

# Bank of England PRA

The Bank of England's approach to enforcement: statements of policy and procedure

## Statement of Policy

January 2024



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## **Statement of policy**

**January 2024**

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# 1. Overview

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1. This statement of policy provides an overview of the enforcement powers of the Bank of England (the 'Bank'), including the Bank acting in our capacity as the Prudential Regulation Authority (the 'PRA'), and sets out the Bank's statements of policy and procedure in relation to our enforcement powers under the Financial Services and Markets Act 2000 ('FSMA'), the Banking Act 2009 ('BA09') and any other legislation under which the Bank has civil or criminal enforcement powers.
2. The Bank uses regulatory, supervisory and enforcement powers to pursue our mission of monetary and financial stability and our statutory objectives.<sup>1</sup> Through regulation, the Bank develops standards and policies that set out what we require and expect of firms<sup>2</sup>, financial market infrastructures ('FMIs'), and those involved in their management. Through supervision, the Bank monitors and assesses whether firms and FMIs are meeting our requirements and expectations. Where they do not, the Bank can take action – supervisory or enforcement – to reduce the risks that might arise. The Bank's approach to regulation and supervision is forward-looking, judgment-based, and focused on the issues, firms and FMIs that pose the greatest risk to the stability of the UK financial system, to the safety and soundness of firms and (in the case of insurers) to policyholders. The Bank's approach to enforcement supports and supplements our regulatory and supervisory tools by ensuring that we have credible mechanisms for holding our regulated firms and FMIs to account where they do not meet our requirements and expectations and providing a wider deterrent effect. We are also committed to holding individuals to account and, where appropriate, taking regulatory and/or enforcement action against those individuals who breach our standards.

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<sup>1</sup> The Bank's financial stability objective under section 2A of the Bank of England Act 1998 and the PRA's general objective, insurance objective and, so far as is reasonably possible, secondary objectives under sections 2B, 2C and 2H of FSMA. Further, after section 30D of the Bank of England Act 1998 has commenced, in exercising its FMI functions, the Bank has a secondary objective of facilitating innovation in the provision of FMI services.

<sup>2</sup> 'Firm' means a PRA-authorized person within the meaning of section 2B(5) of FSMA.

3. Chapters 4 and 5 of Annex 1<sup>3</sup> and Chapter 2 of Annex 2<sup>4</sup> to this document, relating to financial penalties, take effect upon publication, but only with respect to breaches that have occurred after that date. The remainder of this document takes effect upon publication.<sup>5</sup>
4. Unless inconsistent with the subject or context, words importing the singular number include the plural and vice versa.

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<sup>3</sup> 'The PRA's approach to enforcement: statements of policy and procedure'.

<sup>4</sup> 'The Bank's approach to enforcement in respect of Financial Market Infrastructures: statements of policy and procedure'.

<sup>5</sup> 30 January 2024.

## 2. The Bank's regulatory enforcement powers

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1. The Bank has a number of investigatory and enforcement powers under the various statutory regimes for which it has regulatory responsibilities, specifically:
  - prudential supervision by the PRA;
  - supervision of FMIs;
  - resolution; and
  - the Scottish and Northern Ireland banknotes regime.
2. The Bank's enforcement powers ensure that we are able to uphold and encourage high standards of behaviour on the part of those firms and FMIs which, and individuals who, are subject to the Bank's regulatory requirements and standards and to advance the Bank's objectives. Further detail on each of the regimes and the Bank's enforcement powers is provided below.

### **Enforcement by the Prudential Regulation Authority**

3. The Bank, through the PRA, is the UK's prudential regulator for deposit-takers, insurance companies and designated investment firms.<sup>1</sup> The PRA has a range of enforcement powers where PRA-authorized firms, qualifying parent undertakings, auditors, actuaries and individuals contravene legal and regulatory requirements. These powers assist the PRA in pursuing its statutory objectives to promote the safety and soundness of PRA-authorized persons and, where relevant, contributing to the securing of an appropriate degree of protection for those who are or may become insurance policyholders.<sup>2</sup>

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<sup>1</sup> As of 1 March 2017, the PRA is no longer a subsidiary of the Bank, and the Bank is able to exercise the functions of the PRA through the Prudential Regulation Committee. Specifically, pursuant to section 2A of FSMA the PRA is the Bank. The Bank (acting in its capacity as the PRA) has various functions and powers under FSMA and other legislation. References to the PRA in this document refer only to the Bank acting in its capacity as the PRA and not in any other capacity.

<sup>2</sup> Sections 2B and 2C of FSMA.

**Table 1: Regulatory enforcement statutory decisions - PRA**

<b>Description</b>	<b>Statutory provision</b>	<b>Type of Notice</b>	<b>Notice requirement</b>
Proposal to make a prohibition order against an individual	FSMA s.56	Warning Notice	FSMA s.57(1)
Decision to make a prohibition order against an individual	FSMA s.56	Decision Notice	FSMA s.57(3)
Proposal to impose a penalty on a person for performing a controlled function without approval	FSMA s.63A	Warning Notice	FSMA s.63B(1)
Decision to impose a penalty on a person for performing a controlled function without approval	FSMA s.63A	Decision Notice	FSMA s.63B(3)
Proposal to take disciplinary action if it appears to the regulator a person is guilty of misconduct	FSMA s.66	Warning Notice	FSMA s.67(1)
Decision to take disciplinary action if it appears to the regulator a person is guilty of misconduct	FSMA s.66	Decision Notice	FSMA s.67(4)
Proposal to impose penalty or issue censure on a qualifying parent undertaking or person knowingly concerned in the contravention	FSMA s.142S	Warning Notice	FSMA s.142T(1)
Decision to impose penalty or issue censure on a qualifying parent undertaking or person knowingly concerned in the contravention	FSMA s.142S	Decision Notice	FSMA s.142T(4)
Proposal to impose a financial penalty, publicly censure or impose a restriction – qualifying parent undertakings or persons knowingly concerned in the contravention	FSMA s.192K	Warning Notice	FSMA s.192L(1)
Decision to impose a financial penalty, publicly censure or impose a restriction – qualifying parent undertakings or	FSMA s.192K	Decision Notice	FSMA s.192L(4)

Description	Statutory provision	Type of Notice	Notice requirement
persons knowingly concerned in the contravention			
Proposal to issue a public censure or impose a financial penalty on a financial holding company, mixed financial holding company or person knowingly concerned in the contravention	FSMA s.192Y	Warning Notice	FSMA s.192Z(1)
Decision to issue a public censure or impose a financial penalty on a financial holding company, mixed financial holding company or person knowingly concerned in the contravention	FSMA s.192Y	Decision Notice	FSMA s.192Z(4)
Proposal to publish a statement of public censure in relation to an authorised person	FSMA s.205	Warning Notice	FSMA s.207(1)
Decision to publish a statement of public censure in relation to an authorised person	FSMA s.205	Decision Notice	FSMA s.208(1)
Proposal to impose a financial penalty on an authorised person	FSMA s.206	Warning Notice	FSMA s.207(1)
Decision to impose a financial penalty on an authorised person	FSMA s.206	Decision Notice	FSMA s.208(1)
Proposal to suspend any permission of, or impose limitations or restrictions on, an authorised person	FSMA s.206A	Warning Notice	FSMA s.207(1)
Decision to suspend any permission of, or impose limitations or restrictions on, an authorised person	FSMA s.206A	Decision Notice	FSMA s.208(1)
Proposal to take disciplinary action against an auditor or actuary	FSMA s.345A	Warning Notice	FSMA s.345B(1)
Decision to take disciplinary action against an auditor or actuary	FSMA s.345A	Decision Notice	FSMA s.345B(4)
Proposal to require restitution	FSMA s.384	Warning Notice	FSMA s.385(1)



Description	Statutory provision	Type of Notice	Notice requirement
Decision to require restitution	FSMA s.384	Decision Notice	FSMA s.386(1)

4. FSMA requires the PRA to prepare and publish various statements of policy or procedure on the exercise of certain enforcement and investigation powers and in relation to the issuance of statutory notices. These statutory statements, together with other relevant statements of policy or procedure, are set out in Annex 1<sup>3</sup>.
5. Decision-making in relation to enforcement statutory notice decisions is addressed in Chapter 8 of Annex 1<sup>4</sup> below.

### Enforcement in respect of FMIs

6. The Bank is the supervisory authority for FMIs in the UK and it is empowered by statute to investigate and take enforcement action where certain FMIs and, in certain circumstances, individuals fail to meet legal and regulatory requirements.
7. Under FSMA<sup>5</sup> and BA09,<sup>6</sup> the following types of FMIs fall within the remit of the Bank for both supervision and enforcement purposes:
  - (a) recognised clearing houses, including recognised central counterparties ('CCPs') and clearing houses which provide clearing services in the UK without doing so as a central counterparty (together, 'RCHs');<sup>7</sup>
  - (b) third country central counterparties;<sup>8</sup>
  - (c) recognised central securities depositories ('Recognised CSDs');<sup>9</sup>
  - (d) third country central securities depositories;<sup>10</sup>
  - (e) qualifying parent undertakings of RCHs and Recognised CSDs ('FMI QPUs');<sup>11</sup>

<sup>3</sup> 'The PRA's approach to enforcement: statements of policy and procedure'.

<sup>4</sup> 'The PRA's approach to enforcement: statements of policy and procedure'.

<sup>5</sup> Part XVIII of FSMA and Schedule 17A to FSMA.

<sup>6</sup> Part 5 of BA09.

<sup>7</sup> See definition of 'recognised clearing house' in sections 285(1)(b) and 313(1) of FSMA.

<sup>8</sup> See definition of 'third country central counterparty' in section 285(1)(d) of FSMA.

<sup>9</sup> See definition of 'recognised CSD' in section 285(1)(e) of FSMA.

<sup>10</sup> See definition of 'third country CSD' in section 285(1)(g) of FSMA.

<sup>11</sup> For the definition of 'qualifying parent undertaking' in relation to FMIs, see section 192B of FSMA and paragraph 17 of Schedule 17A to FSMA.

- (f) recognised payment systems ('RPSs');<sup>12</sup> and
  - (g) specified services providers in relation to RPS ('SSPs').<sup>13</sup>
8. Additionally, the Bank may exercise disciplinary powers with respect to auditors of RCHs or Recognised CSDs.<sup>14</sup>
9. Where FMIs are in breach of a relevant requirement,<sup>15</sup> have contravened a direction or information rule,<sup>16</sup> or have committed a compliance failure,<sup>17</sup> this may impact detrimentally on market functioning, and therefore financial stability. The Bank's enforcement powers in relation to FMIs assist it in pursuing its objective to protect and enhance the stability of the financial system of the UK.<sup>18</sup>

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<sup>12</sup> Sections 184 and 185 of BA09.

<sup>13</sup> Section 206A(2) of BA09.

<sup>14</sup> Section 345A(3) and paragraph 21 of Schedule 17A to FSMA.

<sup>15</sup> Defined in section 312E of FSMA.

<sup>16</sup> Section 192K and paragraph 17 of Schedule 17A to FSMA.

<sup>17</sup> Defined in section 196 of BA09.

<sup>18</sup> Section 2A of the Bank of England Act 1998.

**Table 2: Regulatory enforcement statutory decisions - FMIs**

<b>Description</b>	<b>Statutory provision</b>	<b>Type of Notice</b>	<b>Notice requirement</b>
Proposal to impose a financial penalty, publicly censure or impose a restriction – qualifying parent undertakings or persons knowingly concerned in the contravention	FSMA s.192K	Warning Notice	FSMA s.192L(1)
Decision to impose a financial penalty, publicly censure or impose a restriction – qualifying parent undertakings or persons knowingly concerned in the contravention	FSMA s.192K	Decision Notice	FSMA s.192L(4)
Proposal to publish a statement of public censure in relation to a recognised body	FSMA s.312E	Warning Notice	FSMA s.312G(1)
Decision to publish a statement of public censure in relation to a recognised body	FSMA s.312E	Decision Notice	FSMA s.312H(1)
Proposal to impose a financial penalty on a recognised body	FSMA s.312F	Warning Notice	FSMA s.312G(1)
Decision to impose a financial penalty on a recognised body	FSMA s.312F	Decision Notice	FSMA s.312H(1)

Description	Statutory provision	Type of Notice	Notice requirement
Proposal to publish a statement of public censure with respect to or impose a financial penalty or impose a prohibition on a member of the management body	FSMA s.312FA	Warning Notice	FSMA s.312G(1)
Decision to publish a statement of public censure with respect to or impose a financial penalty or impose a prohibition on a member of the management body	FSMA s.312FA	Decision Notice	FSMA s.312H(1)
Proposal to take disciplinary action against an auditor	FSMA s.345A	Warning Notice	FSMA s.345B(1)
Decision to take disciplinary action against an auditor	FSMA s.345A	Decision Notice	FSMA s.345B(4)
Proposal to require restitution	FSMA s.384	Warning Notice	FSMA s.385(1)
Decision to require restitution	FSMA s.384	Decision Notice	FSMA s.386(1)
Proposal to publish details of a compliance failure	BA09 s.197	Warning Notice	BA09 s.201(1)(a)

Description	Statutory provision	Type of Notice	Notice requirement
Decision to publish details of a compliance failure	BA09 s.197	Notice	BA09 s.201(1)(d)
Proposal to require the payment of a penalty in respect of a compliance failure	BA09 s.198	Warning Notice	BA09 s.201(1)(a)
Decision to require the payment of a penalty in respect of a compliance failure	BA09 s.198	Notice	BA09 s.201(1)(d)
Proposal to give a closure order	BA09 s.199	Warning Notice	BA09 s.201(1)(a)
Decision to give a closure order	BA09 s.199	Notice	BA09 s.201(1)(d)
Proposal to impose a management disqualification order <sup>19</sup>	BA09 s.200	Warning Notice	BA09 s.201(1)(a)
Decision to impose a management disqualification order	BA09 s.200	Notice	BA09 s.201(1)(d)

10. FSMA requires the Bank to prepare and publish statements of policy and procedure on the exercise of certain enforcement powers, and BA09 requires the Bank to prepare and publish a statement of principles in relation to the amount

<sup>19</sup> The Bank's powers under section 200 of BA09 are not limited to enforcement scenarios.

and imposition of a penalty. These statutory statements, together with other relevant statements of policy or procedure, are set out in Annex 2.<sup>20</sup>

### **Enforcement under the special resolution regime**

11. The Bank is the UK's resolution authority under the special resolution regime (the 'resolution regime') and it is responsible for taking action to manage the resolution of every bank, building society and some investment firms in the UK.<sup>21</sup>
12. BA09 sets out certain investigatory powers and regulatory sanctions which are available to the Bank for breaches of relevant requirements related to the resolution regime, as well as the matters which it must take into account when determining whether and how to apply such sanctions.

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<sup>20</sup> 'The Bank's approach to enforcement in respect of Financial Market Infrastructures: statements of policy and procedure'.

<sup>21</sup> For more information, see the Bank's approach to resolution, as amended and supplemented from time to time: <https://www.bankofengland.co.uk/paper/2023/the-bank-of-englands-approach-to-resolution>.

**Table 3: Regulatory enforcement statutory decisions – Resolution**

<b>Description</b>	<b>Statutory provision</b>	<b>Type of Notice</b>	<b>Notice requirement</b>
Proposal to publish a statement that a person has failed to comply with a relevant requirement <sup>22</sup>	BA09 s.83ZR(1)(a)	Warning Notice	BA09 s.83ZT(1)
Decision to publish a statement that a person has failed to comply with a relevant requirement	BA09 s.83ZR(1)(a)	Decision Notice	BA09 s.83ZU(1)
Proposal to impose a financial penalty	BA09 s.83ZR(1)(b)	Warning Notice	BA09 s.83ZT(1)
Decision to impose a financial penalty	BA09 s.83ZR(1)(b)	Decision Notice	BA09 s.83ZU(1)
Proposal to direct a person to refrain from certain conduct in future	BA09 s.83ZR(1)(c)	Warning Notice	BA09 s.83ZT(1)
Decision to direct a person to refrain from certain conduct in future	BA09 s.83ZR(1)(c)	Decision Notice	BA09 s.83ZU(1)
Proposal to prohibit a person from holding offices or positions of responsibility in respect of a bank or banks	BA09 s.83ZR(1)(d)	Warning Notice	BA09 s.83ZT(1)
Decision to prohibit a person from holding offices or positions of responsibility in respect of a bank or banks	BA09 s.83ZR(1)(d)	Decision Notice	BA09 s.83ZU(1)

<sup>22</sup> Defined in section 83ZD(3) of BA09.

## Scottish and Northern Ireland Banknotes Regime

13. The Bank has responsibility for regulating the treatment, holding and issuance of commercial banknotes in Scotland and Northern Ireland. The Bank derives its responsibilities and powers from BA09.<sup>23</sup>
14. The Bank has certain powers in relation to a failure by an authorised bank to comply with any of the Scottish and Northern Ireland Banknote Regulations 2009 (the ‘Banknote Regulations’) or any rules made under the Banknote Regulations (the ‘Scottish and Northern Ireland Banknote Rules 2017’).
15. The Bank has a separate policy concerning the imposition of penalties arising from compliance failures in relation to banknotes and this policy can be found on the Bank’s website.<sup>24</sup>

**Table 4: Regulatory enforcement statutory decisions - Banknotes**

Description	Statutory provision	Type of Notice	Notice requirement
Proposal to impose a financial penalty	BA09 s.222; regulation 33 Banknote Regulations	Notice of proposal	Paragraph 1, Schedule 3 to the Banknote Regulations
Varying a proposal to impose a financial penalty	BA09 s.222; regulation 33 Banknote Regulations	Variation of proposal	Paragraph 2, Schedule 3 to the Banknote Regulations
Decision to impose a financial penalty	BA09 s.222; regulation 33 Banknote Regulations	Decision Notice	Paragraph 3, Schedule 3 to the Banknote Regulations

<sup>23</sup> For more information, see the Bank of England’s approach to regulating Scottish and Northern Ireland commercial banknotes, as amended and supplemented from time to time: <https://www.bankofengland.co.uk/-/media/boe/files/banknotes/scottish-northern-ireland/scottish-and-northern-ireland-regime-approach.pdf>.

<sup>24</sup> The Scottish and Northern Ireland Banknote Statement of Penalty Policy (applicable to breaches from 28 August 2018), as amended and supplemented from time to time: <https://www.bankofengland.co.uk/-/media/boe/files/banknotes/scottish-northern-ireland/scottish-and-northern-ireland-statement-of-penalty-policy-2018.pdf>



## 3. The Bank's use of criminal enforcement powers

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1. In addition to the regulatory enforcement powers described in Chapter 2<sup>1</sup> above, the Bank has powers under various statutes to prosecute criminal offences in England, Wales and/or Northern Ireland, for example, in relation to failure to notify the PRA of a change in control of a PRA-authorized firm or providing false or misleading information to the PRA or the Bank.<sup>2</sup> In addition, the Bank may prosecute criminal offences where to do so would be consistent with the relevant statutory objectives.
2. These criminal powers provide the Bank with additional tools which we can apply in appropriate cases.
3. If the Bank suspects that a criminal offence may have occurred, we will apply the principles set out in the relevant code for prosecutors to consider whether to prosecute the matter itself or refer it to another authority.
4. It is important to note that criminal proceedings may be pursued in addition, or as an alternative, to regulatory enforcement proceedings and/or the use of other statutory powers. For example, the PRA could make a prohibition order under section 56 of FSMA and/or exercise disciplinary powers under section 66 of FSMA in a case where there are also criminal proceedings arising from related facts. The Bank and/or PRA will consider carefully, on a case-by-case basis, the public interest in taking such action, the potential impact of one set of proceedings on another and any potential prejudice or detriment to the subjects of any regulatory investigation and possible defendants of any criminal prosecution.

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<sup>1</sup> 'The Bank's regulatory enforcement powers'.

<sup>2</sup> For example, the PRA has various prosecution powers under section 401 of FSMA and section 38 of the Financial Services (Banking Reform) Act 2013 and the Bank has powers under paragraph 31(1) of Schedule 17A to FSMA and section 83ZO of BA09.

# Annexes

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- 1 The PRA's approach to enforcement: statements of policy and procedure**

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  - 2 The Bank's approach to enforcement in respect of Financial Market Infrastructures: statements of policy and procedure**

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  - 3 The Bank's other statements of policy and procedure in relation to enforcement**

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  - 4 Definitions**

# **Annex 1: The PRA's approach to enforcement: statements of policy and procedure**

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**Statement of policy**  
(Updating September 2021)

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# 1. The PRA's general approach

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- 1.1. This statement sets out the PRA's policy and procedure with respect to decisions concerning the use of its investigatory, disciplinary and other enforcement powers.
- 1.2. In applying this policy, the PRA will, so far as is reasonably possible, act in a way which advances its statutory objectives with respect to the safety and soundness of PRA-authorized persons and protection of insurance policyholders.<sup>1</sup> Where relevant, it will have regard to published statements of the PRA's approach to carrying out its role in respect of persons who are subject to its regulatory requirements and standards.<sup>2</sup> It will also have regard to regulatory expectations set out in relevant guidance or other information or materials provided by the PRA, the Financial Conduct Authority (the 'FCA') and/or any predecessor regulators, which applied to such persons at the time of the behaviour in question.
- 1.3. In developing this policy, the PRA has had regard not only to its statutory objectives, but also to certain regulatory principles applicable to the exercise of its general functions.<sup>3</sup>
- 1.4. The PRA considers it desirable to uphold and encourage high standards of behaviour on the part of those firms and individuals who are subject to the PRA's regulatory requirements and standards. The PRA also considers it important to demonstrate the benefits of these high standards of behaviour. It therefore will, in appropriate cases, use its enforcement powers to advance its statutory objectives and will seek to do so in a manner which is fair and proportionate in all the circumstances. In particular, the PRA will have regard to the following general principles:
  - (a) where the proposed action arises in the context of a breach of the PRA's rules or requirements, the need to ensure that the proposed action:
    - (i) properly reflects the seriousness of the breach;
    - (ii) is proportionate to the breach;
    - (iii) is effective (along with the threat of similar action for any future misconduct) in deterring the person who committed the breach, and others who are subject to the PRA's regulatory requirements, from committing similar or other breaches;
    - (iv) is in the public interest; and

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<sup>1</sup> Sections 2B and 2C of FSMA.

<sup>2</sup> In this regard, see in particular the PRA's approach to banking supervision and the PRA's approach to insurance supervision (as may be amended or supplemented from time to time).

<sup>3</sup> Sections 2H and 3B of FSMA.

- (b) the availability and appropriateness of any alternatives to the use of the power under consideration.

## 2. The PRA's approach to information gathering in enforcement investigations

### Investigative powers

- 2.1. Once the PRA has decided to conduct an investigation, it will ordinarily appoint investigators under FSMA<sup>1</sup> and, where required under FSMA, will give written notice of the appointment of investigators to the subject of the investigation. This notice will be accompanied by information outlining the circumstances that have given rise to the PRA's decision to open the investigation.
- 2.2. Investigators appointed under FSMA have a number of powers available to them, including the power to require the provision of information, the production of documents and to compel individuals to attend interviews and answer questions.
- 2.3. The PRA, through its investigators, will consider using any and all of these powers to establish the facts, gather evidence and ascertain whether there have been breaches of relevant regulatory requirements and/or standards. The PRA expects full, timely and meaningful co-operation with its investigations.
- 2.4. The PRA may pursue sanctions in the event of failure to comply with an information requirement or a requirement to attend an interview.
- 2.5. Where the PRA issues a statutory information requirement for provision of information and/or documents, the information requirement will typically cover the form in which this material is to be provided. Depending on the nature and complexity of the matter, the PRA may provide an information requirement in draft first.
- 2.6. In appropriate cases, the PRA may use its information gathering powers to obtain a detailed factual account of the matter under investigation from the subject at an early stage<sup>2</sup> of the investigation, via the Early Account Scheme (the 'EAS').
- 2.7. Where the PRA obtains confidential information for the purposes of, or in the discharge of its functions (including through the use of its investigative powers), section 348 FSMA places strict conditions on the PRA's ability to disclose that information to other parties. However, subject to those conditions and relevant gateways, the PRA may need to disclose confidential information in appropriate circumstances (for example, if required by law). For example,

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<sup>1</sup> Pursuant to either section 167 of FSMA (for general investigations) or section 168 of FSMA (for specific investigations). The PRA may also appoint investigators when conducting investigations in support of overseas regulators under section 169 of FSMA.

<sup>2</sup> See the timeframes in paragraph 2.14 below.

where the PRA is investigating multiple subjects in relation to related matters, it may be necessary to share information obtained from one subject to another as part of the PRA's fact-finding.<sup>3</sup>

## The PRA's Early Account Scheme

### Appropriate cases

- 2.8. The EAS may be used, at the PRA's sole discretion, in investigations of firms and/or individuals and in appropriate circumstances multi-party investigations of firms and individuals.<sup>4</sup>
- 2.9. In determining whether the EAS is appropriate, the PRA will consider all relevant circumstances, including:
- (a) the existing evidential basis relating to the matters under investigation by the PRA;<sup>5</sup>
  - (b) the potential complexity and scope of the investigation;
  - (c) the nature of the potential breaches – for example, in scenarios in which there are circumstances to suggest potential breaches of PRA Fundamental Rule 1 (lack of integrity) or PRA Fundamental Rule 7 (being open and co-operative) by a firm, or the relevant conduct rule requiring individuals to act with integrity ('individual integrity rules'),<sup>6</sup> the EAS is unlikely to be available;
  - (d) the number of subjects under investigation;<sup>7</sup>
  - (e) the subject's supervisory and compliance history;

<sup>3</sup> For the PRA's policy with respect to disclosure of without prejudice material, see footnote 15 in Chapter 8 below: 'Statement of the PRA's policy on enforcement statutory notices and the allocation of decision-making in uncontested cases, and settlement decision-making procedure and policy'.

<sup>4</sup> Where the scheme is entered into by an individual, the PRA will make appropriate allowances for any limitations in the materials that may be available to the individual.

<sup>5</sup> For example, if the PRA has already obtained a very large amount of material (for example, through a related investigation), the utility of the EAS might be reduced compared to an investigation where the PRA has relatively limited information. However, this would be considered on a case-by-case basis.

<sup>6</sup> Large Non-Solvency II Firms – Conduct Standards 3.1 (Individual Conduct Standard 1) and Non-Solvency II Firms – Conduct Standards 2.1 (Conduct Standard 1) in the Non-Solvency II firms version of the PRA Rulebook; Insurance – Conduct Standards 3.1 (Insurance Conduct Standard 1) in the Solvency II firms version of the PRA Rulebook; Conduct Rules 2.1 (Individual Conduct Rule 1) in the CRR version of the PRA Rulebook; and Conduct Rules 2.1 (Individual Conduct Rule 1) in the Non-CRR version of the PRA Rulebook, as the case may be.

<sup>7</sup> In multi-party investigations, the PRA may consider allowing more than one subject to participate in the EAS. Any request to participate in the EAS will be considered on its own merits. Should the PRA permit more than one subject to participate in the EAS, each subject will be individually responsible for complying with the requirements of the EAS. However, the PRA will consider on a case-by-case basis whether it is appropriate for members of the same corporate group to produce information collectively.



- (f) the position of other regulatory authorities; and
  - (g) the nature and seriousness of the potential breaches.
- 2.10. The PRA will consider all requests to participate in the EAS on a case-by-case basis and welcomes discussion with any firm or individual interested in using the EAS. However, the scheme is more likely to apply in specific investigations under section 168 of FSMA given their narrower initial focus by comparison to general investigations under section 167 of FSMA.<sup>8</sup>
- 2.11. For the avoidance of doubt, the PRA will not permit the use of the EAS where the subject is under investigation for potential criminal breaches or where criminal conduct is suspected.
- 2.12. In multi-regulator investigations, the PRA will discuss the suitability of using the EAS with other regulator or regulators and/or law enforcement agencies before allowing its use. In investigations being conducted jointly with another regulator, the PRA is unlikely to permit its use if the other regulator does not consider the EAS process to be appropriate. Further, if the PRA permits use of the EAS, this will apply only to the PRA's investigative processes and will not bind the other regulator or law enforcement agency.

### What does the EAS involve?

- 2.13. Under the EAS, the PRA will compel the production of a document, providing a detailed factual account of the matters under investigation (the 'Account'), supported by all relevant evidence.
- 2.14. The EAS operates as follows:
- (a) **Step 1:** Within 28 days<sup>9</sup> of receipt of notice of the appointment of investigators a subject may inform the PRA in writing that they are interested in providing the Account together with all relevant materials and evidence.<sup>10</sup> During this time, the PRA and the subject will discuss the scope and matters under investigation.
  - (b) **Step 2:** The PRA will consider the request and notify the subject of its decision. If the PRA is content for the subject to use the EAS, the PRA will invite the subject to discuss the following:
    - (i) the initial scope of the Account (for example, the relevant period of the suspected breach, surrounding events and relevant individuals whose involvement in those events may be relevant to establishing the facts),

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<sup>8</sup> Section 167 investigation are general investigations into the nature, conduct or state of the business of certain persons (including PRA-regulated firms), a particular aspect of that business or the firm's ownership or control. The time involved in taking the investigative steps required to narrow down their scope is unlikely to be compatible with the timeframes envisioned in the EAS.

<sup>9</sup> The PRA may, at its discretion, provide an extension in exceptional circumstances.

<sup>10</sup> For the avoidance of doubt, if a subject chooses not to request to use the EAS, the PRA will not draw an adverse inference or take this into account when considering co-operation or aggravation in the context of determining any disciplinary measure (such as a financial penalty).

noting that the scope will be kept under review in light of new information or further developments;

- (ii) the date by which the Account is to be provided to the PRA (which will ordinarily be no longer than six months<sup>11</sup>);
- (iii) a plan for regular communications to discuss progress and scope of the Account;
- (iv) whether the subject proposes to instruct an external party, such as a law firm or other professional adviser, to assist it in undertaking work required to compile the Account; and<sup>12</sup>
- (v) the approach to interviews – in particular, where the subject proposes to interview any witnesses, the PRA may indicate it wishes to attend these interviews or, if appropriate, conduct the interviews itself using its investigatory powers.<sup>13</sup>
- (vi) where the subject under investigation is a firm:
  - a. an appropriate senior manager<sup>14</sup> will be expected to attest (in a form agreed by the PRA, the firm and the senior manager), on production of the Account:
    - i. as to the process followed in relation to the preparation of the Account and their role in overseeing its production;
    - ii. that the process followed in relation to the production of the Account has, in the view of the senior manager, been robust and diligent and the findings of any investigatory work carried out by

<sup>11</sup> The PRA may, at its discretion, provide an extension in appropriate circumstances.

