



7. DECISION MAKING

7.1 Introduction

7.1.1 This chapter sets out our general approach to making decisions when exercising our discretionary powers.

7.2 Who can exercise our powers?

7.2.1 Our powers can be exercised by the Chief Executive or any delegate of the Chief Executive, including:

- (a) to any employee to whom the Chief Executive has delegated his powers ("Regulatory officer"); and
- (b) to any panel or committee established by the Chief Executive for the purpose of making decisions; or
- (c) to any other delegated person.

7.3 Our general approach to decision-making

Natural Justice and Procedural fairness principles

7.3.1 Our approach to decision-making is based on observance of natural justice and the procedural fairness principles, by:

- (a) acting without bias or conflict of interest;
- (b) giving the Person an opportunity to present his case; and
- (c) taking into account only those considerations which are relevant to the matter to be decided upon.

Acting without bias or conflict of interest

7.3.2 A decision maker called upon to make a decision is expected to act impartially in doing so. If the decision maker has a vested financial or personal interest in the matter, a conflict of interest may arise that prevents an impartial or unbiased decision being made. A decision maker who does have a financial or other personal interest in the matter is required to disclose this interest and, if the interest is material, would not be the decision maker in relation to that matter.

7.3.3 We may refer an executive decision to the ADGM Regulatory Committee for determination under section 225(5) of the FSMR in order to avoid the risk of bias or conflict of interest affecting any such decision.



Relevant considerations

- 7.3.4 The decision maker is expected to take into account all and only those considerations which are relevant to the matter to be decided upon. This requires the decision maker to:
- (a) ensure that it has all the material information that is necessary to be able to make the relevant decision (and, if necessary, obtain further information, including from any third party sources);
 - (b) disregard any irrelevant information; and
 - (c) have the relevant power to make the decision.
- 7.3.5 To meet its procedural fairness obligations, the key elements to our approach to decision-making include:
- (a) having adequate systems and controls to ensure that those making decisions on our behalf are impartial and not affected by conflicts of interests that may affect their decisions;
 - (b) giving a person in respect of whom we propose to make a decision (in this Chapter, the "affected person") advance notice about our proposed action (with the exception of cases when we may take immediate action because any delay resulting from advance notice would be prejudicial to the interests of direct or indirect users of financial services in the ADGM or otherwise prejudicial to the interests of the ADGM);
 - (c) giving the affected person clear reasons why we propose to take the relevant action;
 - (d) giving the affected person a suitable opportunity to make representations (in person and in writing) with regard to the our proposed action;
 - (e) taking into account any representations made by, or on behalf of, the affected person before making a final decision, i.e. making any consequential changes to the proposed action given the representations made or other additional material available to us, as appropriate;
 - (f) taking into account only those considerations which are relevant to the matter to be decided upon;
 - (g) giving, without undue delay, the affected person a clear statement in writing of our final decision, the reasons for that decision and the effective date;
 - (h) informing the affected person what rights of review that person has in respect of our decision, and within what period those rights of review must be exercised; and



- (i) having in place adequate mechanisms to enable the affected person to have our decision properly and impartially reviewed.

7.3.6 In certain circumstances, including:

- (a) the issuing of a stop order under section 71 of FSMR; and
- (b) suspension of a Listed Entity's Securities from the Official List under section 180 of FSMR,

We do not have to give an affected person advance notice of our proposed action and a right for that person to make prior representations before we make our final decision.

In such circumstances, we are still obliged to give the affected person a right of representation within 14 days (or other longer period as may be agreed) from the date on which the decision is made and communicated to the affected person. We are obliged to consider any representations made by, or on behalf of, the affected person during that period.

7.3.7 Where a right to make representations is exercised by an affected person, we will communicate to the affected person whether we confirm our original decision, or otherwise we vary or withdraw that decision, given the representations made.

7.3.8 Where no representations are made by, or on behalf of, the affected person during the relevant period, our original decision will remain in effect and will be confirmed.

Categories of decisions

7.3.9 The decisions which are made by us fall into three broad categories:

- (a) decisions which are subject to the procedures in Part 21 of the FSMR ("Part 21 Decisions") e.g. a decision to cancel the Financial Services Permission of an Authorised Person or to revoke the recognition of a Recognised Body;
- (b) decisions which are not subject to the procedures set out in Part 21 of the FSMR ("Non Part 21 Decisions") e.g. the rejection of a new Controller of an Authorised Person; and
- (c) routine operational decisions that do not affect the rights, interests and liabilities of a person ("Operational Decisions") e.g. a decision to commence an investigation against a person.

7.4 Part 21 Decisions

7.4.1 Where, on our own initiative, we propose to:

- (a) impose a public censure or financial penalty;



- (b) cancel the Financial Services Permission of an Authorised Person firm;
- (c) revoke the recognition of a Recognised Body; or
- (d) withdraw the approval of an Approved Person,

the procedures must be exercised according to what is set out in Part 21 of the FSMR.

7.4.2 To facilitate a consistent approach to decision-making, Part 21 of the FSMR sets out the steps we are required to follow in relation to Part 21 Decisions.

