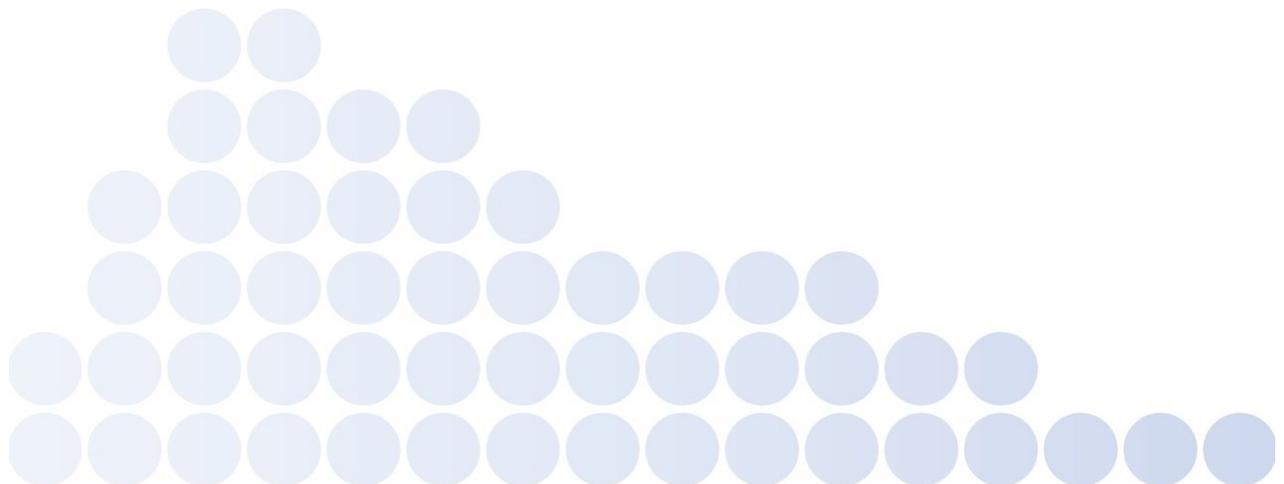




The Gibraltar Financial Services Commission

Enforcement Process

Published: April 2016



Enforcement Process

The GFSC is committed to operating a transparent and consistent enforcement process to the extent permitted by the requirements of applicable legislation.

This document sets out our enforcement decision making process (“the enforcement process”).

This process applies to enforcement action. Unless required by a statute, it does not apply to the exercise of our supervisory powers to intervene directly in the business of firms in the interests of our regulatory objectives nor to the exercise of powers to withhold consent, to oppose or to object.

The enforcement process applies, for example, to:

- the imposition of conditions (including prohibitions and restrictions) on a licence at any time after issue;
- cancellation, suspension or variation of a licence otherwise than at the request of a licensee;
- a direction to cease or desist from, or to undertake, specified action;
- a direction that a person shall not carry out any or specified functions in relation to the business of a licensee on the grounds that they are no fit and proper to do so;
- other sanctions specific to one sector of the market and its related legislation, e.g. the imposition of financial penalties under the Financial Services (Investment and Fiduciary Services) Act.

We may depart from the enforcement process if and to the extent that we are required by a statute or other law to do so and also, if permitted to do so by law, where we judge that upholding the regulatory objectives makes it necessary or desirable to do so. For example, we may consider whether to expedite cases which present urgent or serious ongoing risks. Where that is the case, we will inform the firm or individual concerned where significant departures from the process will occur.

Except as may be required by a statute or other law, the enforcement process will also not apply to the following:

- the exercise of powers:
 - ◆ to petition or make applications to the courts or to institute legal proceedings;
 - ◆ that support the carrying out by the GFSC’s of its supervisory or regulatory functions, such as (for example only) the powers to require production of information or documents, to require explanations, to conduct inspections, to appoint examiners, investigators or inspectors, to require skilled persons’ reports or to require a financial restoration plan;
 - ◆ to order restitution;
 - ◆ to appoint administrators;
 - ◆ to exchange information or co-operate with other authorities;
 - ◆ to grant or refuse, or impose conditions on the grant of authorisations, licenses, permissions or consents;

- making public statements in relation to its enforcement actions;
- enforcement action taken in relation to market abuse or other forms of criminal or unauthorised activity;
- the imposition of strict liability fines e.g. automatic fines for late filing.