<sup>12</sup> If the subject proposes to instruct an external party to assist it in meeting the requirements of the EAS, the PRA may wish to discuss matters including, but not limited to, the extent of any claims for legal professional privilege (see also paragraph 2.14(c)(iii) below), the role of the external party in advising the subject or any other parties on any related matters and how any actual or potential conflicts will be managed.

<sup>13</sup> The PRA may consider it necessary to attend or conduct interviews if, for example, the subject is an individual or a smaller firm without the necessary resources to conduct interviews. The PRA may also decide to re-interview individuals already interviewed by the subject. The PRA will permit a witness to be accompanied by one or more legal representatives but reserves the right to place any reasonably necessary restrictions on their attendance (for example, limitation upon the number of legal representatives attending). The PRA will provide the witness with a transcript for their approval. The PRA will consider, on a case-by-case basis, whether it is appropriate for the subject's legal representative also to attend an interview conducted by the PRA. Where the PRA conducts an interview that, in its opinion, is necessary for the subject to produce the Account, it will provide the approved transcript to the subject prior to production of the Account.

<sup>14</sup> The term generally refers to a senior manager approved under the Senior Managers and Certification Regime (SM&CR) where relevant to the firm. Where the SM&CR does not apply or for small firms if an appropriate approved senior manager is not available, the term senior manager refers to the relevant senior executive or board member the PRA has agreed should provide the attestation.

or on behalf of the subject has been accurately reflected in the Account; and

- iii. that, in relation to the matters to be covered by the Account and based on the scope and methodology for the Account agreed with the PRA, there are no other related matters or relevant information which the senior manager is aware of which are relevant to the matters under investigation and which should be notified to the PRA (i.e. that there are no other material factors/information that the firm should have made the PRA aware of in relation to the matters the PRA is investigating).
- b. The identity of the relevant senior manager will be agreed between the PRA and the firm as part of the discussions regarding the scope of the Account prior to compelling the Account. The firm will be invited to nominate a relevant senior manager to provide the attestation and oversee the production of the Account. The PRA will consider any nominations put forward by the firm by reference to all relevant matters including: (i) the senior manager's areas of responsibility; and (ii) whether there are circumstances suggesting that the relevant senior manager is sufficiently objective and competent in relation to the matters under investigation. Detailed knowledge of the area is not required but a sufficient understanding of the facts, events, individuals, systems, controls and governance structures is expected.
  - c. The senior manager will take responsibility for ensuring that there has been appropriate challenge and oversight in the production of the Account, including related investigatory work carried out by the firm. In doing so, the PRA will expect the senior manager to take all reasonable steps to ensure the firm's compliance with the requirements of the EAS and to be mindful of the obligations in the Individual Conduct Rules and Senior Manager Conduct Rules set out in the PRA Rulebook.
- (vii) What supporting documents must be provided, for example:
- a. a chronology of the relevant events supported by relevant documentation;
  - b. relevant legal entity and personnel structure charts, including an organogram setting out the relevant personnel, their roles and their regulated status;
  - c. a narrative summary of the relevant systems, controls, policies and procedures and copies of all relevant policies and procedures; and
  - d. if appropriate, an account of the steps the subject has taken or proposes to take to address the matters under investigation by the PRA.

- (c) **Step 3:** If the matters referred to in Step 2 are agreed by the Subject and the PRA, the PRA will compel production of the Account.<sup>15</sup>
- (i) The PRA will use its statutory powers to compel an Account, to be produced on an open basis, as well as all relevant materials and evidence within an appropriate timeframe (which will ordinarily be limited to six months). Extensions to that timeframe will be agreed only in exceptional circumstances. Failure to provide a response to an information requirement on time will be relevant to the PRA's assessment of a subject's co-operation, in the context of determining any disciplinary measure (such as a financial penalty).
  - (ii) The PRA will require the Account to be supported by at least:
    - a. all contemporaneous materials and evidence relevant to the subject matter of the investigation, including all contemporaneous materials evidencing all factual statements in the Account;
    - b. transcripts of any interviews undertaken (noting that subjects should retain recordings of interviews as the PRA may subsequently require their production); and
    - c. a detailed account of the methodology used by the subject in producing the Account, including an explanation if the subject has been unable to provide or obtain any relevant contemporaneous material.
  - (iii) For the avoidance of doubt, section 413 FSMA will continue to restrict the PRA's ability to require production, disclosure or inspection of protected items. However, the potential benefits of the EAS are more likely to be served where there is fulsome disclosure of all relevant material. If this does not occur the PRA may, where necessary, seek further information to assess a privilege claim or to challenge it. It may also need to take further investigative steps that could potentially be avoided by a subject willingly disclosing the relevant information directly. The PRA will encourage subjects to carefully consider the scope of any privilege claims against the benefits of an open process for producing a fulsome Account, related materials (including transcripts) and evidence. Furthermore, the PRA will be willing to discuss the provision of otherwise privileged information on the basis of a limited waiver of privilege. However, the PRA cannot accept any such material on the basis of a purported restriction on its use of the material in the lawful exercise of its statutory functions, or that would require the PRA to act in a way that was contrary to its statutory objectives, or that would be contrary to any legal obligation.

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<sup>15</sup> For the avoidance of doubt, the PRA retains its discretion to take such investigative steps as it sees fit, using its statutory powers where necessary. This may include, in an EAS case, seeking information necessary to supplement the Account or, in a non-EAS case, issuing information requirements to obtain the factual information that might otherwise have been provided via the Account.

- (d) **Step 4:** The PRA will acknowledge receipt and consider the information provided.
- (i) The PRA will consider the Account, including any further supplementary information to the Account, and what (if any) additional investigatory steps are required.
  - (ii) The extent to which the Account and relevant materials are clear, comprehensive, accurate and focused on the key issues under investigation will have a significant impact on the PRA's ability to decide expeditiously on next steps.

It may, nevertheless, be necessary for the PRA to use its investigatory powers to issue further information requirements to clarify points and/or to undertake any additional interviews with individuals and the PRA reserves the right to do so.

- (iii) Once the PRA has considered the Account and any other relevant information, it will write to the subject confirming whether it intends to:
  - a. discontinue the investigation;
  - b. continue the investigation, including undertaking further information gathering as necessary;
  - c. invite the subject to enter into without prejudice settlement discussions on the basis that the Account (in conjunction with any other relevant information) is sufficient for the PRA to make findings;<sup>16</sup> or
  - d. refer the matter to the Enforcement Decision Making Committee (the 'EDMC').

- (e) In relation to the steps and materials set out above, the PRA will:
- (i) take a proportionate approach to the size and resources of the subject of an investigation, including, but not limited to, the size of the firm and whether the subject is a firm or an individual;
  - (ii) consider limitations in terms of the information that is available to the subject of an investigation to produce their Account under the EAS; and
  - (iii) consider the steps that the subject has taken to try to obtain information that may be relevant to the Account but is not in their possession.

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<sup>16</sup> In this event, the PRA will prepare a draft Warning Notice to be provided to the subject at the outset of the settlement discussions. Please see Chapter 8 of Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure' for further information regarding the operation of the discount scheme. A subject is free to initiate without prejudice communications with the PRA at any time, including prior to providing the Account. However, the PRA will consider when and whether to engage in any without prejudice discussions on a case-by-case basis.

## Termination

- 2.15. The PRA may terminate the EAS prior to production of the Account, relevant materials and evidence and (if applicable) the senior manager attestation. If the PRA has already issued a statutory requirement for production of this material, the PRA will rescind the requirement. In deciding to terminate the EAS, the factors to which the PRA may have regard include but are not limited to:
- (a) any request by the participating subject to withdraw from the EAS and the circumstances of that request;
  - (b) a significant change in the scope of the investigation, such as expansion in the matters under investigation or the identification of potential breaches of the individual integrity rules;
  - (c) the subject coming under a criminal investigation in relation to the same or connected events or matters;
  - (d) the impact or potential impact of termination on the PRA's investigation, including, where relevant, possible impacts on other subjects of the investigation or other regulatory authorities; and
  - (e) the subject's progress, or lack of progress, in relation to the work required under the EAS and any circumstances impacting on that progress.
- 2.16. As contemplated in Step 2, the PRA expects to communicate regularly with the subject to discuss progress and scope of the Account. The PRA may notify the subject of concerns with respect to the progress of work necessary to provide a fulsome Account. Failure to address those concerns satisfactorily within a reasonable timeframe of the PRA's notification may be a ground for termination of the EAS.

## 3. Statement of policy on the conduct of interviews pursuant to section 169(7) of FSMA

### Introduction and interpretation

- 3.1. This statement of policy is issued by the PRA in accordance with the requirements of sections 169(9) and 169(11) of FSMA. It has been approved by His Majesty's Treasury in accordance with section 169(10) of FSMA.
- 3.2. This statement of policy applies when, pursuant to section 169 of FSMA ('Assistance to overseas regulators'), the PRA has:
- (a) appointed an investigator under section 169(1)(b) of FSMA to investigate any matter at the request of an overseas regulator; and
  - (b) given a section 169(7) direction<sup>1</sup> or is considering doing so.
- 3.3. The PRA operates within an international environment and institutional framework and seeks to promote co-operation with overseas regulators. It views the provision of assistance to overseas regulators as an essential part of the advancement of its statutory objectives and the discharge of its general functions.
- 3.4. Unless inconsistent with the subject or context, in this statement:
- (a) 'interview' means an interview conducted for the purposes of an investigation under section 169(1)(b) of FSMA in relation to which the PRA has given a direction under section 169(7) of FSMA;
  - (b) 'investigator' means one or more competent persons who may be appointed or are appointed by the PRA under section 169(1)(b) of FSMA; and
  - (c) 'overseas regulator' has the meaning set out in section 195 of FSMA.<sup>2</sup>

### Appointment of an investigator and confidentiality of information

- 3.5. Under section 169(1)(b) of FSMA, the PRA may appoint an investigator to investigate any matter at the request of an overseas regulator. FSMA permits the PRA to appoint as an investigator its employees, officers and servants or

<sup>1</sup> For definition see paragraph 3.7 below.

<sup>2</sup> Section 195 of FSMA provides that an overseas regulator is an authority in a country or territory outside the UK (i) which is a home state regulator; or (ii) which exercises any function of a kind set out in section 195(4) of FSMA.



other competent persons. Where the investigator appointed by the PRA is not its employee, officer or servant, the PRA may choose to:

- (a) require that an employee, officer or servant of the PRA is present at the interview; and
  - (b) appoint that person as an investigator.
- 3.6. The powers of an investigator so appointed by the PRA include the PRA's compulsory interview power, that is, the power to require persons to attend at a specified time and place and answer questions.<sup>3</sup>
- 3.7. Where the PRA appoints an investigator in response to a request from an overseas regulator it may, under section 169(7) of FSMA, direct them to permit a representative of the overseas regulator to attend and take part in an interview conducted for the purposes of the investigation ('section 169(7) direction').
- 3.8. Pursuant to section 169(8) of FSMA, the PRA may only give a section 169(7) direction if it is satisfied that any information that may be obtained by the overseas regulator as a result of an interview will be subject to safeguards equivalent to those contained in Part XXIII of FSMA (Public Record, Disclosure of Information and Co-operation).

### **Use of the PRA's power of direction under section 169(7) of FSMA**

- 3.9. The PRA may need to consider whether to use its section 169(7) power of direction:
- (a) at or around the time that it considers a request from an overseas regulator to appoint an investigator; or
  - (b) after it has appointed an investigator. For example, at the request of the overseas regulator or on the recommendation of the investigator.
- 3.10. Subject to the facts and circumstances of the case in question, before giving a section 169(7) direction, the PRA may determine, in conjunction with the overseas regulator, how this statement of policy will apply to the conduct of the interview. For example, the PRA may at this stage determine whether and to what extent a representative of the overseas regulator will be able to participate in the interview. Ordinarily, the overseas regulator will be notified of any such determination made by the PRA when its section 169(7) direction is given.
- 3.11. The PRA's section 169(7) direction may contain the identity of the representative of the overseas regulator who is permitted to attend the interview and/or information as to the role that they will play in it.

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<sup>3</sup> In this regard, see also paragraph 3.21 below.



- 3.12. If the PRA envisages that there will be more than one interview in the course of its investigation, the section 169(7) direction may also specify which interviews the representative of the overseas regulator will be permitted to attend.

### **Conduct of interviews and ancillary matters**

- 3.13. The PRA's investigator will have conduct of the interview and will act on behalf of the PRA and under the PRA's control.
- 3.14. The PRA's investigator will determine the venue and timing of the interview. The interviewee will be provided with written notification of these matters in advance of the interview.
- 3.15. The PRA's investigator may decide which documents or other information should be put to the interviewee and whether it is appropriate to give the interviewee sight of such documents or other information before the interview takes place.
- 3.16. The PRA may instruct the investigator to permit a representative of the overseas regulator to assist in the preparation of the interview.
- 3.17. Where the PRA considers it appropriate to do so, it may permit the representative of the overseas regulator to attend and ask questions of the interviewee in the course of the interview. The interview will be conducted in accordance with the terms of the section 169(7) direction and, as set out in paragraph 3.10 above, any relevant determination.
- 3.18. If the PRA's section 169(7) direction permits a representative of the overseas regulator to attend an interview and ask the interviewee questions:
- (a) the PRA's investigator will retain control of the interview throughout;
  - (b) the PRA's investigator will instigate and conclude the interview, introduce everyone present, and explain the procedure of the interview. They will warn the interviewee of the possible consequences of refusing to answer questions and the uses to which any answers that are given can and cannot be put. They will always ask appropriate preliminary questions, such as those establishing the identity of the interviewee and any legal or other representative of the interviewee;
  - (c) the PRA's investigator will determine the duration of the interview and when, if at all, there should be any breaks in the course of it;
  - (d) where the representative of the overseas regulator wishes to ask the interviewee questions about documents or other information during the interview and the PRA's investigator wishes to inspect such documents or

other information before or during the interview, they will be given an adequate opportunity to do so;<sup>4</sup>

- (e) the PRA's investigator may, where they consider it appropriate to do so, suspend the interview, ask the representative of the overseas regulator to leave the interview or terminate the interview and, if appropriate, reschedule it for another occasion. In making such decisions, the PRA's investigator will consider the relevant circumstances of the case in question including: the terms of the PRA's direction, any relevant determination pursuant to paragraph 3.10 above and/or agreement made with the overseas regulator as to the conduct of the interview and the contents of this statement of policy;<sup>5</sup> and
  - (f) the PRA's investigator has responsibility for making a record of the interview. The record should note the times and duration of any breaks in the interview and any periods when the representative of the overseas regulator was either present or not present.
- 3.19. Subject to paragraph 3.20 below, the PRA will in general provide written notice of the appointment of an investigator to the person under investigation pursuant to section 169(1)(b) of FSMA. Whether or not the interviewee is the person under investigation, the PRA's investigator will ordinarily:
- (a) inform the interviewee of the provisions of FSMA under which they have been appointed, the identity of the requesting overseas regulator and the general nature of the matter under investigation;
  - (b) inform the interviewee if a representative of the overseas regulator is to attend and take part in any interview;
  - (c) provide the interviewee with a copy of any section 169(7) direction; and
  - (d) provide the interviewee with a copy of this statement of policy.<sup>6</sup>
- 3.20. Notification of any of the matters set out in paragraph 3.19 above may not be provided in advance of the interview if the PRA believes that the circumstances of the case are such that notification could result in the interview or the PRA's investigation more generally being frustrated or prejudiced.
- 3.21. When the PRA's investigator has exercised the PRA's compulsory interview power:
- (a) at the outset of the interview, the interviewee will be given an appropriate warning. Among other things, the warning must state that the interviewee is

<sup>4</sup> If the PRA's investigator wishes to inspect such documents or other information and has not been able to do so before the interview is due to take place, they may delay the interview until they have had an opportunity to do so. In that event, the interviewee will be notified as soon as practicable as to any changes to the arrangements for the interview.

<sup>5</sup> 'Statement of policy on the conduct of interviews pursuant to section 169(7) of FSMA'.

<sup>6</sup> 'Statement of policy on the conduct of interviews pursuant to section 169(7) of FSMA'.

obliged to answer all questions put to them during the interview, including any put to them by the representative of the overseas regulator. The warning will also, in accordance with section 174 of FSMA, deal with the admissibility of statements made to the investigator; and

- (b) the PRA's investigator will require the interviewee to answer the questions put to them during the interview. Where the PRA has given a section 169(7) direction, questions may also be put to the interviewee by the representative of the overseas regulator. The interviewee will also be required to answer these questions. The PRA's investigator may intervene at any stage during questioning by the representative of the overseas regulator.

## **Language**

- 3.22. Any interview will, in general, be conducted in English. Where the interviewee's first language is not English, at the request of the interviewee arrangements will be made for the questions to be translated into the interviewee's first language and for their answers to be translated back into English.
- 3.23. If a translator is employed at the request of the representative of the overseas regulator, the translation costs will normally be met by the overseas regulator.
- 3.24. Ordinarily, in all cases, the meeting of any translation costs will be agreed in advance with the overseas regulator.

## **Recording of interviews**

- 3.25. All compulsory interviews by the PRA will be recorded. The method of recording will be decided on and arranged by the PRA's investigator. The costs of recording the interview will be addressed in a similar manner to that set out in paragraphs 3.23 and 3.24 above.
- 3.26. The PRA will not normally provide the overseas regulator with transcripts of the recording of interviews unless specifically agreed to, but a copy of the recording will normally be provided where requested.
- 3.27. The interviewee will be provided with a copy of the recording of the interview but will only be provided with transcripts of the recording or translations of any transcripts if they meet the costs of producing them.

## **Representation at interviews**

- 3.28. The interviewee may be accompanied at a section 169(7) interview by a qualified lawyer or a non-legally qualified observer of their choice. The presence at the interview of a representative of the overseas regulator may mean that the interviewee wishes to be represented or accompanied by a person either from or familiar with that regulator's jurisdiction. The costs of any such representation are the responsibility of the interviewee and will not be met by the PRA.

- 3.29. As far as reasonably practicable, the arrangements for the interview should accommodate the attendance of a representative of the interviewee. However, the PRA reserves the right to proceed with the interview if the interviewee cannot find a suitable representative within a reasonable time or no such person is willing or able to attend at a suitable venue and/or a suitable time.

## 4. Statement of the PRA's policy on the imposition and amount of financial penalties on a PRA-authorised person and individuals under FSMA

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### Introduction

4.1. This statement of policy is issued by the PRA in accordance with the requirements of sections 63C(1), 69(1), 142V, 192N(1), 192Z2 and 210(1) of FSMA. It sets out the PRA's policy on the imposition and amount of penalties under sections 63A, 66, 142S, 192K, 192Y and 206 of FSMA.

### Determining whether the PRA will impose a penalty

4.2. The PRA will consider all relevant facts and circumstances of each case when determining whether to impose a penalty against a person under section 63A, 66, 142S, 192K, 192Y or 206 of FSMA (and/or other appropriate enforcement action). Factors that may be relevant for this purpose include:

- (a) The general principles and considerations set out in Chapter 1<sup>1</sup> of 'The PRA's approach to enforcement: statements of policy and procedure'.<sup>2</sup>
- (b) The impact or potential impact of the misconduct on the stability of the financial system.
- (c) The seriousness of the breach of the PRA's regulatory requirements, including the factors outlined in paragraph 4.23 below, as well as:
  - (i) whether the person has derived any economic benefits from or in consequence of the breach; and
  - (ii) whether there is more than one issue which, considered individually, may not justify the imposition of a penalty but, when considered together, may do so.
- (d) The extent of the person's responsibility for the breach.
- (e) The conduct of the person after the breach was committed, including:

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<sup>1</sup> 'The PRA's general approach'.

<sup>2</sup> Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

- (i) how promptly, comprehensively and effectively the person brought the breach to the attention of the PRA and/or any other relevant regulatory authorities or law enforcement agencies;
  - (ii) the degree of co-operation the person showed during the investigation of the breach by the PRA and/or any other relevant regulatory authorities or law enforcement agencies;
  - (iii) the nature, extent and effectiveness or likely effectiveness of any remedial action the person has taken or will take in respect of the breach and how promptly it was or will be taken;
  - (iv) the likelihood that the same or a similar type of breach (whether on the part of the person in question or other persons who are subject to the PRA's regulatory requirements) will recur if a penalty (and/or other appropriate enforcement action) is not imposed by the PRA and/or any other relevant regulatory authorities or law enforcement agencies;
  - (v) whether the person has promptly and effectively complied with any requests or requirements of the PRA and/or any other relevant regulatory authorities or law enforcement agencies relating or relevant to their behaviour, including as to any remedial action; and
  - (vi) the nature and extent of any false, incomplete or inaccurate information given by the person and whether the information has or appears to have been given in an attempt knowingly or recklessly to mislead the PRA and/or any other relevant regulatory authorities or law enforcement agencies.
- (f) The previous disciplinary and/or supervisory record of the person including:
- (i) any previous enforcement or other regulatory action<sup>3</sup> by the PRA, the FCA and/or any predecessor regulators resulting in an adverse finding against the person;
  - (ii) any private warning<sup>4</sup> given to the person by the PRA, FCA and/or any predecessor regulators;

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<sup>3</sup> Including any action taken by the PRA, FCA and/or any predecessor regulators using their own-initiative powers (by means of a variation of an authorised person's Part 4A permission, the imposition of a requirement or otherwise), or any request or requirement to take remedial action, and how promptly and effectively such action has been taken.

<sup>4</sup> Private warnings are a non-statutory tool. Subject to the facts and circumstances of the case in question, the PRA may decide to give a person a private warning rather than taking formal disciplinary or other enforcement action against them. A private warning by the PRA is not a formal determination of whether the PRA's regulatory requirements have been breached. Where the PRA is minded to give a private warning, it will normally set out in writing its concerns and afford the person a reasonable opportunity to respond to those concerns prior to any private warning being given.

- (iii) any previous agreement or undertaking by the person to act or behave or refrain from acting or behaving in a particular way and their compliance with it; and
  - (iv) the general supervisory record of the person or specific aspects of it relevant to the behaviour in question.
- (g) Relevant guidance or other information or materials provided by the PRA, FCA and/or any predecessor regulators, which were in force at the time of the behaviour in question.<sup>5</sup>
- (h) Any relevant action by other domestic and/or international regulatory authorities or law enforcement agencies (including whether, if such agencies are taking or propose to take relevant action in respect of the behaviour in question, it is necessary or desirable for the PRA also to take its own separate action, including a penalty):
- (i) Certain misconduct by PRA-authorized firms or approved persons may result in breaches of the rules and requirements of the PRA, the FCA or other domestic or overseas regulatory authorities or law enforcement agencies. Such cases may result in investigation and enforcement action by the PRA and/or such other agencies.
  - (ii) When deciding how to proceed in such cases, the PRA will examine the facts and circumstances of the case in question and the threat the misconduct posed or continues to pose to the advancement of its statutory objectives. Where required by FSMA or appropriate, the PRA will also consult or co-operate with the FCA<sup>6</sup> and/or any other relevant regulatory authorities or law enforcement agencies.
  - (iii) The PRA will determine, in the light of these matters and the principles and considerations set out in Chapter 1<sup>7</sup> of 'The PRA's approach to enforcement: statements of policy and procedure',<sup>8</sup> whether it is appropriate for the PRA to investigate and take enforcement or other legal action in respect of the misconduct. In appropriate cases, the PRA in conjunction with the FCA and/or any other relevant regulatory authorities or law enforcement agencies will determine whether any joint or co-ordinated investigation and enforcement or other legal action is required.

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<sup>5</sup> The PRA may have regard to any relevant guidance or other materials provided by it, the FCA and/or any predecessor regulators, whether in the form of general guidance issued publicly or advice given to individual firms or individuals. For example, where this helps to illustrate ways in which a person can comply (or could at the relevant time have complied) with relevant regulatory requirements or the standards of behaviour expected of them.

<sup>6</sup> See in this regard the memorandum of understanding between the FCA and the PRA as may be amended or supplemented from time to time.

<sup>7</sup> 'The PRA's general approach'.

<sup>8</sup> Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.



## Public censures

- 4.3. Pursuant to sections 66(3)(b), 142S(3), 192K(3), 192Y(3) and 205 of FSMA, where a person has breached the PRA's rules and/or requirements, the PRA may publish a statement of their misconduct (a 'public censure').
- 4.4. In deciding whether it is appropriate to issue a public censure rather than impose a penalty (and/or take other appropriate enforcement action), the PRA may have regard to:
- (a) The general principles and considerations set out in Chapter 1<sup>9</sup> of 'The PRA's approach to enforcement: statements of policy and procedure'.<sup>10</sup>
  - (b) The factors set out in paragraph 4.2 above (determining whether the PRA will impose a penalty).
  - (c) The factors set out in paragraphs 4.12 to 4.39 below (determining the appropriate level of penalty).
- 4.5. Other considerations that may be relevant include the approach of the PRA in any similar previous cases.<sup>11</sup>

## Penalties against a person under section 66 of FSMA

- 4.6. The PRA's regulatory approach is based on forward-looking judgments with disciplinary and other enforcement action directed at reducing or preventing current and potential future risks to the advancement of its statutory objectives, particularly risks to the stability of the financial system. A key element of the PRA's approach is the personal responsibility of a PRA-authorized firm's senior management to ensure that the firm is run prudently. PRA-authorized firms and individuals within them who perform controlled functions must each comply with the PRA's rules, regulatory requirements and standards, which contribute to the advancement of the PRA's statutory objectives.
- 4.7. In addition to the factors set out in paragraph 4.2 above (determining whether the PRA will impose a penalty), additional considerations may be relevant when the PRA is deciding whether to impose a penalty against a person pursuant to section 66 of FSMA (and/or other appropriate enforcement action).<sup>12</sup> These may include:
- (a) The person's controlled function (where applicable), position, role and responsibilities within the relevant firm.

<sup>9</sup> 'The PRA's general approach'.

<sup>10</sup> Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

<sup>11</sup> Subject to the particular facts and circumstances of the case in question, the PRA will seek to achieve a consistent approach to its decisions on whether to impose a penalty or issue a public censure.

<sup>12</sup> The persons upon whom the PRA may impose a penalty under section 66 of FSMA are set out in section 66B of FSMA.



- (b) Whether the person's behaviour calls into question their fitness and propriety.
- (c) The PRA's determination of whether a penalty (and/or other appropriate enforcement action) against the person and/or the relevant PRA-authorised person is or is likely to be an appropriate and effective regulatory response to the behaviour in question.

### **Penalties against persons who perform a controlled function without approval under section 63A of FSMA**

4.8. In addition to the factors set out in paragraph 4.2 above (determining whether the PRA will impose a penalty), additional considerations may be relevant when the PRA is deciding whether to impose a penalty under section 63A of FSMA (and/or other appropriate enforcement action) against a person who has at any time performed a controlled function without approval.<sup>13</sup> These include:

- (a) The circumstances in which the person performed a controlled function without approval. This may include an assessment of the role and any culpability on the part of the authorised person for whom the controlled function was performed.
- (b) Whether, while performing a controlled function without approval, the person committed misconduct in respect of which, had they been approved, the PRA could have taken action against them pursuant to section 66 of FSMA and, if so, the nature and seriousness of the misconduct.
- (c) Whether, at the time the person performed a controlled function without approval, they knew, or could reasonably be expected to have known, that they were doing so.
- (d) The circumstances in which the PRA would expect to be satisfied that a person could reasonably be expected to have known that they were performing a controlled function without approval include:
  - (i) the person had previously performed a similar role for the same or another authorised person for which they had been approved;
  - (ii) the authorised person for whom the controlled function was performed or another authorised person had previously applied for approval for them to perform the same or a similar controlled function;
  - (iii) the person's seniority and/or experience was such that they could reasonably be expected to have known that they were performing a controlled function without approval; and

<sup>13</sup> Contrary to section 63A(2) of FSMA. For the purposes of this paragraph, controlled functions are those of a description specified in the PRA Rules.

- (iv) the authorised person for whom the controlled function was performed had sufficiently defined and apportioned responsibilities so the person's role, and the responsibilities associated with it, were sufficiently clear.
- (e) The length of the period during which the person performed a controlled function without approval.
- (f) Whether the person's only misconduct was to perform a controlled function without approval.
- (g) Whether the person is an individual.
- (h) The PRA's determination of whether a penalty (and/or other appropriate enforcement action) against the person who has performed a controlled function without approval and/or the authorised person in question is or is likely to be an appropriate and effective regulatory response to the misconduct in question.

### **Action against qualifying parent undertakings under section 192K of FSMA**

4.9. Under section 192K(1) of FSMA, where the PRA is satisfied that a person who is or has been a qualifying parent undertaking (a 'QPU') has contravened:

- (a) a requirement of a direction given to that person by the PRA under section 192C of FSMA; or
- (b) rules made by the PRA under section 192J of FSMA;

the PRA may, under section 192K(2) and (3) of FSMA, impose on that QPU or any person who was knowingly concerned in the contravention, a penalty of such amount as it considers appropriate or, alternatively, publish a public censure.

4.10. In addition to the factors set out in paragraph 4.2 above (determining whether the PRA will impose a penalty), additional considerations may be relevant when the PRA is deciding whether to impose a penalty or public censure under section 192K of FSMA. These include:

- (a) The role or influence of the QPU in determining, directing or affecting the affairs of the relevant qualifying authorised person,<sup>14</sup> any other company within the group<sup>15</sup> of companies of which they form part or the group of companies as a whole (including but not limited to their risk profile and resilience).
- (b) The effect or potential effect of the contravention on the QPU, the relevant qualifying authorised person, any other company within the group of companies of which they form part or the group of companies as a whole.

<sup>14</sup> As defined in and pursuant to section 192A of FSMA.

<sup>15</sup> As defined in section 421 of FSMA.

- (c) The impact or potential impact of the matters set out in (a) and (b) above on the advancement of the PRA's statutory objectives.

