

Issuing statutory notices – a new approach to decision makers

Consultation Paper

CP21/25***

July 2021

How to respond

We are asking for comments on this Consultation Paper (CP) by **17 September 2021**.

You can send them to us using the form on our website at: www.fca.org.uk/cp21-25-response-form

Or in writing to:

Law and Policy
Enforcement and Market Oversight
Financial Conduct Authority
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1 Summary

Why we are consulting

- 1.1** We need to transform to ensure the FCA can make fast and effective decisions and can prioritise the right outcomes for consumers, markets and firms. The decisions we make affect how and when consumers are protected from firms which do not meet our regulatory standards. We're looking at how we maximise our delivery and make the best use of our breadth of expertise and capability.
- 1.2** A key part of our Transformation Programme is a fresh approach to tackling firms and individuals who do not meet the required standards. This involves streamlining our decision making and governance so we can respond more quickly. As a result, we want to move some decision making from our Regulatory Decisions Committee (RDC) to our Authorisations, Supervision and Enforcement Divisions. The decision making framework we propose to use is our existing Executive Procedures framework.

Who this applies to

- 1.3** This CP is likely to interest:
- regulated firms
 - individuals working in financial services
 - consumer groups and individual consumers
 - industry groups / trade bodies
 - policy makers and regulatory bodies
 - industry experts and commentators

What we want to change

- 1.4** We want to change who decides to issue a statutory notice in some of our cases. Statutory notices are required where we are proposing to exercise, or have already exercised, our enforcement and supervisory powers. For example, where we are varying or cancelling a firm's permission, cancelling an individual's approvals, or imposing requirements on a firm. Statutory notices are also required where we propose to refuse authorisation for a firm or approval of an individual, so preventing them from offering financial services to consumers.
- 1.5** Decisions to issue a statutory notice are made by the RDC and under Executive Procedures. We want more decisions to be made under Executive Procedures. So we propose revising the decision-making remit of the RDC.
- 1.6** This will mean more decisions are taken within our Divisions with responsibility for the issue. For example, decisions regarding authorisation applications will be made within

Authorisations. This will provide a more flexible approach, allowing decisions to be made faster, more effectively and efficiently.

1.7 The RDC presently makes decisions in relation to the following matters:

- when we make a decision to use our own-initiative intervention powers to impose a fundamental variation of permission or requirement in relation to a firm (DEPP 2.5.8G defines fundamental variation or requirement)
- when we make a decision in relation to a firm's authorisation or an individual's approval that is contested
- when we decide to take action in straightforward cancellation cases because a firm does not meet our regulatory requirements, and that action is contested

1.8 The RDC also makes decisions on matters that do not require the issue of a statutory notice. These are approvals to commence civil or criminal proceedings, which include

- decisions to commence civil proceedings, such as seeking an injunction
- decisions to commence criminal proceedings, such as a prosecution for insider dealing.

1.9 We are proposing that these decisions would be made through our Executive Procedures rather than the RDC. The RDC will continue to decide cases where we are enforcing the FCA's Principles and Rules for Businesses and seeking a resolution that involves a disciplinary or similar sanction, such as a financial penalty, a prohibition order or restitution. The changes we are making will not compromise the rights and protections that firms and individuals who are subject to these processes have; we will still remain transparent and accountable for all our decisions made through either process.

Outcome we are seeking

1.10 As a result of these changes, the RDC would focus on contentious enforcement cases. These cases often involve proposals to impose a sanction or disciplinary measure against a firm or individual and will concern conduct which has already taken place.

1.11 Decisions under Executive Procedures would focus on issues where we need to prevent firms from offering financial services, or we need to intervene to prevent or stop harm to consumers or the market occurring or increasing.

1.12 While the identity of the decision maker will change, we believe this will enable us to act more decisively and swiftly in the areas we suggest, where the greatest levels of harm exist. This is because of the flexibility that follows from the ability to have individual decision makers as opposed to decision making by committee.

Read more about our proposed changes in Chapter 5

Measuring success

- 1.13** We will monitor the impact of these changes; for example, by tracking the time taken from case allocation to decision and the types of decisions taken in different situations.

Next steps

- 1.14** We want your feedback on our proposals and the issues discussed in this CP. Please send your answers to the questions in the CP by **17 September 2021** using one of the methods in the 'How to respond' section on page 2.
- 1.15** Following this consultation, we will consider your feedback and publish a Policy Statement; we expect to publish the Policy Statement in or around November 2021.

2 The wider context

Introduction

2.1 In this chapter we cover:

- the issue we are trying to improve
- the outcomes we want to see
- equality and diversity considerations

2.2 The details of our proposals follow in Chapters 3, 4 and 5.

Background

2.3 In the same way that we require regulated firms and individuals to keep pace with the changing world, our day-to-day regulation must continually adapt. As the world around us becomes more complex, we need to develop our capabilities. We are adapting our approach so that we are as effective as possible and can make confident, well-informed decisions.

2.4 We are transforming the way that the FCA works through an ambitious programme that encompasses our culture, our people and our technology. Our Transformation Programme seeks to change how we operate and help us to continue to deliver our Mission and good outcomes for consumers. We're looking at how we maximise our delivery and make the best use of our breadth of expertise and capability.

2.5 Part of our Transformation Programme involves reviewing how we assess risk. We want to be more robust and assertive in the decisions we make in order to prevent and stop harm faster and more effectively, including being bolder when making decisions.

2.6 We are also focused on how we can use new capabilities that are available which will transform how we work and help deliver our priorities. One of the aims of our Data Strategy is to improve the way we use data and intelligence to better understand harm and manage it more swiftly.

2.7 Through our proposed changes we want to increase our ability to make some of our decisions more quickly. By revising the decision-making framework and increasing Executive decision making, our decisions will be made in a more timely way. We want to be able to act swiftly where we think there is conduct that will lead to (or increase) harm to consumers or markets and give our decision makers the flexibility to use the appropriate tools to address the situation.

2.8 Similarly, when firms are applying for FCA authorisation, having decisions taken through Executive Procedures will allow decisions to be taken with full appreciation of the wider context and full range of options.

Equality and diversity considerations

- 2.9** We have considered the equality and diversity issues that may arise from the proposals in this CP. Overall, we do not consider that the proposals materially impact any of the groups with protected characteristics under the Equality Act 2010. But we will continue to consider the equality and diversity implications of the proposals during the consultation period. In the meantime, we welcome your input to this consultation on this issue.

3 Our powers and the need for statutory notices

3.1 This Chapter gives an overview of how we regulate and what we mean by statutory notices. It looks at the types of decisions which require a statutory notice.

Why and how we regulate

3.2 We are responsible for regulating a sector which plays a critical role in the lives of everyone in the UK. From children's ISAs to pensions, direct debits to credit cards, loans to investments – how well financial markets work has a fundamental impact on us all.

3.3 We aim to make markets work well – for individuals, for business, large and small, and for the economy as a whole. Financial markets need to be honest, fair and effective so that consumers get a fair deal.

3.4 Our strategic objective is to ensure that the relevant markets function well and our operational objectives are to:

- protect consumers – we secure an appropriate degree of protection for consumers
- protect financial markets – we protect and enhance the integrity of the UK financial system
- promote competition – we promote effective competition in the interests of consumers

3.5 Our work and purpose is defined by the Financial Services and Markets Act 2000 (FSMA). We work with consumer groups, trade associations and professional bodies, domestic regulators, and a wide range of other stakeholders. With this extensive remit, we use a proportionate approach to regulation, prioritising the areas and firms that pose a higher risk to our objectives. We have a range of powers available so that we may take action where firms or individuals do pose a risk. An overview of some of the powers we have in relation to our different functions is set out below.

Authorisation decisions

3.6 We are responsible for authorising firms and approving individuals who undertake financial services activities. Applicants must meet a range of requirements before we allow them to operate in the market.

3.7 Our regulatory requirements include a set of threshold conditions. Our Handbook gives more detail on when and how the conditions apply. The conditions represent the minimum standards which a firm must satisfy to be authorised. In summary, the threshold conditions relate to:

- the location of a firm's office

- the capability of a firm to be effectively supervised
- the firm having appropriate resources in relation to the activity to be carried out
- the suitability of a firm (including how it is managed and whether its affairs are conducted in an appropriate manner)
- the suitability of the firms' business model

3.8 We review their business plans, risks, budgets, resources, systems, controls and whether key staff have the necessary qualifications, experience and ability to carry out their roles effectively. Firms must meet these requirements before we will authorise or register them. If these requirements are not met, we may decide to refuse an application for authorisation.

3.9 For individuals to be approved, they must also meet certain minimum standards. The relevant test for individuals is the Fit and Proper test. We have regard to a number of factors when assessing the fitness and propriety of a person and we may refuse an application for approval if individuals do not meet the minimum standards.

3.10 We also have a range of powers under other legislation, for example the Payment Services Regulations 2017 and the Money Laundering Regulations 2017 which transpose the 5th Money Laundering Directive. These include the ability to authorise or register firms or refuse to do so.

Cancellation decisions

3.11 Firms and individuals must continue to satisfy the conditions after they have obtained authorisation or approval. We are responsible for ensuring that all firms and individuals continue to meet these minimum standards.

3.12 We have powers to revoke authorisation or registration if a firm no longer meets our minimum standards. There are various circumstances that could lead to the cancellation of a firm's authorisation or registration. This depends on the legislation under which we have power to act.

3.13 We consider the threshold conditions to be fundamental requirements, and so we generally take action where we have concerns about a firm or the way its business is or has been conducted. Where our concerns cannot be resolved through the use of supervisory tools, we will consider cancelling the firm's permission.

3.14 For example; a firm that can no longer fulfil its basic regulatory obligations, such as paying fees or submitting regulatory returns. When firms fail to pay fees or submit returns, we interpret this as a breach of the appropriate resources threshold condition or the suitability threshold condition.

3.15 We also have powers under other legislation to cancel permission or registration. For example, under the Payment Services Regulations 2017 or the Electronic Money Regulations 2011.

3.16 We have also been provided with an additional process through which we can vary or cancel the permissions of firms we have authorised. This allows us to act more quickly than currently to cancel or vary permissions where we consider that firms are no longer carrying on any activities we regulate. We have published a consultation paper setting out our proposed amendments to the Decision Procedure and Penalties Manual (DEPP) and our Fees manual- <https://www.fca.org.uk/publication/consultation/cp21-16.pdf>

3.17 For individuals, we may also revoke their approval, or ban them from working in a role if we have evidence that they are no longer fit and proper.

Intervention decisions

3.18 Our work involves the continuing oversight of firms and of individuals controlling firms to reduce actual and potential harm to consumers and markets.

3.19 We supervise against a framework of principles and rules. The firms that we regulate, and their people, are responsible for ensuring that they act in accordance with these. We expect firms and their employees to meet these standards and we hold them to account when they fail to meet them.

3.20 Where we consider that a firm needs to take certain steps to meet regulatory requirements, we will seek to agree those steps with the firm. However, where we consider it appropriate, we may exercise our statutory powers on our own initiative.

3.21 We have a range of powers to intervene where standards are not met. These powers include the ability to vary a firm's permission. This could mean narrowing the regulated activities that a firm has permission to carry on.

3.22 We may also impose limitations or requirements. Examples of limitations we may impose include limitations on the number of categories of customer a firm can deal with, or on the number of specified investments that a firm can deal in. Examples of requirements we may consider imposing include a requirement not to take on new business, a requirement not to hold or control client money or to conduct a past business review and redress being paid to consumers.

Enforcement cases

3.23 Our Enforcement division works closely with teams across the FCA in other Divisions, as well as other regulators and law enforcement. This means we can identify and act early when enforcement action is necessary. The action we may take includes:

- prohibiting individuals from carrying on regulated activities
- suspending firms and individuals from undertaking regulated activities
- issuing financial penalties against firms and individuals who breach our rules or commit market abuse

The need for statutory notices

3.24 The exercise of the powers referred to above is subject to a statutory notice procedure. This means we are required to give written notice to the person we propose to take action against. We issue different types of statutory notice, depending on the nature of the issue and the stage we are at.

3.25 Warning notices are issued where we propose to take certain action, for example cancelling permission or imposing a financial penalty. Decision notices must be issued where, after considering the representations a firm or individual has made on a warning notice (or if none are made) we decide to take action.

- 3.26** We issue supervisory notices when we decide to take certain other types of action. A supervisory notice requires a regulated firm to do something or not to do something – for example, it may remove regulated activities from a firm’s permissions, or impose requirements restricting the use of assets.
- 3.27** Unlike a warning notice or decision notice, the action set out in a supervisory notice may take effect immediately. That means we may give written notice after we have made a decision, so there is no opportunity before a decision is made to make representations. The chance to make representations will, in some instances, arise once a supervisory notice has already been issued.
- 3.28** We have not referred to Final Notices or Notices of Discontinuance. These notices are not included in the definition of statutory notice in our Handbook and are not the subject of this CP. Where we exercise powers under other legislation, we expect to adopt a procedure in respect of notices under enactments other than FSMA which is similar to that for statutory notices under FSMA, but which recognises any differences in the legislative framework and requirements.
- 3.29** Examples of the different types of notices are summarised in the table below.

Table: Example Statutory Notices

Type of Statutory Notice	Description	Example
Warning Notice	Gives the recipient details about action that we propose to take and about the right to make representations.	Cancelling a Part 4A Permission Imposing a financial penalty
Decision Notice	Gives the recipient details about action that we have decided to take.	Cancelling a Part 4A Permission Prohibiting an individual from undertaking regulated activities
First Supervisory Notice	Gives the recipient details about action that we have taken or propose to take	Varying a Part 4A Permission Imposing a requirement on a firm
Second Supervisory Notice	Gives the recipient details about action that we have decided to take	Varying a Part 4A Permission

4 Our current approach to decision making on statutory notices

Introduction

- 4.1** This Chapter looks at who currently decides to issue statutory notices. We often refer to these decisions as ‘statutory notice decisions’. This chapter also gives an overview of decision making by the RDC (including decisions to commence civil and criminal proceedings), and decision making under Executive Procedures.

Who currently makes decisions to issue statutory notices?

- 4.2** We are required by section 395 FSMA to publish our procedure for giving statutory notices. The procedure must be designed to ensure that the decision which gives rise to the obligation to give a statutory notice is taken by a person not directly involved in establishing the evidence on which that decision is based. Alternatively, a decision to give a statutory notice may be made by two or more persons who include a person not directly involved in establishing that evidence. In some instances, FSMA allows us to issue a supervisory notice, even where the individual decision maker has been involved in establishing the evidence.
- 4.3** Subject to this statutory provision, which helps ensure we make fair and objective decisions, the procedure and decision maker are matters for our discretion.
- 4.4** Our assessment of the appropriate decision maker to issue statutory notices depends on the nature of the decision, including its complexity, impact and urgency. All our decisions to give a statutory notice are taken either by the RDC or under Executive Procedures. DEPP sets out whether the decision is made by the RDC or under Executive Procedures.