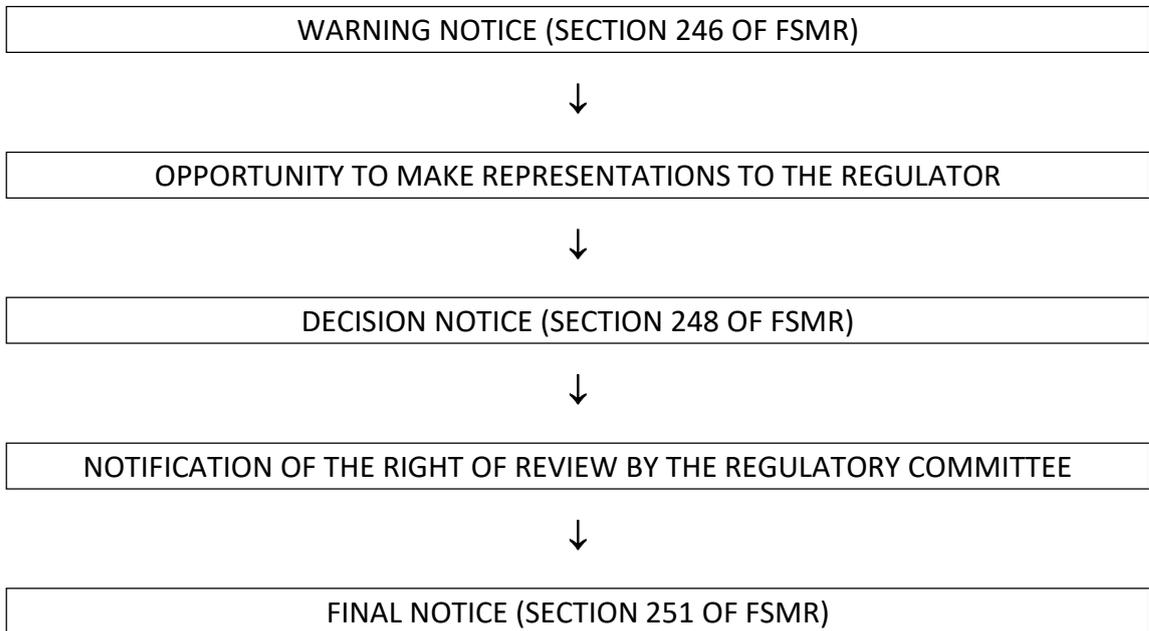
7.4.3 The procedures set out in Part 21 are designed to ensure procedural fairness by giving:

- (a) advance notice of our proposed decision (the Warning Notice), except in the cases referred to in paragraph 7.5 and 7.6 and the reasons for proposing to make such a decision;
- (b) an opportunity to make representations relating to the proposed decision;
- (c) our final decision (the Decision Notice) and the reasons for that decision, including any changes made to the preliminary decision, taking into account any representations made for, or on behalf of, the affected person; and
- (d) notice of the affected person's right to have our decision reviewed by the Regulatory Committee, including the period within which that right can be exercised.

7.4.4 Prior to any issue of a Warning Notice, we will notify the person concerned and provide an opportunity to present enquiries and make representations, provided this would not result in a tip-off, prejudice the exercise of our powers or otherwise jeopardise our objectives.



Figure 1: the Regulator's Decision Making Process for Part 21 Decisions



7.5 Non Part 21 Decisions

7.5.1 Certain decisions are not subject to the procedures set out in Part 21 of the FSMR - for example our powers relating to Controllers of regulated firms and the power to approve or reject the Business Rules of a Recognised Body.

7.6 Operational decisions

7.6.1 The remaining decisions, such as decisions made as part of our day-to-day supervision of regulated firms, do not invoke the procedures in Part 21 of the FSMR. Examples of these operational decisions include decisions to:

- (a) obtain additional information from an Authorised Person;
- (b) disclose information about an Authorised Person to a Non-ADGM Financial Services Regulator;
- (c) issue a risk mitigation plan stemming from any supervisory concerns identified in the course of firm visit; or
- (d) commence an investigation.

7.6.2 Operational decisions are generally not reviewable by the ADGM Regulatory Committee. In making these decisions, we are still subject to overarching administrative law principles of acting in good faith and acting in a proportionate and reasonable manner.

7.7 The Regulatory Committee

- 7.7.1 Section 225(1) of FSMR provides that all of our decisions that may affect the rights or liabilities of a person or otherwise adversely affect the interests of a person (except operational decisions) may be referred to the ADGM Regulatory Committee for review. Upon a referral, the Regulatory Committee (which is independent of us) is required to conduct a full merits review of our decision.
- 7.7.2 To enable an affected person to exercise properly and effectively his right to have our original decision referred to the Regulatory Committee, we will provide to such a person a Decision Notice specifying:
- (a) our decision and the reasons for making that decision;
 - (b) the date on which the decision is to take effect; and
 - (c) the person's right to seek a review of the decision by the Regulatory Committee; and
 - (d) by when the right referred to in paragraph (c) has to be exercised.

7.8 The Appeals Panel

- 7.8.1 Any decision, order or direction made by the Regulatory Committee may in turn be referred to the Appeals Panel for review by the person in respect of whom the decision was made or by us, in accordance with section 228(1) of FSMR. A second full merits review may then be conducted by the Appeals Panel.
- 7.8.2 Decisions of the Appeals Panel may only be reviewed on judicial review basis. An application for judicial review of a decision of the Appeals Panel may be made to the ADGM Court on the grounds that the decision is wrong in law or is in excess of the Appeal Panel's jurisdiction.