



Enforcement Information Guide

April 2017

This guide is not intended to provide an exhaustive explanation of the enforcement process. You should refer to the guidance in the Handbook and regulatory guides, in particular the Decision Procedure and Penalties manual (DEPP) and the Enforcement Guide (EG), which can be found on the FCA's website at <https://www.handbook.fca.org.uk/handbook/EG/>

The FCA's general enforcement powers

Under the Financial Services and Markets Act 2000 (FSMA), we have an extensive range of disciplinary, criminal and civil powers to take action against regulated and non-regulated firms and individuals who are failing or have failed to meet the standards we require.

Examples of our powers include being able to:

- Withdraw a firm's authorisation
- Prohibit an individual from operating in financial services
- Prevent an individual from undertaking specific regulated activities
- Suspend a firm for up to 12 months from undertaking specific regulated activities
- Suspend an individual for up to two years from undertaking specific controlled functions
- Censure firms and individuals through public statements
- Impose financial penalties
- Seek injunctions
- Apply to court to freeze assets
- Seek restitution orders
- Prosecute firms and individuals who undertake regulated activities without authorisation

We also work closely with other law enforcement agencies.

The enforcement procedure for disciplinary cases

The flowchart in this guide shows the process of a typical FCA enforcement case where the matter is dealt with through our administrative powers under FSMA. It also shows options available to contest or resolve a case.

We also have powers to prosecute some offences through criminal courts (e.g. insider trading) and/or to bring proceedings in the civil courts (e.g. injunctions and restitution proceedings). These procedures are not covered in this guide, but we can provide further information if needed.

The Regulatory Decision Committee

The Regulatory Decision Committee (RDC) is the FCA's decision maker for contested cases. The RDC comprises practitioners and non practitioners, who are drawn from across a spectrum of business, consumer and industry backgrounds. The RDC is operationally separate from the rest of the FCA; the FCA staff who handle cases before they go to the RDC will not be involved in the RDC's decision making. Members of the RDC are appointed by, and are accountable to, the FCA Board. The RDC has a team of support staff and its own legal advisers, which ensures separation from those recommending the action. This helps to ensure that decisions to issue statutory notices are made fairly.

The RDC process is administrative, not judicial. It is not an appeal body; it is the final stage of decision making for the FCA.

The Settlement Decision Makers

The Settlement Decision Makers (SDMs) will be drawn from a pool of FCA Directors and Heads of Department. SDMs will decide on behalf of the FCA whether to enter any complete resolution of the matter or any focused resolution agreement (and for that purpose, what issues are resolved). Communications exploring resolution of the case between the case team, SDMs and those under investigation are made on a 'without prejudice' basis. This means that if the case proceeds through a contested administrative process to the RDC, the RDC will not be told about any admissions or concessions made during the resolution period, except where they are set out in a focused resolution agreement agreed between the parties (see **Early resolution** below).

It is important to appreciate that 'settlement' or resolution in the regulatory context is not the same as settlement of a commercial dispute; it is a regulatory decision taken by us, the terms of which are accepted by the firm or individual concerned. So we must have careful regard to our statutory objectives when agreeing the terms of any resolution.

We operate a discount scheme on early resolution for financial penalties, suspensions, restrictions, conditions and disciplinary prohibitions (prohibitions imposed under s123A FSMA). See **Discount scheme** below.

Early resolution

When the Enforcement and Market Oversight division has a sufficient understanding of the case to make a reasonable assessment of the appropriate sanction, we will normally give a reasonable period during which the firm or individual may resolve the case with us where they may obtain a discount for agreement. This period is generally referred to as stage 1.

There are a number of options for firms and individuals to resolve a case:

1. agree all issues – facts, liability and penalty, or
2. agree all issues of fact and liability, and contest penalty only through the RDC, or
3. agree all issues of fact, and contest liability and penalty through the RDC, or
4. agree most issues of fact, and liability, and contest a limited number of issues and penalty through the RDC, or
5. contest all issues through the RDC, or
6. refer the case straight to the Upper Tribunal.

Agreements under (2) – (4) will be contained in a focused resolution agreement. Whether to enter a focused resolution agreement is at the discretion of the FCA.

Referral to the Upper Tribunal (Tax and Chancery Chamber)

Following a Decision Notice, a firm or individual has the right to refer their case to the Tribunal. The Tribunal is entirely independent of the FCA and will consider the case afresh. A Tribunal hearing is normally held in public.

A firm or individual may elect not to make representations to the RDC and instead use our expedited procedure to enable the firm or individual to receive a Decision Notice more quickly, enabling them to refer to the Tribunal earlier. For further information on the expedited reference procedure see DEPP 5.1.8E-I.

