
STATUTORY INSTRUMENTS

2013 No. 1635

**The Legal Aid, Sentencing and Punishment of
Offenders Act 2012 (Referral Fees) Regulations 2013**

PART 6

Disciplinary measures and offences

Public censure

14. If the FCA considers that a referral fees authorised person has contravened a relevant requirement, the FCA may publish a statement to that effect.

Statement of misconduct

15. If the FCA considers that an approved person (“A”) has been knowingly concerned in a contravention by the relevant referral fees authorised person of a relevant requirement, the FCA may publish a statement of A’s misconduct.

Financial penalties

16.—(1) The FCA may impose a penalty on a referral fees authorised person (“P”) of such amount as the FCA considers appropriate if the FCA considers that P has contravened a relevant requirement.

(2) The FCA may impose a penalty on an approved person (“A”) of such amount as the FCA considers appropriate if the FCA considers that A has been knowingly concerned in a contravention by the relevant referral fees authorised person of a relevant requirement.

(3) A penalty imposed under this regulation is payable to the FCA and may be recovered as a debt owed to the FCA.

Restrictions on permission to carry on regulated activities

17.—(1) If the FCA considers that a referral fees authorised person (“P”) has contravened a relevant requirement, it may impose for such period as it considers appropriate, such limitations or other restrictions in relation to the carrying on of a regulated activity under any permission which P has to carry on a regulated activity as it considers appropriate.

(2) In paragraph (1) “permission” means any permission that the authorised person has, whether given (or treated as given) by the FCA or conferred by any provision of the 2000 Act.

(3) The period for which a restriction is to have effect may not exceed 12 months.

(4) A restriction may, in particular, be imposed so as to require the person concerned to take, or refrain from taking, specified action.

(5) The FCA may—

(a) withdraw a restriction, or

- (b) vary a restriction so as to reduce the period for which it has effect or otherwise to limit its effect.
- (6) The power under this regulation may (but need not) be exercised so as to have effect in relation to all the regulated activities that the person concerned carries on.
- (7) Any one or more of the powers under this regulation and regulations 14 to 16 may be exercised in relation to the same contravention.

Suspension of and restrictions on approval to carry on functions

- 18.**—(1) If the FCA considers that an approved person (“A”) has been knowingly concerned in a contravention by the relevant referral fees authorised person of a relevant requirement, it may—
- (a) suspend, for such period as it considers appropriate, any approval of the performance by A of any function to which the approval relates, or
 - (b) impose for such period as it considers appropriate, such limitations or other restrictions in relation to the performance by A of any function to which any approval relates as it considers appropriate.
- (2) The period for which a suspension or restriction is to have effect may not exceed two years.
 - (3) A suspension or restriction may have effect in relation to part of a function.
 - (4) A restriction may, in particular, be imposed so as to require any person to take, or refrain from taking, specified action.
 - (5) The FCA may not take action under this regulation after the end of the period of three years beginning with the first day on which the FCA knew of conduct by A within the scope of paragraph (1), unless proceedings in respect of it against A were begun before the end of that period.
 - (6) For the purposes of paragraph (5)—
 - (a) the FCA is to be treated as knowing of A’s conduct if it has information from which the conduct can reasonably be inferred, and
 - (b) proceedings against A in respect of A’s conduct are to be treated as begun when a warning notice is given to A under regulation 25.
 - (7) In relation to any time while a suspension is in force under paragraph (1)(a) in relation to part of a function, any reference in section 59 (approval for particular arrangements) or 63A (power to impose penalties) of the 2000 Act⁽¹⁾ to the performance of a function includes the performance of part of a function.
 - (8) If at any time a restriction imposed under paragraph (1)(b) is contravened, the approval in relation to the person concerned is to be treated for the purposes of sections 59 and 63A of the 2000 Act as if it had been withdrawn at that time.

