FCA/PRA Enforcement Procedure



Conduct of investigations
Supervisors and enforcement staff will have a close relationship prior to an investigation taking place. This illustrates the intrusive and aggressive approach which the FCA plans to take.

Joint investigations The FCA and PRA will determine whether to carry out separate but coordinated

coordinated investigations, or whether one regulator should carry out an instigation and keep the other informed.

Variation of permission and imposition of requirements

The FCA will have powers to issue an own initiative variation of permission, or to impose a requirement, on the firm.

PRA

The PRA's general approach will be to use its powers in a preventative or remedial manner as far as possible. Nevertheless it will have disciplinary and other enforcement powers to levy fines and publish public censures where it deems these appropriate responses.

Appointment of investigators

Appointment of investigators and, if appropriate, Notice of Appointment of Investigators sent to the firm or individual.

Scoping discussion

Initial discussions with the firm or individuals, which are intended to provide a clear indication of the scope of the investigation, including how the process will unfold and the individuals and documents the investigators will initially need access to.

Investigation work

The appointed investigators carry out the investigation. The investigation may include, for example, requests for documents or information and interviews of witnesses and subjects. Following the investigation work, there is an internal legal review of the case by a lawyer who has not been part of the investigation team.

Preliminary Investigation Report (PIR)

If appropriate, a PIR is sent to the firm or individual, who has 28 days to respond. They can apply for extra time to complete their response

Submission to the FSA Regulatory Decisions Committee* (RDC)

If, following their investigation, the regulator's staff believe action is justified they may submit case papers to the RDC. This includes an Investigation Report, which takes account of the firm of individual's response to the PIR. The RDC considers the submission.

* The Regulatory Decisions Committee comprises practitioners and non practitioners, who all represent the public interest. The regulator's staff who handle cases before they go to the RDC will not be involved in the RDC's decision making. Members of the RDC are appointed by, and are account to, the FSA Board.

Warning Notices

If the RDC* decides it is appropriate it will send out a Warning Notice informing the person concerned that the regulator intends to take further action.

The firm or individual has the right to access material relied on by the RDC in taking its decision together with secondary material which might undermine that decision. The firm or individual has 28 days to make oral or written representation to the RDC and can apply for extra time.

Oral and written representations to the RDC

After it receives the Warning Notice, the firm or individual may make written or oral representations to the RDC. The RDC will then meet again to consider the facts of the case, including the firm's or individual's written representations and any new information that may have come to light. If the firm or individual has chosen to make oral representations, they are made before the RDC at this stage

Publicity

RDC makes its decision and, if appropriate, issues a Decision Notice. The firm or individual has 28 days to make a referral to the Upper Tribunal (Tax and Chancery Chambers).

Upper Tribunal (Tax and Chancery Chambers): a fresh look

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

Private warning

A private warning may be issued at any stage in the procedure and in doing so the investigation is closed.

Settlement discussions

The parties can seek to resolve the issue by having settlement discussions with the regulator at any *stage in the procedure*.

Closure

If the regulator finds there is no case to answer, the investigation is closed at any stage in the procedure.

If the RDC finds there is no case, either before or after representations, the investigation is closed. If after representations, the RDC finds there is no case a Notice of Discontinuance may be issued.

Final Notice

If no referral is made to the Upper Tribunal following the Decision Notice, a Final Notice is issued to the firm or individual concerned.

Published information

On the issue of the Final Notice, information about the case will be published, as appropriate.

Tribunal's determination

The Tribunal decides what action the regulator should take in relation to the matter referred to it (including issuing a Notice of Discontinuance if the case is not made out).

Contacts



Rob MoultonPartner

T: +44 (0)20 7859 1029 E: rob.moulton@ashurst.com



David CappsPartner

T: +44 (0)20 7859 1397 E: david.capps@ashurst.com



Jake Green Senior Associate

T: +44 (0)20 7859 1034 E: jake.green@ashurst.com



Celia Le Fanu Solicitor

T: +44 (0)20 7859 3221 E: celia.lefanu@ashurst.com



James Perry Partner

T: +44 (0)20 7859 1214 E: james.perry@ashurst.com



Edward Sparrow Partner

T: +44 (0)20 7859 1573 E: edward.sparrow@ashurst.com



Nicola Higgs Senior Associate

T: +44 (0)20 7859 1033 E: nicola.higgs@ashurst.com



Anne Mainwaring Solicitor

T: +44 (0)20 7859 2719 E: anne.mainwaring@ashurst.com

This publication is not intended to be a comprehensive review of all developments in the law and practice, or to cover all aspects of those referred to. Readers should take legal advice before applying the information contained in this publication to specific issues or transactions. For more information please contact us at Broadwalk House, 5 Appoid Street, London EC2A 2HA T: +44 (0)20 7638 1111 F: +44 (0)20 7638 1112 www.ashurst.com.

Ashurst LLP and its affiliates operate under the name Ashurst. Ashurst LLP is a limited liability partnership registered in England and Wales under number OC330252. It is a law firm authorised and regulated by the Solicitors Regulation Authority of England and Wales under number 468653. The term "partner" is used to refer to a member of Ashurst LLP or to an employee or consultant with equivalent standing and qualifications or to an individual with equivalent status in one of Ashurst LLP's affiliates. Further details about Ashurst can be found at www.ashurst.com.

© Ashurst LLP 2013 February 2013