Statutory notice decisions made by the RDC

- 4.5** The RDC is a Committee of the FCA Board that operates separately from the rest of the FCA. The FCA Board appoints the RDC Chair, one or more Deputy Chairs and the other members of the Committee. Generally, RDC cases are considered by a panel of 3 members, including the Chair or a Deputy Chair. If the decision is straightforward or is urgent, the RDC Chair or a Deputy can decide alone whether to issue a statutory notice.
- 4.6** The RDC takes a range of statutory notice decisions on our behalf. These decisions relate to enforcement and supervisory actions, as well as refusing applications by firms for authorisation and by individuals for approval. The RDC operates with the benefit of its own support staff and legal advisers. More information on the RDC and how it

operates is available here: <https://www.fca.org.uk/about/committees/regulatory-decisions-committee-rdc>

- 4.7** The types of cases where the RDC makes statutory notice decisions include:
- decision notices refusing authorisation, variation of permissions or approval of an individual
 - cancelling permissions and registrations
 - issuing prohibitions to prevent an individual from carrying on activities in relation to regulated business, or from carrying on any such role
 - issuing financial penalties or public censures against a firm or individual
 - issuing suspensions or restrictions against a firm or individual preventing them from carrying out actions
 - withdrawing approval from an individual for particular functions
- 4.8** The RDC is also our decision maker for supervisory notices in relation to variations of permission and 'asset requirements', which impose certain types of restriction on a firm's ability to deal with its assets or consumers' assets which it holds.
- 4.9** At present, a decision to exercise our powers under sections 401 and 402 FSMA and commence criminal proceedings is made by the RDC Chair (or the Deputy Chair, director of Enforcement or another director of at least director of division level depending on the degree of urgency). Decisions about whether to initiate criminal proceedings under the Building Societies Act 1986, the Friendly Societies Acts 1974 and 1992 and the Co-operative and Community Benefit Societies Act 2014 may be taken by the RDC or under Executive Procedures, depending on the impact and complexity of the offence.
- 4.10** Decisions about whether to apply to the civil courts for injunctions, restitution orders or insolvency orders under FSMA or other legislation are presently made in the same way as set out above for the commencement of criminal proceedings.

Statutory notice decisions under executive procedures

- 4.11** Our corporate governance arrangements set out which decisions are reserved specifically to the Board and the process by which the Board delegates other responsibilities to committees or individuals. The Board has delegated a range of functions to the Chief Executive, who may in turn delegate to one or more individuals or committees. By way of these delegations, statutory notice decisions may be made under Executive Procedures.
- 4.12** All statutory notice decisions under Executive Procedures are taken either by a senior staff committee or by an individual FCA staff member. A senior staff committee meeting comprises a Chair and at least two other members; it operates on the basis of a recommendation from our staff and with the benefit of legal advice from our staff. During 2020, the senior staff committee made the decision to issue over 120 statutory notices.
- 4.13** The types of decisions involving statutory notices issued under Executive Procedures include

- warning notices refusing an application for Part 4A permission or refusing an application for a person to be approved
- imposing a limitation or requirement which was not applied for on the grant of a Part 4A permission (unless the action involves a fundamental variation or requirement)

Challenge to our statutory notice decisions

- 4.14** Recipients of a statutory notice can challenge the decision to issue the notice whether that notice has been given by the RDC or through Executive Procedures, by making representations to the RDC or the executive decision maker. For example, where a decision is made under Executive Procedures to refuse an authorisation application, representations may be made to the RDC. The RDC may then decide to issue a decision notice.
- 4.15** For a warning notice, instead of making representations to us, the subject may notify the RDC that they wish to make an expedited reference to the Upper Tribunal. The RDC will then issue a decision notice, subject to the interests of any third parties.
- 4.16** For recipients of a decision notice, they may either accept the decision or take the matter to Court by referring it to the Upper Tribunal.
- 4.17** Unlike a warning notice or decision notice, the action set out in a supervisory notice can take effect immediately or on a date set out in the notice. It is open to the recipient of a first supervisory notice to refer it the Upper Tribunal within 28 days of receiving it.
- 4.18** If we issue a second supervisory notice after considering representations, that notice may also be referred to the Upper Tribunal. The Upper Tribunal has the power to suspend the effect of a supervisory notice.

5 Our proposed approach to decision making on statutory notices

5.1 We propose making some changes to who takes some of our decisions. This Chapter provides more detail on

- why we're proposing the changes
- what the changes would be
- what the changes would mean for our procedures.

Why we're making the changes

5.2 In the same way that we require regulated firms and individuals to keep pace with the changing world, our day-to-day regulation must continually adapt. As the world around us becomes more complex, we need to grow and develop our capabilities.

5.3 Our Transformation Programme seeks to change how we operate and help us to continue to deliver good outcomes for consumers. We're looking at how we maximise our delivery and make the best use of our breadth of expertise and capability. As part of our Transformation Programme, we have reviewed who makes our statutory notice decisions and how those decisions are made.

5.4 The RDC currently reviews the majority of notices, with the bulk of the volume being straightforward cancellation decisions. In 2019/20, the RDC made nearly 400 decisions. Of these, 329 were cancellation decisions based on failures to meet the threshold conditions. In about a third of these, firms either voluntarily cancelled their permissions, or took the required steps during the process, so ending the regulatory action and enabling the firms to continue trading.

5.5 Our Transformation Programme seeks to place greater emphasis on individual responsibility and accountability for decisions. Rather than having decisions taken by RDC members who, aside from the Chair, are not FCA staff, we want more decisions taken by our senior staff.

5.6 This would allow the RDC to focus on significant misconduct cases, where the harm has already materialised, and we consider the subject needs to be penalised for the failure. These decisions are usually the most material and are less urgent.

5.7 We consider that our proposals will continue to fulfil our obligations under section 395 FSMA. This provision does not require separation between the investigation team and the decision maker. Rather, it requires us to ensure that the decision which gives rise to the obligation to give a statutory notice is taken by a person not directly involved in establishing the evidence on which that decision is based. Alternatively, a decision to give a statutory notice may be made by two or more persons who include a person not directly involved in establishing that evidence. We will still be transparent about how we make our decisions and accountable for them; none of the proposed changes removes any of the rights and protections that firms and individuals subject to our decision-making processes have.

- 5.8** Another reason for proposing change is that having a potential mix of decision makers is inefficient and time consuming. The decision to give a warning notice and a decision notice in a particular matter will often not be taken by the same decision maker. Certain types of action require that the warning notice decision be taken by our staff under Executive Procedures and the decision notice decision be taken by the RDC.
- 5.9** In other instances, the decision to give a first supervisory notice may be made under Executive Procedures and the decision to give the second supervisory notice will be made by the RDC. And in the case of certain supervisory notices, both the first and second notice will be issued by the RDC.
- 5.10** Having two sets of decision makers on the same matter can lead to duplication and delay. We want to streamline our approach to make it more efficient and enable us to make decisions more quickly.

What we propose

- 5.11** We still need to ensure that decision makers who determine whether to issue a statutory notice are not involved in establishing the evidence which forms the basis for the recommended action against a firm or individual. We propose that the decision to issue a statutory notice on the following issues are made under Executive Procedures rather than by the RDC; however, the RDC will remain the decision maker in cancellation cases where we have opened an investigation, where we are proposing a disciplinary sanction or seeking to impose a prohibition order.

Category of decision	Current decision Maker	Proposed Decision Maker
Authorisations (refusal of permission)	Executive Procedures and RDC	Executive Procedures
Straightforward Cancellations (eg threshold conditions)	RDC	Executive Procedures
Interventions (Variation of permission and imposition of requirements fundamental)	Executive Procedures and RDC	Executive Procedures
Interventions (variation of permission and imposition of requirements non fundamental)	Executive Procedures and RDC	Executive Procedures

- 5.12** The decisions to issue statutory notices in the table above refer to decisions under FSMA and other enactments, for example, the Payment Services Regulations 2017 or the Electronic Money Regulations 2001.
- 5.13** In addition to the proposed changes to who decides to issue a statutory notice, we propose that decisions on whether to commence civil or criminal proceedings through the court (as set out in paragraphs 4.9 and 4.10 above) are made under Executive Procedures.
- 5.14** Since the process of approval by the RDC was put in place, we have built up a considerable amount of experience and expertise in both civil and criminal litigation. There is a substantial amount of preparation work and analysis carried out before taking the decision to start legal proceedings. We believe that the benefit of a further layer of consideration is outweighed by the time and resources saved by not preparing further submission documents to the RDC and the RDC's consideration of the issue.

After commencing proceedings, our conduct and that of the other parties to the litigation will be subject to and governed by the Court’s case management powers.

Category of decision	Current decision Maker	Proposed Decision Maker
Approvals to commence civil or criminal proceedings	RDC (or Executive Procedures where criminal proceedings under legislation other than FSMA)	Executive Procedures

See a more detailed summary of our proposed changes in Annex 1. Appendix 1 contains a draft of the Handbook changes

- 5.15** As a result of these changes, the RDC would focus on significant misconduct cases, where the harm has already materialised and the subject needs to be penalised for the failure. These cases could involve proposals to impose a sanction or disciplinary measure against a firm or individual.
- 5.16** Decisions under Executive Procedures would focus on situations where we need to intervene to prevent or stop harm, or prevent harm from increasing, to consumers or the market, where the exercise of a power involves making regulatory judgments. This may be through the use of our statutory intervention powers, or through our authorisation and cancellation decisions as well as action through the civil and criminal courts. These matters will often involve us needing to act decisively and swiftly.
- 5.17** In all situations, the decision maker will make decisions by applying the relevant statutory tests, having regard to the context and nature of the matter, that is, the relevant facts, law, and our priorities and policies (including on matters of legal interpretation).

Q1: Do you agree with the proposal to move some statutory notice decisions from the RDC to the Executive? Please give reasons for your answer.

Q2: Do you agree with the categories of decision that we suggest? If not, which statutory notice decisions do you consider the RDC should keep? And which statutory notice decisions should be made under Executive Procedures?

Changes to decision making under executive procedures

- 5.18** Our Executive Procedures decision making framework is already well established and set out in DEPP. The procedure for taking decisions under Executive Procedures is generally less formal and structured than that for decisions by the RDC. The approach will generally remain the same, to continue to facilitate greater flexibility and speed of decision making.
- 5.19** We propose some changes to the framework to provide additional flexibility. Under Executive Procedures, a decision may be made by an individual or by committee. The first change would be to amend the definition of Senior Staff Committee meeting, so that it would comprise a minimum of two, rather than three people. DEPP already

provides for a decision to be made by two people, so a senior staff committee could comprise a minimum of two.

5.20 We propose keeping the option to refer a matter to the RDC, where the RDC is considering, or shortly due to consider, a closely related matter. This means there may be a limited number of situations where the RDC issues a supervisory notice. This would promote consistency of decision-making and potential savings in terms of the time and cost of reaching a decision.

Q3: Do you agree with the proposed changes to the definition of Senior Staff Committee meeting under Executive Procedures? Please give reasons for your answer

5.21 Whilst the Executive Procedures framework largely remains the same, we recognise that moving some of our decision making from the RDC to the Executive will lead to three main points of difference between the proposed Executive Procedures and the RDC's procedure. Those differences relate to:

- the ability to make oral representations once a statutory notice has been issued
- the role of legal advisers to the decision maker
- the disclosure of communications between FCA staff recommending the decision and those responsible for the decision to give a statutory notice.

Making oral representations

5.22 Recipients of our statutory notices currently can make representations to us about the action covered by the notice. Recipients of a Warning Notice, which proposes the action we are minded to take, have a statutory right to make representations to us on the content of the notice. This means we will consider representations before deciding to take action.

5.23 Recipients of a first supervisory notice also have the option to make representations. However, we can issue a supervisory notice which takes immediate effect. That means the opportunity to make representations to us will arise after we have decided that action needs to be taken.

5.24 We currently take account of written and oral representations and have reviewed our current procedures for considering oral representations. We will continue to enable a recipient of a Warning Notice to make oral representations where the decision maker is the RDC.

5.25 For statutory notice decisions to be made under Executive Procedures, we will take account of written representations, and in exceptional circumstances will allow recipients to make oral representations. These could be made in addition to written representations or as an alternative.

5.26 We are proposing this change as part of our changes to improve the efficiency and speed of decision making. Scheduling oral representation meetings delays decision making, and the decisions that are the subject of this consultation are those where we need to move at pace and make swift decisions.

- 5.27** We would not restrict representations to written only if that would impact on the fairness of the decision. We would expect that such circumstances would mean that the case falls into the exceptional circumstances category of cases and oral representations would be heard. An example of exceptional circumstances may be where the subject of the notice is not reasonably able to make written representations due to personal circumstances.
- 5.28** We consider that in the vast majority of matters, decisions made under Executive Procedures can be made on the basis of written representations and this will enable us to make properly informed decisions more quickly.

The test for urgency when considering our powers

- 5.29** We are also proposing a change to our policy set out in our Enforcement Guide (EG) 8.3. This is where we believe it is necessary to act on an own initiative basis, and / or for a variation of permission or requirement, to take effect without urgency being a requirement for the use of such powers. We set out the circumstances when we will consider the exercise of this power: where we have information available that indicates serious concerns about the firm or its business that need to be addressed immediately; and circumstances indicate that it is appropriate to use statutory powers immediately to require and/or prohibit certain actions by the firm to ensure the firm addresses these concerns.
- 5.30** We are not proposing any changes to those circumstances, or to the factors set out in EG 8.3.3 (examples of situations that would give rise to such serious concerns) and 8.3.4 (examples of factors going to seriousness). However, we propose to remove the requirement for urgency before we can make such a decision.
- 5.31** So the focus will be on the seriousness of the situation – including risk of loss for consumers, financial crime risks, where we have been misled or have such serious concerns about a firm that the firm's ability to meet our threshold conditions is called into question. Urgency may very likely be a factor, but it is not helpful as a "pre-condition" - we want to be able to address situations where we consider we have exhausted our engagement with a firm and consider that an intervention (whether a requirement or variation of permission) with immediate effect or a specified date is the appropriate and logical next step.

The role of legal advisers to executive decision makers

- 5.32** Some statutory notice decisions previously made by the RDC (which has its own legal advisers) would now be made under Executive Procedures, where FCA staff responsible for taking the statutory notice decision may be advised by legal advisers who have also advised FCA staff recommending action by the FCA.

Disclosure of communications

- 5.33** Our current approach to sharing communications between our staff recommending that action be taken and those responsible for a decision under Executive Procedures

is set out in DEPP. We will not normally disclose such communications and we propose to maintain this approach.