### Action against financial holding company or mixed financial holding company under section 192Y of FSMA

4.11. Under section 192Y of FSMA, where the PRA is satisfied that a company which is or has been a financial holding company or a mixed financial holding company has contravened:

- (a) a requirement imposed by a direction given to that company by the PRA under Part 12B of FSMA;
- (b) a requirement imposed by a direction given to that company by the PRA under section 192T of FSMA;
- (c) rules made by the PRA under section 192V of FSMA; or
- (d) Parts 3, 4, 6, 7 or 7A of the Capital Requirements Regulation;

the PRA may, under section 192Y(2) and (3) of FSMA, impose on that company or any person who was knowingly concerned in the contravention, a penalty of such amount as it considers appropriate or, alternatively, issue a public censure.

### Determining the appropriate level of penalty

4.12. Where, in light of the matters set out in Chapter 1<sup>16</sup> of 'The PRA's approach to enforcement: statements of policy and procedure'<sup>17</sup> and paragraphs 4.2 to 4.11 above relevant to the case in question, the PRA has decided to impose a penalty, it will be calculated in accordance with the following method:

- (a) **Step 1: Disgorgement:** where relevant, the disgorgement of any economic benefits derived from the breach.
- (b) **Step 2: Seriousness:** in addition to any disgorgement at Step 1, the determination of a starting point figure for a punitive penalty having regard to the seriousness of the breach and the category of the firm<sup>18</sup> or the income of the individual concerned.
- (c) **Step 3: Aggravating, mitigating or other relevant factors:** where appropriate, an adjustment to the figure determined at Step 2 to take account of any aggravating, mitigating or other relevant circumstances.

<sup>16</sup> 'The PRA's general approach'.

<sup>17</sup> Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

<sup>18</sup> As amended from time to time. For an explanation of the firm categories, please see <https://www.bankofengland.co.uk/prudential-regulation/publication/pras-approach-to-supervision-of-the-banking-and-insurance-sectors>, as amended and supplemented from time to time.

- (d) **Step 4: Deterrence:** where appropriate, an upwards adjustment to the figure determined at Steps 2 and 3 to ensure that the penalty has an appropriate and effective deterrent effect.
- (e) **Step 5: Settlement and financial hardship:** if applicable, one or both of the following factors may be applied to the figure determined following Steps 2, 3 and 4:
- (i) a settlement discount<sup>19</sup> (see Chapter 8<sup>20</sup> of 'The PRA's approach to enforcement: statements of policy and procedure'<sup>21</sup>);
  - (ii) an adjustment based on any serious financial hardship which the PRA considers payment of the penalty would cause the firm or individual (see paragraphs 4.32 to 4.39 below).
- 4.13. These steps will apply in all cases, although the detail of the application of one or more of them may differ for cases against firms or individuals.<sup>22</sup>
- 4.14. The PRA recognises that the overall penalty arrived at must be appropriate and proportionate to the relevant breach. The PRA may decrease the level of the penalty that would otherwise be determined following Steps 2 and 3 if it considers that it is disproportionately high having regard to the seriousness, scale or effect of the breach. In determining any deterrence uplift at Step 4, the PRA will also ensure that the overall penalty is not disproportionate. In considering proportionality, the PRA will also consider whether multiple breaches are derived from the same set of facts.
- 4.15. The PRA may decide to impose a penalty on a PRA-authorized person that is a mutual (such as a building society, credit union or friendly society). Whether a firm is a mutual will not, in itself, result in an increase or decrease to the level of penalty which would otherwise apply. It may however be a relevant factor when the PRA is assessing, for example, whether to impose a penalty and/or the impact or likely impact of a penalty (and/or other appropriate enforcement action).
- 4.16. Part 3 (Penalties and Fees) of Schedule 1ZB to FSMA provides, amongst other things, that the PRA may not, in determining its policy with respect to the amounts of penalties to be imposed by it under FSMA, take account of expenses which it incurs, or expects to incur, in discharging its functions.

<sup>19</sup> Any such discount does not apply to the disgorgement of any economic benefits derived by the firm or individual from the breach (Step 1).

<sup>20</sup> 'Statement of the PRA's policy on enforcement statutory notices and the allocation of decision-making in uncontested cases, and settlement decision-making procedure and policy'.

<sup>21</sup> Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

<sup>22</sup> See paragraphs 4.17 to 4.39.

## The PRA's approach to calculating penalties to be imposed on firms or individuals

### Step 1 - Disgorgement

4.17. Where relevant and where it is practicable to ascertain and quantify them, the PRA will seek to deprive a firm or individual of any economic benefits derived from or attributable to the breach of its regulatory requirements, including any profit made or loss avoided. The PRA may also charge interest on such benefits.<sup>23</sup>

### Step 2 - Seriousness

4.18. In addition to any figure in respect of disgorgement, the PRA will determine the seriousness of the breach by reference to a starting point figure for a punitive penalty.

### Firms

4.19. In assessing seriousness, the PRA will take into account the firm's significance to the stability of the UK financial system (reflected in its potential impact categorisation<sup>24</sup>) and the factors in paragraph 4.23 below. Where a firm has not been assigned a category of impact, then the PRA will determine which firm category is appropriate.

4.20. In determining the appropriate Step 2 penalty, the PRA will use the following ranges to identify an appropriate starting point. Levels 1 to 3 reflect the spectrum of seriousness within breaches that warrant the imposition of a penalty, with Level 3 breaches being the most serious.

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<sup>23</sup> The PRA will determine on a case-by-case basis whether interest should be charged and, if so, the interest rate that should apply and the period for which interest should be payable. In determining an interest rate, the PRA may have regard to the rates applied by the civil courts or other regulatory authorities.

<sup>24</sup> As amended from time to time. For an explanation of the firm categories, please see the <https://www.bankofengland.co.uk/prudential-regulation/publication/pras-approach-to-supervision-of-the-banking-and-insurance-sectors>, as amended and supplemented from time to time.

Firm category at the time of the relevant breach(es)	Seriousness <sup>25</sup>		
	Level 1	Level 2	Level 3
1	£25-75 million	£75-125 million	> £125 million
2	£15-45 million	£45-75 million	> £75 million
3	£1-7 million	£7-15 million	> £15 million
4	£1 million	£1-2 million	> £2 million

4.21. With regard to any assessment of seriousness, PRA Fundamental Rule 1 and PRA Fundamental Rule 7<sup>26</sup> are central to the regulatory regime and breaches of either will be taken particularly seriously. There will therefore be a rebuttable presumption by the PRA that breaches of PRA Fundamental Rule 1 and/or PRA Fundamental Rule 7 are to be categorised as high seriousness.

## Individuals

4.22. In respect of individuals, the PRA will ordinarily determine a starting point figure based on the individual's relevant income.<sup>27</sup> As to that:

- (a) 'Relevant income' means the gross amount of all benefits, including any deferred benefits, received by the individual from the employment in connection with which the breach of the PRA's requirements occurred, and for the period of the breach.
- (b) In determining an individual's relevant income:
  - (i) 'benefits' include, but are not limited to, salary, bonus, pension contributions, share options and share schemes; and

<sup>25</sup> In respect of all breaches of PRA rules and requirements (including Fundamental Rules). As set out in paragraph 4.2 above, the PRA has regard to the seriousness of the breach in determining whether to impose a penalty. It does not impose penalties unless it considers the breach to be sufficiently serious to warrant a financial penalty.

<sup>26</sup> See [the PRA Rulebook - https://www.prarulebook.co.uk/](https://www.prarulebook.co.uk/)

<sup>27</sup> Where the PRA determines that an individual's income is not an appropriate basis for determining a penalty at Step 2 that properly reflects the seriousness of the breach, it may use an alternative. For example, the net worth of the individual.

- (ii) 'employment' includes, but is not limited to, employment as an adviser, director, partner, consultant or contractor.
- (c) Where the breach lasted less than 12 months, or was a one-off event, the relevant income will be that earned by the individual in the 12 months preceding the end of the breach. Where the individual was in the relevant employment for less than 12 months, the relevant income will be calculated on a pro rata basis to the equivalent of 12 months.
- (d) The PRA will apply a percentage rate to the individual's relevant income to produce a starting point figure that properly reflects the nature, extent, scale and gravity of the breach.<sup>28</sup>

### Determining seriousness

- 4.23. In determining the seriousness of the breach in cases involving firms or individuals, the factors to which the PRA may have regard include, as appropriate:
- (a) The effect or potential effect of the breach on the advancement of the PRA's statutory objectives.
  - (b) The duration or frequency of the breach in relation to the nature of the requirement contravened.
  - (c) Whether the breach was deliberate or reckless.
  - (d) The extent of the person's responsibility for the breach.
  - (e) Whether the person against whom action is to be taken is an individual.
  - (f) Whether the breach forms part of a course or pattern of non-compliant behaviour.<sup>29</sup>
  - (g) Whether the breach reveals serious or systemic weaknesses or potential weaknesses in the firm's business model, financial strength, governance, risk or other management systems and internal controls relating to all or part of its business.<sup>30</sup>
  - (h) The seniority or experience of the individual and the extent of their responsibility for the matters giving rise to the breach and/or the business area affected by it.

<sup>28</sup> The PRA has a discretion to determine an appropriate seriousness percentage. In general, the more serious and widespread the breach and the greater the threat or potential threat it posed or continues to pose to the advancement of the PRA's statutory objectives, the higher the percentage is likely to be, subject to the overall penalty being appropriate and proportionate to the relevant breach.

<sup>29</sup> For example, in relation to consistently late, inaccurate or inadequate reporting.

<sup>30</sup> For example, the adequacy of the firm's capital and liquid assets relative to its risk profile.



- (i) Whether the individual failed to act with integrity, abused a position of trust or committed a breach of any applicable professional code of conduct.
- (j) In relation to action under section 66 of FSMA, the PRA may have regard to the factors set out in paragraphs 4.6 and 4.7 above.
- (k) In relation to action under section 63A of FSMA, the PRA may have regard to the factors set out in paragraph 4.8 above.
- (l) In relation to action under section 192K of FSMA, the PRA may have regard to the factors set out in paragraphs 4.9 and 4.10 above.

### **Penalties for the late or incomplete submission of reports**

- 4.24. The PRA attaches considerable importance to the timely,<sup>31</sup> accurate and complete<sup>32</sup> submission by firms of reports required under the PRA's rules. This is because the information they contain is essential to the effectiveness of the PRA's forward-looking, judgement-based approach to the exercise of its functions.
- 4.25. In addition to the factors relevant to determining the starting point for a penalty in cases against firms or individuals, the following considerations may be relevant where the PRA is considering the imposition of a penalty on a firm or individual for the late, inaccurate or incomplete submission of reports (whether in isolation or together with other enforcement action such as the cancellation of the firm's permission or the withdrawal of an individual's approval):
- (a) The length of time after the due date that the report in question is submitted and the implications or potential implications of that default.
  - (b) The nature and extent of any omissions, inaccuracies or incomplete information in the report.
  - (c) Any repeated failures to submit accurate and complete reports or to do so on time.
  - (d) Any failure or persistent failure fully, promptly, and adequately to engage with the PRA's supervisors in connection with the preparation and/or submission of reports or matters ancillary thereto.

### **Step 3 - Adjustment for any aggravating, mitigating or other relevant factors**

- 4.26. In cases involving firms or individuals, the PRA may increase or decrease the starting point figure for a punitive penalty (excluding any amount to be disgorged) to take account of any factors which may aggravate or mitigate the

<sup>31</sup> The PRA may treat a report as not received where the method by which it is submitted to the PRA does not comply with the prescribed method of submission.

<sup>32</sup> The PRA may treat a report which is materially incomplete or inaccurate as not received until it has been submitted in a form which is materially complete and accurate.



breach or other factors which may be relevant to the breach or the appropriate level of penalty in respect of it. Any such adjustment will normally be made by way of a percentage adjustment to the starting point figure.

4.27. Factors that may aggravate or mitigate the breach include:

- (a) The conduct of the firm or individual in bringing (or failing to bring) promptly, effectively and comprehensively to the PRA's attention (or, where relevant, the attention of any other relevant regulatory authorities or law enforcement agencies) the full facts, circumstances and implications or potential implications of the breach.
- (b) The nature, timeliness and adequacy of the firm's response to any supervisory interventions by the PRA and any remedial actions proposed or required by the PRA's supervisors.
- (c) The degree of co-operation the firm or individual showed during the investigation of the breach by the PRA (or, where relevant, any other relevant regulatory authorities or law enforcement agencies), including – if relevant – the scope and timing of any factual admissions or admissions of breach(es),<sup>33</sup> and the impact of this on the PRA's ability to conclude its enforcement process promptly and efficiently.
- (d) Whether the firm's senior management was aware of the breach (or could reasonably be expected to have been aware of the breach) and, if so, the nature and extent of their knowledge of or involvement in it and the timeliness, adequacy and effectiveness of any steps taken by them to address it and/or the consequences of it.
- (e) The previous disciplinary record and general supervisory history of the firm or individual, both in respect of the PRA's regulatory requirements and, where relevant, those of any other relevant regulatory authorities or law enforcement agencies, including the reporting or non-reporting of concerns in relation to the issue giving rise to the breach in question.
- (f) The nature and impact or likely impact of any compliance or training policy or programme or other remedial steps taken by the firm or individual since the breach was identified to meaningfully address it and reduce the risk of future breaches or, where they occur, the effective management of the consequences of them (including whether these were taken on the firm's or individual's own initiative or that of the PRA or any other relevant regulatory authorities or law enforcement agencies).

<sup>33</sup> See also Chapter 8: 'Statement of the PRA's policy on enforcement statutory notices and the allocation of decision-making uncontested cases, and settlement decision-making procedure and policy'. For the avoidance of doubt, any firm or individual under investigation by the PRA may choose to make admissions as to facts and as to breaches at any time, even when they are not participating in the Early Account Scheme discussed in Chapter 2: 'The PRA's approach to information gathering in enforcement investigations'. Where such admissions materially assist the PRA in the conduct of its investigation but the EAS is not used, the PRA will recognise them as a mitigating factor for the purposes of Step 3 of any penalty calculation.

- (g) In relation to a contravention of section 63A of FSMA, whether the individual's firm or another firm has previously withdrawn an application for the individual to perform the same or a similar significant influence function or another controlled function or has had such an application rejected by the PRA, FCA or any predecessor regulators.
- 4.28. Other relevant factors may include any action taken against the firm by other domestic and/or international regulatory authorities or law enforcement agencies relevant to the breach of the PRA's regulatory requirements. This may include any penalties or fines or other disciplinary measures imposed by those authorities and/or agencies.

#### **Step 4 - Adjustment for deterrence**

- 4.29. If the PRA considers the penalty determined following Steps 2 and 3 is insufficient to deter the person who committed the breach and/or others who are subject to the PRA's regulatory requirements from committing breaches, it may increase the penalty by making an appropriate deterrence adjustment to it.
- 4.30. The circumstances in which the PRA may make a deterrence adjustment to the penalty include:
- (a) Where the PRA considers the value of the penalty is too small in relation to the breach to achieve effective deterrence.
  - (b) Where previous action by the PRA, FCA and/or any predecessor regulators in respect of the same or a similar breach has failed to improve or sufficiently improve the relevant standards of the subject of the PRA's action and/or relevant industry standards.
  - (c) Where the PRA considers it likely that, in the absence of a deterrence adjustment, the same or a similar breach will be committed in the future by the relevant firm or individual or by other members of the regulated community more widely.

#### **Step 5 - Application of any reductions for early settlement or serious financial hardship**

##### **Settlement discount**

- 4.31. The PRA and the firm or individual on whom a penalty is to be imposed may seek to agree the amount of the penalty and any other appropriate settlement terms. In recognition of the benefits of such agreements, the PRA's settlement policy provides that the amount of the penalty which would otherwise have been payable may, subject to the stage at which a binding settlement agreement is reached, be reduced.<sup>34</sup>

<sup>34</sup> Any applicable settlement discount applied at Step 5 will not apply to the disgorgement of any economic benefits determined at Step 1.

**Serious financial hardship**

- 4.32. In appropriate cases, the PRA may reduce a penalty to reflect that it would cause serious financial hardship to the firm or individual upon whom it is to be imposed. The onus is on the firm or individual in question to make a serious financial hardship claim to the PRA and to satisfy the PRA that this would be the case.
- 4.33. Where the PRA agrees in principle to consider a firm's or individual's written and/or oral representations as to serious financial hardship, the firm or individual must:
- (a) promptly provide to the PRA relevant, comprehensive and verifiable evidence that payment of the penalty will cause them serious financial hardship; and
  - (b) co-operate fully with the PRA and promptly, transparently and comprehensively comply with any requests by it for further information or evidence concerning and relevant to a proper assessment of their financial position or other relevant circumstances.
- 4.34. In respect of firms, in assessing whether the penalty would cause the firm serious financial hardship the factors which the PRA may have regard to include:
- (a) the firm's financial strength and viability; and
  - (b) any impact payment of the penalty would or would be likely to have on the firm's ability to meet and continue to meet the PRA's regulatory requirements and standards.
- 4.35. The PRA may, in addition to imposing a penalty, withdraw a PRA-authorized person's authorisation under section 33 of FSMA. Such action by the PRA would not affect its assessment of the appropriate penalty in relation to a breach of its requirements. However, where the PRA's withdrawal of a PRA-authorized person's authorisation results in that person having less earning potential, this may be a relevant factor in assessing whether the penalty will cause the person serious financial hardship.
- 4.36. In respect of individuals, in assessing whether the proposed penalty would cause the individual serious financial hardship the factors which the PRA may have regard to include:
- (a) The individual's ability to pay the penalty over a reasonable period (normally no more than three years).
  - (b) The PRA's starting point is that an individual may suffer serious financial hardship only if during that period (i) their gross annual income will fall below two thirds of the most recent Office for National Statistics figures for median

annual pay for full time employees<sup>35</sup>; and (ii) their capital<sup>36</sup> will fall below two thirds of the most recent Office for National Statistics figures for the median estimate for average total wealth<sup>37</sup> as a result of payment of the penalty.<sup>38</sup>

- 4.37 There may be cases where, even though the individual has satisfied the PRA that payment of the financial penalty would cause them serious financial hardship, the PRA considers the breach to be so serious that it is not appropriate to reduce the penalty. The PRA will consider all the circumstances of the case in determining whether this course of action is appropriate, including whether:
- (a) the individual directly derived a financial benefit from the breach and, if so, the extent of that financial benefit;
  - (b) the individual acted fraudulently or dishonestly with a view to personal gain;
  - (c) previous FCA or law enforcement action in respect of similar breaches has failed to improve industry standards; or
  - (d) the individual has spent money or dissipated assets in anticipation of FCA or law enforcement action with a view to frustrating or limiting the impact of action taken by other authorities.
- 4.38. The PRA may, in addition to imposing a penalty, make a prohibition order under section 56 of FSMA or withdraw an individual's approval under section 63 of FSMA. Such action would reflect the PRA's assessment of the individual's fitness to perform regulated activity or suitability for a particular role and would not affect its assessment of the appropriate penalty in relation to a breach of its requirements. However, where the effect of the PRA making

<sup>35</sup> Based on [Earnings and hours worked, all employees: ASHE Table 1 - Office for National Statistics](#). The relevant income threshold will be calculated as two-thirds of the median gross annual income for full time employees in the UK. At the time of drafting, the Office for National Statistics published this data in Table 1.7a 'Annual Pay – Gross' in the Earnings and hours worked, all employees: ASHE Table 1 dataset.

<sup>36</sup> The PRA will consider as capital anything that could provide the individual with a source of income, including savings, property (including personal possessions), investments and land. The PRA will normally consider as capital the equity that an individual has in the home in which they live as their only or principal residence but will consider any representations by the individual about this, including as to the position of any other occupants of the property or the practicability of re-mortgaging or selling the property within a reasonable period.

<sup>37</sup> Based on the dataset reported in [Individual wealth: wealth in Great Britain - Office for National Statistics](#). The relevant capital threshold will be calculated as two thirds of the latest median estimate of average total individual wealth. At the time of publication, that figure was reported in Table 1 of the dataset.

<sup>38</sup> The PRA will keep these income and capital thresholds under review and will consider all relevant facts and circumstances in determining whether they should be modified in a particular case. For the avoidance of doubt, such circumstances will include whether the available data from the Office for National Statistics or any successor body continues to be an appropriate basis for determining the thresholds and / or the identification of a more suitable basis for determining the applicable thresholds. Where a penalty is reduced, it will be reduced to an amount which the individual can pay without going below the income and capital threshold levels that apply in that case. If an individual has no income, any reduction in the penalty will be to an amount that the individual can pay without going below the capital threshold.

a prohibition order against an individual or withdrawing their approval is or is likely to result in the individual having less earning potential, this may be a relevant factor in assessing whether the penalty will cause the individual serious financial hardship.

- 4.39. The PRA will consider agreeing to defer the due date for payment of the penalty or accepting payment by instalments where, for example, the firm or individual requires a reasonable time to realise a particular asset to enable the totality of the penalty to be paid within a reasonable period.

### **Transitional matters**

- 4.40. The PRA will apply the relevant penalty policy that was in place at the time of the breach. Where a breach spans two policies, two penalty calculations will be considered. In the event a firm's category has changed, the PRA will use the lower category figures but will consider increasing this figure if necessary at Steps 3 and 4 of the penalty framework.

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## 5. Statement of the PRA's policy on the imposition and amount of financial penalties under FSMA on persons who are, or have been, auditors or actuaries of a PRA-authorised person, appointed under or as a result of a statutory provision

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### Introduction and interpretation

- 5.1. This statement of policy is issued by the PRA in accordance with the requirements of section 345D of FSMA. It sets out the PRA's policy on the imposition and amount of penalties under section 345A(4)(c) of FSMA on persons who are, or have been, auditors or actuaries of a PRA-authorised person, appointed under or as a result of a statutory provision ('auditors or actuaries').<sup>1</sup>
- 5.2. The auditor or actuary who is so appointed, and to whom this statement of policy applies, may be an individual or a firm, depending on the specific terms of the relevant appointment. For this reason, where it is a firm (rather than the individual) who is appointed under, or as a result of a statutory provision, the PRA does not consider that it has powers to impose penalties on (or to issue a public censure of or seek to disqualify) individual auditors and actuaries employed by, or holding partnership with, that firm. Similarly, if an individual actuary (or less commonly, auditor) is appointed, the PRA would not seek to impose a financial penalty on (or to issue a public censure of or seek to disqualify) a firm which employs that individual or in which they were a partner.

### Determining whether the PRA will impose a penalty

- 5.3. The PRA will consider all relevant facts and circumstances of each case when determining whether to impose a penalty against an auditor or actuary under section 345A(4)(c) of FSMA (and/or other appropriate enforcement action). Factors that may be relevant for this purpose include:

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<sup>1</sup> As set out in section 342 of FSMA.

- (a) The general principles and considerations set out in Chapter 1<sup>2</sup> of 'The PRA's approach to enforcement: statements of policy and procedure'.<sup>3</sup>
- (b) The impact or potential impact of the misconduct<sup>4</sup> on the stability of the financial system.
- (c) The seriousness of the breach of the PRA's regulatory requirements, including the factors outlined in paragraph 5.17 below as well as:
  - (i) whether the auditor or actuary has derived any economic benefits from or in consequence of a breach (including, in instances where, in the opinion of the PRA, the auditor or actuary appears to have allowed commercial considerations to take precedence over that auditor's or actuary's duty to the PRA, economic benefits in the form of fee income); and
  - (ii) whether there is more than one issue which, considered individually, may not justify the imposition of a penalty but, when considered together, may do so.
- (d) The extent of the auditor's or actuary's responsibility for the breach.
- (e) The conduct of the auditor or actuary after the breach was committed, including:
  - (i) how promptly, comprehensively and effectively the auditor or actuary brought the breach to the attention of the PRA and/or any other relevant regulatory or professional body<sup>5</sup> or law enforcement agency;
  - (ii) the degree of co-operation the auditor or actuary showed during the investigation of the breach by the PRA and/or any other relevant regulatory or professional body or law enforcement agency;
  - (iii) the nature, extent and effectiveness or likely effectiveness of any remedial action the auditor or actuary has taken or will take in respect of the breach and how promptly it was or will be taken;
  - (iv) the likelihood that the same or a similar type of breach (whether on the part of the person in question or other auditors and actuaries who are subject to the PRA's regulatory requirements) will recur if a penalty (and/or other appropriate enforcement action) is not imposed by the PRA and/or

<sup>2</sup> 'The PRA's general approach'.

<sup>3</sup> Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

<sup>4</sup> Misconduct by auditors or actuaries which could have an impact on financial stability might include, for example, failure promptly to draw the PRA's attention to matters which may be material to the exercise of functions by the PRA, including failure to notify the PRA in good time that a firm is failing to meet threshold conditions, may no longer be a going concern or is in breach of PRA rules.

<sup>5</sup> 'Professional body' would include, but is not limited to, accounting and actuarial bodies covered by the disciplinary scheme of the Financial Reporting Council.



- any other relevant regulatory or professional body or law enforcement agency;
- (v) whether the auditor or actuary has promptly and effectively complied with any requests or requirements of the PRA and/or any other relevant regulatory or professional body or law enforcement agency relating or relevant to their behaviour, including as to any remedial action; and
- (vi) the nature and extent of any false, incomplete or inaccurate information given by the person and whether the information has or appears to have been given in an attempt knowingly or recklessly to mislead the PRA and/or any other relevant regulatory or professional body or law enforcement agency.
- (f) The previous disciplinary record, compliance history and/or regulatory relationships of the auditor or actuary including:
- (i) any previous enforcement or other regulatory action<sup>6</sup> by the PRA, the FCA, any predecessor regulators, the Financial Reporting Council (the 'FRC') and/or professional body resulting in an adverse finding against the auditor or actuary;
- (ii) any private warning given to the auditor or actuary by the PRA, FCA, and/or any predecessor regulators;<sup>7</sup>
- (iii) any previous agreement or undertaking by the auditor or actuary to act or behave or refrain from acting or behaving in a particular way and their compliance with it; and
- (iv) the general disciplinary record and/or compliance history of the auditor or actuary, or specific aspects of it relevant to the behaviour in question, and the auditor's or actuary's approach to being open and co-operative with the PRA, FCA or any predecessor regulators.
- (g) Relevant guidance or other information or materials provided by the PRA, FCA and/or any predecessor regulators, and/or relevant auditing standards, ethical standards and related practice notes and bulletins issued by the FRC, which were in force at the time of the behaviour in question.<sup>8</sup>

<sup>6</sup> Including any requests made by the PRA, FCA and/or any predecessor regulators to take remedial action, and how promptly and effectively such action has been taken.

<sup>7</sup> Private warnings are a non-statutory tool. Subject to the facts and circumstances of the case in question, the PRA may decide to give an auditor or actuary a private warning rather than taking formal action against them. A private warning by the PRA is not a formal determination of whether the PRA's regulatory requirements have been breached. Where the PRA is minded to give a private warning, it will normally set out its concerns in writing and afford the person a reasonable opportunity to respond to those concerns prior to any private warning being given.

<sup>8</sup> The PRA may have regard to any relevant guidance or other materials provided by it, the FCA, any predecessor regulators, and/or the FRC, whether in the form of general guidance issued publicly or advice given to particular auditors or actuaries. For example, where this helps to illustrate ways in which an auditor or actuary can comply (or could at the relevant time have complied) with relevant regulatory requirements or the standards of behaviour expected of them.



- (h) The PRA's determination of whether a penalty (and/or other appropriate enforcement action) against the auditor or actuary is or is likely to be an appropriate and effective regulatory response to the behaviour in question.
- (i) Any relevant action by other domestic and/or international regulatory authorities or law enforcement agencies (including whether, if such agencies are taking or propose to take relevant action in respect of the behaviour in question, it is necessary or desirable for the PRA also to take its own separate action, including imposing a penalty):
- a. Certain misconduct by auditors and actuaries may result in breaches of the rules and requirements of the PRA, the FCA or other domestic or overseas regulatory authorities or law enforcement agencies. Such cases may result in investigation and enforcement action by the PRA and/or such other agencies.
  - b. When deciding how to proceed in such cases, the PRA will examine the facts and circumstances of the case in question and the threat the misconduct posed or continues to pose to the advancement of its statutory objectives. Where required by FSMA or where appropriate, the PRA will also consult or co-operate with the FCA<sup>9</sup> and/or any other relevant regulatory or professional body or law enforcement agency.
  - c. The PRA will determine, in the light of these matters and the principles and considerations set out in Chapter 1<sup>10</sup> of 'The PRA's approach to enforcement: statements of policy and procedure',<sup>11</sup> whether it is appropriate for the PRA to investigate and take enforcement or other legal action in respect of the misconduct. In appropriate cases, the PRA in conjunction with the FCA and/or any other relevant regulatory or professional body or law enforcement agency will determine whether any joint or co-ordinated investigation and enforcement or other legal action is required.

## Public censures

- 5.4. Pursuant to section 345A(4)(b) of FSMA, where an auditor or actuary has breached the PRA's rules and/or regulatory requirements, the PRA may publish a statement to that effect (a 'public censure').
- 5.5. In deciding whether it is appropriate to issue a public censure rather than impose a penalty (and/or take other appropriate enforcement action), the PRA may have regard to:

<sup>9</sup> See in this regard the memorandum of understanding between the FCA and the PRA as may be amended or supplemented from time to time.

<sup>10</sup> 'The PRA's general approach'.

<sup>11</sup> Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

- (a) The general principles and considerations set out in Chapter 1<sup>12</sup> of ‘The PRA’s approach to enforcement: statements of policy and procedure’.<sup>13</sup>
  - (b) The factors set out in paragraph 5.34 above (determining whether the PRA will impose a penalty).
  - (c) The factors set out in paragraphs 5.7 to 5.33 below (determining the appropriate level of penalty).
- 5.6. Other considerations that may be relevant include the approach of the PRA in any similar previous cases.<sup>14</sup>

### Determining the appropriate level of penalty

- 5.7. Where, in the light of the matters set out in Chapter 1<sup>15</sup> of ‘The PRA’s approach to enforcement: statements of policy and procedure’<sup>16</sup> and paragraph 5.3 above relevant to the case in question, the PRA has decided to impose a penalty, it will be calculated in accordance with a five-step approach, which can be summarised as follows:
- (a) **Step 1: Disgorgement:** where relevant, the disgorgement of any economic benefits derived from the breach.
  - (b) **Step 2: Seriousness:** in addition to any disgorgement at Step 1, the determination of a starting-point figure for a punitive penalty having regard to the seriousness of the breach, whether the auditor or actuary that committed the breach is a firm, a sole trader or an individual working in a firm and the financial position of that auditor or actuary.
  - (c) **Step 3: Aggravating, mitigating or other relevant factors:** where appropriate, an adjustment to the figure determined at Step 2 to take account of any aggravating, mitigating or other relevant circumstances.
  - (d) **Step 4: Deterrence:** where appropriate, an upwards adjustment to the figure determined following Steps 2 and 3 to ensure that the penalty has an appropriate and effective deterrent effect.
  - (e) **Step 5: Settlement and financial hardship:** if applicable, one or both of the following factors may be applied to the figure determined following Steps 2, 3 and 4:

<sup>12</sup> ‘The PRA’s general approach’.

