Enforcement Guide

Chapter 12

Prosecution of Criminal Offences

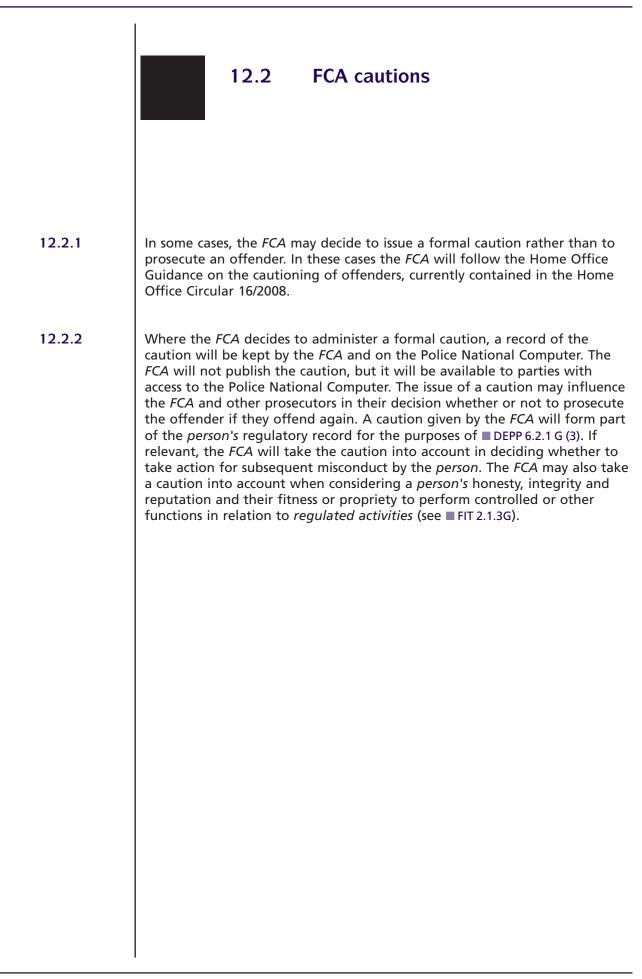
	12.1 The FCA's general approach
12.1.1	The FCA has powers under sections 401 and 402 of the Act to prosecute a range of criminal offences in England, Wales and Northern Ireland. The FCA may also prosecute criminal offences where to do so would be consistent with meeting any of its statutory objectives.
12.1.2	The FCA's general policy is to pursue through the criminal justice system all those cases where criminal prosecution is appropriate. When it decides whether to bring criminal proceedings in England, Wales or Northern Ireland, or to refer the matter to another prosecuting authority in England, Wales or Northern Ireland (see paragraph 12.4.1), it will apply the basic principles set out in the Code for Crown Prosecutors. ¹⁴ When considering whether to prosecute a breach of the <i>Money Laundering Regulations</i> , the <i>FCA</i> will also have regard to whether the person concerned has followed the Guidance for the UK financial sector issued by the Joint Money Laundering Steering Group.
12.1.3	The FCA's approach when deciding whether to commence criminal proceedings for <i>misleading statements and practices offences</i> and <i>insider dealing offences</i> , where the FCA also has power to impose a sanction for <i>market abuse</i> , is discussed further in paragraphs 12.3.1 to 12.3.4 .
12.1.4	 Commencing criminal proceedings In cases where criminal proceedings have commenced or will be commenced, the FCA may consider whether also to take civil or regulatory action (for example where this is appropriate for the protection of <i>consumers</i>) and how such action should be pursued. That action might include: applying to court for an <i>injunction</i>; applying to court for a restitution order; variation and/or cancellation of <i>permission</i>; and prohibition of individuals. The factors the FCA may take into account when deciding whether to take such action, where criminal proceedings are in contemplation, include, but are not limited to the following: (1) whether, in the FCA's opinion, the taking of civil or regulatory action might unfairly prejudice the prosecution, or proposed prosecution, of criminal offences; (2) whether, in the FCA's opinion, the taking of civil or regulatory action might unfairly prejudice the defendants in the criminal proceedings in the conduct of their defence; and

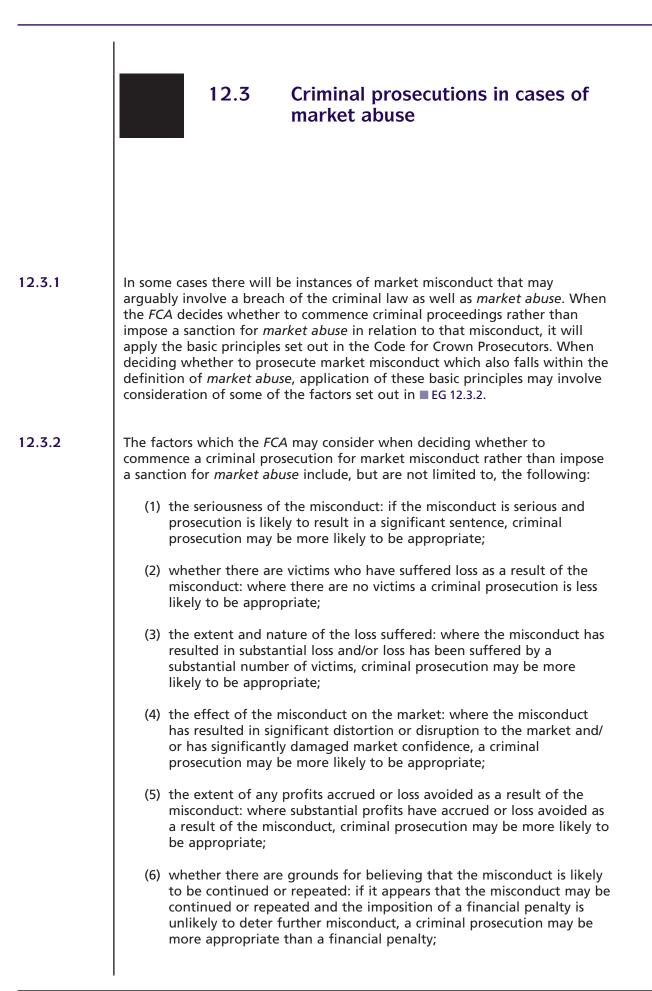
- (3) whether it is appropriate to take civil or regulatory action, having regard to the scope of the criminal proceedings and the powers available to the criminal courts.
- **12.1.5** Subject to 12.4C, a decision to commence criminal proceedings will be made by the executive director of Enforcement or, in his or her absence, the acting executive director of Enforcement.

