

Bank of England

Prudential Regulation Authority

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

Statement of Policy

May 2023

Draft for consultation



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1. Overview

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 related statutory objectives.¹ Through regulation, the Bank develops standards and policies that set out what we require and expect of firms, 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 community to account where they do not meet our requirements and expectations and providing a wider deterrent effect. We are committed to holding individuals to account and, where appropriate, taking regulatory and/or enforcement action against those individuals who breach our standards.

3. Chapters 4 and 5 of Annex 1² and Chapter 2 of Annex 2³ to this document, relating to financial penalties, take effect upon publication, but only with

¹ The Bank's financial stability objective under section 2A of the Bank of England Act 1998 and the PRA's general objective and insurance objective under sections 2B and 2C of FSMA.

² 'The PRA's approach to enforcement: statements of policy and procedure'.

³ 'The Bank's approach to enforcement in respect of Financial Market Infrastructures: statements of policy and procedure'.

respect to breaches that have occurred after that date. The remainder of this document takes effect upon publication.⁴

4. Unless inconsistent with the subject or context, words importing the singular number include the plural and vice versa.

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⁴ This refers to publication of the final statement of policy, and not the draft for consultation.

2. The Bank's regulatory enforcement powers

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 FMI's;
 - 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 FMI's 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.¹ 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.²

¹ 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.

² See sections 2B and 2C of FSMA.

Table 1: Regulatory enforcement statutory decisions - PRA

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

<u>Description</u>	<u>Statutory provision</u>	<u>Type of Notice</u>	<u>Notice requirement</u>
<u>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</u>	<u>FSMA s.192Y</u>	<u>Warning Notice</u>	<u>FSMA s.192Z(1)</u>
<u>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</u>	<u>FSMA s.192Y</u>	<u>Decision Notice</u>	<u>FSMA s.192Z(4)</u>
<u>Proposal to publish a statement of public censure in relation to an authorised person</u>	<u>FSMA s.205</u>	<u>Warning Notice</u>	<u>FSMA s.207(1)</u>
<u>Decision to publish a statement of public censure in relation to an authorised person</u>	<u>FSMA s.205</u>	<u>Decision Notice</u>	<u>FSMA s.208(1)</u>
<u>Proposal to impose a financial penalty on an authorised person</u>	<u>FSMA s.206</u>	<u>Warning Notice</u>	<u>FSMA s.207(1)</u>
<u>Decision to impose a financial penalty on an authorised person</u>	<u>FSMA s.206</u>	<u>Decision Notice</u>	<u>FSMA s.208(1)</u>
<u>Proposal to suspend any permission of, or impose limitations or restrictions on, an authorised person</u>	<u>FSMA s.206A</u>	<u>Warning Notice</u>	<u>FSMA s.207(1)</u>
<u>Decision to suspend any permission of, or impose limitations or restrictions on, an authorised person</u>	<u>FSMA s.206A</u>	<u>Decision Notice</u>	<u>FSMA s.208(1)</u>
<u>Proposal to take disciplinary action against an auditor or actuary</u>	<u>FSMA s.345A</u>	<u>Warning Notice</u>	<u>FSMA s.345B(1)</u>
<u>Decision to take disciplinary action against an auditor or actuary</u>	<u>FSMA s.345A</u>	<u>Decision Notice</u>	<u>FSMA s.345B(4)</u>
<u>Proposal to require restitution</u>	<u>FSMA s.384</u>	<u>Warning Notice</u>	<u>FSMA s.385(1)</u>
<u>Decision to require restitution</u>	<u>FSMA s.384</u>	<u>Decision Notice</u>	<u>FSMA s.386(1)</u>

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 1³ to this statement of policy.
5. Decision-making in relation to enforcement statutory notice decisions is addressed in Chapter 8 of Annex 1⁴ 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 FSMA⁵ and BA09,⁶ 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');⁷
 - (b) third country central counterparties;⁸
 - (c) recognised central securities depositories ('Recognised CSDs');⁹
 - (d) qualifying parent undertakings of UK RCHs and Recognised CSDs ('FMI QPUs');¹⁰
 - (e) recognised interbank payment systems ('RPS');¹¹ and
 - (f) services providers in relation to RPS ('Service Providers');¹²

³ 'The PRA's approach to enforcement: statements of policy and procedure'.

⁴ 'The PRA's approach to enforcement: statements of policy and procedure'.

⁵ Part XVIII of FSMA and Schedule 17A to FSMA.

⁶ Part 5 of BA09.

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

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

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

¹⁰ For the definition of 'qualifying parent undertaking' in relation to FMIs, see section 192B of FSMA and paragraph 17 of Schedule 17A to FSMA.

¹¹ See definition of 'payment system' in section 182 of BA09.

¹² See definition of 'service provider' in sections 183(ba) and 206A(2) of BA09.

8. Where FMI's are in breach of a relevant requirement,¹³ have contravened a direction or information rule,¹⁴ or have committed a compliance failure,¹⁵ this may impact detrimentally on market functioning, and therefore financial stability. The Bank's enforcement powers in relation to FMI's assist it in pursuing its objective to protect and enhance the stability of the financial system of the UK.¹⁶

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¹³ Defined in section 312E of FSMA.

¹⁴ See section 192K and paragraph 17 of Schedule 17A to FSMA.

¹⁵ Defined in section 196 of BA09.

¹⁶ Section 2A of the Bank of England Act 1998.

Table 2: Regulatory enforcement statutory decisions – FMs

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

<u>Description</u>	<u>Statutory provision</u>	<u>Type of Notice</u>	<u>Notice requirement</u>
<u>impose a prohibition on a member of the management body</u>			
<u>Decision to censure publicly, impose a financial penalty or impose a prohibition on a member of the management body</u>	<u>FSMA s.312FA</u>	<u>Decision Notice</u>	<u>FSMA s.312H(1)</u>
<u>Proposal to take disciplinary action against an auditor</u>	<u>FSMA s.345A</u>	<u>Warning Notice</u>	<u>FSMA s.345B(1)</u>
<u>Decision to take disciplinary action against an auditor</u>	<u>FSMA s.345A</u>	<u>Decision Notice</u>	<u>FSMA s.345B(4)</u>
<u>Proposal to require restitution</u>	<u>FSMA s.384</u>	<u>Warning Notice</u>	<u>FSMA s.385(1)</u>
<u>Decision to require restitution</u>	<u>FSMA s.384</u>	<u>Decision Notice</u>	<u>FSMA s.386(1)</u>
<u>Proposal to publish details of a compliance failure</u>	<u>BA09 s.197</u>	<u>Warning Notice</u>	<u>BA09 s.201(1)(a)</u>
<u>Decision to publish details of a compliance failure</u>	<u>BA09 s.197</u>	<u>Notice</u>	<u>BA09 s.201(1)(d)</u>
<u>Proposal to require the payment of a penalty in respect of a compliance failure</u>	<u>BA09 s.198</u>	<u>Warning Notice</u>	<u>BA09 s.201(1)(a)</u>

<u>Description</u>	<u>Statutory provision</u>	<u>Type of Notice</u>	<u>Notice requirement</u>
<u>Decision to require the payment of a penalty in respect of a compliance failure</u>	<u>BA09 s.198</u>	<u>Notice</u>	<u>BA09 s.201(1)(d)</u>
<u>Proposal to give a closure order</u>	<u>BA09 s.199</u>	<u>Warning Notice</u>	<u>BA09 s.201(1)(a)</u>
<u>Decision to give a closure order</u>	<u>BA09 s.199</u>	<u>Notice</u>	<u>BA09 s.201(1)(d)</u>
<u>Proposal to impose a management disqualification order¹⁷</u>	<u>BA09 s.200</u>	<u>Warning Notice</u>	<u>BA09 s.201(1)(a)</u>
<u>Decision to impose a management disqualification order</u>	<u>BA09 s.200</u>	<u>Notice</u>	<u>BA09 s.201(1)(d)</u>

9. 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 and imposition of a penalty. These statutory statements, together with other relevant statements of policy or procedure, are set out in Annex 2¹⁸ to this statement of policy.

Enforcement under the special resolution regime

10. 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

¹⁷ The Bank's powers under section 200 of BA09 are not limited to enforcement scenarios.

¹⁸ 'The Bank's approach to enforcement in respect of Financial Market Infrastructures: statements of policy and procedure'.

resolution of every bank, building society and some investment firms in the UK.¹⁹

11. The 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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¹⁹ For more information, see the Bank's approach to resolution, October 2017: <https://www.bankofengland.co.uk/-/media/boe/files/news/2017/october/the-bank-of-england-approach-to-resolution>.

Table 3: Regulatory enforcement statutory decisions – Resolution

<u>Description</u>	<u>Statutory provision</u>	<u>Type of Notice</u>	<u>Notice requirement</u>
<u>Proposal to publish a statement that a person has failed to comply with a relevant requirement²⁰</u>	<u>BA09 s.83ZR(1)(a)</u>	<u>Warning Notice</u>	<u>BA09 s.83ZT(1)</u>
<u>Decision to publish a statement that a person has failed to comply with a relevant requirement</u>	<u>BA09 s.83ZR(1)(a)</u>	<u>Decision Notice</u>	<u>BA09 s.83ZU(1)</u>
<u>Proposal to impose a financial penalty</u>	<u>BA09 s.83ZR(1)(b)</u>	<u>Warning Notice</u>	<u>BA09 s.83ZT(1)</u>
<u>Decision to impose a financial penalty</u>	<u>BA09 s.83ZR(1)(b)</u>	<u>Decision Notice</u>	<u>BA09 s.83ZU(1)</u>
<u>Proposal to direct a person to refrain from certain conduct in future</u>	<u>BA09 s.83ZR(1)(c)</u>	<u>Warning Notice</u>	<u>BA09 s.83ZT(1)</u>
<u>Decision to direct a person to refrain from certain conduct in future</u>	<u>BA09 s.83ZR(1)(c)</u>	<u>Decision Notice</u>	<u>BA09 s.83ZU(1)</u>
<u>Proposal to prohibit a person from holding offices or positions of responsibility in respect of a bank or banks</u>	<u>BA09 s.83ZR(1)(d)</u>	<u>Warning Notice</u>	<u>BA09 s.83ZT(1)</u>
<u>Decision to prohibit a person from holding offices or positions of responsibility in respect of a bank or banks</u>	<u>BA09 s.83ZR(1)(d)</u>	<u>Decision Notice</u>	<u>BA09 s.83ZU(1)</u>

Scottish and Northern Ireland Banknotes Regime

12. 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 BA09.²¹

²⁰ Defined in section 83ZD(3) of BA09.

²¹ For more information, see the Bank of England's approach to regulating Scottish and Northern Ireland commercial banknotes, March 2017: <https://www.bankofengland.co.uk/>

13. 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 ('Banknote Regulations') or any rules made under the Banknote Regulations ('the Scottish and Northern Ireland Banknote Rules 2017').
14. 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.²²

Table 4: Regulatory enforcement statutory decisions - Banknotes

<u>Description</u>	<u>Statutory provision</u>	<u>Type of Notice</u>	<u>Notice requirement</u>
<u>Financial penalty</u>	<u>BA09 s.222; regulation 33 Banknote Regulations</u>	<u>Notice of proposal</u>	<u>Para 1, Sch. 3 to the Banknote Regulations</u>
<u>Financial penalty</u>	<u>BA09 s.222; regulation 33 Banknote Regulations</u>	<u>Variation of proposal</u>	<u>Para 2, Sch. 3 to the Banknote Regulations</u>
<u>Financial penalty</u>	<u>BA09 s.222; regulation 33 Banknote Regulations</u>	<u>Decision Notice</u>	<u>Para 3, Sch. 3 to the Banknote Regulations</u>

</media/boe/files/banknotes/scottish-northern-ireland/scottish-and-northern-ireland-regime-approach.pdf>.

²² The Scottish and Northern Ireland Banknote Statement of Penalty Policy (applicable to breaches from 28 August 2018): <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

1. In addition to the regulatory enforcement powers described in Chapter 2¹ 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.² 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.

¹ 'The Bank's regulatory enforcement powers.'

² 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

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

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

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

4 Definitions

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

Statement of Policy

(Updating September 2021)

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1 The PRA's general approach

- 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.¹ 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.² 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 ('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.³
- 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; and
- (iv) is in the public interest;

¹ See sections 2B and 2C of FSMA.

² 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).

³ See sections 2H and 3B of FSMA.

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

Draft for consultation

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 FSMA¹ 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 it 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 of the investigation, via the Early Account Scheme ('EAS').

¹ 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.

The PRA's Early Account Scheme

Appropriate cases

2.7. The EAS may be used, at the PRA's sole discretion, in investigations of firms and/or individuals.²

2.8. 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;
- (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, the EAS is unlikely to be available;
- (d) the number of subjects under investigation;
- (e) the subject's supervisory and compliance history;
- (f) the position of other regulatory authorities; and
- (g) the nature and seriousness of the potential breaches.

2.9. Although the PRA will consider all requests to participate in the EAS on a case-by-case basis, 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.

2.10. 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.

What does the EAS involve?

2.11. 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.

2.12. The EAS operates as follows:

² 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.

- (a) **Step 1:** Within 28 days 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.
- (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), 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);
 - (iii) A plan for regular communications to discuss progress and scope of the Account;
 - (iv) 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;³
 - (v) Where the subject under investigation is a firm, the provision of an attestation by an appropriate senior manager (to be agreed with the PRA), on production of the Account, that there are no other related matters, relevant information or potential breaches of which the firm is aware 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); and
 - (vi) 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.
 - 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.

³ The PRA may decide to re-interview individuals already interviewed by the subject.

(c) **Step 3:** The PRA will compel production of the Account.

(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 a specified 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 the PRA may subsequently require production of recordings of the interviews); 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.

(d) **Step 4:** The PRA will consider the information provided.

(i) The PRA will consider 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;⁴ or

d. refer the matter to the Enforcement Decision Making Committee ('EDMC').

Draft for consultation

⁴ 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.

3.6 Statement of policy on the conduct of interviews pursuant to section 169(7) of the Act FSMA

Introduction and interpretation

- 3.1. This statement of policy is issued by the Prudential Regulation Authority (~~PRA~~) PRA in accordance with the requirements of sections 169(9) and 169(11) of ~~the Act~~.⁴ FSMA. It has been approved by Her His Majesty's Treasury in accordance with section 169(10) of ~~the Act~~ FSMA.
- 3.2. This statement of policy applies when, pursuant to section 169 of ~~the Act~~ FSMA ('Assistance to overseas regulators'), the PRA has:
- (a) appointed an investigator under section 169(1)(b) of ~~the Act~~ FSMA to investigate any matter at the request of an overseas regulator; and
 - (b) given a section 169(7) direction² or is considering doing so.
- 3.3. The PRA operates within a ~~global and European~~ 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 of policy:
- (a) 'interview' means an interview conducted for the purposes of an investigation under section 169(1)(b) of ~~the Act~~ FSMA in relation to which the PRA has given a direction under section 169(7) of ~~the Act~~ 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 ~~the Act~~; FSMA; and
 - (c) 'overseas regulator' has the meaning set out in section 195 of ~~the Act~~; FSMA.³
 - (d) 'section 169(7) direction' means a direction given by the PRA under section 169(7) of ~~the Act~~ to an investigator appointed under section 169(1)(b) of ~~the~~

⁴ 'the Act' means the Financial Services and Markets Act 2000 (as amended).

² For definition see paragraph 3.7 below.

³ Section 195 of ~~the Act~~ FSMA provides that an overseas regulator is an authority in a country or territory outside the ~~United Kingdom~~ UK (i) which is a home state regulator; or (ii) which exercises any function of a kind set out in section 195(4) of ~~the Act~~ FSMA.

~~Act, to permit a representative of an overseas regulator to attend and take part in an interview; and~~

~~(e) words importing the singular number include the plural and vice versa, and words importing the masculine gender only include the feminine.~~

Appointment of an investigator and confidentiality of information

3.5. Under section 169(1)(b) of ~~the Act~~ FSMA, the PRA may appoint an investigator to investigate any matter at the request of an overseas regulator. ~~The Act~~ FSMA permits the PRA to appoint as an investigator its employees, officers and servants or 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.⁴

3.7. Where the PRA appoints an investigator in response to a request from an overseas regulator it may, under section 169(7) of ~~the Act~~ FSMA, direct ~~him~~ 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 ~~the Act~~ 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 ~~the Act~~ FSMA (Public Record, Disclosure of Information and Co-operation).

Use of the PRA's power of direction under section 169(7) of ~~the Act~~ 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

⁴ In this regard, see also paragraph 3.21 below.

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 ~~he~~ they will play in it.
- 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. ~~He~~ 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. ~~He~~ They will always ask appropriate preliminary questions, such as those establishing the identity of the interviewee and any legal or other representative of ~~him~~ 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, ~~he~~they will be given an adequate opportunity to do so;⁵
 - (e) the PRA's investigator may, where ~~he considers~~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;⁶ 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 the Act ~~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 the Act ~~FSMA~~ under which ~~he has~~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.⁷
- 3.20. Notification of any of the matters set out in paragraph 3.19(a) to (c) 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

⁵ 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, ~~he~~they may delay the interview until ~~he has~~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.

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

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

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. Amongst other things, the warning must state that the interviewee is obliged to answer all questions put to ~~him~~them during the interview, including any put to ~~him~~them by the representative of the overseas regulator. The warning will also, in accordance with section 174 of ~~the Act~~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 ~~him~~them during the interview. Where the PRA has given ~~an appropriate direction under a section 169(7) of the Act~~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 ~~his~~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. ~~Where the interview is being conducted in pursuance of an EU law obligation, the translation costs will be met by the PRA.~~

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 ~~he meets~~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 ~~his~~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.