<sup>13</sup> Annex 1 to ‘The Bank of England’s approach to enforcement: statements of policy and procedure’.

<sup>14</sup> Subject to the particular facts and circumstances of the case in question, the PRA will seek to achieve a consistent approach to its decisions on whether to impose a penalty or issue a public censure.

<sup>15</sup> ‘The PRA’s general approach’.

<sup>16</sup> Annex 1 to ‘The Bank of England’s approach to enforcement: statements of policy and procedure’.

- (i) a settlement discount (see paragraphs 5.25 to 5.26 below);<sup>17</sup>
  - (ii) an adjustment based on any serious financial hardship which the PRA considers payment of the penalty would cause the auditor or actuary (see paragraphs 5.27 to 5.33 below).
- 5.8. These steps will apply in all cases, although the detail of the application of one or more of them may differ for cases against auditing and actuarial firms as opposed to individual auditors and actuaries.<sup>18</sup>
- 5.9. The PRA recognises that the overall penalty arrived at must be appropriate and proportionate to the relevant breach. The PRA may decrease the level of the penalty that would otherwise be determined following Steps 2 and 3 if it considers that it is disproportionately high having regard to the seriousness, scale or effect of the breach. In determining any deterrence uplift at Step 4, the PRA will also ensure that the overall penalty is not disproportionate. In considering proportionality, the PRA will also consider whether multiple breaches are derived from the same set of facts.
- 5.10. Part 3 (Penalties and Fees) of Schedule 1ZB to FSMA provides, amongst other things, that the PRA may not, in determining its policy with respect to the amounts of penalties to be imposed by it under FSMA, take account of expenses which it incurs, or expects to incur, in discharging its functions.

## **The PRA's approach to calculating penalties to be imposed on auditors and actuaries**

### **Step 1 - Disgorgement**

- 5.11. Where relevant and where it is practicable to ascertain and quantify them, the PRA will seek to deprive an auditor or actuary of any economic benefits derived from or attributable to the breach of its regulatory requirements. The PRA may also charge interest on such benefits.<sup>19</sup>
- 5.12. For these purposes, in instances where, in the opinion of the PRA, the auditor or actuary appears to have allowed commercial considerations to take precedence over that auditor's or actuary's duty to the PRA, 'economic benefits' may include part or whole of:
- (a) the fee, including disbursements, payable to the auditor or actuary in respect of the engagement in which the misconduct occurred; and

<sup>17</sup> Any such discount does not apply to the disgorgement of any economic benefits derived by the auditor or actuary from the breach (Step 1).

<sup>18</sup> See paragraphs 5.11 to 5.33.

<sup>19</sup> The PRA will determine on a case-by-case basis whether interest should be charged and, if so, the interest rate that should apply and the period for which interest should be payable. In determining an interest rate, the PRA may have regard to the rates applied by the civil courts or other regulatory authorities.

- (b) the total fees, including disbursements, payable to the auditor or actuary in respect of any further engagements between the auditor or actuary and the PRA-authorized person who was party to the engagement in which the misconduct occurred (or members of its group), which run concurrently with, or commence within twelve months of the end of, the engagement in relation to which the misconduct occurred.

5.13. In assessing whether economic benefits should include relevant fee income, the PRA will have regard to the extent to which an individual auditor or actuary working in a firm was in a position to benefit from such fee income.

## Step 2 - Seriousness

5.14. In addition to any figure in respect of disgorgement established at Step 1, the PRA will ordinarily determine at Step 2 a starting point figure for a punitive penalty having regard to:

- (a) the seriousness of the breach by the relevant auditor or actuary, including any threat or potential threat it posed or continues to pose to the advancement of the PRA's statutory objectives; and
- (b) a suitable indicator of the size and financial position of the audit or actuarial firm;<sup>20</sup> or
- (c) the income of the individual auditor or actuary.<sup>21</sup>

5.15. In respect of firms:

- (a) A suitable indicator of the size and financial position of the audit or actuarial firm may include, but is not limited to, the firm's total revenue or its revenue in respect of one or more areas of its business.<sup>22</sup>
- (b) In those cases where the PRA considers that revenue is an appropriate indicator of the size and financial position of the audit or actuarial firm, ordinarily it will calculate the audit or actuarial firm's revenue during its last business year, that is, the financial year preceding the date when the breach ended<sup>23</sup> ('relevant revenue').

<sup>20</sup> The firm size in this case would relate only to the UK firm and would not be by reference to the size of the network to which it belongs.

<sup>21</sup> Where the PRA determines that an individual's income is not an appropriate basis for determining a penalty at Step 2 that properly reflects the seriousness of the breach, it may use an alternative, for example, the net worth of the individual.

<sup>22</sup> Where the PRA determines that revenue is not an appropriate indicator of the size and financial position of the firm for the purpose of determining a penalty for the breach, it may use an appropriate alternative indicator.

<sup>23</sup> In this connection, the PRA may have regard to any relevant considerations. These may include, for example, (a) any unusual features of the business year in question; or (b) where the breach is continuing, the PRA may have regard to the firm's relevant revenue in its last and/or current business year.

- (c) The PRA will apply an appropriate percentage rate to the audit or actuarial firm's relevant revenue to produce a figure at Step 2 that properly reflects the nature, extent, scale and gravity of the breach.<sup>24</sup>

5.16. In respect of auditors and actuaries who are individuals:

- (a) The PRA will ordinarily determine a starting point figure based on the individual's relevant income. 'Relevant income' means either: (i) the pre-tax profit that the auditor or actuary made from their work as a sole trader; or (ii) the gross amount of all benefits, including any deferred benefits, received by the individual from the employment in connection with which the breach of the PRA's requirements occurred, and for the period of the breach.
- (b) For the purposes of paragraph 5.16(a) above, 'benefits' include, but are not limited to, salary, bonus, pension contributions, share options and share schemes, and 'employment' includes, but is not limited to, employment as an adviser, director, partner, consultant or contractor.
- (c) Where the breach lasted less than 12 months, or was a one-off event, the relevant income will be that earned by the individual in the 12 months preceding the end of the breach. Where the individual was in the relevant employment for less than 12 months, the relevant income will be calculated on a pro rata basis to the equivalent of 12 months.
- (d) The PRA will apply an appropriate percentage rate to the individual's relevant income to produce a starting point figure that properly reflects the nature, extent, scale and gravity of the breach.<sup>25</sup>

5.17. In determining a percentage rate reflecting the seriousness of the breach in cases involving auditors or actuaries, the factors to which the PRA may have regard include, as appropriate:

- (a) The effect or potential effect of the breach on the advancement of the PRA's statutory objectives.
- (b) The duration or frequency of the breach in relation to the nature of the requirement contravened.
- (c) Whether the breach was deliberate or reckless.

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<sup>24</sup> The PRA has the discretion to determine an appropriate seriousness percentage. In general, the more serious and widespread the breach and the greater the threat or potential threat it posed or continues to pose to the advancement of the PRA's statutory objectives, the higher the percentage is likely to be, subject to the overall penalty being appropriate and proportionate to the relevant breach.

<sup>25</sup> The PRA has the discretion to determine an appropriate seriousness percentage. In general, the more serious or widespread the breach (both in relation to the activities of the auditor or actuary concerned or in the wider market for audit and actuarial services) and the greater the threat or potential threat it posed or continues to pose to the advancement of the PRA's statutory objectives, the higher the percentage is likely to be, subject to the overall penalty being appropriate and proportionate to the relevant breach.

- (d) The extent of the auditor's or actuary's responsibility for the breach.
- (e) Whether the person against whom action is to be taken is an individual auditor or actuary.
- (f) Whether the breach forms part of a course or pattern of non-compliant behaviour.<sup>26</sup>
- (g) Whether the breach reveals serious or systemic weaknesses or potential weaknesses in the auditor's or actuary's management of the provision of audit and/or actuarial services to PRA-authorized persons and the governance and controls relating to the oversight of all or part of those services.
- (h) The seniority or experience of an individual auditor or actuary.
- (i) Whether the auditor or actuary failed to act with integrity, abused a position of trust or committed a breach of any applicable professional code of conduct.

### **Penalties for the late, inaccurate or incomplete reporting of matters to the PRA**

- 5.18. The PRA attaches considerable importance to the timely,<sup>27</sup> accurate and complete<sup>28</sup> communication and/or notification of matters on which auditors and actuaries are required to report to the PRA under legislation<sup>29</sup> and/or PRA rules. This is because information reported by auditors and actuaries is essential to the effectiveness of the PRA's forward-looking, judgement-based approach to the exercise of its functions.
- 5.19. In addition to the factors set out in paragraphs 5.14 to 5.17 above for cases against auditors and actuaries, the following considerations may be relevant where the PRA is considering the imposition of a penalty on an auditor or actuary for late, inaccurate or incomplete communications or notifications (whether in isolation or together with other enforcement action such as disqualification):
- (a) The length of time after which the communication or notification was made and the implications or potential implications of that default.
  - (b) The nature and extent of any omissions, inaccuracies or incomplete information in the report.

<sup>26</sup> For example, in relation to consistently late, inaccurate, or inadequate communication or notification of matters to the PRA.

<sup>27</sup> The PRA may treat a report as not received where the method by which it is submitted to the PRA does not comply with any prescribed method of submission.

<sup>28</sup> The PRA may treat a report which is materially incomplete or inaccurate as not received until it has been submitted in a form which is materially complete and accurate.

<sup>29</sup> Including, by way of non-exhaustive example, in Part XXII of FSMA, the FSMA 2000 (Communications by Auditors) Regulations 2001 and the FSMA 2000 (Communications by Actuaries) Regulations 2003.

- (c) Any repeated failures to submit accurate and complete reports or to do so on time.
- (d) Any failure or persistent failure fully, promptly and adequately to engage with the PRA in connection with the submission of communications and/or notifications or matters ancillary thereto.

### **Step 3 - Adjustment for any aggravating, mitigating or other relevant factors**

5.20. In cases involving auditors or actuaries, the PRA may increase or decrease the starting-point figure for a punitive penalty determined at Step 2 (excluding any amount to be disgorged pursuant to Step 1) to take account of any factors which may aggravate or mitigate the breach or other factors which may be relevant to the breach or the appropriate level of penalty in respect of it. Any such adjustment will normally be made by way of a percentage adjustment to the figure determined at Step 2.

5.21. Factors that may aggravate or mitigate the breach include:

- (a) The conduct of the auditor or actuary in bringing (or failing to bring) promptly, effectively and comprehensively to the PRA's attention (or, where relevant, to the attention of any other relevant regulatory authorities or law enforcement agencies) the full facts, circumstances and implications or potential implications of the breach.
- (b) The nature, timeliness and adequacy of the auditor's or actuary's response to any regulatory interventions by the PRA and any remedial actions proposed or required by the PRA.
- (c) The degree of co-operation the auditor or actuary showed during the investigation of the breach by the PRA (or, where relevant, any other relevant regulatory authorities or law enforcement agencies), including – if relevant – the scope and timing of any factual admissions or admissions of breach(es),<sup>30</sup> and the impact of this on the PRA's ability to conclude its enforcement process promptly and efficiently.
- (d) Where the auditor or actuary is a firm, whether the firm's senior management was aware of the breach (or could reasonably be expected to have been aware of the breach) and, if so, the nature and extent of their knowledge of or

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<sup>30</sup> See also Chapter 8: 'Statement of the PRA's policy on enforcement statutory notices and the allocation of decision-making uncontested cases, and settlement decision-making procedure and policy'. For the avoidance of doubt, any firm or individual under investigation by the PRA may choose to make admissions as to facts and as to breaches at any time, even when they are not participating in the Early Account Scheme discussed in Chapter 2: 'The PRA's approach to information gathering in enforcement investigations'. Where such admissions materially assist the PRA in the conduct of its investigation, the PRA will recognise them as a mitigating factor for the purposes of Step 3 of any penalty calculation.



involvement in it and the timeliness, adequacy and effectiveness of any steps taken by them to address it and/or the consequences of the breach.

- (e) The previous disciplinary record, compliance record and general supervisory history of the auditor or actuary, both in respect of the PRA's regulatory requirements and, where relevant, those of any other relevant regulatory or professional body or law enforcement agency, including the reporting or non-reporting of concerns in relation to the issue giving rise to the breach in question.
- (f) The nature and impact or likely impact of any compliance or training policy or programme or other remedial steps taken by the auditor or actuary since the breach was identified meaningfully to address it and reduce the risk of future breaches or, where they occur, the effective management of the consequences of them (including whether these were taken on the auditor or actuary's own initiative or that of the PRA or any other relevant regulatory or professional body or law enforcement agency).

5.22. Other relevant factors may include any action taken against the auditor or actuary by other domestic and/or international regulatory authorities or law enforcement agencies relevant to the breach of the PRA's regulatory requirements. This may include any penalties or fines or other disciplinary measures imposed by those authorities and/or agencies.

#### **Step 4 - Adjustment for deterrence**

5.23. If the PRA considers the penalty determined following Steps 2 and 3 is insufficient to deter the auditor or actuary who committed the breach and/or others who are subject to the PRA's regulatory requirements from committing breaches, it may increase the penalty by making an appropriate deterrence adjustment to it.

5.24. The circumstances in which the PRA may make a deterrence adjustment to the penalty include:

- (a) Where the PRA considers the value of the penalty is too small in relation to the breach to achieve effective deterrence.
- (b) Where previous action by the PRA, FCA, any predecessor regulators, FRC or professional body in respect of the same or a similar breach has failed to improve or sufficiently improve the relevant standards of the subject of the PRA's action and/or relevant industry standards.
- (c) Where the PRA considers it likely that, in the absence of a deterrence adjustment, the same or a similar breach will be committed in the future by the relevant auditor or actuary or by other members of the auditing or actuarial communities more widely.

#### **Step 5 - Application of any applicable reductions for early settlement or serious financial hardship**



## Settlement discount

- 5.25. The PRA and the auditor or actuary on whom a penalty is to be imposed may seek to agree the amount of the penalty and any other appropriate settlement terms. In recognition of the benefits of such agreements, the PRA's settlement policy provides that the amount of the penalty which would otherwise have been payable may, subject to the stage at which a binding settlement agreement is reached, be reduced.<sup>31</sup>
- 5.26. The PRA will apply its settlement decision-making procedure and policy<sup>32</sup> to settlement with an auditor or actuary subject to a proposed penalty under section 345A(4)(c) of FSMA, save that paragraph 8.2 of that statement shall be deemed to be amended to: (i) refer to the settlement of actions by the PRA to impose penalties under section 345A(4)(c); and (ii) be read in conjunction with:
- (a) this statement of the PRA's policy on the imposition and amount of financial penalties under FSMA on persons who are, or have been, auditors or actuaries of a PRA-authorized person, appointed under or as a result of a statutory provision; and
  - (b) the PRA's statement of policy on enforcement statutory notices and the allocation of decision-making in uncontested cases,<sup>33</sup> with particular reference to the arrangements for decision-making in relation to the use of PRA disciplinary powers under section 345A(4).

## Serious financial hardship

- 5.27. In appropriate cases, the PRA may reduce a penalty to reflect that it would cause serious financial hardship upon the auditor or actuary upon whom it is to be imposed. The onus is on the auditor or actuary in question to make a serious financial hardship claim to the PRA and to satisfy the PRA that this would be the case.
- 5.28. Where the PRA agrees in principle to consider an auditor's or actuary's written and/or oral representations as to serious financial hardship, the firm or individual auditor or actuary must:
- (a) promptly provide to the PRA relevant, comprehensive and verifiable evidence that payment of the penalty will cause them serious financial hardship; and
  - (b) co-operate fully with the PRA and promptly, transparently and comprehensively comply with any requests by it for further information or

<sup>31</sup> Any applicable settlement discount applied at Step 5 will not apply to the disgorgement of any economic benefits determined at Step 1.

<sup>32</sup> Chapter 8 of Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

<sup>33</sup> Chapter 8 of Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

evidence concerning and relevant to a proper assessment of their financial position or other relevant circumstances.

- 5.29. In respect of firms, in assessing whether the penalty would cause the firm serious financial hardship the factors which the PRA may have regard to include:
- (a) the firm's financial strength and viability; and
  - (b) any impact payment of the penalty would or would be likely to have on the firm's ability to meet and continue to meet the PRA's regulatory requirements and standards in providing services to PRA-authorized persons.
- 5.30. The PRA may, in addition to imposing a penalty, disqualify a firm under section 345A(a) of FSMA. Such action by the PRA would not affect its assessment of the appropriate penalty in relation to a breach of its requirements. Where the PRA's disqualification of a firm from being the auditor or actuary of a PRA-authorized person or a particular class of PRA-authorized person results in that firm having less earning potential, this may be a relevant factor in assessing whether the penalty will cause the firm serious financial hardship.
- 5.31. In respect of individuals, in assessing whether the proposed penalty would cause the individual serious financial hardship, the factors which the PRA may have regard to include:
- (a) The individual's ability to pay the penalty over a reasonable period (normally no more than three years).
  - (b) The PRA's starting point is that an individual may suffer serious financial hardship only if during that period: (i) their gross annual income will fall below two thirds of the most recent Office for National Statistics figures for median annual pay for full time employees<sup>34</sup>; and (ii) their capital<sup>35</sup> will fall below two

<sup>34</sup> Based on [Earnings and hours worked, all employees: ASHE Table 1 - Office for National Statistics](#). The relevant income threshold will be calculated as two-thirds of the median gross annual income for full time employees in the UK. At the time of drafting, the Office for National Statistics published this data in Table 1.7a 'Annual Pay – Gross' in the Earnings and hours worked, all employees: ASHE Table 1 dataset.

<sup>35</sup> The PRA will consider as capital anything that could provide the individual with a source of income, including savings, property (including personal possessions), investments, and land. The PRA will normally consider as capital the equity that an individual has in the home in which they live as their only or principal residence but will consider any representations by the individual about this, including as to the position of any other occupants of the property or the practicability of re-mortgaging or selling the property within a reasonable period.

thirds of the most recent Office for National Statistics figures for the median estimate for average total wealth<sup>36</sup> as a result of payment of the penalty.<sup>37</sup>

- (c) There may be cases where, even though the individual has satisfied the PRA that payment of the financial penalty would cause them serious financial hardship, the PRA considers the breach to be so serious that it is not appropriate to reduce the penalty. The PRA will consider all the circumstances of the case in determining whether this course of action is appropriate, including whether:
- (i) the individual directly derived a financial benefit from the breach and, if so, the extent of that financial benefit;
  - (ii) the individual acted fraudulently or dishonestly with a view to personal gain;
  - (iii) previous FCA action in respect of similar breaches has failed to improve industry standards; or
  - (iv) the individual has spent money or dissipated assets in anticipation of FCA or other enforcement action with a view to frustrating or limiting the impact of action taken by the FCA or other authorities.
- 5.32. The PRA may also disqualify an individual auditor or actuary under section 345A(a) of FSMA. Such action by the PRA would not affect its assessment of the appropriate penalty in relation to a breach of its requirements. Where the PRA's disqualification of an individual from being the auditor or actuary of a PRA-authorized person or a particular class of PRA-authorized person results or is likely to result in an individual having less earning potential, this may be a relevant factor in assessing whether the penalty will cause the individual serious financial hardship.
- 5.33. The PRA will consider agreeing to defer the due date for payment of the penalty or accepting payment by instalments where, for example, an auditor or actuary requires a reasonable time to realise a particular asset to enable the totality of the penalty to be paid within a reasonable period.

<sup>36</sup> Based on the dataset reported in [Individual wealth: wealth in Great Britain - Office for National Statistics](#), The relevant capital threshold will be calculated as two thirds of the latest median estimate of average total individual wealth. At the time of publication, that figure was reported in Table 1 of the dataset.

<sup>37</sup> The PRA will keep these income and capital thresholds under review and will consider all relevant facts and circumstances in determining whether they should be modified in a particular case. For the avoidance of doubt, such circumstances will include whether the available data from the Office for National Statistics or any successor body continues to be an appropriate basis for determining the thresholds and / or the identification of a more suitable basis for determining the applicable thresholds. Where a penalty is reduced, it will be reduced to an amount which the individual can pay without going below the income and capital threshold levels that apply in that case. If an individual has no income, any reduction in the penalty will be to an amount that the individual can pay without going below the capital threshold.

**Transitional matters**

- 5.34. The PRA will apply the relevant penalty policy that was in place at the time of the breach. Where a breach spans two policies, two penalty calculations will be considered.

## 6. Statement of the PRA's policy on the imposition of suspensions or restrictions under FSMA and the period for which they are to have effect

### Introduction and interpretation

- 6.1. This statement of policy is issued by the PRA in accordance with the requirements of sections 69(1) and 210(1) of FSMA. It sets out the PRA's policy on the imposition and period of suspensions or restrictions under sections 66 and 206A of FSMA.
- 6.2. In applying this statement of policy, the PRA will have regard to the general principles and considerations set out in Chapter 1<sup>1</sup> of 'The PRA's approach to enforcement: statements of policy and procedure'.<sup>2</sup>
- 6.3. Unless inconsistent with the subject or context, in this statement of policy:
- (a) 'approved person' means a person in relation to whom an approval is given under section 59 of FSMA.<sup>3</sup>
  - (b) 'authorised person' means a person who is authorised for the purposes of FSMA.<sup>4</sup>
  - (c) 'restriction' means a limitation or other restriction (including a condition) imposed by the PRA, for such period as it considers appropriate (up to the maximum periods set out in FSMA), on:
    - (i) the carrying on of a regulated activity by an authorised person;<sup>5</sup> or
    - (ii) the performance by an approved person of any function to which any approval relates.<sup>6</sup>
  - (d) 'suspension' means the suspension by the PRA, for such period as it considers appropriate (up to the maximum periods set out in FSMA), of:

<sup>1</sup> 'The PRA's general approach'.

<sup>2</sup> Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

<sup>3</sup> As set out in sections 66(5A) and 66(6) of FSMA.

<sup>4</sup> As set out in sections 31(1) and (2) of FSMA.

<sup>5</sup> Pursuant to section 206A(1)(b) of FSMA.

<sup>6</sup> Pursuant to section 66(3)(ab) of FSMA in relation to conditions and section 66(3)(ac) in relation to limitations on the period for which the approval is to have effect.

- (i) any permission which an authorised person has to carry on a regulated activity;<sup>7</sup> or
- (ii) any approval of the performance by an approved person of any function to which the approval relates.<sup>8</sup>

### **Determining whether the PRA will take action for a suspension or restriction and ancillary matters**

6.4. The PRA will consider all relevant facts and circumstances of each case when determining whether to take action against an authorised person under section 206A of FSMA or an approved person under section 66 of FSMA for a suspension or restriction (and/or other appropriate enforcement action). Factors that may be relevant for this purpose include:

- (a) The general principles and considerations set out in Chapter 1<sup>9</sup> of 'The PRA's approach to enforcement: statements of policy and procedure'.<sup>10</sup>
- (b) The impact or potential impact of the misconduct on the stability of the financial system.
- (c) The seriousness of the breach of the PRA's regulatory requirements, including:
  - (i) its impact or potential impact on and any threat or potential threat it posed or continues to pose to the advancement of the PRA's statutory objectives and any effect action for a suspension or restriction could have on the advancement of those objectives;
  - (ii) its duration or frequency;
  - (iii) whether it was deliberate or reckless;
  - (iv) whether the person has derived any economic benefits from or in consequence of the breach;
  - (v) whether it reveals serious or systemic weaknesses or potential weaknesses in the person's business model, financial strength, governance, risk or other management systems and/or internal controls relating to all or part of the person's business; and
  - (vi) whether there is more than one issue which, considered individually, may not justify the imposition of a suspension or restriction but, when considered together, may do so.

<sup>7</sup> Pursuant to section 206A(1)(a) of FSMA.

<sup>8</sup> Pursuant to section 66(3)(aa) of FSMA.

<sup>9</sup> 'The PRA's general approach'.

<sup>10</sup> Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

- (d) The extent of the person's responsibility for the breach.
- (e) The conduct of the person after the breach was committed, including:
- (i) how promptly, comprehensively and effectively the person brought the breach to the attention of the PRA and/or any other relevant regulatory authorities or law enforcement agencies;
  - (ii) the degree of co-operation the person showed during the investigation of the breach by the PRA and/or any other relevant regulatory authorities or law enforcement agencies;
  - (iii) the nature, extent and effectiveness or likely effectiveness of any remedial action the person has taken or will take in respect of the breach and how promptly it was or will be taken;
  - (iv) the likelihood that the same or a similar type of breach (whether on the part of the person in question or other persons who are subject to the PRA's regulatory requirements) will recur if action for a suspension or restriction (and/or other appropriate enforcement action) is not taken by the PRA and/or any other relevant regulatory authorities or law enforcement agencies;
  - (v) whether the person has promptly and effectively complied with any requests or requirements of the PRA and/or any other relevant regulatory authorities or law enforcement agencies relating or relevant to their behaviour, including as to any remedial action; and
  - (vi) the nature and extent of any false, incomplete or inaccurate information given by the person and whether the information has or appears to have been given in an attempt knowingly or recklessly to mislead the PRA and/or any other relevant regulatory authorities or law enforcement agencies.
- (f) The previous disciplinary and/or supervisory record of the person including:
- (i) any previous enforcement or other regulatory action<sup>11</sup> by the PRA, FCA and/or any predecessor regulators resulting in an adverse finding against the person;
  - (ii) any private warning<sup>12</sup> given to the person by the PRA, FCA and/or any predecessor regulators;

<sup>11</sup> Including any action taken by the PRA, FCA and/or any predecessor regulators using their own-initiative powers (by means of a variation of an authorised person's Part 4A permission, the imposition of a requirement or otherwise), or any request or requirement to take remedial action, and how promptly and effectively such action has been taken.

<sup>12</sup> Private warnings are a non-statutory tool. Subject to the facts and circumstances of the case in question, the PRA may decide to give a person a private warning rather than taking formal disciplinary or other enforcement action against them. A private warning by the PRA is not a



- (iii) any previous agreement or undertaking by the person to act or behave or refrain from acting or behaving in a particular way and their compliance with it; and
  - (iv) the general supervisory record of the person or specific aspects of it relevant to the behaviour in question.
- (g) Relevant guidance or other information or materials provided by the PRA, FCA and/or any predecessor regulators, which were in force at the time of the behaviour in question.<sup>13</sup>
- (h) Any relevant action by other domestic and/or international regulatory authorities or law enforcement agencies (including whether, if such agencies are taking or propose to take relevant action in respect of the behaviour in question, it is necessary or desirable for the PRA also to take its own separate action, including action for a suspension or restriction):
- (i) Certain misconduct by PRA-authorized firms or approved persons may result in breaches of the rules and requirements of the PRA, the FCA or other domestic or overseas regulatory authorities or law enforcement agencies. Such cases may result in investigation and enforcement action by the PRA and/or such other agencies.
  - (ii) When deciding how to proceed in such cases, the PRA will examine the facts and circumstances of the case in question and the threat the misconduct posed or continues to pose to the advancement of its statutory objectives. Where required by FSMA or appropriate, the PRA will also consult or co-operate with the FCA<sup>14</sup> and/or any other relevant regulatory authorities or law enforcement agencies.
  - (iii) The PRA will determine, in light of these matters and the principles and considerations set out in Chapter 1<sup>15</sup> of 'The PRA's approach to enforcement: statements of policy and procedure',<sup>16</sup> whether it is appropriate for the PRA to investigate and take enforcement or other legal action in respect of the misconduct. In appropriate cases, the PRA in conjunction with the FCA and/or any other relevant regulatory authorities or law enforcement agencies will determine whether any joint or co-ordinated investigation and enforcement or other legal action is required.

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formal determination of whether the PRA's regulatory requirements have been breached. Where the PRA is minded to give a private warning, it will normally set out in writing its concerns and afford the person a reasonable opportunity to respond to those concerns prior to any private warning being given.

<sup>13</sup> The PRA may have regard to any relevant guidance or other materials provided by it, the FCA and/or any predecessor regulators, whether in the form of general guidance issued publicly or advice given to individual firms or individuals. For example, where this helps to illustrate ways in which a person can comply (or could at the relevant time have complied) with relevant regulatory requirements or the standards of behaviour expected of them.

<sup>14</sup> See in this regard the memorandum of understanding between the FCA and the PRA as may be amended or supplemented from time to time.

<sup>15</sup> 'The PRA's general approach'.

<sup>16</sup> Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.



- 6.5. FSMA confers on the PRA a wide discretion as to the nature and ambit of any suspension or restriction which it may impose.<sup>17</sup> Subject to the exercise of that discretion, the nature of the breach of the PRA's regulatory requirements and to the particular facts and circumstances of the case in question, the PRA may suspend or restrict an authorised person or an approved person from carrying on one or more regulated activities or controlled functions.
- 6.6. In appropriate cases, in addition to or instead of taking disciplinary action against an authorised person or an approved person, including action for a suspension or restriction, the PRA may:
- (a) exercise its requirement power, vary or cancel a PRA-authorised person's Part 4A permission; or
  - (b) exercise its powers to make a prohibition order or withdraw a person's approval in respect of a function performed by them in relation to the carrying on by a PRA-authorised person of a regulated activity to which the approval relates.

### Public censures

- 6.7. Pursuant to sections 66(3)(b) and 205 of FSMA, where a person has breached the PRA's regulatory requirements, the PRA may publish a statement of their misconduct (a 'public censure').
- 6.8. In deciding whether it is appropriate to issue a public censure rather than take action for a suspension or restriction (and/or take other appropriate enforcement action), the PRA may have regard to:
- (a) The general principles and considerations set out in Chapter 1<sup>18</sup> of 'The PRA's approach to enforcement: statements of policy and procedure'.<sup>19</sup>
  - (b) The factors set out in paragraphs 6.4 to 6.6 above (determining whether the PRA will take action for a suspension or restriction and ancillary matters).
  - (c) The factors set out in paragraphs 6.10 and 6.11 below (determining the period of a suspension or restriction).
- 6.9. Other considerations that may be relevant include the approach of the PRA in any similar previous cases.<sup>20</sup>

<sup>17</sup> See paragraphs 6.3(c) and (d) of this statement of policy.

