



BANK OF ENGLAND
PRUDENTIAL REGULATION
AUTHORITY

Consultation Paper | CP10/19

Enforcement: Changes to the PRA's settlement policy

April 2019



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Responses are requested by Monday 15 July 2019

Please address any comments or enquiries to:

Email: CP10_19@bankofengland.co.uk

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1 Overview

1.1 In this consultation paper (CP), the Prudential Regulation Authority (PRA) sets out proposals to amend its policy on the settlement of enforcement action. This is by way of proposed amendments to the PRA's Enforcement Statement of Policy.¹

1.2 This CP may be relevant to PRA-authorized persons, qualifying parent undertakings, persons who are or have been auditors or actuaries of a PRA-authorized person, senior managers and certified employees at firms, and all individuals involved in providing financial services at PRA-authorized persons. It will also be of particular interest to professional advisers who represent firms and individuals subject to PRA enforcement action.

Background

1.3 In February 2017, the PRA and FCA published a joint Policy Statement 'Implementation of the Enforcement Review and the Green Report'.² This was in response to HM Treasury's 'Review of enforcement decision-making at the financial services regulators: final report'³ (the 'HMT Report'). The HMT Report made a number of recommendations, including regarding settlement policies and procedures (the 'HMT recommendations').

Purpose

1.4 The purpose of this CP is to consult on proposals which would:

- simplify the PRA's settlement discount scheme; and
- further improve the clarity and transparency of the PRA's settlement procedures.

Summary of proposals

1.5 This CP includes a proposal to retain a 30% penalty discount for early settlement and to remove the 20% and 10% discounts which are available for settlement in later stages of an enforcement action. This proposal would simplify the PRA's settlement discount scheme, focus incentives, encourage early settlement of those cases which are capable of settlement, and identify at an early stage those cases that are likely to be contested.

1.6 In addition, this CP proposes a number of amendments that would clarify and make more transparent the PRA's procedures for settlement.

Implementation

1.7 The PRA will consider all representations received within the consultation period. Any changes to the settlement discount scheme will apply to all cases from the date of publication of the final policy, with one exception: in relation to cases where the PRA has already concluded 'Stage 1' settlement discussions with the subject, without reaching a settlement, prior to publication of the final policy, the existing scheme will continue to apply.

¹ Statement of Policy 'The Prudential Regulation Authority's approach to enforcement: statutory statements of policy and procedure', March 2019: <https://www.bankofengland.co.uk/prudential-regulation/publication/2013/the-pra-approach-to-enforcement-statutory-statements-of-policy-and-procedure-sop>.

² PRA PS2/17 / Financial Conduct Authority (FCA) PS17/1: <https://www.bankofengland.co.uk/prudential-regulation/publication/2016/proposed-implementation-of-the-enforcement-review-and-the-green-report> followed the joint PRA CP14/16 and FCA CP16/10, available at page 2 of 2 of the webpage.

³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/389063/enforcement_review_response_final.pdf.

Responses and next steps

1.8 This consultation closes on Monday 15 July 2019. The PRA invites feedback on the proposals set out in this consultation. Please address any comments or enquiries to CP10_19@bankofengland.co.uk.

2 Proposals

Settlement Discount

2.1 The PRA's settlement discount scheme is set out in paragraphs 26-28 of Chapter 4 of its Enforcement Statement of Policy.

2.2 There are a number of benefits to settlement for both the PRA and the subject under investigation, including:

- (i) resource savings – avoiding the time and expense of preparing for a contested hearing;
- (ii) certainty – the removal of the uncertainty of outcome inherent in contested proceedings before the Enforcement Decision Making Committee (EDMC) and/or the Upper Tribunal; and
- (iii) speedier resolution – timely market messaging on enforcement outcomes benefits the PRA, its regulatory objectives, and also brings closure for the firms or individuals involved.

2.3 It is important to note that 'settlement' in this regulatory context is not the same as settlement of a commercial dispute; it is a regulatory decision taken by the PRA, having regard to its statutory objectives. The PRA will only settle on terms which it considers provide the right regulatory outcome in the circumstances.