5.34 This contrasts to the approach applying to communications where the RDC is the decision maker. In those such cases, it will remain the case that the RDC will not, after giving a warning notice, meet with or discuss the matter while it is still ongoing with the FCA staff responsible for the case without other relevant parties being present or otherwise having the opportunity to respond.

Q4: Do you agree with the proposal that oral representations may only be made to Executive decision makers in exceptional circumstances? If not, please give reasons for your answer.

Q5: Do you agree with the proposed definition of exceptional circumstances? If not, please explain how you would define exceptional circumstances.

Q6: Do you agree with the proposed modifications to our Executive Procedures framework?

When would the new approach to decision making start?

5.35 Our Consultation closes on 17 September 2021 and we aim to publish a Policy Statement in or around November 2021. Subject to the responses to our consultation, if we decide to implement the changes as we propose, we envisage that the revised decision making framework would start in November. At that point, we propose that any cases being considered by the RDC would remain with the RDC. When considering those cases, the RDC will follow its stated procedures. This includes any cases where a warning notice has been issued before that date which refers to making representations to the RDC.

Annex 1

Our current and proposed new decision makers on statutory notices

1. This Annex contains tables which give a simplified overview of our current statutory notice decision approach to
 - Authorisations
 - Cancellations
 - Interventions
 - Enforcement
2. It also contains tables to summarise our proposed changes to the identity of the decision maker on statutory notices for those decisions. These decisions include those made under FSMA or other enactments. The details of the proposed decision maker is set out in the Handbook changes at Appendix 1.
3. There is also a table for decisions to approve commencing civil or criminal proceedings. These decisions do not involve issuing a statutory notice.

Authorisations

4. The table below illustrates the steps in the current process where representations are made. It also sets out the decision maker at each step of the process.

Table: Our Current Process – Authorisations

Step in Process	Action	Decision Maker
1	Recommendation to refuse application	FCA Team
2	Issue warning notice if agree with recommendation to refuse	Executive Procedures
3	Opportunity to make written and/or oral representations	RDC
4	Issue decision notice after hearing representations	RDC
5	Opportunity to refer refusal to the UT	

5. The table below illustrates what the proposed changes would mean for decision making on authorisation matters

Table: Our Proposed Process – Authorisations

Step in Process	Action	Decision Maker
1	Recommendation to refuse application	FCA Team
2	Issue warning notice if agree with recommendation to refuse	Executive Procedures)

Step in Process	Action	Decision Maker
3	Opportunity to make written representations Opportunity to make oral representations in exceptional circumstances	Executive Procedures
4	Issue decision notice (after considering representations where applicable)	Executive Procedures
5	Opportunity to refer refusal to the UT	

Cancellations

6. The table below illustrates the steps in the process and the decision maker at each step for decisions to issue a statutory notice to cancel.

Table: Our current process – cancellations

Step in Process	Action	Decision Maker
1	Recommendation to cancel	FCA Team
2	Issue warning notice if agree with recommendation to cancel	RDC
3	Opportunity to make written and / or oral representations	RDC
4	Issue decision notice (after considering representations where applicable)	RDC
5	Opportunity to refer cancellation to the UT	

7. The following table sets out who the decision maker would be under our proposed new approach.

Table: Our proposed process – cancellations

Step in Process	Action	Decision Maker
1	Recommendation to cancel	FCA Team
2	Issue warning notice if agree with recommendation to cancel	Executive Procedures
3	Opportunity to make written representations Opportunity to make oral representations in exceptional circumstances	Executive Procedures
4	Issue decision notice (after considering representations where applicable)	Executive Procedures
5	Opportunity to refer cancellation to the UT	

Intervention cases

8. The table below illustrates the steps in the current process and the decision maker at each step of the process.

Table: Our current process - Fundamental variation or requirement

Step in Process	Action	Decision Maker
1	Recommendation to intervene and impose fundamental variation or requirement	FCA Team
2	Issue First Supervisory Notice if agree with recommendation	RDC
3	Opportunity to make written and / or oral representations	RDC
4	Issue Second Supervisory (after considering representations where applicable)	RDC
5	Opportunity to refer to the UT	

9. The table below illustrates what the proposed changes could mean for decision making which involves a fundamental variation or requirement.

Table: Our proposed process - Fundamental variation or requirement

Step in Process	Action	Decision Maker
1	Recommendation to intervene	FCA Team
2	Issue First Supervisory Notice if agree with recommendation	Executive Procedures
3	Opportunity to make written representations Opportunity to make oral representations in exceptional circumstances	Executive Procedures
4	Issue Second Supervisory Notice (after considering representations where applicable)	Executive Procedures
5	Opportunity to refer to the UT	

10. We will continue to distinguish between Fundamental and Non- Fundamental variations or requirements. The table below illustrates the current steps in the process and the decision maker at each step for a Non-Fundamental Variation or Requirement.

Table: Our current process – Non-Fundamental variation or requirement

Step in Process	Action	Decision Maker
1	Recommendation to intervene	FCA Team
2	Issue First Supervisory Notice if agree with recommendation	Executive Procedures
3	Opportunity to make written and / or oral representations	Executive Procedures
4	Issue Second Supervisory Notice, (after considering of representations where applicable)	Executive Procedures
5	Opportunity to refer to the UT	

11. The table below illustrates the approach for decision making where the variation or requirement is not fundamental. All these decisions are already made under Executive Procedures.

Our proposed process - Non-Fundamental variation or requirement

Step in Process	Action	Decision Maker	Decision Maker
1	Recommendation to intervene	FCA Team	FCA Team
2	Issue First Supervisory Notice if agree with recommendation	Executive Procedures)	Executive Procedures
3	Opportunity to make written representations Opportunity to make oral representations in exceptional circumstances	Executive Procedures	Executive Procedures
4	Issue Second Supervisory Notice (after considering representations where applicable)	Executive Procedures	Executive Procedures
5	Opportunity to refer to the UT		

Enforcement

12. The table below illustrates the steps in our current process and the decision maker at each step of the process. We do not propose any changes to who will decide whether to issue a statutory notice on our enforcement cases. All decisions to issue statutory notices on Enforcement cases will continue to be made by the RDC.

Our process – Enforcement

Step in Process	Action	Decision Maker
1	Recommendation to impose penalty / disciplinary prohibition / sanction etc	FCA Team
2	Issue warning notice	RDC
3	Opportunity to make written and / or oral representations	RDC
4	Issue decision notice (after considering representations where applicable)	RDC
5	Opportunity to refer to the UT	

Approval to commence civil or criminal proceedings

13. The table below illustrates the steps in the current process and the decision maker at each step of the process.

Our current process – Decisions to commence civil proceedings or criminal proceedings under FSMA

Step in Process	Action	Decision Maker
1	Recommendation to commence proceedings	FCA Team

Step in Process	Action	Decision Maker
2	Decision whether to accept recommendation	RDC Chair, RDC Deputy, Or Enforcement Director (exceptional urgency)

Our current process – Decisions to commence criminal proceedings under legislation other than FSMA

Step in Process	Action	Decision Maker
1	Recommendation to commence proceedings	FCA Team
2	Decision whether to accept recommendation	RDC Chair, RDC Deputy, or Enforcement Director (exceptional urgency) or Executive Procedures (Individual or Committee)

14. The table below shows who the decision maker would be under the new framework.

Our Proposed Process – Decisions to commence civil proceedings or criminal proceedings

Step in Process	Action	Decision Maker
1	Recommendation to commence proceedings	FCA Team
2	Decision whether to accept recommendation	Executive Procedures (Individual - Enforcement Executive Director or acting Executive Director)

Annex 2

Questions in this paper

- Q1:** Do you agree with the proposal to move some statutory notice decisions from the RDC to the Executive? Please give reasons for your answer.
- Q2:** Do you agree with the categories of decision that we suggest? If not, which statutory notice decisions do you consider the RDC should keep? And which statutory notice decisions should be made under Executive Procedures?
- Q3:** Do you agree with the proposed changes to the definition of Senior Staff Committee meeting under Executive Procedures? Please give reasons for your answer
- Q4:** Do you agree with the proposal that oral representations may only be made to Executive decision makers in exceptional circumstances? If not, please give reasons for your answer.
- Q5:** Do you agree with the proposed definition of exceptional circumstances? If not, please explain how you would define exceptional circumstances.
- Q6:** Do you agree with the proposed modifications to our Executive Procedures framework?

Annex 3

Cost benefit analysis

1. Our proposals do not impose additional obligations on firms. They are not related to rule changes or guidance on rules. Under section 138I of FSMA, when the FCA wishes to introduce any new rules it must publish a cost benefit analysis along with the proposed rules. Since the requirements under section 138I are not applicable, the FCA is not required to carry out a cost benefit analysis. In any event, the FCA does not expect that the proposal will lead to any increase in costs, or the cost increase will be of minimal significance.

Impact on mutual societies

2. Where a mutual society is authorised under Part 4A FSMA, the effect on them of these changes is the same as on any other firm authorised under Part 4A FSMA, as described above. If a mutual society is not authorised under Part 4A FSMA, the new power, and consequently the changes being consulted on here, will not apply.

Annex 4

Compatibility statement

- 1.** Section 1B of FSMA requires the FCA, when discharging its general functions, as far as is reasonably possible, to act in a way that is compatible with its strategic objective and that advances one or more of its operational objectives. The FCA also needs to, so far as is compatible with acting in a way that advances the consumer protection objective or the integrity objective, carry out its general function in a way that promotes effective competition in the interests of consumers.
- 2.** The FCA's general functions include its functions in relation to making rules under FSMA and the giving of general advice. In discharging its general functions, the FCA must have regard to the regulatory principles in section 3B of FSMA.
- 3.** We are satisfied that the proposed changes are compatible with our objectives and regulatory principles. In particular, the proposed changes link to the regulatory principle that we use our resources in the most efficient and economical way.

Annex 5

Abbreviations used in this paper

Abbreviation	Description
CP	Consultation Paper
EG	Enforcement Guide
DEPP	Decision Procedures and Penalties Manual
FCA	Financial Conduct Authority
FSMA	Financial Services and Markets Act 2000
PRA	Prudential Regulation Authority
RDC	Regulatory Decisions Committee
TC	Threshold Conditions

We make all responses to formal consultation available for public inspection unless the respondent requests otherwise. We will not regard a standard confidentiality statement in an email message as a request for non-disclosure.

Despite this, we may be asked to disclose a confidential response under the Freedom of Information Act 2000. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the Information Commissioner and the Information Rights Tribunal.

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Appendix 1

Draft Handbook Text

**CHANGES TO DECISION MAKING FOR STATUTORY NOTICE PROCEDURE
INSTRUMENT 2021**

Powers exercised

- A. The Financial Conduct Authority (“the FCA”) makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 63C (Statement of policy);
 - (2) section 69 (Statement of policy);
 - (3) section 88C (Action under s.88A: statement of policy);
 - (4) section 89S (Action under s.89Q: statement of policy);
 - (5) section 93 (Statement of policy);
 - (6) section 124 (Statement of policy);
 - (7) section 131J (Imposition of penalties under section 131G: statement of policy);
 - (8) section 137T (General supplementary powers);
 - (9) section 139A (Power of the FCA to give guidance);
 - (10) section 192N (Imposition of penalties under section 192K: statement of policy);
 - (11) section 210 (Statements of policy);
 - (12) section 312J (Statement of policy);
 - (13) section 345D (Imposition of penalties on auditors or actuaries: statement of policy); and
 - (14) section 395 (The FCA’s and PRA’s procedures).
- B. The rule-making provisions listed above are specified for the purposes of section 138G(2) (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on [*date*].

Amendments to the Handbook

- D. The Decision Procedure and Penalties manual (DEPP) is amended in accordance with Annex A to this instrument.
- E. The Enforcement Guide (EG) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Changes to Decision Making for Statutory Notice Procedure Instrument 2021.

By order of the Board
[*date*]

Annex A

Amendments to the Decision Procedure and Penalties manual (DEPP)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

1 Application and Purpose

...

1.2 Introduction to statutory notices

...

The decision makers

1.2.5 G Decisions on whether to give a *statutory notice* will be taken by a ‘decision maker’. The *FCA*’s assessment of who is the appropriate decision maker is subject to the requirements of section 395 of the *Act* and will depend upon the nature of the decision, including its complexity, importance and urgency. References to the ‘decision maker’ in *DEPP* are to:

- (1) ~~the Regulatory Decisions Committee (RDC)~~ FCA staff under executive procedures; or
- (2) ~~FCA staff under executive procedures~~ the Regulatory Decisions Committee (RDC); or
- (3) *FCA* staff under the *settlement decision procedure*.

...

2 Statutory notices and the allocation of decision making

...

2.1 Statutory notices

...

Consistent decision making

...

2.1.4A G If a *statutory notice* decision is referred to the *RDC* which would otherwise be taken by *executive procedures* in accordance with *DEPP* 2.1.4G, the *RDC* will follow the procedure as set out at *DEPP* 3.2.

...

2.3 Decision notices and second supervisory notices

Approach of decision maker

...

2.3.1A G Notwithstanding DEPP 2.3.1G(2), FCA staff under executive procedures who are asked to decide whether to give a decision notice or second supervisory notice will consider oral representations only in exceptional circumstances where they determine that prohibiting oral representations are likely to impact on the fairness of the decision. This may include (but is not limited to) circumstances where:

- (1) the subject of the decision notice or second supervisory notice is not reasonably able to make written representations due to relevant personal circumstances; and/or
- (2) oral representations are required due to the urgency or complexity of the matter to be decided.

...

2.5 Provision for certain categories of decision

...

Different decision makers

2.5.2 G ~~The~~ In some circumstances, the decision to give a warning notice and a decision notice in a particular matter will often not be taken by the same decision maker. Certain types of action require that the warning notice decision be taken by FCA staff under executive procedures and the decision notice decision be taken by the RDC. Similarly For example, in enforcement cases the RDC might take the decision to give a warning notice, but the decision to give a decision notice could be taken by the settlement decision makers on the basis that the person concerned does not contest the action proposed (see DEPP 5).

...

2.5.5 G ~~If representations are made in response to a warning notice proposing any of the action actions set out at DEPP 2.5.3G(1), DEPP 2.5.3G(4), DEPP 2.5.3G(4A), DEPP 2.5.3G(4B) or DEPP 2.5.3G(5), then the RDC will take the decision to give a decision notice. DEPP 2.5.3G, then FCA staff under executive procedures will take the decision to give a decision notice.~~

2.5.5A G ~~If representations are made in response to a warning notice proposing the action set out at DEPP 2.5.3G(3B), FCA staff under executive procedures will take the decision to give a decision notice. [deleted]~~

- 2.5.6 G ~~If representations are made in response to a *warning notice* proposing the action set out at *DEPP 2.5.3G(2)*, *DEPP 2.5.3G(3)*, *DEPP 2.5.3G(3A)*, or *DEPP 2.5.3G(6)*, then the *RDC* will take the decision to give a *decision notice* if the action involves a fundamental variation or requirement (see *DEPP 2.5.8G*). Otherwise, the decision to give the *decision notice* will be taken by *FCA* staff under *executive procedures*. [deleted]~~

...

