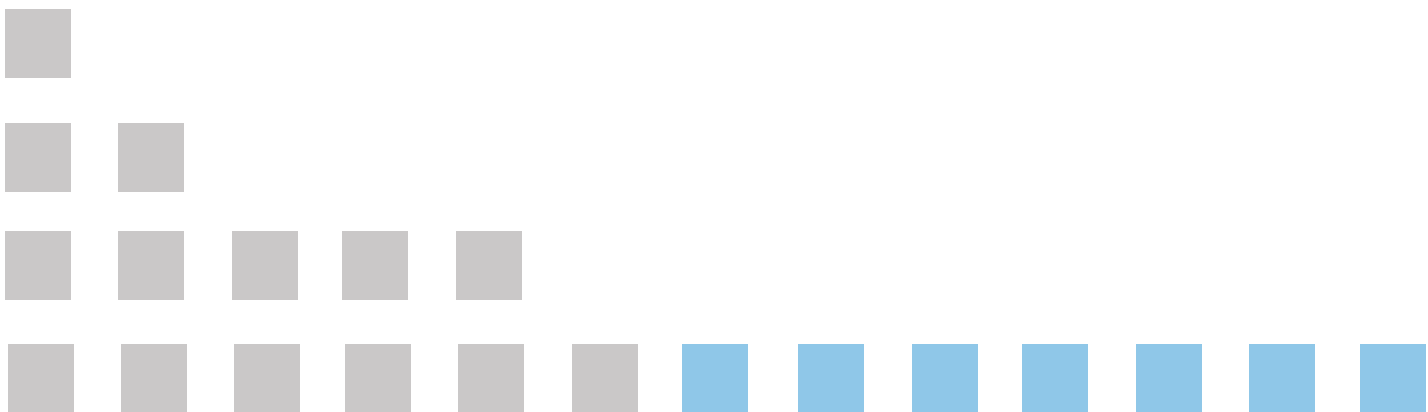


GFSC Decision Making Process

Regulatory Interventions



GFSC's Decision Making Process for Regulatory Interventions

1. This document sets out the GFSC's Decision Making Process for Regulatory Interventions involving the use of supervisory powers or sanctioning powers ("DMP").
2. The GFSC is committed to ensuring that we are consistent, fair and proportionate in our approach to decision-making when carrying out our statutory functions.

When this DMP applies

3. This DMP applies where the legislative decision-making procedure for Regulatory Interventions requires a Warning Notice to be issued by the GFSC before it makes a final decision.
4. A Warning Notice is a written notice that states the action the GFSC proposes to take as well as providing the rationale for proposing to take the action, and the right for the recipient to make representations.
5. The DMP relies on two distinct committees, both of which play a role in our DMP but apply at different parts of the process and consist of different individuals:
 - Regulatory and Authorisations Committee ("RAC") – a committee that advises the GFSC's CEO on exercising certain Regulatory Intervention powers. In most cases, the CEO will decide whether to issue a Warning Notice following a RAC meeting.
 - Decision Making Committee ("DMC") – a statutory, operationally independent, committee of the GFSC. The DMC exercises the GFSC's powers in respect of specified regulatory decisions, as listed in Section 24(3) of the Financial Services Act 2019 ("the FSA 2019") and any sector specific Regulations. The DMC issues Decision Notices in respect of these specified regulatory decisions, normally following the issue of a Warning Notice by the GFSC (see 'Departure from DMP when Warning Notice is not issued' section below). However, in cases where the recipient of the Warning Notice has agreed in writing to the steps proposed in the Warning Notice, or (where the legislation permits this), in cases where the recipient has not disputed the proposed decision by providing representations to the GFSC within the period specified by the Warning Notice (usually 28 days), the Decision Notice that follows does not need to be issued by the DMC.
6. Below are some examples of the powers that this DMP applies to:
 - Imposing administrative penalties
 - Cancelling a permission
 - Imposing cease and desist orders
 - Issuing a temporary suspension of permission order
 - Issuing a prohibition order
 - Imposing or varying a Requirement so as to require the firm to take specified action or to refrain from taking specified action
 - Varying a permission
7. The list is not exhaustive.
8. The DMP **does not** apply (except where the CEO considers it would be appropriate to do so) in cases where the legislation does not require a Warning Notice to be issued, for example,

decisions taken in the course of routine functions that are not subject to a legislative decision-making procedure. These include statutory requests for information or action taken in relation to unauthorised activity (such as issuing warnings and alerts about unauthorised firms/ individuals).

