

CONSULTATION PAPER NO. 126



DFSA DECISION MAKING PROCESSES

8 JULY 2019

PREFACE

Why are we issuing this Consultation Paper (CP)?

1. This paper sets out our proposals to enhance the DFSA's decision making processes in the light of experience gained in recent years, particularly in enforcement matters. We would appreciate stakeholders' views on these issues.
2. These proposals will, we believe, lead to decisions being taken in a more efficient and timely way, and publicised in a more appropriate manner. We believe that it is important for stakeholders to know when the DFSA takes action in a matter, what action has been taken, who is involved, and to know these things in a timely manner.

Who should read this CP?

3. The proposals in this Paper should be of interest to:
 - a) all Authorised Persons, DNFBPs and Registered Auditors;
 - b) potential applicants;
 - c) Authorised Individuals or Key Individuals for Authorised Persons;
 - d) Registered Audit Principals for Registered Auditors;
 - e) Issuers and Offerors;
 - f) Persons providing legal, accounting, audit, or compliance services in the DIFC; and
 - g) investors.

Terminology

4. In this CP, defined terms have the initial letter of a word, or of each word in a phrase, capitalised and are defined in the Glossary Module (GLO). Unless the context otherwise requires, where capitalisation of the initial letter is not used, the expression has its natural meaning.

What are the next steps?

5. Please send any comments online by clicking [here](#). You will need to identify the organisation you represent in providing your comments. The DFSA reserves the right to publish, including on its website, any comments you provide, unless you expressly request otherwise at the time of making comments. The deadline for providing comments is **6 September 2019**.
6. Following public consultation, we will proceed to make the relevant changes – amended as appropriate to reflect points raised in consultation - to the DFSA's Regulatory Policy and Process (RPP) Sourcebook. The proposed changes to the Regulatory Law (DIFC Law No. 1 of 2004, "the Law") will be submitted to His Highness the President of the DIFC for his consent that the changes should be

passed, for assent, to His Highness the Ruler. You should not act on the proposals until the relevant changes to the laws and the DFSA's Sourcebook¹ are made. We shall issue a notice on our website telling you when this happens.

Structure of this CP

7. The remainder of this CP contains:
 - a) Background information;
 - b) Section 1 – Processes regarding settlement;
 - c) Section 2 – Appointment of external decision makers;
 - d) Section 3 – The representations process;
 - e) Section 4 – Policy on interest charged on disgorged benefits;
 - f) Section 5 – Publication of information on decisions;
 - g) Appendix 1: suggested amendments to the Law;
 - h) Appendix 2: draft amendments to the RPP Sourcebook; and
 - i) Appendix 3: Questions in this Consultation Paper.

Background information: DFSA Decision Making

8. The DFSA is required, in exercising a number of its powers, to follow formal decision making processes. This is a necessary part of the DFSA's providing procedural fairness and ensuring that it makes sound decisions.
9. In 2015, the DFSA's approach to decision making underwent significant changes (see the proposals in CPs 90, 94 and 95), with the introduction of new procedures. Since that time, we have learnt a number of lessons from the operation of the new procedures and have found, generally, that decisions have taken longer than the DFSA had anticipated. The changes proposed below are a reflection of these lessons and, we believe, will lead to more effective and timely decision making in future.
10. The changes proposed support the DFSA's objective to foster and maintain confidence in the financial services industry in the DIFC. This is because timely publication of information about regulatory action, as proposed in this paper, tells industry participants and direct and indirect users of those services, that misconduct is dealt with appropriately.
11. The proposed changes also support the DFSA's objective of preventing, detecting and restraining conduct that causes or may cause damage to the reputation of the DIFC or the financial services industry in the DIFC. This is because the proposals are intended to enable the DFSA to deliver appropriate

¹ The RPP Sourcebook contains guidance on the DFSA's approach to regulation. It does not create obligations for Firms, or set requirements that must be met, although it does describe the DFSA's expectations in some areas. The DFSA is not required to consult with stakeholders when changes to the RPP Sourcebook are proposed. However, in this case the proposed RPP changes are closely linked to the proposed changes to the Law, so we believe it will be helpful for stakeholders to see all of the proposed changes together.

outcomes in regulatory matters more efficiently and with earlier transparency.

