

# Bank of England

## Prudential Regulation Authority

The Prudential Regulation Authority's  
allocation of decision making and approach  
to supervisory decisions

### Statement of policy

May 2023

Draft for consultation



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# 1. Introduction

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1. The Bank of England ('Bank') uses regulatory, supervisory, and enforcement powers to pursue its mission of financial stability, and related to that, to advance the Prudential Regulation Authority's (PRA) statutory objectives. Through regulation, the PRA develops standards and policies that set out what it requires and expects of firms. Through supervision, the PRA monitors and assesses whether firms are meeting its requirements and expectations. Where they do not, the PRA can take action – supervisory or enforcement – to reduce the risks that might arise. The PRA's approach to regulation and supervision is forward-looking, judgement-based, and focused on the issues and firms that pose the greatest risk to the stability of the UK financial system and (in the case of insurers) to policyholders. The PRA's approach to enforcement supports and supplements its regulatory and supervisory tools by ensuring that the PRA has credible mechanisms for holding its regulated firms to account where they do not meet the PRA's requirements and expectations.

2. The PRA regularly takes different types of decisions in order to advance its objectives. These range from decisions on policymaking to firm-specific decisions. This PRA statement of policy sets out:

- a) the PRA's allocation of decision-making regarding statutory notices (Warning Notices, Decision Notices, Final Notices, and Supervisory Notices);
- b) the PRA's approach to decision-making on statutory notices in relation to supervisory decisions under the Financial and Services Markets Act 2000 ('the Act'); and
- c) the PRA's approach to publication of supervisory cases.

3. Separate statements of policy are published in relation to enforcement cases.

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## 2. Statement of the PRA's policy on statutory notices and the allocation of decision making under the Act

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1. This statement of policy is issued by the Prudential Regulation Authority (PRA) in accordance with the requirements of section 395 of the Act 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. This statement of policy covers the committee allocation for these types of decisions.
2. In addition, the Bank has published separate statements of policy and procedures for the issuing of statutory notices in cases where the outcome of an enforcement investigation is accepted by the subject (ordinarily achieved through settlement), and 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').
3. In discharging its general functions, the PRA must, so far as is reasonably possible, act in a way which advances its statutory objectives.<sup>1</sup> The PRA is also required to have regard to certain regulatory principles.<sup>2</sup>
4. 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.
5. The PRA will ensure that the decision-making procedure is designed to secure, among 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.
6. The Act allows for the procedure to permit a decision which gives rise to an obligation to give a statutory notice to be taken other than 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.

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<sup>1</sup> As set out in sections 2B and 2C of the Act.

<sup>2</sup> As set out in sections 2G and 3B of the Act.

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

9. 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
Decision Notice	States the reasons for the action that the PRA has decided to take. The PRA may also give a further Decision Notice which relates to a different action in respect of the same matter if the recipient consents.  The notice also gives an indication of any right to have the matter referred to the Tribunal <sup>3</sup> and the procedure for such a reference.	Section 388
Notice of Discontinuance	Identifies the proceedings set out in a Warning or Decision Notice and which are not being taken or being discontinued.	Section 389
Final Notice	Sets out the terms of the action that the PRA is taking.	Section 390
Supervisory Notice	Details action that the PRA has taken or proposes to take.	Section 395(13)

10. 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.

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<sup>3</sup> 'Tribunal' means the Upper Tribunal (Tax and Chancery Chamber) or any successor body.

## Decision making

### Decision Making Committees

11. 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.

12. There will be five DMCs responsible for the issue of statutory notices:

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

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

- 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) publish the notice.<sup>4</sup>

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

15. 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

16. The PRA divides all firms it supervises into four categories of impact.<sup>5</sup>

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<sup>4</sup> For further information on publication notices, see the statement of the PRA's approach to publication of regulatory action in relation to supervisory decisions.

<sup>5</sup> The PRA's assessment of 'impact' reflects a firm's potential to affect adversely the stability of the UK financial system by failing, coming under operational or financial stress, or because of the way in which it carries out its

17. 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 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. <sup>6</sup> All Type EDMC decisions will be made by the EDMC, regardless of impact. The list of decisions in the Act that are Type EDMC decisions and the procedures that will apply are set out in the document 'Procedures – The Enforcement Decision Making Committee' <sup>7</sup> .

18. For supervisory 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).

## Warning Notices and first Supervisory Notices related to supervisory decisions

### General

19. If PRA staff consider that action requiring a Warning or first Supervisory Notice is appropriate, they will recommend to the relevant DMC that the notice be given.

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business. For further information, see the PRA's approach to banking supervision and the PRA's approach to insurance supervision.

<sup>6</sup> By 'contested', the PRA means 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 PRA 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 PRA.

<sup>7</sup> <http://www.bankofengland.co.uk/paper/2018/procedures-the-enforcement-decision-making-committee>, as amended and supplemented from time to time.



20. 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.

