

FSA Enforcement Information Guide

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 FSA’s website at www.fsa.gov.uk.

The FSA’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;
- censure firms and individuals through public statements;
- impose financial penalties;
- seek injunctions;
- apply to court to freeze assets;
- seek restitution orders; and
- prosecute firms and individuals who undertake regulated activities without authorisation.

We work closely with other law enforcement agencies.

The enforcement procedure for disciplinary cases

Under FSMA, we are legally required to follow a prescribed enforcement procedure. In addition, we are required to comply with the Human Rights Act 1998.

The flowchart overleaf shows the process of a typical FSA enforcement case where the matter is dealt with through our administrative powers under FSMA.

Although this procedure applies to many FSA enforcement cases, it is important to emphasise that it does not cover all cases. We also have powers to prosecute some offences through the Criminal Courts (e.g. insider dealing) 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.

Publicity and enforcement cases

We do not normally comment on whether we are investigating an issue. However, we are required to make information public, if appropriate, when we issue a Final Notice.



Mediation and the FSA

The mediation process involves a neutral mediator helping the parties to negotiate an agreed settlement. The mediator will not offer an evaluation of each party's case, but will purely assist the negotiation.

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.

The FSA and settlement

Settlement is possible at any stage of the enforcement process.

Our settlement process changed on 20 October 2005. Now, our Executive can agree to settle cases without approval from the Regulatory Decisions Committee (RDC). This reflects the desire for increased separation and transparency between the Enforcement Division and the RDC.

The Settlement Decision Makers will be drawn from a pool of FSA Directors and will be the ultimate decision makers in any settlement negotiations between Enforcement and a firm or individual. This means all settlement communications are made without prejudice to the RDC. Consequently, if the settlement negotiations break down and the case proceeds through a contested administrative process through the RDC, it will not be told about any admissions or concessions made during settlement talks.

It is important to appreciate that 'settlement' in the regulatory context is not the same as settlement of a commercial dispute. An FSA settlement 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 a settlement.

For cases where investigators were appointed on or after 20 October 2005, we operate a discount scheme for financial penalties (where that is the appropriate outcome) on early settlement. In outline, this operates as follows: If settlement is reached, we and the person concerned will agree in principle the amount of a financial penalty, taking into account all the factors set out in the Decision Procedure and Penalties manual (apart from the existence of the discount scheme itself). A discount will be applied to this amount, depending on when settlement is reached as follows:

Stage 1 (early settlement stage): 30%

Stage 2 (up to the expiry of the period for making written representations to the RDC): 20%

Stage 3 (up to the issue of the Decision Notice): 10%

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



FSA Enforcement Procedure

The diagram below shows the process of a typical investigation following the referral to the enforcement division.