12. In particular:
 - a) the proposed publication of more detailed information about DFSA decisions that are referred to the Financial Markets Tribunal (FMT) enables us to convey information at the earliest appropriate time about matters involving behaviour that we consider unacceptable, and in respect of which we have decided to take action, while at the same time making it clear that the decision is being reviewed; and
 - b) the proposals reduce the scope for delays in the decision making process that may be caused by oral representations.

Section 1: Processes regarding settlement

13. We are proposing three changes regarding settlement of enforcement matters. The first relates to internal process, the second to the period in which a matter can be settled, and the third to the allowable settlement discount.
14. We propose to create a process whereby the relevant decision maker involved in setting the parameters for negotiation (the Settlement Decision Maker, or SDM) also approves the outcome reached. This approach is consistent with that adopted in the UK by the FCA.
15. The SDM would be drawn from the current pool of DFSA staff that are suitably experienced to be a decision maker. If the matter is not settled, that staff member would generally not be able to act as the decision maker for the matter if it proceeds in accordance with the usual decision making process. Please see the draft RPP 5-15-9 to 5-15-12 in Appendix 2.
16. The DFSA's policy on settlement is set out primarily in RPP sections 5-15 and 6-8². While it is currently structured in such a way to give the DFSA flexibility in how it approaches settlement, we propose that it would be beneficial to be more prescriptive about certain aspects of the settlement process. In particular, we propose more structure around:
 - a. the period in which settlement is available; and
 - b. the discount for settlement that will be applied to the agreed penalty amount.
17. RPP 5-15-7 currently provides that the DFSA will set clear and reasonable timetables to ensure they do not unreasonably delay settlement or a supervisory or enforcement outcome. However, experience to date has shown that this can be a very time-consuming process. Accordingly, we are proposing to introduce a single fixed period, usually of 28 days, within which settlement must be agreed in order for the subject to benefit from the settlement discount. Extensions to this deadline may be granted in exceptional circumstances, but only if the subject has already engaged in settlement discussions in a meaningful way. Please see

² Chapter 6, which sets out the DFSA's policy on penalties, is, unlike other parts of RPP, a statement that the DFSA is required to publish under the Regulatory Law (Article 90(6)).

the draft RPP 5-15-2 and 6-8-2 in Appendix 2. Additionally, we propose deleting a number of RPP provisions regarding settlement criteria because they are no longer relevant in the new model of offering settlement within a specified period of time.

18. RPP 6-8-1 currently provides that a financial penalty agreed as part of a settled outcome will generally be reduced to reflect the timing of any settlement. RPP does not indicate what that level of reduction will be. The DFSA's general practice³ since the start of 2015 has been to reduce proposed fines by 20%, where the outcome is settled with the subject of the action.
19. In order to provide greater certainty around settlement, we propose that if settlement is achieved within the specified period (i.e., 28 days or such other period allowed by the DFSA), a fixed discount of 30% will be given. As with the current policy, if the penalty includes an amount representing disgorgement of a benefit gained as result of the contraventions, the discount will not apply to that disgorged amount. Please see the draft RPP 6-8-2 and 6-8-3 in Appendix 2.
20. We are proposing a 30% discount, rather than the current 20%, to create a greater incentive for settlement. This is in line with the DFSA's approach that we should settle cases where possible (i.e., where agreement can be reached with the subject of the action and a satisfactory regulatory outcome can be achieved), to make most effective use of DFSA resources. Again, for comparison purposes, 30% is the maximum discount offered by the UK FCA.

Issues for consideration

Q1: Do you have any comments on the proposed use of Settlement Decision Makers? If so, what are they?

Q2: Do you agree with the proposed limitation of the time available to reach a settlement? If not, why not, and what alternative would you propose?

Q3: Do you agree with the proposed change on settlement discounts? If not, why not, and what alternative would you propose?