<sup>18</sup> 'The PRA's general approach'.

<sup>19</sup> Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

<sup>20</sup> Subject to the particular circumstances of the case in question, the PRA will seek to achieve a consistent approach to its decisions on whether to impose a suspension or restriction or issue a public censure.

## Determining the period of a suspension or restriction

- 6.10. Where, in light of the matters set out in paragraphs 6.2 to 6.9 above relevant to the case in question, the PRA has decided to impose a suspension or restriction, it will determine the period of the suspension or restriction that is appropriate for and proportionate to the breach concerned and an effective deterrent. In doing so, the factors to which the PRA may have regard include, as appropriate:
- (a) The effect or potential effect of the breach on the advancement of the PRA's statutory objectives.
  - (b) The duration or frequency of the breach in relation to the nature of the requirement contravened.
  - (c) The seriousness of the misconduct by the authorised person or approved person in question in relation to the nature of the obligation breached.<sup>21</sup>
  - (d) Whether the breach was deliberate or reckless.
  - (e) Whether or not the subject of the PRA's proposed action is an individual.
  - (f) Whether the breach forms part of a course or pattern of non-compliant behaviour.<sup>22</sup>
  - (g) Whether the breach reveals serious or systemic weaknesses or potential weaknesses in the firm's business model, financial strength, governance, risk or other management systems and internal controls relating to all or part of its business.<sup>23</sup>
  - (h) The seniority or experience of the individual and the extent of their responsibility for the matters giving rise to the breach and/or the business area affected by it.
  - (i) Whether the individual failed to act with integrity, abused a position of trust or committed a breach of any applicable professional code of conduct.
- 6.11. Additional matters that may be relevant include:
- (a) Aggravating, mitigating or other relevant factors

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<sup>21</sup> Considerations that may be relevant for this purpose include those set out at Step 2 ('the seriousness of the breach') of the 'Statement of the PRA's policy on the imposition and amount of financial penalties under FSMA'.

<sup>22</sup> For example, in relation to consistently late, inaccurate or inadequate reporting.

<sup>23</sup> For example, the adequacy of the firm's capital and liquid assets relative to its risk profile.

The PRA may have regard to any relevant factors that may aggravate or mitigate the breach and/or other factors which may be relevant to it or the appropriate period of a suspension or restriction in respect of the breach.<sup>24</sup>

(b) The possible impact of a suspension or restriction on the person in breach

The PRA may have regard to the possible impact of a suspension or restriction on the authorised person or approved person who is or was in breach of its regulatory requirements. Relevant considerations may include, as appropriate:

- (i) any loss or potential loss of revenue or profits that the authorised person may incur as a result of not being able to carry on the suspended or restricted regulated activity and any material impact this may have on its safety and soundness;
- (ii) any material impact a suspension or restriction could have on other aspects of the authorised person's business and any material impact this may have on its safety and soundness;
- (iii) the anticipated reasonable costs of any reasonable measures the authorised person would have to undertake to comply with a suspension or restriction and any material impact such costs may have on its safety and soundness;
- (iv) any other economic costs that the authorised person may incur, such as an obligation to pay salaries or other sums to employees who would be unable to work or to work full-time during the period of the suspension or restriction, and any material impact such costs may have on its safety and soundness; and
- (v) whether the suspension or restriction would or would be likely to cause the authorised person or approved person serious financial hardship.<sup>25</sup>

(c) The potential for a suspension or restriction to have a wider impact

The PRA may have regard to any possible wider impact of a suspension or restriction. Relevant considerations could include any material impact a suspension or restriction could have on:

- (i) persons other than the person in breach, including other authorised persons; or
- (ii) the stability of the financial system.

<sup>24</sup> Considerations that may be relevant for this purpose include those set out at Step 3 ('adjustment for any aggravating, mitigating or other relevant factors') of the 'Statement of the PRA's policy on the imposition and amount of financial penalties under FSMA'.

<sup>25</sup> Considerations that may be relevant for this purpose include those set out at Step 5 ('application of any applicable reductions for...serious financial hardship') of the 'Statement of the PRA's policy on the imposition and amount of financial penalties under FSMA'.

### **Delaying the commencement of the period of a suspension or restriction**

6.12. In appropriate cases, the PRA may delay the commencement of the period of a suspension or restriction. Factors that may be relevant to the PRA's assessment of whether such action would be appropriate include the likely impact of the suspension or restriction or the timing and practical application of the matters set out in paragraph 6.11(b) and (c) above.

### **The interaction between the power to impose a suspension or restriction and the power to impose a penalty or public censure**

6.13. The PRA will consider the overall impact and deterrent effect of any disciplinary measure or combination of measures that it imposes in any given case. Where the PRA is minded to impose a combination of disciplinary or disciplinary and other enforcement measures, it will ensure that the combined impact of those measures is appropriate and proportionate to the breach in question.

### **Settlement**

6.14. The PRA and the person on whom a suspension or restriction may be imposed may seek to agree the period of it and any other appropriate settlement terms. In recognition of the benefits of such agreements, the PRA settlement decision-making procedure and policy<sup>26</sup> provides that the period of suspension or restriction which would otherwise have been imposed may, subject to the terms of the policy including the stage at which a binding settlement agreement is concluded, be reduced.

### **Transitional matters**

6.15 The PRA will apply the policy on suspensions or restrictions that was in place at the time of the breach.

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<sup>26</sup> Chapter 8 of Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure': 'The PRA's approach to enforcement: statements of policy and procedure'.

## 7. Statement of the PRA's policy on prohibition orders

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### Introduction

7.1. This statement sets out the PRA's approach to exercising its power under section 56 of FSMA. All statutory references in this Chapter are to provisions of FSMA.

### Statutory power

7.2. Under section 56(1A) of FSMA, the PRA may prohibit an individual from performing functions in relation to any or all regulated activities as set out in section 56(3). The PRA can use this power in relation to any individual, not just those who currently hold an approval or certification pursuant to Part V of FSMA. However, it can only do so where it considers that the individual is not fit and proper as set out in section 56(1A) of FSMA.

7.3. If the PRA proposes to exercise the section 56 power and, after considering any representations, decides to do so, it will give written notice to the individual concerned and, in some instances, also to relevant third parties.<sup>1</sup> For further information on the notice procedure, see the PRA's 'Statement of policy on enforcement statutory notices and the allocation of decision-making in uncontested cases, and settlement decision-making procedure and policy'.<sup>2</sup>

7.4. If the PRA decides to make a prohibition order, the individual concerned may refer the matter to the Upper Tribunal.<sup>3</sup>

### Exercise of prohibition power in conjunction with other powers

7.5. The PRA may make a prohibition order in addition to imposing a financial penalty under section 66(3)(a) of FSMA or publishing a statement of the individual's misconduct (a 'public censure') under section 66(3)(b) of FSMA. A prohibition reflects the PRA's assessment of the individual's fitness to perform a controlled function in relation to a firm carrying on regulated activity, or suitability for a particular role. This is a separate assessment to the PRA's consideration of the appropriateness of any disciplinary measure in relation to a breach of its requirements.

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<sup>1</sup> Section 393 of FSMA.

<sup>2</sup> Chapter 8 of Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure' 'The PRA's approach to enforcement: statements of policy and procedure'.

<sup>3</sup> Section 57(5) of FSMA.

## The PRA's approach to use of prohibition power

- 7.6. In deciding whether to make a prohibition order, the PRA will consider all circumstances relevant to the case at hand (including the considerations and general principles referred to in Chapter 1<sup>4</sup> of 'The PRA's approach to enforcement: statements of policy and procedure'<sup>5</sup>). The factors that the PRA will consider include (but are not limited to):
- (a) the matters set out in section 60A(2) of FSMA;
  - (b) the matters which the PRA rules require firms to be satisfied about when assessing an individual's fitness and propriety;<sup>6</sup>
  - (c) the supervisory, disciplinary and compliance record of the individual, including (but not limited to):
    - (i) whether the individual has engaged in misconduct within the meaning of section 66B of FSMA;
    - (ii) sanctions imposed by other regulators and professional bodies, whether in the UK or not;
    - (iii) any disciplinary action (within the meaning of section 64C of FSMA) taken against the individual and the circumstances under which it was taken;
    - (iv) relevant criminal convictions, court judgments and orders (including with respect to director disqualification) that may give rise to questions about the individual's fitness and propriety, particularly on the question of their integrity; and
    - (v) any relevant matters disclosed in regulatory references and regulatory filings or of which the PRA otherwise becomes aware.
  - (d) the impact and/or potential impact that the individual's behaviour has had, or is having, on the PRA advancing its objectives, including the behaviour of other persons in the firm over whom the individual should exercise control, and whether that behaviour calls into question the person's fitness and propriety;
  - (e) the circumstances giving rise to questions about the individual's fitness and propriety, including (but not limited to) the necessity and proportionality of any prohibition order having regard to the time elapsed since those circumstances arose, the individual's behaviour thereafter and the individuals understanding of their past behaviour;

<sup>4</sup> 'The PRA's general approach'.

<sup>5</sup> Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

<sup>6</sup> For CRR and non-CRR Firms, the relevant rules are Fitness and Propriety 2.6. For Solvency II (SII) firms, the relevant rules are Insurance Fitness and Propriety 2.2. For non-SII firms, the relevant rules are Non-Solvency II Firms – Fitness and Propriety 2.2 or Large Non-Solvency II Firms – Fitness and Propriety 2.2.

- (f) the desirability of upholding and encouraging high standards of behaviour that are consistent with persons who are subject to the PRA's regulatory requirements and standards, meeting and continuing to meet those requirements and standards; and/or
- (g) the relevance and materiality of any other matters concerning the individual's fitness and propriety.

**Effect of prohibition orders**

- 7.7. The scope of any prohibition order will depend on the circumstances of each case. The PRA may make a prohibition order preventing an individual from performing any function at all in relation to any regulated activity at any or all authorised persons. However, the PRA may choose only to restrict the individual from performing certain functions in relation to certain regulated activities and at specified authorised persons. In such a case, the PRA will specify the functions, regulated activities and authorised persons concerned in the prohibition order.
- 7.8. Once a prohibition order has taken effect, an individual who performs or agrees to perform a function in breach of that order may be committing an offence under section 56(4) of FSMA. In addition, under section 56(6) of FSMA, firms must take reasonable care to ensure that none of their functions, in relation to carrying on a regulated activity, are performed by a person in breach of a prohibition order.

**Variation or revocation of prohibition orders**

- 7.9. Under section 56(7) of FSMA, the PRA may vary or revoke a prohibition order on application of the individual named in the order.
- 7.10. In considering whether to do so, the PRA may have regard to the same matters set out in paragraph 7.6 as far as they are relevant. The PRA will take into account any new information provided by or on behalf of the individual applying for variation or revocation of the order.



## 8. Statement of the PRA's policy on enforcement statutory notices and the allocation of decision-making in uncontested cases, and settlement decision-making procedure and policy

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### Introduction

- 8.1. In compliance with section 395 of FSMA, this chapter sets out the procedure the PRA will follow in issuing statutory notices concerning the use of enforcement powers in cases where the outcome of the enforcement investigation is accepted by the subject ('uncontested cases'). The Bank has published separate statements of policy and procedure for cases where settlement is not considered appropriate or is not achieved ('contested cases'), which are dealt with by the EDMC,<sup>1</sup> and for supervisory and non-enforcement statutory notice decisions.<sup>2</sup>
- 8.2. Further, this statement of procedure and policy is issued by the PRA in accordance with the requirements of sections 63C(1), 69(1), 192N(1), 142V(1), 210(1) and 395(5) of FSMA. It deals specifically with the settlement of enforcement action by the PRA and supplements, and should be read in conjunction with, the PRA's:
- (a) policies on the imposition and amount of financial penalties under FSMA;<sup>3</sup> and
  - (b) policy on the imposition and period of suspensions or restrictions under FSMA.<sup>4</sup>

### Statutory notices

- 8.3. If the PRA proposes to exercise enforcement powers, it must give written notice to the person in relation to whom the power is exercised.

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<sup>1</sup> See PS/EDMC2018, Enforcement Decision Making Committee – Policy Statement: PS/EDMC2018: <https://www.bankofengland.co.uk/-/media/boe/files/paper/2018/enforcement-decision-making-committee-policy-statement.pdf>; <https://www.bankofengland.co.uk/-/media/boe/files/paper/2018/procedures-the-enforcement-decision-making-committee.pdf>, as amended and supplemented from time to time.

<sup>2</sup> The PRA's allocation of decision-making and approach to supervisory decisions.

<sup>3</sup> Chapter 4 and 5 of 'The PRA's approach to enforcement: statements of policy and procedure', at Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

<sup>4</sup> Chapter 6 of 'The PRA's approach to enforcement: statements of policy and procedure', at Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.



Notices are divided into the following categories:

<b>NOTICE</b>	<b>DESCRIPTION</b>	<b>ACT REFERENCE</b>
Warning Notice	States the action which the PRA proposes to take giving reasons for the proposed action and giving the opportunity for representations.	Section 387 FSMA
Decision Notice	States the reasons for the action that the PRA has decided to take. The PRA may also give a further Decision Notice which relates to a different action in respect of the same matter if the recipient consents.  The notice also gives an indication of any right to have the matter referred to the Tribunal <sup>5</sup> and the procedure for such a reference.	Section 388 FSMA
Notice of Discontinuance	Identifies the proceedings set out in a Warning or Decision Notice and which are not being taken or being discontinued.	Section 389 FSMA
Final Notice	Sets out the terms of the action that the PRA is taking.	Section 390 FSMA

### Statutory notice decisions

8.4. For the purposes of this statement of policy, enforcement statutory notice decisions are decisions as to the exercise of any of the powers set out in Table 1, Chapter 2<sup>6</sup> of 'The Bank of England's approach to enforcement: statements of policy and procedure'.

### Choice of committee and categorisation of decisions

8.5. The PRA will ensure that statutory notice decisions in uncontested cases are made by the appropriate decision-making committee ('DMC') pursuant to the PRA's Decision-Making Framework<sup>7</sup> and in accordance with section 395 of FSMA.<sup>8</sup> Decisions on uncontested cases will typically be treated as Type B decisions within that framework and will ordinarily be made by the Supervision, Risk and Policy Committee (the 'SRPC').

<sup>5</sup> 'Tribunal' means the Upper Tribunal (Tax and Chancery Chamber) or any successor body.

<sup>6</sup> 'The Bank's regulatory enforcement powers'.

<sup>7</sup> The PRA's Decision-Making Framework in 'The PRA's Allocation of Decision-Making and Approach to Supervisory Decisions'.

<sup>8</sup> Statutory notice decisions will be taken by two or more persons who include a person not directly involved in establishing the evidence on which the relevant decision is based (section 395(2) of FSMA).

- 8.6. For the avoidance of doubt, this also applies to cases where the PRA is proposing or deciding to exercise its disciplinary powers in relation to auditors and actuaries under section 345A of FSMA. Except for contested matters which fall within the remit of the EDMC, the DMC in such cases will ordinarily be the SRPC.

### Composition of decision-making committees

- 8.7. In accordance with the requirements of section 395(2)(a) of FSMA, a DMC will comprise two or more persons, at least one of whom will not have been directly involved in establishing the evidence on which the decision is based. A DMC will usually be composed of at least three members, although the size may vary depending on the nature of the particular matter under consideration.
- 8.8. DMC members are usually PRA employees and part of its executive management structure. However, if the DMC is the Prudential Regulation Committee (the 'PRC'), one or more of the DMC members may be external.<sup>9</sup>
- 8.9. The PRA will make appropriate records of statutory notice decisions, including records of meetings and the representations (if any) of the recipient(s) of the notice and materials considered by the DMC. A DMC will have a secretariat.

### General procedure for the DMC

- 8.10. One member of the DMC will act as chairperson. The chairperson will determine the manner in which a decision will be taken, ensuring that it is dealt with fairly and expeditiously.
- 8.11. If a DMC member has to withdraw (as a result of a conflict of interest or other pressing reasons), the chair will determine whether a new member should be appointed or whether to continue deciding the matter with the remaining DMC members. This determination will be based on, among other issues, the complexity of the case and the stage the case has reached.
- 8.12. While the DMC will make decisions based on all relevant information available to it, it cannot require individuals to attend before it, provide documents or give evidence. If a DMC considers it relevant to its consideration, however, it may ask PRA staff to provide any or all of the following:
- (a) additional information about the matter (which may require the PRA staff to undertake further investigations);
  - (b) further explanation of any aspect of the PRA staff recommendation or accompanying papers;

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<sup>9</sup> <https://www.bankofengland.co.uk/about/people/prudential-regulation-committee>. In contested cases, the EDMC members will also be external. The composition of the EDMC is set out in 'Procedures – the Enforcement Decision Making Committee', as amended and supplemented from time to time: [www.bankofengland.co.uk/paper/2018/procedures-the-enforcement-decision-making-committee](http://www.bankofengland.co.uk/paper/2018/procedures-the-enforcement-decision-making-committee).

- (c) information about the PRA priorities and policies; and/or
- (d) legal advice.

## Settlement decision-making procedure

### The PRA's approach to settlement

- 8.13. In applying this statement of policy, the PRA will have regard to the general principles and considerations set out in Chapter 1<sup>10</sup> of 'The PRA's approach to enforcement: statements of policy and procedure'.<sup>11</sup> These include acting, so far as is reasonably possible, in a way which advances the PRA's statutory objectives and having regard to the need to use the PRA's resources in the most efficient and economic way.
- 8.14. Having regard to those overarching statutory requirements, the PRA recognises the potential scope for, benefits of and public interest in the timely and comprehensive settlement on appropriate terms, and particularly the early settlement, of enforcement action which it may take against persons who are subject to its regulatory requirements. Such agreements can:
- (a) expedite the procedure under FSMA for the final determination of enforcement action by the PRA, enabling timely communication of regulatory outcomes to the person concerned, the regulated population more widely and the public;
  - (b) save time and resources (for the PRA and the subject of the proposed enforcement action); and
  - (c) remove uncertainty of outcome for the PRA and the subject of the proposed action inherent in contested proceedings before the Bank's EDMC and/or the Upper Tribunal.
- 8.15. In the course of an investigation, the PRA has a wide discretion whether or not to enter into or continue settlement discussions and, where an agreement in principle can be reached, conclude a binding settlement agreement. In exercising its discretion, the matters to which the PRA may have regard include:
- (a) its statutory objectives;
  - (b) the terms of this chapter and any relevant guidance or other materials issued by the PRA; and
  - (c) the facts and circumstances of the case in question.<sup>12</sup>

<sup>10</sup> 'The PRA's general approach'.

<sup>11</sup> Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

<sup>12</sup> Relevant considerations may include the PRA's assessment of the probability of settlement discussions leading to the core facts being agreed and an effective and timely regulatory outcome being secured.

- 8.16. Neither the PRA nor the subject of proposed enforcement action by the PRA are obligated to enter into or continue settlement discussions or conclude a settlement agreement.
- 8.17. In recognition of the matters set out in paragraphs 8.13 to 8.15 above, the PRA operates a scheme to award discounts for the early settlement of enforcement action involving the imposition of penalties or suspensions or restrictions under FSMA, details of which are set out below.

### **The key characteristics of a settlement of enforcement action by the PRA**

- 8.18. Regulatory enforcement action by the PRA is conducted pursuant to and in accordance with the statutory scheme set out in FSMA. The process leading up to the imposition of an enforcement sanction has a number of stipulated stages and requires the PRA to give the subject of the proposed enforcement action prescribed statutory notices.
- 8.19. The fact that the PRA agrees to enter into or continue settlement discussions will not entitle the subject under investigation to a suspension of or delay in the progress of the enforcement process.
- 8.20. A settlement of regulatory enforcement action ordinarily will involve a regulatory decision by the PRA. Where an enforcement measure is to be imposed, that decision will normally give rise to a statutory obligation on the PRA to give the person concerned the requisite statutory notices and the PRA will do so. The fact that the matter settles will not remove that obligation.<sup>13</sup> The decision to issue the requisite statutory notices will be taken in accordance with paragraphs 8.3 to 8.12 above and the PRA's Decision-Making Framework.<sup>14</sup>
- 8.21. The PRA will take reasonable steps to ensure that the subject is provided with sufficient information to understand the essential elements of the case against them and make an informed decision as to whether or not to settle the case.
- (a) Prior to the commencement of the Discount Stage (defined in paragraph 8.42), the PRA may offer the subject preliminary meetings to discuss settlement on a without prejudice basis, where the PRA considers it appropriate to do so.<sup>15</sup> These will generally take place during the advance notice period described in paragraph 8.45. The PRA will provide an oral

<sup>13</sup> Nor will it alter the potential relevance of the matter to any subsequent cases by the PRA which give rise to the same or similar issues.

<sup>14</sup> The PRA's Decision-Making Framework in 'The PRA's Allocation of Decision-Making and Approach to Supervisory Decisions' – [www.bankofengland.co.uk/prudential-regulation/publication/2024/january/the-pra-allocation-of-decision-making-and-approach-to-supervisory-decisions-statement-of-policy](https://www.bankofengland.co.uk/prudential-regulation/publication/2024/january/the-pra-allocation-of-decision-making-and-approach-to-supervisory-decisions-statement-of-policy).

<sup>15</sup> From time to time, third parties may request disclosure of information from the PRA: see paragraph 2.7 of Chapter 2 above: 'The PRA's approach to information gathering in enforcement investigations'. The PRA will not disclose material provided to it on a without prejudice basis in response to a voluntary request for disclosure. If the PRA became legally obliged to provide such material, it would give the source of the material a reasonable opportunity to consider their position and make representations as to the potential disclosure.

and/or written summary of the key factual, legal, and evidential bases of the case which will usually include setting out the nature of the case, the rules breached, and an indication of the proposed sanction(s).

- (b) At the commencement of the Discount Stage, the PRA will notify the subject in writing of the start and end dates of that period and provide the subject with a draft Warning Notice (on a without prejudice basis), setting out the issues to be discussed and identifying the key evidence on which the PRA's case relies. Where the PRA considers it necessary to help resolve factual disputes or to assist the subject in making an informed decision about whether to resolve the dispute by agreement, the PRA may provide the subject with the key evidence on which it relies. However, the PRA will not provide any other investigation report or engage in an evidential disclosure exercise at this stage.
- 8.22. The PRA will only agree to settle an enforcement action when the terms of the settlement would, in its view, represent an appropriate regulatory outcome. Generally, the PRA will require a settlement to be sufficiently comprehensive to enable it to terminate the totality of its investigation and all proposed disciplinary or other enforcement action pursuant to it against the person under investigation.<sup>16</sup>
- 8.23. Subject to and in accordance with the terms of section 391 of FSMA, save in exceptional circumstances, a settlement of regulatory enforcement action by the PRA will involve the publication by the PRA of one or more of the relevant enforcement statutory notices or the matters to which they relate.

### **The timing of settlement discussions with the PRA**

- 8.24. Subject to paragraph 8.25 below, the PRA may, at any stage of an enforcement action by it, enter into and pursue settlement discussions and conclude a binding settlement agreement or decline to enter into or discontinue settlement discussions. For example, the PRA may enter into settlement discussions with the subject of proposed enforcement action following an investigation of a suspected breach of its regulatory requirements but prior to the giving of a Warning Notice or following a Warning Notice but before a Decision Notice. In exercising its discretion, the PRA will have regard to all relevant factors, including those set out in paragraphs 8.13 to 8.15 above.
- 8.25. The PRA will not ordinarily agree to enter into substantive settlement discussions or conclude a binding settlement agreement until:
- (a) it has a sufficient understanding of the nature, seriousness and impact or potential impact of the suspected breach of its regulatory requirements; and

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<sup>16</sup> In determining the suitability of settlement, as part of its broad discretion, the PRA may, for example, have regard to the number of parties under investigation for the same or similar breaches or suspected breaches of its regulatory requirements and the potential for a settlement of one investigation adversely to affect any ongoing investigations.

- (b) it is able to make a reasonable assessment of any action, including remedial or disciplinary measures, that should be taken in consequence of it.

## **The conduct of settlement discussions and PRA decision-making in relation to whether to conclude a binding settlement agreement**

### **Settlement discussions and in principle settlement agreements**

- 8.26. Where the PRA enters into settlement discussions with the subject of proposed enforcement action by it, ordinarily those discussions will be conducted and progressed by one or more of the investigators appointed by the PRA and/or any other members of the PRA's staff responsible for the conduct of the matter.
- 8.27. The PRA and the subject of its proposed enforcement action will determine and agree the basis of any settlement discussions. Ordinarily, the PRA will require any settlement discussions to be conducted on a without prejudice basis such that if a binding settlement agreement is not concluded, the parties will not be permitted to refer to or seek to rely on any admissions, concessions, offers or proposals made in the course of settlement discussions. Without prejudice discussions and preliminary meetings conducted by the investigation team (or other staff responsible for the conduct of the matter) are undertaken on the express basis that the decision to settle rests with the assigned DMC (usually the SRPC, as discussed at paragraphs 8.5 and 8.6 above) and that there is therefore the potential for the terms of the settlement, including the parameters of the proposed sanction(s), to change.
- 8.28. Where the parties are able to reach an agreement in principle, the terms of the proposed settlement will be put in writing and agreed by the parties (the 'proposed settlement agreement').
- 8.29. The proposed settlement agreement may include:
- (a) particulars of the breach of the PRA's rules and/or regulatory requirements admitted by the person concerned;
  - (b) the PRA's conclusions concerning the breach;
  - (c) details of any disciplinary or other measures to be imposed by the PRA, including any settlement discount that would apply if a binding settlement agreement is concluded,<sup>17</sup> or any other action, such as remedial action, to be undertaken by the person concerned; and
  - (d) details of all outstanding statutory notices to be given to the person concerned and a draft of one or more of them.

<sup>17</sup> Determined in accordance with the PRA's settlement discount scheme set out in paragraphs 8.37 to 8.42 of this statement of policy.



## Concluding a settlement agreement

- 8.30. The PRA's decision whether or not to approve and conclude an in principle settlement agreement will, in accordance with the 'Statement of the PRA's Policy on enforcement statutory notices and the allocation of decision-making in uncontested cases',<sup>18</sup> be reached by an appropriate DMC.
- 8.31. A summary of the case and the terms of the proposed settlement agreement will be submitted by the PRA's investigators and/or any other members of the PRA's staff responsible for the conduct of the matter to the DMC.
- 8.32. Any decision by the DMC to approve and conclude a binding settlement agreement must be unanimous.
- 8.33. In cases where a binding settlement agreement is approved and concluded by the DMC and the subject, the PRA will give the subject of the proposed enforcement action a Warning Notice or a Decision Notice. The DMC will also decide whether a copy of the notice is required to be given to:
- (a) any third parties in accordance with section 393 of FSMA;<sup>19</sup>
  - (b) in the case of action under section 66(3)(aa) or (ab) of FSMA, any other interested parties.<sup>20</sup>
- 8.34. Depending on the investigatory stage at which a binding settlement agreement is concluded, the agreement may provide for the subject of the PRA's proposed action to waive and not exercise any subsisting rights:
- (a) to contest or further to contest that enforcement action, including the facts and matters set out in any statutory notices which have been or are to be given to them by the PRA;
  - (b) to make representations to the relevant DMC;
  - (c) to be given access to 'PRA material' or 'secondary material' pursuant to section 394 of FSMA;
  - (d) to object to the giving of any Decision Notice;
  - (e) to refer the matter to the Tribunal<sup>21</sup> and/or otherwise seek to challenge any aspect of the matter, including by way of a claim for judicial review.

<sup>18</sup> Chapter 8 of Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure': 'The PRA's approach to enforcement: statements of policy and procedure'.

<sup>19</sup> The PRA's DMC will also consider any representations made by third parties, pursuant to section 393(3) of FSMA, in response to any notice given them.

<sup>20</sup> 'Other interested parties' has the meaning set out in section 67(9) of FSMA.

<sup>21</sup> 'Tribunal' means the Upper Tribunal (Tax and Chancery Chamber) or any successor body.

### Third party rights and access to PRA material

- 8.35. For Warning and Decision Notices,<sup>22</sup> some third parties<sup>23</sup> have rights to receive a copy of a draft statutory notice, to make certain representations and to access PRA material.<sup>24</sup> These rights arise only when a statutory notice is given. In the course of settlement discussions, PRA staff may engage with third parties on a without prejudice basis notifying them of their potential third party rights and providing copies of or relevant extracts from the draft statutory notice.
- 8.36. A third party may wish to make open representations on the statutory notice. PRA staff will notify the relevant DMC of any such representations.

### The PRA's settlement discount scheme

- 8.37. Where the PRA and the subject under investigation agree to settle a case involving a proposed financial penalty or a suspension or restriction under FSMA, the subject will be entitled to a reduction in the amount or period of the relevant sanction, determined by the PRA in accordance with paragraphs 8.39 and 8.40 below.
- 8.38. Depending on the stage the enforcement process has reached when any settlement discussions are concluded, generally the PRA's approach will be to determine, pursuant to its statement of policy on the imposition and amount of penalties<sup>25</sup> or the imposition and period of suspensions and restrictions,<sup>26</sup> as appropriate, the amount or period of the sanction that it is proposing to impose<sup>27</sup> (the 'pre-discount sanction').
- 8.39. Where the pre-discount sanction and all other settlement terms are:
- (a) agreed in principle as part of a proposed settlement agreement;
  - (b) approved by the DMC; and
  - (c) a binding settlement agreement is concluded;
- during the Discount Stage, the PRA will reduce the pre-discount sanction by the Relevant Discount.
- 8.40. The Relevant Discount means:

<sup>22</sup> As set out in section 392 of FSMA.

<sup>23</sup> As set out in section 393 of FSMA.

<sup>24</sup> As set out in section 394 of FSMA.

<sup>25</sup> Chapter 4 of Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure': 'The PRA's approach to enforcement: statements of policy and procedure'.

<sup>26</sup> Chapter 6 of Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure': 'The PRA's approach to enforcement: statements of policy and procedure'.