Draft for consultation

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

Introduction and interpretation

- 4.1. This statement of policy is issued by the Prudential Regulation Authority (the 'PRA') PRA in accordance with the requirements of sections 63C(1), 69(1), 142V, 192N(1), 192Z2 and 210(1) of the Act.¹FSMA. It sets out the PRA's policy on the imposition and amount of penalties under sections 63A, 66, 142S, 192K, 192Y and 206 of the ActFSMA.
2. In applying this statement of policy, the PRA may have regard to the following general principles and considerations:
- (a) 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
- (b) The desirability of:
- (i) upholding and encouraging high standards of behaviour that are consistent with persons⁴ who are subject to the PRA's regulatory requirements and standards, meeting and continuing to meet those requirements and standards;⁵ and
 - (ii) demonstrating the benefits of such behaviour.
- (c) The need to ensure that where disciplinary measures, including penalties, are imposed by the PRA:
- (i) they properly reflect the seriousness of the breach of the PRA's regulatory requirements;

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.

⁴ 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.

⁵ In relation to the possible imposition of financial penalties on PRA authorised persons, the PRA may have regard to the impact or likely impact of a penalty or a particular level of penalty on the person concerned, including their ability to comply with the PRA's regulatory requirements and to remain safe and sound going forward if a penalty or a particular level of penalty was to be imposed.

- ~~(ii) they are proportionate to the breach;~~
 - ~~(iii) they, and the threat of similar disciplinary measures for any future misconduct, are effective 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; and~~
 - ~~(iv) they are in the public interest.~~
- ~~(d) Where relevant, 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.⁶~~

Determining whether the PRA will ~~take action for~~ impose a penalty

4.2. ~~3.~~ The PRA will consider all relevant facts and circumstances of each case when determining whether to ~~take action~~ impose a penalty against a person for a ~~penalty~~ under section 63A, 66, 142S(2), 192K, 192Y or 206 of the Act 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 ~~paragraph 2 above.~~ Chapter 17 of 'The PRA's approach to enforcement: statements of policy and procedure'.⁸
- (b) The impact or potential impact of the misconduct on the stability of the financial system.⁹
- (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) 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 penalty could have on the advancement of those objectives;~~
 - ~~(ii) its duration or frequency;~~
 - ~~(iii) whether it was deliberate or reckless;~~
 - (i) ~~(iv)~~ whether the person has derived any economic benefits from or in consequence of the breach; and

⁶ 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).

⁷ 'The PRA's general approach'.

⁸ See Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

⁹ As set out in section 11 of the Act, 'the financial system' refers to the financial system operating in the United Kingdom and includes: (a) financial markets and exchanges, (b) regulated activities, and (c) other activities connected with financial markets and exchanges.

~~(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~~

~~(ii) (vi) 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:

(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 penalty~~ (and/or other appropriate enforcement action) is not ~~taken~~ 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 action¹⁰ by the PRA, the ~~Financial Conduct Authority ('FCA')~~ FCA and/or any predecessor regulators resulting in an adverse finding against the person;

¹⁰ 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

- (ii) any private warning¹¹ given to the person by the PRA, FCA and/or any predecessor regulators;
 - (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.¹²
- (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 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 the Act FSMA or appropriate, the PRA will also consult or co-operate with the FCA¹³ 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 paragraph 2 above, Chapter 1¹⁴ of 'The PRA's

requirement or otherwise), or any request or requirement to take remedial action, and how promptly and effectively such action has been taken.

¹¹ 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 ~~him~~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.

¹² 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.

¹³ See in this regard the memorandum of understanding between the FCA and the PRA (~~the 'MOU'~~) as may be amended or supplemented from time to time.

¹⁴ 'The PRA's general approach'.

approach to enforcement: statements of policy and procedure,¹⁵ 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.

Public censures

- 4.3. ~~4.~~ Pursuant to sections 66(3)(b), 142S(3), 192K(3), 192Y(3) and 205 of the ~~the~~ Act FSMA, where a person has breached the PRA's regulatory rules and/or requirements, the PRA may publish a statement of ~~his~~ their misconduct (a 'public censure').
- 4.4. ~~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:
- (a) The general principles and considerations set out in ~~paragraph 2 above.~~ Chapter 1¹⁶ of 'The PRA's approach to enforcement: statements of policy and procedure'.¹⁷
 - (b) The factors set out in ~~paragraph 3.4.2~~ paragraph 4.2 above (determining whether the PRA will ~~take action for~~ impose a penalty).
 - (c) The factors set out in ~~paragraphs 4.12 to 3.6.4.38~~ paragraphs 4.12 to 4.38 below (determining the appropriate level of penalty).
- 4.5. ~~6.~~ Other considerations that may be relevant include the approach of the PRA in any similar previous cases.¹⁸

~~Action for a penalty~~ Penalties against approved persons a person under section 66 of the Act FSMA

- 4.6. ~~7.~~ 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-authorised firm's senior management to ensure that the firm is run prudently. PRA-authorised firms and individuals within them who perform significant-influence-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.

¹⁵ See Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

¹⁶ 'The PRA's general approach'.

¹⁷ See Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

¹⁸ 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.

4.7. ~~8.~~ In addition to the factors set out in paragraph ~~3.4.2~~ 4.2 above (determining whether the PRA will ~~take action for~~ impose a penalty), additional considerations ~~that~~ may be relevant when the PRA is deciding whether to ~~take action for~~ impose a penalty against a person pursuant to section 66 of the ~~Act~~ FSMA (and/or other appropriate enforcement action).¹⁹ ~~against a person approved to perform a significant influence function in relation to the carrying on by a PRA-authorised firm of a regulated activity (a 'significant influence function')~~ These may include:

- (a) ~~The approved person's significant influence controlled function, (where applicable), position, role and responsibilities within the relevant firm.~~
- (b) Whether the person's behaviour calls into question ~~his~~ their fitness and propriety.
- (c) The PRA's determination of whether ~~action by it for~~ a penalty (and/or other appropriate enforcement action) against the ~~approved 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.

Action for a penalty Penalties against persons who perform a controlled function without approval under section 63A of the Act FSMA

4.8. ~~9.~~ In addition to the factors set out in paragraph ~~3.4.2~~ 4.2 above (determining whether the PRA will ~~take action for~~ impose a penalty), additional considerations may be relevant when the PRA is deciding whether to ~~take action for~~ impose a penalty under section 63A of the Act FSMA (and/or other appropriate enforcement action) ~~against a person who has at any time performed a controlled function without approval.~~²⁰ 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 ~~he~~ they been approved, the PRA could have taken action against ~~him~~ them pursuant to section 66 of the ~~Act~~ FSMA and, if so, the nature and seriousness of the misconduct.
- (c) Whether, at the time the person performed a controlled function without approval, ~~he~~ they knew, or could reasonably be expected to have known, that ~~he was~~ they were doing so.

¹⁹ The persons upon whom the PRA may impose a penalty under section 66 of FSMA are set out in section 66B of FSMA.

²⁰ Contrary to section 63A(2) of the Act FSMA. For the purpose of this paragraph, controlled functions are those of a description specified in the PRA Rules.

- (d) The circumstances in which the PRA would expect to be satisfied that a person could reasonably be expected to have known that ~~he was~~ they were performing a controlled function without approval include:
- (i) the person had previously performed a similar role at the same or another authorised person for which ~~he~~ 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 ~~him~~ them to perform the same or a similar controlled function;
 - (iii) the person's seniority and/or experience was such that ~~he~~ they could reasonably be expected to have known that ~~he was~~ they were performing a controlled function without approval; and
 - (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 ~~action by it for~~ 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 the Act FSMA

4.9. ~~40.~~ Under section 192(K)(1) of the Act 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 the Act FSMA; or
- (b) rules made by the PRA under section 192J of the Act FSMA;

the PRA may, under section 192K(2) and (3) of the Act 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. ~~44.~~ In addition to the factors set out in paragraph ~~3~~ 4.2 above (determining whether the PRA will ~~take action for~~ impose a penalty), additional

considerations may be relevant when the PRA is deciding whether to ~~take action for~~ impose a penalty or public censure under section 192(K) of the ~~Act~~ FSMA. These include:

- (a) The role or influence of the QPU in determining, directing or affecting the affairs of the relevant qualifying authorised person,²¹ any other company within the group²² 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.
- (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 the ~~Act~~ FSMA

4.11. ~~41b.~~ Under section 192Y of the ~~Act~~ 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 the ~~Act~~ FSMA;
- (b) a requirement imposed by a direction given to that company by the PRA under section 192T of the ~~Act~~ FSMA;
- (c) rules made by the PRA under section 192V of the ~~Act~~ 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 the ~~Act~~ 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 the light of the matters set out in Chapter 1²³ of 'The PRA's approach to enforcement: statements of policy and procedure'²⁴ 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 a ~~five-step approach, which can be summarised as follows~~ the following method:

²¹ As defined in and pursuant to section 192A of the ~~Act~~ FSMA.

²² As defined in section 421 of the ~~Act~~ FSMA.

²³ 'The PRA's general approach'.

²⁴ See Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

- (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~~ Step 1, the determination of a starting point figure for a punitive penalty having regard to the seriousness of the breach and the size and financial position category of the firm²⁵ or the income of the individual²⁶ ~~that committed the breach concerned.~~
- (c) **Step 3: Aggravating, mitigating or other relevant factors:** where appropriate, an adjustment to the figure determined at ~~step~~ 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 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~~ Steps 2, 3 and 4:
- (i) a settlement discount²⁷ (see ~~the statement Chapter 8~~²⁸ of the 'The PRA's settlement decision-making procedure and approach to enforcement: statements of policy for the determination and amount of penalties and the period of suspensions or restrictions in settled cases and procedure'²⁹);
 - (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 ~~30-4.32 to 36-4.38~~ 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.³⁰
- 4.14. The PRA recognises that the overall penalty arrived at ~~pursuant to its five-step approach~~ must be appropriate and proportionate to the relevant breach. The PRA may decrease the level of the penalty ~~which that~~ would otherwise be determined following ~~steps~~ Steps 2 and 3 if it considers that it is

²⁵ Unless inconsistent with the subject or context, references in this policy to a 'firm' is to a person subject to the PRA's regulatory requirements and on whom the PRA may impose a penalty pursuant to sections 192K or 206 of the Act, as amended from time to time. For an explanation of the firm categories, please see <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/approach/banking-approach-2018.pdf> and <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/approach/insurance-approach-2018.pdf>, as amended and supplemented from time to time.

²⁶ Unless inconsistent with the subject or context, references in this policy to an 'individual' is to a person subject to the PRA's regulatory requirements and on whom the PRA may impose a penalty pursuant to sections 63A or 66 of the Act.

²⁷ Any such discount does not apply to the disgorgement of any economic benefits derived by the firm or individual from the breach (~~step~~ Step 1).

²⁸ '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'.

²⁹ Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

³⁰ See paragraphs 4.17 to 36-4.38.

disproportionately high having regard to the seriousness, scale ~~and or~~ effect of the breach. In determining any deterrence uplift at ~~step~~ 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-authorised 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 ~~take action for~~ 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 ~~the Act~~ FSMA provides, amongst other things, *inter alia* that the PRA may not, in determining its policy with respect to the amounts of penalties to be imposed by it under ~~the Act~~ FSMA, take account of expenses which it incurs, or expects to incur, in discharging its functions.

The five steps for 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.³¹

Step 2 – the seriousness of the breach

- 4.18. In addition to any figure in respect of disgorgement ~~established at step 1~~, the PRA will determine at step 2 the seriousness of the breach by reference to a starting point figure for a punitive penalty, having regard to:
- ~~(a) the seriousness of the breach by the relevant firm or individual, 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 firm; or~~
 - ~~(c) the income of the individual.~~³²

³¹ 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.

³² ~~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.~~

Firms

4.19. In assessing seriousness, the PRA will take into account the firm’s categorisation³³ 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 ordinarily use the following indicative ranges as the starting point.

<u>Firm category at the time of the relevant breach(es)</u>	<u>Seriousness³⁴</u>		
	<u>Low</u>	<u>Medium</u>	<u>High</u>
<u>1</u>	<u>£25-75 million</u>	<u>£75-125 million</u>	<u>> £125 million</u>
<u>2</u>	<u>£15-45 million</u>	<u>£30-75 million</u>	<u>> £75 million</u>
<u>3</u>	<u>£1-7 million</u>	<u>£3-15 million</u>	<u>> £15 million</u>
<u>4</u>	<u>£0-0.2 million</u>	<u>£1-2 million</u>	<u>> £2 million</u>

4.21. With regard to any assessment of seriousness, PRA Fundamental Rule 1 and PRA Fundamental Rule 7³⁵ are central to the regulatory regime and breaches of either will be taken particularly seriously. The PRA therefore considers that it is appropriate for breaches of PRA Fundamental Rule 1 and/or PRA Fundamental Rule 7 to always be categorised as high seriousness.

19. In respect of firms:

³³ As amended from time to time. For an explanation of the firm categories, please see the PRA’s approach to supervision of the banking and insurance sectors: <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.

³⁴ In respect of all breaches of PRA rules and requirements (including Fundamental Rules).

³⁵ See the PRA Rulebook: <https://www.prarulebook.co.uk/>.

- (a) A suitable indicator of the size and financial position of the 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.³⁶
- (b) In those cases where the PRA considers that revenue is an appropriate indicator of the size and financial position of the firm, ordinarily it will calculate the firm's revenue during its last business year, that is, the financial year preceding the date when the breach ended³⁷ ('relevant revenue').
- (c) The PRA will apply an appropriate percentage rate to the firm's relevant revenue to produce a figure at step 2 that properly reflects the nature, extent, scale and gravity of the breach.³⁸

Individuals

4.22. ~~20.~~ In respect of individuals: ~~(a) The~~, the PRA will ordinarily determine a starting point figure at step 2 based on the individual's annual relevant income. As to that:

- (a) 'Relevant Annual 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 annual relevant income:
- (i) 'benefits' include, but are not limited to, salary, bonus, pension contributions, share options and share schemes; and
- (ii) 'employment' includes, but is not limited to, employment as an adviser, director, partner, consultant or contractor.
- (c) Ordinarily, the PRA will calculate the individual's annual income during the tax year preceding the date when the breach ended³⁹ ('relevant income').
- (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

³⁶ 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.

³⁷ 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.

³⁸ 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.

³⁹ Where the breach is continuing, the PRA may, for example, have regard to the individual's annual income in the last and/or current tax year.

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~~ a percentage rate to the individual's relevant income to produce a starting point figure ~~at step 2~~ that properly reflects the nature, extent, scale and gravity of the breach.⁴⁰

Determining seriousness

4.23. ~~21.~~ In determining ~~a percentage rate reflecting~~ 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.⁴¹
- (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.⁴²
- (h) The seniority or experience of the individual and the extent of ~~his~~ 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.
- (j) In relation to action under section 66 of ~~the Act~~ FSMA, the PRA may have regard to the factors set out in paragraphs ~~7-4.6~~ and ~~8-4.7~~ above.
- (k) In relation to action under section 63A of ~~the Act~~ FSMA, the PRA may have regard to the factors set out in paragraph ~~9-4.8~~ above.

⁴⁰ 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.

⁴¹ For example, in relation to consistently late, inaccurate or inadequate reporting.

⁴² For example, the adequacy of the firm's capital and liquid assets relative to its risk profile.

- (l) In relation to action under section 192K of the Act~~FSMA~~, the PRA may have regard to the factors set out in paragraphs ~~40-4.9~~ and ~~41-4.10~~ above.

Penalties for the late or incomplete submission of reports

~~4.24.~~ ~~22.~~The PRA attaches considerable importance to the timely⁴³, accurate and complete⁴⁴ 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.~~ ~~23.~~In addition to the factors set out in ~~step 2~~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~~ Adjustment for any aggravating, mitigating or other relevant factors

~~4.26.~~ ~~24.~~In cases involving firms or individuals, 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 4~~) 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 starting point figure ~~determined at step 2~~.

~~4.27.~~ ~~25.~~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

⁴³ 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.

⁴⁴ 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.

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) 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 ~~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 firm's or individual's own initiative or that of the PRA or any other relevant regulatory authorities or law enforcement agencies).
- (g) In relation to a contravention of section 63A of the ~~Act~~ 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. ~~26.~~ 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~~ Adjustment for deterrence

4.29. ~~27.~~ If the PRA considers the penalty determined following ~~steps~~ Steps 2 and 3 is insufficiently effectively to deter the person who committed the breach and/or others who are subject to the PRA's regulatory requirements from committing ~~similar or other~~ breaches, it may increase the penalty ~~at step 4~~ by making an appropriate deterrence adjustment to it.

4.30. ~~28.~~ 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~~ Application of any applicable reductions for early settlement or serious financial hardship

Settlement discount

4.31. ~~29.~~ 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.⁴⁵

Serious financial hardship

4.32. ~~30.~~ Where a firm or individual claims that payment of a penalty determined by the PRA will cause them serious financial hardship (the onus is on the firm or individual to satisfy the PRA that this would be the case), in exceptional circumstances the PRA may reduce the penalty.

4.33. ~~31.~~ 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.

⁴⁵ Any applicable settlement discount applied at ~~stage~~ Step 5 will not apply to the disgorgement of any economic benefits determined at ~~step~~ Step 1.

4.34. ~~32.~~ 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. ~~33.~~ The PRA may, in addition to imposing a penalty, withdraw a PRA-
authorised person's authorisation under section 33 of the Act ~~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-authorised person's authorisation results in it 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. ~~34.~~ 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 his net (i) their gross annual income will fall below £14,22,000; and; his (ii) their capital⁴⁶ will fall below £16,00083,133 as a result of payment of the penalty.⁴⁷

4.37. ~~35.~~ The PRA may, in addition to imposing a penalty, make a prohibition order under section 56 of the Act ~~FSMA~~ or withdraw an individual's approval under section 63 of the Act ~~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 a prohibition order against an individual or withdrawing his 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.

