG. We will seek to exercise our enforcement powers in a manner that is transparent, proportionate, responsive to the issue and consistent with our publicly stated policies. We will also seek to ensure fair treatment when exercising our enforcement powers. Finally, we will aim to change the behaviour of the person who is the subject of our action, to deter future non-compliance by others, to eliminate any financial gain or benefit from non-compliance.
19.38A.3	 The regulatory powers which the Securitisation (Amendment) (EU Exit) Regulations provide to the FCA include the power: (1) to require information and appoint investigators; (2) of entry and inspection; (3) to publicly censure; (4) to impose financial penalties; and to apply for an injunction.
19.38A.4	Conduct of investigations under the Securitisation Regulation as amended by the Securitisation (Amendment) (EU Exit) Regulations The Securitisation (Amendment) (EU Exit) Regulations and the Trade Repositories (EU Exit) Regulations apply much of Part 11 of the Act. The effect of this is to apply the same procedures under the Act for appointing investigators and requiring information when investigating breaches of the Securitisation Regulation.

19.38A.5	The FCA will notify the subject of the investigation that we have appointed investigators to carry out an investigation under the Securitisation Regulation and the reasons for the appointment, unless notification is likely to prejudice the investigation or otherwise result in it being frustrated. The FCA expects to carry out a scoping visit early on in the enforcement process in most cases. The FCA's policy in non-criminal investigations under the Securitisation Regulation is to use powers to compel the provision of information in the same way as we would during an investigation under the Act.
	Decision making under the Securitisation Regulation as amended by the Securitisation (Amendment) (EU Exit) Regulations
19.38A.6	The decision-making procedures for those decisions under the Securitisation Regulation requiring the giving of a warning notice, decision notice or supervisory notice are dealt with in DEPP.
19.38A.7	The Securitisation Regulation requires the FCA to give third party rights as set out in section 393 of the Act, and to give access to certain material as set out in section 394 of the Act as applied by the Securitisation Regulation and the Trade Repositories (EU Exit) Regulations.
	Imposition of penalties under the Securitisation Regulation as amended by the Securitisation (Amendment) (EU Exit) Regulations
19.38A.8	When determining whether to take action to impose a penalty or to issue a public censure under the <i>Securitisation Regulation</i> , the <i>FCA's</i> policy includes having regard to the relevant factors in DEPP 6.2 and DEPP 6.4 . The <i>FCA's</i> policy in relation to determining the level of a financial penalty includes having regard, where relevant, to DEPP 6.5 , DEPP 6.5A , DEPP 6.5B and DEPP 6.5D .
19.38A.9	As with cases under the Act, the FCA may settle or mediate appropriate cases involving non-criminal breaches of the Securitisation Regulation to assist us to exercise our functions under the Securitisation Regulation in the most efficient and economical way. See \blacksquare DEPP 5, \blacksquare DEPP 6.7 and \blacksquare EG 5 for further information on the settlement process and the settlement discount scheme.
19.38A.10	The FCA will apply the approach to publicity that is outlined in EG 6, read in light of regulation 76 of the <i>Trade Repositories (EU Exit) Regulations</i> as applied by article 15 of the <i>Securitisation Regulation</i> .
	Statement of policy in section 169(7) interviews (as implemented by the Securitisation (Amendment) (EU Exit) Regulations))
19.38A.11	The Securitisation (Amendment) (EU Exit) Regulations amend the Securitisation Regulation to apply regulation 75 of the Trade Repositories (EU Exit) Regulations, which in turn applies section 169 of the Act. This

requires the FCA to publish a statement of policy on the conduct of certain interviews in response to requests from *overseas regulators*. For the purposes of the *Securitisation Regulation*, the FCA will follow the procedures described in **DEPP 7**.

	19.39 Credit Rating Agencies (CRA) Regulation
19.39.1 R	The <i>CRA Regulation</i> aims to enhance the integrity, responsibility, good governance and independence of credit rating activities, contributing to the quality of credit ratings issued in the <i>United Kingdom</i> while achieving high levels of investor protection. The <i>CRA Regulation</i> imposes requirements including, among other things, obligations on <i>credit rating agencies</i> relating to their independence and avoidance of conflicts of interest, their methodologies and disclosures.
19.39.2 R	Supervisory and enforcement functions under the CRA Regulation were transferred from ESMA to the FCA through the CRA (EU Exit) Regulations on IP completion day.
19.39.3 R	The FCA's approach to enforcing under the CRA Regulation will mirror our general approach to enforcing the Act, as set out in \blacksquare EG 2. We will seek to exercise our enforcement powers in a manner that is transparent, proportionate, responsive to the issue and consistent with our publicly stated policies. We will also seek to ensure fair treatment when exercising our enforcement powers. Finally, we will aim to change the behaviour of the <i>person</i> who is the subject of our action, to deter future non-compliance by others, to eliminate any financial gain or benefit from non-compliance and, where appropriate, to remedy the harm caused by the non-compliance.
19.39.4 R	Conduct of investigations under the CRA Regulation The CRA (EU Exit) Regulations apply much of Part 11 of the Act. The effect of this is to apply the same procedures under the Act for appointing investigators and requiring information when investigating breaches of the CRA Regulation.
19.39.5 R	The FCA will notify the subject of the investigation that we have appointed investigators to carry out an investigation under the CRA Regulation and the reasons for the appointment, unless notification is likely to prejudice the investigation or otherwise result in it being frustrated. The FCA expects to carry out a scoping visit early on in the enforcement process in most cases. The FCA's policy in non-criminal investigations under the CRA Regulation is to use powers to compel the provision of information in the same way as we would during an investigation under the Act.

