



Guernsey Financial
Services Commission

GUERNSEY FINANCIAL SERVICES COMMISSION

**GUIDANCE NOTE
DECISION MAKING PROCESS**

This document is intended as a general guide to the way in which the Guernsey Financial Services Commission (the “Commission”) approaches the exercise of its statutory powers that involve the making of a particular type of administrative decision.

It does not hold force of law and is not prescriptive of a process that will always be followed: each case will be considered on its own merits and, as it deems appropriate, the Commission may depart from the process described here.

The objective of the guidance is to enable those affected to understand where they are in the process. To that end, as far as possible, the Commission will endeavour to inform those affected both when the process described here is being applied and when significant departures from it occur.

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SECTION 1 – GENERAL INFORMATION

1. INTRODUCTION

- 1.1 This document is intended as a guide to the way in which the Commission will approach the exercise of its statutory powers when making decisions that involve the use of Enforcement Powers.
- 1.2 The Commission is not a judicial body. However it does undertake quasi-judicial functions. So, whilst the Commission is not bound to follow fixed rules of procedure in reaching decisions, it must follow principles of natural justice and fairness. In doing this, the Commission is the master of its own procedure.
- 1.3 As an alternative to Commissioners sitting as a CDC (please refer to the Glossary of Terms), the Commission Secretary may, when she considers it appropriate to do so, appoint as an Officer of the Commission a Senior Decision Maker. The Senior Decision Maker will have all applicable Enforcement Powers with the exception of any powers to revoke, cancel, suspend, or withdraw a licence, authorisation, registration or consent or to make an application for the winding up of a body corporate.
- 1.4 A decision is taken in stages which are described in Section 2 of this Guidance Note. Each stage includes a number of distinct steps which are collectively designed to ensure that the final decision taken:
 - 1.4.1 has been arrived at in accordance with principles of natural justice; and
 - 1.4.2 is proportionate and reasonable based on all relevant information before the decision-maker at the time.
- 1.5 In taking a decision, the Commission is mindful that all those that require a licence under the Regulatory Laws, must meet the minimum criteria for licensing.
- 1.6 This Guidance Note applies to those decisions taken by the Commission in relation to Enforcement Powers. The Commission may deviate from the process described in this document where it determines that it is necessary or appropriate to do so.
- 1.7 This Guidance Note is only intended to cover decisions relating to the exercise of an Enforcement Power where a party has a statutory right of appeal to the Royal Court of Guernsey.
- 1.8 The Commission's role is to enquire into and investigate matters that come to its attention, decide whether breaches of any of the Regulatory Laws have occurred and if so, what the regulatory response will be.
- 1.9 This Guidance Note does not hold the force of law and is not prescriptive of a process that will always be followed. Each case will be considered on its merits.
- 1.10 The Appendix contains a flow chart of the possible paths which may be followed in the decision making process.

1.11 In this Guidance Note:

1.11.1 please refer to the Glossary of Terms for the list of terms and their meanings; and

1.11.2 please note that, unless the context requires otherwise, the singular includes the plural and vice versa and words denoting one gender include all genders.

2. OVERRIDING OBJECTIVE

2.1 The Commission adopts the following as its ‘overriding objective’ to enable the decision-maker to deal with matters in a reasonable manner.

2.1.1 Dealing with matters justly including, so far as is practicable:

2.1.1.1 ensuring that the parties are on an equal footing;

2.1.1.2 dealing with the matter in ways which are proportionate to the:

- (i) amount of money involved;
- (ii) importance of the matter;
- (iii) complexity of the issues; and
- (iv) financial position of each party;

2.1.1.3 ensuring that it is dealt with expeditiously and fairly; and

2.1.1.4 allotting to it an appropriate share of the decision-maker’s resources.

2.1.2 The decision-maker must seek to give effect to the overriding objective when he¹:

2.1.2.1 exercises any Enforcement Powers; or

2.1.2.2 considers the guidance in this note.

2.1.3 The parties are required to help the decision-maker to further the overriding objective, and are reminded of article 10 of the Principles of Conduct of Finance Business² in this regard.

¹ Please note that, unless the context requires otherwise, words denoting one gender include all genders. If sitting as a Committee “he” or “him” would also mean “their” or “them”.

² A financial institution should deal with the Commission in an open and co-operative manner and keep the Commission promptly informed of anything concerning the financial institution which might reasonably be expected to be disclosed to it.