⁴⁶ 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 ~~he lives they live~~ as ~~his 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.

⁴⁷ 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. 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.

4.38. ~~36.~~ 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.

Draft for consultation

5.7 Statement of the PRA's policy on the imposition and amount of financial penalties under the Act 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

Introduction and interpretation

5.1. This statement of policy is issued by the Prudential Regulation Authority ('PRA') ~~PRA~~ in accordance with the requirements of section 345D of ~~the Act~~.¹ FSMA. It sets out the PRA's policy on the imposition and amount of penalties under section 345A(4)(c) of ~~the Act~~ 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').²

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 ~~he is~~ they were a partner.

3. In applying this statement of policy, the PRA may have regard to the following general principles and considerations:

(a) ~~In discharging its general functions, the PRA must, so far as is reasonably possible, act in a way which advances its statutory objectives.~~³ The PRA is also required to have regard to certain regulatory principles.⁴

(b) The desirability of:

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

² As set out in section 342 of ~~the Act~~ FSMA.

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

⁴ As set out in sections 2H and 3B of ~~the Act~~.

- ~~(i) upholding and encouraging high standards of behaviour that are consistent with persons⁵ who are subject to the PRA's regulatory requirements and standards, meeting and continuing to meet those requirements and standards;⁶ and~~
- ~~(ii) demonstrating the benefits of such behaviour.~~
- ~~(c) The need to ensure that where disciplinary measures, including penalties, are imposed by the PRA:
 - ~~(i) they properly reflect the seriousness of the breach of the PRA's regulatory requirements;~~
 - ~~(ii) they are proportionate to the breach;~~
 - ~~(iii) they, and the threat of similar disciplinary measures for any future misconduct, are effective 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; and~~
 - ~~(iv) they are in the public interest.~~~~
- ~~(d) Where relevant, published statements of the PRA's approach to arrangements governing its interactions with auditors and actuaries who are subject to its regulatory requirements and standards.⁷~~

Determining whether the PRA will take action for impose a penalty

5.3. 4. The PRA will consider all relevant facts and circumstances of each case when determining whether to impose a penalty take action against an auditor or actuary for a penalty under section 345A(4)(c) of the Act 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 paragraph 3 above. Chapter 1⁸ of 'The PRA's approach to enforcement: statements of policy and procedure'.⁹

⁵ 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.

⁶ In relation to the possible imposition of financial penalties on auditors and actuaries, the PRA may have regard to the impact or likely impact of a penalty or a particular level of penalty on the person concerned, including their continuing ability to provide services of an appropriate standard to PRA authorised persons going forward.

⁷ In this regard, see in particular PRA Supervisory Statement LSS7/13 'The relationship between the external auditor and the supervisor: a code of practice', April 2013; www.bankofengland.co.uk/pru/Pages/publications/codeofpractice.aspx.

⁸ 'The PRA's general approach'.

⁹ See Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

- (b) The impact or potential impact of the misconduct¹⁰ on the stability of the financial system.^{11,12}
- (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 penalty could have on the advancement of those objectives; the factors outlined in paragraph 5.17 below as well as:~~
 - ~~(ii) its duration or frequency;~~
 - ~~(iii) whether it was deliberate or reckless;~~
 - ~~(i) (iv) 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~~
 - ~~(v) whether it reveals serious or systemic weaknesses or potential weaknesses in the auditor's or actuary's management of the provision to PRA authorised persons of audit or actuarial services which relate to requirements imposed on those persons or on the auditor or actuary by the PRA and/or the governance and controls relating to the oversight of all or part of those services; and~~
 - ~~(ii) (vi) 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:

¹⁰ 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.

¹¹ As set out in section 11 of the Act, 'the financial system' refers to the financial system operating in the United Kingdom and includes: (a) financial markets and exchanges, (b) regulated activities, and (c) other activities connected with financial markets and exchanges.

¹² 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.

- (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 body¹³ 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 ~~action for a~~ penalty (and/or other appropriate enforcement action) is not taken-imposed by the PRA and/or 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 action¹⁴ by the PRA, the ~~Financial Conduct Authority ('FCA'), FCA,~~ any predecessor regulators, the Financial Reporting Council ('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;¹⁵

¹³ 'Professional body' would include, but is not limited to, accounting and actuarial bodies covered by the disciplinary scheme of the Financial Reporting Council.

¹⁴ 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.

¹⁵ 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 ~~him~~ 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.

- (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.¹⁶
- (h) The PRA's determination of whether ~~action by it for 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 action for imposing a penalty):
- (i) 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.
 - (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 ~~the Act FSMA~~ or where appropriate, the PRA will also consult or co-operate with the FCA¹⁷ and/or any other relevant regulatory or professional body or law enforcement agency.
 - (iii) The PRA will determine, in the light of these matters and the principles and considerations set out in ~~paragraph 3 above~~, Chapter 1¹⁸ of 'The PRA's approach to enforcement: statements of policy and procedure',¹⁹ whether it is appropriate for the PRA to investigate and take enforcement or other

¹⁶ 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.

¹⁷ See in this regard the memorandum of understanding between the FCA and the PRA (~~the 'MoU'~~) as may be amended or supplemented from time to time.

¹⁸ 'The PRA's general approach'.

¹⁹ See Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

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. ~~5.~~Pursuant to section 345A(4)(b) of the ~~Act~~FSMA, where an auditor or actuary has breached the PRA's rules and/or regulatory requirements, the PRA may publish a Statement of Misconduct statement to that effect (a 'public censure').
- 5.5. ~~6.~~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 ~~paragraph 3 above~~Chapter 1²⁰ of 'The PRA's approach to enforcement: statements of policy and procedure'.²¹
 - (b) The factors set out in paragraph ~~4~~5.34 above (determining whether the PRA will ~~take action for~~impose a penalty).
 - (c) The factors set out in paragraphs ~~8~~5.7 to 5.33 below (determining the appropriate level of penalty).
- 5.6. ~~7.~~Other considerations that may be relevant include the approach of the PRA in any similar previous cases.²²

Determining the appropriate level of penalty

- 5.7. ~~8.~~Where, in the light of the matters set out in ~~paragraphs 3 and 4~~Chapter 1²³ of 'The PRA's approach to enforcement: statements of policy and procedure'²⁴ 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~~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

²⁰ 'The PRA's general approach'.

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

²² 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.

²³ 'The PRA's general approach'.

²⁴ Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

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 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 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 Steps 2, 3 and 4~~:
 - (i) a settlement discount (see paragraphs 5.25 to 5.26 below),²⁵
 - (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 ~~28-5.27~~ to ~~34-5.33~~ below).

5.8. ~~9.~~ 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.²⁶

5.9. ~~10.~~ The PRA recognises that the overall penalty arrived at pursuant to its ~~five-step approach~~ must be appropriate and proportionate to the relevant breach. The PRA may decrease the level of the penalty which ~~that~~ would otherwise be determined following ~~steps Steps 2 and 3~~ if it considers that it is disproportionately high having regard to the seriousness, scale ~~and or~~ effect of the breach. In determining any deterrence uplift at ~~step 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. ~~11.~~ Part 3 (Penalties and Fees) of Schedule 1ZB to ~~the Act FSMA~~ provides, amongst other things, *inter alia* that the PRA may not, in determining its policy with respect to the amounts of penalties to be imposed by it under ~~the Act FSMA~~, take account of expenses which it incurs, or expects to incur, in discharging its functions.

The five steps for PRA's approach to calculating penalties to be imposed on auditors and actuaries

Step 1 — disgorgement

²⁵ Any such discount does not apply to the disgorgement of any economic benefits derived by the auditor or actuary from the breach (~~step Step 1~~).

²⁶ See paragraphs ~~15-5.11~~ to ~~18-5.33~~.

5.11. 42. 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.²⁷

5.12. 43. 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
- (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. 44. 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 — ~~the seriousness of the breach~~ Seriousness

5.14. 45. In addition to any figure in respect of disgorgement established at ~~step~~ Step 1, the PRA will determine at ~~step~~ 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;²⁸ or
- (c) the income of the individual auditor or actuary.²⁹

5.15. 46. In respect of firms:

²⁷ 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.

²⁸ 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.

²⁹ Where the PRA determines that an individual's income is not an appropriate basis for determining a penalty at ~~step~~ Step 2 that properly reflects the seriousness of the breach, it may use an alternative, for example, the net worth of the individual.

- (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.³⁰
- (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 ended³¹ ('relevant revenue').
- (c) The PRA will apply an appropriate percentage rate to the audit or actuarial firm's relevant revenue to produce a figure at ~~step~~ Step 2 that properly reflects the nature, extent, scale and gravity of the breach.³²

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

- (a) The PRA will ordinarily determine a starting point figure at ~~step 2~~ based on the individual's ~~annual relevant~~ income. 'Annual 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 (a)(ii) 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) Ordinarily, the PRA will calculate the individual's annual income during the tax year preceding the date when the breach ended³³ ('relevant income').~~
- (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.

³⁰ 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.

³¹ 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.

³² 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.

~~²² Where the breach is continuing, the PRA may, for example, have regard to the individual's annual income in the last and/or current tax year.~~

- (d) The PRA will apply an appropriate percentage rate to the individual's relevant income to produce a starting point figure at ~~step 2~~ that properly reflects the nature, extent, scale and gravity of the breach.³⁴

5.17. ~~18.~~ 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.
- (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.³⁵
- (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. ~~19.~~ The PRA attaches considerable importance to the timely,³⁶ accurate and complete³⁷ communication and/or notification of matters on which auditors

³⁴ The PRA has the discretion to determine an appropriate seriousness percentage. In general, the more serious or ~~pervasive~~ 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.

³⁵ For example, in relation to consistently late, inaccurate or inadequate communication or notification of matters to the PRA.

³⁶ 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.

³⁷ 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.

and actuaries are required to report to the PRA under legislation³⁸ 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. ~~20.~~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.
- (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~~ Adjustment for any aggravating, mitigating or other relevant factors

5.20. ~~24.~~In cases involving auditors or actuaries, the PRA may increase or decrease the starting-point figure for a punitive penalty determined at ~~step~~ Step 2 (excluding any amount to be disgorged pursuant to ~~step~~ 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~~ Step 2.

5.21. ~~22.~~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.

³⁸ 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) 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 or professional body or law enforcement agency) 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 involvement in it and the timeliness, adequacy and effectiveness of any steps taken by them to address it and/or the consequences of ~~it~~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. ~~23.~~ 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~~ Adjustment for deterrence

5.23. ~~24.~~ If the PRA considers the penalty determined following ~~steps~~ Steps 2 and 3 is ~~insufficiently~~ ineffectively to deter the auditor or actuary who committed the breach and/or others who are subject to the PRA's regulatory requirements from committing ~~similar or other~~ breaches, it may increase the penalty ~~at step~~ 4 by making an appropriate deterrence adjustment to it.

5.24. ~~25.~~ 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~~ Application of any applicable reductions for early settlement or serious financial hardship

Settlement discount

- 5.25. ~~26.~~ 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.³⁹
- 5.26. ~~27.~~ The PRA will apply its settlement decision-making procedure and policy⁴⁰ ~~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~~ to settlement with an auditor or actuary subject to a proposed penalty under section 345A(4)(c) of the Act~~FSMA~~, save that paragraph ~~4-8.2~~ 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 ~~the Act~~ 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; and
 - (b) the PRA's statement of policy on enforcement statutory notices and the allocation of decision-making ~~under the Act~~ in uncontested cases,⁴¹ 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. ~~28.~~ Where an auditor or actuary claims that payment of a penalty determined by the PRA will cause them serious financial hardship, in exceptional circumstances the PRA may reduce the penalty. The onus is on the firm or individual to satisfy the PRA that this would be the case and they must first ask whether the PRA will consider representations on this point.

³⁹ Any applicable settlement discount applied at ~~stage~~ Step 5 will not apply to the disgorgement of any economic benefits determined at ~~step~~ Step 1.

⁴⁰ See Chapter 8 of Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

⁴¹ See Chapter 8 of Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

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

5.29. ~~30.~~ 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-~~authorised~~ persons.

5.30. ~~31.~~ The PRA may, in addition to imposing a penalty, disqualify a firm under section 345A(a) of the ~~Act~~ 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-~~authorised~~ person or a particular class of PRA-~~authorised~~ 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. ~~32.~~ 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 ~~his net~~: (i) their gross annual income will fall below ~~£14,000~~ £22,000; and (ii) their capital⁴² will fall below ~~£16,000~~ £83,133 as a result of payment of the penalty.⁴³

⁴² 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 ~~he lives~~ they live as ~~his~~ 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 ~~remortgaging~~ re-mortgaging or selling the property within a reasonable period.

⁴³ 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. Where a penalty is

- 5.32. ~~33.~~ The PRA may also disqualify an individual auditor or actuary under section 345A(a) of the ~~Act~~ 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. ~~34.~~ 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.

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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.

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

Introduction and interpretation

- 6.1. This statement of policy is issued by the Prudential Regulation Authority (the 'PRA') PRA in accordance with the requirements of sections 69(1) and 210(1) of the Act.¹ FSMA. It sets out the PRA's policy on the imposition and period of suspensions or restrictions under sections 66 and 206A of the Act FSMA.
- 6.2. In applying this statement of policy, the PRA ~~may~~ will have regard to the following general principles and considerations: set out in Chapter 1² of 'The PRA's approach to enforcement: statements of policy and procedure'.³
- (a) ~~In discharging its general functions, the PRA must, so far as is reasonably possible, act in a way which advances its statutory objectives.~~⁴ ~~The PRA is also required to have regard to certain regulatory principles.~~⁵
- (b) ~~The desirability of:~~
- ~~(i) 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;~~⁶ ~~and~~
 - ~~(ii) demonstrating the benefits of such behaviour.~~
- (c) ~~The need to ensure that where disciplinary measures, including suspensions or restrictions, are imposed by the PRA:~~
- ~~(i) they properly reflect the seriousness of the breach of the PRA's regulatory requirements;~~
 - ~~(ii) they are proportionate to the breach;~~

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

² ~~'The PRA's general approach'.~~

³ ~~See Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.~~

⁴ ~~As set out in sections 2B and 2C of the Act.~~

⁵ ~~As set out in sections 2H and 3B of the Act.~~

⁶ ~~In relation to the possible imposition of suspensions or restrictions on PRA authorised persons, the PRA may have regard to the impact or likely impact of the sanction on the person concerned, including their ability to comply with the PRA's regulatory requirements and to remain safe and sound going forward if a suspension or restriction was to be imposed.~~

~~(iii) they, and the threat of similar disciplinary measures for any future misconduct, are effective 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; and~~

~~(iv) they are in the public interest.~~

~~(d) Where relevant, 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.⁷~~

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 the ActFSMA.⁸

(b) 'authorised person' means a person who is authorised for the purposes of the ActFSMA.⁹

(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 the ActFSMA), on:

(i) the carrying on of a regulated activity by an authorised person;¹⁰ or

(ii) the performance by an approved person of any function to which any approval relates.¹¹

(d) 'suspension' means the suspension by the PRA, for such period as it considers appropriate (up to the maximum periods set out in the ActFSMA), of:

(i) any permission which an authorised person has to carry on a regulated activity;¹² or

(ii) any approval of the performance by an approved person of any function to which the approval relates.¹³

~~(e) Words importing the singular number include the plural and vice versa, and words importing the masculine gender only include the feminine.~~

⁷ ~~In this regard, see in 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).~~

⁸ ~~As set out in sections 66(5A) and 66(6) of the ActFSMA.~~

⁹ ~~As set out in sections 31(1) and (2) of the ActFSMA.~~

¹⁰ ~~Pursuant to section 206A(1)(b) of the ActFSMA.~~

¹¹ ~~Pursuant to section 66(3)(ab) of FSMA in relation to conditions and section 66(3)(ac) in relation to limitations on the Act period for which the approval is to have effect.~~

¹² ~~Pursuant to section 206A(1)(a) of the ActFSMA.~~

¹³ ~~Pursuant to section 66(3)(aa) of the ActFSMA.~~

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 ~~the Act~~ FSMA or an approved person under section 66 of ~~the Act~~ 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 ~~paragraph 2 above~~ Chapter 1¹⁴ of 'The PRA's approach to enforcement: statements of policy and procedure'.¹⁵
- (b) The impact or potential impact of the misconduct on the stability of the financial system.¹⁶
- (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 ~~penalty~~ 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 ~~penalty~~ suspension or restriction 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:

¹⁴ 'The PRA's general approach'.

¹⁵ See Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

¹⁶ As set out in section 11 of the Act, 'the financial system' refers to the financial system operating in the United Kingdom and includes: (a) financial markets and exchanges, (b) regulated activities, and (c) other activities connected with financial markets and exchanges.

- (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 penalty-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 action¹⁷ by the PRA, the ~~Financial Conduct Authority ('FCA')~~ FCA and/or any predecessor regulators resulting in an adverse finding against the person;
 - (ii) any private warning¹⁸ given to the person by the PRA, FCA and/or any predecessor regulators;

¹⁷ 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.

¹⁸ 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 ~~him~~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.¹⁹
- (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-authorised 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 the Act FSMA or appropriate, the PRA will also consult or co-operate with the FCA²⁰ 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 paragraph 2 above, Chapter 1²¹ of 'The PRA's approach to enforcement: statements of policy and procedure',²² 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.
- 6.5. ~~The Act FSMA~~ confers on the PRA a wide discretion as to the nature and ambit of any suspension or restriction which it may impose.²³ Subject to the

¹⁹ 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.