		Decision making under the CRA Regulation
19.39.6	R	The decision making procedures for those decisions under the CRA Regulation requiring the giving of a warning notice, decision notice or supervisory notice are dealt with within DEPP.
19.39.7	R	The CRA Regulation requires the FCA to give third party rights as set out in section 393 of the Act and to give access to certain material as set out in section 394 of the Act as applied by the CRA Regulation.
19.39.8	R	Imposition of penalties under the CRA (EU Exit) Regulations When determining whether to take action to impose a penalty or to issue a public censure under the <i>CRA (EU Exit) Regulations</i> , the <i>FCA's</i> policy includes having regard to the relevant factors in DEPP 6.2 and DEPP 6.4 . The <i>FCA's</i> policy in relation to determining the level of a financial penalty includes having regard, where relevant, to DEPP 6.5 , DEPP 6.5A , DEPP 6.5B and DEPP 6.5D .
19.39.9	R	As with cases under the <i>Act</i> , the <i>FCA</i> may settle or mediate appropriate cases involving non-criminal breaches of the <i>CRA Regulation</i> to assist us to exercise our functions under the <i>CRA Regulation</i> in the most efficient and economical way. See DEPP 5, DEPP 6.7 and EG 5 for further information on the settlement process and the <i>settlement discount scheme</i> .
19.39.10	R	The FCA will apply the approach to publicity that is outlined in EG 6, read in the light of regulation 19 of the CRA (EU Exit) Regulations.
		Statement of policy in section 169(7) interviews (as implemented by the CRA (EU Exit) Regulations 2019)
19.39.11	R	The CRA (EU Exit) Regulations apply section 169 of the Act which requires the FCA to publish a statement of policy on the conduct of certain interviews in response to requests from overseas regulators. For the purposes of the CRA (EU Exit) Regulations the FCA will follow the procedures described in DEPP 7.

	19.40 Trade Repositories (EU Exit) Regulations
19.40.1	Supervisory and enforcement functions in respect of <i>trade repositories</i> under <i>EU EMIR</i> were transferred from <i>ESMA</i> to the <i>FCA</i> through the <i>Trade Repositories</i> (<i>EU Exit</i>) <i>Regulations</i> on <i>IP completion day</i> .
19.40.2	The FCA's approach to enforcing under the Trade Repositories (EU Exit) Regulations will mirror our general approach to enforcing the Act, as set out in EG 2. We will seek to exercise our enforcement powers in a manner that is transparent, proportionate, responsive to the issue and consistent with our publicly stated policies. We will also seek to ensure fair treatment when exercising our enforcement powers. Finally, we will aim to change the behaviour of the person who is the subject of our action, to deter future non-compliance by others, to eliminate any financial gain or benefit from non-compliance. Conduct of investigations under the Trade Repositories (EU Exit) Regulations
19.40.3	The <i>Trade Repositories (EU Exit) Regulations</i> apply much of Part 11 of the <i>Act</i> . The effect of this is to apply the same procedures under the <i>Act</i> for appointing investigators and requiring information when investigating breaches of the <i>Trade Repositories (EU Exit) Regulations, EMIR</i> and the Trade Repositories (Amendment and Transitional Provision) (EU Exit) Regulations 2018.
19.40.4	The FCA will notify the subject of the investigation that we have appointed investigators to carry out an investigation under the <i>Trade Repositories (EU Exit) Regulations</i> and the reasons for the appointment, unless notification is likely to prejudice the investigation or otherwise result in it being frustrated. The FCA expects to carry out a scoping visit early on in the enforcement process in most cases. The FCA's policy in non-criminal investigations under the <i>Trade Repositories (EU Exit) Regulations</i> is to use powers to compel the provision of information in the same way as we would during an investigation under the <i>Act</i> .
	Decision making under the Trade Repositories (EU Exit) Regulations
19.40.5	The decision-making procedures for those decisions under the <i>Trade</i> <i>Repositories (EU Exit) Regulations</i> requiring the giving of a <i>warning notice</i> , <i>decision notice</i> or <i>supervisory notice</i> are dealt with within <i>DEPP</i> .