Section 2: Appointment of external decision makers

21. Under the existing arrangements, a decision maker carries out their functions through a delegation from the Chief Executive of the DFSA under Article 36(h) of the Law. That article permits the Chief Executive to delegate his functions and powers if they may be more efficiently and effectively performed by officers or employees of the DFSA, or committees of such persons. Further, with the approval of the DFSA's Board of Directors, Article 36(h) also permits the Chief Executive to delegate certain functions and powers, either generally or in relation to any particular matter, to an external person, i.e., a person who is not a DFSA officer or employee.
22. Experience since 2015 has shown that the practice of using internal DFSA staff

³ In one case, the DFSA gave a discount of 10% - instead of the usual 20% - to reflect the late stage of the proceedings when agreement was reached.

as decision makers can lead to delays in the decision making process because of the difficulties of balancing decision making responsibilities with their day-to-day responsibilities. In response to these lessons, we changed the process at the end of 2016 with the appointment of a Chief Decision Maker, who prioritises this work and acts as the decision maker whenever possible. However, there are still cases of particular complexity, or ones which involve multiple parties, that cannot easily be undertaken by internal appointees with already substantive responsibilities.

23. We propose that, in appropriate cases, the DFSA appoints an external person to be the decision maker. This is already permitted under the Law, however, we propose minor changes to our existing RPP to reflect the use of external decision makers. Please see the draft RPP 7-7-1 in Appendix 2.

Issues for consideration

Q4: Do you have any comments on the DFSA's proposals for the use of external decision makers? If so, what are they?

Section 3: The representation process

24. The proposals on the representations process set out below would apply to all relevant decisions, i.e., both supervisory decisions and enforcement decisions, to which the procedures set out in Schedule 3 of the Law apply.

The right to both written and oral representations

25. We have observed that the subjects of DFSA Notices frequently ask for extensions to the deadlines for making representations. Schedule 3 of the Law currently provides subjects with the right to make representations in person and in writing, should they wish to do so. However, we have seen cases where the process for making representations has taken almost ten months⁴. To reduce duplication, and the potential for delays arising out of the representations process, we propose changing this to allow subjects to make only representations in writing, but with the possibility in appropriate cases of also making representations in person if the subject of the Notice can satisfy the decision maker that oral representations are necessary as well. This proposal will require changes to the Law and RPP.
26. Although not formally set out in RPP, our general practice has been to inform the subject(s) of an investigation of the relevant findings of the investigation before making a recommendation to the decision maker. Since mid-2018, the DFSA has adopted a practice of presenting its investigation findings, for each of the subjects it is proposing to refer to the decision maker, in separate draft annotated notices similar in format to Preliminary Notices. The subject has the opportunity to comment on those proposed findings and any comments they make are considered by the DFSA when finalising its findings to take forward with a recommendation to a decision maker. Therefore, prior to receiving a Preliminary Notice, the subject has already had an opportunity to make written

⁴ Being the period from when a Preliminary Notice is given to the date of the oral representations meeting.

representations on the proposed findings, albeit that a Preliminary Notice given by a decision maker may contain preliminary findings and proposed action that may be different in some respects from those that were contained in the draft annotated notice.