²⁰ See in this regard the memorandum of understanding between the FCA and the PRA (the 'MoU') as may be amended or supplemented from time to time.

²¹ 'The PRA's general approach'.

²² See Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

²³ See paragraphs 6.3(c) and (d) of this statement of policy.

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 ~~significant influence~~ function performed by ~~him~~ 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 the Act ~~FSMA~~, where a person has breached the PRA's regulatory requirements, the PRA may publish a statement of ~~his~~ 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 ~~paragraph 2 above~~ Chapter 1²⁴ of 'The PRA's approach to enforcement: statements of policy and procedure'.²⁵
 - (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.²⁶

Determining the period of a suspension or restriction

- 6.10. Where, in ~~the~~ light of the matters set out in paragraphs 6.2 to ~~40~~ 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

²⁴ 'The PRA's general approach'.

²⁵ See Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

²⁶ 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.

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.²⁷
- (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.²⁸
- (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.²⁹
- (h) The seniority or experience of the individual and the extent of ~~his~~ 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

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~~ the breach.³⁰

- (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

²⁷ Considerations that may be relevant for this purpose include those set out at ~~step~~ Step 2 ('the seriousness of the breach') of the 'Statement of the PRA's policy on the imposition and amount of financial penalties under the ActFSMA'.

²⁸ For example, in relation to consistently late, inaccurate or inadequate reporting.

²⁹ For example, the adequacy of the firm's capital and liquid assets relative to its risk profile.

³⁰ Considerations that may be relevant for this purpose include those set out at ~~step~~ 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 the ActFSMA'.

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.³¹
- (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.

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.

³¹ Considerations that may be relevant for this purpose include those set out at ~~step~~ 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 the ActFSMA'.

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 ~~statement of the PRA's settlement decision-making procedure and policy for the determination and amount of penalties and the period of suspensions or restrictions in settled cases'~~ PRA settlement decision-making procedure and policy³² 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.

³² See 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

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.¹ 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'.²

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

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.

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

¹ See section 393 of FSMA.

² 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'.

³ See section 57(5) of FSMA.

general principles referred to in Chapter 1⁴ of ‘The PRA’s approach to enforcement: statements of policy and procedure’⁵. 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 requires firms to be satisfied about when assessing an individual’s fitness and propriety;⁶
- (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 time elapsed since those circumstances arose, the individual’s behaviour thereafter and the individual’s understanding of their past behaviour;
- (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

⁴ ‘The PRA’s general approach’.

⁵ See Annex 1 to ‘The Bank of England’s approach to enforcement: statements of policy and procedure’.

⁶ 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.

(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.

8.1 Statement of the PRA's policy on enforcement statutory notices and the allocation of decision-making under the Act in uncontested cases, and settlement decision-making procedure and policy

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 Bank's Enforcement Decision Making Committee ('EDMC'),¹ and for supervisory and non-enforcement statutory notice decisions.²
- 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;³ and
 - (b) policy on the imposition and period of suspensions or restrictions under FSMA.⁴

~~1. This statement of policy is issued by the Prudential Regulation Authority ('PRA') in accordance with the requirements of section 395 of the Act⁵ that requires the PRA to issue a statement of its procedure in relation to the issuance of statutory notice decisions. Statutory notice decisions are those which give rise to an obligation to issue a supervisory, warning or decision notice under sections 395(1)(a) and 395(1)(b) of the Act.~~

¹ See PS/EDMC2018, Enforcement Decision Making Committee – Policy Statement: <https://www.bankofengland.co.uk/paper/2018/enforcement-decision-making-committee-policy-statement>; 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.

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

³ Chapters 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'.

⁴ 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'.

⁵ The Act means the Financial Services and Markets Act 2000 (as amended).

~~2. In discharging its general functions, the PRA must, so far as is reasonably possible, act in a way which advances its statutory objectives.⁶ The PRA is also required to have regard to certain regulatory principles.⁷~~

~~In settling this statement of policy, the PRA recognises the desirability of:~~

- ~~(a) 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~~
- ~~(b) demonstrating the benefits of such behaviour.~~

~~3. The PRA will ensure that the decision-making procedure is designed to secure, amongst other things that statutory notice decisions are taken by two or more persons who include a person not directly involved in establishing the evidence on which that decision is based as stated in section 395(2) of the Act.~~

~~4. The procedure permits a decision which gives rise to an obligation to give a statutory notice to be taken otherwise as mentioned above if the person taking the decision is of a level of seniority laid down by the procedure and the PRA considers that, in the particular case, it is necessary in order to advance any of its objectives.~~

~~5. In urgent statutory notice cases, a decision can be taken by two decision makers including one who has not been directly involved in establishing the evidence on which that decision is based.~~

~~Introduction to Statutory notices~~

~~8.3. 6. If the PRA proposes to exercise certain statutory enforcement powers, it must give written notice to the person in relation to whom the power is exercised.~~

~~7. Notices are divided into the following categories:~~

NOTICE	DESCRIPTION	ACT REFERENCE
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 <u>FSMA</u>
Decision Notice	States the reasons for the action that the PRA has decided to take. The PRA may also give a further dDecision nNotice 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	Section 388 <u>FSMA</u>

~~6 As set out in sections 2B and 2C of the Act.~~

~~7 As set out in sections 2G and 3B of the Act.~~

	Tribunal ⁸ and the procedure for such a reference.	
Notice of Discontinuance	Identifies the proceedings set out in a w Warning or d Decision n Notice and which are not being taken or being discontinued.	Section 389 <u>FSMA</u>
Final Notice	Sets out the terms of the action that the PRA is taking.	Section 390 <u>FSMA</u>
Supervisory Notice	Details action that the PRA has taken or proposes to take.	Section 395(13)

~~8. The requirement in section 395 of the Act to publish a procedure for the giving of notices does not extend to the giving of a notice of discontinuance or final notice.~~

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

Decision Making

Decision Making Committees

~~9. Decisions as to whether to give a statutory notice will be taken by an appropriate decision making committee (DMC). The PRA will ensure that the level of seniority of the decision maker is appropriate to the importance, complexity and urgency of the decision.~~

~~10. There will be five decision making committees responsible for the issue of statutory notices:~~

- ~~(a) The Prudential Regulation Committee (the PRC) excluding the Financial Conduct Authority Chief Executive Officer;~~
- ~~(b) Supervision, Risk and Policy Committee (SRPC);~~
- ~~(c) Supervision and Assessment Panel (SAP);~~
- ~~(d) Panel of Heads of Departments and Managers (HMP); and~~
- ~~(e) Enforcement Decision Making Committee (EDMC).~~

~~11. The DMCs will also take decisions associated with a statutory notice including decisions to:~~

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

⁹ 'The Bank's regulatory enforcement powers'.

- ~~(a) set or extend time for making representations;~~
- ~~(b) give copies of the statutory notice to any third party setting out that party's rights and time limits to make representations;~~
- ~~(c) grant access to PRA material relevant to the statutory notice under section 394 of the Act; and~~
- ~~(d) publicise the notice.⁴⁰~~

~~12. In all cases, the DMCs will make decisions by having regard to the relevant facts, the law and the PRA's priorities and policies.~~

~~13. The PRA will make appropriate records of those decisions, including records of meetings and the representations (if any) of the recipient(s) of the notice and materials considered by the decision makers.~~

Decision Making Framework

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 Framework¹¹ and in accordance with section 395 of FSMA.¹² 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 ('SRPC').~~

~~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.~~

~~14. The PRA divides all the firms it supervises into five categories of impact.¹³~~

~~15. Statutory notice decisions will be divided into one of four categories. PRA staff will determine into which category each proposed decision falls.~~

Type A	Decisions which: (i) the PRA expects to have a significant impact on a firm's ability to carry out its business effectively or (ii) the PRA considers could have a significant impact on its objectives.
Type B	Decisions which: (i) the PRA expects to have a moderate impact on a firm's ability to carry out its business effectively, (ii) the PRA considers could have a

~~⁴⁰ For further information on publicity notices see the statement of the PRA's approach to publicity of regulatory action~~

~~¹¹ The PRA's Decision-Making Framework in 'The PRA's Allocation of Decision-Making and Approach to Supervisory Decisions'.~~

~~¹² 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).~~

~~¹³ As set out in 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).~~

	moderate impact on its objectives or (iii) may set a sensitive precedent but which would otherwise have fallen under Type C.
Type C	Decisions which: (i) the PRA expects to have a low impact on a firm's ability to carry out its business effectively, (ii) the PRA considers could have a low impact on its objectives, or (iii) relate to which a precedent has already been set.
Type EDMC	Decisions which are statutory notice decisions in contested enforcement cases. ¹⁴ All Type EDMC decisions will be made by the EDMC, regardless of impact. The procedures set out in the document 'Procedures—The Enforcement Decision Making Committee' ¹⁵ will apply.

16. For non-EDMC matters, the choice of which DMC will take a decision will be determined by the category of the firm in conjunction with the anticipated impact of the decision on a firm's ability to carry out its business effectively and/or the impact on the PRA's objectives. In summary, the more significant the firm and the greater the decision's impact, the more senior the composition of the DMC. (See Annex A at the end of this policy).

Disciplinary Powers in relation to Auditors and Actuaries

16A. SRPC will ordinarily act as the DMC for all statutory notice decisions where the PRA is proposing or deciding to exercise its disciplinary powers in relation to auditors and actuaries under section 345A of the Act, as well as for decisions associated with a statutory notice (as set out in paragraph 11 of this policy) — except for contested matters which will fall within the remit of the EDMC as per paragraph 15 above and the table at Annex B. SRPC has the right to escalate any such SRPC decisions to the PRC where it considers it appropriate to do so.

Warning Notices and First Supervisory Notices

General

17. If PRA staff consider that action requiring a warning or first supervisory is appropriate, they will recommend to the relevant DMC that the notice be given.

18. In the case of a supervisory notice, the PRA staff will recommend whether the action should take effect immediately, on a specified date, or when the matter is no longer open to review.

19. In relation to a supervisory notice which does not take effect immediately, a matter is open to review¹⁶ when:

¹⁴— By 'contested', we mean a case where: (i) the parties have been engaged in settlement proceedings but cannot agree on the terms and conditions of the settlement agreement; or (ii) the Bank does not consider it appropriate to invite settlement due to the circumstances of the particular case; or (iii) the subject does not wish to engage in settlement discussions with the Bank.

¹⁵— August 2018: www.bankofengland.co.uk/paper/2018/procedures-the-enforcement-decision-making-committee.

¹⁶— As set out in section 391(8) of the Act.

- ~~(a) the period during which a person may refer a matter to the Tribunal is still running; or~~
- ~~of~~
- ~~(b) the matter has been referred to the Tribunal but has not been dealt with; or~~
- ~~(c) the matter has been referred to the Tribunal and dealt with but the period during which an appeal may be brought against the Tribunal's decision is still running; or~~
- ~~(d) such an appeal has been brought but has not been determined.~~

Approach of the Decision Making Committee

~~20. The DMC will:~~

- ~~(a) consider whether the material on which the recommendation is based is adequate to support it; the decision maker may seek additional information about or clarification of the recommendation;~~
- ~~(b) if the Act requires the PRA to consult the FCA, take into consideration the FCA's views on the issue;~~
- ~~(c) satisfy itself that the action recommended is appropriate in all the circumstances;~~
- ~~(d) decide whether to give the notice and settle the terms of any notice including whether and in what form to publicise the notice.~~

~~21. If the PRA decides to issue a warning or first supervisory notice, the PRA will ensure that the notice meets the requirements set out in the Act.~~

~~22. If the PRA decides to take no further action and the PRA had previously informed the person concerned that it intended to recommend action, the PRA will communicate this promptly to the person concerned.~~

Decision Notices and Second Supervisory Notices

Approach of the Decision Making Committee

~~23. If a DMC is asked to decide whether to give a decision notice or a second supervisory notice it will:~~

- ~~(a) review the material before it;~~
- ~~(b) consider any representations made (whether written, oral or both) and any comments by PRA staff in respect of those representations;~~
- ~~(c) if the Act requires the PRA to consult the FCA, take into consideration the FCA's views on the issue;~~
- ~~(d) decide whether to give the notice and settle the terms of any notice including whether, and in what form, to publicise the notice.~~

~~24. Save where the DMC decides otherwise, the same committee that issued the warning notice or first supervisory notice will determine whether to issue a decision notice or a second supervisory notice and will decide questions concerning publicity.~~

~~25. If the PRA decides to issue a decision notice, it will ensure that the notice meets the requirements set out in the Act.~~

Default Procedures

~~26. If the PRA receives no response or representations within the period specified in the warning notice, the decision maker may regard the allegations or matters in that notice as undisputed and issue a decision notice accordingly.~~

~~27. A person who has not previously made any response or representations to the PRA may nevertheless refer the PRA's decision to the Tribunal.~~

~~28. If the PRA receives no response or representations within the period specified in the first supervisory notice, the PRA will not automatically give a second supervisory notice. The outcome of the default procedure depends on whether the relevant action takes effect immediately or at a future point in time. If the action:~~

- ~~(a) took effect immediately or on a specified date which has already passed, it continues to have effect subject to any decision on a referral to the Tribunal; or~~
- ~~(b) was to take effect at a specified date which is still in the future, it takes effect on that date subject to any decision on referral to the Tribunal; or~~
- ~~(c) was to take effect when the matter was no longer open for review, it takes effect when the period to make representations or refer the matter to the Tribunal expires, unless the matter has been referred to the Tribunal.~~

~~29. In exceptional circumstances, a person who has received a decision notice or against whom action detailed in the warning notice has taken effect may show on reasonable grounds that the person to whom the notice relates did not receive the warning notice or that he had reasonable grounds for not responding within the specified period. In these circumstances, if the DMC considers it appropriate, with the consent of the person to whom the notice relates, it may decide to revoke the decision notice and the matter may be considered afresh or it may decide to give a further decision or supervisory notice.~~

Further Decision Notice

~~30. Following the giving of a decision notice but before the PRA takes action to which the decision notices relates, the PRA may give the person concerned a further decision notice relating to a different action concerning the same matter.¹⁷ The PRA may only do this if the person receiving the further decision notice gives his/her consent.¹⁸ In these circumstances the following procedure will apply:~~

¹⁷— As set out in section 388 (3) of the Act.

¹⁸— As set out in section 388(4) of the Act.

- ~~(a) PRA staff will recommend to the appropriate DMC that a further decision notice be given;¹⁹~~
- ~~(b) the DMC will consider whether the action proposed in the further decision notice is appropriate in the circumstances;~~
- ~~(c) if the DMC decides that the proposed action is inappropriate, it will decide not to give the further decision notice. In this case the original decision notice will stand and the person's rights in relation to that notice will be unaffected. If the person's consent has already been obtained, the PRA will notify the person of the decision not to give the further decision notice;~~
- ~~(d) if the DMC decides that the action proposed is appropriate then subject to the person's consent being (or having been) obtained, the PRA will issue a further decision notice;~~
- ~~(e) a person who had the right to refer the matter to the Tribunal under the original decision notice will have that right under the further decision notice. The time period in which the reference to the Tribunal may be made will begin from the date on which the further decision notice is given.~~

Third party rights and access to PRA material

~~31. In certain warning and decision notices²⁰ there are additional procedural rights relating to third parties²¹ and to disclosure of PRA material.²² These are generally cases in which the warning notice or decision notice is given on the PRA's own initiative rather than in response to an application or notification made to the PRA.~~

The nature and procedure of the DMCs

Composition of decision-making committees DMCs (other than the EDMC)²³

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. 32. All DMC members are usually PRA employees and part of its executive management structure other than the members of the Regulatory Sub-Committee of the PRC where some members will be non-executives. However, if the DMC is the Prudential Regulation Committee ('PRC'), one or more of the DMC members may be external.²⁴

¹⁹ Either before or after obtaining the person's consent.

²⁰ As set out in section 392 of the Act.

²¹ As set out in section 393 of the Act.

²² As set out in section 394 of the Act.

²³ The composition of the EDMC is set out in 'Procedures – The Enforcement Decision Making Committee', August 2018: www.bankofengland.co.uk/paper/2018/procedures-the-enforcement-decision-making-committee.

²⁴ <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

~~33. A DMC will usually be composed of at least 3 members who will include a chairperson although the size may vary depending on the nature of the particular matter under consideration.~~

~~34. The members of a DMC will usually meet in person but may, in appropriate cases, discuss cases in writing or by telephone or by email or other electronic means.~~

~~8.9. 35. 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 procedures for the DMC

~~8.10. 36. One member of the DMC will act as chairperson. The chairperson of a DMC will determine the manner in which a decision will be taken, ensuring that it is dealt with fairly and expeditiously.~~

~~37. A DMC will aim to reach a consensus on the decisions they are asked to consider. Each member of a DMC is entitled to vote on the matter under consideration. In the event that a consensus cannot be reached by a DMC, a decision will be taken based on a majority vote and the chairperson of the DMC will have the casting vote in a tie.²⁵~~

~~38. In a situation where a DMC member has to recuse him/herself from a DMC due to~~

~~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. 39. 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); or~~
- ~~(b) further explanation of any aspect of the PRA staff recommendation or accompanying papers; or~~
- ~~(c) information about the PRA priorities and policies; and/or~~
- ~~(d) legal advice.~~

~~40. A DMC cannot require individuals to attend before it, provide documents or give evidence. It will make decisions based on all the relevant information available to it.~~

Decision Making Committee', as amended and supplemented from time to time:

www.bankofengland.co.uk/paper/2018/procedures-the-enforcement-decision-making-committee.