19.40.6	The Trade Repositories (EU Exit) Regulations require the FCA to give third party rights as set out in section 393 of the Act and to give access to certa material as set out in section 394 of the Act as applied by the Trade Repositories (EU Exit) Regulations.					
	Imposition of penalties under the Trade Repositories (EU Exit) Regulations					
19.40.7	When determining whether to take action to impose a penalty or to issue a public censure under the <i>Trade Repositories (EU Exit) Regulations</i> . The <i>FCA's</i> policy includes having regard to the relevant factors in DEPP 6.2 and DEPP 6.4. The <i>FCA's</i> policy in relation to determining the level of a financial penalty includes having regard, where relevant, to DEPP 6.5, DEPP 6.5A, DEPP 6.5B and DEPP 6.5D.					
19.40.8	As with cases under the Act, the FCA may settle or mediate appropriate cases involving non-criminal breaches of the Trade Repositories (EU Exit) Regulations to assist us to exercise our functions under the Trade Repositories (EU Exit) Regulations in the most efficient and economical way. See DEPP 5, DEPP 6.7 and EG 5 for further information on the settlement process and the settlement discount scheme.					
19.40.9	The FCA will apply the approach to publicity that is outlined in EG 6, read in the light of regulation 76 of the Trade Repositories (EU Exit) Regulations.					
	Statement of policy in section 169(7) interviews (as implemented by the Trade Repositories (EU Exit) Regulations)					
19.40.10	The <i>Trade Repositories (EU Exit) Regulations</i> apply section 169 of the <i>Act</i> which requires the <i>FCA</i> to publish a statement of policy on the conduct of					
	certain interviews in response to requests from overseas regulators. For the purposes of the <i>Trade Repositories (EU Exit) Regulations</i> the <i>FCA</i> will follow the procedures described in DEPP 7.					
	certain interviews in response to requests from overseas regulators. For the purposes of the <i>Trade Repositories (EU Exit) Regulations</i> the <i>FCA</i> will follow					
	certain interviews in response to requests from overseas regulators. For the purposes of the <i>Trade Repositories (EU Exit) Regulations</i> the <i>FCA</i> will follow					
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	certain interviews in response to requests from overseas regulators. For the purposes of the <i>Trade Repositories (EU Exit) Regulations</i> the <i>FCA</i> will follow					

	19.41 Securities Financing Transactions Regulation
19.41.1	Supervisory and enforcement functions in respect of <i>trade repositories</i> under the <i>Securities Financing Transactions Regulation</i> were transferred from <i>ESMA</i> to the <i>FCA</i> through the <i>SFTR (EU Exit) Regulations</i> on <i>IP completion day</i> .
19.41.2	The FCA's approach to enforcing under the Securities Financing Transactions Regulation and the SFTR (EU Exit) Regulations will mirror our general approach to enforcing the Act, as set out in EG. We will seek to exercise our enforcement powers in a manner that is transparent, proportionate, responsive to the issue and consistent with our publicly stated policies. We will also seek to ensure fair treatment when exercising our enforcement powers. Finally, we will aim to change the behaviour of the person who is the subject of our action, to deter future non-compliance by others, to eliminate any financial gain or benefit from non-compliance and, where appropriate, to remedy the harm caused by the non-compliance.
	Conduct of investigations under the Securities Financing Transactions Regulation and the SFTR (EU Exit) Regulations
19.41.3	The SFTR (EU Exit) Regulations apply much of Part 11 of the Act. The effect of this is to apply the same procedures under the Act for appointing investigators and requiring information when investigating breaches of the Securities Financing Transactions Regulation, the SFTR (EU Exit) Regulations and the TRATP Regulations.
19.41.4	The FCA will notify the subject of the investigation that we have appointed investigators to carry out an investigation under the SFTR (EU Exit) Regulations and the reasons for the appointment, unless notification is likely to prejudice the investigation or otherwise result in it being frustrated. The FCA expects to carry out a scoping visit early in the enforcement process in most cases. The FCA's policy in non-criminal investigations under the SFTR (EU Exit) Regulations is to use powers to compel the provision of information in the same way as we would during an investigation under the Act.
19.41.5	Decision making under the Securities Financing Transactions Regulation The decision-making procedures for those decisions under the Securities Financing Transactions Regulation and SFTR (EU Exit) Regulations requiring the giving of a warning notice, decision notice or supervisory notice are dealt with within DEPP.

set	e <i>SFTR (EU Exit) Regulations</i> require the <i>FCA</i> to give third party rights as to out in section 393 of the <i>Act</i> and to give access to certain material as set t in section 394 of the <i>Act</i> , as applied by the <i>SFTR (EU Exit) Regulations</i> .
Im	position of penalties under SFTR (EU Exit) Regulations
pul hav pol hav	hen determining whether to take action to impose a penalty or to issue a blic censure under the SFTR (EU Exit) Regulations, the FCA's policy includes ving regard to the relevant factors in \blacksquare DEPP 6.2 and \blacksquare DEPP 6.4. The FCA's licy in relation to determining the level of a financial penalty includes ving regard, where relevant, to \blacksquare DEPP 6.5, \blacksquare DEPP 6.5A, \blacksquare DEPP 6.5B and DEPP 6.5D.
inv Reg fur SFT ■ D	with cases under the Act, the FCA may settle or mediate appropriate cases volving non-criminal breaches of the Securities Financing Transactions gulation and the SFTR (EU Exit) Regulations to assist us to exercise our nctions under the Securities Financing Transactions Regulation and the TR (EU Exit) Regulations in the most efficient and economical way. See DEPP 5, DEPP 6.7 and EG 5 for further information on the settlement occess and the settlement discount scheme.
	e FCA will apply the approach to publicity that is outlined in \blacksquare EG 6, read the light of regulation 37 of the SFTR (EU Exit) Regulations.
	atement of policy in section 169(7) interviews (as plemented by the SFTR (EU Exit) Regulations)
the in 1 SF7	e <i>SFTR (EU Exit) Regulations</i> apply section 169 of the <i>Act</i> which requires e <i>FCA</i> to publish a statement of policy on the conduct of certain interviews response to requests from overseas regulators. For the purposes of the <i>TR (EU Exit) Regulations</i> , the <i>FCA</i> will follow the procedures described in DEPP 7.