3. WHEN THIS GUIDANCE NOTE WILL NOT APPLY

- 3.1 Administrative decisions taken as part of normal or enhanced supervision will not follow the approach set out in this Guidance Note.
- 3.2 The process described by this Guidance Note will not apply where:
 - 3.2.1 legislation provides that a decision will have immediate effect;
 - 3.2.2 the circumstances require urgent action to be taken³; or
 - 3.2.3 an application is to be made by the Commission to the Royal Court.
- 3.3 At any stage, the decision-making process will be terminated if it is determined that no further action is required, or that the matter should be addressed through normal or enhanced supervision.
- 3.4 In addition, the decision-making process may be temporarily suspended where a relevant member of the Executive takes a decision to do something that is not covered by this Guidance Note.
- 3.5 For the avoidance of doubt, the decision-making process in this Guidance Note does not include any decision that may be taken under The Companies (Guernsey) Law, 2008, as amended or The Companies (Alderney) Law, 1994, as amended.

4. EXECUTIVE REVIEW

- 4.1 The Executive Review is outside the decision-making process, but is the point at which a selection is made, from a range of options, as to what appears from the information presented to be the most appropriate way forward in dealing with the matter, dependent on the nature and severity of the conduct presented.
- 4.2 The Executive Review involves considering information presented by the staff member investigating the matter (the “**case officer**”), with particular attention given to:
 - 4.2.1 the relevant Regulatory Laws;
 - 4.2.2 matters indicating non-compliance;
 - 4.2.3 any known mitigating factors;
 - 4.2.4 the degree of confidence that the Commission may have in the reliability of the information; and
 - 4.2.5 any recommendations of the case officer as to the action that may be taken.

³ For example: to safeguard the assets of investors; or in the best interests of customers, beneficiaries, investors or the public where the financial resources of the registered person do not comply with regulatory requirements; or where statute vests in the Commission the right to apply to Court for relief.

- 4.3 The Executive Review will be conducted by the Director or a Deputy Director of the relevant Division. In the event that they cannot act for any reason, alternative arrangements will be made for another Executive Officer to conduct the review.
- 4.4 If it appears, to those conducting the review, that the information presented indicates a reasonable probability that non-compliance has occurred in relation to which the Commission may wish to exercise an Enforcement Power, the Executive Review may:
 - 4.4.1 initiate the decision-making process by directing that arrangements be made for provision and verification of the information under Stage 2 (see paragraph 8 below);
 - 4.4.2 refer the matter to the Enforcement Division for further investigation; or
 - 4.4.3 determine that this matter should be dealt with as a supervisory matter.
- 4.5 Where the review concludes that neither of the options under paragraph 4.4 above is appropriate at that time, or at all, it may direct any other action it deems to be appropriate which is within the Commission's powers.

SECTION 2 – THE DECISION-MAKING PROCESS

5. INTRODUCTION / OVERVIEW

- 5.1 Where a relevant member of the Executive has determined to seek the use of Enforcement Powers against a party or parties then the choice of actual sanctions will determine who fulfils the role of decision-maker.
- 5.2 The decision-maker will be a person or persons who have been unconnected with the investigation of the matter.
- 5.3 The decision-maker will follow the process described in this section, but will otherwise conduct himself in the manner that he considers suitable in order to enable him to determine fairly and expeditiously the matter under consideration. The decision-maker may, subject to the relevant Regulatory Law, deviate from this process, as he may deem necessary or appropriate to do so. Subject to section 21 of the FSC Law (which imposes certain confidentiality requirements on the Commission) the decision-maker will endeavour to advise those parties who may take part in this process where such deviation occurs.
- 5.4 The Commission's decision-making process falls into four key stages and is preceded by the Executive Review stage:
 - 5.4.1 Stage One – Case Review Panel.
 - 5.4.2 Stage Two – Provision of Case Material.
 - 5.4.3 Stage Three – First Consideration of the Decision-Maker.