FCA's own-initiative powers

- 2.5.7 G ~~The *RDC FCA* staff under *executive procedures* will take the decision to give a *supervisory notice* exercising the *FCA's own-initiative powers* (by removing a regulated activity, by imposing a limitation or requirement or by specifying a narrower description of regulated activity) if the action involves a fundamental variation or requirement, including where the action involves a fundamental variation or requirement (see *DEPP 2.5.8G*). Otherwise, the decision to give the *supervisory notice* will be taken by *FCA* staff under *executive procedures*.~~

- 2.5.7A G ~~Notwithstanding *DEPP 2.5.7G*, *FCA* staff under *executive procedures* will be the decision maker ~~whenever~~ when a *firm* agrees not to contest the *FCA's* exercise of its *own-initiative powers*, ~~including where the *FCA's* action involves a fundamental variation or requirement, and when the exercise of the *FCA's own-initiative powers* is contested by a *firm*.~~~~

- 2.5.7B G Any decision made by *FCA* staff under *executive procedures* to give a *supervisory notice* exercising the *FCA's own-initiative powers* (by removing a regulated activity, by imposing a limitation or requirement or by specifying a narrower description of regulated activity) which involves a fundamental variation or requirement (see *DEPP 2.5.8G*) will be taken by a member of *FCA* staff of at least Director level (which may include an acting Director).

...

The FCA's power to vary SMF manager's approval on its own initiative

- 2.5.8A G ~~The *RDC FCA* staff under *executive procedures* will take the decision under section 63ZB of the *Act* to vary an approval given to an *SMF manager* (by imposing a condition, varying a condition, removing a condition or limiting the period for which the approval is to have effect).~~
- 2.5.8B G ~~Notwithstanding *DEPP 2.5.7G*, *FCA* staff under *executive procedures* will be the decision maker ~~whenever~~ when all of the interested parties (as defined by section 63ZC(6) of the *Act*) agree not to contest the *FCA's* exercise of its power under section 63ZB of the *Act* and when the exercise of such powers is contested by any of the interested parties (as so defined).~~

...

Decisions relating to imposition of limitations or other restrictions of sponsors and primary information providers

- 2.5.11A G Under section 88(4)(aa) of the *Act*, if the *FCA* proposes to impose limitations or other restrictions on the services to which a *sponsor's* approval relates, it must give him a *warning notice*. If, after considering any representations made in response to the *warning notice*, the *FCA* decides to impose limitations or other restrictions on the services to which a *sponsor's* approval relates, it must give him a *decision notice*. ~~Where the *sponsor* has requested or otherwise agrees to the limitation or other restriction, *FCA* staff under *executive procedures* will take the decision to give the *warning notice* and *decision notice*~~ where the *sponsor* has requested or otherwise agrees to the limitation or other restriction and where the *sponsor* contests the imposition of the limitation or other restriction. ~~Otherwise, the *RDC* will take the decision to give the *warning notice* and *decision notice*.~~
- 2.5.11B G If the *FCA* is proposing or deciding to refuse a *sponsor's* application for the withdrawal or variation of a limitation or other restriction on the services to which a *sponsor's* approval relates under section 88(8)(d) of the *Act*, the decision maker will be *FCA* staff under *executive procedures*, ~~where *FCA* staff decided to impose the limitation or other restriction.~~ ~~Otherwise, the *RDC* will take the decision to give the *warning notice* and *decision notice*.~~
- 2.5.11C G Under section 89P(5)(b) of the *Act*, if the *FCA* proposes to impose limitations or other restrictions on the dissemination of *regulated information* to which a *primary information provider's* approval relates, it must give him a *warning notice*. If, after considering any representations made in response to the *warning notice*, the *FCA* decides to impose limitations or other restrictions on the dissemination of *regulated information* to which a *primary information provider's* approval relates, it must give him a *decision notice*. ~~Where the *primary information provider* has requested or otherwise agrees to the limitation or other restriction, *FCA* staff under *executive procedures* will take the decision to give the *warning notice* and *decision notice*~~ where the *primary information provider* has requested or otherwise agrees to the limitation or other restriction and where the *primary information provider* contests the imposition of the limitation or other restriction. ~~Otherwise, the *RDC* will take the decision to give the *warning notice* and *decision notice*.~~
- 2.5.11D G Under section 89P(9)(d) of the *Act*, if the *FCA* is proposing or deciding to refuse a *primary information provider's* application for the withdrawal or variation of a limitation or other restriction on the dissemination of *regulated information* to which a *primary information provider's* approval relates, the decision maker will be *FCA* staff under *executive procedures*, ~~where *FCA* staff decided to impose the limitation or other restriction.~~ ~~Otherwise, the *RDC* will take the decision to give the *warning notice* and *decision notice*.~~

Modified procedures in collective investment scheme and certain other cases

- 2.5.12 G *FCA* staff will usually inform or discuss with the *person* concerned any action they contemplate before they recommend to ~~the RDC~~ *FCA* staff under executive procedures that the *FCA* takes formal action. The *FCA* may also be invited to exercise certain powers by the *persons* who would be affected by the exercise of those powers. In these circumstances ~~if such decisions, including those referred to in DEPP 2.5.13G, will be taken by FCA staff under executive procedures~~ if the *person* concerned has agreed to or accepted the action proposed ~~then the decisions referred to in DEPP 2.5.13G will be taken by FCA staff under executive procedures rather than by the RDC~~ and if the proposed action is not agreed.

...

- 2.5.15 G A decision to give a *warning notice* or *decision notice* refusing an application for an *authorisation order* declaring a *scheme* to be an *AUT*, *ACS* or *ICVC* or an *AUT*, *ACS* or *ICVC* to be a money market fund ~~will be taken by the RDC only if the application is by an authorised fund manager who is not the operator of an existing AUT, ACS or ICVC. Otherwise, the decision to give the warning notice or decision notice will be taken by FCA staff under executive procedures, including if the application is by an authorised fund manager who is not the operator of an existing AUT, ACS or ICVC.~~

...

Notices under other enactments

...

- 2.5.18 G Some of the distinguishing features of notices given under enactments other than the *Act* are as follows:

...

- (5) The decision to give a written notice under section 55XA(1) of the *Act* will be taken by *FCA* staff under *executive procedures*. If the applicant decides to seek a review, by the *FCA*, of that decision, they can make representations to ~~the RDC~~ *FCA* staff under executive procedures. ~~If the RDC FCA staff under executive procedures then decides~~ decide under section 55XA(5) of the *Act* to confirm the first decision, or take a different decision of the type described by section 55XA(1) of the *Act*, it must give the applicant a written notice.
- (5A) The decision to impose or vary a direction under regulation 74C of the *Money Laundering Regulations* ~~will be taken by the RDC, if the direction involves a fundamental imposition or variation. Otherwise, the decision to give the supervisory notice will be taken by FCA staff under executive procedures, including if the direction involves~~

a fundamental imposition or variation. *FCA* staff under *executive procedures* will be the decision maker ~~whenever~~ when a *cryptoasset business* does not contest the direction and when the direction is contested by a *cryptoasset business*. A fundamental imposition or variation of a direction means:

- (a) preventing a *cryptoasset business* from undertaking *cryptoasset business*; or
 - (b) imposing or varying a direction in relation to the *cryptoasset business*' assets, or refusing an application to vary or cancel such a direction.
- (6) *CRA Regulation*: Where the *FCA* is exercising its powers to refuse an application for registration under articles 16 or 17, or to refuse an application made by a *credit rating agency* to withdraw its registration under article 20(3), it must give a written notice in accordance with article 18(2). In these circumstances the decision to give a written notice under article 18(2) will be taken by *FCA* staff under *executive procedures*.

Where the *FCA* is exercising its powers to withdraw the registration of a *credit rating agency* on the *FCA*'s own initiative under article 20(1) or (2), or to give a direction under article 24(1), it must give a written notice in accordance with article 18(2). In these circumstances the decision to give a written notice under article 18(2) will be taken by ~~the RDC~~ *FCA* staff under *executive procedures*.

Upon receipt of a written notice under article 18(2) the *credit rating agency* may decide to seek a review or to refer the matter directly to the *Tribunal* under article 18A.

If the *credit rating agency* decides to seek a review of the decision set out in the article 18(2) notice, they can make representations to ~~the RDC~~ *FCA* staff under *executive procedures*. If ~~the RDC decides~~ *FCA* staff under *executive procedures* decide to maintain the original decision, the *credit rating agency* may refer the ~~RDC's~~ decision to do so to the *Tribunal*.

- (7) *Trade Repositories (EU Exit) Regulations*: Where the *FCA* is exercising its powers to refuse an application for registration of a *trade repository* under article 58 of *EMIR* or to refuse an application made by a *trade repository* to withdraw its registration under article 71(3) of *EMIR*, it must give a written notice in accordance with article 71a(6) of *EMIR*. In these circumstances the decision to give a written notice under article 71a(6) will be taken by *FCA* staff under *executive procedures*.

Where the *FCA* is exercising its powers to withdraw the registration of a trade repository on the *FCA*'s own initiative under article 71(1) or (2), it must give a written notice in accordance with article 71a(6). In these circumstances the decision to give a written notice

under article 71a(6) will be taken by ~~the RDC~~ FCA staff under executive procedures.

Upon receipt of a written notice under article 71a(6) the credit rating agency may decide to seek a review or to refer the matter directly to the *Tribunal* under article 71b.

If the *trade repository* decides to seek a review of the decision set out in the article 71a(6) notice, they can make representations to ~~the RDC~~ FCA staff under executive procedures. If ~~the RDC decides~~ FCA staff under executive procedures decide to maintain the original decision, the trade repository may refer the ~~RDC's~~ decision to do so to the *Tribunal*.

- (8) *Securitisation Regulation* (as amended by the *Securitisation (Amendment) (EU Exit) Regulations*): where the *FCA* exercises its powers to refuse an application for registration of a *securitisation repository* under article 12, or to refuse an application made by a *securitisation repository* to withdraw its registration under article 13a, it must give a written notice in accordance with article 13(6). In these circumstances, the decision to give a written notice under article 13(6) will be taken by *FCA* staff under *executive procedures*.

Where the *FCA* exercises its powers to withdraw the registration of a *securitisation repository* on its own initiative under article 13a, it must give a written notice in accordance with article 13(6)(b). In these circumstances, the decision to give a written notice under article 13(6)(b) will be taken by ~~the RDC~~ FCA staff under executive procedures.

Upon receipt of a written notice under regulation 13a, the *securitisation repository* may decide to seek a review or to refer the matter to the *Tribunal*. If the *securitisation repository* decides to seek a review of the decision set out in the regulation 13a notice, they can make representations to ~~the RDC~~ FCA staff under executive procedures. If ~~the RDC decides~~ FCA staff under executive procedures decide to maintain the original decision, the *securitisation repository* may refer the ~~RDC's~~ decision to do so to the *Tribunal*.

- (9) *Securities Financing Transactions Regulation* (as amended by the *SFTR (EU Exit) Regulations*): where the *FCA* is exercising its powers to refuse an application for registration of a *trade repository* under article 7 of the *Securities Financing Transactions Regulation* or to refuse an application made by a *trade repository* to withdraw its registration under article 10(3), it must give a written notice in accordance with article 10a(6). In these circumstances the decision to give a written notice under article 10a(6) will be taken by *FCA* staff under *executive procedures*.

Where the *FCA* is exercising its powers to withdraw the registration of a *trade repository* on the *FCA's* own initiative under article 10(1) or 10(2), it must give a written notice in accordance with article

10a(6)(b). In these circumstances, the decision to give a written notice under article 10a(6)(b) will be taken by ~~the RDC~~ FCA staff under executive procedures.

Upon receipt of a written notice under article 10 the *trade repository* may decide to seek a review or to refer the matter directly to the *Tribunal* under article 10b.

If the *trade repository* decides to seek a review of the decision set out in the article 10 notice, they can make representations to ~~the RDC~~ FCA staff under executive procedures. If ~~the RDC~~ decides FCA staff under executive procedures decide to maintain the original decision, the trade repository may refer the ~~RDC's~~ decision to do so to the *Tribunal*.

**2 Annex
1G**

Warning notices and decision notices under the Act and certain other enactments

Note: Third party rights and access to *FCA* material apply to the powers listed in this Annex where indicated by an asterisk * (see *DEPP 2.4*)

Section of the Act	Description	Handbook reference	Decision maker
...
55X(2)	when the <i>FCA</i> is proposing to refuse an application for the variation of a <i>requirement</i> imposed under section 55L or for the imposition of a new <i>requirement</i>		<i>RDC or executive procedures</i> See <i>DEPP 2.5.6G</i> <u><i>Executive procedures</i></u>
55X(4)(a) 55X(4)(b)	when the <i>FCA</i> is deciding to grant an application for a <i>Part 4A permission</i> with a <i>limitation</i> or a <i>requirement</i> which was not applied for, or with a narrower description of <i>regulated activity</i> than that applied for		<i>RDC or executive procedures</i> See <i>DEPP 2.5.6G</i> <u><i>Executive procedures</i></u>
55X(4)(c) 55X(4)(d)	when the <i>FCA</i> is deciding to grant an application to vary a <i>firm's Part 4A permission</i> but, other than as part of the application, to restrict the <i>Part 4A permission</i> (either by imposing a <i>limitation</i> or <i>requirement</i> which was not applied for or by specifying a narrower description of <i>regulated activity</i> than that applied for)	<i>SUP 6</i>	<i>RDC or executive procedures</i> See <i>DEPP 2.5.6G</i> <u><i>Executive procedures</i></u>
...			