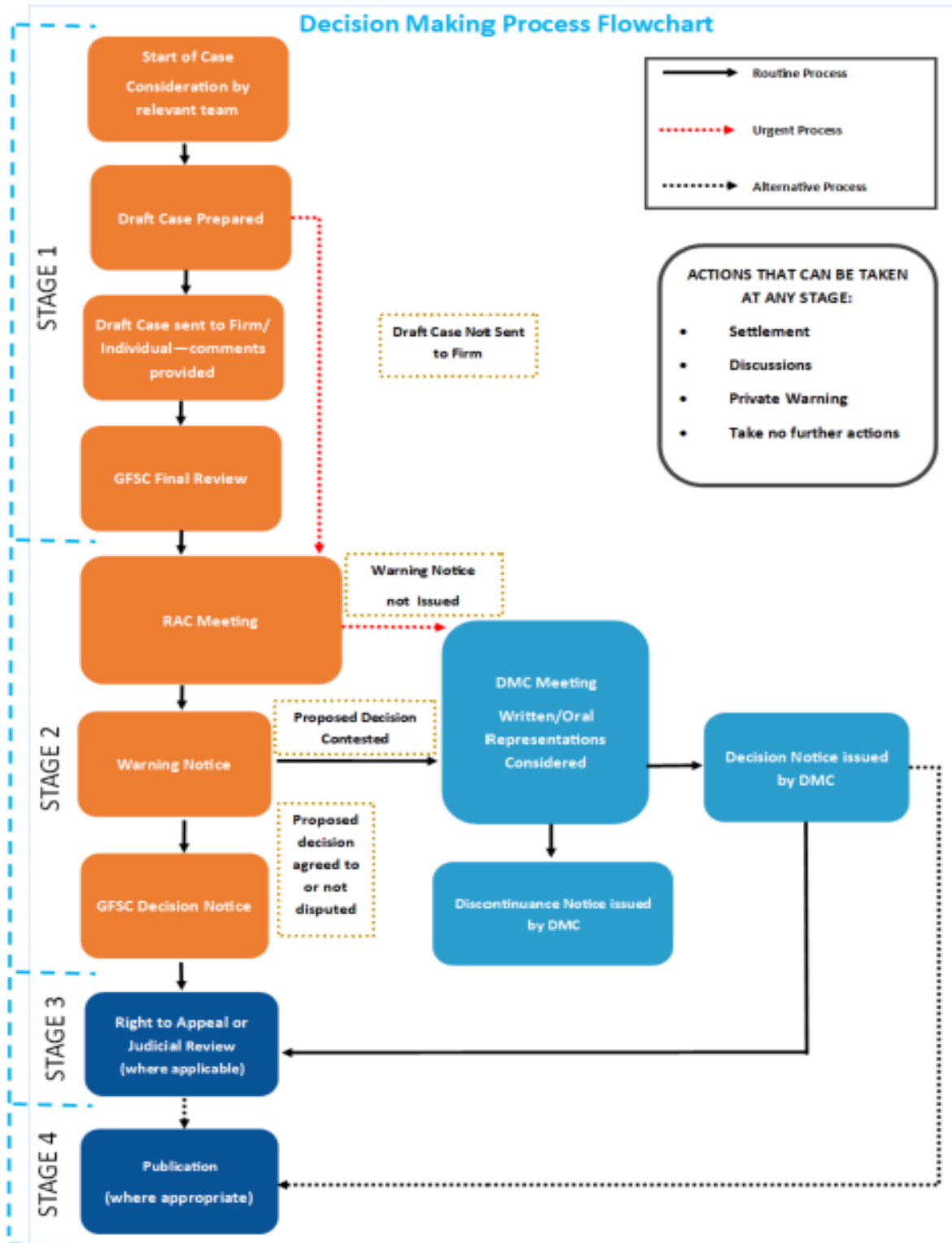
9. There are also scenarios where:

- only part of the process applies, as determined by the relevant legislation. Examples of this are urgent cases for Regulatory Interventions where a Warning Notice can be dispensed with if certain criteria in the legislation are met
- only part of the process applies, as determined by the GFSC (from a procedural perspective the GFSC). To be clear, the GFSC would only be able to make this determination for stages of the process which are not required by the legislation.
- The GFSC chooses to apply part of the process to cases which do not fall within the scope of the DMP e.g. the appointment of inspectors or skilled persons.