²⁵ Save in relation to settled cases where a decision by the relevant DMC to approve and conclude a binding settlement agreement must be unanimous.

Procedure for warning notices and first supervisory notices

~~41. If PRA staff consider that action is appropriate, they will make a recommendation to the appropriate DMC that a warning notice or supervisory notice should be given.~~

~~42. As set out above, the appropriate DMC will be selected to decide the case.~~

~~43. As set out above, the DMC will consider whether it is right in all the circumstances to give the statutory notice.~~

~~44. If the matter requires the PRA to consult the FCA, the PRA will take into consideration the FCA's views on the issue.~~

~~45. If the DMC decides that the PRA should give a warning notice or first supervisory notice, the DMC will:~~

~~(a) settle the wording of the notice;~~

~~(b) make any relevant statutory notice associated decisions; and~~

~~(c) consider whether it is desirable to publicise the notice as provided in the PRA's approach to publicity of regulatory action.²⁶~~

~~46. The PRA will make appropriate arrangements for:~~

~~(a) the notice to be given;~~

~~(b) disclosure of the FCA's views on the matter or its reasons if it proposes to refuse consent or to give conditional consent where the Act requires it;~~

~~(c) the disclosure of the substantive communications between the DMC and the PRA staff who made the recommendation on which the DMC's decision is based. This may include providing copies in electronic format.~~

Procedure for representations

~~47. A warning notice or a first supervisory notice will specify that the time for making representations will be no less than 14 days.~~

~~48. The PRA will also, when giving the warning or first supervisory notice specify a time within which the recipient is required to indicate whether (s)he wishes to make oral representations.~~

~~49. The recipient of the warning notice or first supervisory notice may request an extension of time allowed for making representations. Such a request should normally be made within 14 days of the notice being given.~~

~~50. If a request is made for an extension of time for making representations, the chairperson of the allocated DMC will decide whether it is fair in all the circumstances to allow an extension, and if so, how much additional time is to be allowed for making~~

²⁶ For further information on the publicity process see the statement of the PRA's approach to publicity of regulatory action.

~~representations. In reaching his/her decision (s)he may take account of any recommendation by PRA staff responsible for the matter.~~

~~51. The PRA will notify the relevant party and the PRA staff responsible for the matter of the decision in writing.~~

~~52. If the recipient of the warning or first decision notice indicates that (s)he wishes to make oral representations the PRA will seek to arrange a date suitable to the recipient of the notice and the DMC that will hear the representations.~~

~~53. The chairperson of the relevant meeting will ensure that the meeting is conducted so as to enable:~~

~~(a) the recipient of the warning or first supervisory notice, or any third party who has the right to do so, to make representations;~~

~~(b) the relevant DMC members to raise with those present any points or questions about the matter; and~~

~~(c) the recipient to respond to points made by the DMC.~~

~~54. The chairperson may ask the recipient of the notice to limit his/her representations or response in length or to particular issues.~~

~~55. The recipient of the warning notice or supervisory notice may choose to be legally represented at the meeting, but this is not a requirement.~~

~~56. In appropriate cases, the chairperson of the DMC hearing the oral representations may require the recipient of the warning or first supervisory notice to provide additional information in writing after the meeting. If (s)he does so, (s)he will specify the time within which that information is to be provided.~~

~~57. During the hearing the DMC may ask either side to comment on issues raised if it feels it is necessary to help its understanding of the case.~~

~~58. The relevant PRA staff will attend the oral hearing for the recipient of the notice but will not respond to any representations at the meeting unless asked to do so by the DMC.~~

~~59. The relevant PRA staff may provide the DMC with a written response to the oral representations no later than 7 days after the hearing.~~

~~60. Save in exceptional circumstances, whilst a matter is still on-going, the DMC will not, after the PRA has given a warning or first supervisory notice, meet with the PRA staff responsible for the case without other relevant parties being present or otherwise having the opportunity to respond.~~

~~61. Save in exceptional circumstances, the DMC will not, after having received any written response from the relevant PRA staff to the oral representations, meet or discuss the matter with the PRA staff responsible for the case.~~

~~62. If such exceptional circumstances arise, the DMC will disclose such meetings or discussions with the recipient of the notice and permit him the opportunity to respond.~~

~~63. Where the decision being considered is one that requires FCA consent, the PRA, in consultation with the FCA will decide whether it is more appropriate for the FCA rather than the PRA to hear the representations and will advise the recipient of the notice accordingly.~~

Procedure for decision notices and second supervisory notices

~~64. If no representations are made in response to the warning notice or first supervisory notice, the PRA will regard as undisputed the allegations or matters set out in the notice and the default procedure set out above will apply.~~

~~65. However, if the representations are made, the relevant DMC will consider as set out above, whether or not to give the decision notice or a second supervisory notice.~~

~~66. If the relevant DMC decides that the PRA will give a decision notice or a second supervisory notice it will:~~

- ~~(a) include in the notice a brief summary of how it has dealt with the key representations made;~~
- ~~(b) make any relevant statutory notice associated decisions, including whether the PRA is required to give a copy of the notice to any third party; and~~
- ~~(c) consider whether it is desirable to publicise the notice as provided in the PRA's approach to publicity of regulatory action.~~

~~67. The PRA will make the appropriate arrangements for the distribution of the notice to all the relevant parties.~~

~~68. If the relevant DMC decides that the PRA should not give a decision notice or a second supervisory notice it will notify the relevant parties (including the PRA staff) of the decision in writing.~~

Discontinuance of PRA actions

~~69. PRA staff responsible for recommending action to the relevant DMC will continue to assess the appropriateness of the proposed action in light of any new information or representations they receive and any material change in the facts or circumstances relating to a particular matter. It may be therefore that they decide to give a notice of discontinuance to a person to whom a warning notice or a decision notice has been given. The decision to give a notice of discontinuance does not require the agreement of the relevant DMC, but the PRA staff will inform the relevant DMC of the discontinuance of the proceedings.~~

Urgent statutory notice cases²⁷

~~70. In a situation where the PRA considers that, in a particular case, in order to advance any of its objectives, it is necessary to take a decision before a recommendation can be made to the appropriate DMC, a decision can be made by two individuals of at least the~~

²⁷—This does not apply to cases within the remit of the EDMC.

same level as the individuals who would have comprised the appropriate DMG. In that case, the decision will only be taken if the two decision makers are unanimous.

71. At least one of the two individuals will not have been directly involved in establishing the evidence on which that decision is based and where practicable PRA will seek to ensure that both executives will not have been so involved.

Settlement decision-making procedure

General Procedure

72. A person who is or may be subject to enforcement action may wish to discuss the proposed action with PRA staff through settlement discussions.²⁸

73. Where a binding settlement of a regulatory enforcement action by the PRA can be concluded and a disciplinary measure is to be imposed by the PRA, that decision will ordinarily give rise to a statutory obligation on the PRA to give the person concerned the requisite statutory notices. The fact that the matter is settled will not remove or otherwise alter that obligation. Accordingly, the PRA will normally issue the requisite statutory notices recording the PRA's decision to take the action. The decision to issue the requisite statutory notices will be taken in accordance with paragraph 16 above.

Procedure in relation to decision makers involved in settlement decision making

74. Where the PRA staff has reached an in-principle settlement agreement with the person subject to enforcement action, the terms of any proposed settlement will be put in writing and agreed in principle by the PRA staff and the person concerned.

75. A summary of the case coupled with the terms of the in-principle settlement agreement will be sent to the appropriate DMG.

76. The DMG that will consider the settlement will be determined in accordance with paragraph 16 above.

77. Where the DMG requires clarification of or changes to the proposed settlement agreement, further settlement discussions may be required to seek to agree a modified proposed settlement agreement. The PRA shall, in its discretion, determine the nature and timing of its input to such further discussions.

78. The DMG may:

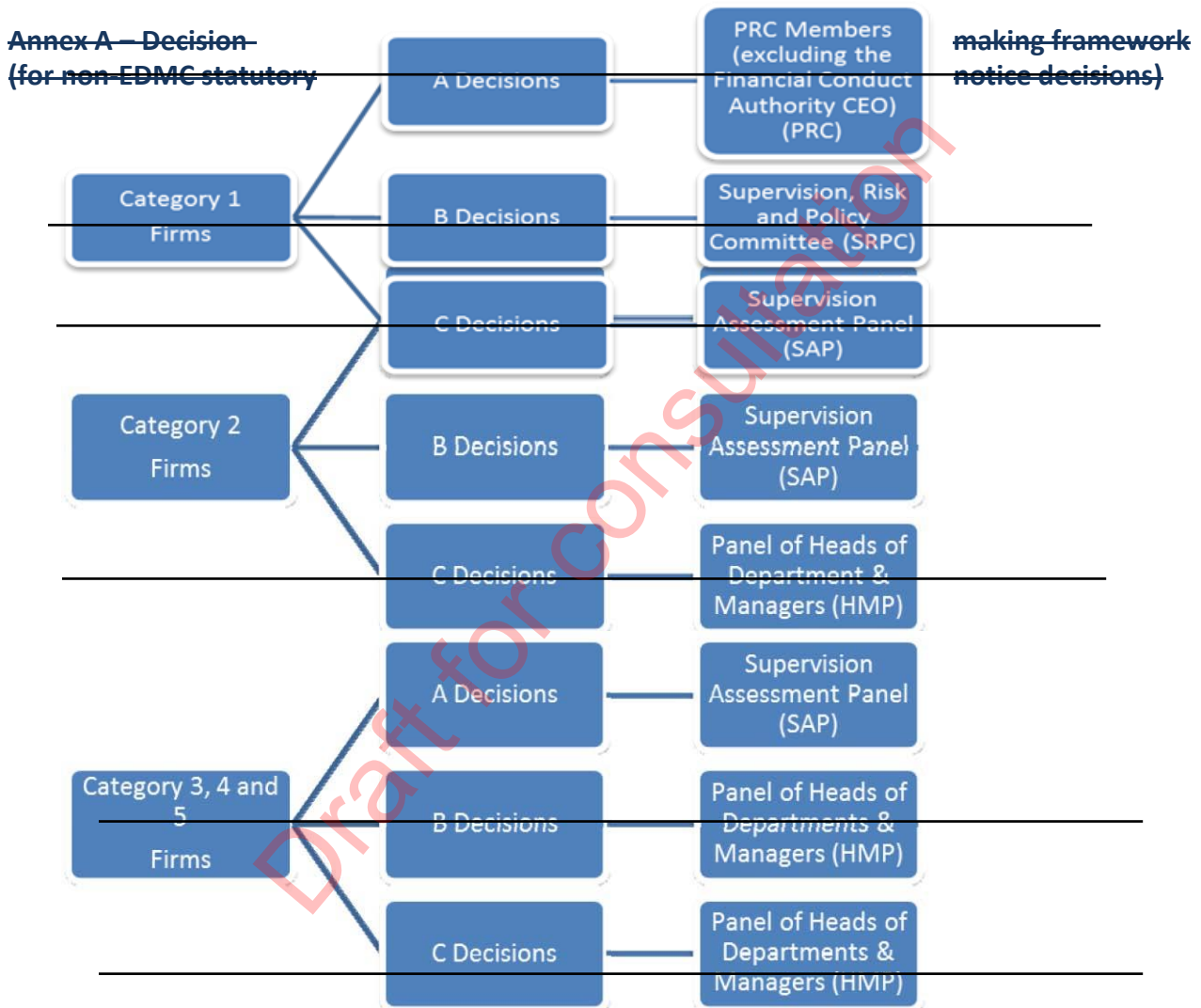
- (a) endorse the proposed settlement by deciding to give the relevant statutory notices based on the terms of the settlement;
- (b) decline the proposed settlement.

²⁸ For further information on the settlement process see the 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.

79. Where the DMC declines to endorse a settlement agreement, it may invite PRA staff and the person concerned to enter into further discussions to try and achieve an outcome the settlement decision makers would be prepared to endorse.

80. If a settlement decision is reached that the DMC is willing to endorse, the DMC will issue the relevant statutory notices based on the terms of the settlement.

81. If a settlement decision is not reached and the matter remains contested, the EDMC will not be privy to any details from the settlement discussions.



Annex B— Overview of the EDMC’s decision making role with regard to warning notices and decision notices under the Act

Description	Statutory provision	Type of Notice	Notice requirement
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.63(B)(1)
Decision to impose a penalty on a person for performing a controlled function without approval	FSMA s.63A	Decision Notice	FSMA s.63(B)(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	FSMA s.142S	Warning Notice	FSMA s.142T(1)
Decision to impose penalty or issue censure on a qualifying parent undertaking	FSMA s.142S	Decision Notice	FSMA s.142T(4)
Proposal to impose a financial penalty or publicly censure qualified parent undertakings	FSMA s.192k	Warning Notice	FSMA s.192(L)(1)
Decision to impose a financial penalty or publicly censure qualified parent undertakings	FSMA s. 192k	Decision Notice	FSMA s.192(L)(4)
Proposal to publish a statement of public censure in relation to an authorised person	FSMA s.205	Warning Notice	FSMA s.207(1)

Description	Statutory provision	Type of Notice	Notice requirement
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 permission, or impose limitations or restrictions on an authorised person	FSMA s. 206A	Decision Notice	FSMA s.208(1)
Proposal to censure publicly a recognised body	FSMA s.312E	Warning Notice	FSMA s.312G(1)
Decision to censure publicly a recognised body	FSMA s.312E	Decision Notice	FSMA s.312H(1)
Proposal to impose a financial penalty	FSMA s.312F	Warning Notice	FSMA s.312G(1)
Decision to impose a financial penalty	FSMA s.312F	Decision Notice	FSMA s.312H(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)

~~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), 192N(1), 142V(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.

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 1² of ‘The PRA’s approach to enforcement: statements of policy and procedure’.³ 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 economical way.

3. In discharging its general functions, the PRA must, so far as is reasonably possible, act in a way which advances its statutory objectives.⁴ The PRA is also

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

² ‘The PRA’s general approach’.

³ See Annex 1 to ‘The Bank of England’s approach to enforcement: statements of policy and procedure’.

⁴ As set out in sections 2B and 2C of the Act.

~~required to have regard to certain regulatory principles,⁵ including the need for it to use its resources in the most efficient and economical way.~~

8.14. ~~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~~FSMA 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;
- (b) save time and resources (for the PRA and the subject of the proposed enforcement action by it); and
- (c) remove uncertainty of outcome for the PRA and the subject of the proposed action inherent in contested proceedings before the Bank's ~~Enforcement Decision-Making Committee (EMC)~~EDMC and/or the Upper Tribunal.

8.15. ~~5.~~In the course of ~~enforcement action~~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 ~~policy~~chapter and any relevant guidance or other materials issued by the PRA; and
- (c) the facts and circumstances of the case in question.⁶

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

8.17. ~~7.~~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 ~~the Act~~FSMA, details of which are set out below.

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

8.18. ~~8.~~Regulatory enforcement action by the PRA is conducted pursuant to and in accordance with the statutory scheme set out in ~~the Act~~FSMA. The process

⁵ ~~As set out in sections 2H and 3B of the Act.~~

⁶ 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.

leading up to the imposition of an ~~disciplinary enforcement~~ sanction has a number of ~~prescribed stipulated~~ stages and requires the PRA to give the subject of the proposed enforcement action prescribed statutory notices.

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

8.20. ~~10.~~–A settlement of regulatory enforcement action ordinarily will involve a regulatory decision by the PRA. Where an ~~disciplinary 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.⁷ 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.⁸

11. ~~[Deleted]~~

8.21. ~~12.~~–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 ~~288.41~~), 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 ~~308.44~~. 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 ~~w~~Warning ~~n~~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.

8.22. ~~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

⁷ 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.

⁸ The PRA’s Decision-Making Framework in ‘The PRA’s Allocation of Decision-Making and Approach to Supervisory Decisions’.

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.⁹

~~8.23.~~ 14. Subject to and in accordance with the terms of section 391 of the Act 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.~~ 15. Subject to paragraph ~~16~~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 regulatory proposed enforcement action following an investigation of a suspected breach of its regulatory requirements but prior to the giving of a ~~w~~Warning nNotice or following a ~~w~~Warning nNotice but before a ~~d~~Decision nNotice. In exercising its discretion, the PRA will have regard to all relevant factors, including those set out in paragraphs ~~8.13, 4~~ and 8.15 above.

~~8.25.~~ 16. The PRA will not normally 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
- (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.~~ 17. 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. ~~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~~

⁹ 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.

~~conveyed to the relevant settlement decision making committee (DMC) prior to any decision being reached.~~

8.27. ~~18.~~ 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 relevant 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. ~~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 parties (the 'proposed settlement agreement').

8.29. ~~20.~~ 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,¹⁰ 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

8.30. ~~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~~ the 'Statement of the PRA's Policy on enforcement statutory notices and the allocation of decision-making under the Act in uncontested cases',¹¹ be reached by an appropriate ~~decision-making committee ('DMC')~~.

8.31. ~~22.~~ A summary of the case and the terms of ~~t~~The proposed settlement agreement will be submitted by the PRA's investigators and/or any other

¹⁰ Determined in accordance with the PRA's settlement discount scheme set out in paragraphs ~~26 to 28~~ 8.37 to 8.41 of this statement of policy.

¹¹ 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'.

members of the PRA's staff responsible for the conduct of the matter to the DMC.

8.32. ~~23.~~ Any decision by the DMC to approve and conclude a binding settlement agreement¹² must be unanimous.