2.4 The HMT Report observed that subjects will either settle or they will not – depending on their attitude to the alleged misconduct – and that the Stage 2 and 3 discounts provide little additional incentive to settle. The availability of the later-stage discounts risks tempering the incentive to settle at an early stage. The HMT Report recommended that the PRA review its settlement policy and consider applying a discount only to those cases which settle in Stage 1.

2.5 HMT recommendation 31 stated: 'The government considers that removing the discounts currently available at Stages 2 and 3 will assist in demarcating, at an early stage, between those cases that can be settled, and those that must be contested. The regulators should consider reviewing the graduated discount scheme and applying a discount only to those cases which settle in Stage 1. The regulators may wish to retain the ability to apply a discretionary discount in cases which settle outside Stage 1, where they consider it appropriate.'⁴

2.6 At the time the HMT recommendations were made, the PRA had limited experience of operating the settlement discount scheme, having concluded only one enforcement action. Since its inception on 1 April 2013 to 30 November 2018, the PRA has concluded 14 separate enforcement actions and has a better empirical basis for assessing the proposed changes to the settlement policy. All of the enforcement actions referred to date have been concluded by way of settlement at Stage 1. The PRA has never settled a matter at Stages 2 or 3. The Financial Conduct Authority (FCA) has already removed Stage 2 and Stage 3 discounts from its settlement discount scheme.

2.7 The PRA agrees with HM Treasury that there are benefits to having a discount scheme that encourages settlement at an early stage. Offering a settlement discount only at Stage 1 has the benefit of simplifying the PRA's settlement discount scheme, and better reflects the resource and time savings of

⁴ HMT recommendation 32.

early settlement. Settlement at a later stage does not generate the same regulatory benefit because of the considerable additional work needed in preparation for contested proceedings, and because it delays the outcome and therefore the delivery of timely messages to industry. Given that there have been no PRA settlements at Stages 2 or 3 to date, removing them is unlikely to have a materially detrimental impact on the efficiency of concluding enforcement cases.

2.8 The PRA proposes to implement this recommendation by continuing to offer a 30% settlement discount for those cases that settle within 'Stage 1', and abolishing the settlement discounts currently offered at Stages 2 and 3. To be clear, it would still be open to parties to settle an enforcement action after Stage 1 has passed; however any such settlement would not attract the benefit of a settlement discount in relation to the financial penalty, suspension or restriction imposed. For this reason, to make it clear to subjects that there is only one stage in which discounts are available, the PRA proposes renaming Stage 1 the 'Discount Stage' (and so the term 'Discount Stage' is used in the remainder of this CP).

Increased transparency

2.9 The PRA proposes a number of amendments to its Enforcement Statement of Policy to clarify its settlement procedures. Several of these amendments reflect the existing practices of the PRA during the conduct of PRA enforcement matters and reflect the relevant HMT recommendations. To increase transparency and clarity, the PRA proposes to make the following changes to the Enforcement Statement of Policy:

- (i) **Early notification of Discount Stage discussions.**⁵ In practice, the PRA communicates the likely commencement of Discount Stage settlement discussions to the subject sufficiently in advance to enable parties to make necessary administrative arrangements. The PRA intends to make this commitment to notify subjects of the proposed commencement of Discount Stage discussions in the Enforcement Statement of Policy.
- (ii) **Preliminary 'without prejudice' meetings.**⁶ The PRA, where it considers appropriate to do so, often holds preliminary 'without prejudice' meetings before the formal period of Discount Stage settlement discussions. These can take place at any point prior to the commencement of formal Discount Stage discussions and usually include setting out the nature of the case, the rules breached and an indication of the proposed sanctions. The PRA intends to make this clear in the Enforcement Statement of Policy.
- (iii) **Preliminary penalty parameters.**⁷ Where preliminary meetings take place prior to approval of terms and penalty parameters by PRA decision makers, the PRA makes clear to the subject that there is the potential for the case to change. To reinforce this, the PRA proposes making this explicit in the Enforcement Statement of Policy.