21. In relation to a Supervisory Notice which does not take effect immediately, a matter is open to review<sup>8</sup> when

- a) the period during which a person may refer a matter to the Tribunal is still running; or
- 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 DMC

22. 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 publish the notice.

23. 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.

24. 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.

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<sup>8</sup> As set out in section 391(8) of the Act.

## Decision Notices and second Supervisory Notices related to supervisory decisions

### Approach of the DMC

25. 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 publish the notice.

26. 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 publication.

27. 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 related to supervisory decisions

28. 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.

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

30. 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;
- 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.

31. 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 they 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 Notice or Supervisory Notice.

## Further Decision Notice related to supervisory decisions

32. Following the giving of a Decision Notice but before the PRA takes action to which the Decision Notice relates, the PRA may give the person concerned a further Decision Notice relating to a different action concerning the same matter.<sup>9</sup> The PRA may only do this if the person receiving the further Decision Notice gives their consent.<sup>10</sup> In these circumstances the following procedure will apply:

- a) PRA staff will recommend to the appropriate DMC that a further Decision Notice be given;<sup>11</sup>
- 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; and
- 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

<sup>9</sup> As set out in section 388(3) of the Act.

<sup>10</sup> As set out in section 388(4) of the Act.

<sup>11</sup> Either before or after obtaining the person's consent.

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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 related to supervisory decisions

33. In certain Warning and Decision Notices,<sup>12</sup> there are additional procedural rights relating to third parties<sup>13</sup> and to disclosure of PRA material.<sup>14</sup> 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 related to supervisory decisions

### Composition of DMCs

34. All DMC members are PRA employees other than the non-executive members of the PRC. A DMC will usually be composed of at least three members who will include a chair, although the size may vary depending on the nature of the particular matter under consideration.

35. The members of a DMC will usually meet in person or on video conferencing software but may, in appropriate cases, discuss cases in writing or by telephone or by email or other electronic means.

36. A DMC will have a secretariat.

### General procedures

37. The chair of a DMC will determine the manner in which a decision will be taken, ensuring that it is dealt with fairly and expeditiously.

38. Decisions made by DMCs often give rise to the need for decisions to be made on a timely basis, either to ensure the PRA complies with any relevant time period in which it must reach a decision in respect of an application by a firm or person, or to avoid prolonged periods of uncertainty for firms and supervisors in respect of proposed supervisory action. DMCs will take account of the need for timely decisions when determining the manner in which a decision will be taken and will expect recipients of notices to engage in the process accordingly.

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<sup>12</sup> As set out in section 392 of the Act.

<sup>13</sup> As set out in section 393 of the Act.

<sup>14</sup> As set out in section 394 of the Act.

39. 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 chair of the DMC will have the casting vote in a tie.<sup>15</sup>

40. In a situation where a DMC member has to recuse themselves from a DMC due to a conflict of interest, 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.

41. If a DMC considers it relevant to its consideration, 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; or
- d) legal advice

42. 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.

43. For enquiries relating to a statutory or Supervisory notice, the recipient should engage with the secretariat of the DMC. Recipients are encouraged to engage early and fully with the process. The recipient should engage with its supervisory contacts in the usual way in relation to matters not relating to the notice.

### **Procedure for Warning Notices and first Supervisory Notices**

44. 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.

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

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

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<sup>15</sup> Save in relation to settled cases where a decision by the relevant DMC to approve and conclude a binding settlement agreement must be unanimous.

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

48. 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 publish the notice as provided in the PRA's approach to publication of regulatory action.<sup>16</sup>

49. 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; and
- c) disclosure of material agreed by the DMC in accordance with section 394 of the Act.

### Procedure for representations

50. A Warning Notice will specify that the time for making representations will be no less than 14 days. For a first Supervisory Notice, the DMC will agree an appropriate time for making representations. This will normally be no less than 14 days but there may be circumstances where the PRA considers a shorter period is appropriate or justified. The first Supervisory Notice will specify this time.

51. The PRA will also, when giving the Warning or first Supervisory Notice, specify a time within which the recipient is required to indicate whether they wish to make oral representations.

52. 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, or if in respect of a first Supervisory Notice where the period for making representations is less than 14 days, before such period expires.

53. If a request is made for an extension of time for making representations, the chair 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 representations. In reaching their

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<sup>16</sup> For further information on the publication process, see the statement of the PRA's approach to publication of regulatory action.

decision, they may take account of any recommendation by PRA staff responsible for the matter.

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

55. If the recipient of the Warning or first Decision Notice indicates that they wish 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.

56. The chair 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.

57. The chair may ask the recipient of the notice to limit their representations or response in length or to particular issues.

58. The recipient of the Warning Notice or Supervisory Notice may choose to be legally represented at the meeting, but this is not a requirement.

59. In appropriate cases, the chair 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 they do so, they will specify the time within which that information is to be provided.

60. 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.

61. 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.

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

63. Save in exceptional circumstances, while a matter is still ongoing, the DMC will not, after the PRA has given a Warning or first Supervisory Notice, meet with the PRA staff responsible for the case to discuss the case without other relevant parties being present or otherwise having the opportunity to respond.