	19.42 EU Exit Passport Regulations					
19.42.1	Regulations 28 and 34 of the <i>EU Exit Passport Regulations</i> make provision for certain qualifying <i>persons</i> to be treated as having <i>Part 4A permission</i> . The <i>EU Exit Passport Regulations</i> provide a supervised run-off regime, which enables such <i>persons</i> to run off existing <i>UK</i> contracts and conduct an orderly exit from the <i>UK</i> market.					
19.42.2	The FCA has power under the EU Exit Passport Regulations to direct that the regime should not apply to a particular person. The effect of such a direction would be to remove that person's deemed permission to conduct regulated activities in the UK.					
19.42.3	 The FCA may consider whether to make a direction under the EU Exit Passport Regulations where: (1) the person is failing or is likely to fail to satisfy the threshold conditions; or 					
	(2) it is desirable to exercise the power in order to advance one or more of its operational objectives.					
19.42.4	When exercising this power, the <i>FCA</i> will do so in a manner consistent with its approach generally to enforcement and cancellation under the <i>Act</i> .					
19.42.5	The decision making procedures used to exercise the power will be consistent with the <i>FCA's</i> approach to making decisions under <i>executive procedures</i> .					

Enforcement Guide

Chapter 20

Enforcement of the Consumer Credit Act 1974

EG 20 : Enforcement of the Consumer Credit Act 1974

20.1 Introduction 20.1.1 The CCA Order gives the FCA the power to enforce the CCA through the application of its investigation and sanctioning powers in the Act by reference to the contravention of CCA Requirements and criminal offences under the CCA. The FCA's investigation and sanctioning powers include the following: power to censure or fine an approved person, or impose a suspension or a restriction on their approval under section 66 of the Act, for being knowingly concerned in a contravention by the relevant authorised person of a CCA Requirement; power to require information and documents, under section 165 of the Act, it reasonably requires in connection with the exercise of the functions conferred on it by the CCA Order; power to appoint an investigator under section 167 of the Act for reasons related to its functions under the CCA Order: power to appoint an investigator under section 168 of the Act where there are circumstances suggesting that an offence under the CCA may have been committed or that a person may have failed to comply with a CCA Requirement: power to censure (under section 205 of the Act) or fine (under section 206 of the Act) an authorised person, or impose a suspension or restriction on their permission (under section 206A of the Act) for the contravention of a CCA Requirement; power to apply to the court for an injunction under section 380 of the Act by reference to the contravention or likely contravention of a CCA Requirement: power to apply to the court for a restitution order under section 382 of the Act by reference to the contravention of a CCA Requirement; power to impose a restitution requirement under section 384 of the Act by reference to the contravention of a CCA Requirement; and power to prosecute under section 401 of the Act an offence committed under the CCA. 20.1.2 The FCA's approach to taking enforcement action under the CCA Order will mirror its general approach to enforcing the Act, as set out in EG 2. It will seek to exercise its enforcement powers in a manner that is transparent, proportionate, responsive to the issue and consistent with its publicly stated policies. It will also seek to ensure fair treatment when exercising its enforcement powers. Finally, it will aim to change the behaviour of the person who is the subject of its action, to deter future non-compliance by

	others, to eliminate any financial gain or benefit from non-compliance and, where appropriate, to remedy the harm caused by the non-compliance.
20.1.3	The FCA has decided to adopt procedures and policies that it currently has in place for the enforcement of the Act in exercising its powers to enforce the CCA. Key features of the FCA's approach are described below.

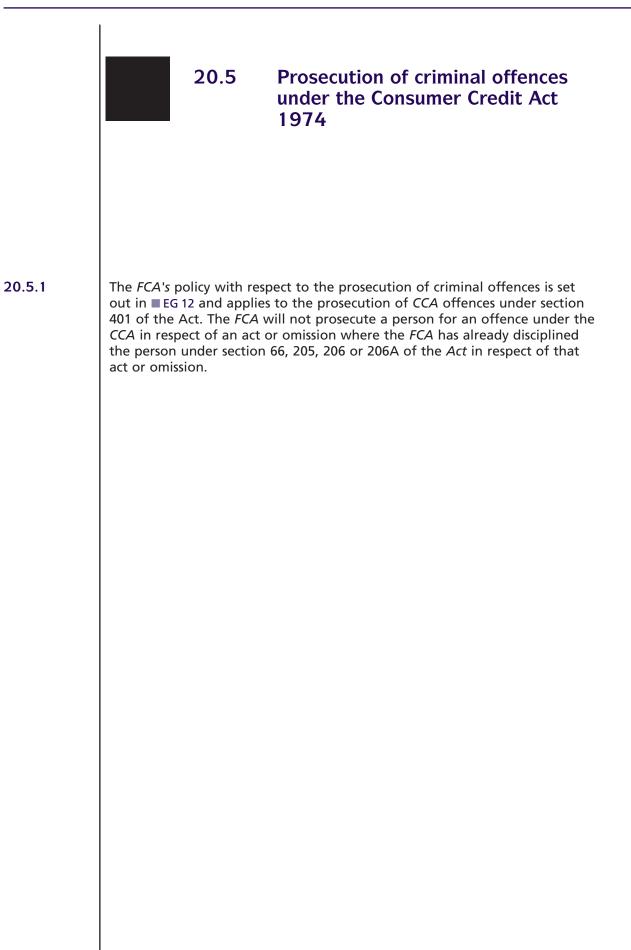
EG 20 : Enforcement of the Consumer Credit Act 1974

20.2 Information gathering and investigation powers 20.2.1 The CCA Order applies much of Part 11 of the Act. The effect of this is to apply the same procedures under the Act for appointing investigators and requiring information when investigating contraventions of the CCA Requirements and offences committed under the CCA. 20.2.2 The FCA will notify the subject of the investigation that it has appointed investigators to carry out an investigation under the CCA Order and the reasons for the appointment, unless notification is likely to result in the investigation being frustrated. The FCA expects to carry out a scoping visit early on in the enforcement process in most cases. The FCA's policy in civil investigations under the CCA Order is to use powers to compel information in the same way as it would in the course of an investigation under the Act.