5.4.4 Stage Four – Second Consideration of the Decision-Maker.

5.4.5 **Decision taken by the Decision-Maker.**

6. SETTLEMENT

6.1. SUCCESSFUL SETTLEMENT DISCUSSIONS

6.1.1 **Early settlement is generally desirable, however the Commission reserves the right not to enter into settlement negotiations or to settle where the interests of the public would not be served by extended settlement negotiations or where settlement of the matter would not be in the interests of the public.**

The possibility of settlement does not detract from the fact that enforcement action is one of the tools available to the Commission. Settlements are not the same as “out of court” settlements in the litigation context. Any settlement agreement is a regulatory decision to which the party has consented. Approval on behalf of the Commission of any settlement agreement will be by either:

6.1.1.1 at least two Executive Officers not involved in the case; or

6.1.1.2 a case review panel (“**CRP**”) constituted as at paragraph 7 below;
or

6.1.1.3 a sub-group of Commissioners not otherwise previously involved with the matter.

6.1.2 Where it is both consistent with discharging its statutory functions in accordance with its guiding principles, and it is appropriate to do so, the Commission may enter into discussions (“**settlement discussions**”) with the party, with a view to entering into a settlement agreement, concerning the nature of non-compliance by the party and the action to be taken by the Commission.

6.1.3 Any settlement discussions will only arise once the Commission has a sufficient understanding, and an acceptance by the party, of the nature and gravity of the misconduct, and reserves the right to withdraw from discussions if new matters come to light. All settlement discussions will be conducted on a *without prejudice* basis.

6.1.4 The Commission operates a discount scheme for discretionary financial penalties (and/or in relation to periods of prohibition) on early settlement. In outline, this operates as follows: if settlement is reached, the Commission and the parties concerned will agree in principle the amount of the financial penalty, taking into account all the factors as set out in the case. A discount will be applied as follows depending upon when settlement is reached:

- Stage 1: Prior to the matter being referred to a decision-maker - 30%
- Stage 2: After the period set out in Stage 1 but before the issue of a notice by a decision-maker that they are minded to impose a sanction -15%
- Stage 3: After the period set out in stage 2 but before 3 days prior to the expiry of any representation period as a result of a ‘minded to’ notice being issued⁴ – 10%

- 6.1.5 If a party chooses not to accept the opportunity to engage in settlement discussions when first offered by the Commission, the Commission may decline such discussions at a later stage. If the Commission does later agree to negotiate the terms of a settlement agreement, the terms originally offered may be varied.
- 6.1.6 Until any settlement agreement has been executed by both the Commission and the party, the terms of that agreement (including any attachments such as a direction or public statement) will not be in effect. The agreement will remain a working draft document that is *without prejudice* to the rights of any party concerned. Once the settlement agreement has been executed by each of the parties, the *without prejudice* nature of the settlement agreement will fall away and will no longer apply to the settlement agreement or any attachment, but will continue to apply to the discussions and correspondence that led to the agreement.
- 6.1.7 The party will be encouraged to be accompanied at each meeting by a legal advisor or to obtain legal advice beforehand. Further, the party will be recommended to take legal advice before entering into a settlement agreement.
- 6.1.8 The relevant member of the Executive will set a clear and reasonable time frame for the completion of settlement discussions to ensure that they result in a prompt and clear outcome and do not delay the discharge of the Commission’s regulatory functions.

6.2. UNSUCCESSFUL SETTLEMENT DISCUSSIONS

- 6.2.1. In the event that discussions cannot be concluded with a settlement agreement, the regulatory issue will be dealt with in accordance with this Guidance Note.

7. STAGE ONE – CASE REVIEW PANEL

- 7.1 The CRP is not a standing committee of the Commission. It is convened on a “case by case” basis, with membership dependent upon the matter under consideration.

⁴ Please note that this period will not apply where the representation period is reduced to 3 days or less or dispensed with altogether.

- 7.2 The CRP will normally include the following members:
- 7.2.1 the Director General (who will chair the CRP); if the Director General is not available, the CRP meeting(s) will be chaired by a suitably senior Executive Officer who is sufficiently independent of the issue being considered;
 - 7.2.2 a relevant⁵ Executive Officer; and
 - 7.2.3 at least one other Executive Officer *not* connected with the case.
- 7.3 The case officer(s) will attend the meeting to present the facts and to answer any questions or clarify issues raised.
- 7.4 The CRP will review the matter before it, taking account any of the initial responses from the party and the related comments of any relevant member of the Executive; consider the proposed recommendations for further action; and, without limitation, may take any, or a combination, of the following decisions:
- 7.4.1 whether or not any further investigation is necessary;
 - 7.4.2 that the investigation be discontinued and either no further action taken or that some other action be taken that is not subject to the decision-making process (such as enhanced supervision be introduced/continued; a formal warning issued; or referral for criminal investigation);
 - 7.4.3 the nature of any further action that may be taken under delegated powers;
 - 7.4.4 a recommendation for an alternative sanction;
 - 7.4.5 that the case is appropriate to attempt to reach a settlement by way of negotiation;
 - 7.4.6 to make recommendation to the Director General to refer the matter to a decision-maker.
- 7.5 There may be more than one meeting of the CRP (for example, if the decision taken is that further enquiries are needed).
- 7.6 If the CRP recommends that the matter proceeds then the relevant member of the Executive will send a full package (see paragraph 8 below) of all the documents to the party and seek representations on any factual matters. The relevant member of the Executive will at this stage notify the Commission Secretary of the possible need to appoint a decision-maker.