55X(4)(f)	when the <i>FCA</i> is deciding to refuse an application for a <i>Part 4A permission</i>		RDC or executive procedures <u>Executive procedures</u> See <i>DEPP 2.5.5G</i>
55X(4)(f)	when the <i>FCA</i> is deciding to refuse an application to vary a <i>firm's Part 4A permission</i>	<i>SUP 6</i>	RDC or executive procedures See <i>DEPP 2.5.6G</i> <u>Executive procedures</u>
55X(4)(f)	when the <i>FCA</i> is deciding to refuse an application to cancel a <i>firm's Part 4A permission</i>	<i>SUP 6</i>	RDC or executive procedures <u>Executive procedures</u> See <i>DEPP 2.5.5G</i>
55X(4)(f)	When the <i>FCA</i> is deciding to refuse an application for the variation of a <i>requirement</i> imposed under section 55L or for the imposition of a new <i>requirement</i>		RDC or RDC or executive procedures See <i>DEPP 2.5.6G</i> <u>Executive procedures</u>
55Z(1) 55Z(2)	when the <i>FCA</i> is proposing or deciding to cancel a <i>firm's Part 4A permission</i> otherwise than at its request *		RDC <u>Executive procedures</u>
...			
62(3)	when the <i>FCA</i> is deciding to refuse an application for approval of a <i>person</i> performing a <i>controlled function</i> or to grant the application subject to conditions or for a limited period (or both)	<i>SUP 10A</i> and <i>SUP 10C</i>	RDC or executive procedures <u>Executive procedures</u> See <i>DEPP 2.5.5G</i>
63(3)/(4)	when the <i>FCA</i> is proposing or deciding to withdraw approval from an <i>approved person</i> *		RDC <u>Executive procedures</u>

...			
63ZA(8) and 62(3)	when the <i>FCA</i> is deciding to refuse an application for variation of an approval granted to an <i>SMF manager</i> , subject to conditions	<i>SUP 10C</i>	<i>RDC</i> or <u><i>executive procedures</i></u> <u><i>Executive procedures</i></u> See <i>DEPP 2.5.5G</i>
...			
88(4)(a) 88(6)(a) 88(8)(a)	when the <i>FCA</i> is proposing or deciding to refuse a <i>person's</i> application for approval as a <i>sponsor</i>	<i>LR 8</i>	<i>RDC</i> <u><i>Executive procedures</i></u>
...			
88(4)(a) 88(6)(a) 88(8)(d)	when the <i>FCA</i> is proposing or deciding to refuse a <i>sponsor's</i> application for the withdrawal or variation of a limitation, or other restriction on the services to which a <i>sponsor's</i> approval relates		<i>RDC</i> or <u><i>executive procedures</i></u> <u><i>Executive procedures</i></u> See <i>DEPP 2.5.11BG</i>
88(4)(aa) 88(6)(aa)	when the <i>FCA</i> is proposing or deciding to impose limitations or restrictions on the services to which a <i>sponsor's</i> approval relates		<i>RDC</i> or <u><i>executive Executive procedures</i></u> See <i>DEPP 2.5.11AG</i>
88(4)(b) 88(6)(b)	when the <i>FCA</i> is proposing or deciding to cancel a <i>sponsor's</i> approval as a <i>sponsor</i> otherwise than at the <i>sponsor's</i> request*		<i>RDC</i> <u><i>Executive procedures</i></u>
...			
89P(5)(a) 89P(7)(a) 89P(9)(a)	when the <i>FCA</i> is proposing or deciding to refuse a <i>person's</i> application for approval as		<i>RDC</i> <u><i>Executive procedures</i></u>

	a <i>primary information provider</i>		
...			
89P(5)(a) 89P(7)(a) 89P(9)(d)	when the <i>FCA</i> is proposing or deciding to refuse a <i>primary information provider's</i> application for the withdrawal or variation of a limitation or other restriction on the dissemination of <i>regulated information</i> to which a <i>primary information provider's</i> approval relates		<i>RDC</i> or <i>executive procedures</i> <u><i>Executive procedures</i></u> See <i>DEPP</i> 2.5.11DG
89P(5)(b) 89P(7)(b)	when the <i>FCA</i> is proposing or deciding to impose <i>limitations</i> or other restrictions on the dissemination of <i>regulated information</i> to which a <i>primary information provider's</i> approval relates.		<i>RDC</i> or <i>executive Executive procedures</i> See <i>DEPP</i> 2.5.11AG
89P(5)(c) 89P(7)(c)	when the <i>FCA</i> is proposing or deciding to cancel a <i>person's</i> approval as a <i>primary information provider</i> otherwise than at the <i>primary information provider's</i> request		<i>RDC</i> <u><i>Executive procedures</i></u>
...			
245(1)/(2)	when the <i>FCA</i> is proposing or deciding to refuse an application for an <i>authorisation order</i> declaring a <i>unit trust scheme</i> to be an <i>AUT</i> or an <i>AUT</i> to be a money market fund	<i>COLL 2</i>	<i>RDC</i> or <i>executive procedures</i> <u><i>Executive procedures</i></u> See <i>DEPP</i> 2.5.15G
...			

255(1)/(2)	when the <i>FCA</i> is proposing or deciding to make an order under section 254 revoking the <i>authorisation order</i> of an <i>AUT</i> *	None, but see Chapter 14 of the Regulatory Guide <i>EG</i> .	<i>RDC</i> <u><i>Executive procedures</i></u>
...			
256(4)/(5)	when the <i>FCA</i> is proposing or deciding to refuse a request for the revocation of the <i>authorisation order</i> of an <i>AUT</i>		<i>RDC</i> <u><i>Executive procedures</i></u>
260(1)/(2)	when the <i>FCA</i> , on an application to revoke or vary a direction under section 257, proposes or decides to refuse to revoke or vary the direction or proposes or decides to vary the direction otherwise than in accordance with the application		<i>RDC</i> <u><i>Executive procedures</i></u>
261G(1)/(2)	when the <i>FCA</i> is proposing or deciding to refuse an application for an <i>authorisation order</i> declaring a <i>scheme</i> to be an <i>ACS</i> or an <i>ACS</i> to be a money market fund	<i>COLL 2</i>	<i>RDC</i> or <i>executive procedures</i> <u><i>Executive procedures</i></u> See <i>DEPP</i> 2.5.15G
...			
261V(1)/(2)	when the <i>FCA</i> is proposing or deciding to make an order under section 261U revoking the <i>authorisation order</i> of an <i>ACS</i> *	None, but see Chapter 14 of the Regulatory Guide <i>EG</i> .	<i>RDC</i> <u><i>Executive procedures</i></u>
...			

261W(4)/(5)	when the <i>FCA</i> is proposing or deciding to refuse a request for the revocation of the <i>authorisation order</i> of an <i>ACS</i>		<u><i>RDC Executive procedures</i></u>
261Z2(1)/(2)	when the <i>FCA</i> , on an application to revoke or vary a direction under section 261X, proposes or decides to refuse to revoke or vary the direction or proposes or decides to vary the direction otherwise than in accordance with the application		<u><i>RDC Executive procedures</i></u>
...			
280(1)/(2)	when the <i>FCA</i> is proposing or deciding to revoke a section 272 order in respect of a <i>recognised scheme</i> *		<u><i>RDC Executive procedures</i></u>
...			
331(1)/(3)	when the <i>FCA</i> is proposing or deciding to make an order disapplying the exemption from the <i>general prohibition</i> under section 327*		<u><i>RDC Executive procedures</i></u>
331(7)/(8)	when the <i>FCA</i> is proposing or deciding to refuse an application for the variation or revocation of an order made under section 329*		<u><i>RDC Executive procedures</i></u>
...			

Co-operative and Community	Description	Handbook reference	Decision maker
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Benefit Societies Act (Northern Ireland) 1969			
...			
Sections 15 and 16	where the <i>FCA</i> is proposing to cancel or suspend the registration of a <i>registered society</i> relying on section 15 (1)(c)(ii)		<i>Executive procedures</i> where no representations are made in response to a notice of proposed cancellation, otherwise by the <i>RDC</i> <u><i>Executive procedures</i></u>
Section 65	where the <i>FCA</i> is proposing to petition for the winding up of a <i>registered society</i>		<i>RDC</i> <u><i>Executive procedures</i></u>
Section 75	where the <i>FCA</i> is proposing to prosecute a <i>registered society</i>		<i>Executive procedures</i> or <i>RDC</i>

Credit Unions (Northern Ireland) Order 1985	Description	Handbook reference	Decision maker
...			
Articles 60(1) and 61(1)	where the <i>FCA</i> is proposing to cancel or suspend the registration of a <i>Northern Ireland credit union</i> relying on section 60(1)(c)(ii)		<i>Executive procedures</i> where no representations are made in response to a notice of proposed cancellation, otherwise by the <i>RDC</i>

Article 63	where the <i>FCA</i> is proposing to petition for the winding up of a <i>Northern Ireland credit union</i>		RDC <u>Executive procedures</u>
Article 76	where the <i>FCA</i> is proposing to prosecute a <i>Northern Ireland credit union</i>		<i>Executive procedures</i> or RDC

Section of the Friendly Societies Act 1992	Description	Handbook reference	Decision maker
58A(1)(a)/(3)(a)	when the <i>FCA</i> is proposing or deciding to give a direction under section 54 or section 55 requiring a <i>friendly society</i> to take or refrain from taking steps where certain activities have become disproportionate to those of the <i>friendly society</i> group or, as the case may be, the society, or varying such a direction other than at the	See <i>DEPP</i> 2.5.18G(3)	RDC <u>Executive procedures</u>

	request of the society*		
58A(1)(b)/(3)(b)	when the <i>FCA</i> is proposing or deciding to give a direction under section 90 providing for a transfer of the engagements of a <i>friendly society</i> *		RDC <u>Executive procedures</u>
85(4A)	when the <i>FCA</i> , on an amalgamation between <i>friendly societies</i> each of which has a <i>Part 4A permission</i> , notifies the successor society of the terms of its <i>Part 4A permission</i>		RDC or executive procedures <u>Executive procedures</u> See DEPP 2.5.12G

OEIC Regulation s reference	Description	Handbook reference	Decision maker
Regulation 16(1)(2)	when the <i>FCA</i> is proposing or deciding to refuse an application for an <i>authorisation order</i> in respect of a proposed <i>ICVC</i> or an <i>ICVC</i> to be a money market fund	<i>COLL 2</i>	RDC or executive procedures <u>Executive procedures</u> See DEPP 2.5.15G
...			

Regulation 24(1)/(2)	when the <i>FCA</i> is proposing or deciding to revoke an <i>authorisation order</i> relating to an <i>ICVC</i> under regulation 23(1)*		<u><i>RDC Executive procedures</i></u>
Regulation 28(1)/(2)	when the <i>FCA</i> is proposing or deciding to refuse an application to revoke or vary a direction in accordance with a request under regulation 25(7) or to vary the direction in accordance with the application		<u><i>RDC Executive procedures</i></u>
...			

Regulated Activities Order	Description	Handbook reference	Decision maker
Article 95(2)/(3)	when the <i>FCA</i> is proposing or deciding not to include, or to remove, an <i>appointed representative</i> from the <i>Register</i> *	<i>SUP</i> 12.4.10G	<u><i>RDC Executive procedures</i></u>
Article 95(7)/(8)	when the <i>FCA</i> is proposing or deciding to refuse an application to revoke a determination not to include, or to remove, an <i>appointed representative</i> from the <i>Register</i> *	<i>SUP</i> 12.4.10G	<u><i>RDC Executive procedures</i></u>

Payment Services Regulations	Description	Handbook reference	Decision maker
...			
Regulations 9(8)(a), 15 and 19	when the <i>FCA</i> is deciding to refuse an application for authorisation as an <i>authorised payment institution</i> , or for registration of a <i>small payment institution</i> , or for registration as an <i>account information service provider</i> , or to impose a requirement, or to refuse an application to vary an authorisation or existing registration		<i>Executive procedures</i> where no representations are made in response to a warning notice, otherwise by the RDC
Regulations 10(2), 10(3)(a), 15 and 19	when the <i>FCA</i> is proposing or deciding to either cancel an <i>authorised payment institution's</i> authorisation, or to cancel a <i>small payment institution</i> or <i>account information service provider's</i> registration, otherwise than at that institution's own request*		<u><i>RDC Executive procedures</i></u>
...			
Regulation 34(9)(a)	when the <i>FCA</i> is deciding to refuse an application for		<i>Executive procedures</i> where no representations are made in response to a

	registration as an <i>agent</i>		warning notice, otherwise by the RDC
Regulations 35(2) and 35(3)(a)	when the <i>FCA</i> is proposing or deciding to remove an <i>agent</i> from the <i>Financial Services Register</i> otherwise than at the request of a <i>payment institution</i> *		RDC <u><i>Executive procedures</i></u>
...			
Schedule 5 paragraph 5(6)	when the <i>FCA</i> is proposing to refuse an application to vary the period, event or condition of a prohibition, or to remove a prohibition, or to vary or remove a restriction		<i>Executive procedures</i>
Schedule 5 paragraph 5(7)	when the <i>FCA</i> is deciding to refuse an application to vary the period, event or condition of a prohibition, or to remove a prohibition, or to vary or remove a restriction		<i>Executive procedures, where no representations are made in response to a warning notice, otherwise by the RDC</i>
...			

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer)	Description	Handbook reference	Decision maker

Regulations 2017			
Regulations 25(6), 25(9) and 25 (10)(b)	when the <i>FCA</i> is exercising its power to give a direction		<i>RDC</i> <u><i>Executive procedures</i></u>
...			
Regulation 59(4)(b)	when the <i>FCA</i> is deciding to refuse an application for registration		<i>RDC</i> or <i>executive procedures</i> <u><i>Executive procedures</i></u> (Note 1)
Regulations 60(8) and 60(9)	when the <i>FCA</i> is proposing or deciding to suspend or cancel the registration of a person registered under the <i>Money Laundering Regulations</i>		<i>RDC</i> <u><i>Executive procedures</i></u>
...			
<p>Note:</p> <p>(1) The <i>RDC</i> will take the decision to give the notice under regulation 59(4)(b) if representations are made in response to the notice under regulation 59(3)(b) proposing to refuse the registration application.</p>			

...