<sup>27</sup> Where a Warning Notice has been given to the subject of the PRA's proposed enforcement action, it will set out the penalty which the PRA is minded to impose.



- (a) 50% in cases where:
- (i) the subject has co-operated with the PRA by participating in the EAS and providing an Account, any related documents and co-operation which, in the PRA's view, complies with the PRA's requirements in relation to the subject's participation in the EAS; and
  - (ii) at an early stage of the investigation (including, if appropriate, on production of the Account), the subject has made admissions, on a without prejudice basis, in relation to potential breaches under investigation; and
  - (iii) in the PRA's view, the subject's co-operation merits a discount of 50%, having regard to all relevant circumstances, including:
    - a. that the subject has provided comprehensive and accurate information within the timeframes required by the PRA, including an Account that the PRA is satisfied is fulsome and that was produced through a process that the PRA is satisfied was appropriately rigorous;
    - b. that the subject has materially assisted the PRA in the efficient and effective conduct of the investigation, in particular by enabling the PRA to move quickly to develop a sufficient understanding of the nature, seriousness and impact (or potential impact) of the suspected breach and make a reasonable assessment of any action that should be taken in consequence of it;
    - c. that the subject has made admissions not only of relevant facts, but also accurate and fulsome admissions of any relevant regulatory breach(es) arising from those facts;
    - d. that the subject has satisfied the PRA that they have ceased the behaviour giving rise to the breach and did so promptly;
    - e. that the subject has satisfied the PRA that they neither repeated, nor failed to stop, the behaviour giving rise to the breach;
    - f. the subject has satisfied the PRA that they have carried out any remediation adequately and promptly; and
    - g. the subject's supervisory and disciplinary record.
- (b) a figure higher than 30% but less than 50%, in cases where the conditions set out in paragraph 8.40(a) above are not met but:
- (i) the subject has co-operated with the PRA by participating in the EAS and providing an Account; and
  - (ii) at an early stage of the investigation (including, if appropriate, on production of the Account), the subject has made admissions, on a without prejudice basis, in relation to potential breaches under investigation; and

(iii) in the PRA's views, the subject's cooperation merits a discount in excess of 30% but less than 50%.

(c) 30% in all other cases.

8.41 The PRA expects all subjects to co-operate fully with its investigations. A subject who has done no more than to meet their legal obligation to comply with statutory information requirements is unlikely to receive a discount above 30%.

8.42. 'Discount Stage' means the period between:

(a) the date on which the PRA invites, in writing, the subject of the investigation to participate in settlement discussions; and

(b) the date set for the end of settlement discussions. This shall be set by reference to what the PRA considers is likely to be a reasonable opportunity for the parties to reach a settlement agreement. The PRA generally considers that a 28 day period is likely to be a reasonable period for settlement discussions, but it will take into account the nature of the case and the subject's circumstances when determining the relevant period. For example, in complex cases involving multiple parties and/or jurisdictions or for subjects without legal representation, the PRA may allow for a longer period.

8.43. Once the PRA has determined when the Discount Stage should end, the PRA will likely only grant extensions in exceptional circumstances, such as where factors outside of the subject's control significantly impact their ability to engage in settlement discussions.

8.44. Ordinarily, the pre-discount sanction, the percentage reduction and the reduced sanction will each be recorded in writing in the binding settlement agreement.

8.45. The PRA will seek to give the parties a reasonable period of notice in advance of the commencement of any Discount Stage to allow the parties to make administrative arrangements to prepare for settlement discussions. What is a reasonable period of advance notice will be determined by the PRA. Ordinarily a period of 28 days is likely to be sufficient notice, although it may be shorter or longer depending on the circumstances of the case.

### **Referral to the EDMC**

8.46. If a settlement decision is not reached and the matter is contested, it may be referred to the EDMC which will not be made aware of any details from the settlement discussions.

### **Periodic independent reviews of settled cases**

8.47. The PRA's processes for settled cases will be reviewed periodically by a member or members of the EDMC who are independent of the enforcement function. The reviewer(s) will seek comments from all subjects, or a sample of

those subjects, who have settled PRA enforcement cases, and will seek views from the relevant enforcement staff and relevant PRA decision makers involved in the settlement. The periodic review will assess the fairness and effectiveness of the PRA's settlement processes. It will not be a mechanism to re-open settled cases. The periodic review will take place at appropriate intervals once there are a sufficient number of cases to enable the PRA to draw representative thematic conclusions and to enable the PRA to anonymise the identity of subjects providing comments. The output of the reviews will be reported to the PRA's PRC, together with any recommendations of the reviewers for improving the settlement process. The PRA will consider these reports and will publish on its website an account of any improvements to practices and processes which result.

## 9. Statement of the PRA's approach to publicity of enforcement regulatory action

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### Introduction

- 9.1. This statement of procedure and policy is issued by the PRA. It deals with the question of publicity of statutory notice decisions by the PRA.
- 9.2. In applying this statement of policy, the PRA will have regard to the general principles and considerations set out in Chapter 1<sup>1</sup> of 'The PRA's approach to enforcement: statements of policy and procedure'.<sup>2</sup> These include having regard to the desirability in appropriate cases of the PRA publishing information relating to persons on whom requirements are imposed under FSMA, as a means of contributing to the advancement of its objectives and the principle that the PRA should exercise its functions as transparently as possible.
- 9.3. Having regard to those overarching statutory requirements, the PRA recognises the potential scope for, benefits of and public interest in an appropriate degree of transparency concerning enforcement and other regulatory action which it takes, in terms of:
- (a) reinforcing publicly the PRA's statutory objectives and its policies;
  - (b) informing the financial services industry of behaviour on the part of firms or individuals which it considers to be unacceptable;
  - (c) deterring future and/or more widespread breaches of its regulatory requirements; and
  - (d) informing society as a whole of the action it is taking and the reasons for it.

### Publicity during PRA enforcement investigations

- 9.4. This section of the statement of policy applies from the point the PRA appoints investigators (for example under sections 167 to 169 of FSMA) until it has decided to issue a Warning Notice.
- 9.5. The PRA will not normally make public:
- (a) the fact that it is or is not investigating a particular firm or individual and/or matter;

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<sup>1</sup> 'The PRA's general approach'.

<sup>2</sup> Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

(b) the identity of the firm or individual and/or details of the matter under investigation; or

(c) any of the findings or conclusions of an investigation,

except as set out in the remainder of this statement of procedure and policy.

9.6. In determining whether to make a public announcement, the PRA may have regard to a variety of factors, including the extent to which publicity would in its view be likely to:

(a) advance its statutory objectives;

(b) assist the investigation, for example by bringing forward witnesses; or

(c) deter more widespread breaches of its regulatory requirements.

9.7. In determining whether to make a public announcement, the PRA will also consider any potential prejudice risk of unfairness and/or disproportionate damage that it believes may be caused to any persons who are, or who are likely to be, a subject of the investigation and/or to third parties.<sup>3</sup>

9.8. In circumstances where the existence of a PRA investigation has entered the public domain, and:

(a) the PRA subsequently concludes that no further action is warranted; or

(b) the action the PRA proposes to take is materially different to that which previously entered the public domain,

it may (either on its own initiative, or at the request of the subject of the investigation) take reasonable steps to publicise that fact.

### **Publicity of enforcement regulatory action – Warning Notices**

9.9. The general position under section 391 of FSMA is that neither the PRA nor the person to whom a Warning Notice is given or copied may publish the notice, or any details concerning it. However, in relation to certain categories of Warning Notice,<sup>4</sup> section 391 of FSMA does permit the PRA, after consulting the persons to whom a relevant Warning Notice is given or copied, to publicise such information as it considers appropriate about the matter to which the notice relates.

9.10. The PRA will consider a number of factors in determining whether it is appropriate to exercise its discretion in favour of publicity, including the extent to which publicity would in its view be likely to:

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<sup>3</sup> Who may have or acquire rights in relation to the matter by virtue of section 393 of FSMA.

<sup>4</sup> The categories of Warning Notice to which the power applies are set out in section 391(1ZB) of FSMA.

- (a) advance its statutory objectives;
- (b) where applicable, enhance financial stability;
- (c) provide a signal to firms as to the types of behaviour it considers to be unacceptable; and
- (d) prevent more widespread breaches of its regulatory requirements.

9.11. In accordance with section 391 of FSMA, the PRA will not publish information if in its opinion publication would be:

- (a) unfair to the persons concerned;
- (b) prejudicial to the safety and soundness of PRA-authorised persons; or
- (c) prejudicial to securing the appropriate degree of protection for policyholders.

### **Publicity at the conclusion of enforcement regulatory action – Decision and Final Notices**

9.12. Section 391 of FSMA also requires the PRA to publish – in such manner as it considers appropriate – such information as it considers appropriate about the matters to which a Decision Notice and a Final Notice relate.

9.13. However, section 391 of FSMA provides that the PRA may not publish information concerning a Decision or Final Notice if in its opinion publication would be:

- (a) unfair to the persons concerned;
- (b) prejudicial to the safety and soundness of PRA-authorised persons; or
- (c) prejudicial to securing the appropriate degree of protection for policyholders.

9.14. The PRA will consider the circumstances of each case but, subject to paragraph 9.13 above, will ordinarily publicise enforcement action when this has led to the issue of a Decision Notice, as well as where it has led to the issue of a Final Notice.

### **Making representations on issues of publicity**

9.15. Where it proposes to publish details of a Warning, Decision or Final Notice, the PRA will consider any representations made to it (whether as a result of a formal requirement to consult under FSMA, or otherwise) by the subject of the notice and any person to whom the notice is copied.

- 9.16. Such representations should normally be made in writing,<sup>5</sup> and should contain detailed information – with reference to the test in section 391 of FSMA – as to why it would not be appropriate for the PRA to publish details of the relevant notice.
- 9.17. The PRA is unlikely to decide against publication solely because it is claimed that:
- (a) publication could have a negative impact on a person’s reputation; or
  - (b) a person will apply (or is likely to apply) for some or all of the matter to be dealt with in private<sup>6</sup> when they refer it to the Tribunal.

### **Who will take decisions on publicity?**

- 9.18. In relation to information concerning a Warning Notice publicised pursuant to the PRA’s power under section 391 of FSMA, section 395(2) provides that the PRA’s decision-making policies must be designed to ensure that the decision to publicise that a Warning Notice has been issued is taken in accordance with a procedure which is, as far as possible, the same as that applicable to a decision which gives rise to an obligation to give a Warning Notice.
- 9.19. The PRA’s statement of procedure on decision-making provides that the decision to publicise that a Warning Notice has been issued will be taken by the same committee as took the decision to issue the Warning Notice itself.<sup>7</sup>
- 9.20. In relation to Decision Notices and Final Notices, any decision concerning publicity will normally be taken by the same committee as took the decision to issue the Notice itself.

### **What form will publicity take?**

- 9.21. In relation to information concerning a Warning Notice publicised pursuant to the PRA’s power under section 391 of FSMA, the information placed in the public domain will normally include:
- (a) sufficient details as to the identity of the firm or individual concerned for it to be clear to whom the matter relates. This will include, but may not be limited to, the name of the firm or individual or a Firm Reference Number or an Individual Reference Number;

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<sup>5</sup> If a person wishing to make representations to the PRA on any of the matters set out in this section is unable to provide representations in writing, for example due to that person having a disability, the PRA may allow representations to be made in person or by some other suitable means.

<sup>6</sup> The Tribunal Procedure (Upper Tribunal) Rules 2008, rule 37.

<sup>7</sup> For further information about the decision-making process see Chapter 8: ‘Statement of the PRA’s policy on enforcement statutory notices and the allocation of decision-making in uncontested cases, and settlement decision-making procedure and policy for the determination and amount of penalties and the period of suspensions or restrictions on settled cases’.

- (b) a brief summary of the facts which the PRA is relying on as giving rise to the decision to take regulatory action against the firm or individual concerned; and
  - (c) a statement making clear that the issue of a Warning Notice is not a final decision,<sup>8</sup> and that if, following representations, the PRA decides to issue a Decision Notice, the subject of the notice has the option to refer the matter to the Tribunal to have the matter considered afresh.
- 9.22. In relation to Decision Notices and Final Notices, publicity will generally include placing the relevant notice on the PRA's website. The notice may be accompanied by a press release.
- 9.23. In relation to Final Notices, the PRA will also consider what matters it should notify to the FCA for inclusion on the FCA's public Financial Services Register.<sup>9</sup>

### Reviewing whether continuing publicity remains appropriate

- 9.24. Where it has published details of a Warning, Decision, or Final Notice, the PRA will on request review those notices and any related press releases that are published on its website to determine whether – at the time of the request – continued publication is appropriate, or whether they should be removed or amended.
- 9.25. In determining whether continued publicity remains appropriate, the PRA will in particular take into account:
- (a) whether it has continuing concerns in respect of the person and any risk they might pose to its statutory objectives;
  - (b) the seriousness of the person's misconduct;
  - (c) the nature of the action taken by it and the level of any sanction imposed on the person;
  - (d) whether the person is a firm or an individual;
  - (e) the extent to which the publication continues adequately to set out its position and/or expectations regarding behaviour in a particular area;
  - (f) public interest in the case (both at the time of publication and subsequently);
  - (g) whether continued publication is necessary for the purposes of deterrence and/or advancing its statutory objectives;

<sup>8</sup> A Warning Notice is akin to a 'minded to' decision.

<sup>9</sup> <https://www.fca.org.uk/firms/financial-services-register>. Section 347A of FSMA requires the PRA to provide the FCA with certain information relating to any prohibition order it may make relating to an individual.



- (h) how much time has passed since publication; and
- (i) any representations made by the person on the continuing impact on them of the publication.

## 10. Statement of policy updates

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10.1. This chapter summarises changes that have been made to this statement of policy. Please see the statement of policy's landing page for previous versions.<sup>1</sup>

### 2013

10.2. This PRA statement of policy was first published on 1 April 2013 and included statutory statements of policy and procedure<sup>2</sup> in relation to:

- (a) Statutory notices and decision-making;
- (b) Financial penalties;
- (c) Suspensions and restrictions;
- (d) Settlement;
- (e) Publicity of regulatory action; and
- (f) Conduct of interviews pursuant to section 169(7) of FSMA.

### 2016

10.3. Following the publication on 21 January 2016 of policy statement (PS) 1/16 'Engagement between external auditors and supervisors and commencing the PRA's disciplinary powers over external auditors and actuaries',<sup>3</sup> this statement of policy has been updated to:

- (a) present the PRA's statements of policy as chapters rather than appendices, to be consistent with other PRA policy publications; and
- (b) reflect the statements of policy set out in PS1/16 with:
  - (i) an amendment to the statement of the PRA's policy on statutory notices and the allocation of decision-making under FSMA, as set out in paragraph 16A in Chapter 1; and
  - (ii) a new statement of the PRA's policy on the imposition and amount of financial penalties under FSMA on persons who are, or have been,

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<sup>1</sup> Statement of Policy, January 2016: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/statement-of-policy/2016/the-pras-approach-to-enforcement-statutory-statements-of-policy-and-procedure-sop.pdf>.

<sup>2</sup> Statement of policy, April 2013: <https://www.bankofengland.co.uk/prudential-regulation/publication/2013/the-pra-approach-to-enforcement-statutory-statements-of-policy-and-procedure-sop>.

<sup>3</sup> PS 1/16- <https://www.bankofengland.co.uk/prudential-regulation/publication/2013/the-pra-approach-to-enforcement-statutory-statements-of-policy-and-procedure-sop>, January 2016.

auditors or actuaries of a PRA-authorised person, appointed under or as a result of a statutory provision, as set out in Chapter 7.

## 2018

- 10.4. Following publication on 3 August 2018 of the Bank of England Policy Statement ‘PS/EDMC2018’,<sup>4</sup> this statement of policy has been updated to reflect the policy changes in PS/EDMC2018 which establish the Enforcement Decision Making Committee.

## 2019

- 10.5. Following the publication on 5 March 2019 of Policy Statement ‘PS6/19’,<sup>5</sup> this statement of policy has been updated to apply the PRA’s policy on the imposition and amount of financial penalties under FSMA (as set out in Chapter 2) to the imposition and amount of financial penalties under section 142S of FSMA.
- 10.6. Following the publication on 4 October 2019 of Policy Statement ‘PS23/19’,<sup>6</sup> this statement of policy has been updated to reflect the policy changes in PS23/19 to the PRA’s settlement policy as set out in Chapter 4.

## 2021

- 10.7. Following publication of PS21/20 –Financial holding companies: ‘Further implementation’,<sup>7</sup> paragraph 11b was added to Chapter 2 of this statement of policy to explain the PRA’s approach to action against financial holding companies or mixed financial holding companies under section 192Y of FSMA.

## 2024

- 10.8. Following the publication on 30 January 2024 of Policy statement (PS) 1/24 – The Bank of England’s approach to enforcement<sup>8</sup>, this statement of policy has been updated to:
- (a) set out the PRA’s approach to:
- (i) the exercise of its investigatory, disciplinary and other enforcement powers (see Chapter 1);

<sup>4</sup> ‘Policy statement, August 2018: <https://www.bankofengland.co.uk/paper/2018/enforcement-decision-making-committee-policy-statement>.

<sup>5</sup> March 2019: <https://www.bankofengland.co.uk/prudential-regulation/2018/occasional-consultation-paper>.

<sup>6</sup> PRA policy statement 23/19: <https://www.bankofengland.co.uk/prudential-regulation/publication/2019/enforcement-changes-to-the-pras-settlement-policy>, October 2019.

<sup>7</sup> September 2021: <https://www.bankofengland.co.uk/prudential-regulation/publication/2021/june/financial-holding-companies-further-implementation>.

<sup>8</sup> <https://www.bankofengland.co.uk/prudential-regulation/publication/2024/january/the-bank-of-england-approach-to-enforcement-policy-statement>.

- (ii) information-gathering (see Chapter 2);
  - (iii) prohibition orders (see Chapter 7); and
- (b) update the PRA's approach to:
- (i) conduct of interviews pursuant to section 169(7) of FSMA (see Chapter 3, which updates Chapter 6 of the 2021 version of this statement of policy);
  - (ii) the imposition and amount of financial penalties (see Chapters 4 and 5, which update Chapters 2 and 7, respectively, of the 2021 version of this statement of policy);
  - (iii) the imposition of suspensions or restrictions under FSMA (see Chapter 6, which updates Chapter 3 of the 2021 version of this statement of policy);
  - (iv) decision-making in uncontested cases and settlement decision-making procedure and policy (see Chapter 8, which combines and updates Chapters 1 and 4 of the 2021 version of this statement of policy); and
  - (v) publicity of enforcement regulatory action (see Chapter 9, which updates Chapter 5 of the 2021 version of this statement of policy); and
- (c) update the summary of changes to the statement of policy (contained in this chapter, which combines and replaces the Introduction to and Chapter 8 of the 2021 version of this statement of policy).
- 10.9. Chapter 1 of the 2021 version of this statement of policy previously contained policies and procedures relevant to making supervisory and non-enforcement statutory notice decisions, including the PRA's Decision-Making Framework. This material can now be found in 'The PRA's Allocation of Decision-Making and Approach to Supervisory Decisions'.<sup>9</sup>

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<sup>9</sup> The PRA's Decision-Making Framework in 'The PRA's Allocation of Decision-Making and Approach to Supervisory Decisions' – <https://www.bankofengland.co.uk/prudential-regulation/publication/2024/january/the-pra-allocation-of-decision-making-and-approach-to-supervisory-decisions-statement-of-policy>.

## **Annex 2: The Bank of England's approach to enforcement in respect of Financial Market Infrastructures: statements of policy and procedure**

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# 1. Introduction

## Introduction

- 1.1. The Bank of England (the 'Bank') has enforcement powers with respect to recognised clearing houses (including recognised central counterparties ('RCHs'), recognised central securities depositories ('Recognised CSDs'), third country central counterparties, qualifying parent undertakings of RCHs and Recognised CSDs ('FMI QPUs'), operators of recognised payment systems ('RPSs') and specified service providers of RPSs ('SSPs').<sup>1</sup> In this statement of policy, these firms are collectively referred to as 'relevant bodies' or financial market infrastructures ('FMIs'). The Bank also has enforcement powers with respect to those responsible for the management of certain FMIs and others involved in breaches.
- 1.2. The Bank's enforcement powers with respect to FMIs are set out in FSMA and BA09.<sup>2</sup> In summary, where there has been a breach<sup>3</sup> by an FMI, the Bank has various powers to, where applicable:
  - (a) impose financial penalties;<sup>4</sup>
  - (b) publish public censures;<sup>5</sup>
  - (c) prohibit individuals;<sup>6</sup> and
  - (d) issue a closure order.<sup>7</sup>
- 1.3. The Bank also has disciplinary powers with respect to certain auditors of RCHs and Recognised CSDs.<sup>8</sup>

<sup>1</sup> For statutory definitions of these terms, please see footnotes at paragraph 7 of Chapter 2 (The Bank's regulatory enforcement powers) of 'The Bank of England's approach to enforcement: statutory statements of policy and procedure'.

<sup>2</sup> For powers relating to RCHs, Recognised CSDs and third country central counterparties, see Part 18 of, and Schedule 17A to, FSMA. For FMI QPUs, see Part 12A of, and Schedule 17A to, FSMA. For powers relating to operators of RPS and Service Providers, see Part 5 of BA09. For powers relating to auditors of RCHs and Recognised CSDs, see Part 22 of, and Schedule 17A to, FSMA.

<sup>3</sup> In this context, 'breach' refers to situations where an RCH, Recognised CSD or third country central counterparty has contravened a relevant requirement imposed on it (section 312E of FSMA), an FMI QPU has contravened a direction or information rule (section 192K(1) of FSMA), or there has been a compliance failure by the operator of an RPS or a Service Provider (section 196 of BA09).

<sup>4</sup> Sections 192K, 312F and 312FA of FSMA and section 198 of BA09.

<sup>5</sup> Sections 192K, 312E and 312FA of FSMA and section 197 of BA09.

<sup>6</sup> Sections 192K and 312FA(2)(c) of FSMA and section 200 of BA09.

<sup>7</sup> Section 199 of BA09.

<sup>8</sup> Section 345A of FSMA, which applies to such auditors pursuant to paragraph 21 of Schedule 17A to FSMA.

- 1.4. The Bank has published this statement of policy to clarify and explain its approach to enforcement investigations with respect to FMIs, individuals and auditors under FSMA and BA09.
- 1.5. In applying this policy, the Bank will, so far as is reasonably possible, act in a way which advances our objective to protect and enhance UK financial stability (the ‘financial stability objective’).<sup>9</sup> Where relevant, we will have regard to published statements of the Bank’s approach to supervision of FMIs and those responsible for their management. The Bank will also have regard to regulatory expectations set out in relevant guidance or other information or materials published by the Bank or other relevant regulators, which applied to FMIs and those responsible for their management at the time of the behaviour in question.
- 1.6. In developing this policy, the Bank has had regard to its statutory financial stability objective.
- 1.7. This statement of policy should be read in conjunction with the following:
- (a) the Bank’s approach to the supervision of financial market infrastructures (‘Approach to FMI Supervision’);<sup>10</sup>
  - (b) the Bank’s approach to the supervision of service providers of recognised payment systems (‘Approach to Supervision of Service Providers’);<sup>11</sup> and
  - (c) the procedures of the Bank’s Enforcement Decision Making Committee (‘EDMC Procedures’).<sup>12</sup>
- 1.8. This statement of policy updates and replaces:
- (a) the Bank’s April 2013 policy with respect to ‘Financial penalties imposed by the Bank under FSMA or under Part 5 of BA09’;<sup>13</sup> and
  - (b) the Bank’s August 2018 ‘Statutory statements of procedure in respect of the Bank of England’s supervision of financial market infrastructures’.<sup>14</sup>

<sup>9</sup> Section 2A of the Bank of England Act 1998.

<sup>10</sup> <https://www.bankofengland.co.uk/-/media/boe/files/financial-stability/financial-market-infrastructure-supervision/the-boe-approach-to-the-supervision-of-fmi.pdf>, April 2013, as amended and supplemented from time to time.

<sup>11</sup> [The Bank of England’s supervision of service providers to recognised payment systems February 2018](https://www.bankofengland.co.uk/-/media/boe/files/financial-stability/financial-market-infrastructure-supervision/the-boe-approach-to-the-supervision-of-fmi.pdf), February 2018, as amended and supplemented from time to time.

<sup>12</sup> ‘Procedures – The Enforcement Decision Making Committee’: <https://www.bankofengland.co.uk/paper/2018/procedures-the-enforcement-decision-making-committee>, as amended and supplemented from time to time.

<sup>13</sup> <https://www.bankofengland.co.uk/-/media/boe/files/statement/2013/financial-penalties-policy-statement.pdf>, April 2013.

<sup>14</sup> Policy Statement: <https://www.bankofengland.co.uk/-/media/boe/files/statement/2018/statutory-statements-of-procedure-in-respect-of-the-boe-supervision-of-fmi-policy-statement-update.pdf>, August 2018.



- 1.9. In conjunction with the EDMC Procedures,<sup>15</sup> the publication of this statement of policy discharges the requirements for the Bank to publish:
- (a) a statement of procedure in relation to enforcement statutory notice decisions under FSMA;<sup>16</sup> and
  - (b) statements of policy or statements of principles (as applicable) with respect to the imposition of penalties and/or prohibitions (as the case may be) under sections 192K, 312F, 312FA and 345A of FSMA and penalties under section 198 of BA09.<sup>17</sup>

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<sup>15</sup> The EDMC Procedures set out procedures in relation to statutory notice decisions in contested enforcement cases.

<sup>16</sup> Section 395(5) of, and paragraph 29 of Schedule 17A to, FSMA. Statutory notice decisions are those which give rise to an obligation to give a Warning or Decision Notice under section 395(1)(c) or to publish information about the matter to which a Warning Notice relates under section 395(1)(d) of FSMA. Paragraph 29 of Schedule 17A to FSMA applies the provisions of Part 26 of FSMA to certain Warning or Decision Notices given by the Bank. The requirement to publish a procedure does not extend to notices of discontinuance or Final Notices.

<sup>17</sup> Sections 192N, 312J and 345D of FSMA and section 198 of BA09.

## 2. Statement of policy on financial penalties imposed by the Bank under the Financial Services and Markets Act 2000 or under Part 5 of the Banking Act 2009

- 2.1. This statement of policy<sup>1</sup> is issued by the Bank in respect of recognised clearing houses (including recognised central counterparties) ('RCHs'), third country central counterparties, recognised central securities depositories ('Recognised CSDs'), qualifying parent undertakings of RCHs and Recognised CSDs ('FMI QPUs'), operators of recognised payment systems ('RPSs'), specified service providers of RPS ('SSPs'),<sup>2</sup> as well as those responsible for the management of certain bodies and others involved in breaches (where applicable).<sup>3</sup> It sets out the Bank's policy on the imposition and amount of penalties under sections 312F, 312FA and 192K of FSMA,<sup>4</sup> and section 198 of BA09.
- 2.2. This statement of policy<sup>5</sup> updates and replaces the Bank's April 2013 policy with respect to financial penalties imposed by the Bank under FSMA or under Part 5 of BA09.<sup>6</sup>
- 2.3. For the purposes of this policy, RCHs, third country central counterparties, Recognised CSDs, FMI QPUs, operators of RPSs and SSPs are collectively referred to as 'relevant bodies' or financial market infrastructures ('FMIs').
- 2.4. Where this policy refers to a 'breach', this covers situations where an RCH, Recognised CSD or third country central counterparty has contravened a

<sup>1</sup> See the requirements of sections 312J and 192N of FSMA in relation to statements of policy and section 198 of BA09 in relation to statements of principles.

<sup>2</sup> For statutory definitions of these terms, please see footnotes at paragraph 7 of Chapter 2 (The Bank's regulatory enforcement powers) of 'The Bank of England's approach to enforcement: statutory statements of policy and procedure'.

<sup>3</sup> See the requirements of section 312J and section 192N of the Financial Services and Markets Act 2000 (FSMA), as amended by the Financial Services Act 2012, in respect of RCHs and QPUs respectively, and section 198 of the Banking Act 2009 in respect of operators of payment systems.

<sup>4</sup> All references in this policy to FSMA are to that Act, (where applicable) as applied to the Bank by Schedule 17A.

<sup>5</sup> 'Statement of policy on financial penalties imposed by the Bank under the Financial Services and Markets Act 2000 or under Part 5 of the Banking Act 2009'.

<sup>6</sup> Policy Statement: 'Financial Penalties imposed by the Bank under the Financial Services and Markets Act 2000 or under Part 5 of the Banking Act 2009', April 2013:  
<https://www.bankofengland.co.uk/statement/2013/financial-penalties-policy-statement>.

relevant requirement imposed on it;<sup>7</sup> or an FMI QPU has contravened a direction or information rule;<sup>8</sup> or there has been a compliance failure<sup>9</sup> by the operator of an RPS or a SSP.

- 2.5. The Bank will apply the same penalties policy in respect of all relevant bodies. This does not imply that the same breach would necessarily result in the same financial penalty across those classes of body.
- 2.6. This statement of policy also sets out, at paragraphs 2.13 to 2.15, the Bank's policy, pursuant to section 345D(2) and paragraph 21 of Schedule 17A to FSMA, with respect to the imposition and amount of penalties upon auditors of RCHs and Recognised CSDs under section 345A of FSMA.<sup>10</sup>
- 2.7. In applying this policy, the Bank may have regard to the following general principles and considerations:
- (a) the general principles and considerations set out in Chapter 1<sup>11</sup> of 'The Bank's approach to enforcement in respect of Financial Market Infrastructures: statements of policy and procedure';<sup>12</sup>
  - (b) the desirability of upholding and encouraging high standards of behaviour that are consistent with the relevant bodies meeting and continuing to meet relevant regulatory requirements; and
  - (c) the need to ensure that where disciplinary measures, including penalties, are imposed by the Bank:
    - (i) they properly reflect the seriousness of the breach of regulatory requirements;
    - (ii) they are proportionate to the breach; and
    - (iii) they are effective in deterring those who are subject to the relevant regulatory requirements from committing similar or other breaches.
- 2.8. Prior to imposing a penalty, the Bank will provide a Warning Notice<sup>13</sup> allowing an opportunity for the relevant body or individual to make representations, and will consider any representations made.<sup>14</sup>

<sup>7</sup> Section 312E of FSMA.