12.1.6 [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 will be taken by the executive director of Enforcement or, in his or her absence, the acting executive director of Enforcement.

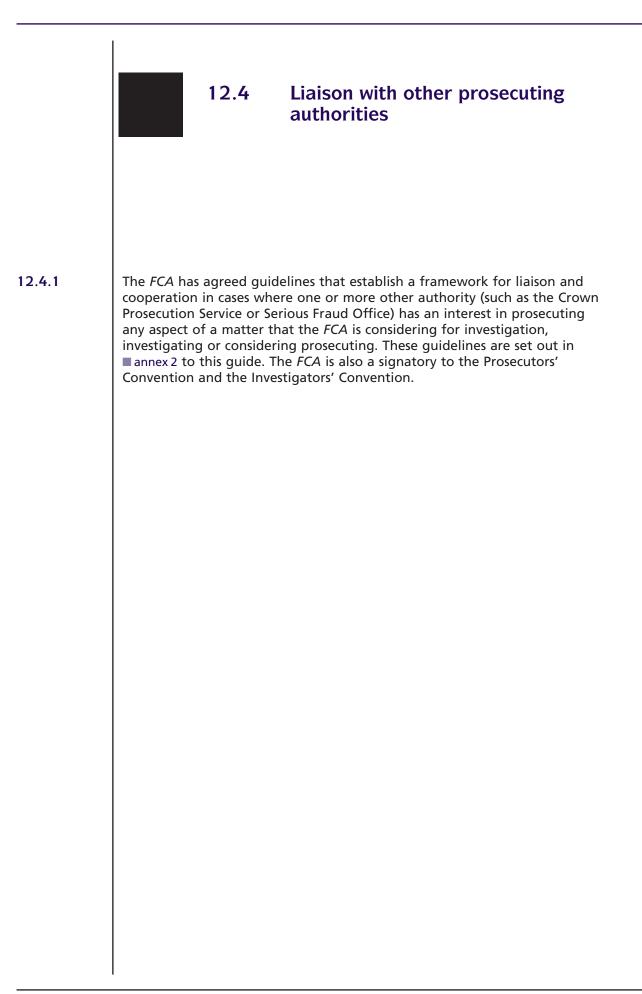
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- (7) whether the person has previously been cautioned or convicted in relation to market misconduct or has been subject to civil or regulatory action in respect of market misconduct;
- (8) the extent to which redress has been provided to those who have suffered loss as a result of the misconduct and/or whether steps have been taken to remedy any failures in systems or controls which gave rise to the misconduct: where such steps are taken promptly and voluntarily, criminal prosecution may not be appropriate; however, potential defendants will not avoid prosecution simply because they are able to pay compensation;
- (9) the effect that a criminal prosecution may have on the prospects of securing redress for those who have suffered loss: where a criminal prosecution will have adverse effects on the solvency of a *firm* or individual in circumstances where loss has been suffered by *consumers*, the *FCA* may decide that criminal proceedings are not appropriate;
- (10) whether the *person* is being or has been voluntarily cooperative with the *FCA* in taking corrective measures; however, potential defendants will not avoid prosecution merely by fulfilling a statutory duty to take those measures;
- (11) whether an individual's misconduct involves dishonesty or an abuse of a position of authority or trust;
- (12) where the misconduct in question was carried out by a group, and a particular individual has played a leading role in the commission of the misconduct: in these circumstances, criminal prosecution may be appropriate in relation to that individual;
- (12A) where the misconduct in question was carried out by two or more individuals acting together and one of the individuals provides information and gives full assistance in the FCA's prosecution of the other(s), the FCA will take this co-operation into account when deciding whether to prosecute the individual who has assisted the FCA or bring market abuse proceedings against him;
- (13) the personal circumstances of an individual may be relevant to a decision whether to commence a criminal prosecution.
- **12.3.3** The importance attached by the *FCA* to these factors will vary from case to case and the factors are not necessarily cumulative or exhaustive.
- 12.3.4 It is the FCA's policy not to impose a sanction for market abuse where a person is being prosecuted for market misconduct or has been finally convicted or acquitted of market misconduct (following the exhaustion of all appeal processes) in a criminal prosecution arising from substantially the same allegations. Similarly, it is the FCA's policy not to commence a prosecution for market misconduct where the FCA has brought or is seeking to bring disciplinary proceedings for market abuse arising from substantially the same allegations.

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