



## CP21/25 regarding the FCA

### Decision Making Process

#### Submission by the Transparency Task Force, September 17th 2021

##### About the Transparency Task Force

The Transparency Task Force is a Certified Social Enterprise, meaning that we exist to make an impact, not profit.

The mission of the Transparency Task Force is to promote ongoing reform of the financial sector, so that it serves society better. Our vision is to build a large, influential and highly respected international institution that helps to ensure consumers are treated fairly by the financial sector.

The primary beneficiaries of our work will be consumers; but the sector itself will also benefit through improved market conduct and increased trust in the services it provides.

Our objective is to carry out a broad range of activities that help to drive positive, progressive and purposeful finance reform, such as:

- Building a collaborative, campaigning community; the larger it is the more influence it can have in driving the change that is needed
- Raising awareness of issues; so that society better understands the problems that exist in the financial sector and how they can be dealt with
- Engaging with people who can make change happen; because through such dialogue we can influence thinking, policy making and market conduct

Much of our focus is on rebuilding trustworthiness and confidence in financial services. To make this possible we are busy developing a framework for finance reform which we describe as a “whole system solution for a whole-system problem” as described in [our recently published book](#)

Our response to you has been produced by a highly collaborative group of TTF volunteers, our “Response Squad,” working together to build consensus, whilst always remaining true to our “North Star” question: “What is best for the consumer?”

For further information about the Transparency Task Force see:

<http://www.transparencytaskforce.org>

## Response to Questions

Note: RDC = [Regulatory Decisions Committee](#)

### **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.**

There is a bottleneck in the decision-making process at the FCA that is affecting firms and affecting customers. Any proposal that aims to clear the bottleneck must be welcomed. We would, however, state that all decisions must be reached following due process and proper level of scrutiny by Senior Managers within the FCA with sufficient competence, capability and experience to make an informed decision. The staff making decisions under executive procedures should be independent of the firm’s supervisory team if the decision is about an individual firm or its senior managers.

### **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**

The categories of decision seem appropriate. Clearly, straightforward cancellations where firms have failed to meet threshold conditions do not require RDC intervention.

We think that interventions following enforcement action should be the province of the RDC rather than an executive committee. That will allow for robust scrutiny of the evidence from the firm, the actions of the enforcement team. The actions of the firm following the recommendations of the enforcement team, while overseen by the supervision team should be scrutinised by the RDC.

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

We disagree with this proposal. Any Senior Staff Committee should comprise of at least 3 members and should be minuted by an independent minute taker. There is a risk that with a committee of only 2 people, one may dominate the meeting and impose their view unchallenged by the other. In any decision-making process, best practice would be to have a minimum of three on the committee.

**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.**

The lead should be taken from the DISP sourcebook which allows complainants to raise their issues through any medium, written, or oral. Whilst the argument for speed and efficiency of the decision-making process has been made, some representation will be better made by the firm being able to make an oral representation. This could be over a recorded telephone line, or, as we have discovered during lockdown, a recorded meeting over Zoom, Microsoft Teams or Google Meets.

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

Given our comments above, the definition of exceptional circumstances is moot. We believe that all firms should have the option to raise any issue with the FCA orally or in writing

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

Overall, the proposals should allow for a better and more effective decision-making process by the FCA. We have reservations about a Senior Staff Committee of less than 3 people with an independent note-taker in addition. We also believe that the removal of the option for firms to provide oral as well as written submissions is a retrograde step and should therefore be reversed.

## Further Thoughts

As well as the speed of any decision-making, the impartiality and transparency of such processes is also important. It seems to us that the RDC has a pro-industry bias in its composition, but is the FCA in-house alternative any better - and is either option transparent or accountable?

In light of these thoughts, we ask that the viability of a third way to open up these procedures to consumer stakeholders is explored. After all, "sunlight is the best disinfectant."

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