	20.3 Decision making under the CCA Order
20.3.1	The <i>RDC</i> is the <i>FCA</i> 's decision maker for decisions which require the giving of warning or decision notices under the <i>CCA Order</i> , as set out in DEPP 2 Annex 1G. The <i>RDC</i> will make its decisions following the procedure set out in DEPP 3.2 or, where appropriate, DEPP 3.3.
20.3.2	The CCA Order does not require the FCA to publish procedures about its approach towards the commencement of criminal prosecutions. However, the FCA will normally follow its equivalent decision-making procedures for similar decisions under the Act as set out in \blacksquare EG 12.
20.3.3	The CCA Order does not require the FCA to publish procedures about its approach towards applications to the court for an injunction or restitution order. However, the FCA will normally follow its equivalent decision-making procedures for similar decisions under the Act as set out in \blacksquare EG 10 and \blacksquare EG 11.
20.3.4	The CCA Order requires the FCA to give third party rights as set out in section 393 of the Act and to give access to material, as set out in section 394 of the Act, in relation to warning notices and decision notices given under the CCA Order.
20.3.5	The CCA Order applies the procedural provisions of Part 9 of the Act, as modified by the CCA Order, in respect of matters that can be referred to the Tribunal. Referrals to the Tribunal in respect of decision notices given under sections 67 (pursuant to article 3(3) of the CCA Order) and 208 (pursuant to article 3(7) of the CCA Order) of the Act are treated as disciplinary referrals for the purpose of section 133 of the Act.

EG 20 : Enforcement of the Consumer Credit Act 1974

	20.4 Public censures, imposition of penalties and the impositions of suspensions or restrictions in relation to contraventions of the Consumer Credit Act 1974
20.4.1	When determining whether to take action to impose a penalty or to issue a public censure in relation to the contraventions of a CCA Requirement, the FCA's policy includes having regard to the relevant factors in DEPP 6.2 and DEPP 6.4. When determining the level of financial penalty, the FCA's policy includes having regard to relevant principles and factors in DEPP 6.5 to DEPP 6.5B, DEPP 6.5D and DEPP 6.7.
20.4.2	As with cases under the <i>Act</i> , the <i>FCA</i> may settle or mediate appropriate cases involving civil contraventions of <i>CCA Requirements</i> to assist it to exercise its functions. \blacksquare DEPP 5, \blacksquare DEPP 6.7 and \blacksquare EG 5 set out information on the <i>FCA</i> 's settlement process and the settlement discount scheme.
20.4.3	When determining whether to take action to impose a suspension or restriction in relation to the contraventions of <i>CCA Requirements</i> , the <i>FCA</i> 's policy includes having regard to the relevant factors in \blacksquare DEPP 6A.2 and \blacksquare DEPP 6A.4. When determining the length of the period of suspension or restriction, the <i>FCA</i> 's policy includes having regard to relevant principles and factors in \blacksquare DEPP 6A.3.
20.4.4	The FCA will apply the approach to publicity that is outlined in EG 6.



Appendix 1

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Appendix 2 - Guidelines on investigation of cases of interest or concern to the Financial Conduct Authority and other prosecuting and investigating agencies

2.1 Purpose, status and application of the guidelines

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the Financial Conduct Authority (the FCA);	
the Serious Fraud Office (the SFO);	
the Department for Business, Innovation and Skills (BIS);	

These guidelines concern the following bodies (the agencies):

the Crown Prosecution Service (the CPS);

the Association of Chief Police Officers in England, Wales and Northern Ireland (ACPO);

- the Crown Office and Procurator Fiscal Service (COPFS); the Public Prosecution Service for Northern Ireland (the PPS); the Association of Chief Police Officers in Scotland (ACPO).
- App 2.1.2 The guidelines are intended to assist the agencies when considering cases concerning financial crime and/or regulatory misconduct that are, or may be, of mutual interest to the *FCA* and one or more of the other agencies. Their implementation and wider points arising from them will be kept under review by the agencies who will liaise regularly.
- App2.1.3 The purpose of the guidelines is to set out some broad principles which the agencies agree should be applied by them in order to assist them to:
 - (a) decide which of them should investigate such cases;
 - (b) co-operate with each other, particularly in cases where more than one agency is investigating;

- (c) prevent undue duplication of effort by reason of the involvement of more than one agency;
- (d) prevent the subjects of the proceedings being treated unfairly by reason of the unwarranted involvement of more than one agency.

App2.1.4 The guidelines are intended to apply to the relationships between the *FCA* and the other agencies. They are not intended to apply to the relationships between those other agencies themselves where there is no *FCA* interest. They are not legally binding.