⁵ An Executive Officer will be a “relevant” Executive Officer where the case involves a person that is connected to the Division for which they have responsibility in the Commission. There may be more than one relevant Executive Officer.

8. STAGE TWO – PROVISION OF CASE MATERIAL⁶

- 8.1 This stage involves the provision to the party of the relevant information on which the relevant member of the Executive will rely in asking the decision-maker to act⁷.
- 8.2 The party will be requested to consider the information that has been provided and respond to the relevant member of the Executive, in writing:
 - 8.2.1 confirming that the facts as presented are correct or, if not, suggesting what changes might be made so that they are correct;
 - 8.2.2 providing any additional information considered material or relevant in any way to the matter; and
 - 8.2.3 including any comments the party may wish to make in relation to the recommendations that the relevant member of the Executive is considering making to the decision-maker.
- 8.3 In determining the date by which the response should be provided, the relevant member of the Executive will take account of the nature and volume of information and the extent to which individual items have been previously available to the party for review and comment.
- 8.4 All comments received will be considered and evaluated.
- 8.5 Following collation, the document package, amended as necessary in the light of the comments received from the party, and the matter will be re-presented to a CRP to review see paragraph 7 above.
- 8.6 Following the review by the CRP, the party will be provided with a copy of any new and revised information from that previously provided.
- 8.7 It is not usually necessary for the steps in this stage to be repeated more than once. An exception might be a complex investigation involving numerous parties.

9. STAGE THREE – FIRST CONSIDERATION OF THE DECISION-MAKER (INTERNAL)

- 9.1 As part of Stage 3 the Commission will provide a list of documents which they have identified during the investigation that may affect the case and which it has identified following a reasonable search. This is carried out being mindful of the number of documents involved, the nature of the proceedings and the complexity of retrieval.

⁶ This stage involves the provision of the Commission's case and the documents that it relies upon and should not be confused with the provision of lists of documents and the accompanying process which occurs in connection with Stage 3

⁷ Statutory Powers exist throughout the Regulatory Laws in terms similar to section 11G(2) of the FSC Law which allows the Commission to withhold certain confidential information.

- 9.2 The Commission Secretary will appoint a decision-maker and take the role of Secretary to them. After considering the package of documents presented by the relevant member of the Executive, the decision-maker may:
- 9.2.1 request further information;
 - 9.2.2 decide that it is minded to take the recommended action;
 - 9.2.3 decide that it is minded to take some other action;
 - 9.2.4 take no action; or
 - 9.2.5 refer the matter to a person with the authority to take the appropriate action.
- 9.3 Some of the Regulatory Laws provide that before a decision is made for which a right of appeal is conferred, a decision-maker must advise the party that it may, within a period of 28 days beginning on the date of the notice, make written ***or*** oral representations to the decision-maker in respect of the recommended measure or sanction in such a manner as the Commission may from time to time determine (“**Representation Period**”). Subject to paragraph 9.4, the Commission considers the length of the Representation Period to be reasonable, and will apply it in respect of all matters referred to a decision-maker involving potential use of an Enforcement Power or sanction under any of the Regulatory Laws.
- 9.4 A decision-maker may reduce the Representation Period where it determines, at his sole discretion, that to do so would be in the interests of the public, or any class thereof, or any particular persons, or the reputation of the Bailiwick as a finance centre. If by reason of those interests a decision-maker considers that a decision must be taken immediately as a matter of urgency, then a decision-maker may decide, at his sole discretion, to dispense with the Representation Period altogether.
- 9.5 Under those Regulatory Laws that prescribe the Representation Period, the Commission does not have the power to extend the Representation Period beyond 28 days. The Commission will, therefore, as a matter of policy, not extend the Representation Period in matters involving an Enforcement Power or sanction where the Representation Period is not prescribed.
- 9.6 The decision-maker to whom a recommendation has been made will, if he is minded to exercise one or more of his powers, via the Secretary:
- 9.6.1 notify the party and the relevant member of the Executive in writing that the decision-maker is minded to accept the recommendation for the proposed sanction, or to impose some alternative sanction;
 - 9.6.2 notify the party and the relevant member of the Executive who the members of the decision-maker are that considered the matter to date and will be considering it further;
 - 9.6.3 ensure that the party is provided with a copy of any documented evidence that the party has not received as part of the initial provision of material, upon which the recommendation is based; including the memorandum