Misleading the FCA

- 19.**—(1) A person must not, in purported compliance with a relevant requirement, knowingly or recklessly give the FCA information which is false or misleading in a material particular.
- (2) A person must not—
 - (a) provide any information to another person knowing the information to be false or misleading in a material particular, or
 - (b) recklessly provide to another person any information which is false or misleading in a material particular,

(1) Section 59 was amended by sections 14 and 15 of the Financial Services Act 2012 and [S.I. 2012/1906](#). Section 63A was inserted by section 11 of the Financial Services Act 2012.

knowing that the information is to be used for the purposes of providing information to the FCA in connection with its functions under these Regulations.

(3) A person who contravenes paragraph (1) or (2) is guilty of an offence.

(4) Paragraphs (1) and (2) apply only to a requirement in relation to which no other provision of these Regulations applies an offence in connection with the giving of information.

(5) A person guilty of an offence under this regulation is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum, or

(b) on conviction on indictment, to a fine.

Restriction on penalties

20. A person who is convicted of an offence under regulation 19 is not liable to a penalty under regulation 16 in respect of the same contravention of a requirement imposed by or under these Regulations.

Liability of officers of bodies corporate, &c.

21.—(1) If an offence under regulation 19 committed by a body corporate is shown—

(a) to have been committed with the consent or connivance of an officer, or

(b) to be attributable to any neglect on their part,

the officer as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with such member's functions of management as if the member were a director of the body.

(3) If an offence under regulation 19 committed by a partnership is shown—

(a) to have been committed with the consent or connivance of a partner, or

(b) to be attributable to any neglect on their part,

the partner as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.

(4) If an offence under regulation 19 committed by an unincorporated association (other than a partnership) is shown—

(a) to have been committed with the consent or connivance of an officer, or

(b) to be attributable to any neglect on their part,

the officer as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.

(5) In this regulation—

“officer”—

(a) in relation to a body corporate, means a director, manager, secretary, chief executive, member of the committee of management, or a person purporting to act in such a capacity, and

(b) in relation to an unincorporated association, means any officer of the association or any member of its governing body, or a person purporting to act in such capacity;

“partner” includes a person purporting to act as a partner.

Proceedings for offences

- 22.** Proceedings for an offence under regulation 19 may be instituted only—
- (a) by the FCA, or
 - (b) by or with the consent of the Director of Public Prosecutions.

Proceedings against unincorporated bodies

23.—(1) Proceedings for an offence under regulation 19 alleged to have been committed by a partnership or other unincorporated association must be brought in the name of the partnership or association (and not in that of its members).

(2) A fine imposed on the partnership or association on its conviction of an offence is to be paid out of the funds of the partnership or association.

(3) Rules of court relating to the service of documents are to have effect as if the partnership or association were a body corporate.

(4) In proceedings for an offence brought against the partnership or association, section 33 of the Criminal Justice Act 1925⁽²⁾ (procedure on charge of offence against corporation) and section 46 of and Schedule 3 to the Magistrates' Courts Act 1980⁽³⁾ (corporations) apply as they do in relation to a body corporate.

- (5) Summary proceedings for an offence under regulation 19 may be taken—
- (a) against a body corporate or unincorporated association at any place at which it has a place of business;
 - (b) against an individual at any place where they are for the time being.
- (6) Paragraph (5) does not affect any jurisdiction exercisable apart from this regulation.

(2) 1925 c. 86. Section 33 was amended by the Magistrates' Courts Act 1952 (c.55), section 132 and Schedule 6, by the Courts Act 1971 (c.23), section 56(1) and Schedule 8 and by the Courts Act 2003 (c.39), Schedule 8, paragraph 71 and Schedule 10.

(3) 1980 c.43. Schedule 3 was amended by the Criminal Justice Act 1991 (c.53), section 25(2) and Schedule 13, and by the Criminal Procedure and Investigations Act 1996 (c.25), Schedule 1, paragraph 1. Amendments by the Criminal Justice Act 2003 (c.44), Schedule 3, paragraph 51 and Schedule 37, Part 4 have not come fully into force at the time of making of these Regulations.