Electronic Money Regulations	Description	Handbook reference	Decision maker
...			
Regulations 9(7)(a) and 15	when the <i>FCA</i> is deciding to refuse an application for authorisation as an <i>authorised electronic money institution</i> , or for registration as a <i>small electronic money institution</i> , or		<i>Executive procedures</i> where no representations are made in response to a warning notice; otherwise by the <i>RDC</i>

	impose a requirement or refuse to vary an authorisation or registration		
Regulations 10(4), 10(5)(a) and 15	when the <i>FCA</i> is proposing or deciding to either cancel an <i>authorised electronic money institution's</i> authorisation, or to cancel a <i>small electronic money institution's</i> registration otherwise than at that institution's own request *		<u><i>RDC Executive procedures</i></u>
Regulations 11(6), 11(9), 11(10)(b) and 15	when the <i>FCA</i> is exercising its powers to vary an <i>electronic money institution's</i> authorisation or vary a <i>small electronic money institution's</i> registration on its own initiative		<i>RDC</i> <u><i>Executive procedures (Note 1)</i></u>
...			
Regulation 34(10)(a)	when the <i>FCA</i> is deciding to refuse an application for registration as an <i>agent</i>		<u><i>Executive procedures</i></u> where no representations are made in response to a warning notice, otherwise by the <i>RDC</i>
Regulations 35(2) and 35(3)(a)	when the <i>FCA</i> is proposing or deciding to remove an <i>agent</i> from the <i>Financial Services Register</i> otherwise than at the request of the <i>electronic money institution</i> *		<u><i>Executive procedures</i></u> <i>RDC</i>

...			
Regulation 74(7)	when the <i>FCA</i> is proposing to decide not to include a person on the register		<i>Executive procedures</i>
Regulation 74(8) (a)	when the <i>FCA</i> is deciding not to include a person on the register		<i>Executive procedures</i> where no representations are made in response to a warning notice; otherwise by the <i>RDC</i>
Regulation 74(8) (a)	when the <i>FCA</i> is deciding not to include a person on the register		<i>Executive procedures</i> where no representations are made in response to a warning notice; otherwise by the <i>RDC</i>
Schedule 2A paragraph 5(6)	when the <i>FCA</i> is proposing to refuse an application to vary the period, event or condition of a prohibition, or to remove a prohibition, or to vary or remove a restriction		<i>Executive procedures</i>
Schedule 2A paragraph 5(7)	when the <i>FCA</i> is deciding to refuse an application to vary the period, event or condition of a prohibition, or to remove a prohibition, or to vary or remove a restriction		<i>Executive procedures</i> , where no representations are made in response to a warning notice; otherwise by the <i>RDC</i>
...			
Notes:			

(1) The *RDC* will take the decision to give the notice exercising the *FCA*'s own initiative power if the action involves:

- (a) removing a type of activity from an authorisation or registration; or
- (b) refusing an application to include a type of activity in an authorisation or registration; or
- (c) restricting a person from taking on new business, dealing with a particular category of customer or refusing an application to vary or cancel such a restriction; or
- (d) imposing or varying a capital requirement, or refusing an application to vary or cancel such a requirement. [deleted]

(2) The *Electronic Money Regulations* do not require third party rights and access to *FCA* material when the *FCA* exercises this power. However, the *FCA* generally intends to allow for third party rights and access to material when exercising this power.

...

Alternative Investment Fund Managers Regulations 2013	Description	Handbook reference	Decision maker
...			
Regulation 13(2)(a), article 14b of the <i>RVECA</i> regulation and article 15b of the <i>SEF</i> regulation	where the <i>FCA</i> decides to refuse an application for entry on the register of <i>small registered UK AIFMs</i>		<i>Executive procedures where no representations are made in response to a warning notice otherwise by the RDC</i>
Regulation 18(1)	where the <i>FCA</i> proposes to revoke the registration of a <i>small registered UK AIFM</i> including, where applicable, its registration as a		<i>RDC Executive procedures</i>

	<i>SEF manager or RVECA manager</i>		
Regulation 18(2)(a)	where the <i>FCA</i> decides to revoke the registration of a <i>small registered UK AIFM</i> including where applicable its registration as a <i>SEF manager</i> or <i>RVECA manager</i>		<u><i>RDC Executive procedures</i></u>
...			
Regulation 23B(2)(a)	where the <i>FCA</i> decides to refuse an application made by a <i>UK AIF</i> for authorisation as a <i>UKLTIF</i>		<i>Executive procedures</i> where no representations are made in response to a warning notice otherwise by the <i>RDC</i>
Regulation 23C(1)	where the <i>FCA</i> proposes to revoke the authorisation of a <i>UK LTIF</i>		<u><i>RDC Executive procedures</i></u>
Regulation 23C(2)(a)	where the <i>FCA</i> decides to revoke the authorisation of a <i>UK LTIF</i>		<u><i>RDC Executive procedures</i></u>
...			
Regulation 23E(2)(a)	where the <i>FCA</i> decides to refuse an application for registration as a <i>qualifying social entrepreneurship fund</i> or a <i>qualifying venture capital fund</i>		<i>Executive procedures</i> where no representations are made in response to a warning notice otherwise by the <i>RDC</i>
Regulation 23F(1)	where the <i>FCA</i> proposes to revoke the registration of a <i>qualifying social entrepreneurship fund</i> or a <i>qualifying</i>		<u><i>RDC Executive procedures</i></u>

	<i>venture capital fund</i>		
Regulation 23F(2)(a)	where the <i>FCA</i> decides to revoke the registration of a <i>qualifying social entrepreneurship fund</i> or a <i>qualifying venture capital fund</i>		<u><i>RDC Executive procedures</i></u>
...			
Regulation 23H(2)(a)	where the <i>FCA</i> decides to refuse an application for authorisation as a money market fund		<i>Executive procedures</i> where no representations are made in response to a warning notice otherwise by the <i>RDC</i>
Regulation 23I(1)	where the <i>FCA</i> proposes to revoke the authorisation of a money market fund		<u><i>RDC Executive procedures</i></u>
Regulation 23I(2)(a)	where the <i>FCA</i> decides to revoke the authorisation of a money market fund		<u><i>RDC Executive procedures</i></u>
...			
Regulation 56	where the <i>FCA</i> is proposing to revoke a <i>full-scope UK AIFM's</i> approval to <i>market</i> an <i>AIF</i> under regulation 54		<u><i>RDC Executive procedures</i></u>
Regulation 56	where the <i>FCA</i> is deciding to revoke a <i>full-scope UK AIFM's</i> approval to <i>market</i> an <i>AIF</i> under regulation 54		<u><i>RDC Executive procedures</i></u>

Regulation 62(2)	where the <i>FCA</i> proposes to revoke an <i>AIFM</i> 's entitlement to market an <i>AIF</i>		<i>RDC</i> <u><i>Executive procedures</i></u>
Regulation 62(3)	where the <i>FCA</i> decides to revoke the entitlement of an <i>AIFM</i> to market an <i>AIF</i>		<i>RDC</i> <u><i>Executive procedures</i></u>
...			

...

The Co-operative and Community Benefit Societies Act 2014	Description	Handbook reference	Decision maker
...			
Sections 6 to 8	where the <i>FCA</i> is proposing to cancel or suspend the registration of a <i>registered society</i> relying on condition C, D or E in section 5		<i>Executive procedures</i> where no representations are made in response to a notice of proposed cancellation, otherwise by the <i>RDC</i>
Section 123	where the <i>FCA</i> is proposing to petition for the winding up of a <i>registered society</i>		<i>RDC</i> <u><i>Executive procedures</i></u>
Section 132	where the <i>FCA</i> is proposing to prosecute a <i>registered society</i>		<i>Executive procedures</i> or <i>RDC</i>

...

The Mortgage Credit Directive Order 2015	Description	Handbook reference	Decision maker
...			
Article 11(2)	when the <i>FCA</i> is deciding to refuse an application for entry on the register or variation of an existing entry on the register		<i>Executive procedures where no representations are made in response to a warning notice, otherwise by the RDC</i>
Articles 14(1), 14(2), 16(3) and 16(4)	when the <i>FCA</i> is proposing or deciding to revoke or suspend the registration of a registered <i>CBTL firm</i> other than at the firm's request or with the firm's consent*		<i>RDC Executive procedures</i>
...			

...

Data Reporting Services Regulations 2017	Description	Handbook reference	Decision maker
...			
Regulation 10(9)(b)	when the <i>FCA</i> is deciding to impose a restriction on the applicant for authorisation as a <i>data reporting services provider</i>		<i>RDC or executive procedures</i> <i>Executive procedures (see Note 1)</i>
...			

Regulations 8(6)(b) and 10(9)(c)	when the <i>FCA</i> is deciding to refuse an application for verification or authorisation as a <i>data reporting services provider</i>		<i>RDC</i> or <i>executive procedures</i> <u><i>Executive procedures</i></u> (see Note 2)
Regulations 8(9), 11(4)(a) and 11(5)(b)(i)	when the <i>FCA</i> is proposing or deciding to cancel a verification or the authorisation of a <i>data reporting services provider</i> otherwise than at its request		<i>RDC</i> <u><i>Executive procedures</i></u>
...			
Regulations 8(9) and 11(5)(b)(ii)	when the <i>FCA</i> is deciding to refuse a request to cancel a verification authorisation of a <i>data reporting services provider</i>		<i>RDC</i> or <i>executive procedures</i> <u><i>Executive procedures</i></u> (see Note 2)
...			
Regulations 8(10) and 12(4)	when the <i>FCA</i> is deciding to refuse a request to vary a verification or the authorisation of a <i>data reporting services provider</i>		<i>RDC</i> or <i>executive procedures</i> <u><i>Executive procedures</i></u> (see Note 1)
...			
<p>Notes:</p> <p>1) If representations are made in response to a <i>warning notice</i>, then the <i>RDC</i> will take the decision to give a <i>decision notice</i> if the action proposed involves:</p> <p>(a) restricting a <i>person</i> from providing a <i>data reporting service</i>; or</p>			

~~(b) refusing an application to include a type of activity in a verification or authorisation.~~

~~In all other cases, the decision to give a *decision notice* will be taken by FCA staff under *executive procedures*.~~

~~(2) If representations are made in response to a *warning notice* then the RDC will take the decision to give a *decision notice*. Otherwise the decision to give a *decision notice* will be taken by FCA staff under *executive procedures*.~~

...

UK Securitisation Regulations	Description	Handbook reference	Decision maker
...			
Regulation 19(1)(d) and 20(1)(d)	when the <i>FCA</i> is proposing or deciding to refuse an application under regulation 13		RDC or <i>executive procedures</i> <u><i>Executive procedures</i></u> (see Note)
Regulation 19(1)(e) and 20(1)(e)	when the <i>FCA</i> is proposing or deciding to cancel the authorisation of a third-party verification service otherwise than at its request under regulation 16		RDC <u><i>Executive procedures</i></u>
Regulation 19(1)(f) and 20(1)(f)	when the <i>FCA</i> is proposing or deciding to refuse a request to cancel the authorisation of a third-party verification service under regulation 17		RDC or <i>executive procedures</i> <u><i>Executive procedures</i></u> (see Note)
...			

~~[Note:
The decision to give a *warning notice* will be taken by FCA staff under *executive procedures*. If representations are made in response to a *warning notice* then the RDC will take the decision to give a *decision notice*.~~

Otherwise the decision to give a *decision notice* will be taken by *FCA* staff under *executive procedures*.]

Proxy Advisors (Shareholders' Rights) Regulations	Description	Handbook reference	Decision maker
...			
Regulation 12	when the <i>FCA</i> is proposing or deciding to impose a financial penalty under regulation 12		<i>RDC</i> or <i>executive procedures</i>
...			

OPBAS Regulations	Description	Handbook reference	Decision maker
...			
Regulation 17	when the <i>FCA</i> is proposing to make a recommendation to the Treasury that a <i>self-regulatory organisation</i> is removed from Schedule 1 to the <i>Money Laundering Regulations</i>		<i>RDC</i> <u><i>Executive procedures</i></u>
Regulation 17	when the <i>FCA</i> is deciding to recommend to the Treasury that a <i>self-regulatory organisation</i> is removed from Schedule 1 to the <i>Money Laundering Regulations</i>		<i>Executive procedures</i> where no representations are made in response to a warning notice, otherwise by the <i>RDC</i>

...

2 Annex
2G Supervisory notices

Section of the Act	Description	Handbook reference	Decision maker
55XA(1)(a) and 55XA(1)(b)	when the <i>FCA</i> is deciding to grant an application for a <i>Part 4A permission</i> to carry on the <i>regulated activity</i> specified in article 63S of the <i>Regulated Activities Order</i> with a limitation or a requirement which was not applied for, or with a narrower or wider description of <i>regulated activity</i> than that applied for		<i>RDC</i> or <i>executive procedures</i> <u><i>Executive procedures</i></u> See DEPP 2.5.18G(5)
55XA(1)(c) and 55XA(1)(d)	when the <i>FCA</i> is deciding to grant an application to vary a <i>firm's Part 4A permission</i> to carry on the <i>regulated activity</i> specified in article 63S of the <i>Regulated Activities Order</i> but, other than as part of the application, to restrict the <i>Part 4A permission</i> either by imposing a limitation or requirement which was not applied for or by specifying a narrower or wider description of <i>regulated activity</i> than that applied for		<i>RDC</i> or <i>executive procedures</i> <u><i>Executive procedures</i></u> See DEPP 2.5.18G(5)
55XA(1)(e)	when the <i>FCA</i> is deciding to refuse an application for a <i>Part</i>		<i>RDC</i> or <i>executive procedures</i> <u><i>Executive procedures</i></u>

	<i>4A permission to carry on the regulated activity specified in article 63S of the Regulated Activities Order</i>		See DEPP 2.5.18G(5)
55XA(1)(f)	when the <i>FCA</i> is deciding to refuse an application to vary a firm's <i>Part 4A permission to carry on the regulated activity specified in article 63S of the Regulated Activities Order</i>		<i>RDC or executive procedures</i> <u><i>Executive procedures</i></u> See DEPP 2.5.18G(5)
55Y(4) 55Y(7) 55Y(8)(b)	when the <i>FCA</i> is exercising its <i>own-initiative variation power to vary a firm's Part 4A permission</i>	SUP 7	<i>RDC or executive procedures</i> <u><i>Executive procedures</i></u> See DEPP 2.5.7G
63ZC(4) 63ZC(8) 63ZC(9)(b)	when the <i>FCA</i> is exercising its power to vary, on its own initiative, an approval granted to an <i>SMF manager</i>		<i>RDC or executive procedures</i> <u><i>Executive procedures</i></u> See DEPP 2.5.8AG and DEPP 2.5.8BG
71H(2), (3), (4), (9) or (11)(a)	where the <i>FCA</i> is proposing or deciding to impose or vary a requirement in relation to a director or senior executive under section 71B or 71C(2) or (8) or to appoint or vary the terms of appointment of a temporary manager under section 71C(1)		<i>RDC</i> <u><i>Executive procedures</i></u>
55Y(4) 55Y(7) 55Y(8)(b)	when the <i>FCA</i> is exercising its <i>own-initiative requirement power</i>		<i>RDC or executive procedures</i> <u><i>Executive procedures</i></u> See DEPP 2.5.7G

78(2)/(5)	when the <i>FCA</i> is proposing to discontinue or discontinues the <i>listing</i> of a security	LR 5	RDC or executive procedures <u>Executive procedures</u> See DEPP 2.5.9G(4) and DEPP 2.5.10G
...			
259(3)/ (8)/ (9)(b)	when the <i>FCA</i> is exercising its power to give or, on its own initiative, to vary a direction to the <i>manager</i> and <i>trustee</i> of an <i>AUT</i>	COLL	RDC <u>Executive procedures</u>
261Z1	when the <i>FCA</i> gives a direction under section 261X or section 261Z	COLL	RDC <u>Executive procedures</u>
268(3)/ (7)(a) or (9)(a) (as a result of (8)(b)/(13))	when the <i>FCA</i> is proposing or deciding to give or, on its own initiative, to vary a direction to the <i>operator</i> of a <i>recognised scheme</i>	COLL	RDC <u>Executive procedures</u>
282 (3)/ (6)/ (7)(b)	when the <i>FCA</i> is exercising its power to give a direction to an <i>operator, trustee</i> or <i>depository</i> of a <i>recognised scheme</i>	COLL	RDC <u>Executive procedures</u>
...			
321(2)/(5)	when the <i>FCA</i> is exercising its power to impose a requirement on a former underwriting member of Lloyd's		RDC <u>Executive procedures</u>

OEIC Regulations reference	Description	Handbook reference	Decision maker
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Regulation 27	when the <i>FCA</i> is exercising its power to give or, on its own initiative, to vary a direction to an <i>ICVC</i> and its <i>depository</i>	<i>COLL</i>	<i>RDC</i> <u><i>Executive procedures</i></u>
---------------	--	-------------	--

Payment Services Regulations	Description	Handbook reference	Decision maker
12(6), 12(9), 12(10)(b), 15 and 19	when the <i>FCA</i> is exercising its powers to vary a person's <u><i>person's</i></u> authorisation on its own initiative		<i>RDC</i> or <i>Executive procedures</i> See also <i>DEPP 3.4</i> (Note 1)
Schedule 5, paragraphs 1(1), 1(2), 2(2)(a), 2(2)(b), 2(3), 4(6) and 4(7)	when the <i>FCA</i> is exercising its power to impose a prohibition or restriction, or to vary a restriction		<i>RDC</i> or <i>executive procedures</i> <u><i>Executive procedures</i></u> (Note 2) See also <i>DEPP 3.4</i>

Notes:

(1) ~~The RDC will~~ *FCA* staff under *executive procedures* will take ~~the decision~~ all decisions to give a notice exercising the *FCA*'s own initiative power to vary a *person's* authorisation, including if the action involves:

- (a) removing a type of activity from an authorisation or registration; or
- (b) refusing an application to include a type of activity in an authorisation or registration; or
- (c) restricting a person from taking on new business, dealing with a particular category of customer or refusing an application to vary or cancel such a restriction; or
- d) imposing or varying a capital requirement, or refusing an application to vary or cancel such a requirement.