- App 2.1.5 The guidelines are subject to the restrictions on disclosure of information held by the agencies. They are not intended to override them.
- App 2.1.6 The guidelines are relevant to ACPO and ACPO(S) only in so far as they relate to investigations. Similarly, they are relevant to the CPS, COPFS and the PPS only in so far as they relate to prosecutions.

Commencing Investigations

- App 2.1.7 The agencies recognise that there are areas in which they have an overlapping remit in terms of their functions and powers (the powers and functions of the agencies are set out in the Appendix to this document). The agencies will therefore endeavour to ensure that only the agency or agencies with the most appropriate functions and powers will commence investigations.
- App 2.1.8 The agencies further recognise that in certain cases concurrent investigations may be the most quick, effective and efficient way for some cases to be dealt with. However, if an agency is considering commencing an investigation and another agency is already carrying on a related investigation or proceedings or is otherwise likely to have an interest in that investigation, best practice is for the agencies concerned to liaise and discuss which agency or agencies should take action, i.e. investigate, bring proceedings or otherwise deal with the matter.

Indicators for deciding which agency should take action

App 2.1.9 The following are indicators of whether action by the FCA or one of the other agencies is more appropriate. They are not listed in any particular order or ranked according to priority. No single feature of the case should be considered in isolation, but rather the whole case should be considered in the round.

(a) Tending towards action by the FCA

Where the suspected conduct in question gives rise to concerns regarding market confidence or protection of consumers of services regulated by the FCA. Where the suspected conduct in question would be best dealt with by: criminal prosecution of offences which the FCA has powers to prosecute by virtue of the Financial Services and Markets Act 2000 ("the 2000 Act") (See Appendix paragraph 1.4) and other incidental offences; civil proceedings under the 2000 Act (including applications for injunctions, restitution and to wind up firms carrying on regulated activities); regulatory action which can be referred to the *Tribunal* (including proceedings for market abuse); and

proceedings for breaches of the Prospectus Regulation actionable under Part VI of the Act, of Part 6 rules or the Prospectus Rules. Where the likely defendants are authorised persons, approved persons or conduct rules staff.

Where the likely defendants are issuers or sponsors of a security admitted to the official list or in relation to which an application for listing has been made. Where there is likely to be a case for the use of *FCA* powers which may take immediate effect (e.g. powers to vary the permission of an authorised firm or to suspend listing of securities).

Where it is likely that the investigator will be seeking assistance from overseas regulatory authorities with functions equivalent to those of the FCA.

Where any possible criminal offences are technical or in a grey area whereas regulatory contraventions are clearly indicated.

Where the balance of public interest is in achieving reparation for victims and prosecution is likely to damage the prospects of this.

Where there are distinct parts of the case which are best investigated with regulatory expertise.

(b) Tending towards action by one of the other agencies Where serious or complex fraud is the predominant issue in the conduct in guestion (normally appropriate for the SFO).

Where the suspected conduct in question would be best dealt with by: criminal proceedings for which the *FCA* is not the statutory prosecutor; proceedings for disqualification of directors under the Company Directors Disqualification Act 1986 (normally appropriate for BIS action);

winding up proceedings which the FCA does not have statutory powers to bring (normally appropriate for BIS action); or

criminal proceedings in Scotland.

Where the conduct in question concerns the abuse of limited liability status under the Companies Acts (normally appropriate for BERR action). Where powers of arrest are likely to be necessary.

Where it is likely that the investigator will rely on overseas organisations (such as law enforcement agencies) with which the other agencies have liaison.

- Where action by the FCA is likely to prejudice the public interest in the prosecution of offences for which the FCA is not a statutory prosecutor Where the case falls only partly within the regulated area (or criminal offences for which FCA is a statutory prosecutor) and the prospects of splitting the investigation are not good.
- **App2.1.10** It is also best practice for the agencies involved or interested in an investigation to continue to liaise as appropriate throughout in order to keep under review the decisions as to who should investigate or bring proceedings. This is particularly so where there are material developments in the investigation that might cause the agencies to reconsider its general purpose or scope and whether additional investigation by others is called for.

Conduct of concurrent investigations

App 2.1.11 The agencies recognise that where concurrent investigations are taking place, action taken by one agency can prejudice the investigation or subsequent proceedings brought by another agency. Consequently, it is best practice for the agencies involved in concurrent investigations to notify each other of significant developments in their investigations and of any significant steps they propose to take in the case, such as:

interviewing a key witness; requiring provision of significant volumes of documents; executing a search warrant; or instituting proceedings or otherwise disposing of a matter.

App2.1.12 If the agencies identify that particular action by one party might prejudice an investigation or future proceedings by another, it is desirable for the parties concerned to discuss and decide what action should be taken and by whom. In reaching these decisions, they will bear in mind how the public interest is best served overall. The examples provided in App 2.1.9 above may also be used as indicators of where the overall balance of interest lies.