⁵ This responds to HMT recommendation 25: '... the FCA and PRA should ordinarily be able to provide subjects with a reasonably certain indication that settlement papers will be served shortly, such that they can anticipate the commencement of Stage 1. Regulators should aim to provide 28 days' notice of the commencement of Stage 1, so that administrative arrangements can be made. If, for any reason, service of settlement papers is likely to be delayed, subjects should be notified.'

By way of further context, Stage 1 technically runs from the start of the investigation until the PRA brings Stage 1 to an end. By contrast, Stage 1 discussions start only once the PRA has a sufficient understanding of the misconduct and is able to make a reasonable assessment of what action it should take in consequence, in line with the Enforcement Statement of Policy.

⁶ This responds to HMT recommendation 26: 'Preliminary meetings, in the period between notification of the date on which Stage 1 will begin, and its commencement, will prove helpful in most cases. The regulators should consider offering such meetings where it is appropriate to do so. The key legal and factual bases of the case should be summarised by the investigators at preliminary meetings. It will usually be helpful for investigators to identify to subjects the evidence that they regard as key.'

⁷ This responds to HMT recommendation 27: 'It is anticipated that preliminary meetings will usually take place prior to decision-makers' approval of terms and penalty parameters. Preliminary meetings should be expressly undertaken on that basis, so that subjects understand that there is the potential for the case to change.'

- (iv) **Subjects' understanding of the case.**⁸ The PRA takes reasonable steps to enable the subject of the investigation to understand the essential elements of the case against them and make an informed decision as to whether or not to settle the case. During preliminary meetings, the PRA summarises the key factual, legal, and evidential bases of the case. There is currently no prescribed format for this, but the PRA generally provides an oral summary of the nature of the case, the rules breached, and an indication of the proposed sanction(s). At the beginning of Discount Stage settlement discussions, the PRA will 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 generally provide any other investigation report or engage in an evidential disclosure exercise at this stage, having regard to the objectives of early settlement set out in paragraph 2.2 above, and in particular the time and resource benefits of settlement. The PRA intends to make this approach clear in the Enforcement Statement of Policy.
- (v) **Extending the Discount Stage.**⁹ The PRA currently sets a date for the end of the Discount Stage, allowing what it considers to be a reasonable opportunity for the parties to reach a settlement agreement. In practice, the regulators' experience is that 28 days is usually sufficient to reach agreement and this would generally be the default starting position. That said, the Enforcement Statement of Policy does not currently specify that this should be a fixed 28 day period. The absence of a fixed period ensures that the PRA can take into account the nature of the case and the subjects' circumstances. For example, in complex cases involving multiple parties and/or jurisdictions, the PRA may allow for a longer period for the Discount Stage. Therefore, once a 'reasonable period' has been set, the PRA only expects to grant extensions to the Discount Stage in exceptional circumstances, such as where factors outside of the subject's control significantly impact their ability to engage in settlement discussions. The PRA intends to make this clear in the Enforcement Statement of Policy.
- (vi) **Submissions during the Discount Stage.**¹⁰ The PRA ensures that senior staff are involved in the settlement process. In particular, these staff act as a conduit between the investigation team and the relevant PRA Decision Making Committee (DMC) which will decide on settlement. This ensures that the representations made by subjects during settlement discussions, where relevant to the assessment of the case and/or enforcement action, are provided to the DMC prior to any decision being reached. To reinforce this, the PRA proposes making this explicit in the Enforcement Statement of Policy.
- (vii) **PRA discretion to offer or engage in settlement discussions.** The PRA settlement policy contains a non-exhaustive list of the matters to which the PRA may have regard when deciding whether or not to enter settlement discussions (see paragraph 5 in the appendix). As a clarification, the PRA considers that the 'public interest' in settlement is in fact captured by the PRA's pursuit of its statutory objectives in the performance of its functions. Therefore, the PRA proposes to delete

⁸ This also responds to HMT recommendation 26, see above footnote 8; and responds to recommendations 28 ('The regulators should continue to ensure that they identify and, where necessary, provide to subjects, the key evidence on which their case relies, at the commencement of Stage 1') and 29 ('The regulators may wish to provide more specific guidance about the circumstances in which they will provide PIRs.' [Preliminary Investigation Reports].)