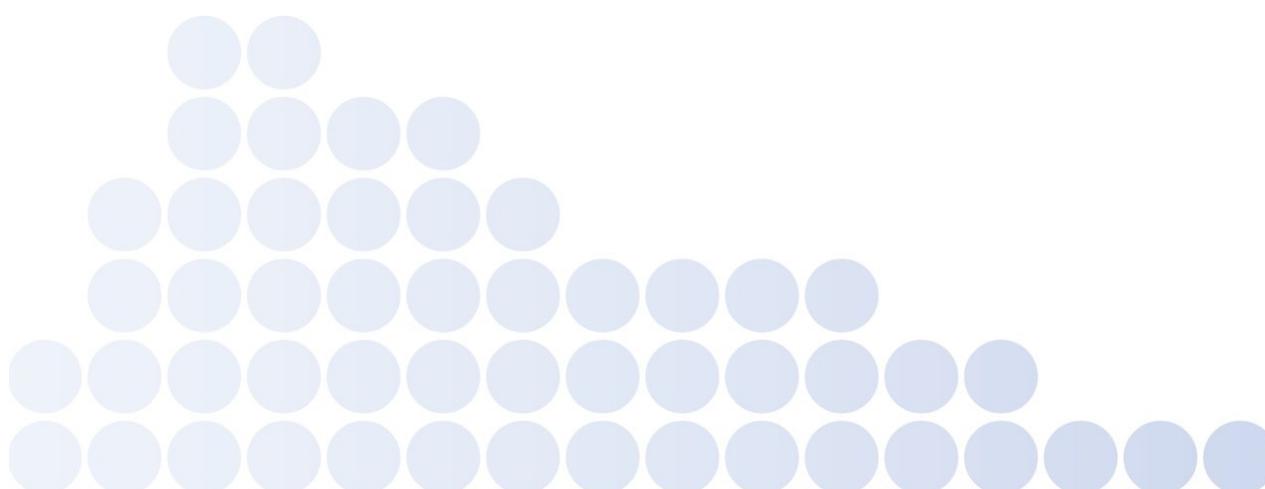
This process will be kept under review and amended as appropriate in the light of developing law and practice or, where permitted, changes to our policy.

Phase 1 – Referral to Enforcement

1.1 Preliminary Review

Where Supervision believe that there has been, or have concerns that there may be or have been a breach of regulatory or other legal requirements, or there is a risk to the GFSC's regulatory objectives, Supervision and Enforcement will jointly consider whether a regulatory response is appropriate. This is determined by reference to factors set out in our [Referral Policy](#).

If a matter is considered appropriate for further investigation and/or formal regulatory or enforcement action, the matter is referred from Supervision to Enforcement.



Phase 2 – Investigation and disclosure

2.1 Investigation

If the GFSC considers that further investigation is necessary, investigators will be appointed and the firm or individual notified. Investigators may be informally designated GFSC staff or GFSC staff and/or external persons formally appointed inspectors, examiners or investigators under a statutory power.

The appointed investigators undertake an investigation, which may involve:

- onsite inspections;
- desk based investigation;
- recorded interviews;
- gathering witness or third party evidence;
- requesting production of information and/or formal explanation;
- the exercise of statutory powers to require production of information and/or documents and/or the attendance of persons, as well as any other available statutory powers.

An investigation report is prepared by the investigators setting out their findings.

2.2 Disclosure and verification of material

The firm or individual concerned is:

- provided with the material on which the Enforcement team will rely in making a referral to the Enforcement Committee, including any investigation report and evidence. The material disclosed will:
 - a) be redacted to blank out or otherwise exclude information in respect of which the GFSC has a statutory obligation of confidentiality;
 - b) exclude
 - i. material which is subject to legal privilege (but the GFSC will disclose its existence) where applicable;
 - ii. material relating to a case involving a different person and which was taken into account by the GFSC in this case only for the purposes of comparison with other cases;
 - iii. material disclosure of which would in the GFSC's opinion not be in the public interest or would not be fair having regard to the likely significance of the material to the firm or individual in respect of the matter under investigation and the potential prejudice to the commercial interests of another person which would be caused by the material's disclosure.

- informed of the proposed recommendations to be made to the Enforcement Committee;
- given the opportunity during a 14 day period to provide comments on the material, the facts presented in and findings of the investigation report and Enforcement's proposed recommendation to the Enforcement Committee and to provide any additional information which is relevant to the matter. Additional time may be given at the discretion of the GFSC.

2.3 Final Review

Upon receipt of comments or additional material from the firm or individual concerned, or upon their failure to do so within the prescribed time period, Enforcement will undertake a final review. If it appears to Enforcement that enforcement action should be taken the matter, together with all the relevant material and Enforcement's recommendation, will be referred to the Enforcement Committee for formal consideration.