Deciding to bring proceedings

- The agencies will consider, as necessary, and keep under review whether an App2.1.13 investigation has reached the point where it is appropriate to commence proceedings. Where agencies are deciding whether to institute criminal proceedings, they will have regard to the usual codes or guidance relevant to that decision. For example, agencies other than the PPS or COPFS will have regard to the Code for Crown Prosecutors (Note: Different guidance applies to the PPS and COPFS. All criminal proceedings in Scotland are the responsibility of the Lord Advocate. Separate arrangements have been agreed between the FCA and the Crown Office for the prosecution of offences in Scotland arising out of FCA investigations). Where they are considering whether to bring non-criminal proceedings, they will take into account whatever factors they consider relevant (for example, in the case of market abuse proceedings brought by the FCA, these are set out in paragraph 6.2 of the FCA Decision and Procedure and Penalties manual).
- The agencies recognise that in taking a decision whether to commence App2.1.14 proceedings, relevant factors will include:

whether commencement of proceedings might prejudice ongoing or potential investigations or proceedings brought by other agencies; and whether, in the light of any proceedings being brought by another party, it is appropriate to commence separate proceedings against the person under investigation.

App2.1.15 Best practice in these circumstances, therefore, is for the parties concerned to liaise before a decision is taken.

Closing Cases It is best practice for the agencies, at the conclusion of any investigation where it is App2.1.16 decided that no further action need be taken, or at the conclusion of proceedings, to notify any other agencies concerned of the outcome of the investigation and/or proceedings and to provide any other helpful feedback.

Appendix 3 Appendix 3 - Appendix to the guidelines on investigation of cases of interest or concern to the financial conduct authority and other prosecuting and investigating agencies

3.1 The FCA

App 3.1.1 The FCA is the single statutory regulator for all financial business in the UK. Its strategic objective under the Financial Services and Markets Act 2000 (the 2000 Act) is to ensure that the relevant markets function well. The FCA's operational objectives are:

> securing an appropriate degree of protection for *consumers*; protecting and enhancing the integrity of the *UK financial system*; and promoting effective competition in the interests of *consumers* in the markets.

(Note: The 2000 Act repealed and replaced various enactments which conferred powers and functions on the FCA and other regulators whose functions are now carried out by the FCA. Most notable in this context are the Financial Services Act 1986 and the Banking Act 1987. Transitional provisions under the 2000 Act permit the FCA to continue to investigate and bring proceedings for offences under the old legislation. Details of these transitional provisions are not set out in these guidelines)

App 3.1.2 The FCA's regulatory objectives as the competent authority under Part VI of the Act are:

the protection of investors; access to capital; and investor confidence.

App 3.1.3 Under the 2000 Act the FCA has powers to investigate concerns including:

• regulatory concerns about authorised *firms* and individuals employed by them;

suspected contraventions of the *Market Abuse Regulation* or any supplementary market abuse legislation (as defined in Part 8 of the *Act*)

• suspected misleading statements and practices under s.397 of the 2000 Act and Part 7 of the Financial Services Act 2012;

• suspected insider dealing under of Part V of the Criminal Justice Act 1993;

• suspected contraventions of the general prohibition under s.19 of the 2000 Act and related offences;

• suspected offences under various other provisions of the 2000 Act (see below);

• suspected breaches of Part VI of the Act, of Part 6 rules or the prospectus rules or a provision that was otherwise made in accordance with the Prospectus Directive.

• suspected contraventions of the *Prospectus Regulation*, the *PR Regulation*, the *Prospectus RTS Regulation* and suspected breaches of Part VI of the *Act*, of *Part 6 rules* or the *prospectus rules*.

The FCA's powers of information gathering and investigation are set out in Part XI of the 2000 Act and in s.97 in relation to its Part VI functions.

App 3.1.4 The FCA has the power to take the following enforcement action:

• discipline authorised firms under Part XIV of the 2000 Act and approved persons and other individuals under s.66 of the 2000 Act;

• impose penalties on persons that perform *controlled functions* without approval under s.63A of the 2000 Act;

• impose civil penalties under s.123 of the 2000 Act;

temporarily prohibit an individual from exercising management functions in *MiFID investment firms* or from dealing in *financial instruments* on their own account or on the account of a third party, under s.123A(2) of the 2000 Act;
temporarily prohibit an individual from making a bid, on his or her own account or the account of a third party, directly or indirectly, at an auction conducted by a *recognised auction platform* under s.123A(2) of the 2000 Act;
permanently prohibit an individual from exercising management functions in *MiFID investment firms* under s.123A(3) of the 2000 Act;

• suspend the permission of an *authorised person* or impose limitations or other restrictions in relation to the carrying on of a *regulated activity* by an *authorised person* under s.123B of the 2000 Act;

• prohibit an individual from being employed in connection with a *regulated activity*, under s.56 of the 2000 Act;

• apply to Court for *injunctions* (or interdicts) and other orders against persons contravening relevant requirements (under s.380 of the 2000 Act) or engaging in *market abuse* (under s.381 of the 2000 Act);

• petition the court for the winding up or administration of companies, and the bankruptcy of individuals, carrying on *regulated activities*;

• apply to the court under ss.382 and 383 of the 2000 Act for restitution orders against persons contravening relevant requirements or persons engaged in *market abuse*;

• require restitution under s.384 of the 2000 Act of profits which have accrued to authorised persons contravening relevant requirements or persons engaged

in *market abuse*, or of losses which have been suffered by others as a result of those *breaches*;

• (except in Scotland) prosecute certain offences, including under the Money Laundering Regulations 2007, the Transfer of Funds (Information on the Payer) Regulations 2007, Part V Criminal Justice Act 1993 (insider dealing), Part 7 of the Financial Services Act 2012 and various offences under the 2000 Act including (Note: The *FCA* may also prosecute any other offences where to do so would be consistent with meeting any of its statutory objectives):

carrying on regulated activity without authorisation or exemption, under s.23;

- making false claims to be authorised or exempt, under s.24;
- promoting investment activity without authorisation, under s.25;
- breaching a prohibition order, under s.56;

• failing to co-operate with or giving false information to FCA appointed investigators, under s.177;

• failing to comply with provisions about influence over authorised persons, under s.191;

• making misleading statements and engaging in misleading practices, under s.397;

- misleading the FCA, under s.398;
- various offences in relation to the FCA's Part VI function;
- Fine, issue public censures, suspend or cancel listing for breaches of the Listing Rules by an issuer; and
- Issue public censures or cancel a sponsor's approval.