10. Further details around these limitations are set out in the section [“When only part of DMP applies”](#).

The Process

11. The diagram below shows the different steps of the DMP. The orange boxes reflect the process applied where a firm/individual agrees with the GFSC’s proposed action (as set out in the Warning Notice) in writing or does not provide representations within the notice period set out in the Warning Notice, such that the proposed decision is considered undisputed and does not require referral to the DMC. Alternative routes are also reflected. Information on each of the stages represented is provided below the diagram.



Consideration by Relevant Team

12. The Relevant Team (Supervisory or Regulatory Investigations) will consider whether a recommendation should be made to RAC to issue a Warning Notice proposing to exercise a Regulatory Intervention power.

Draft Case

13. The draft Recommendation Paper (that will be presented to the RAC) will usually be provided to the firm/individual concerned (“Draft Case”) for comments.
14. The Draft Case will contain the relevant background facts, the applicable legislation, and will explain the proposed recommendation(s) that would be made to the relevant decision maker. If applicable, we will also provide the firm/individual with a copy of any investigation report and evidence.
15. The Draft Case will also exclude by redaction or otherwise:
 - Documents or material that are subject to legal privilege (where applicable).
 - Documents/ material in respect of which the GFSC has a statutory obligation of confidentiality e.g. relating to a case involving a different person and which was considered by the GFSC only for the purposes of comparison (to note full information would go to the DMC with a redacted version to firm to ensure that we comply with our confidentiality obligations).
 - Documents/material that if provided would, in the GFSC’s opinion, not be in the public interest.
 - Documents/material that would not be fair to disclose given the likely significance of the material to the firm/individual in respect of the matter under consideration and the potential prejudice to the commercial interests of another person that would be caused by providing the material.
16. Please also see the [“Draft Case not issued”](#) section below for detail on when this Step of the DMP may not apply.

Comments by Firm/Individual on Draft Case

17. The firm/individual will then be given a 14-day period to provide us with any comments on the Draft Case. Any additional information relevant to the matter can also be provided in the response.
18. The firm/individual can request more time to respond to the Draft Case and we will consider each request on its merits. The GFSC will take into account the circumstances, the seriousness of the issues and complexity of the law and facts. The GFSC will grant more time if appropriate to ensure the firm/individual has a fair opportunity to comment.

GFSC Final Review

19. After considering any comments submitted by the deadline imposed and making any corrections or amendments where necessary, if it appears to the Relevant Team that the proposed action is required, the case will be finalised (“the Recommendation Paper”) and referred to the RAC for determination as to whether a Warning Notice should be issued.

RAC meeting

20. Following consideration of the Recommendation Paper, including any comments from the firm/individual, the CEO as part of the RAC may decide to:
- take no action
 - postpone the decision on a matter where further information is required and/or direct that a matter be reverted to the Relevant Team for work
 - decide to issue a Warning Notice.

Warning Notice after RAC meeting

21. If the CEO decides to issue a Warning Notice after the RAC meeting, the Warning Notice will set out and disclose the following in writing:
- the action that the CEO is considering taking
 - the reasons why the action is being considered
 - any information that the legislation under which it is given requires to be included
 - the evidence on which the GFSC's decision to give the Warning Notice was based
 - all evidence presented or to be presented to the DMC for the purposes of enabling it to determine the steps to be taken by the GFSC to issue a Decision Notice
 - the firm/individual's right to make representations and the timescales for doing so in accordance with the legislation (usually 28 days).
22. Where there is no specific legislative provision applicable to a particular case, the period to provide representations will be 28 days. This may be extended by the GFSC at its discretion. The recipient will have a period of not less than 14 days within which to decide whether to make oral representations and then inform the GFSC.
23. A recipient can request an extension to the time period set out in the legislation to provide representations. Any decision to refuse to extend is made by the DMC.