prepared by the relevant member of the Executive in order to present the matter to a decision-maker;

- 9.6.4 set a deadline for the receipt of a letter indicating whether the party intend to make written or oral representations.
 - 9.6.4.1 If written, they must be made and received by the decision-maker before the expiry of the Representation Period.
 - 9.6.4.2 If oral, they must be made before the expiry of the Representation Period (see paragraph 9.4 above) and at a time agreed by all parties including the decision-maker, but in default of agreement as set by the decision-maker.
- 9.6.5 ensure that the party is aware of and has access to this Guidance Note; and
- 9.6.6 set out the consequences of failing to respond within the time frame and set out any right of appeal which will apply if the decision-maker makes the decision which the notice referred to in paragraph 9.5.1 states that the decision-maker is minded to make.
- 9.7 The decision-maker may permit allegations or statements of denial to be amended at any time provided that the submissions or representations of any other participant are not prejudiced.
- 9.8 Where a written submission is made within the Representation Period the Secretary shall be responsible, upon receipt, for ensuring that a copy is provided to the decision-maker and the relevant member of the Executive.
- 9.9 The relevant member of the Executive may, if considered appropriate, respond to the written submissions. These responses will be provided to the decision-maker and the party by the Secretary.

10. STAGE FOUR – SECOND CONSIDERATION OF THE DECISION-MAKER

- 10.1 The decision-maker will advise the party and the relevant member of the Executive of the date which the decision-maker will consider or meet to consider the matter further.
- 10.2 The decision-maker will meet/consider on the date advised to the party in paragraph 10.1 above. The decision-maker may also invite anyone else that he considers will assist it in his deliberations, such as the decision-maker's legal adviser.
- 10.3 Procedural matters relating to the conduct of the meeting, evidence, or the process will be addressed in the first instance at the start of the meeting by the decision-maker and will be recorded by the Secretary.

Oral Submissions to the decision-maker

- 10.4 The decision-maker will be responsible for determining the procedure that will be followed where oral submissions are made, but in general, the following guidelines will apply:
- 10.4.1 The oral submission by, or on behalf of, the party should explain why the proposed decision is inappropriate or not justified.
 - 10.4.2 Following the oral submission, the party may be required to answer questions from the decision-maker and clarify issues that may arise.
 - 10.4.3 Members of the Executive may be invited to comment on any matter raised by the party, to answer questions posed by the decision-maker or clarify issues.
 - 10.4.4 In exceptional circumstances, if information is introduced by the party during the oral submission that has not previously been made available to the Commission, the decision-maker may decide to defer taking a decision to allow more time for the relevant member of the Executive to comment on the information and to disclose any such comments to the party.
 - 10.4.5 The process is intended to be interactive rather than adversarial in nature. For the avoidance of doubt, court rules, process and procedures do not apply. All decision-maker meetings will be conducted in private.
 - 10.4.6 Whilst the decision-maker will attempt to arrange a meeting date convenient to the parties, this may not always be possible, for example, because of the urgency of the matter or because the party appears to be attempting to delay a decision by not making reasonable efforts to attend a meeting. Where strict statutory provisions exist the decision-maker is unable to adjourn a meeting scheduled to hear oral representations beyond the Representation Period.
 - 10.4.7 If the party fails to attend the meeting, the decision-maker may proceed in its absence, provided that the decision-maker is satisfied that the party has been given sufficient notice of the meeting. If the decision-maker receives no response or representations from the party, the decision-maker may regard as undisputed the allegations or matters outlined in the Commission's submissions.
 - 10.4.8 The meeting will be recorded through the use of audio equipment: one of the audio copies made at the meeting will be provided to the party.