Publicity and enforcement cases

We do not normally comment on whether we are investigating an issue. For information on the exceptional circumstances in which the FCA may make a public announcement that it is or is not investigating a particular matter see EG 6.1. We may, if appropriate, publish information about certain Warning Notices, having consulted the person to whom the notice is issued.

Discount scheme

We operate a scheme giving discounts on financial penalties, suspensions, restrictions conditions and disciplinary prohibitions (prohibitions under s123A FSMA) for early resolution of part or all of a case. Under this scheme, for example, the financial penalty that would otherwise be payable is reduced by up to 30% as follows:

Agreement	Penalty discount
Full agreement of facts, liability and penalty in stage 1	30%
Full agreement of facts and liability (but not penalty) in stage 1	30%
Full agreement of facts (but not liability or penalty) in stage 1	15-30% at the discretion of the RDC
Partial agreement as to facts, liability and penalty (leaving a narrow set of issues in dispute) in stage 1	0-30% at the discretion of the RDC
No agreement on facts, liability or penalty in stage 1	0%

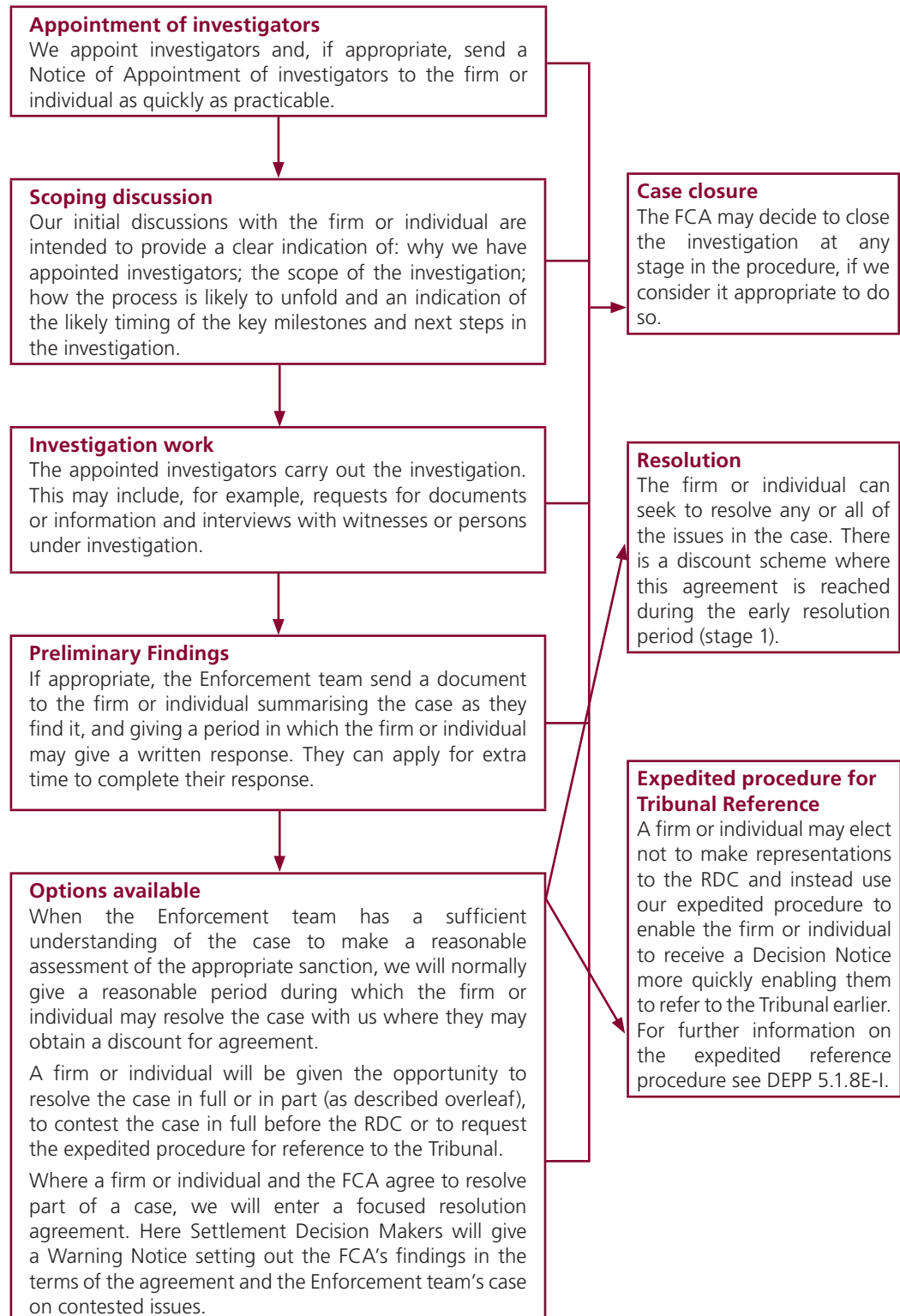
There are no further stages beyond stage 1 where discounts to penalty are available. Details regarding settlement and penalty can be found at sections 5.1 and 6.7 of DEPP.