Representations to the DMC

24. If the firm/individual informs the GFSC in writing that they agree to the action proposed in the Warning Notice, or (where the legislation permits this), if they do not make representations to the GFSC in respect of the Warning Notice within the notice period that it specifies, the matter will be considered as undisputed and will not be referred to the DMC.
25. Where the recipient of a Warning Notice provides representations to the GFSC within the specified notice period, or the requirement to issue a Warning Notice has been dispensed with (see the '[Departure from DMP when Warning Notice is not issued](#)' section below), the matter will be referred to the DMC for a final decision.
26. The firm/individual may make oral or written representations to the DMC within the period specified in the Warning Notice.
27. The DMC would then meet to:
- review and consider any written representations made and/or
 - hear and consider any oral representations made.

Issuance of Decision Notice by the DMC

The DMC will, after considering all evidence presented to it (including any representations made by the firm/ individual), within a reasonable period issue:

- a Decision Notice stating that the GFSC will take the action proposed

- a Discontinuance Notice stating that the GFSC will not take the action proposed, or
- a notice comprising a combination of:
 - a Decision Notice stating that the GFSC will take certain proposed action, and
 - a Discontinuance Notice in respect of the remaining proposed action.

28. A Decision Notice or Discontinuance Notice will be in writing and will set out:

- any information that the legislation under which it is given requires to be included in such a notice
- the proposed action and the reasons for taking or not taking it, as the case may be
- information of any right of appeal under the legislation.

29. Please also see the "[Departure from DMP when Warning Notice is not issued](#)" section below for detail on when the requirement to issue a Warning Notice can be dispensed with.

Right of Appeal and/or Judicial Review

30. Following the Decision Notice, the firm/individual may have the right to appeal the outcome to the Supreme Court. The nature of such right depends on the legislation under which the GFSC has made its decision for example see Sections 613 and 615 of the FSA 2019. The relevant legislation should be reviewed to determine the time period within which an appeal must be filed, which is either 21 or 28 days from the date on which the Decision Notice was served.

Decisions under the FSA 2019

31. For decisions made under the FSA 2019 to which a right of appeal applies, the commencement of an appeal has the effect of staying a Decision Notice unless it is made under a provision which provides for a decision to take effect immediately. In any event, the Court may in its discretion grant a stay or other relief in respect of such a notice until the appeal has been determined.
32. With respect to an appeal under the FSA 2019, the Court may dismiss the appeal; allow the appeal and quash the decision appealed against; or remit the matter to the GFSC for further consideration, in accordance with any directions of the Court.

Decisions under the Supervisory Bodies (Powers Etc.) Regulations 2017

33. These Regulations are made under the Proceeds of Crime Act 2015 and set out the GFSC's powers in respect of the AML/CFT regulatory regime. For decisions made under these Regulations, the commencement of an appeal does not operate as a stay of the decision appealed against, but the court has the power, in its discretion, to order a stay.
34. After considering an appeal under these Regulations, the Court may confirm, reverse or vary the matter appealed against or may direct the GFSC to take any actions which it directs.

Supreme Court Rules

35. The provisions of rules 13 to 24 of the Supreme Court Rules (Appeals in Civil Matters) apply to appeals from the decisions of the DMC by virtue of rule 31 of the Supreme Court Rules.

No statutory right of appeal

36. Where the legislation under which a decision has been made does not provide for a right of appeal, the firm/individual may have the right to apply for leave to judicially review the decision of the CEO or DMC in accordance with the rules of law applying to such judicial reviews. Where this process applies and there is no right of statutory appeal we will consider staying the effect of the decision pending determination of any judicial review commenced within 28 days of the decision.

Other outcomes

37. At any stage of the DMP prior to the issuance of a Decision Notice, we may decide to:
- commence **settlement discussions** to seek to reach an agreed regulatory outcome
 - issue a **private warning** and close a case if we determine that this is an appropriate and proportionate outcome
 - take **no further action** and close the case if we find there is no case to answer.