Phase 3 – Decision making process

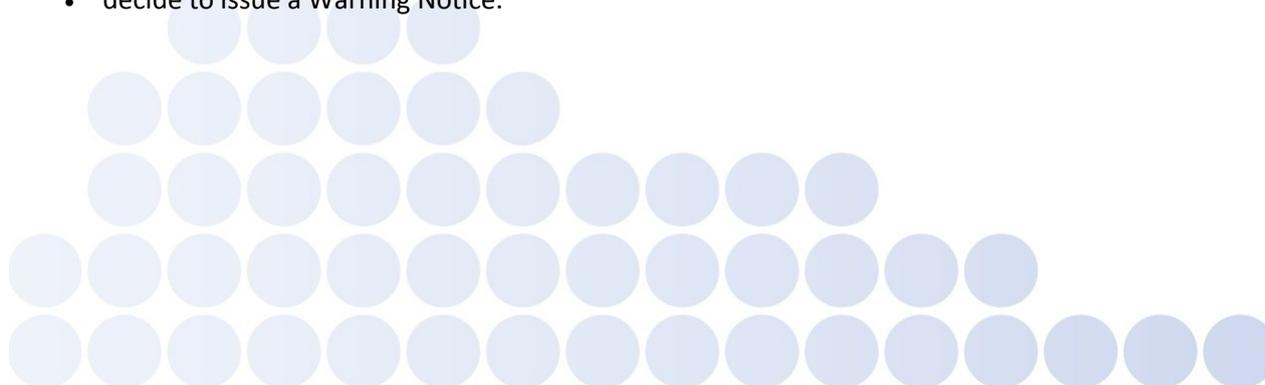
3.1 Consideration by the Enforcement Committee & the CEO

The Enforcement Committee comprises the CEO and two GFSC staff members of senior level who have not previously been involved in the investigation or gathering of evidence.

The purpose of the Enforcement Committee is to consider the case on the basis of all material submitted and to provide advice to and inform the CEO's consideration of the matter. The CEO is the decision maker and will make all decisions upon due consideration of all the relevant material. The CEO will not be bound to act on the advice of the Enforcement Committee.

Following consideration of the case referred by the Enforcement Committee, the CEO may decide to:

- take no action;
- stand over a matter where s/he requires further information and/or direct that a matter be referred back to Enforcement for further substantive investigation;
- decide to issue a Warning Notice.



3.2 Warning notice

If the CEO decides to issue a Warning Notice it will include:

- the action that s/he is considering taking;
- the grounds and reasons why s/he is considering taking that action;
- the material on which s/he relies in issuing the Warning Notice;
- the firm or individual's right to make representations and the timescales for doing so in accordance with legislation. Absent specific legislative provision in a particular case, the period will be 28 days. This may be extended by the GFSC in its discretion.

3.3 Representations

The firm or individual may make representations to the CEO either by way of oral or written representations within the specified, prescribed time period. Such representations as are made must be taken into account by the CEO when making a final decision.

The Enforcement Committee meets again to:

- review and consider any written representations made; and/or
- hear and consider any oral representations made; and
- consider the matter in the light or in the absence of any representations and all other relevant material.

The CEO may decide to refer the matter back to Enforcement for further investigation if s/he considers it appropriate to do so.

3.4 Decision Notice

Following consideration of the case by the Enforcement Committee in light of representations received, or in the absence of any representations, and all other relevant material the CEO makes a final decision to:

- discontinue the action specified in the warning notice; or
- take the action specified in the warning notice; or
- either take any other action which can be taken without the issue of a new warning notice or decide to issue a new warning notice in respect of any other action.

If the CEO's decision is to take the action specified in the warning notice or any other action s/he will issue a Decision Notice setting out:

- the action taken (including any sanction imposed);
- the grounds and reasons for which action has been taken; and
- the firm or individual's right of appeal to the Supreme Court if available and the timescales for appeal.

If the CEO's decision is to discontinue the action, s/he will issue a notice of discontinuance.