Deliberations of the decision-maker

- 10.5 The giving of oral evidence and cross-examination are not usually necessary but the decision-maker may permit both where the interests of justice so require. Cross examination will only be permitted, at the decision-maker's sole discretion, where there is disagreement over the significant facts regarding the alleged regulatory breaches. The decision-maker may, at any time, limit or halt any cross

examination he has permitted. The decision-maker may ask a witness questions either himself or through a legal representative acting on the decision-maker's behalf.

- 10.6 Both the relevant member of the Executive and the party may call witnesses, provided that a request is submitted to the decision-maker in writing, identifying the name of the witness(es) and a summary of the evidence to be adduced. This request must be made at least 7 days prior to the holding of the meeting. Requests must be copied to the other participant. The decision-maker will decide in the first instance whether to permit the witness(es) to give evidence in person. Witnesses proposed to be called during a meeting must be available on the scheduled meeting date. The unavailability of a witness on the scheduled meeting date may not constitute sufficient grounds upon which to adjourn the meeting.
- 10.7 The decision-maker, at his sole discretion, may adjourn the meeting. This may occur where the decision-maker requests that the relevant member of the Executive or the party provide further material or attend a subsequent meeting, or to assist him in obtaining the information he requires so that he may make a final decision in relation to the matter before him.
- 10.8 When the decision-maker is satisfied that he has received complete representations, the relevant member of the Executive and the party (other than the members of the decision-maker, his legal advisor and the Secretary) will leave the meeting.
- 10.9 If any new information or matters emerge during the decision-maker's deliberations, including any legal advice given by his legal advisor, the party and the relevant member of the Executive will be given an opportunity to comment thereon. In such a case, the decision-maker will delay taking his final decision for a reasonable period to allow the person(s) concerned to make comments.

11. DECISION

- 11.1 In deciding any matter of disputed fact or whether any of the allegations have been proved, the standard of proof to be applied by the decision-maker will be the balance of probabilities.
- 11.2 The decision-maker, through the Secretary, will notify the relevant member of the Executive and the party in writing of its decision. The written notice will contain:
 - 11.2.1 a written statement of the reasons for its decision;
 - 11.2.2 the terms and grounds of any enforcement measure or sanction imposed;
and
 - 11.2.3 the particulars of the right of appeal under the applicable Regulatory Law or other applicable legislation.

- 11.3 The decision-maker will not disclose any reasons which would, in his opinion, involve the provision of confidential information, which would be prejudicial to⁸:
- 11.3.1 a criminal or regulatory investigation (whether in the Bailiwick or elsewhere); or
 - 11.3.2 co-operation or relations with investigatory, regulatory or prosecuting authorities in any other place.
- 11.4 Where the decision-maker omits any matter from a statement of reasons, the party may be informed of the fact that there has been an omission and given particulars where the party has a right of appeal with respect to the omission.⁹
- 11.5 Where a ground for a decision is that any criterion of the fitness and propriety requirements of a Regulatory Law is not, or has not, been fulfilled, or may not be or may not have been fulfilled, in the case of any individual, a copy of the written decision will also be served on that individual.
- 11.6 In reaching his decision, the decision-maker will have regard to the written and oral representations received and all other information in the documents before him. It is for the decision-maker to decide which of the matters before him he accepts and which he does not.

12. DISCONTINUANCE OF PROCEEDINGS

- 12.1 The relevant member of the Executive will continue to assess the appropriateness of the recommendation in the light of any new information or representations they receive and any material change in the facts or circumstances relating to the matter. In some instances, as a result of that information, the Commission may decide to withdraw its recommendation and discontinue the matter. The decision to discontinue the matter does not require the agreement of the decision-maker, but the relevant member of the Executive must inform the decision-maker and the party if it decides to discontinue the matter.

⁸ Where the power exists under the relevant Regulatory Law or where the Commission is not required under a Regulatory Law to provide reasons for a decision.

⁹ The right of appeal, and therefore this provision, will not apply where the Commission is not required to provide reasons for its decision under a Regulatory Law.

GLOSSARY OF TERMS

For the purposes of this Guidance Note, the following terms should be understood to have the meaning shown by this table. The terms and their meanings are intended only to aid clarity to the Guidance Note: they are not formal definitions. Please note that, unless the context requires otherwise, words denoting one gender include all genders and the singular includes the plural and vice versa.