When only part of the DMP applies

38. The complete DMP will be followed in most cases to which it applies. In cases where upholding our regulatory objectives makes it necessary or desirable to depart from stages of the Process we will do so. To be clear, this would not permit the GFSC to depart from any parts of the DMP which are required by the legislation.
39. Where we depart from our DMP we will be transparent and inform the firm/individual concerned.

Draft Case not issued

40. In cases where upholding our regulatory objectives makes it necessary or desirable to depart from this Process, the Draft Case will not be provided to the firm/individual and the matter will be presented directly to RAC for consideration.
41. The stage of providing the Draft Case to the firm/individual is not a legal requirement. The GFSC has included it as part of this DMP to provide the firm/individual with an opportunity to comment on the case at an earlier point in the process (near the start). This part of the process falls outside of the legislative decision-making process, which starts with the issuance of a Warning Notice. A Warning Notice will always be issued when required by the legislation, including in cases where the Draft Case stage of the DMP is bypassed. This also does not affect the firm/individual's right under the legislation to make representations to the DMC in response to a Warning Notice when applicable.
42. Examples of where the Draft Case may not be issued to the firm/individual may be, if the GFSC is satisfied that:
- it is necessary to expedite the case because the firm/individual presents an urgent or serious ongoing risk to the GFSC's regulatory objectives.
 - upholding our regulatory objectives makes it necessary or desirable to depart from this part of the Process e.g. where we consider that taking this step would be superfluous and it just serves to delay the ultimate decision (such as where we have been in discussions with the firm/individual and they are in agreement with the action being proposed or have already indicated that they intend to challenge it).
 - there is a risk that steps would be taken to undermine the effectiveness of the action being proposed.
43. This is a non-exhaustive list.

Departure from DMP when Warning Notice is not issued

44. In certain circumstances, as permitted by legislation, we will depart from the Warning Notice stage of the DMP. In most cases, the GFSC will be required to satisfy the urgency criteria set out in the relevant legislation for this to happen.

Dispensing with a Warning Notice: sanctions in urgent cases

45. In certain urgent cases, the requirement to issue a Warning Notice will be dispensed with when

certain conditions are met (Section 160 of the FSA 2019). This decision would be made by the DMC.

Directions in urgent cases

46. The procedure for issuing Directions in urgent cases where certain conditions are met can be found under Section 80 of the FSA 2019 and also permits the GFSC to dispense with the Warning Notice. This would be a decision of the DMC.

Other cases when a Warning Notice would not be required

47. In certain other cases, the FSA 2019 states that the issuance of a Warning Notice would not be required, for example:
1. where the GFSC exercises the GFSC's Requirement power in a manner which the regulated firm has requested by means of an application or consented to in writing
 2. if the GFSC is satisfied, usually as a decision of the DMC, that:
 - there is an immediate risk of substantial damage to:
 - the interests of consumers
 - the public interest; or
 - the reputation of Gibraltar; and
 - the exercise of a power is under certain sections and is:
 - to a material extent, likely to avoid the occurrence or reduce the extent of that damage; and
 - proportionate to the achievement of that objective having regard to the adverse consequences for the person concerned that may result from that direction.

Circumstances under which a Warning Notice is not required under the Supervisory Bodies (Powers Etc.) Regulations 2017

49. Under these Regulations, a Warning Notice would not be required if the GFSC is satisfied, that it:
- cannot be given because of urgency;
 - should not be given because of the risk that steps would be taken to undermine the effectiveness of the action to be taken; or
 - is superfluous having regard to the need to give notice of legal proceedings or for some other reason.
50. This would be a decision of the DMC.

Appointment of Inspectors or Skilled Persons

51. As explained above, the DMP applies when the legislation requires the issuance of a Warning Notice in respect of Regulatory Intervention powers. The DMP does not apply to investigatory powers, including the powers to appoint an inspector or a skilled person.
52. Despite this, we will apply the Draft Case Step parts of the DMP to appropriate cases where the Appointment of Inspectors or Skilled Persons is being proposed to RAC without the agreement of the firm/individual.

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