3.5 Right of Appeal and/or Judicial Review

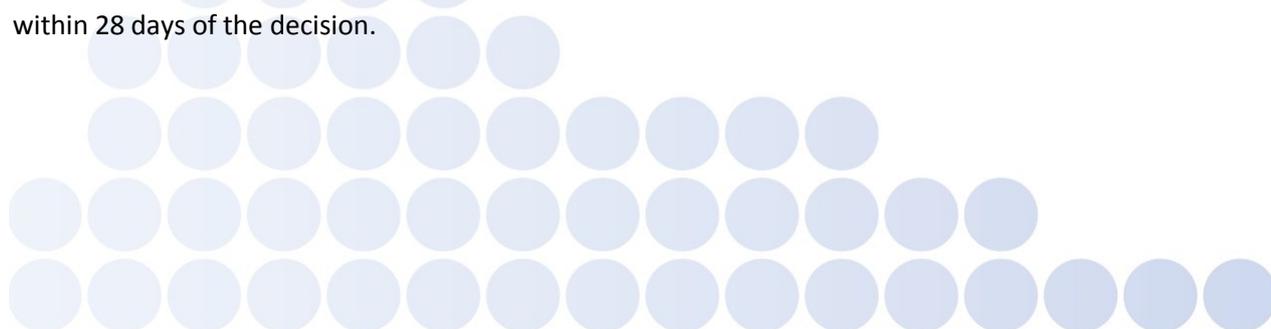
Following the issue of the Decision Notice, the firm or individual may have the right to appeal the outcome to the Supreme Court or to refer the decision to a judge of that court. The nature of such right depends on the statute under which the GFSC has made its decision.

Different statutes provide for different types of appeal. Some statutes provide for the effect of the Decision Notice to be stayed pending appeal, others do not. In both cases, some Acts provide for a right of application to court by the firm or individual for a stay or by the GFSC for any automatic stay not to apply.

Some Acts specify a time period within which to lodge an appeal, others do not. The provisions of rules 13 to 24 of the Supreme Court Rules (Appeals in Civil Matters) apply to appeals from the decisions of the CEO by virtue of rule 31 of the Supreme Court Rules.

Where this process applies and there is a right of appeal the GFSC will generally stay the effect of its decision pending determination of any appeal brought within the prescribed period or expiry of that period without appeal. Where the GFSC considers that there is an ongoing significant risk to its statutory objectives and that the protection of the interests of consumers or other overriding public interest requires it we may decide, where we have discretion, that the effect of our decision will not be stayed pending determination of an appeal.

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



3.6 Publication

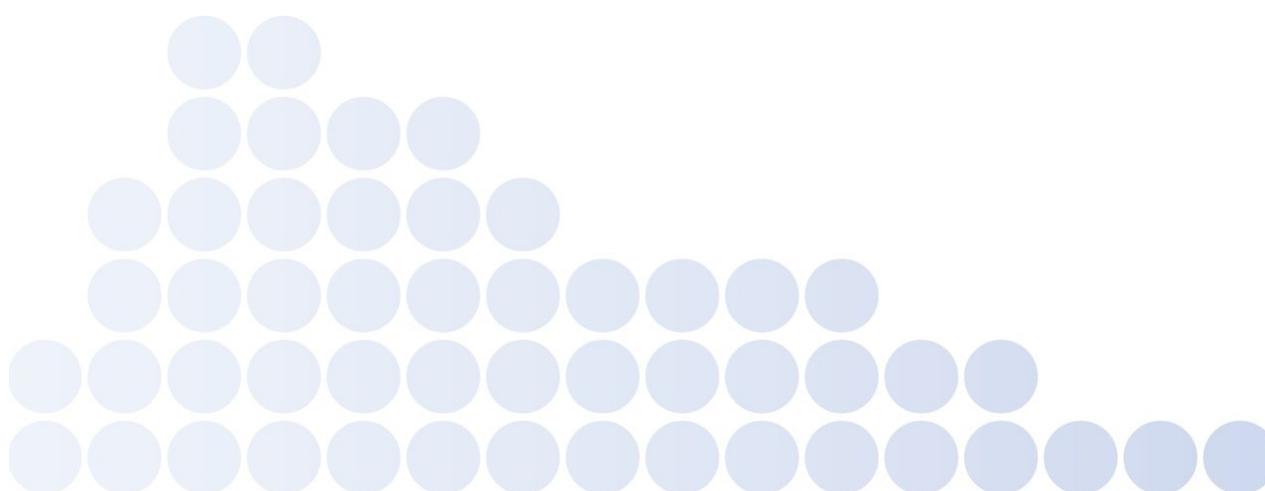
To the extent that we are permitted or required by law to do so we will publish information about a matter to which a Decision Notice relates. Where we have discretion in that respect, we reserve the right not to publish where we consider that it is not in the public interest to do so or that the public interest is not advanced by publication.