8.33. ~~24.~~ In cases where a binding settlement agreement is approved and concluded by the DMC and the subject, the PRA will give the subject of its the investigation 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 ~~the Act~~ FSMA; ¹³
- (b) in the case of action under section 66(3)(aa) or (ab) of ~~the Act~~ FSMA, any other interested parties.¹⁴

8.34. ~~25.~~ ~~Subject to the stage the enforcement process has reached when~~ 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 ~~the Act~~ FSMA;
- (d) to object to the giving of any ~~Decision~~ ~~Notice~~;
- (e) to refer the matter to the Tribunal¹⁵ and/or otherwise seek to challenge any aspect of the matter, including by way of a claim for judicial review.

Third party rights and access to PRA material

8.35. For Warning and Decision Notices,¹⁶ some third parties¹⁷ have rights to receive a copy of a draft statutory notice, to make certain representations and to access PRA material.¹⁸ These rights arise only when a statutory notice is given. In the course of settlement discussions, PRA staff may engage with

¹² ~~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.~~

¹³ The PRA's DMC will also consider any representations made by third parties, pursuant to section 393(3) of ~~the Act~~ FSMA, in response to any notice given them.

¹⁴ 'Other interested parties' has the meaning set out in section 67(9) of ~~the Act~~ FSMA.

¹⁵ 'Tribunal' means the Upper Tribunal (Tax and Chancery Chamber) or any successor body.

¹⁶ As set out in section 392 of FSMA.

¹⁷ As set out in section 393 of FSMA.

¹⁸ As set out in section 394 of FSMA.

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. 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 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 28-8.39 and 8.40 below.

8.38. 27. Subject to 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 penalties¹⁹ or the imposition and period of suspensions and restrictions,²⁰ as appropriate, the amount or period of the sanction that it is proposing to impose²¹ (the 'pre-discount sanction').

8.39. 28. 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 ~~30%~~ the Relevant Discount.

8.40. The Relevant Discount means:

- A figure higher than 30% and up to 50%, in cases where:
 - o the subject has co-operated with the PRA by participating in the EAS and providing an Account, any related documents and co-

¹⁹ 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'.

²⁰ 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'.

²¹ Where a ~~w~~Warning ~~n~~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.

operation which, in the PRA's view, complies with the PRA's requirements in relation to the subject's participation in the EAS;

- o 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
- o in the PRA's view, the subject's co-operation merits a discount above 30%, having regard to all relevant circumstances, including:
 - whether they provided comprehensive and accurate information within the timeframes required by the PRA;
 - whether the subject has materially assisted the PRA in the efficient and effective conduct of the investigation, in particular by enabling the PRA to more quickly 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;
 - whether and, if so, how promptly the subject ceased the behaviour giving rise to the breach;
 - whether the subject repeated, or failed to stop, the behaviour giving rise to the breach;
 - the adequacy and promptness of any remediation; and
 - the subject's supervisory and disciplinary record.

- 30% in all other cases.

8.41. 'Discount Stage' means the period from the commencement of an enforcement investigation by the PRA until the PRA has between:

- (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 the date on which the PRA invites, in writing, the subject of the investigation to participate in settlement discussions; and
- (b) allowed what it considers to be a reasonable opportunity for the parties to reach a settlement agreement. 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.

8.42. 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.

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

8.44. 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.~~

Referral to EDMC

8.45. 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

8.46. 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 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.

Draft for consultation

9.5 Statement of the PRA's approach to publicity of enforcement regulatory action

Introduction

- 9.1. This statement of procedure and policy is issued by the Prudential Regulation Authority ('PRA'). PRA. It deals with the question of publicity of statutory notice decisions by the PRA.¹
- 9.2. In ~~discharging its general functions~~ applying this statement of policy, 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 will have regard to certain regulatory the general principles,³ including and considerations set out in Chapter 1⁴ of 'The PRA's approach to enforcement: statements of policy and procedure'.⁵ These include having regard to the desirability in appropriate cases of the PRA publishing information relating to persons on whom requirements are imposed under the Act 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 has ~~appointed~~ appoints investigators (for example under ~~section~~ sections 167 ~~to~~ 169 of the Act FSMA) until it has decided to issue a Warning Notice.

¹ Unless inconsistent with the subject or context, references in this statement of policy and procedure to 'the Act' are to 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

⁴ 'The PRA's general approach'.

⁵ See Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

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;
- (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.⁶

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 ~~the Act~~ 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,⁷ section 391 of ~~the Act~~ 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.

⁶ Who may have or acquire rights in relation to the matter by virtue of section 393 of ~~the Act~~ FSMA.

⁷ The categories of Warning Notice to which the power applies are set out in section 391(12B) of ~~the Act~~ FSMA.

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:

- (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 ~~the Act~~ 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 – ~~Supervisory~~, Decision and Final Notices

9.12. Section 391 of ~~the Act~~ 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 ~~Supervisory Notice~~,⁸ a Decision Notice and a Final Notice relate.

9.13. However, section 391 of ~~the Act~~ 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 ~~429.13~~ 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 ~~or~~ ~~Supervisory~~ Notice, the PRA will consider any representations made to it (whether as a result of a formal requirement to consult under ~~the Act~~ FSMA,

⁸ ~~As defined in section 395(13) of the Act.~~

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,⁹ and should contain detailed information – with reference to the test in section 391 of ~~the Act~~ FSMA – as to why it would not be appropriate for the PRA to publish details of the relevant notice.

9.17. The PRA ~~will not normally~~ 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 private¹⁰ 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 ~~the Act~~ 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.¹¹

9.20. In relation to Decision Notices, and ~~Final Notices and Supervisory 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 will take?

9.21. In relation to information concerning a Warning Notice publicised pursuant to the PRA's power under section 391 of ~~the Act~~ 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

⁹ 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.

¹⁰ The Tribunal Procedure (Upper Tribunal) Rules 2008, rule 37.

¹¹ For further information about the decision-making process see the ~~statement~~ 'Statement of the PRA's policy on enforcement statutory notices and the allocation of decision-making under in uncontested cases, and settlement decision-making procedure and policy for the Act ~~determination and amount of penalties and the period of suspensions or restrictions in settled cases'~~.

to, the name of the firm or individual or a Firm Reference Number; or an Individual Reference Number;

- (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,¹² 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 and Supervisory Notices~~, publicity will generally include placing the relevant notice on the PRA's ~~web-site~~ website. The notice may be accompanied by a press release.

9.23. In relation to Final ~~Notices and Supervisory Notices~~, the PRA will also consider what matters it should notify to the FCA for inclusion on the FCA's public register Financial Services Register.¹³

Reviewing whether continuing publicity remains appropriate

9.24. Where it has published details of a Warning, Decision, or Final or Supervisory 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);

¹² A Warning Notice is akin to a 'minded to' decision.

¹³ <https://www.fca.org.uk/firms/financial-services-register>. Section 347A of the Act requires the PRA to provide the FCA with certain information relating to any prohibition order it may make relating to an individual.

- (g) whether continued publication is necessary for the purposes of deterrence and/or advancing its statutory objectives;
- (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

Draft for consultation

10 Introduction–Statement of policy updates

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.¹⁴

2013

10.2. ~~1.~~ This Prudential Regulation Authority (‘PRA’) PRA sStatement of pPolicy was first published on 1 April 2013 and included statutory statements of policy and procedure¹⁵ 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.¹⁶

2016

10.3. ~~2.~~ Following the publication on 21 January 2016 of pPolicy sStatement (PS) 1/16 ‘Engagement between external auditors and supervisors and commencing the PRA’s disciplinary powers over external auditors and actuaries’,¹⁷ this sStatement of pPolicy 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

¹⁴ 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>

¹⁵ The April 2013 version is available at <https://www.bankofengland.co.uk/prudential-regulation/publication/2013/the-pra-approach-to-enforcement-statutory-statements-of-policy-and-procedure-sop> 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>.

¹⁶ ‘the Act’ means the Financial Services and Markets Act 2000 (as amended).

¹⁷ Available at <https://www.bankofengland.co.uk/prudential-regulation/publication/2015/engagement-between-external-auditors-and-supervisors-and-commencing-the-pras-disciplinary-powers-PS-1/16>: <https://www.bankofengland.co.uk/prudential-regulation/publication/2015/engagement-between-external-auditors-and-supervisors-and-commencing-the-pras-disciplinary-powers>, January 2016.

(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 the Act 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 the Act 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, as set out in Chapter 7.

2018

10.4. ~~3.~~ Following publication on 3 August 2018 of the Bank of England Policy Statement 'PS/EDMC2018',¹⁸ this sStatement of pPolicy has been updated to reflect the policy changes in PS/EDMC2018 which establish the Enforcement Decision Making Committee.

2019

10.5. ~~4.~~ Following the publication on 5 March 2019 of Policy Statement 'PS6/19',¹⁹ this sStatement of pPolicy has been updated to apply the PRA's policy on the imposition and amount of financial penalties under the Act FSMA (as set out in Chapter 2) to the imposition and amount of financial penalties under section 142S of the Act FSMA.

10.6. ~~5.~~ Following the publication on 4 October 2019 of Policy Statement 'PS23/19',²⁰ this sStatement of pPolicy has been updated to reflect the policy changes in PS23/19 to the PRA's settlement policy as set out in Chapter 4.

~~6. This Statement of Policy includes the original content from the April 2013 version with the amendments and additions set out in PS1/16, the amendments and additions set out in PS/EDMC2018 and the additions set out in PS/6/19.~~

8 Annex – SoP updates

~~This annex details changes that have been made to this SoP.~~

2021

¹⁸ 'Enforcement Decision Making Committee', August 2018: www.bankofengland.co.uk/paper/2018/enforcement-decision-making-committee-policy-statement.
<https://www.bankofengland.co.uk/paper/2018/enforcement-decision-making-committee-policy-statement>

¹⁹ Available at <https://www.bankofengland.co.uk/prudential-regulation/publication/2018/occasional-consultation-paper> March 2019: <https://www.bankofengland.co.uk/prudential-regulation/publication/2018/occasional-consultation-paper>.

²⁰ Page 1 of 2 at: <https://www.bankofengland.co.uk/prudential-regulation/publication/2019/enforcement-changes-to-the-pras-settlement-policy> PRA policy statement 23/19: <https://www.bankofengland.co.uk/prudential-regulation/publication/2019/enforcement-changes-to-the-pras-settlement-policy>

September 2021

10.7. Following publication of PS21/20 'Financial holding companies: Further implementation',²¹ paragraph 11b was added to Chapter 2 of this ~~SoP~~ statement of policy to explain the PRA's approach to action against financial holding companies or mixed financial holding companies under section 192Y of the ~~Act~~ FSMA.

~~Please see the SoP's landing page for further past versions.~~

2023

10.8. Following the publication on [INSERT] of Policy Statement [INSERT], 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);
- (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).

²¹ September 2021: PS21/20 'Financial holding companies: Further implementation'.
<https://www.bankofengland.co.uk/prudential-regulation/publication/2021/june/financial-holding-companies-further-implementation>'.

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 PS[xxx/xxx] 'The PRA's Allocation of Decision-Making and Approach to Supervisory Decisions'.

Draft for consultation

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

Draft for consultation

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Draft for consultation

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 UK RCHs and Recognised CSDs (‘FMI QPUs’), operators of recognised interbank payment systems (‘RPS’) and service providers of RPS (‘Service Providers’).¹ 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 the Financial Services and Markets Act 2000 (‘FSMA’) and the Banking Act 2009 (‘BA09’).² In summary, where there has been a breach³ by an FMI, the Bank has various powers to, where applicable:

(a) impose financial penalties;⁴

(b) publish public censures;⁵

(c) prohibit individuals;⁶ and

(d) issue a closure order.⁷

1.3. The Bank also has disciplinary powers with respect to certain auditors of RCHs and Recognised CSDs.⁸

¹ 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’.

² 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.

³ 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 (see section 312E of FSMA), an FMI QPU has contravened a direction or information rule (see section 192K(1) of FSMA), or there has been a compliance failure by the operator of an RPS or a Service Provider (see section 196 of BA09).

⁴ Sections 192K, 312F and 312FA of FSMA and section 198 of BA09.

⁵ Sections 192K, 312E and 312FA of FSMA and section 197 of BA09.

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

⁷ Section 199 of BA09.

⁸ 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 ('financial stability objective').⁹ 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');¹⁰
 - (b) the Bank's approach to the supervision of service providers of recognised payment systems ('Approach to Supervision of Service Providers');¹¹
 - (c) information on the effect of the UK's withdrawal from the EU on FMI supervision;¹² and
 - (d) the procedures of the Bank's Enforcement Decision Making Committee ('EDMC Procedures').¹³
- 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';¹⁴ and

⁹ Section 2A of the Bank of England Act 1998.

¹⁰ <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.

¹¹ <https://www.bankofengland.co.uk/-/media/boe/files/annual-report/2018/sfmi-annual-report-2018-annex.pdf>, February 2018, as amended and supplemented from time to time.

¹² See <https://www.bankofengland.co.uk/eu-withdrawal/information-on-the-effect-of-the-uks-withdrawal-from-the-eu-on-fmi-supervision> and <https://www.bankofengland.co.uk/-/media/boe/files/paper/2022/boes-approach-to-comparable-compliance-under-emir-article-25-sop-jun-22.pdf>, both as amended and supplemented from time to time.

¹³ '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.

¹⁴ <https://www.bankofengland.co.uk/-/media/boe/files/statement/2013/financial-penalties-policy-statement.pdf>, April 2013.

(b) the Bank's August 2018 'Statutory statements of procedure in respect of the Bank of England's supervision of financial market infrastructures'.¹⁵

1.9. In conjunction with the EDMC Procedures,¹⁶ 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;¹⁷ 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 BA09.¹⁸

Draft for consultation

¹⁵ 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.

¹⁶ The EDMC Procedures set out procedures in relation to statutory notice decisions in contested enforcement cases.

¹⁷ 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.

¹⁸ See 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

Introduction

- 2.1. ~~4-~~This statement of policy¹ is issued by the Bank of England (the 'Bank') in respect of ~~r~~Recognised ~~c~~Clearing ~~h~~Houses (including recognised central counterparties) ('RCHs'), ~~third country central counterparties~~, recognised central securities depositories ('Recognised CSDs'), ~~q~~Qualifying ~~p~~Parent ~~u~~Undertakings of UK RCHs ~~and Recognised CSDs~~ ('FMI QPUs'), ~~and~~ operators of recognised inter-bank payment systems ('RPS'), ~~service providers of RPS~~ ('Service Providers'),² as well as those responsible for the management of certain bodies and others involved in breaches (where applicable).³ It sets out the Bank's policy on the imposition and amount of penalties under sections 312F, 312FA and 192K of the Financial Services and Markets Act 2000 ('FSMA'),⁴ and section 198(3) of the Banking Act 2009 ('BA09').
- 2.2. ~~This statement of policy~~⁵ 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 BA09.⁶
- 2.3. ~~2-~~For the purposes of this policy, RCHs, ~~third country central counterparties~~, Recognised CSDs, FMI QPUs, ~~and operators of RPS and Service Providers~~ recognised inter-bank payment systems are collectively referred to as the 'relevant bodies' ~~or financial market infrastructures~~ ('FMIs').
- 2.4. ~~3-~~Where this policy refers to a 'breach', this covers situations where an RCH, ~~Recognised CSD or third country central counterparty~~ has contravened a

¹ 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.

² 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'.

³ See the requirements of s.312J and s.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 s.198 of the Banking Act 2009 in respect of operators of payment systems.

⁴ All references in this document policy to FSMA are to that Act, (where applicable) as amended by the Financial Services Act 2012 and applied to the Bank in respect of RCHs by Schedule 17A.

⁵ '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'.

⁶ 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/-/media/boe/files/statement/2013/financial-penalties-policy-statement.pdf>.

relevant requirement imposed on it;⁷ or an FMI QPU has contravened a direction or information rule;⁸ or there has been a compliance failure⁹ by the operator of an RPS or a Service Provider, a recognised inter-bank payment system.

- 2.5. ~~4.~~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 ~~three~~ 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.¹⁰
- 2.7. ~~5.~~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 1¹¹ of 'The Bank's approach to enforcement in respect of Financial Market Infrastructures: statements of policy and procedure',¹²
 - (b) (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; and
 - ~~(b) the desirability of demonstrating the benefits of such behaviour; 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.

⁷ See section 312FE of FSMA.

⁸ See section 192K(1) of FSMA.

⁹ Section 196 of the Banking Act 2009 defines as a 'compliance failure' a failure to: (a) comply with a code of practice under s189 (codes of practice); (b) comply with a requirement under s190 (system rules); (c) comply with a direction under s191 (directions); or (d) ensure compliance with a requirement under s195 (independent report)BA09.

¹⁰ See section 345A of FSMA, which applies to such auditors pursuant to paragraph 21 of Schedule 17A to FSMA.

¹¹ 'Introduction'.

¹² See Annex 2 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

~~2.8. 6.~~ Prior to imposing a penalty the Bank will provide a ~~w~~Warning ~~n~~Notice¹³ allowing an opportunity for the relevant body or individual to make representations, and will consider any representations made.¹⁴

~~2.9. 7.~~ Where the Bank ~~intends~~ decides to impose a financial penalty, the relevant body or individual may appeal to the Upper Tribunal.¹⁵

Policy concerning whether the Bank will impose a financial penalty

~~2.10. 8.~~ 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 ~~5~~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) 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;~~
 - (i) (iv) whether it was a result of direct acts or omissions of the relevant body or individual;
 - (ii) (v) whether the relevant body or individual derived any economic benefits; and
 - ~~(vi) whether it reveals serious or systemic weaknesses or potential weaknesses in the relevant body's business model, financial strength, governance, risk or other management systems and/or internal controls relating to all or part of the relevant body's business; and~~
 - (iii) (vii) 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:

¹³ In accordance with section 201 of ~~the BA09 Banking Act 2009~~ or sections 192L or 312G of FSMA.