27. In substance, then, the Schedule 3 written representations amount to a second opportunity for the subject to make representations on the preliminary findings and proposed action and Schedule 3 oral representations amount to a third opportunity. The experience of the DFSA, to date, has been that representations in person rarely result in new information or submissions being put before the decision maker that have not already been made at least once before in writing.
28. While oral representations may sometimes be helpful in enabling the subject to participate in the process and address directly the person responsible for making a decision which affects them, they also have disadvantages. Apart from the obvious delay and likely (based on our experiences to date) repetition of representations, allowing both written and oral representations may be disadvantageous in that the decision maker may have to determine which of the written representations are repeated in the oral representations, perhaps with a different emphasis or focus, and which points are new.
29. We have considered the option of allowing subjects to make only oral representations (i.e., instead of written) but recognise that this may present certain practical difficulties. For example:
 - a. the subject may raise matters previously not before the decision maker, which the case team needs to check and address. This may result in delays if a further meeting has to be scheduled by the decision maker to allow the case team to respond to the new issues;
 - b. the subject may still wish to provide written representations for the decision maker to consider (either before or after a representations meeting);
 - c. in multi-party cases it may take considerable time to organise a hearing on a mutually convenient date and agree the order in which the subjects are to make their oral representations/responses; and
 - d. oral representations may become formal, legalistic and costly if, for example, external counsel are representing a number of different parties.
30. The proposal to limit representations to being in written form should help reduce the overall amount of time required to deal with the representations stage of the Schedule 3 process, leading to more timely outcomes for both the subject of the proposed action and the DFSA. Importantly, however, the proposals are aimed at improving credible deterrence, by deterring others from engaging in similar conduct, and at providing greater reassurance to direct and indirect users of DIFC financial services that misconduct is being punished. Both of these aims, closely linked to the DFSA's objectives, can be achieved without prejudicing the subject's right to procedural fairness or the decision maker's ability to reach a properly informed decision.
31. In making this proposal, we recognise there may be instances where oral representations may also be appropriate. We propose, therefore, allowing the

subject to request oral representations, but they will need to demonstrate to the DMC's satisfaction that written representations alone, in the particular circumstances of the case, will not be adequate, and that there are good reasons why in the circumstances both forms of representation are necessary.

32. In making this proposal, we have considered the administrative decision making processes in comparable regimes, such as Australia, Canada, Hong Kong and the UK. This comparison is summarised below:
 - a. **The Australian Securities and Investments Commission (ASIC)** – the ASIC delegate holds an oral hearing. However, it provides that if the affected person does not want to attend an oral hearing they may make written submissions instead.
 - b. **The Ontario Securities Commission (OSC)** – proceedings before a Panel of the Commission are tantamount to court proceedings with service and filing of documents, motions, interim proceedings to manage the proceeding, admissibility of evidence and cross-examination of witnesses.
 - c. **The Hong Kong Securities and Futures Commission (HKSF)** – disciplinary proceedings are normally determined on the basis of written submissions. However, a regulated person may ask for a meeting with the SFC to make oral submissions. A regulated person who wants to have a meeting with the SFC must apply to the SFC in writing explaining why he thinks a meeting is necessary. Such a meeting will be held if the SFC considers fairness in the circumstances requires it.
 - d. **The UK Financial Conduct Authority (FCA)** – the Regulatory Decisions Committee (RDC) process provides for written and oral representations.
 - e. **The Bank of England, Prudential Regulation Authority (PRA)** – representations to the Enforcement Decision Making Committee (EDMC) are usually in writing. However, it is open to the recipient of a warning notice to ask the EDMC for permission to make oral representations. It is for the EDMC to determine whether to give such permission. The warning notice will specify a time within which the recipient is required to indicate whether they wish to make oral representations.
33. In summary, of the regulators reviewed, the UK FCA is the only one that allows both written and oral representations as of right. The OSC in Canada has court-style proceedings; ASIC has an oral administrative hearing, but with an option for written representations instead; and the HKSF and UK PRA have a usual practice of written representations with an option to request an oral hearing in addition, if there are good reasons for needing such a hearing.
34. We propose to adopt a similar approach to the UK PRA and the HKSF by providing that decision making proceedings would normally be decided on the papers, but with the subject being able to request oral representations in addition to written representations in appropriate cases. Implementing this proposal requires amendment to the Law and an update to RPP. Please see the draft Schedule 3, paragraph 7, of the Law in Appendix 1 and RPP 7-7-4 in Appendix 2.

Comments from Enforcement

35. During some decision making cases, subjects have questioned why the decision maker has sought comments from the DFSA case team on the subject's written representations. This approach, which is consistent with the approach taken by other regulators, is to assist the decision maker's consideration of the subject's representations and ensure they have all relevant information available to decide what action to take. We propose amending RPP to make clear that the decision maker may, if it considers appropriate, request further information, including asking the DFSA team that prepared the case to respond to evidence or issues raised in representations. Please see the draft RPP 7-3-7 in Appendix 2.