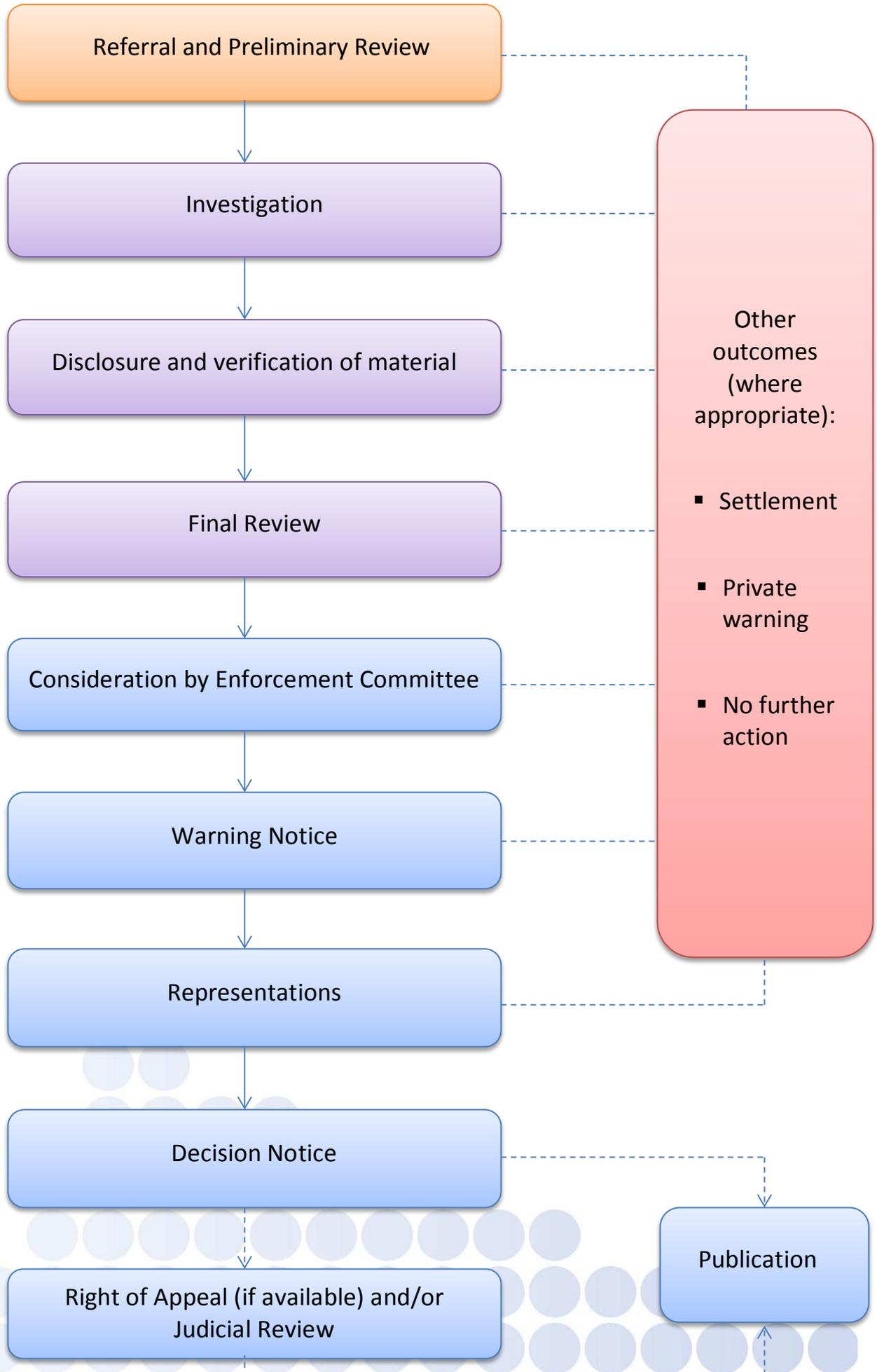
We will generally withhold publication until following determination of an appeal or after the expiry of the appeal period, unless we consider that it is necessary or desirable in the public interest for us to do so following issue of the Decision Notice and the law permits it. You can find our policy on publication [here](#).

Other outcomes

At any stage of the process prior to the issue of a Decision Notice, we may decide to:

- enter into **settlement discussions** in order to reach an agreed regulatory outcome. You can find our policy on regulatory settlement agreements [here](#);
- issue a **private warning** and close the case if we determine that it is an appropriate and proportionate outcome;
- take **no further action** and close the case if we find there is no case to answer.





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