~~For all other types of action the decision to give a notice will be taken by~~ *FCA* staff under *executive procedures*.

(2) ~~The RDC will take the decision to give a notice imposing a prohibition or imposing or varying a restriction under Schedule 4A paragraphs 1(1), 1(2), 2(2)(a), 2(2)(b), 2(3), 4(6) and 4(7). However,~~ *FCA* staff under *executive procedures* will be the decision maker whenever a *firm* agrees

~~not to contest the imposition of a prohibition or imposition or variation of a restriction.~~

Alternative Investment Fund Managers Regulations 2013	Description	Handbook reference	Decision maker
Regulation 22(4)	where the <i>FCA</i> is exercising its power on its own initiative to give or vary a direction under regulation 22(1) to a <i>small registered UK AIFM</i> , a <i>SEF manager</i> or <i>RVECA manager</i>		<i>RDC</i> or <i>executive procedures</i> <u><i>Executive procedures</i></u> See <i>DEPP 2.5.7G</i> to <i>DEPP 2.5.8G</i>
...			

<i>Electronic Money Regulations</i>	Description	Handbook reference	Decision maker
Schedule 2A, paragraphs 1(1), 1(2), 2(2)(a), 2(2)(b), 2(3), 4(6) and 4(7)	when exercising its power to impose a prohibition or restriction, or to vary a restriction		<i>RDC</i> or <i>executive procedures</i> (Note 1) See also <i>DEPP 3.4</i>

Notes:

(1) The *RDC* will take the decision to give a notice imposing a prohibition or imposing or varying a restriction under Schedule 2A paragraphs 1(1), 1(2), 2(2)(a), 2(2)(b), 2(3), 4(6) and 4(7). However, *FCA* staff under *executive procedures* will be the decision maker whenever a *firm* agrees not to contest the imposition of a prohibition or imposition or variation of a restriction.

...

The Immigration Act 2014 (Bank Account) Regulations 2014	Description	Handbook reference	Decision maker
Regulation 24 and 25	where the <i>FCA</i> is proposing or deciding to publish a statement (under regulations 15 or 16) or impose a financial penalty (under regulation 17) or impose a restriction on permission (under regulation 18) or suspend or restrict an approval (under regulation 19)*		<i>RDC</i> or <u><i>executive procedures</i></u>

The Mortgage Credit Directive Order 2015	Description	Handbook reference	Decision maker
Article 19(6)	when the <i>FCA</i> is exercising its <i>own-initiative power</i> to impose a direction		<i>RDC</i> or <u><i>executive procedures</i></u> <u><i>Executive procedures</i></u> See <i>DEPP</i> 2.5.7G and <i>DEPP</i> 2.5.7AG

The Payment Accounts Regulations 2015	Description	Handbook reference	Decision maker
Regulation 30	when the <i>FCA</i> is exercising the power to impose a direction		<i>RDC</i> or <u><i>executive procedures</i></u> (Note)

			<u>Executive procedures</u> See DEPP 2.5.17G
Note: The <i>RDC</i> will take the decision to give a notice imposing a direction. However, <i>FCA</i> staff under <i>executive procedures</i> will be the decision maker whenever a <i>firm</i> agrees not to contest the direction.			

Markets in Financial Instruments Regulations 2017	Description	Handbook reference	Decision maker
Regulation 12(2)	when the <i>FCA</i> is exercising its power of intervention in respect of a <i>third country</i> firm		<i>RDC</i> or <i>executive procedures</i> <u>Executive procedures</u> (see DEPP 2.5.7G and DEPP 2.5.7AG)
...			
Regulations 40(3) and 40(6)	when the <i>FCA</i> is proposing or deciding to impose a requirement, or deciding to not rescind the imposition of a requirement that has already taken effect under regulation 40		<i>RDC</i> <u>Executive procedures</u>

Data Reporting Services Regulations 2017	Description	Handbook reference	Decision maker
Regulation 22(6)	when the <i>FCA</i> is imposing a limitation or other restriction under regulation 22		<i>RDC</i> or <i>executive procedures</i> <u>Executive procedures</u>

			(see Note)
<p>Note: The <i>RDC</i> will take the decision to give a notice imposing a restriction or limitation if it involves restricting a <i>person</i> from providing a <i>data reporting service</i>. Otherwise the decision to give a notice will be taken by <i>FCA</i> staff under <i>executive procedures</i>.</p>			

...

CRA Regulation	Description	Handbook reference	Decision maker
Article 18(2) and 18(10)	when the <i>FCA</i> is exercising its power under article 16 to refuse an application for registration of a <i>credit rating agency</i>		<i>RDC</i> or <i>executive procedures</i> <u><i>Executive procedures</i></u> (see <i>DEPP</i> 2.5.18G(6))
Article 18(2) and 18(10)	when the <i>FCA</i> is exercising its power under article 17 to refuse an application for registration of a group of <i>credit rating agencies</i>		<i>RDC</i> or <i>executive procedures</i> <u><i>Executive procedures</i></u> (see <i>DEPP</i> 2.5.18G(6))
Article 18(2) and 18(10)	when the <i>FCA</i> is exercising its power under article 20(1) and 20(2) to withdraw the registration of a <i>credit rating agency</i> on its own initiative		<i>RDC</i> <u><i>Executive procedures</i></u> (see <i>DEPP</i> 2.5.18G(6))
Article 18(2) and 18(10)	when the <i>FCA</i> is exercising its power under article 20(3) to refuse an application made by a <i>credit rating agency</i> to withdraw its registration		<i>RDC</i> or <i>executive procedures</i> <u><i>Executive procedures</i></u> (see <i>DEPP</i> 2.5.18G(6))
Article 18(2) and 18(10)	when the <i>FCA</i> is exercising its power under article 24(1) to impose a direction to		<i>RDC</i> or <i>executive procedures</i> <u><i>Executive procedures</i></u>

	temporarily prohibit a <i>credit rating agency</i> from issuing credit ratings or to suspend the use of credit ratings issued by a <i>credit rating agency</i>		(see <i>DEPP</i> 2.5.18G(6))
--	--	--	------------------------------

Trade Repositories (EU Exit) Regulations	Description	Handbook reference	Decision maker
Article 71a(6) and 71a(10)	when the <i>FCA</i> is exercising its power under article 58 to refuse an application for registration of a <i>trade repository</i>		RDC or executive procedures <u>Executive procedures</u> (see <i>DEPP</i> 2.5.18G(7))
Article 71a(6) and 71a(10)	when the <i>FCA</i> is exercising its power under article 71(1) or 71(2) to withdraw the registration of a <i>trade repository</i> on its own initiative		RDC <u>Executive procedures</u> (see <i>DEPP</i> 2.5.18G(7))
Article 71a(6) and 71a(10)	when the <i>FCA</i> is exercising its power under article 71(3) to refuse an application made by a <i>trade repository</i> to withdraw its registration		RDC or executive procedures <u>Executive procedures</u> (see <i>DEPP</i> 2.5.18G(7))

Securitisation (Amendment) (EU Exit) Regulations	Description	Handbook reference	Decision maker
Article 13(6)(a) and 13(11)(a) of the <i>Securitisation Regulation</i> as	when the <i>FCA</i> is exercising its power to refuse an application for registration of a		RDC or executive procedures <u>Executive procedures</u>

amended by regulation 15	<i>securitisation repository</i> under article 12 of the <i>Securitisation Regulation</i> as amended by regulation 15		(see <i>DEPP</i> 2.5.18G(8))
Article 13(6)(b) and 13(11)(b) of the <i>Securitisation Regulation</i> as amended by regulation 15	when the <i>FCA</i> is exercising its power to withdraw the registration of a <i>securitisation repository</i> on its own initiative under article 13a(1) or 13a(2) of the <i>Securitisation Regulation</i> as amended by regulation 15		<i>RDC Executive procedures</i> (see <i>DEPP</i> 2.5.18G(8))
Article 13(6)(c) and 13(11)(c) of the <i>Securitisation Regulation</i> as amended by regulation 15	when the <i>FCA</i> is exercising its power to refuse an application made by a <i>securitisation repository</i> to withdraw its registration under article 13a(3) of the <i>Securitisation Regulation</i> as amended by regulation 15		<i>RDC</i> or <i>executive procedures</i> <u><i>Executive procedures</i></u> (see <i>DEPP</i> 2.5.18G(8))

Securities Financing Transactions Regulation	Description	Handbook reference	Decision maker
Article 10a(6)(a) and 10a(11)(a)	when the <i>FCA</i> is exercising its power under article 7 of the <i>Securities Financing Transactions Regulation</i> to refuse an application for		<i>RDC</i> or <i>executive procedures</i> <u><i>Executive procedures</i></u> (see <i>DEPP</i> 2.5.18G(9))

	registration of a <i>trade repository</i>		
Article 10a(6)(b) and 10a(11)(b)	when the <i>FCA</i> is exercising its power to withdraw the registration of a <i>trade repository</i> on its own initiative under article 10(1) or 10(2)		<i>RDC</i> <u><i>Executive procedures</i></u> (see <i>DEPP</i> 2.5.18G(9))
Article 10a(6)(c) and 10a(11)(c)	when the <i>FCA</i> is exercising its power to refuse an application made by a <i>trade repository</i> to withdraw its registration under article 10(3)		<i>RDC</i> or <i>executive procedures</i> <u><i>Executive procedures</i></u> (see <i>DEPP</i> 2.5.18G(9))

The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017	Description	Handbook reference	Decision maker
Regulation 74C(5)	When the <i>FCA</i> is exercising its own initiative powers to impose, vary or rescind a direction.		<i>RDC</i> or <i>executive procedures</i> <u><i>Executive procedures</i></u>

3 The nature and procedure of the RDC

...

3.2 The operation of the RDC

...

Procedure: warning notices ~~and first supervisory notices~~

- 3.2.12 G If *FCA* staff consider that action is appropriate in a matter for which the *RDC* is the decision maker, they will make a recommendation to the *RDC* that a *warning notice* ~~or a supervisory notice~~ should be given.

...

- 3.2.14 G If the *RDC* decides that the *FCA* should give a *warning notice* ~~or a first supervisory notice~~:

- (1) The *RDC* will settle the wording of the *warning notice* ~~or first supervisory notice~~, and will ensure that the notice complies with the relevant provisions of the *Act*;

...

...

Procedure: representations

- 3.2.15 G (1) A *warning notice* ~~or a first supervisory notice~~ will (as required by the *Act*) specify the time allowed for making representations. This will not be less than 14 ~~days~~days.

- (2) The *FCA* will also, when giving a *warning notice* ~~or a first supervisory notice~~, specify a time within which the recipient is required to indicate whether he wishes to make oral representations.

- 3.2.16 G (1) The recipient of a *warning notice* ~~or a first supervisory notice~~ may request an extension of the time allowed for making representations. Such a request must normally be made within seven *days* of the notice being given.

- (2) If a request is made, the Chairman or a Deputy Chairman of the *RDC* will decide whether to allow an extension, and, if so, how much additional time is to be allowed for making representations. In reaching their decision they will take into account all relevant factors including the legal and factual complexity of the case, as well as whether there are any factors outside the control of the *firm* or *individual* that would materially impact on their ability to respond within the period set out in the *warning notice* ~~or first~~

~~supervisory notice~~. They may also take account of any relevant comments from the *FCA* staff responsible for the matter.

- 3.2.17 G (1) If the recipient of a *warning notice* ~~or a first supervisory notice~~ indicates that he wishes to make oral representations, the *RDC* staff, in conjunction with the Chairman or a Deputy Chairman of the *RDC*, will fix a date or dates for a meeting at which the relevant *RDC* members will receive those representations.

...

- 3.2.18 G The chairman of the relevant meeting will ensure that the meeting is conducted so as to enable:

- (1) the recipient of the *warning notice* ~~or first supervisory notice~~ to make representations;

...

- (4) the recipient of the notice to respond to points made by *FCA* staff or the *RDC*;

but the chairman may ask the recipient of the notice or *FCA* staff to limit their representations or response in length or to particular issues arising from the *warning notice* ~~or first supervisory notice~~. If the *warning notice* was given on the basis of a *focused resolution agreement*, the recipient will be required to limit their representations to the issues that remain in dispute.

- 3.2.19 G The recipient of the *warning notice* ~~or supervisory notice~~ may wish to be legally represented at the meeting, but this is not a requirement.

...

- 3.2.21 G The *RDC* will not, after the *FCA* has given a *warning notice* ~~or a first supervisory notice~~, meet with or discuss the matter whilst it is still ongoing with the *FCA* staff responsible for the case without other relevant parties being present or otherwise having the opportunity to respond.