⁹ This responds to HMT recommendation 30: 'To enhance transparency, the regulators should set out those factors that they might consider to be relevant to an application for extension of Stage 1. Factors might include, for example, where subjects are, for legitimate reasons, prevented or impaired from properly considering their position on settlement during the 28 day period.'

¹⁰ This responds to HMT recommendation 31: 'It is important that subjects are assured that representations made during settlement, where material to the regulators' assessment of the case or penalty and not previously considered or given sufficient weight, are assimilated by the regulator prior to it reaching a decision. That may be best achieved, in the case of the FCA, by the relevant Enforcement Head of Department, where necessary, acting as a suitably senior conduit between the case team and the Settlement Decision Makers. The government considers that, in most cases, the Head of Department should attend a 'without prejudice' settlement meeting during Stage 1, and where that is not feasible, an appropriately senior substitute should do so.'

paragraph 4.5(d) of the Enforcement Statement of Policy that lists 'public interest' as a standalone factor.

Periodic reviews of settlement processes

2.10 The PRA agrees with HMT recommendation 33 that, for the purpose of assessing the fairness and effectiveness of settlement procedures, there should be periodic reviews of settled cases.¹¹ Such reviews should include seeking comments from subjects (or a sample of them) who have settled PRA enforcement cases. The PRA agrees that the review should also monitor the effectiveness of the changes to the settlement process, and should identify lessons learned and make generic public recommendations.

2.11 The FCA has implemented this recommendation by asking its Regulatory Decisions Committee (RDC) to conduct a questionnaire-based annual review of a sample of cases with the results published in an anonymised form. The RDC is well placed to undertake this work for the FCA, partly because of its structure (having a permanent secretariat and legal advisers), and partly because the large volume of contested cases the RDC hears provides it with the experience and context which it can use to assess the fairness and effectiveness of settled cases.

2.12 Given the comparatively small number of enforcement cases settled by the PRA (approximately two to three per year on average from 1 April 2013 to date) it is less clear that the FCA model will translate effectively to the PRA's circumstances. In particular, given the small number of cases each year, if annual reporting was adopted, it may be difficult to ensure anonymity for subjects.

2.13 By way of solution, the PRA proposes to implement a process which invites post-settlement feedback from the subjects of PRA cases. It would adopt the format and methodology which the PRA already uses to obtain feedback from firms about the quality and effectiveness of supervision. This would use a combination of questionnaires and face-to-face feedback meetings with members of the Bank's EDMC, which is independent of both enforcement and the DMC deciding on settlement.

2.14 Given the small number of enforcement cases, the PRA proposes that all settled cases would be subject to this review, until and unless the number increases significantly, at which point it would consider taking a sample. The periodic reviews will assess the fairness and effectiveness of the PRA's settlement processes, occurring at appropriate intervals once there are a sufficient number of cases (the PRA estimates at least five settled cases from the point of publication) 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 Prudential Regulation Committee (PRC), together with any reviewer recommendations for improving the settlement process. The PRA would consider these reports and publish on its website an account of any improvements to practices and processes which result.

2.15 The benefits of periodic reviews of settlement processes would be a better understanding of the perceptions of the PRA's processes, and of the scope for adjustment to improve fairness and minimise costs for subjects. The costs of periodically reviewing the settlement process would be enforcement costs of the PRA.

¹¹ HMT Recommendation 33: 'The government recommends that the contested case decision-makers regularly review the regulators' processes in settled cases. The review should include seeking comments from all or a sample of those who have settled FCA and PRA enforcement cases, and speaking with the relevant enforcement staff. The review should also monitor the effectiveness of the recommended changes to the settlement process. The review should identify whether there may be settlement process lessons to be learned, and make generic, public recommendations.'

