

Chapter 4

Conduct of investigations

4.7 Use of statutory powers to require the production of documents, the provision of information or the answering of questions

4.7.1

The *FCA's* standard practice is generally to use statutory powers to require the production of documents, the provision of information or the answering of questions in interview. This is for reasons of fairness, transparency and efficiency. It will sometimes be appropriate to depart from this standard practice, for example:

- (1) For suspects or possible suspects in criminal or *market abuse* investigations, the *FCA* may prefer to question that *person* on a voluntary basis, possibly under caution. In such a case, the interviewee does not have to answer but if they do, those answers may be used against them in subsequent proceedings, including criminal or *market abuse* proceedings.
- (2) In the case of third parties with no professional connection with the financial services industry, such as the victims of an alleged fraud or misconduct, the *FCA* will usually seek information voluntarily.
- (3) In some cases, the *FCA* is asked by *overseas regulators* to obtain documents or conduct interviews on their behalf. In these cases, the *FCA* will not necessarily adopt its standard approach as it will consider with the *overseas regulator* the most appropriate method for obtaining evidence for use in their country.

4.7.2

Firms, approved persons and conduct rules staff have an obligation to be open and co-operative with the *FCA* (as a result of Principle 11 for Businesses, Statement of Principle 4 for Approved Persons and *Rule 3* of ■ COCON 2.1). The *FCA* will make it clear to the *person* concerned whether it requires them to produce information or answer questions under the *Act* or whether the provision of answers is purely voluntary. The fact that the *person* concerned may be a regulated person does not affect this.

4.7.3

The *FCA* will not bring disciplinary proceedings against a *person* for failing to be open and co-operative with the *FCA* simply because, during an investigation, they choose not to attend or answer questions at a purely voluntary interview. However, there may be circumstances in which an adverse inference may be drawn from the reluctance of a *person* (whether or not they are a *firm* or individual) to participate in a voluntary interview. If a *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.