“**adverse decision**” means a decision to be taken by the Commission to undertake or impose certain regulatory action to which the regulated person does not agree or consent,

“**Banking Supervision Law**” means The Banking Supervision (Bailiwick of Guernsey) Law, 1994, as amended,

“**Commission**” means the Guernsey Financial Services Commission,

“**Commissioners’ Decisions Committee**” or “**CDC**” means ad-hoc committee comprising of not less than 3 Commissioners,

“**Committee**” means, collectively, the Executive Decisions Committee and the Commissioners’ Decisions Committee,

“**decision-maker**” means all or any of the Executive Officers, the Executive Decisions Committee and the Commissioners’ Decisions Committee,

“**Enforcement Policy**” means the Guernsey Financial Services Commission Enforcement Policy, dated 13 June 2011,

“**Enforcement Powers**” means the Commission’s enforcement powers which are derived principally from the Regulatory Laws. The Commission also performs other prescribed regulatory functions under other Bailiwick legislation¹⁰,

“**Executive**” means, collectively, those individuals for the time being appointed or employed as Officers of the Commission in the following positions:

- a) Director General;
- b) Chief Operating Officer;
- c) Director and Deputy Director of Banking and Insurance Supervision and Policy;
- d) Director and Deputy Director of Fiduciary Supervision Policy and Innovations;
- e) Director and Deputy Director of Investment Supervision and Policy;
- f) Director and Assistant Director of Enforcement;

¹⁰The Protection of Depositors, Companies and Prevention of Fraud (Bailiwick of Guernsey) Law, 1969
The Road traffic (Compulsory Third-Party Insurance) (Guernsey) Law, 1936
The Surf-Riding (Long Boards) (Compulsory Third-Party Insurance) (Guernsey) Law, 1969
The Vessels and Speedboats (Compulsory Third-Party Insurance, Mooring Charges and Removal of Boats) (Guernsey) Law, 1972
The Companies (Guernsey) Law, 2008
The Companies (Alderney) Law, 1994
The Control of Borrowing (Bailiwick of Guernsey) Ordinance 1959, and
The Limited Partnerships (Guernsey) Law, 1995,

- g) Deputy Director, Intelligence Services;
- h) General Counsel;
- i) Head of Financial Crime and Authorisations;
- j) Chief Transformation Officer;
- k) Commission Secretary;
- l) The Special Adviser on Government and Public Affairs; and
- m) An Officer appointed as a Senior Decision Maker by the Commission Secretary,

“Executive Review” means a review by an Executive Officer undertaken as set out in paragraph 4 of this Guidance Note,

“Executive Officer” means an individual for the time being holding any of the above Executive positions, except the Director or Assistant Director of Enforcement, the Deputy Director of Intelligence, General Counsel, and Commission Secretary,

“Executive Decisions Committee” or **“EDC”** means a committee comprising not less than 2 Executive Officers,

“Fiduciaries Law” means The Regulation of Fiduciaries, Administration Businesses and Company Directors etc (Bailiwick of Guernsey) Law, 2000, as amended,

“FSC Law” means The Financial Services Commission (Bailiwick of Guernsey) Law, 1987, as amended,

“Insurance Business Law” means The Insurance Business (Bailiwick of Guernsey) Law, 2002, as amended,

“IMII Law” means The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, as amended,

“party” means persons who are the subject of the proposed enforcement measure or sanction,

“POI Law” means The Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended,

“Prescribed Businesses Law” means The Prescribed Businesses (Bailiwick of Guernsey) Law, 2008, as amended and The Criminal Justice (Proceeds of Crime)(Legal Professionals, Accountants and Estate Agents)(Bailiwick of Guernsey) Regulations, 2008,

“Registered Businesses Law” means The Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008, as amended,