3 The PRA's statutory obligations

3.1 The PRA must comply with a number of statutory and public law obligations when determining the general policy and principles by which it performs its functions. Where applicable, the PRA meets these obligations by providing the following in its consultations:

- a cost benefit analysis (CBA);
- an explanation of the PRA's reasons for believing that making the proposed policy is compatible with the PRA's duty to act in a way that advances its general objective,¹² insurance objective,¹³ and secondary competition objective;¹⁴
- an explanation of the PRA's reasons for believing that making the proposed policy is compatible with its duty to have regard to the regulatory principles;¹⁵ and
- a statement as to whether the impact of the proposed policy will be significantly different to mutuals than to other persons and if so details of the difference.¹⁶

3.2 The PRC should have regard to aspects of the Government's economic policy as recommended by HM Treasury.¹⁷ The PRA is also required by the Equality Act 2010¹⁸ to have due regard to the need to eliminate discrimination and to promote equality of opportunity in carrying out its policies, services and functions.

Cost benefit analysis (CBA)

3.3 Under section 138J of FSMA, when the PRA wishes to introduce any new rules it must publish a CBA along with the proposed rules. This is an estimate of the costs and benefits that will result from the rule being made. The PRA's obligations to prepare a CBA are not engaged here as the PRA is not making rules. However, the PRA has considered as a matter of good practice what the costs and benefits of the proposed amendments to the Enforcement Statement of Policy are likely to be. These are discussed in the body of the text in Chapter 2 (see in particular paragraphs 2.2 and 2.7 above).

Compatibility with the PRA's objectives

3.4 In discharging its general functions, the PRA must, so far as reasonably possible, act in a way that advances its general objective to promote the safety and soundness of PRA-authorized persons;¹⁹ and in the context of insurance, to contribute to policyholder protection.²⁰ The proposals in this CP are intended to increase the efficiency of PRA enforcement action and the transparency of its processes. Enforcement action contributes to the PRA's objectives of promoting the safety and soundness of firms and securing an appropriate degree of protection for policyholders.

3.5 When discharging its general functions, the PRA is legally required, so far as is reasonably possible, to facilitate effective competition in the markets for services provided by PRA-authorized persons in carrying on regulated activities. The PRA has assessed whether the proposals in this CP facilitate effective competition and considers that there will not be any impact on competition.

¹² Section 2B of FSMA.

¹³ Section 2C of FSMA.

¹⁴ Section 2H(1) of FSMA.

¹⁵ Section 2H(2) and 3B of FSMA.

¹⁶ Section 138K of FSMA.

¹⁷ Section 30B of the Bank of England Act 1998.

¹⁸ Section 149.

¹⁹ Sections 2B (1) and Section 2B (2) of FSMA.

²⁰ Section 2C of FSMA.

Regulatory principles

3.6 In developing the proposals in this CP, the PRA has had regard to the regulatory principles as set out in FSMA. The PRA considers that two of the regulatory principles are of particular relevance to this CP:

- the need to use the resources of the PRA in the most efficient and economic way. The PRA's proposals are designed to encourage early settlement of PRA enforcement matters, which should result in a more efficient use of PRA resources; and
- the principle that the PRA should exercise its functions as transparently as possible. The PRA's proposals clarify current practice and will create greater transparency of PRA settlement processes.

Impact on mutuals

3.7 The PRA considers that the impact of the proposals on mutuals is expected to be no different from the impact on other firms.

HM Treasury recommendation letter

3.8 The PRA considers that the aspects of the Government's economic policy to which HM Treasury recommended the PRA should have regard are not relevant to the proposals in this consultation.

Equality and diversity

3.9 The PRA has considered the equality and diversity issues that may arise from the proposals in this consultation. The PRA considers that the proposals in this consultation do not raise any concerns with regards to equality and diversity.

Appendix: Draft amendments to Statement of Policy 'The PRA's approach to enforcement: statutory statements of policy and procedure'

This appendix proposes changes to Statement of Policy 'The PRA's approach to enforcement: statutory statements of policy and procedure'. Underlining indicates proposed additions and striking through indicates proposed deletions.

...

4 Statement of the PRA's settlement decision-making procedure and policy for the determination of the amount of penalties and the period of suspensions or restrictions in settled cases

Introduction and interpretation

1. This statement of procedure and policy is issued by the Prudential Regulation Authority (the 'PRA') in accordance with the requirements of sections 63C(1), 69(1), 142V(1), 192N(1), 210(1) and 395(5) of the Act¹. 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) policy on the imposition and amount of penalties under the Act;
- (b) policy on the imposition and period of suspensions or restrictions under the Act; and
- (c) statement of policy on statutory notices and the allocation of decision making under the Act.