<sup>8</sup> Section 192K(1) of FSMA.

<sup>9</sup> Section 196 of BA09.

<sup>10</sup> Under section 345A of FSMA, which applies to such auditors pursuant to paragraph 21 of Schedule 17A to FSMA.

<sup>11</sup> 'Introduction'.

<sup>12</sup> Annex 2 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

<sup>13</sup> In accordance with section 201 of BA09 or sections 192L or 312G of FSMA.

<sup>14</sup> The minimum period for representations is 21 days under BA09 and 14 days under FSMA.

2.9. Where the Bank decides to impose a financial penalty, the relevant body or individual may appeal to the Upper Tribunal.<sup>15</sup>

### **Policy concerning whether the Bank will impose a financial penalty**

2.10. The Bank will consider the facts and circumstances of each case when determining whether to impose a financial penalty. Factors that may be relevant for this purpose include (but are not limited to):

- (a) the general principles and considerations set out in paragraph 2.7 above;
- (b) the impact or potential impact of the breach on financial stability;
- (c) the seriousness of the breach, including the factors outlined in paragraph 2.21 below as well as:
  - (i) whether it was a result of direct acts or omissions of the relevant body or individual;
  - (ii) whether the relevant body or individual derived any economic benefits; and
  - (iii) whether there is more than one issue which, considered individually, may not justify the imposition of a penalty but, when considered together, may do so;
- (d) the conduct of the relevant body or individual after the breach was committed, including:
  - (i) how promptly, comprehensively and effectively the relevant body or individual brought the breach to the attention of the Bank and/or other regulatory authorities or law enforcement agencies;
  - (ii) the degree of co-operation the relevant body or individual showed during the investigation of the breach by the Bank (or, where relevant, any other relevant regulatory authorities or law enforcement agencies), including – if relevant – the scope and timing of any factual admissions or admissions of breach(es), and the impact of this on the Bank's ability to conclude its enforcement process promptly and efficiently;
  - (iii) the nature, extent and effectiveness or likely effectiveness of any remedial action the relevant body or individual has taken, will take or is in the course of taking in respect of the breach and how promptly it was or will be taken;
  - (iv) the likelihood that the same or a similar type of breach (whether on the part of the relevant body in question or other relevant bodies that are subject to the relevant regulatory requirements) will recur if a penalty is not imposed (or other appropriate enforcement action is not taken) by the Bank and/or other regulatory authorities or law enforcement agencies;

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<sup>15</sup> Under the provisions of section 202 of BA09, or sections 192L(7) or 312H(4) of FSMA.

- (v) whether the relevant body or individual has complied with any requests or requirements of the Bank and/or other regulatory authorities or law enforcement agencies relating or relevant to their behaviour, including as to any remedial action; and
  - (vi) the nature and extent of any false, incomplete or inaccurate information given by the relevant body or individual and whether the information has or appears to have been given in an attempt knowingly or recklessly to mislead the Bank and/or other regulatory authorities or law enforcement agencies.
- (e) the previous disciplinary and/or supervisory record of the relevant body or individual including:
- (i) any previous enforcement or other regulatory action by the Bank or other regulators, including any predecessor regulators, which resulted in an adverse finding against the relevant body or individual;
  - (ii) any warnings given to the relevant body or individual by the Bank or other regulators, including any predecessor regulators;
  - (iii) any previous agreement or undertaking by the relevant body or individual to the Bank or other regulators, including any predecessor regulators, to act or behave or refrain from acting or behaving in a particular way and their compliance with that undertaking; and
  - (iv) the general supervisory record of the relevant body or individual or specific aspects of its record relevant to the matter in question.
- (f) relevant materials provided by the Bank and/or any predecessor regulators, which were in force at the time of the behaviour in question;<sup>16</sup>
- (g) whether other sanctions, or no sanction, may be more appropriate to the achievement of the Bank's objectives; and
- (h) any relevant action by other domestic and/or international regulatory authorities or law enforcement agencies (including whether, if such agencies are taking or proposing to take relevant action in respect of the behaviour in question, it is necessary or desirable for the Bank also to take our own separate action). In appropriate cases, the Bank in conjunction with the FCA, PRA and/or other regulatory authorities or law enforcement agencies will determine whether any joint or co-ordinated investigation and enforcement or other legal action is required.

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<sup>16</sup> The Bank may have regard to any relevant materials provided by it, and/or by any predecessor regulators, whether issued publicly or bilaterally. For example, where this helps to illustrate ways in which a relevant entity can comply (or could at the relevant time have complied) with relevant regulatory requirements, or the standards expected of the entity.

### Qualifying Parent Undertakings: additional factors

2.11. Under section 192K(1) of FSMA, where the Bank is satisfied that a relevant body that is or has been an FMI QPU has contravened:

- (a) a requirement arising from a direction given to that body by the Bank under section 192C of FSMA;
- (b) rules made by the Bank under section 192J of FSMA; or
- (c) a requirement imposed by a qualifying provision specified for the purposes of section 192K(1) of FSMA by His Majesty's Treasury by order;

the Bank may, under sections 192K(2) and (3) of FSMA, impose on that FMI QPU, or any other person knowingly concerned in the contravention, a penalty of such amount as it considers appropriate or, instead of imposing a penalty, publish a statement censuring the FMI QPU or person.

2.12. In addition to the factors set out in paragraph 2.10 above, other considerations may be relevant when the Bank is deciding whether to take action to impose a financial penalty on an FMI QPU. These include:

- (a) where an FMI QPU has contravened a requirement arising from a direction given to it by the Bank under section 192C of FSMA, the nature of any acts or omissions of the FMI QPU that gave rise to that direction and the Bank's determination of their material adverse effects or potential effects;
- (b) the role or influence of the FMI QPU in determining, directing or affecting the affairs of the relevant RCH or Recognised CSD, or, where relevant to the RCH or Recognised CSD, any other company within the group<sup>17</sup> of companies of which they form part, or the group of companies as a whole (including but not limited to their risk profile and resilience); and
- (c) the effect or potential effect of the contravention on the FMI QPU, the RCH or Recognised CSD, or where relevant to the RCH or Recognised CSD, any other company within the group of companies of which they form part, or the group of companies as a whole.

### Auditors of an RCH or Recognised CSD

2.13. The Bank has issued this policy pursuant to section 345D(2) of FSMA.

2.14. Under section 345A(3) of FSMA (applied under paragraph 21 of Schedule 17A to FSMA), the Bank may exercise one or more disciplinary powers against an auditor of a RCH or Recognised CSD.

2.15. The Statement of the PRA's policy on the imposition and amount of financial penalties under FSMA on persons who are, or have been, auditors or

<sup>17</sup> As defined in section 421 of FSMA.

actuaries of a PRA-authorized person, appointed under or as a result of a statutory provision ('PRA auditor and actuary policy')<sup>18</sup> applies as if:

- (a) except as stated below, references to the PRA were to the Bank;
- (b) references to 'auditors or actuaries' were to auditors only;
- (c) references to a PRA-authorized person were to an RCH or Recognised CSD;
- (d) in paragraphs 5.3, 5.5 and 5.7, the references to 'Chapter 1' were to Chapter 1<sup>19</sup> of 'The Bank's approach to enforcement in respect of Financial Market Infrastructures: statements of policy and procedure';<sup>20</sup>
- (e) paragraphs 5.3(f) and (g) included a reference to the Bank, as well as the Bank in our capacity as the PRA;
- (f) paragraph 5.10 was omitted.<sup>21</sup>

### Policy concerning the appropriate amount of a financial penalty

2.16. The amount of any financial penalty imposed by the Bank will be calculated in accordance with the following five-step approach:

- (a) **Step 1:** where relevant, the disgorgement of any economic benefits derived from the breach;
- (b) **Step 2:** in addition to any disgorgement under Step 1, the determination of a figure which properly reflects:
  - (i) the seriousness of the breach; and
  - (ii) the financial strength of the relevant body or individual;
- (c) **Step 3:** where appropriate, an adjustment to the figure determined under Step 2 to take account of any aggravating, mitigating or other relevant circumstances;
- (d) **Step 4:** where appropriate, an upwards adjustment to the figure determined following Steps 2 and 3, to ensure that the penalty has an appropriate and

<sup>18</sup> Chapter 5 of Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure' ('Statement of the PRA's policy on the imposition and amount of financial penalties under FSMA on persons who are, or have been, auditors or actuaries of a PRA-authorized person, appointed under or as a result of a statutory provision').

<sup>19</sup> 'Introduction'.

<sup>20</sup> Annex 2 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

<sup>21</sup> Paragraph 5.10 of the PRA auditor and actuary policy relates to paragraph 27 of Part 3 (Penalties and Fees) of Schedule 1ZB to FSMA. Under that paragraph, in determining its policy with respect to the amount of penalties to be imposed under FSMA, the PRA must take no account of the expenses which it incurs, or expects to incur, in discharging its functions. This paragraph does not apply to the Bank.



effective deterrent effect on the relevant body or individual in question and on other relevant bodies and individuals;

- (e) **Step 5:** if applicable, one or both of the following factors may be applied to the figure determined following Steps 2, 3 and 4:
- (i) a settlement discount;<sup>22</sup>
  - (ii) an adjustment based on any serious financial hardship that the Bank considers payment of the penalty would cause to the relevant body or individual.

2.17. These steps will be considered in all cases, although the detail of the application of one or more of them may differ, depending on the circumstances of the case.

2.18. The Bank will aim to ensure that the overall penalty arrived at using its five-step approach is appropriate and proportionate to the relevant breach. The Bank may decrease the level of the penalty that would otherwise be determined following Steps 2 and 3 if it considers that it is disproportionately high having regard to the seriousness, scale or effect of the breach. In determining any deterrence uplift at Step 4, the Bank will also ensure that the overall penalty is not disproportionate. In considering proportionality, the Bank will also consider whether multiple breaches are derived from the same set of facts.

### Step 1 - Disgorgement

2.19. Where relevant, and where it is practicable to ascertain and quantify them, the Bank will seek to deprive the relevant body or individual of any economic benefits derived from or attributable to the breach, including any profit made or loss avoided. The Bank may also calculate and add interest on such benefits.<sup>23</sup>

### Step 2 - Seriousness

2.20. In addition to any figure in respect of disgorgement established under Step 1, the Bank will determine at Step 2 a figure which properly reflects:

- (a) the seriousness of the breach by the relevant body or individual, including any threat or potential threat it posed or continues to pose to the advancement of the Bank's objectives; and
- (b) a suitable indicator of the financial strength of the relevant body or individual.

<sup>22</sup> Any such discount does not apply to the disgorgement of any economic benefits derived by the FMI or individual from the breach (Step 1).

<sup>23</sup> The Bank will determine on a case-by-case basis whether any interest should be added and, if so, the interest rate that should apply and the period for which interest should be calculated. In determining an interest rate, the Bank may have regard to the rates applied by the civil courts or other regulatory authorities.



- 2.21. When assessing the seriousness of the breach, the factors to which the Bank may have regard may include, as appropriate:
- (a) the effect or potential effect of the breach on the achievement of the Bank's objectives;
  - (b) the duration or frequency of the breach in relation to the nature of the requirement contravened;
  - (c) whether the breach was deliberate or reckless;
  - (d) whether the person against whom action is to be taken is an individual;<sup>24</sup>
  - (e) whether the breach forms part of a pattern of non-compliant behaviour;
  - (f) whether the breach reveals serious or systemic weaknesses or potential weaknesses in the relevant body's business model, financial strength, governance, risk or other management systems and internal controls relating to all or part of its business.

### **Step 3 - Adjustment for any aggravating, mitigating or other relevant factors**

- 2.22. The Bank may increase or decrease the amount of the penalty determined at Step 2 (excluding any amount to be disgorged pursuant to Step 1) to take into account any factors which may aggravate or mitigate the breach, or other factors which may be relevant to the breach or the appropriate level of penalty in respect of it. Factors that may aggravate or mitigate the breach include:
- (a) the conduct of the relevant body or individual in bringing (or failing to bring) promptly, effectively and comprehensively to the Bank's attention (or, where relevant, the attention of other regulatory authorities or law enforcement agencies) the full facts, circumstances and implications or potential implications of the breach;
  - (b) the nature, timeliness and adequacy of the relevant body or individual's response to any supervisory interventions by the Bank and any remedial actions proposed or required by Bank supervisors;
  - (c) the degree of co-operation the relevant body or individual showed during the investigation of the breach by the Bank (or, where relevant, any other relevant regulatory authorities or law enforcement agencies), including – if relevant – the scope and timing of any factual admissions or admissions of breach(es) and the impact of this on the Bank's ability to conclude its enforcement process promptly and efficiently;
  - (d) the extent of any attempt to conceal the breach or impede the Bank's investigation;

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<sup>24</sup> Section 192N(2)(c) of FSMA.

- (e) whether the relevant body's senior management was aware of the breach and, if so, the nature and extent of their involvement in it and the timeliness, adequacy and effectiveness of any steps taken by them to address it or the consequences of it;
  - (f) the previous disciplinary record and general supervisory history of the relevant body or individual, both in respect of the Bank's requirements and, where relevant, those of any other regulatory authorities or law enforcement agencies, including the reporting or non-reporting of concerns in relation to the issue giving rise to the breach in question;
  - (g) the nature and impact or likely impact of any compliance or training policy or programme or other remedial steps taken by the relevant body or individual since the breach was identified to address steps and reduce the likelihood and impact of future breaches (including whether these were taken on the relevant body or individual's own initiative or at the request of the Bank or other regulatory authorities or law enforcement agencies);
  - (h) the extent to which the breach was caused by parties<sup>25</sup> or circumstances beyond the control of the relevant body or individual.
- 2.23. Other relevant factors may include action taken against the relevant body or individual by other domestic and/or international regulatory authorities or law enforcement agencies relevant to the breach of the Bank's regulatory requirements. This may include any penalties or fines or other disciplinary measures imposed by those authorities and/or agencies.

#### **Step 4 - Adjustment for deterrence**

- 2.24. If the Bank considers that the penalty determined following Steps 2 and 3 is insufficient to deter the person that committed the breach, or others who are subject to the Bank's regulatory requirements, from committing breaches, we may increase the penalty at Step 4 by making an appropriate deterrence adjustment.
- 2.25. The circumstances in which the Bank may make a deterrence adjustment to the penalty include:
- (a) where the Bank considers the value of the penalty is too small in relation to the breach to achieve effective deterrence;
  - (b) where previous action by the Bank, PRA, FCA and/or any predecessor regulators in respect of the same or a similar breach has failed to improve or sufficiently improve relevant industry standards of behaviour;

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<sup>25</sup> It is the responsibility of the relevant body to manage the risk arising from any outsourced activities.

- (c) where the Bank considers it likely that, in the absence of a deterrence adjustment, the same or a similar breach will be committed in the future by the relevant body or by other members of the regulated community more widely.

## **Step 5 - Application of any applicable reductions for early settlement or serious financial hardship**

### **Settlement discount**

- 2.26. The Bank and the relevant body or individual on whom a penalty is to be imposed may seek to agree the amount of the penalty and any other appropriate settlement terms. In recognition of the benefits of such agreements, as provided for under paragraph 4.27 of Chapter 4<sup>26</sup> of 'The Bank's approach to enforcement in respect of Financial Market Infrastructures: statements of policy and procedure',<sup>27</sup> the amount of the penalty which would otherwise have been payable may, subject to the stage at which a binding settlement agreement is reached, be reduced.<sup>28</sup>

### **Serious financial hardship**

- 2.27. In appropriate cases, the Bank may reduce a penalty to reflect that it would cause serious financial hardship to a relevant body or individual upon whom it is to be imposed. The onus is on the relevant body or individual in question to make a serious financial hardship claim to the Bank and to satisfy the Bank that this would be the case.
- 2.28. Where the Bank agrees in principle to consider a relevant body or individual's representations as to serious financial hardship, the relevant body or individual must:
- (a) promptly provide to the Bank relevant, comprehensive and verifiable evidence that payment of the penalty will cause them serious financial hardship; and
  - (b) co-operate fully with the Bank and promptly, transparently and comprehensively comply with any requests by it for further information or evidence concerning their financial position or other relevant circumstances.
- 2.29. In respect of relevant bodies, in assessing whether the penalty would cause the relevant body serious financial hardship, the factors to which the Bank may have regard include:
- (a) the relevant body's financial strength and viability; and

<sup>26</sup> 'Statement of procedure on enforcement statutory notices and the allocation of decision-making in uncontested cases, and settlement decision-making procedure'.

<sup>27</sup> Annex 2 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

<sup>28</sup> Any applicable settlement discount applied at Step 5 will not apply to the disgorgement of any economic benefits determined at Step 1.

- (b) any impact that payment of the penalty would or would be likely to have on the relevant body's ability to meet and continue to meet the Bank's regulatory requirements and standards.
- 2.30. In respect of individuals, in assessing whether the proposed penalty would cause the individual serious financial hardship, the factors to which the Bank may have regard include:
- (a) The individual's ability to pay the penalty over a reasonable period (normally no more than three years); and
- (b) The Bank's starting point is that an individual may suffer serious financial hardship only if during that period: (i) their gross annual income will fall below two thirds of the most recent Office for National Statistics figures for median annual pay for full time employees<sup>29</sup>; and (ii) their capital<sup>30</sup> will fall below two thirds of the most recent Office for National Statistics figures for the median estimate for average total wealth<sup>31</sup> as a result of payment of the penalty.<sup>32</sup>
- (c) There may be cases where, even though the individual has satisfied the Bank that payment of the financial penalty would cause them serious financial hardship, the Bank considers the breach to be so serious that it is not appropriate to reduce the penalty. The Bank will consider all the circumstances of the case in determining whether this course of action is appropriate, including whether:
- (i) the individual directly derived a financial benefit from the breach and, if so, the extent of that financial benefit;

<sup>29</sup> Based on [Earnings and hours worked, all employees: ASHE Table 1 - Office for National Statistics](#). The relevant income threshold will be calculated as two-thirds of the median gross annual income for full time employees in the UK. At the time of drafting, the Office for National Statistics published this data in Table 1.7a 'Annual Pay – Gross' in the Earnings and hours worked, all employees: ASHE Table 1 dataset.

<sup>30</sup> The Bank will consider as capital anything that could provide the individual with a source of income, including savings, property (including personal possessions), investments and land. The Bank will normally consider as capital the equity that an individual has in the home in which they live as their only or principal residence but will consider any representations by the individual about this, including as to the position of any other occupants of the property or the practicability of re-mortgaging or selling the property within a reasonable period.

<sup>31</sup> Based on the dataset reported in [Individual wealth: wealth in Great Britain - Office for National Statistics](#). The relevant capital threshold will be calculated as two thirds of the latest median estimate of average total individual wealth. At the time of publication, that figure was reported in Table 1 of the dataset.

<sup>32</sup> The Bank will keep these income and capital thresholds under review and will consider all relevant facts and circumstances in determining whether they should be modified in a particular case. For the avoidance of doubt, such circumstances will include whether the available data from the Office for National Statistics or any successor body continues to be an appropriate basis for determining the thresholds and / or the identification of a more suitable basis for determining the applicable thresholds. Where a penalty is reduced, it will be reduced to an amount which the individual can pay without going below the income and capital threshold levels that apply in that case. If an individual has no income, any reduction in the penalty will be to an amount that the individual can pay without going below the capital threshold.

- (ii) the individual acted fraudulently or dishonestly with a view to personal gain;
- (iii) previous regulatory or law enforcement action in respect of similar breaches has failed to improve industry standards; or
- (iv) the individual has spent money or dissipated assets in anticipation or other regulatory or law enforcement action with a view to frustrating or limiting the impact of action taken by other authorities.

2.31. The Bank will consider agreeing to defer the due date for payment of the penalty or accepting payment by instalments where, for example, the relevant body or individual requires a reasonable time to raise funds to enable the totality of the penalty to be paid within a reasonable period.

### **Transitional matters**

2.32 The Bank will apply the relevant penalty policy that was in place at the time of the breach. Where a breach spans two policies two penalty calculations will be considered.

## 3. Statement of policy on prohibitions under section 312FA of the Financial Services and Markets Act 2000

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### Introduction

- 3.1. This statement of policy sets out the Bank's policy on the imposition of prohibitions under section 312FA of FSMA.
- 3.2. Where this policy refers to a 'breach', in respect of section 312FA of FSMA this covers situations where a recognised central securities depository ('Recognised CSD')<sup>1</sup> has contravened a relevant requirement imposed on it.<sup>2</sup>
- 3.3. In applying this policy, the Bank may have regard to the following general principles and considerations:
  - (a) the general principles and considerations set out in Chapter 1<sup>3</sup> of 'The Bank's approach to enforcement in respect of Financial Market Infrastructures: statements of policy and procedure';<sup>4</sup>
  - (b) the desirability of upholding and encouraging high standards of behaviour that are consistent with the relevant bodies meeting and continuing to meet relevant regulatory requirements;
  - (c) the need to ensure that where disciplinary measures are imposed by the Bank:
    - (i) they properly reflect the seriousness of the breach of regulatory requirements;
    - (ii) they are proportionate to the breach; and
    - (iii) they are effective in deterring those who are subject to the relevant regulatory requirements from committing similar or other breaches.

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<sup>1</sup> See definition of 'recognised CSD' in section 285(1)(e) of FSMA.

<sup>2</sup> Section 312E of FSMA.

<sup>3</sup> 'Introduction'.

<sup>4</sup> Annex 2 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

## Statutory power

- 3.4. Under section 312FA(2)(c) of FSMA, the Bank may prohibit a person, who is a member of the management body or other person who effectively controls the business of a Recognised CSD, from holding an office or position involving responsibility for taking decisions about the management of the Recognised CSD. The Bank may use this power when it considers that the person is responsible for a breach by the Recognised CSD.<sup>5</sup>
- 3.5. If the Bank proposes to impose a prohibition under section 312FA(2)(c) of FSMA and, after considering any representations, decides to do so, it will give written notice to the person concerned<sup>6</sup> specifying the extent of the prohibition.<sup>7</sup>
- 3.6. Where the Bank decides to prohibit a person under section 312FA(2)(c), the person may refer the matter to the Tribunal.<sup>8</sup>

## Exercise of power in conjunction with other powers

- 3.7. The Bank may prohibit a person in addition to imposing a financial penalty under section 312FA(2)(b) of FSMA or publishing a statement (a 'public censure') under section 312FA(2)(a) of FSMA.

## The Bank's approach to use of prohibition power under section

### 312FA(2)(c) of FSMA

- 3.8. In deciding whether to prohibit a person under section 312FA(2)(c) of FSMA, the Bank will consider the facts and circumstances of each case. Factors that the Bank ordinarily may consider include, but are not limited to:
- (a) The general principles and considerations set out in paragraph 3.3 above;
  - (b) The impact or potential impact of the breach on financial stability;
  - (c) The seriousness of the breach including, but not limited to:
    - (i) its impact on, and any threat or potential threat it posed or continues to pose, to the achievement of the Bank's objectives;
    - (ii) its duration or frequency;
    - (iii) whether it was deliberate or reckless;
    - (iv) whether the person has derived any economic benefits from or in consequences of the breach;

<sup>5</sup> Section 312FA(2) of FSMA.

<sup>6</sup> Sections 312G(1)(b) and 312H(1)(b) of FSMA.

<sup>7</sup> Sections 312G(4) and 312H(3A) of FSMA.

<sup>8</sup> Section 312H(4)(b) of FSMA.



- (d) Any relevant factors that may aggravate or mitigate the breach;
- (e) The seriousness of the misconduct by the person in question in relation to the nature of the breach;
- (f) The conduct of the person after the breach was committed;
- (g) The extent of the person's responsibility for the breach;
- (h) The supervisory, disciplinary and/or compliance record of the person;
- (i) Whether or not the subject of the Bank's proposed action is an individual;
- (j) Where the person being prohibited is an individual, the seniority or experience of the individual;
- (k) Where the person being prohibited is an individual, whether they failed to act with integrity, abused a position of trust or committed a breach of any applicable professional code of conduct;
- (l) The potential for the prohibition to have a wider impact, including any material impact the prohibition could have on the stability of the financial system;
- (m) The likelihood that the same or a similar type of breach (whether on the part of the person and/or relevant body in question or other persons or relevant bodies that are subject to the relevant regulatory requirements) will recur if a prohibition is not imposed (or other appropriate enforcement action is not taken) by the Bank and/or other regulatory authorities or law enforcement agencies; and
- (n) Whether other disciplinary measures or sanctions, or no disciplinary measures or sanctions, may be more appropriate to the achievement of the Bank's objectives.

### **Period for which prohibitions are to have effect**

3.9. A prohibition under section 312FA(2)(c) of FSMA may apply for a specific period of time, until further notice or permanently (the latter for repeated serious contraventions).<sup>9</sup>

3.10. Where the Bank has decided to prohibit a person, it will determine a period for which the prohibition is to have effect that is appropriate for, and proportionate to, the breach concerned, and that is an effective deterrent. In doing so, the Bank will have regard to the matters set out in section 312J(2) of FSMA<sup>10</sup> and

<sup>9</sup> Section 312FA(3) of FSMA.

<sup>10</sup> Section 312J(2)(a): the seriousness of the contravention in question in relation to the nature of the requirement concerned;  
Section 312J(2)(b): the extent to which that contravention was deliberate or reckless;  
Section 312J(2)(c): whether the person against whom action is to be taken is an individual.



other relevant factors which may include, but are not limited to, the factors set out in paragraph 3.8 above as far as they are relevant.

### **Variation or revocation of prohibition**

- 3.11. Under section 312FA(4) of FSMA, the Bank may vary or revoke a prohibition on application of the person subject to the section 312FA(2)(c) FSMA prohibition.
- 3.12. In considering whether to do so, the Bank ordinarily will have regard to the same matters set out in paragraph 3.8 above as far as they are relevant. The Bank will take into account any new information provided by or on behalf of the person applying for variation or revocation of the prohibition.

### **Considerations for the imposition of prohibitions, restrictions and bans**

- 3.13. The Bank has additional powers to impose prohibitions, restrictions and bans on individuals in relation to certain financial market infrastructures. In considering the use of these powers, the Bank will take into account all relevant considerations pursuant to the relevant statutory provisions, including, where relevant, the considerations set out in this chapter above.

## 4. Statement of procedure on enforcement statutory notices and the allocation of decision-making in uncontested cases, and settlement decision-making procedure

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### Introduction

- 4.1. In compliance with section 395 of FSMA, this chapter sets out the procedure the Bank will follow in issuing enforcement statutory notices under FSMA. This statement also applies to the issuance of enforcement statutory notices under BA09. It relates to recognised clearing houses ('RCHs'), recognised central securities depositories ('Recognised CSDs'), third country central counterparties, qualifying parent undertakings of RCHs and Recognised CSDs ('FMI QPUs'), operators of recognised payment systems ('RPSs') and specified service providers of RPSs ('SSPs'),<sup>1</sup> collectively referred to as financial market infrastructures ('FMIs') or 'relevant bodies', as well as those responsible for the management of certain FMIs and others involved in breaches (where applicable). It also refers to auditors of RCHs and Recognised CSDs.
- 4.2. The Bank has published a separate statement of procedure for contested cases, which are dealt with by the Bank's Enforcement Decision Making Committee (the 'EDMC').<sup>2</sup>
- 4.3. Further, this statement deals specifically with the settlement of enforcement action by the Bank in relation to FMIs, certain individuals and auditors of RCHs and Recognised CSDs. It supplements, and should be read in conjunction with, Chapter 2<sup>3</sup> of 'The Bank's approach to enforcement in respect of Financial Market Infrastructures: statements of policy and procedure'.<sup>4</sup>
- 4.4. This statement updates and replaces the 'Statement of procedure on the decision-making framework for giving Warning and Decision Notices to recognised clearing houses and qualifying parent undertakings' from the

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<sup>1</sup> For statutory definitions of these terms, please see Annex 4: Abbreviations and definitions

<sup>2</sup> Procedures – The Enforcement Decision Making Committee, <https://www.bankofengland.co.uk/paper/2018/procedures-the-enforcement-decision-making-committee>, as amended or supplemented from time to time.

<sup>3</sup> 'Statement of Policy on financial penalties imposed by the Bank under FSMA or under Part 5 of BA09'.

<sup>4</sup> Annex 2 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

Bank's August 2018 'Statutory statements of procedure in respect of the Bank of England's supervision of financial market infrastructures'.<sup>5</sup>

### Statutory notices

4.5. If the Bank proposes to exercise certain enforcement powers, it must give notice to the person in relation to whom the power is exercised.<sup>6</sup>

4.6. Notices are divided into the following categories:

NOTICE	DESCRIPTION	STATUTORY REFERENCE
Warning Notice	States the action which the Bank proposes to take, giving reasons for the proposed action and providing an opportunity for representations.	Section 387 FSMA; paragraph 29 Schedule 17A FSMA Section 201(1)(a) BA09 Section 201(1A)(a) BA09
Decision Notice <sup>7</sup>	States the reasons for the action that the Bank has decided to take.  The Bank may also give a further Decision Notice which relates to a different action in respect of the same matter if the recipient consents.  The notice also gives an indication of any right to have the matter referred to the Tribunal <sup>8</sup> and the procedure for such a reference.	Section 388 FSMA; paragraph 29 Schedule 17A FSMA Section 201(1)(d) BA09 Section 201(1A)(d) BA09
Notice of Discontinuance	Identifies the proceedings set out in a Warning or Decision Notice and which are not being taken or are being discontinued.	Section 389 FSMA; paragraph 29 Schedule 17A FSMA
Final Notice	Sets out the action that the Bank has taken.	Section 390 FSMA; paragraph 29 Schedule 17A FSMA

<sup>5</sup> Policy Statement: <https://www.bankofengland.co.uk/statement/2014/statutory-statements-of-procedure-in-respect-of-the-boe-supervision-of-fmi-policy-statement>, August 2018.

<sup>6</sup> Under section 201(3) of BA09, the Bank may without notice give a closure order under section 199 of BA09 or make an order under section 200 of BA09, if satisfied that it is necessary.

<sup>7</sup> Sections 201(1)(d) and (1A)(d) of BA09 provide that the Bank should give the operator of an RPS or a Service Provider a notice '*stating whether or not the Bank intends to impose the sanction*'. This notice will take the form of a Decision Notice.

<sup>8</sup> 'Tribunal' means the Upper Tribunal (Tax and Chancery Chamber) or any successor body.