¹⁴ The minimum period for representations is 21 days under ~~the Banking Act 2009 BA09~~ and 14 days under FSMA.

¹⁵ Under the provisions of section 202 of ~~the Banking Act 2009 BA09~~, or sections 192L(7) or 312H(4) of FSMA.

- (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 and/or by other regulatory authorities or law enforcement agencies;
 - (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;
 - (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, that 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;¹⁶
- (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 its own separate action). In appropriate cases, the Bank in conjunction with the ~~Financial Conduct Authority (FCA), Prudential Regulation Authority (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.

Qualifying Parent Undertakings: additional factors

2.11. ~~9.~~ 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; ~~or~~
- (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 HM 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. ~~10.~~ In addition to the factors set out in paragraph ~~8-2.10~~ above, ~~additional~~ 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 UK RCH or Recognised CSD, or, where relevant to the UK RCH or Recognised CSD, any other company within the group¹⁷ of

¹⁶ The Bank may have regard to any relevant materials provided by it, and/or by any predecessor regulators, whether issued publicly or bilaterally. ~~For~~ 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.

¹⁷ As defined in section 421 of FSMA.

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 UK RCH or Recognised CSD, or where relevant to the UK 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 an 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 actuaries of a PRA-authorized person, appointed under or as a result of a statutory provision ('PRA auditor and actuary policy')¹⁸ 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 1¹⁹ of 'The Bank's approach to enforcement in respect of Financial Market Infrastructures: statements of policy and procedure';²⁰
- (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.²¹

Policy concerning the appropriate amount of a financial penalty

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

¹⁸ See 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').

¹⁹ 'Introduction'.

²⁰ See Annex 2 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

²¹ 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.

- (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 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;²²
 - (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. 42. 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. 43. 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 44. 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

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

or loss avoided. The Bank may also calculate and add interest on such benefits.²³

Step 2 — the seriousness of the breach

2.20 ~~15.~~ In addition to any figure in respect of disgorgement established under sStep 1, the Bank will determine at sStep 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.

2.21 ~~16.~~ 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 relevant body against whom action is to be taken is an individual;²⁴
- (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 ~~17.~~ The Bank may increase or decrease the amount of the penalty determined at sStep 2 (excluding any amount to be disgorged pursuant to sStep 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

²³ 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.

²⁴ See s192N(2)(c) of FSMA.

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's 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 regulatory authorities or law enforcement agencies) 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;
 - (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's 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 parties²⁵ or circumstances beyond the control of the relevant body or individual.
- 2.23. ~~18.~~ 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. ~~19.~~ If the Bank considers that the penalty determined following ~~s~~Steps 2 and 3 is insufficiently effectively to deter the relevant body person that committed the breach, or others who are subject to the Bank's regulatory requirements, from

²⁵ It is the responsibility of the RCH or recognised payment system relevant body to manage the risk arising from any outsourced activities.

committing ~~similar or other~~ breaches, ~~it we~~ may increase the penalty at ~~s~~Step 4 by making an appropriate deterrence adjustment.

2.25. ~~20.~~ 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;
- (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 4²⁶ of ‘The Bank’s approach to enforcement in respect of Financial Market Infrastructures: statements of policy and procedure’,²⁷ 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.²⁸

Serious financial hardship

2.27. ~~21.~~ Where a relevant body or individual claims that payment of a penalty determined by the Bank will cause them serious financial hardship (the onus is on the relevant body or individual to satisfy the Bank that this would be the case), in exceptional circumstances the Bank may reduce the amount of the penalty.

2.28. ~~22.~~ Where the Bank agrees in principle to consider a relevant body’s 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

²⁶ ‘Statement of procedure on enforcement statutory notices and the allocation of decision-making in uncontested cases, and settlement decision-making procedure’.

²⁷ See Annex 2 to ‘The Bank of England’s approach to enforcement: statements of policy and procedure’.

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

- (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. ~~23.~~ In respect of relevant bodies, in assessing whether the penalty would cause the firm-relevant body serious financial hardship, the factors to which the Bank may have regard to include:

- (a) the relevant body's financial strength and viability; and
- (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 £22,000; and (ii) their capital²⁹ will fall below £83,133 as a result of payment of the penalty.³⁰

2.31. ~~24.~~ 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.

²⁹ 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.

³⁰ 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. 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.

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

Introduction

- 3.1. This statement of policy sets out the Bank of England's (the 'Bank') policy on the imposition of prohibitions under section 312FA of the Financial Services and Markets Act 2000 ('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')¹ has contravened a relevant requirement imposed on it.²
- 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 1³ of 'The Bank's approach to enforcement in respect of Financial Market Infrastructures: statements of policy and procedure'.⁴
 - (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 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.

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

¹ See definition of 'recognised CSD' in section 285(1)(e) of FSMA.

² See section 312E of FSMA.

³ 'Introduction'.

⁴ See Annex 2 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

CSD. The Bank may use this power when it considers that the person is responsible for a breach by the Recognised CSD.⁵

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 concerned⁶ specifying the extent of the prohibition.⁷

3.6. Where the Bank decides to prohibit a person under section 312FA(2)(c), the person may refer the matter to the Tribunal.⁸

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;
- (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;

⁵ See section 312FA(2) of FSMA.

⁶ See sections 312G(1)(b) and 312H(1)(b) of FSMA.

⁷ See sections 312G(4) and 312H(3A) of FSMA.

⁸ See section 312H(4)(b) of FSMA.

- (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).⁹
- 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 FSMA¹⁰ and other relevant factors which may include, but are not limited to, the factors set out at 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.

⁹ See section 312FA(3) of FSMA.

¹⁰ 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.

3.12. In considering whether to do so, the Bank ordinarily may have regard to the same matters set out at 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.

Draft for consultation

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

Statement of procedure on the decision-making framework for giving warning and decision notices to recognised clearing houses and qualifying parent undertakings

Introduction

1. This statement of procedure is issued by the Bank of England (the Bank) in accordance with the requirements of section 395(5) of the Financial Services and Markets Act 2000 (FSMA),¹ which requires the Bank to issue a statement of its procedure in relation to the giving of statutory notice decisions. In this statement of procedure, 'statutory notice decisions' are those which give rise to an obligation to give a warning notice or a decision notice, as referred to in section 395(1)(b) of FSMA. This procedure relates to Recognised Clearing Houses (RCHs) and Qualifying Parent Undertakings of UK RCHs (QPUs).

2. For the purposes of this procedure, RCHs and QPUs are collectively referred to as the 'relevant bodies'.

4.1. In compliance with section 395 of the Financial Services and Markets Act 2000 ('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 the Banking Act 2009 ('BA09'). It relates to recognised clearing houses ('RCHs'), recognised central securities depositories ('Recognised CSDs'), third country central counterparties, qualifying parent undertakings of UK RCHs and Recognised CSDs ('FMI QPUs'), operators of recognised interbank payment systems ('RPS') and service providers of RPS ('Service Providers'),² 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.

¹ All references in this document to FSMA are to that Act as amended by the Financial Services Act 2012 and applied to the Bank in respect of RCHs by Schedule 17A.

² 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'.

- 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 (‘EDMC’).³
- 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 2⁴ of ‘The Bank’s approach to enforcement in respect of Financial Market Infrastructures: statements of policy and procedure’.⁵
- 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 Bank’s August 2018 ‘Statutory statements of procedure in respect of the Bank of England’s supervision of financial market infrastructures’.⁶

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.⁷
- 4.6. Notices are divided into the following categories:

<u>NOTICE</u>	<u>DESCRIPTION</u>	<u>STATUTORY REFERENCE</u>
<u>Warning Notice</u>	<u>States the action which the Bank proposes to take, giving reasons for the proposed action and providing an opportunity for representations.</u>	<u>Section 387 FSMA; paragraph 29 Schedule 17A FSMA</u> <u>Section 201(1)(a) BA09</u> <u>Section 201(1A)(a) BA09</u>
<u>Decision Notice⁸</u>	<u>States the reasons for the action that the Bank has decided to take.</u> <u>The Bank may also give a further Decision Notice which relates to a different action in</u>	<u>Section 388 FSMA; paragraph 29 Schedule 17A FSMA</u> <u>Section 201(1)(d) BA09</u>

³ ‘Procedures – The Enforcement Decision Making Committee’, <https://www.bankofengland.co.uk/statement/2014/statutory-statements-of-procedure-in-respect-of-the-boe-supervision-of-fmi-policy-statement>, as amended or supplemented from time to time.

⁴ ‘Statement of Policy on financial penalties imposed by the Bank under FSMA or under Part 5 of BA09’.

⁵ See Annex 2 to ‘The Bank of England’s approach to enforcement: statements of policy and procedure’.

⁶ 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.

⁷ 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.

⁸ 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.

	<u>respect of the same matter if the recipient consents.</u> <u>The notice also gives an indication of any right to have the matter referred to the Tribunal⁹ and the procedure for such a reference.</u>	<u>Section 201(1A)(d) BA09</u>
<u>Notice of Discontinuance</u>	<u>Identifies the proceedings set out in a Warning or Decision Notice and which are not being taken or are being discontinued.</u>	<u>Section 389 FSMA; paragraph 29 Schedule 17A FSMA</u>
<u>Final Notice</u>	<u>Sets out the action that the Bank has taken.</u>	<u>Section 390 FSMA; paragraph 29 Schedule 17A FSMA</u>

Statutory notice decisions

4.7. For the purposes of this statement, enforcement statutory notice decisions in respect of FMIs, 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 2¹⁰ of ‘The Bank of England’s approach to enforcement: statements of policy and procedure’.

The decision-making procedure

Allocation of enforcement statutory notice decisions in uncontested cases

3. ~~Section 395 of FSMA requires the Bank to establish a decision-making procedure for statutory notice decisions that is designed to ensure, among other things, that at least one of the decision-makers has not been directly involved in establishing the evidence on which the decision is based.~~

4.8. ~~4. 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. Decisions in contested enforcement cases will be made by the Enforcement Decision Making Committee (EDMC).¹¹~~

5. ~~This may involve decision-making committees, such as the Financial Market Infrastructure (FMI) Board or other committees, taking decisions such as issuing statutory notices. In urgent cases, as outlined below, decisions may be taken by individuals, rather than a committee. Wherever this statement refers to decision-making committees, the same points apply in respect of the decision-makers, as~~

⁹ Tribunal’ means the Upper Tribunal (Tax and Chancery Chamber) or any successor body.

¹⁰ ‘The Bank’s Regulatory enforcement powers’.

¹¹ The procedure for the EDMC is set out in a separate document Procedures—The Enforcement Decision Making Committee, August 2018: www.bankofengland.co.uk/paper/2018/procedures-the-enforcement-decision-making-committee. In the case of any ambiguity, this Policy Statement will take precedence in respect of the Bank’s supervision of financial market infrastructures.

applicable.

~~6. The FMI Board members include Deputy Governors, Executive Directors and Directors from across the Bank, and meetings will ordinarily be chaired by the Deputy Governor for Financial Stability. Certain functions may be delegated to other committees of an appropriate level of seniority. These could include 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 cases¹² are made by the appropriate DMC, with members of seniority commensurate with the classification of the decision.

~~7. The decision-making committees will usually meet in person but may, in appropriate cases, discuss cases by other means, including in writing, by email or by telephone.~~

~~8. Each decision-making committee will aim to reach a consensus on the decisions it is asked to consider. Where consensus cannot be achieved, the decision-making committee will vote, with the chairperson holding the casting vote.~~

~~9. To support effective decision-making, the Bank may divide FMIs into different categories for the purposes of allocating decision-making responsibilities. FMIs are currently divided for these purposes into two categories, with category 1 FMIs including those which pose the greatest risks to financial stability in the event of disruption or failure, and category 2 capturing the remainder.~~

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.¹³

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 Board or its successor, one or more of the DMC members may be external.

¹² Decisions in contested enforcement cases will be made by the EDMC.

¹³ 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).

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.
- 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. 10. A single corporate group may contain both an entity that is an FMI RCH or recognised payment system supervised by the Bank and an entity that operates trading platforms that are recognised investment exchanges supervised by the Financial Conduct Authority ('FCA') (ie 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 (MoU) between them.¹⁴

~~11. In all cases, the decision-making committees will make decisions by applying~~

¹⁴ Pages 3–5 of 'Financial Services and Markets Act 2000: Memorandum of Understanding between the Financial Conduct Authority and the Bank of England, including the Prudential Regulation Authority', March 2015: <https://www.bankofengland.co.uk/-/media/boe/files/memoranda-of-understanding/bank-pra-and-fca-supervision-of-markets-and-markets-infrastructure.pdf>.

the relevant statutory provisions, having regard to the relevant facts, the law and the Bank's priorities and policies.

~~12. 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 decision-making committee.~~

Maintaining impartiality

~~13. Not all committee members will take part in all decisions, for example there may be circumstances where a committee member will not take part because they are unavailable, or unable to take part (for example by virtue of being involved in establishing the evidence).⁴⁵~~

Urgent cases

~~14. If the consequences of not making a decision could be significant and it is not practicable to convene a meeting of the relevant committee within the necessary time period to avoid those consequences, a decision could be taken by individuals, for example, a decision which would ordinarily be taken by the FMI Board may be made by other means, such as by the Deputy Governor for Financial Stability with at least one other member of the FMI Board.~~

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 1¹⁶ of 'The Bank's approach to enforcement in respect of Financial Market Infrastructures: statements of policy and procedure'.¹⁷ These include acting, so far as is reasonably possible, in a way which advances the Bank's statutory objective 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; and
- (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;

⁴⁵ FSMA includes a requirement that the procedure is designed to ensure that the decision-maker, or at least one of the decision-makers, has not been directly involved in establishing the evidence on which the decision is based.

¹⁶ 'Introduction'.

¹⁷ See Annex 2 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

(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.¹⁸

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 and BA09. 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.

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.¹⁹ 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

¹⁸ 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.

¹⁹ 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.

- 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 8²⁰ of 'The PRA's Approach to Enforcement',²¹ 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 4²² of 'The Bank's approach to enforcement in respect of Financial Market Infrastructures',²³
 - (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';²⁴
 - (e) Paragraph 8.33(b) was omitted.

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 8.44 of Chapter 8²⁵ of 'The PRA's approach to enforcement',²⁶ 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;

²⁰ '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'.

²¹ See Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

²² 'Statement of procedure on enforcement statutory notices and the allocation of decision-making in uncontested cases, and settlement decision-making procedure'.

²³ See Annex 2 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

²⁴ Chapter 4 of 'The Bank's approach to enforcement in respect of Financial Market Infrastructures: statements of policy and procedure'.

²⁵ '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'.

²⁶ See Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

- (b) References to a financial penalty under FSMA were to financial penalties pursuant to the relevant powers set out at Table 2, Chapter 2²⁷ of ‘The Bank of England’s approach to enforcement: statements of policy and procedure’;
- (c) 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;
- (d) 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 at paragraph 8.46 of Chapter 8²⁸ of ‘The PRA’s approach to enforcement: statements of policy and procedure’,²⁹ as updated from time to time, subject to any adaptations necessary to take all relevant circumstances into account.

Warning notices

Approach of the decision-making committee

15. If Bank staff consider that action requiring a warning notice is appropriate, they will recommend to the relevant decision-making committee that the notice be given.

16. The decision-making committee will:

- (i) consider whether the material on which the recommendation is based is adequate to support it; the decision-making committee may seek additional information or clarification of the recommendation;
- (ii) consider any responses from the FCA in accordance with the consultation arrangements specified in the MoU between the Bank and the FCA;
- (iii) satisfy itself that the action recommended is appropriate in the relevant circumstances; and

²⁷ ‘The Bank’s regulatory enforcement powers’.

²⁸ ‘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’.

²⁹ See Annex 1 to ‘The Bank’s approach to enforcement: statements of policy and procedure’.