Issues for consideration

Q5: Do you agree with the DFSA's proposals to permit, as a matter of course, only written representations? If not, please explain why and the alternative approach that you would prefer, with reasons.

Q6: Do you have any views on the proposals to clarify the decision maker's right to request further information? If so, what are they?

Section 4: Determining penalties - interest charged on disgorged benefits

36. The first step of the DFSA's five-step process to determine the amount of a financial penalty is to deprive the firm or individual who committed the contravention of any economic benefits they gained, whether directly or indirectly, from the contravention. The relevant policy provides that the DFSA will ordinarily charge interest on such a benefit. However, the policy does not explain how the DFSA will calculate that interest.
37. Since 2015, there have only been limited cases in which disgorgement has been an issue. In the one matter where disgorgement was considered in determining the penalty, interest was calculated at the rate of 5.89%. This interest rate was based on prevailing market rates at the time and consideration of the approach taken by the DIFC Courts to awards of pre- and post-judgment interest.
38. When arriving at that figure, the DFSA reviewed the approaches taken by the UK FCA and the US Securities and Exchange Commission (SEC) to calculating interest charged on disgorged benefits. We also considered the approach of the DIFC Courts and UAE Courts to pre- and post-judgment awards of interest:
- pre-judgment interest is directly comparable to the DFSA ordering a subject to disgorge benefits received from wrongdoing that occurred in the past; and
 - post-judgment interest is comparable to interest charged from the date of a decision until the date it is paid.
39. The approaches reviewed vary from using a fixed rate to a rate based on prevailing market rates at the relevant time. For example, the UK FCA has

applied, in certain cases, an 8% rate on interest charged on disgorgement⁵. Similarly, since Practice Direction No. 4 of 2017 ([PD4/2017](#)) was issued, the DIFC Courts have awarded post-judgment interest at the rate of 9% or such other rate as the judge may prescribe.

40. Pre-judgment interest is not covered specifically in any DIFC Court Rules or practice direction. However, it was considered in a number of Dubai World Tribunal cases⁶. In those, the rate varied according to EIBOR at the relevant time and was between 3-4% above the EIBOR.
41. We propose that, in future, the DFSA determine disgorgement interest on a case-by-case basis by reference to the prevailing market lending rates over the time since the contravention occurred. The minimum rate should be 1% over the 3-month EIBOR reference rate, up to a maximum of 12%. Please see the draft RPP 6-5-1 and 6-6-1 in Appendix 2.

Issues for consideration

Q7: Do you have any comments on the proposals on interest on disgorged benefits? If so, what are they?

Section 5: Publication of information on decisions

42. We propose to amend the Law and Chapter 5 of RPP that deal with publicity of decisions that are referred to the FMT. The changes would apply to information about decisions in both supervision and enforcement matters.
43. The DFSA's current policy, set out in RPP, is that information about matters before the decision maker (e.g., a Preliminary Notice) is not normally published before the issue of a Decision Notice. RPP also provides that the DFSA will generally make public any decision made by the DMC and will do so only after any relevant period to refer a decision to the FMT has expired, or, if the affected person refers the matter to the FMT for review, the appeal process has come to an end.
44. The current policy also provides that if the affected person exercises their right of referral, then the DFSA will publish that fact unless otherwise ordered. In cases so far we have provided only very limited information about matters before the FMT. Currently, we publish the following details about pending matters:
 - a. FMT reference number;
 - b. Date of referral;
 - c. Applicant's name;
 - d. Respondent (i.e. the DFSA);

⁵ For example, Kenneth George Carver Final Notice dated 30 March 2015 and Michael Coscia Final Notice dated 3 July 2013.

⁶ For example, *Shokat Mohammed Dalal v The World and Nakheel* (DWT/0023/201033) and *Greenfield Trading Company v Nakheel PJSC* (DWT/0038/2011).

- e. if appropriate, the hearing type (e.g., case management conference, substantive hearing, closing submissions); and
- f. the date and time of any hearing.