2. Unless inconsistent with the subject or context, in this statement of policy, words importing the singular number include the plural and vice versa, and words importing the masculine gender only include the feminine.

The PRA's approach to settlement

3. In discharging its general functions, the PRA must, so far as is reasonably possible, act in a way which advances its statutory objectives.² The PRA is also required to have regard to certain regulatory principles,³ including the need for it to use its resources in the most efficient and economical way.

4. 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 the Act for the final determination of enforcement action by the PRA, enabling timely communication of regulatory outcomes to the person concerned, the regulated community more widely and the public;

¹ 'the Act' means the Financial Services and Markets Act 2000 (as amended).

² As set out in sections 2B and 2C of the Act.

³ As set out in sections 2H and 3B of the Act.

- (b) save time and resources (for the PRA and the subject of enforcement action by it); and
- (c) ~~[deleted.] facilitate the prompt and comprehensive conclusion of enforcement action by the PRA and the communication of regulatory outcomes to the person concerned, the regulated community more widely and the public~~
- (d) remove uncertainty of outcome for the PRA and the subject inherent in contested proceedings before the Bank's Enforcement Decision Making Committee (EDMC) and/or the Upper Tribunal.

5. In the course of enforcement action, 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 policy and any relevant guidance or other materials issued by the PRA; and
- (c) the facts and circumstances of the case in question;⁴ and
- (d) ~~[deleted.] the public interest.~~

6. Neither the PRA nor the subject of enforcement action by it can be required to enter into or continue settlement discussions or conclude a settlement agreement.

7. In recognition of the matters set out in paragraphs 3 to 5 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 the Act, details of which are set out ~~in paragraphs 26 to 29 below.~~

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

8. Regulatory enforcement action by the PRA is conducted pursuant to and in accordance with the statutory scheme set out in the Act. The process leading up to the imposition of a disciplinary sanction has a number of prescribed stages and requires the PRA to give the subject of the action prescribed statutory notices.

9. The fact that the PRA agrees to enter into or continue settlement discussions will not entitle the subject of its investigation to a suspension of or delay in the progress of the enforcement process.

10. A settlement of regulatory enforcement action ordinarily will involve a regulatory decision by the PRA. Where a disciplinary 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 ~~or otherwise alter~~ that obligation.⁵

11. ~~[Deleted.] The stage the enforcement process has reached when any settlement discussions take place is likely to affect the nature and extent of the information concerning the breaches or suspected breaches of the PRA's regulatory requirements which the PRA will have supplied to the subject of its investigation. For example, where a warning notice has been given, ordinarily the person concerned will have received:~~

⁴ 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.

⁵ 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.

- ~~(a) first, written details of the PRA's findings following its investigation;⁶~~
- ~~(b) second, a warning notice and the related documentation which the PRA is required to supply pursuant to section 394 of the Act.~~

12. ~~Subject to the particular facts and circumstances of the case in question, including the stage the enforcement process has reached and the nature of the information provided by the PRA to the subject of its enforcement action,~~ The PRA will take reasonable steps to ensure that ~~he~~ the subject is provided with sufficient information to understand the essential elements of the case against ~~him~~ 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 28), 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. These will generally take place during the advance notice period described in paragraph 30. The PRA will provide an oral 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 period for 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 generally provide any other investigation report or engage in an evidential disclosure exercise at this stage.

13. The PRA will only agree to settle an enforcement action by it 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.⁷

14. Subject to and in accordance with the terms of section 391 of the Act, 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 statutory notices or the matters to which they relate.

The timing of settlement discussions with the PRA

15. Subject to paragraph 16 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 regulatory 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 3, 4 and 5 above.

16. The PRA will not normally agree to enter into substantive settlement discussions or conclude a binding settlement agreement until:

⁶ ~~This will generally take the form of one or more investigation reports.~~

⁷ 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.