3.2 BIS

- App 3.2.1 The Secretary of State for Business, Innovation and Skills exercises concurrently with the *FCA* those powers and functions marked with an asterisk in App 3.1.3 above. The investigation functions are undertaken by Companies Investigation Branch (CIB) and the prosecution functions by the Legal Services Directorate.
- App 3.2.2 The principal activities of CIB are, however, the investigations into the conduct of companies under the Companies Acts. These are fact-finding investigations but may lead to follow-up action by CIB such as petitioning for the winding up of a company, disqualification of directors of the company or referring the matter to the Solicitors Office for prosecution. CIB may also disclose information to other prosecution or regulatory authorities to enable them to take appropriate action under their own powers and functions. Such disclosure is, however, strictly controlled under a gateway disclosure regime.

EG Appendix	3 Appendix 3 - Appendix to the guidelines of investigation of cases of interest or concert to the financial conduct authority and other.
App 3.2.3	The Solicitors Office advises on investigation work carried out by CIB and undertakes criminal investigations and prosecutions in respect of matters referred to it by CIB, the Insolvency Service or other directorates of BIS or its agencies.
3.3	SFO
App 3.3.1	The aim of the SFO is to contribute to:
	reducing fraud and the cost of fraud; the delivery of justice and the rule of law; maintaining confidence in the UK's business and financial institutions.
App 3.3.2	Under the Criminal Justice Act 1987 the Director of the SFO may investigate any suspected offence which appears on reasonable grounds to involve serious or complex fraud and may also conduct, or take over the conduct of, the prosecution of any such offence. The SFO may investigate in conjunction with any other person with whom the Director thinks it is proper to do so; that includes a police force (or the <i>FCA</i> or any other regulator). The criteria used by the SFO for deciding whether a case is suitable for it to deal with are set out in App 3.3.3.
App 3.3.3	The key criterion should be that the suspected fraud is such that the direction of the investigation should be in the hands of those who would be responsible for any prosecution.
	The factors that are taken into account include:
	whether the amount involved is at least £1 million (this is simply an objective and recognisable signpost of seriousness and likely public concern rather than the main indicator of suitability); whether the case is likely to give rise to national publicity and widespread public concern. That includes those involving government bodies, public bodies the governments of other countries and commercial cases of public interest; whether the case requires highly specialist knowledge of, for example, stock exchange practices or regulated markets; whether there is a significant international dimension; whether legal, accountancy and investigative skills need to be brought together; and whether the case appears to be complex and one in which the use of Section 2 powers might be appropriate.
3.4	CPS

App 3.4.1 The CPS has responsibility for taking over the conduct of all criminal proceedings instituted by the police in England and Wales. The CPS may advise the police in respect of criminal offences. The CPS prosecutes all kinds of criminal offences, including fraud. Fraud cases may be prosecuted by local CPS offices but the most serious and complex fraud cases will be prosecuted centrally.

3.5 ACPO and ACPOS

App 3.5.1 ACPO represents the police forces of England, Wales, and Northern Ireland. ACPO represents the police forces of Scotland.

3.6 COPFS

App 3.6.1 The investigation and prosecution of crime in Scotland is the responsibility of the Lord Advocate, who is the head of the COPFS, which comprises Procurators Fiscal and their Deputes, who are answerable to the Lord Advocate. The Procurator Fiscal is the sole public prosecutor in Scotland, prosecuting cases reported not only by the police but all regulatory departments and agencies. All prosecutions before a jury, both in the High Court of Justiciary and in the Sheriff Court, run in the name of the Lord Advocate; all other prosecutions run in the name of the local Procurator Fiscal. The Head Office of the Procurator Fiscal Service is the Crown Office and the Unit within the Crown Office which deals with serious and complex fraud cases and with the investigation of cases of interest or concern to the Financial Services Authority is the National Casework Division: the remit of this Unit is directly comparable to that of the Serious Fraud Office.

3.7 The PPS

App 3.7.1 The PPS is responsible for the prosecution of all offences on indictment in Northern Ireland, other than offences prosecuted by the Serious Fraud Office. The PPS is also responsible for the prosecution of certain summary offences, including offences reported to it by any government department.

Enforcement Guide

EG TP 1 Transitional provisions applying to the Enforcement Guide

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision dates in force:	(6) Regulatory Guide provi- sion coming into force
1	EG		EG takes effect on 28 August 2007, save to the extent de- scribed below. The FCA's enforcement policy will continue to be as de- scribed in the Enforcement manual (ENF) in relation to any statutory notice or related notice given on or after 28 August where a warning no- tice, first supervisory notice or decision notice was given by the FCA before 28 August in relation to the same matter.	From 28 Aug- ust 2007	28 August 2007