This information is published in a table on the FMT section of the DFSA's website.⁷

45. We do not currently publish details of the decision that has been referred to the FMT or the Decision Notice itself. We propose to change this policy as, in our view, there are very good reasons for publishing information about decisions (which could include the Decision Notice itself) even if they are subject to review by the FMT. These include:
- a. **Promoting more timely transparency of DFSA decisions.** Consistent with the guiding principle in Article 8(4) of the Law, publication of information about decisions shows that the DFSA exercises its powers and performs its functions in a transparent manner.
 - b. **Demonstrating the DFSA is taking action.** Significant delay between the time misconduct occurs and an announcement of regulatory action in respect of that misconduct (as may be the case if publicity comes at the end of the FMT process) potentially diminishes the deterrent effect of that action.
 - c. **Promoting confidence in the DIFC financial services industry.** Significant delay to regulatory outcomes also potentially undermines public confidence in the integrity of the financial services offered in or from the DIFC. Allowing earlier transparency about regulatory proceedings helps the financial services industry and consumers understand the types of behaviour the DFSA considers unacceptable at an earlier stage and should encourage more compliant behaviour.
 - d. **Helping people understand what the proceedings relate to.** Given that proceedings in the FMT must generally be heard in public, the publication of information about a decision that is the subject of the proceedings will greatly assist anyone attending those proceedings in understanding what they are about. While it might be obvious to any members of the public attending a FMT hearing that the subject is challenging a DFSA decision, it is unlikely to be clear what that decision was. Publishing information about the decision will remove that uncertainty.
 - e. **Giving the DFSA greater flexibility to comment publicly.** Publishing information about a decision will mean that otherwise confidential information will no longer be subject to the restrictions on disclosure provided by Article 38 of the Law. This will give the DFSA greater flexibility to comment on the case. This could be beneficial in a situation where the DFSA receives questions, for example, from the media, and we would otherwise be restricted in what we could say about the matter.

⁷ <http://www.dfsa.ae/en/About-Us/Our-Structure#Financial-Market-Tribunal>.

- f. **Bringing consistency with the stage of publicity in other actions.** Publicity at the decision stage also aligns DFSA outcomes with the stage at which publicity is given in civil and criminal cases; and
 - g. **Bringing consistency with the approach by other regulators.** Publishing information about decisions subject to review would bring the DFSA into line with the approach taken by other regulators such as the UK FCA and Australia's ASIC (see below).
46. There may also be cases where the subject wishes for the FMT proceedings to be in private and has applied to FMT accordingly. The DFSA recognises that it would not be appropriate to publish detailed information about a decision that has been referred to the FMT if the FMT decided that because the subsequent proceedings should be held in private, it should issue an order preventing publication. Therefore, in order to address this situation, or where the subject may wish to seek an order preventing information about a decision being published for other reasons, we anticipate informing the subject at the time the decision is made that:
- a. the DFSA will publish appropriate information about the decision after any relevant period to refer the decision to the FMT has expired; or
 - b. if the subject refers the decision to the FMT, the DFSA will publish appropriate information as soon as practicable after the referral, unless the FMT has made an order preventing publication.
47. By giving advance warning that the DFSA intends to publish information about the decision, if the subject refers the decision to the FMT, it would enable the person to apply to the FMT for an order, for example, that the tribunal proceedings not be held in public and that information about the decision not be published.
48. Any published information would make clear that the decision has been referred to the FMT and that the DFSA's decision is provisional in light of the fact that it is being challenged. In this regard, we propose to adopt the wording similar to that suggested in relevant decisions of the UK Upper Tribunal regarding media releases and publication of UK FCA decision notices.⁸
49. We also propose, based on similar provisions applying to the UK Upper Tribunal, to specify in the Law the criteria that the FMT should consider in deciding whether to prevent publication in a particular case.