- (a) it has a sufficient understanding of the nature, seriousness and impact or potential impact of the suspected breach of its regulatory requirements; and
- (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

17. Where the PRA enters into settlement discussions with the subject of 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. The PRA will be represented at the settlement discussions by a Head of Division or other representative of sufficient seniority. In so doing, the PRA seeks to ensure that any representations made by the subject that are relevant to the PRA's assessment of the case are conveyed to the relevant settlement decision making committee (DMC) prior to any decision being reached.

18. The PRA and the subject of its 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 relevant DMC and that there is therefore the potential for the terms of the settlement, including the parameters of the proposed sanction(s), to change.

19. 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 them (the 'proposed settlement agreement').

20. The proposed settlement agreement may include:

- (a) particulars of the breach of the PRA's 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,⁸ 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.

Concluding a settlement agreement

21. The PRA's decision whether or not to approve and conclude an in principle settlement agreement will, in accordance with its statement of policy on statutory notices and the allocation of decision making under the Act, be reached by an appropriate DMC.

⁸ Determined in accordance with the PRA's settlement discount scheme set out in paragraphs 26 to 28 of this policy.

22. 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.

23. Any decision by the DMC to approve and conclude a binding settlement agreement⁹ must be unanimous.

24. In cases where a binding settlement agreement is approved and concluded by the DMC and the PRA will give the subject of its investigation 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 the Act;¹⁰
- (b) in the case of action under section 66(3)(aa) or (ab) of the Act, any other interested parties.¹¹

25. Subject to the stage the enforcement process has reached when a binding settlement agreement is concluded, the agreement may provide for the subject of the PRA's action to waive and not exercise any subsisting rights:

- (a) to contest or further to contest that 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 the Act;
- (d) to object to the giving of any decision notice;
- (e) to refer the matter to the Tribunal¹² and/or otherwise seek to challenge any aspect of the matter, including by way of a claim for judicial review.

The PRA's settlement discount scheme

26. Where the PRA proposes to impose a financial penalty or a suspension or restriction under the Act and a proposed settlement agreement is negotiated by the parties, approved by the PRA's DMC and concluded, the person concerned will be entitled to a reduction in the amount or period of the relevant sanction, determined by the PRA in accordance with paragraph 28 below.

27. Subject to 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 or the imposition and period of suspensions and restrictions, as appropriate, the amount or period of the sanction that it is proposing to impose¹³ (the 'pre-discount sanction').

28. Where the pre-discount sanction and all other settlement terms are:

⁹ Where the PRA's DMC requires clarification of or changes to the proposed settlement agreement, further settlement discussions may be required. The PRA shall, in its discretion, determine the nature and timing of its input to such further discussions.

¹⁰ The PRA's DMC will also consider any representations made by third parties, pursuant to section 393(3) of the Act, in response to any notice given to them.

¹¹ 'Other interested parties' has the meaning set out in section 67(9) of the Act.

¹² 'Tribunal' means the Upper Tribunal (Tax and Chancery Chamber) or any successor body.

¹³ Where a warning notice has been given to the subject of the PRA's enforcement action, it will set out the penalty which the PRA is minded to impose.

- (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 30%. ~~a percentage, determined by the PRA as set out below:~~ 'Discount Stage' means the period from the commencement of an enforcement investigation by the PRA until the PRA has:

- (a) communicated to the subject of its investigation the essential nature of the case against the subject and allowed the subject what it considers to be a reasonable opportunity to understand it; and
- (b) allowed what it considers to be a reasonable opportunity for the parties to reach a settlement agreement.

Stage	Discount	Description
1	30%	Stage 1 means
2	20%	Stage 2 means the period from the end of stage 1 until the expiry of the period (including any extensions of it) for making written representations in response to the giving of a warning notice or, if sooner, the date on which such representations are received by the PRA.
3	10%	Stage 3 means the period from the end of stage 2 until the giving of a decision notice.
4	0%	Stage 4 means the period following the end of stage 3, including any proceedings before the Tribunal and any appeals from any rulings of the Tribunal.

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

30. 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.

31. The PRA will set a date for the end of the Discount Stage, allowing what it considers 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, the PRA may allow for a longer period. 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.

Periodic independent reviews of settled cases

32. 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 Prudential Regulation Committee, 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.