Procedure: decision notices ~~and second supervisory notices~~

- 3.2.22 G If no representations are made in response to the *warning notice* ~~or first supervisory notice~~, the *FCA* will regard as undisputed the allegations or matters set out in the notice and the default procedure will apply: see *DEPP* 2.3.2G to *DEPP* 2.3.4G.

...

- 3.2.23 G In any case in which representations are made, in accordance with *DEPP* 2.3.1G, the *RDC* will consider whether it is right in all the circumstances to give the *decision notice* ~~or a second supervisory notice (as appropriate)~~.

- 3.2.24 G If the *RDC* decides that the *FCA* should give a *decision notice* ~~or a second supervisory notice~~:
- (1) The *RDC* will settle the wording of the notice which will include a brief summary of the key representations made and how they have been dealt with, and will ensure that the notice complies with the relevant provisions of the *Act*;
 - (2) The *RDC* will make any relevant *statutory notice associated decisions*, including whether the *FCA* is required to give a copy of the notice to a third party; and
 - (3) The *RDC* staff will make appropriate arrangements for the notice to be given.
- 3.2.25 G If the *RDC* decides that the *FCA* should not give a *decision notice* ~~or a second supervisory notice~~ the *RDC* staff will notify the relevant parties (including the relevant *FCA* staff) in writing of that decision.

...

Tribunal proceedings

- 3.2.27 G A decision by the *RDC* to give a *decision notice* ~~or supervisory notice~~ may lead to a reference to the *Tribunal* under the *Act*. The conduct of proceedings before the *Tribunal* is not however a matter for the *RDC*.

DEPP 3.4 (Urgent supervisory notice cases) is deleted in its entirety. The deleted text is not shown but the section is marked [deleted] as shown below.

3.4 Urgent supervisory notice cases [deleted]

Amend the following as shown.

4 Decisions by FCA staff under executive procedures

4.1 Executive decision maker

Who takes the decision

...

- 4.1.2B G A decision made in accordance with section 395(3) of the *Act* by an individual *FCA* staff member who has been directly involved in establishing the evidence on which the decision is based will be taken by a member of *FCA* staff of at least Director level (which may include an acting Director).

Decisions by senior staff committee

4.1.3 G An *FCA* senior executive committee will from time to time determine that particular categories of *statutory notice decision* to be taken under *executive procedures* and decisions referred to in *DEPP 2.5.6AG* ~~will~~ may be taken by a *senior staff committee*.

...

4.1.5 G A *senior staff committee* may operate through standing or specific sub-committees to consider particular decisions or classes of decision, for which accountability will lie through the committee. Each meeting of a *senior staff committee*, or sub-committee, will include:

- (1) an individual with authority to act as its chairman; and
- (2) at least ~~two~~ one other ~~members~~ member.

...

Decisions by individual *FCA* staff members

4.1.7 G *Statutory notice decisions* to be taken under *executive procedures* and decisions referred to in *DEPP 2.5.6AG*, ~~and not falling within the responsibility of which are not made by a senior staff committee~~, will be taken by an individual *FCA* staff member. Subject to *DEPP 2.5.7B*, The the decision will be:

- (1) made by an executive director of the *FCA* Board or his delegate (who will be of at least the level of associate);
- (2) on the recommendation of an *FCA* staff member of at least the level of associate; and
- (3) with the benefit of legal advice from an *FCA* staff member of at least the level of associate;

except for decisions made in relation to consumer redress schemes pursuant to provisions of the Consumer Redress Schemes sourcebook (*CONRED*), where (1) will apply, but not (2) or (3).

...

Procedure

4.1.13 G The procedure for taking decisions under *executive procedures* will generally be less formal and structured than that for decisions by the *RDC*. Broadly, however, *FCA* staff responsible for taking *statutory notice decisions* under *executive procedures* will follow a procedure similar to that described at *DEPP 3.2.7G* to *DEPP 3.2.27G* for the *RDC* except that:

- (-1) oral representations will not be permitted unless there are exceptional circumstances (*DEPP 2.3.1A*);

- (1) in a case where the decision will be taken by a *senior staff committee*:
- (a) the chairman or deputy chairman of the *senior staff committee* will perform the role of the Chairman of the *RDC*; ~~and~~
- (b) ~~the secretariat to the *senior staff committee* will perform the role of the *RDC* staff;~~

...

DEPP 4.2 (Urgent Statutory notice cases) is deleted in its entirety. The deleted text is not shown but the section is marked [deleted] as shown below.

4.2 Urgent Statutory notice cases [deleted]

Amend the following as shown.

TP1 Transitional provisions applying to the Decision Procedure and Penalties Manual

1. Table DEPP TP 1

(1)	(2) Material to which the transitional provision applies	(3)	(4) Transitional provision	(5) Transitional provision dates in force:	(6) Handbook provision coming into force
1	<i>DEPP</i>	G	Expired		
2	<i>DEPP 6.7</i> (Discount for early settlement),	G	Expired		
3	<i>DEPP</i>	G	Expired		
4	<i>DEPP</i>	G	Expired		
<u>5</u>	<u><i>DEPP</i></u>	<u>G</u>	<u>A firm or individual who has been given a</u>	<u>Commencement</u>	<u>Commencement</u>

		<p><u>statutory notice before the commencement date in cases where the RDC, but for these changes, would be responsible for giving the decision notice will continue to have that matter dealt with by the RDC under the RDC procedures until the matter is concluded.</u></p>		
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Annex B

Amendments to the Enforcement Guide (EG)

In this Annex, underlining indicates new text and striking through indicates deleted text.

7 **Financial penalties and other disciplinary sanctions**

...

7.9 **Suspensions of voting rights**

...

7.9.2 Decisions about whether to apply to the Court for a voting rights suspension order under the *Act* will be made by the ~~RDC Chairman~~ or, ~~if the Chairman is not available, by an RDC Deputy Chairman~~ executive director of Enforcement, or in his or her absence, the acting executive director of Enforcement.

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

...

8.3 **Use of the own-initiative powers ~~in urgent cases~~**

...

8.3.2 The *FCA* will consider exercising its *own-initiative power* ~~as a matter of urgency~~ 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.

...

8.3.4 The *FCA* will consider the full circumstances of each case when it decides whether ~~an urgent~~ a variation of *Part 4A permission* or an imposition of a requirement 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 adverse effect, the more likely it is that the *FCA's urgent* 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. ~~Urgent exercise~~ 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* ~~urgent~~ 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*.

...

- (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* ~~urgent~~ use of its *own-initiative powers* may well be appropriate.

...

...

10 Injunctions

10.1 Introduction

10.1.1 ~~An exceptionally urgent case in these circumstances is one where the *FCA* staff believe that a decision to begin proceedings~~

- (1) ~~should be taken before it is possible to follow the procedure described in paragraph 10.1.2; and~~
- (2) ~~it is necessary to protect the interests of consumers or potential consumers. [deleted]~~

...

- 10.1.3 Decisions about whether to apply to the civil courts for injunctions under the *Act* will be made by ~~the RDC Chairman or, in an urgent case and if the Chairman is not available, by an RDC Deputy Chairman. In an exceptionally urgent case the matter will be decided by the~~ executive director of Enforcement or, in his or her absence, ~~another member of the FCA's executive of at least director of division level~~ the acting executive director of Enforcement.

...

11 Restitution and redress

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 *Act* will be made by ~~the RDC Chairman or, in an urgent case and if the Chairman is not available, by an RDC Deputy Chairman. In an exceptionally urgent case the matter will be decided by the~~ executive director of Enforcement or, in his or her absence, ~~another member of the FCA's executive of at least director of division level~~ the acting executive director of Enforcement.

- 11.1.2 ~~An exceptionally urgent case in these circumstances is one where the FCA staff believe that a decision to begin proceedings~~

- (1) ~~should be taken before it is possible to follow the procedure described in paragraph 11.1.1; and~~
- (2) ~~it is necessary to protect the interests of consumers or potential consumers. [deleted]~~

...

12 Prosecution of Criminal Offences

12.1 The FCA's general approach

...

Commencing criminal proceedings

...

- 12.1.5 Subject to 12.4C, a decision to commence criminal proceedings will be made by ~~the RDC Chairman or, in an urgent case and if the Chairman is not available, by an RDC Deputy Chairman. In an exceptionally urgent case the matter will be decided by the~~ executive director of Enforcement or, in his or her absence, ~~another member of the FCA's executive of at least director of division level~~ the acting executive director of Enforcement.

12.1.6 ~~An exceptionally urgent case in these circumstances is one where the FCA staff believe that a decision to begin proceedings~~

- ~~(1) should be taken before it is possible to follow the procedure described in paragraph 12.1.5; and~~
- ~~(2) it is necessary to protect the interests of consumers or potential consumers. [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 ~~may either will~~ be taken by the ~~procedure described in EG 12.1.5 or under executive procedures~~. The less serious the offence or its impact and the less complex the issues raised, the more likely that the ~~FCA~~ will take the decision to ~~prosecute under executive procedures~~ executive director of Enforcement or, in his or her absence, the acting executive director of Enforcement.

...

13 Insolvency

...

13.2 The FCA's general approach to use of its powers and rights in insolvency proceedings

...

13.2.3 Decisions about whether to apply to the civil courts for insolvency orders under the *Act* will be made by the ~~RDC Chairman or, in an urgent case and if the Chairman is not available, by an RDC Deputy Chairman~~. In an exceptionally ~~urgent case the matter will be decided by the~~ executive director of Enforcement or, in his or her absence, ~~another member of the FCA's executive of at least director of division level~~ the acting executive director of Enforcement.

13.2.4 ~~An exceptionally urgent case in these circumstances is one where the FCA staff believe that a decision to begin proceedings~~

- ~~(1) should be taken before it is possible to follow the procedure described in paragraph 13.2.3; and~~
- ~~(2) it is necessary to protect the interests of consumers or potential consumers. [deleted]~~

14 Collective Investment Schemes

...

14.4 Exercise of the powers in respect of recognised schemes: sections 279 and 281 of the Act – powers to revoke recognition of schemes recognised under section 272: the FCA’s policy

...

14.4.3 Decisions about whether to apply to the civil courts for *collective investment scheme* related orders under the *Act* will be made by ~~the RDC Chairman or, in an urgent case and if the Chairman is not available, by an RDC Deputy Chairman. In an exceptionally urgent case the matter will be decided by the~~ executive director of Enforcement or, in his or her absence, another member of the FCA’s executive of at least director of division level the acting executive director of Enforcement.

14.4.4 ~~An exceptionally urgent case in these circumstances is one where the FCA staff believe that a decision to begin proceedings~~

- (1) ~~should be taken before it is possible to follow the procedure described in paragraph 14.4.3; and~~
- (2) ~~it is necessary to protect the interests of consumers or potential consumers. [deleted]~~

...

19 Non-FSMA 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 ~~by the RDC following the procedures set out in DEPP 3.2 or, where appropriate, DEPP 3.3~~ 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

...

19.7.3 The *FCA* will give a company a *warning notice* if it proposes to revoke the company’s authorisation and a *decision notice* if the decision to revoke the company’s authorisation is subsequently taken. The decisions to give a *warning*

notice or a *decision notice* will be taken by the *RDC* following the procedures set out in *DEPP 3.2* or, where appropriate, *DEPP 3.3* under *executive procedures*. A person who receives a decision notice under the *OEIC Regulations* may refer the matter to the *Tribunal*.

...

19.22 Decision making under the Payment Services Regulations

- 19.22.1 The *RDC* is the *FCA*'s decision maker for some of the decisions under the *Payment Services Regulations* 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 *RDC* will make its decisions following the procedure set out in *DEPP 3.2* or, where appropriate, *DEPP 3.3* and *3.4*. *DEPP 3.4* applies for urgent notices under regulations 12(6), 12(9), and 12(10)(b) (including as applied by regulations 15 and 19).

...

19.23 Electronic Money Regulations 2011

...

Decision making under the Electronic Money Regulations

- 19.23.7 The *RDC* is the *FCA*'s decision maker for some of the decisions under the *Electronic Money Regulations* as set out in *DEPP 2 Annex 1G*. The *RDC* will make its decisions following the procedure set out in *DEPP 3.2* or, where appropriate, *DEPP 3.3* and *3.4*. *DEPP 3.4* applies for urgent notices under regulation 11(6), (9) and (10)(b) (including as applied by regulation 15).

...

19.27 Alternative Investment Fund Managers Regulations 2013

...

Decision making under the AIFMD UK regulation

- 19.27.6 The *RDC* is the *FCA*'s decision maker for some decisions under the *AIFMD UK regulation*, as set out in *DEPP 2 Annex 1G*. The *RDC* will make its decisions following the procedure in *DEPP 3.2* or, where appropriate, *DEPP 3.3* and *3.4*. For decisions made by *executive procedures*, the procedures to be followed are in *DEPP 4*.

...

19.30 The Mortgage Credit Directive Order

...

Decision making under the MCDO

19.30.8 The *RDC* is the *FCA*'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 *RDC* will make its decisions following the procedure set out in *DEPP 3.2* or, where appropriate, *DEPP 3.3*, ~~and *DEPP 3.4* applies for urgent notices under article 16(1)(a).~~

...

19.31 The Small and Medium Sized Business (Credit Information) Regulations

...

Decision making under the Small and Medium Sized Business (Credit Information) Regulations

19.31.5 The *RDC* is the *FCA*'s decision maker for some decisions which require *warning notices* or *decision notices* to be given under the *Small and Medium Sized Business (Credit Information) Regulations*, as set out in *DEPP 2 Annex 1G*. The *RDC* will make its decisions following the procedure in *DEPP 3.2* or, where appropriate, *DEPP 3.3* ~~or *DEPP 3.4*~~. For decisions made by executive procedures, the procedure to be followed will be those described in *DEPP 4*.

...

19.32 The Payment Accounts Regulations 2015

...

Decision making under the PARs

19.32.7 The *RDC* is the *FCA*'s decision maker for some decisions which require *warning notices*, *decision notices* or other written notices to be given under the *PARs* as set out in *DEPP 2 Annex 1* and *DEPP 2 Annex 2*. The *RDC* will make its decisions following the procedure set out in *DEPP 3.2* or, where appropriate, *DEPP 3.3* ~~or *DEPP 3.4*~~.

...

19.33 The Small and Medium Sized Business (Finance Platforms) Regulations 2015

...

Decision making under the Small and Medium Sized Business (Finance Platforms) Regulations

19.33.5 The *RDC* is the *FCA*'s decision maker for some decisions which require *warning notices* or *decision notices* to be given under the *Small and Medium Sized Business (Finance Platforms) Regulations* as set out in *DEPP 2 Annex 1G*. The *RDC* will make its decisions following the procedure in *DEPP 3.2* or,

where appropriate, *DEPP 3.3* or ~~*DEPP 3.4*~~. For decisions made by *executive procedures*, the procedure to be followed will be those described in *DEPP 4*.