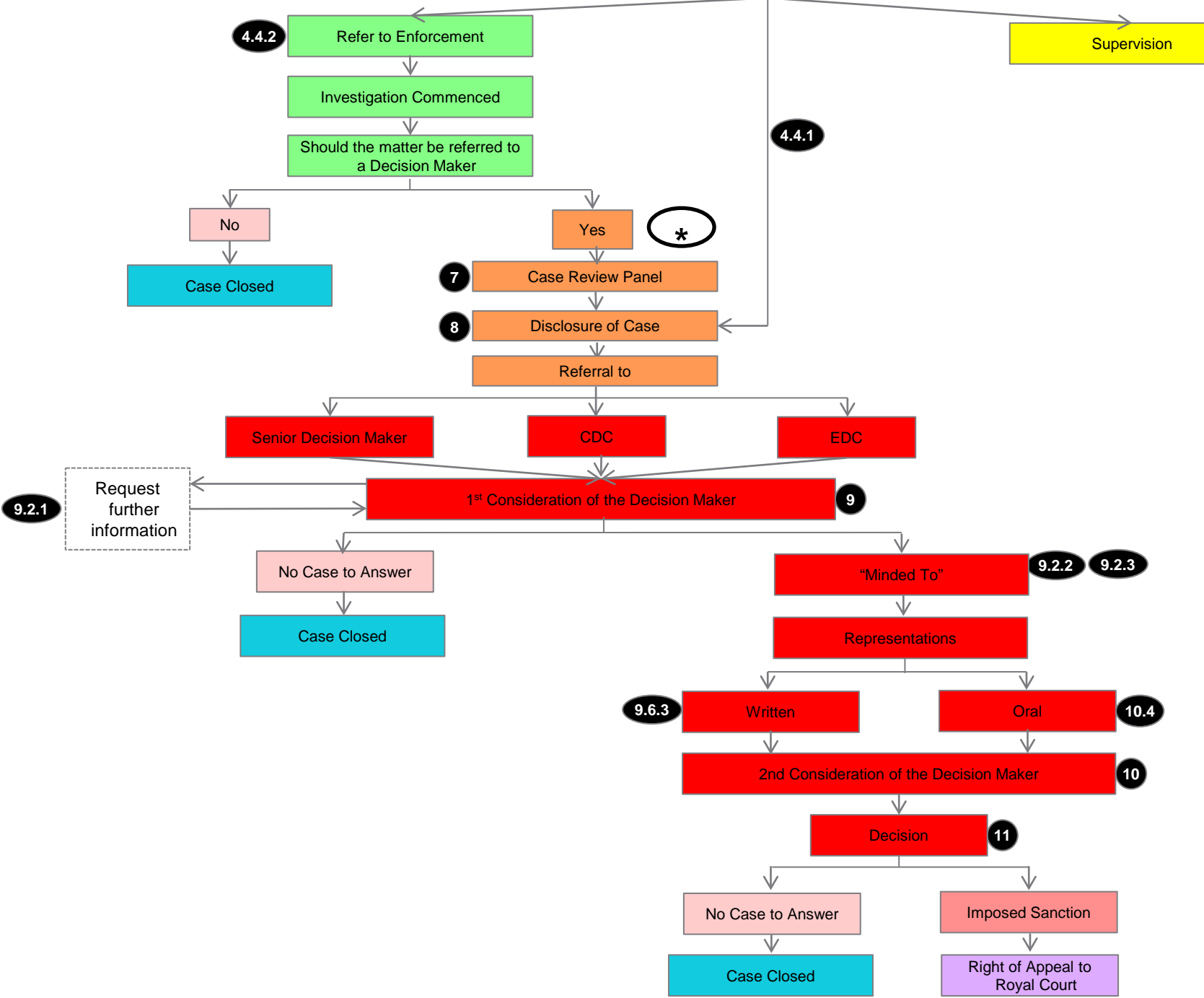
“Regulatory Laws” means the FSC Law, the Banking Supervision Law, the Fiduciaries Law, the Insurance Business Law, the IMII Law, the POI Law, the Prescribed Businesses Law, the Site Visits Ordinance, The Protection of Investors (Administration and Intervention) (Bailiwick of Guernsey) Ordinance, 2008 and the Registered Businesses Law,

“Representation Period” has the meaning ascribed to it in paragraph 9.4 of this Guidance Note,

“**Secretary**” means the secretary to the decision-maker, who is ordinarily the Commission Secretary or their nominated deputy in their absence, and

“**Site Visits Ordinance**” means the Financial Services Commission (Site Visits) (Bailiwick of Guernsey) Ordinance 2008.

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Settlement negotiations may be embarked upon at any stage of the investigation. While early settlement is generally desirable, the Commission reserves the right not to enter into settlement negotiations or to settle where the interests of the public would not be served by extended settlement negotiations or where settlement of the matter would not be in the interests of the public.