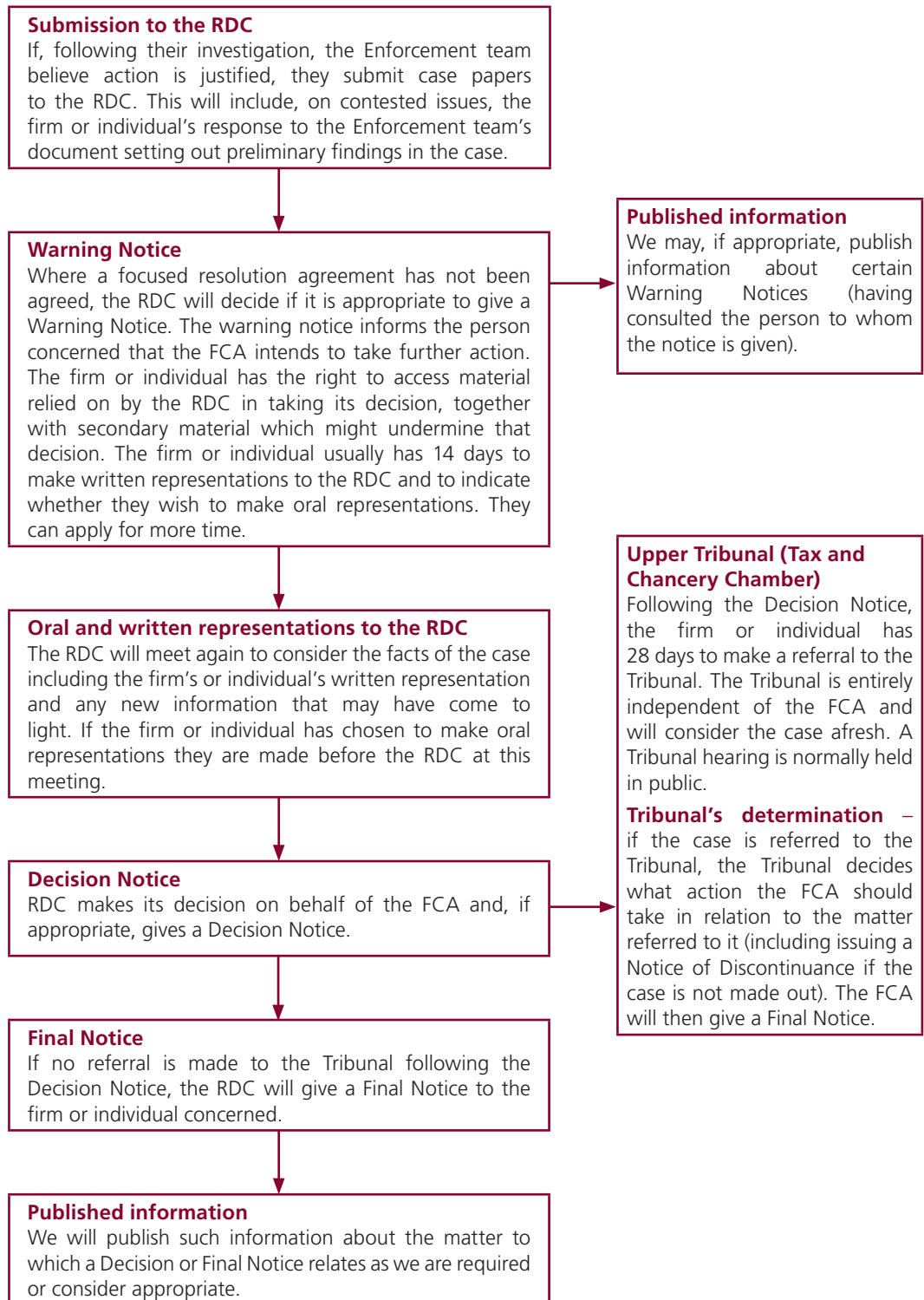
The FCA and mediation

The mediation process involves a neutral mediator helping parties to reach a resolution. The mediator will not offer an evaluation of the case, but will purely assist the parties to reach a resolution.

If the parties consent, mediation may take place at any stage of the enforcement process. However, mediation is unlikely to be appropriate in cases where we are contemplating bringing a criminal prosecution or where we need to take urgent action.

If you would like further details on resolution or mediation, or an update on the progress of your case, please speak to a member of the Enforcement team responsible for your case.





Financial Conduct Authority



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