~~(iv) decide whether to give the notice and the terms of such notice.~~

~~17. If the Bank decides to give a warning notice, it will ensure that the notice meets the requirements set out in FSMA.³⁰~~

~~18. In response to a request from the relevant body, the Bank will allow the relevant body access to substantive communications between the decision-making committee and the Bank staff who made the relevant recommendation as required by section 394 of FSMA. This may include providing copies in electronic format.~~

~~19. If the Bank decides to take no further action and the Bank had previously informed the person concerned that it intended to recommend action, the Bank will communicate this promptly to the person concerned.~~

~~Procedure for representations~~

~~20. A warning notice will specify a time period for making representations, in writing, of no less than fourteen calendar days.~~

~~21. When giving the warning notice, the Bank will also specify a time period within which the recipient is required to indicate whether they wish to make oral representations.~~

~~22. The recipient of the warning notice may request an extension of the time allowed for making representations. Such a request must normally be made within fourteen days of the notice being given.~~

~~23. If a request for an extension is made, the decision-making committee will decide whether to allow an extension, and, if so, for how long. In reaching the decision the committee may take account of any relevant comments from Bank staff, as appropriate.~~

~~24. The Bank will notify in writing the relevant body of the decision on the granting or otherwise of an extension.~~

~~25. If the recipient of the warning notice indicates that they wish to make oral representations, the Bank will seek to arrange a date suitable to the recipient of the notice at which the decision-making committee will hear the representations. The Bank will call a meeting of the decision-making committee for this purpose.~~

~~26. The chair of the relevant meeting will ensure that the meeting is conducted so as~~

³⁰ See section 387 of FSMA (1) A warning notice must: (a) state the action which the regulator giving the notice ('the regulator concerned') proposes to take; (b) be in writing; (c) give reasons for the proposed action; (d) state whether section 394 (access to FCA or PRA material) applies; and (e) if that section applies, describe its effect and state whether any secondary material exists to which the person concerned must be allowed access under it. (2) A warning notice must specify a reasonable period (which may not be less than 14 days) within which the person to whom it is given may make representations to the regulator concerned. (3) The regulator concerned may extend the period specified in the notice. (4) The regulator concerned must then decide, within a reasonable period, whether to give the person concerned a decision notice.

to enable:

- ~~(i) (the recipient of the warning notice, or any third party who has the right to do so, to make representations;~~
- ~~(ii) the decision-making committee to raise with those present any points or questions about the matter; and~~
- ~~(iii) the person making representations to respond to points made by the decision-making committee.~~

~~27. The decision-making committee may ask the person making representations to limit their representations or response in length or to particular issues.~~

~~28. The person making representations may be represented through legal advisors if they wish.~~

~~29. The decision-making committee hearing the oral representations may ask the person making representations to provide additional information in writing after the meeting. If the decision-making committee does so, it will specify the time period within which that information may be provided.~~

~~30. During the hearing the decision-making committee may ask either the person making representations or Bank staff to comment on issues raised if they consider this necessary to improve understanding of the case.~~

~~31. Relevant Bank staff will attend the oral hearing for the person making representations but will not respond to any representations at the meeting unless asked to do so by the decision-making committee.~~

~~32. If requested by the relevant decision-making committee, the relevant Bank staff may provide the decision-making committee with a written response to the oral representations no later than seven calendar days after the hearing.~~

~~33. Save in exceptional circumstances, while a matter is ongoing, the decision-making committee will not:~~

- ~~(i) (after the Bank has given a warning notice, discuss the matter with the relevant Bank staff without other relevant parties being present or otherwise having the opportunity to respond; and~~
- ~~(ii) after having received any written response from the relevant Bank staff to the oral representations, discuss the matter with the relevant Bank staff without other relevant parties being present or otherwise having the opportunity to respond.~~

~~34. If such exceptional circumstances arise, the decision-making committee will disclose such discussions with the recipient of the notice and permit them the opportunity to respond.~~

Procedure where no representations are received

35. If the Bank receives no response or representations within the period specified in the warning notice, the decision-making committee may regard as undisputed the matters in that notice, and a decision notice may be given accordingly.

36. A relevant body that has not previously made any response or representations to the Bank may nevertheless refer the Bank's decision to the Upper Tribunal.

37. In exceptional circumstances, a person who has been sent a decision notice or against whom action, detailed in the warning notice, has taken effect may show that they did not receive the warning notice or that they had reasonable grounds for not responding within the specified period. In these circumstances, if the Bank considers it appropriate, the decision-making committee may decide to revoke the decision notice and the matter may be considered afresh or, with the consent of the person to whom the notice relates, the decision-making committee may decide to give a further decision notice.

Decision notices

Approach of the decision-making committee

38. When determining whether to give a decision notice, the decision-making committee will:

- (i) review the material before them;
- (ii) consider any representations made (whether written, oral or both) and any comments by Bank staff in respect of those representations; and
- (iii) decide whether to give the notice and the terms of any notice.

39. The same decision-making committee that gave the warning notice will ordinarily also decide whether to give a decision notice.

40. If giving a decision notice, the Bank will ensure that the notice meets the requirements set out in FSMA.³¹

41. If a decision-making committee considers it relevant to their consideration,

³¹— See section 388 of FSMA (1) A decision notice must: (a) be in writing; (b) give the reasons of the regulator giving the notice ('the regulator concerned') for the decision to take the action to which the notice relates; (c) state whether section 394 applies; (d) if that section applies, describe its effect and state whether any secondary material exists to which the person concerned must be allowed access under it; and (e) give an indication of (i) any right to have the matter referred to the Tribunal which is given by this Act; and (ii) the procedure on such a reference. (2) If the decision notice was preceded by a warning notice, the action to which the decision notice relates must be action under the same Part as the action proposed in the warning notice. (3) The regulator concerned may, before it takes the action to which a decision notice ('the original notice') relates, give the person concerned a further decision notice which relates to different action in respect of the same matter. (4) The regulator concerned may give a further decision notice as a result of subsection (3) only if the person to whom the original notice was given consents. (5) If the person to whom a decision notice is given under subsection (3) had the right to refer the matter to which the original decision notice related to the Tribunal, he has that right as respects the decision notice under subsection (3).

they may ask Bank staff to explain or provide any or all of the following:

- ~~(i) additional information about the matter (which may require the Bank staff to undertake further investigations);~~
- ~~(ii) further explanation of any aspect of the Bank staff recommendation or accompanying papers;~~
- ~~(iii) information about the Bank's priorities and policies; or~~
- ~~(iv) legal advice.~~

~~42. The decision-making committee cannot require the affected party to attend Bank committees at which decisions giving rise to a notice are discussed, to provide documents or to give evidence.~~

~~43. The decision-making committee will make decisions based on all the relevant information available to them.~~

~~Procedure for decision notices~~

~~44. If the decision-making committee decides that the Bank will give a decision notice, the Bank will:~~

- ~~(i) include in the notice a brief summary of how it has dealt with the key representations made; and~~
- ~~(ii) make any other necessary decisions related to the statutory notice, including in relation to procedural matters relating to third parties and to disclosure of Bank material.³²~~

~~45. The Bank will make the appropriate arrangements for the distribution of the notice to all the relevant parties.~~

~~46. If the decision-making committee decides that the Bank should not give a decision notice, the Bank will notify the relevant parties in writing.~~

~~Further decision notice~~

~~47. Following the giving of a decision notice but before the Bank takes the action to which the decision notices relates, the Bank may give the relevant body concerned a further decision notice relating to a different action concerning the same matter.³³ The Bank may only do this if the relevant body receiving the further decision notice gives its consent.³⁴ In these circumstances the following procedure will apply:~~

³² As set out in sections 392, 393 and 394 of FSMA.

³³ As set out in section 388(3) of FSMA.

³⁴ As set out in section 388(4) of FSMA.

~~(i) Bank staff will recommend to the decision-making committee that a further decision notice be given;³⁵~~

~~(ii) the decision-making committee will consider whether the action proposed in the further decision notice is appropriate in the circumstances;~~

~~(iii) if the decision-making committee decides that the proposed action is inappropriate, they will decide not to give the further decision notice. In this case the original decision notice will stand and the relevant body's rights in relation to that notice will be unaffected. If the consent of the relevant body to a further decision notice has already been obtained, the Bank will notify the relevant body of the decision not to give the further decision notice;~~

~~(iv) if the decision-making committee decides that the action proposed is appropriate then, subject to the relevant body's consent being (or having been) obtained, the Bank will give the further decision notice; and~~

~~(v) a relevant body that had the right to refer the matter to the Upper Tribunal under the original decision notice will also have that right under the further decision notice. The time period within which the reference to the Upper Tribunal may be made will begin from the date on which the further decision notice is given.~~

Discontinuance of Bank actions

~~48. Bank staff responsible for recommending action to the relevant decision-making committee will continue to assess the appropriateness of the proposed action in light of any new information or representations they receive and any material change in the facts or circumstances relating to a particular matter. As a result the Bank may decide to give a notice of discontinuance to a person to whom a warning notice or a decision notice has been given.~~

³⁵ ~~Either before or after obtaining the relevant body's consent.~~

5. Statement of procedure on publishing information about enforcement statutory notices given to recognised clearing houses and qualifying parent undertakings

Introduction

5.1 1. The Financial Services and Markets Act 2000 (FSMA)¹ gives the Bank of England (the Bank) powers to publish the statutory notice decisions it has given to Recognised Clearing Houses (RCHs) and Qualifying Parent Undertakings of UK RCHs (QPUs). The Bank of England (the 'Bank') has powers under the Financial Services and Markets Act 2000 ('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 UK RCHs and Recognised CSDs ('FMI QPUs'), as well as those responsible for the management of certain bodies and others involved in breaches (where applicable).² This statement of procedure outlines the Bank's procedure on publishing information about warning and decision notices, 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 interbank payment systems ('RPS') and service providers of RPS ('Service Providers').

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'.³

¹ All references in this document to FSMA are to that Act as amended by the Financial Services Act 2012 and applied to the Bank in respect of RCHs by Schedule 17A.

² 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'.

³ 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.

5.3. ~~2.~~ 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. ~~3.~~ Appropriate publicity may assist achievement of the Bank's ~~supervisory goals~~ statutory objective, 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.

Publicity during Bank investigations

5.5. ~~4.~~ Unless and until the Bank has decided whether to ~~give issue a w~~ Warning ~~n~~ 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 ~~w~~ Warning ~~n~~ 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. ~~5.~~ 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, however, publicly announce an investigation if it considers that doing so would, in its our view, be likely to:

- (a) advance its ~~supervisory goals~~ our statutory objectives;
- (b) assist the investigation, for example by bringing forward witnesses; or
- (c) deter more widespread breaches of ~~its~~ our requirements.

5.7. ~~6.~~ In determining whether to make a public announcement, the Bank will also consider any potential prejudice, risk of unfairness and/or disproportionate damage that ~~it~~ we ~~considers~~ may be caused to any ~~relevant bodies~~ persons that are, or that are likely to be, a subject of the investigation, and/or to any third parties.

5.8. ~~7.~~ 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;

~~it~~ we may, either on ~~its~~ 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. ~~8.~~ The general position under section 391 of FSMA is that neither the Bank nor the person to whom a ~~w~~Warning ~~n~~Notice is given or copied may publish the notice, or any details concerning it. However in relation to certain categories of ~~w~~Warning ~~n~~Notice,⁴ section 391 of FSMA does permit the Bank, after consulting the person to which a ~~w~~Warning ~~n~~Notice is given or copied, to publicise such information as it considers appropriate about the matter to which the notice relates.

5.10. ~~9.~~ The Bank will consider a number of factors in determining whether it is appropriate to exercise ~~its~~our discretion to publish, including the extent to which publicity would, ~~in its~~in our view, be likely to:

- (a) advance ~~its supervisory goals~~our statutory objectives;
- (b) enhance financial stability;
- (c) provide a signal to relevant bodies as to the types of behaviour ~~it~~we considers to be unacceptable; and
- (d) prevent more widespread breaches of ~~its~~our requirements.

5.11. ~~10.~~ In accordance with section 391 of FSMA, the Bank will not publish information if, ~~in its~~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 ~~d~~Decision ~~and~~ Final ~~n~~Notices

5.12. ~~11.~~ Section 391 of FSMA requires the Bank to publish, in such manner as ~~it~~we considers appropriate, such information as ~~it~~we considers appropriate about the matters to which a ~~d~~Decision ~~n~~Notice and a Final Notice relates.

5.13. ~~12.~~ However, section 391 of FSMA provides that the Bank may not publish information concerning a ~~d~~Decision or a Final ~~n~~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.

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

~~5.14. 13.~~ The Bank will consider the circumstances of each case, but, subject to paragraph ~~12-5.13~~ above, will ordinarily publicise enforcement action when a matter has led to the giving issue of a ~~d~~Decision ~~n~~Notice, as well as where it has led to the issue of a Final Notice.

Making representations on issues of publicity

~~5.15. 14.~~ Where ~~it we~~ proposes to publish details of a ~~w~~Warning, ~~or d~~Decision ~~or~~ Final ~~n~~Notice, the Bank will consider any representations made to ~~it 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. 15.~~ Such representations should ordinarily be made in writing,⁵ 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. 16.~~ The Bank will not ordinarily decide against publication solely because it is claimed that:

- (a) publication ~~w~~ould have a negative impact on a relevant body's or individual's reputation; or
- (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. 17.~~ FSMA section 395(2)(c) requires that the Bank's decision-making in relation to publicising that a ~~w~~Warning ~~n~~Notice has been ~~given 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 the a ~~w~~Warning ~~n~~Notice.

~~5.19. 18.~~ The decision to publicise that a ~~w~~Warning ~~n~~Notice has been given must not, however, be taken only by a person who first proposed the decision to publish.

~~5.20. 19.~~ In relation to ~~w~~Warning, ~~or d~~Decision ~~or~~ Final ~~n~~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 ~~decision-making committee~~ DMC. The decision-maker must, however, be different from the person proposing publication.

⁵ 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.

What form will publicity take?

5.21. ~~20.~~ Information made public in relation to a ~~w~~Warning ~~n~~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 ~~w~~Warning ~~n~~Notice is not a final decision, and that if, following representations, the Bank decides to give a ~~d~~Decision ~~n~~Notice, the subject of the notice has the option to refer the matter to the Upper Tribunal to have the matter considered afresh.

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

Reviewing whether continuing publicity remains appropriate

5.23. ~~22.~~ Where ~~it we has have~~ published details of a ~~w~~Warning, ~~or d~~Decision or Final ~~n~~Notice, the Bank will, on request, review those details and any related press releases that are published on ~~its 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. ~~23.~~ In determining whether continued publicity remains appropriate, the Bank will in particular take into account:

- (a) whether ~~it we has 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. ~~24.~~ Where the Bank revokes a ~~d~~Decision ~~n~~Notice that has been previously published, the Bank will make it clear on ~~its~~our website that it has been revoked.

Draft for consultation

6. Further procedures

Procedures with respect to information gathering in enforcement investigations

6.1. In conducting enforcement investigations relating to financial market infrastructures ('FMIs'), the Bank of England (the 'Bank') will generally apply a similar approach and procedures to those set out in Chapter 2¹ of 'The PRA's approach to enforcement: statements of policy and procedure',² as updated from time to time. This 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 3³ of 'The PRA's approach to enforcement: statements of policy and procedure',⁴ as updated from time to time. This will be subject to any adaptations necessary to take all relevant circumstances into account.

¹ 'The PRA's approach to information gathering in enforcement investigations'.

² See Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

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

⁴ See Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

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

Draft for consultation

1. List of policies referred to in this document

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. PS^{xx/xx}. The PRA's Allocation of Decision-Making and Approach to Supervisory Decisions, as amended from time to time: [\[link\]](#)
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, October 2017: www.bankofengland.co.uk/-/media/boe/files/news/2017/october/the-bank-of-england-approach-to-resolution.pdf.
6. Bank of England's power to direct institutions to address impediments to resolvability, December 2015: <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

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

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

10. Information on the effect of the UK's withdrawal from the EU on FMI supervision, <https://www.bankofengland.co.uk/eu-withdrawal/information-on-the-effect-of-the-uks-withdrawal-from-the-eu-on-fmi-supervision>

11. Bank of England's approach to comparable compliance under EMIR Article 25a: <https://www.bankofengland.co.uk/-/media/boe/files/paper/2022/boes-approach-to-comparable-compliance-under-emir-article-25-sop-jun-22.pdf>

Enforcement

PRA

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

13. Procedures – The Enforcement Decision Making Committee: 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

14. 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

Annex 4: Abbreviations and definitions

Abbreviations

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

Definitions

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

<u>Terminology</u>	<u>Meaning</u>
<u>'approved person'</u>	<u>a person in relation to whom an approval is given under section 59 of FSMA</u>
<u>'auditors or actuaries'</u>	<u>For the purposes of Chapter 5¹ of 'The PRA's approach to enforcement: statements of policy and procedure'² 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</u>
<u>'authorised person'</u>	<u>a person who is authorised for the purposes of FSMA</u>
<u>'Banknote Regulations'</u>	<u>Scottish and Northern Ireland Banknote Regulations 2009</u>
<u>'financial system'</u>	<u>The financial system of the UK. For the purposes of Chapters 4³, 5⁴ and 6⁵ of 'The PRA's approach to enforcement: statements of policy and procedure'⁶ only: pursuant to section 11 of FSMA, this includes (a) financial markets and exchanges, (b) regulated activities, and (c) other activities connected with financial markets and exchanges.</u>
<u>'interview'</u>	<u>For the purposes of Chapter 3⁷ of 'The PRA's approach to enforcement: statements of policy and procedure'⁸ 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</u>
<u>'investigator'</u>	<u>For the purposes of Chapter 3⁹ of 'The PRA's approach to enforcement: statements of policy and procedure'¹⁰ only: one or more competent persons who may be appointed or</u>

¹ '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'.

² See Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

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

⁴ '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'.

⁵ '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'.

⁶ See Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

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

⁸ See Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

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

¹⁰ See Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

<u>Terminology</u>	<u>Meaning</u>
	<u>are appointed by the PRA under section 169(1)(b) of FSMA</u>
<u>'overseas regulator'</u>	<u>For the purposes of Chapter 3¹¹ of 'The PRA's approach to enforcement: statements of policy and procedure'¹² only: as defined in section 195 of FSMA</u>
<u>'PRA Rules'</u>	<u>The rules set out in the PRA Rulebook¹³</u>
<u>'relevant requirement'</u>	<u>Relevant requirement may refer to any statutory requirements, regulatory rules or applicable standards as defined from time to time</u>
<u>'resolution regime'</u>	<u>The UK's special resolution regime under BA09</u>
<u>'restriction'</u>	<u>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</u>
<u>'section 169(7) direction'</u>	<u>For the purposes of Chapter 3¹⁴ of 'The PRA's approach to enforcement: statements of policy and procedure'¹⁵ 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</u>
<u>'Service Providers'</u>	<u>For the purposes of 'The Bank's approach to enforcement in respect of Financial Market Infrastructures: statements of policy and procedure'¹⁶ only: service providers in relation to recognised payment systems</u>
<u>'suspension'</u>	<u>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</u>
<u>'Tribunal'</u>	<u>The Upper Tribunal (Tax and Chancery Chamber) or any successor body</u>

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

¹² See Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

¹³ <https://www.prarulebook.co.uk>

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

¹⁵ See Annex 1 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.

¹⁶ See Annex 2 to 'The Bank of England's approach to enforcement: statements of policy and procedure'.