## Statutory notice decisions

- 4.7. For the purposes of this statement, enforcement statutory notice decisions in respect of FMIIs, certain individuals and auditors of RCHs and Recognised CSDs are decisions as to the exercise of any of the powers set out in Table 2, Chapter 2<sup>9</sup> of 'The Bank of England's approach to enforcement: statements of policy and procedure'.

## Allocation of enforcement statutory notice decisions in uncontested cases

- 4.8. The Bank has a tiered structure for decision-making. Decisions may be made at different levels of seniority in the Bank depending on their potential impact and may involve representatives from across the Bank. The involvement of a broad range of senior Bank staff in the decision-making process is intended to ensure that the decision-making committees ('DMCs') benefit from experience and knowledge across the Bank when making statutory notice decisions.
- 4.9. The Bank will ensure that enforcement statutory notice decisions in uncontested cases<sup>10</sup> are made by the appropriate DMC, with members of seniority commensurate with the classification of the decision.

## Composition of DMCs

- 4.10. The Bank will also ensure that enforcement statutory notice decisions in uncontested cases are taken in accordance with section 395 of FSMA.<sup>11</sup>
- 4.11. A DMC will comprise two or more persons, at least one of whom will not have been directly involved in establishing the evidence on which the decision is based. A DMC will usually be composed of at least three members, although the size may vary depending on the nature of the particular matter under consideration.
- 4.12. DMC members are usually Bank employees and part of its executive management structure. However, if the DMC is the Financial Market Infrastructure Committee, one or more of the DMC members may be external.

## General procedure for the DMC

- 4.13. One member of the DMC will act as chair. The chair will determine the manner in which a decision will be taken, ensuring that it is dealt with fairly and expeditiously.

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<sup>9</sup> 'The Bank's Regulatory enforcement powers'.

<sup>10</sup> Decisions in contested enforcement cases will be made by the EDMC.

<sup>11</sup> Statutory notice decisions will be taken by two or more persons who include a person not directly involved in establishing the evidence on which the relevant decision is based (section 395(2) of FSMA).

- 4.14. If a DMC member has to withdraw (as a result of a conflict of interest or other pressing reasons), the chair will determine whether a new member should be appointed or whether to continue deciding the matter with the remaining DMC members. This determination will be based on, among other issues, the complexity of the case and the stage the case has reached.
- 4.15. In all cases, the DMCs will make decisions by applying the relevant statutory provisions, having regard to the relevant facts, the law and the Bank's priorities and policies.
- 4.16. While the DMC will make decisions based on all relevant information available to it, it cannot require individuals to attend before it, provide documents or give evidence. If a DMC considers it relevant to its consideration, however, it may ask Bank staff to provide any or all of the following:
- (a) additional information about the matter (which may require the Bank staff to undertake further investigations);
  - (b) further explanation of any aspect of the Bank staff recommendation or accompanying papers;
  - (c) information about the Bank's priorities and policies; and/or
  - (d) legal advice.
- 4.17. The Bank will make appropriate records of statutory notice decisions, including records of meetings and the representations (if any) of the recipient(s) of the notice and materials considered by the DMC. A DMC will have a secretariat.
- 4.18. A single corporate group may contain both an entity that is an FMI supervised by the Bank and an entity that operates trading platforms that are recognised investment exchanges supervised by the Financial Conduct Authority (the 'FCA') (i.e. two 'recognised bodies'). There may be cases where a single entity (or recognised body) is supervised by both the FCA and by the Bank. In such cases, the Bank and FCA will co-operate as set out in the Memorandum of Understanding between them.

## Settlement decision-making procedure

### The Bank's approach to settlement

- 4.19. In applying this statement of procedure, the Bank may have regard to the general principles and considerations set out in Chapter 1<sup>12</sup> of 'The Bank's approach to enforcement in respect of Financial Market Infrastructures: statements of policy and procedure'.<sup>13</sup> These include acting, so far as is reasonably possible, in a way which advances the Bank's statutory objective

<sup>12</sup> 'Introduction'.

<sup>13</sup> Annex 2 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

with respect to financial stability and having regard to the need to use the Bank's resources in the most efficient and economic way.

- 4.20. Further, the Bank may have regard to the following general principles and considerations:
- (a) the desirability of upholding and encouraging high standards of behaviour that are consistent with the relevant bodies meeting and continuing to meet relevant regulatory requirements;
  - (b) the need to ensure that where disciplinary measures are imposed by the Bank:
    - (i) they properly reflect the seriousness of the breach of regulatory requirements;
    - (ii) they are proportionate to the breach; and
    - (iii) they are effective in deterring those who are subject to the relevant regulatory requirements from committing similar or other breaches.
- 4.21. In the course of enforcement action, the Bank has a wide discretion whether or not to enter into or continue settlement discussions and, where an agreement in principle can be reached, conclude a binding settlement agreement. In exercising its discretion, the matters to which the Bank may have regard include:
- (a) its statutory objectives;
  - (b) the terms of this policy and any relevant guidance or other materials issued by the Bank; and
  - (c) the facts and circumstances of the case in question.<sup>14</sup>
- 4.22. Neither the Bank nor the subject of proposed enforcement action by the Bank are obligated to enter into or continue settlement discussions or conclude a settlement agreement.

### **The key characteristics of a settlement of enforcement action by the Bank**

- 4.23. Regulatory enforcement action by the Bank in respect of FMIs and certain individuals is conducted pursuant to and in accordance with the statutory scheme set out in FSMA or BA09, as the case may be. The process leading up to the imposition of an enforcement sanction has a number of stipulated stages and requires the Bank to give the subject of the enforcement action prescribed statutory notices.

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<sup>14</sup> Relevant considerations may include the Bank's assessment of the probability of settlement discussions leading to the core facts being agreed and an effective and timely regulatory outcome being secured.

- 4.24. The fact that the Bank agrees to enter into or continue settlement discussions will not entitle the subject under investigation to a suspension of or delay in the progress of the enforcement process.
- 4.25. A settlement of regulatory enforcement action ordinarily will involve a regulatory decision by the Bank. Where an enforcement measure is to be imposed, that decision will normally give rise to a statutory obligation on the Bank to give the person concerned the requisite statutory notices, and the Bank will do so. The fact that the matter settles will not remove that obligation.<sup>15</sup> The decision to issue the requisite statutory notices will be taken in accordance with paragraphs 4.5 to 4.17 above.

### **The conduct and timing of settlement discussions and Bank decision-making in relation to whether to conclude a binding settlement agreement**

- 4.26. Where the Bank exercises its discretion to enter into without prejudice settlement discussions in the course of an FMI enforcement investigation, it will ordinarily follow a similar approach and procedures with respect to settlement to those set out at paragraphs 8.21 to 8.36 of Chapter 8<sup>16</sup> of 'The PRA's Approach to Enforcement',<sup>17</sup> as updated from time to time, subject to any adaptations necessary to take all relevant circumstances into account. Those paragraphs should be read as if:
- (a) References to the PRA were to the Bank;
  - (b) In paragraph 8.24, references to paragraphs 8.13 to 8.15 were replaced with references to paragraphs 4.19 to 4.21 of Chapter 4<sup>18</sup> of 'The Bank's approach to enforcement in respect of Financial Market Infrastructures';<sup>19</sup>
  - (c) In paragraph 8.27, the words '(usually the SRPC, as discussed at paragraphs 8.5 and 8.6 above)' were omitted;
  - (d) In paragraph 8.30, reference to the 'Statement of the PRA's Policy on enforcement statutory notices and the allocation of decision-making in uncontested cases' was replaced by reference to the Bank's 'Statement of procedure on enforcement statutory notices and allocation of decision-making in uncontested cases';<sup>20</sup>
  - (e) Paragraph 8.33(b) was omitted.

<sup>15</sup> Nor will it alter the potential relevance of the matter to any subsequent cases by the Bank which give rise to the same or similar issues.

<sup>16</sup> 'Statement of the PRA's policy on enforcement statutory notices and the allocation of decision-making in uncontested cases, and settlement decision-making procedure and policy'.

<sup>17</sup> Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

<sup>18</sup> 'Statement of procedure on enforcement statutory notices and the allocation of decision-making in uncontested cases, and settlement decision-making procedure'.

<sup>19</sup> Annex 2 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

<sup>20</sup> Chapter 4 of 'The Bank's approach to enforcement in respect of Financial Market Infrastructures: statements of policy and procedure'.



## The Bank's settlement discount scheme

- 4.27. Where the Bank and the subject under investigation agree to settle a case involving a proposed financial penalty or other enforcement measure under FSMA or BA09, the subject will be entitled to a reduction in the amount or period of the relevant sanction, determined by the Bank in accordance with paragraphs 8.37 to 8.45 of Chapter 8<sup>21</sup> of 'The PRA's approach to enforcement',<sup>22</sup> as updated from time to time, subject to any adaptations necessary to take all relevant circumstances into account. Those paragraphs should be read as if:
- (a) References to the PRA were to the Bank;
  - (b) References to a senior manager are to the senior executive or board member agreed between the Bank and the relevant subject;
  - (c) References to a financial penalty under FSMA were to financial penalties pursuant to the relevant powers set out at Table 2, Chapter 2<sup>23</sup> of 'The Bank of England's approach to enforcement: statements of policy and procedure';
  - (d) References to a suspension or restriction under FSMA were to a restriction under section 192K(3A) of FSMA, a prohibition for a specified period under section 312FA(2)(c) of FSMA or a prohibition for a specified period under section 200 of BA09;
  - (e) In paragraph 8.38, the text "pursuant to its Statement of Policy on the imposition and amount of penalties or the imposition and period of suspensions and restrictions, as appropriate" was replaced with "pursuant to the Bank's 'Statement of Policy on financial penalties imposed by the Bank under FSMA or under Part 5 of BA09'".

## Referral to EDMC

- 4.28. If a settlement decision is not reached and the matter is contested, it may be referred to the EDMC, which will not be made aware of any details from the settlement discussions.

## Periodic independent reviews of settled cases

- 4.29. The Bank's processes for settled cases will be reviewed periodically as according to the procedure set out in paragraph 8.47 of Chapter 8<sup>24</sup> of 'The PRA's approach to enforcement: statements of policy and procedure',<sup>25</sup> as

<sup>21</sup> 'Statement of the PRA's policy on enforcement statutory notices and the allocation of decision-making in uncontested cases, and settlement decision-making procedure and policy'.

<sup>22</sup> Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

<sup>23</sup> 'The Bank's regulatory enforcement powers'.

<sup>24</sup> 'Statement of the PRA's policy on enforcement statutory notices and the allocation of decision-making in uncontested cases, and settlement decision-making procedure and policy'.

<sup>25</sup> Annex 1 to 'The Bank's approach to enforcement: statements of policy and procedure'.



updated from time to time, subject to any adaptations necessary to take all relevant circumstances into account.

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## 5. Statement of procedure on publishing information about enforcement statutory notices

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### Introduction

- 5.1. The Bank has powers under FSMA to publish the statutory notice decisions it has given to recognised clearing houses ('RCHs'), recognised central securities depositories ('Recognised CSDs'), third country central counterparties and qualifying parent undertakings of RCHs and Recognised CSDs ('FMI QPUs'), as well as those responsible for the management of certain bodies and others involved in breaches (where applicable).<sup>1</sup> This statement of procedure outlines the Bank's procedure on publishing information about enforcement statutory notice decisions, as required under section 395 of FSMA, and publishing information during Bank investigations. Similar considerations will also be taken into account with regards to publicity of enforcement statutory notice decisions concerning operators of recognised payment systems ('RPSs') and specified service providers of RPSs ('SSPs').
- 5.2. This statement updates and replaces the 'Statement of procedure on publishing information about statutory notices given to recognised clearing houses and qualifying parent undertakings' from the Bank's August 2018 'Statutory statements of procedure in respect of the Bank of England's supervision of financial market infrastructures'.<sup>2</sup>
- 5.3. For the purposes of this procedure, RCHs, Recognised CSDs, third country central counterparties and FMI QPUs are collectively referred to as the 'relevant bodies'.
- 5.4. Appropriate publicity may assist achievement of the Bank's statutory objective<sup>3</sup>, for example, by informing the financial services industry of behaviour on the part of the relevant body or individual that the Bank considers to be unacceptable and helping to prevent more widespread breaches of the Bank's requirements.

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<sup>1</sup> For statutory definitions of these terms, please see footnotes at paragraph 7 of Chapter 2: (The Bank's regulatory enforcement powers) of 'The Bank of England's approach to enforcement: statutory statements of policy and procedure'.

<sup>2</sup> Policy Statement: <https://www.bankofengland.co.uk/statement/2014/statutory-statements-of-procedure-in-respect-of-the-boe-supervision-of-fmi-policy-statement>, August 2018.

<sup>3</sup> Section 2A of the Bank of England Act 1998.

### Publicity during Bank investigations

- 5.5. Unless and until the Bank has decided whether to issue a Warning Notice, the Bank will not ordinarily make public:
- (a) the fact that it is or is not investigating a relevant body or individual and/or matter, with a view to issuing a Warning Notice;
  - (b) details of the matter under such an investigation; or
  - (c) any of the findings or conclusions of such an investigation, except as set out in the remainder of this statement.
- 5.6. In determining whether to make a public announcement, the Bank may have regard to a variety of factors, including the extent to which publicity would, in our view, be likely to:
- (a) advance our statutory objectives;
  - (b) assist the investigation, for example by bringing forward witnesses; or
  - (c) deter more widespread breaches of our requirements.
- 5.7. In determining whether to make a public announcement, the Bank will also consider any potential prejudice, risk of unfairness and/or disproportionate damage that we consider may be caused to any persons that are, or that are likely to be, a subject of the investigation, and/or to any third parties.
- 5.8. In circumstances where the existence of a Bank investigation has entered the public domain, and:
- (a) the Bank subsequently concludes that no further action is warranted; or
  - (b) the action the Bank proposes to take is materially different from that which previously entered the public domain;
- we may, either on our own initiative, or at the request of the subject of the investigation, take reasonable steps to publicise that fact.

### Publication of information about Warning Notices

- 5.9. The general position under section 391 of FSMA is that neither the Bank nor the person to whom a Warning Notice is given or copied may publish the notice, or any details concerning it. However, in relation to certain categories of Warning Notice,<sup>4</sup> section 391 of FSMA does permit the Bank, after consulting the person to which a Warning Notice is given or copied, to

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<sup>4</sup> The categories of Warning Notice to which the power applies are set out in section 391(1ZB) of FSMA and includes those given under sections 192L, 312G and 345B of FSMA.

publicise such information as it considers appropriate about the matter to which the notice relates.

- 5.10. The Bank will consider a number of factors in determining whether it is appropriate to exercise our discretion to publish, including the extent to which publicity would, in our view, be likely to:
- (a) advance our statutory objectives;
  - (b) enhance financial stability;
  - (c) provide a signal to relevant bodies as to the types of behaviour we consider to be unacceptable; and
  - (d) prevent more widespread breaches of our requirements.
- 5.11. In accordance with section 391 of FSMA, the Bank will not publish information if, in our opinion, publication would be:
- (a) unfair to the persons concerned;
  - (b) prejudicial to the safety and soundness of relevant bodies; and
  - (c) detrimental to the stability of the UK financial system.

### **Publication of Decision and Final Notices**

- 5.12. Section 391 of FSMA requires the Bank to publish, in such manner as we consider appropriate, such information as we consider appropriate about the matters to which a Decision Notice and a Final Notice relate.
- 5.13. However, section 391 of FSMA provides that the Bank may not publish information concerning a Decision or a Final Notice if, in the Bank's opinion, publication would be:
- (a) unfair to the persons concerned;
  - (b) prejudicial to the safety and soundness of relevant bodies; or
  - (c) detrimental to the stability of the UK financial system.
- 5.14. The Bank will consider the circumstances of each case, but, subject to paragraph 5.13 above, will ordinarily publicise enforcement action when a matter has led to the issue of a Decision Notice, as well as where it has led to the issue of a Final Notice.

### **Making representations on issues of publicity**

- 5.15. Where we propose to publish details of a Warning, Decision, or Final Notice, the Bank will consider any representations made to us (whether as a result of the formal requirement to consult under section 391(1)(c) of FSMA or

otherwise) by the subject of the notice and any person to whom the notice is copied.

- 5.16. Such representations should ordinarily be made in writing,<sup>5</sup> and should contain information, with reference to the provisions in section 391 of FSMA, as to why it would not be appropriate for the Bank to publish details of the relevant notice.
- 5.17. The Bank will not ordinarily decide against publication solely because it is claimed that:
- (a) publication would have a negative impact on a relevant body or individual's reputation;
  - (b) a relevant body or individual will apply (or is likely to apply) for some or all of the matter to be dealt with in private when they refer it to the Upper Tribunal.

### **Who will take decisions on publicity?**

- 5.18. Section 395(2)(c) of FSMA requires that the Bank's decision-making in relation to publicising that a Warning Notice has been issued should follow a procedure which is, as far as possible, the same as that applicable to the decision which gives rise to an obligation to give a Warning Notice.
- 5.19. The decision to publicise that a Warning Notice has been given must not, however, be taken only by a person who first proposed the decision to publish.
- 5.20. In relation to Warning, Decision or Final Notices, any decision concerning publicity may be taken either by the same decision-making committee ('DMC') that took the decision to give the notice itself or by a different DMC. The decision-maker must, however, be different from the person proposing publication.

### **What form will publicity take?**

- 5.21. Information made public in relation to a Warning Notice will ordinarily include:
- (a) the identity of the relevant body or individual to which the matter relates;
  - (b) a brief summary of the facts giving rise to the decision to take regulatory action against the relevant body or individual; and
  - (c) a statement making clear that the giving of a Warning Notice is not a final decision, and that if, following representations, the Bank decides to give a Decision Notice, the subject of the notice has the option to refer the matter to the Upper Tribunal to have the matter considered afresh.

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<sup>5</sup> If a person wishing to make representations to the Bank on any of the matters set out in this section is unable to provide representations in writing, the Bank may allow representations to be made in person or by some other suitable means.

5.22. Information made public in relation to a Decision Notice or Final Notice will generally include the relevant notice itself, potentially with a press release.

### **Reviewing whether continuing publicity remains appropriate**

5.23. Where we have published details of a Warning, Decision or Final Notice, the Bank will, on request, review those details and any related press releases that are published on our website to determine whether, at the time of the request, continued publication is appropriate, or whether they should be removed or amended.

5.24. In determining whether continued publicity remains appropriate, the Bank will in particular take into account:

- (a) whether we have continuing concerns in respect of the relevant body or individual;
- (b) the seriousness of the concerns;
- (c) the nature of the action taken by the Bank and the nature of any sanction imposed on the relevant body or individual;
- (d) the extent to which the publication continues adequately to set out the Bank's position and/or expectations regarding behaviour in a particular area;
- (e) public interest in the case (both at the time of publication and subsequently);
- (f) whether continued publication is necessary for the purposes of deterrence and/or advancing the Bank's supervisory goals;
- (g) how much time has passed since publication; and
- (h) any representations made by the relevant body or individual on the continuing impact on them of the publication.

5.25. Where the Bank revokes a Decision Notice that has been previously published, the Bank will make it clear on our website that it has been revoked.

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## 6. Further procedures

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### Procedures with respect to information gathering in enforcement investigations

- 6.1. In conducting enforcement investigations relating to FMIs, the Bank will generally apply a similar approach and procedures to those set out in Chapter 2<sup>1</sup> of 'The PRA's approach to enforcement: statements of policy and procedure',<sup>2</sup> as updated from time to time. For the avoidance of doubt, this may include the use of the Early Account Scheme in appropriate cases and, where applicable, making available an Enhanced Settlement Discount. Application of the approach and procedures set out in that chapter will be subject to any adaptations necessary to take all relevant circumstances into account.

### Conduct of interviews

- 6.2. If undertaking interviews at the request of an overseas regulator in relation to FMI enforcement investigations, the Bank will follow the PRA's policy on the conduct of interviews as set out in Chapter 3<sup>3</sup> of 'The PRA's approach to enforcement: statements of policy and procedure',<sup>4</sup> as updated from time to time. This will be subject to any adaptations necessary to take all relevant circumstances into account.

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<sup>1</sup> 'The PRA's approach to information gathering in enforcement investigations'.

<sup>2</sup> Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

<sup>3</sup> 'Statement of policy on the conduct of interviews pursuant to section 169(7) of FSMA'.

<sup>4</sup> Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

## **Annex 3: The Bank of England's other statements of policy and procedure in relation to enforcement**

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# 1. List of policies referred to in this document

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## Introduction

This annex lists the statements of policy and procedure referred to in this document. It is not an exhaustive list of all Bank policies that may be relevant to decisions concerning the exercise, or possible exercise, of enforcement powers or the articulation of supervisory expectations.

## Supervision

### PRA

1. The PRA's approach to supervision of the banking and insurance sectors, as amended from time to time: <https://www.bankofengland.co.uk/prudential-regulation/publication/pras-approach-to-supervision-of-the-banking-and-insurance-sectors>
2. The PRA's Allocation of Decision-Making and Approach to Supervisory Decisions, as amended from time to time: <http://www.bankofengland.co.uk/prudential-regulation/publication/2024/january/the-pra-allocation-of-decision-making-and-approach-to-supervisory-decisions-statement-of-policy>
3. PRA Supervisory Statement 35/15, Strengthening individual accountability in insurance, as amended from time to time: <https://www.bankofengland.co.uk/prudential-regulation/publication/2015/strengthening-individual-accountability-in-insurance-ss>
4. PRA Supervisory Statement 28/15, Strengthening individual accountability in banking, as amended from time to time: <https://www.bankofengland.co.uk/prudential-regulation/publication/2015/strengthening-individual-accountability-in-banking-ss>

## Resolution

5. Bank of England's approach to resolution, as amended from time to time: <https://www.bankofengland.co.uk/paper/2023/the-bank-of-englands-approach-to-resolution>.
6. Bank of England's power to direct institutions to address impediments to resolvability, as amended from time to time: <https://www.bankofengland.co.uk/paper/2015/the-boes-power-to-direct-institutions-to-address-impediments-to-resolvability-sop>

## Banknotes

7. Bank of England's approach to regulating Scottish and Northern Ireland commercial banknotes, March 2017: [www.bankofengland.co.uk/-/media/boe/files/banknotes/scottish-northern-ireland/scottish-and-northern-ireland-regime-approach.pdf](http://www.bankofengland.co.uk/-/media/boe/files/banknotes/scottish-northern-ireland/scottish-and-northern-ireland-regime-approach.pdf)

## Financial Market Infrastructures

8. Bank of England's approach to the supervision of financial market infrastructure, April 2013: [www.bankofengland.co.uk/-/media/boe/files/financial-stability/financial-market-infrastructure-supervision/the-boe-approach-to-the-supervision-of-fmi.pdf](http://www.bankofengland.co.uk/-/media/boe/files/financial-stability/financial-market-infrastructure-supervision/the-boe-approach-to-the-supervision-of-fmi.pdf)

9. The Bank of England's supervision of service providers to recognised payment systems, February 2018: [www.bankofengland.co.uk/-/media/boe/files/annual-report/2018/sfmi-annual-report-2018-annex.pdf](http://www.bankofengland.co.uk/-/media/boe/files/annual-report/2018/sfmi-annual-report-2018-annex.pdf)

## Enforcement

### PRA

10. 'Enforcement Decision Making Committee – Policy Statement PS/EDMC2018', August 2018: [www.bankofengland.co.uk/paper/2018/enforcement-decision-making-committee-policy-statement](http://www.bankofengland.co.uk/paper/2018/enforcement-decision-making-committee-policy-statement)

11. Procedures – The Enforcement Decision Making Committee: [www.bankofengland.co.uk/-/media/boe/files/paper/2018/procedures-the-enforcement-decision-making-committee.pdf](http://www.bankofengland.co.uk/-/media/boe/files/paper/2018/procedures-the-enforcement-decision-making-committee.pdf), as amended and supplemented from time to time.

## Banknotes

12. The Scottish and Northern Ireland Banknote Statement of Penalty Policy (applicable to breaches from 28 August 2018): [www.bankofengland.co.uk/-/media/boe/files/banknotes/scottish-northern-ireland/scottish-and-northern-ireland-statement-of-penalty-policy-2018.pdf](http://www.bankofengland.co.uk/-/media/boe/files/banknotes/scottish-northern-ireland/scottish-and-northern-ireland-statement-of-penalty-policy-2018.pdf)

## Annex 4: Abbreviations and definitions

### Abbreviations

Abbreviation	Meaning
Bank	Bank of England
BA09	Banking Act 2009
CCPs	Central counterparties
CSDs	Central securities depositories
DMC	Decision-making committee
EAS	Early Account Scheme
EDMC	Enforcement Decision Making Committee
FCA	Financial Conduct Authority
FMI QPUs	Qualifying parent undertakings of UK RCHs and Recognised CSDs
FMIs	Financial Market Infrastructures
FRC	Financial Reporting Council
FSMA	Financial Services and Markets Act 2000
PRA	Prudential Regulation Authority
PRC	Prudential Regulation Committee
QPUs	Qualifying parent undertakings
RCHs	Recognised clearing houses
Recognised CSDs	Recognised central securities depositories
RPSs	Recognised payment systems
SRPC	Supervision, Risk and Policy Committee
SSPs	Specified service providers
UK	United Kingdom

## Definitions

Unless inconsistent with the subject or context of the body of this statement of policy the definitions are as follows:

Terminology	Meaning
'approved person'	a person in relation to whom an approval is given under section 59 of FSMA
'auditors or actuaries'	For the purposes of Chapter 5 <sup>1</sup> of 'The PRA's approach to enforcement: statements of policy and procedure' <sup>2</sup> only: persons who are, or have been, auditors or actuaries of a PRA-authorized person, appointed under or as a result of a statutory provision
'authorised person'	a person who is authorised for the purposes of FSMA
'Banknote Regulations'	Scottish and Northern Ireland Banknote Regulations 2009
'financial system'	The financial system of the UK. For the purposes of Chapters 4 <sup>3</sup> , 5 <sup>4</sup> and 6 <sup>5</sup> of 'The PRA's approach to enforcement: statements of policy and procedure' <sup>6</sup> only: pursuant to section 11 of FSMA, the financial system operating in the UK and including (a) financial markets and exchanges, (b) regulated activities, and (c) other activities connected with financial markets and exchanges.
'firm'	PRA-authorized person within the meaning of section 2B(5) of FSMA.
'individual integrity rules'	Large Non-Solvency II Firms – Conduct Standards 3.1 (Individual Conduct Standard 1) and Non-Solvency II Firms – Conduct Standards 2.1 (Conduct Standard 1) in the Non-Solvency II firms version of the PRA Rulebook, Insurance – Conduct Standards 3.1 (Insurance Conduct Standard 1) in the Solvency II firms version of the PRA Rulebook and Conduct Rules 2.1 (Individual Conduct Rule 1) in the CRR version of the PRA Rulebook and Conduct Rules 2.1

<sup>1</sup> 'Statement of the PRA's policy on the imposition and amount of financial penalties under FSMA on persons who are, or have been, auditors or actuaries, of a PRA-authorized person, appointed under or as a result of a statutory provision'.

<sup>2</sup> Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

<sup>3</sup> 'Statement of the PRA's policy on the imposition and amount of financial penalties under FSMA'.

<sup>4</sup> 'Statement of the PRA's policy on the imposition and amount of financial penalties under FSMA on persons who are, or have been, auditors or actuaries, of a PRA-authorized person, appointed under or as a result of a statutory provision'.

<sup>5</sup> 'Statement of the PRA's policy on the imposition of suspensions or restrictions under FSMA and the period for which they are to have effect'.

<sup>6</sup> Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

Terminology	Meaning
	(Individual Conduct Rule 1) in the Non-CRR version of the PRA Rulebook
'interview'	For the purposes of Chapter 3 <sup>7</sup> of 'The PRA's approach to enforcement: statements of policy and procedure' <sup>8</sup> only: an interview conducted for the purposes of an investigation under section 169(1)(b) of FSMA in relation to which the PRA has given a direction under section 169(7) of FSMA
'investigator'	For the purposes of Chapter 3 <sup>9</sup> of 'The PRA's approach to enforcement: statements of policy and procedure' <sup>10</sup> only: one or more competent persons who may be appointed or are appointed by the PRA under section 169(1)(b) of FSMA
'overseas regulator'	For the purposes of Chapter 3 <sup>11</sup> of 'The PRA's approach to enforcement: statements of policy and procedure' <sup>12</sup> only: as defined in section 195 of FSMA
'PRA Rules'	The rules set out in the PRA Rulebook <sup>13</sup>
'relevant requirement'	Relevant requirement may refer to any statutory requirements, regulatory rules or applicable standards as defined from time to time
'resolution regime'	The UK's special resolution regime under BA09
'restriction'	A limitation or other restriction (including a condition) imposed by the PRA on the carrying on of a regulated activity by an authorised person or the performance by an approved person of any function to which any approval relates
'section 169(7) direction'	For the purposes of Chapter 3 <sup>14</sup> of 'The PRA's approach to enforcement: statements of policy and procedure' <sup>15</sup> only: a direction given by the PRA under section 169(7) of FSMA to an investigator appointed under section 169(1)(b) of FSMA, to permit a representative of an overseas regulator to attend and take part in an interview

<sup>7</sup> 'Statement of policy on prohibitions under section 312FA of the Financial Services and Markets Act 2000'.

<sup>8</sup> Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

<sup>9</sup> 'Statement of policy on prohibitions under section 312FA of the Financial Services and Markets Act 2000'.

<sup>10</sup> Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

<sup>11</sup> 'Statement of policy on prohibitions under section 312FA of the Financial Services and Markets Act 2000'.

<sup>12</sup> Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

<sup>13</sup> <https://www.prarulebook.co.uk>.

<sup>14</sup> 'Statement of policy on the conduct of interviews pursuant to section 168(7) of FSMA'.

<sup>15</sup> Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

Terminology	Meaning
'Specified Service Providers'	For the purposes of 'The Bank's approach to enforcement in respect of Financial Market Infrastructures: statements of policy and procedure' <sup>16</sup> only: the specified service providers in relation to recognised payment systems
'suspension'	The suspension by the PRA of any permission which an authorised person has to carry on a regulated activity or any approval of the performance by an approved person of any function to which the approval relates
'Tribunal'	The Upper Tribunal (Tax and Chancery Chamber) or any successor body

<sup>16</sup> Annex 2 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.