Other jurisdictions

50. The UK FCA's current approach to publishing information about decision notices came about following changes to Section 391 of the Financial Services and Markets Act 2000 (FSMA) in October 2010. Before that, FSMA prohibited the FSA (as it then was), and any person who had been given a warning or decision notice, from publishing the notice or any details concerning it. However, the FSA

⁸ Angela Burns v FCA, UKUT, 1 May 2013, FS/2012/24; Arch Financial Products and others v FCA, UKUT, 30 November 2012, FS/2012/20; Ford, Owen & Johnson v FCA, [2015] UKUT 0220 (TCC), 2 May 2015.

was obliged to publish information about a matter to which a final notice relates as it considers appropriate, unless in the opinion of the FSA publication would be unfair to the person with respect to whom the action was taken or prejudicial to the interests of consumers.

51. The main change to FSMA introduced in October 2010 was to bring the FSA's obligation to publish forward in time so, instead of publishing at the final notice stage, the FSA became obliged to publish information about decision notices and final notices unless it would, in the FSA's opinion, be unfair to do so. The purpose of this was to address the drawback that, if a person decided to refer a matter to the UK Upper Tribunal, there was sometimes a long delay before consumers and the industry became aware of the FSA's reasons for taking action. That is the same drawback we have experienced here and are seeking to address through our proposed changes.
52. ASIC in Australia takes a similar approach to the UK FCA. ASIC's website⁹ states:
 - *"Informing the public of our regulatory activities is important because it promotes:*
 - *public confidence in ASIC's administration of the law – that is, that there is transparency around what we are doing about people who break the law;*
 - *compliance with the law by informing the public about the standards we expect and the consequences of failing to meet those standards"*
 - *"We will issue the media release or media advisory even when the person has a right to appeal against or otherwise seek review of the decision. This is because there is a significant public interest in ensuring that consumers are aware of and informed about actions taken by us. A relevant court or tribunal will have jurisdiction to suppress a decision pending the outcome of an appeal or review. We will normally oppose applications for orders to this effect."*
53. The DFSA is of the view that the same reasoning relating to publication of decisions by the UK FCA and by ASIC applies in respect of DFSA decisions.
54. We propose to amend the Law to include a provision similar to that found in the UK FSMA expressly requiring the DFSA to publish details about a Decision Notice at an earlier point. Like FSMA, this should be subject to the discretion not to publish information in appropriate circumstances. Please see the draft Articles 29(5) to (8) and 116(2) of the Law in Appendix 1 and RPP 5-17-11 in Appendix 2.
55. The UK FCA's practice since October 2013 has been to publish information about certain types of warning notice (i.e., in the DFSA process, Preliminary

⁹ <https://asic.gov.au/about-asic/asic-investigations-and-enforcement/public-comment-on-asics-regulatory-activities/#regulatory>.

Notices). It does so on an anonymised basis for individuals (but named basis for firms). This publication takes the form of a warning notice statement on the FCA's website with brief details about the matter and the person's right to make representations and refer any decision to the UK Upper Tribunal. We do not propose, at this stage, that the DFSA should take a similar approach.

Issues for consideration

Q8: Do you agree with the DFSA's proposals on publicity relating to decisions? If not, please explain why not, and suggest an alternative approach, with reasons.

Appendix 3: Questions in this Consultation Paper

- Q1: Do you have any comments on the proposed use of Settlement Decision Makers? If so, what are they?**
- Q2: Do you agree with the proposed limitation of the time available to reach a settlement? If not, why not, and what alternative would you propose?**
- Q3: Do you agree with the proposed change on settlement discounts? If not, why not, and what alternative would you propose?**
- Q4: Do you have any comments on the DFSA's proposals for the use of external decision makers? If so, what are they?**
- Q5: Do you agree with the DFSA's proposals to permit, as a matter of course, only written representations? If not, please explain why and the alternative approach that you would prefer, with reasons.**
- Q6: Do you have any views on the proposals to clarify the decision maker's right to request further information? If so, what are they?**
- Q7: Do you have any comments on the proposals on interest on disgorged benefits? If so, what are they?**
- Q8: Do you agree with the DFSA's proposals on publicity relating to decisions? If not, please explain why not, and suggest an alternative approach, with reasons.**