64. If such exceptional circumstances arise, the DMC will disclose the occurrence and a summary of such meetings with the recipient of the notice and permit them the opportunity to respond.

65. Generally, PRA staff will continue to update the DMC in relation to supervisory matters, in particular where these are relevant to the DMC's decision. The DMC will decide whether such information materially affects or changes the substance of the issues raised in the notice. Where this is the case, the DMC will consider in light of the circumstances of the matter as a whole whether the recipient of the notice should be given the opportunity to respond to such information.

66. 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 Warning Notices and first Supervisory Notices**

67. 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.

68. 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.

69. 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 publish the notice as provided in the PRA's approach to publication of regulatory action.

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

71. 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.



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## Discontinuance of PRA actions related to supervisory decisions

72. The 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.

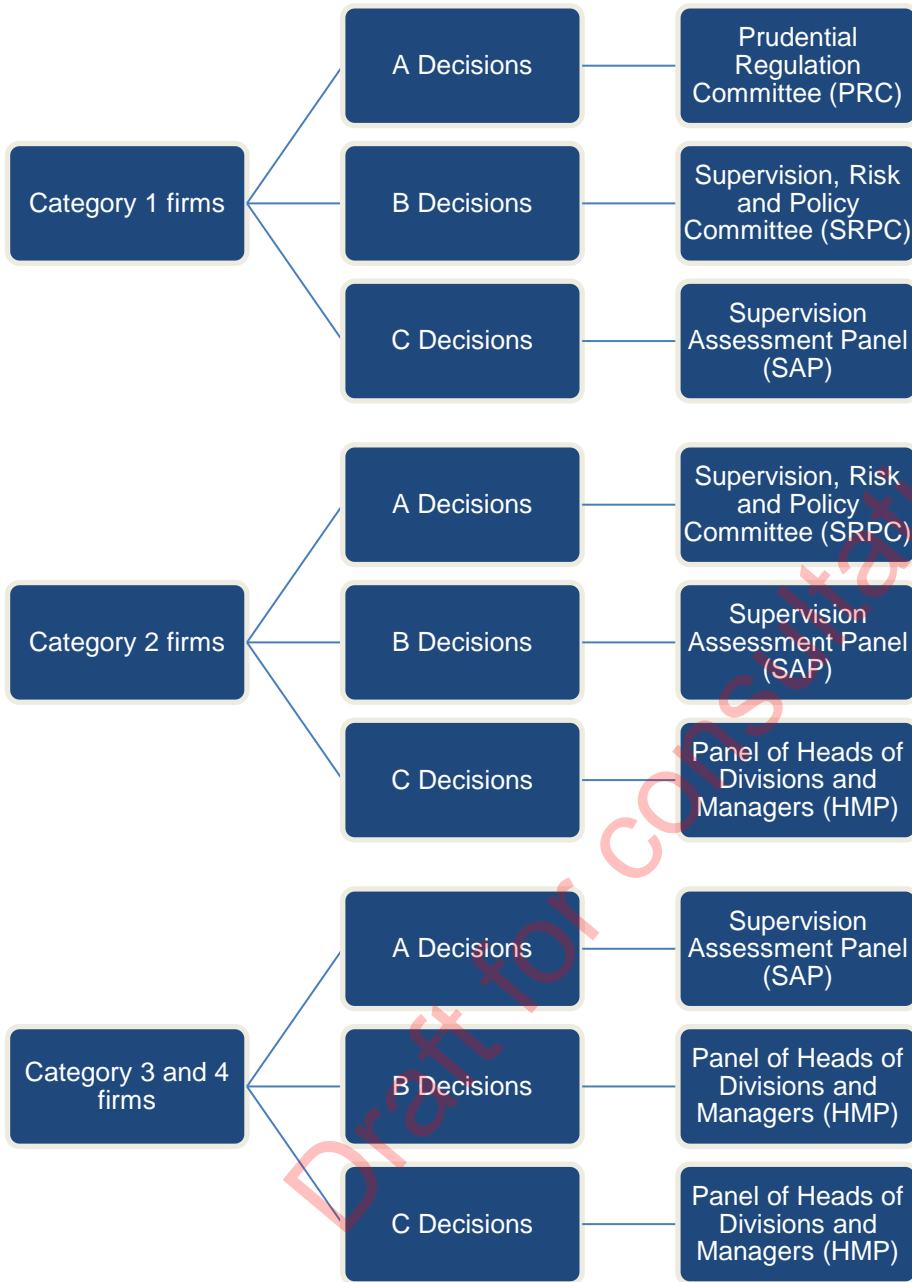
## Urgent statutory notice cases related to supervisory decisions

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

74. 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 the PRA will seek to ensure that both executives will not have been so involved.

Draft for consultation

## Annex A – Decision-making framework (for non-EDMC statutory notice decisions)



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## 3. Statement of the PRA's approach to publication of regulatory action in relation to supervisory decisions

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### Introduction

1. This statement of procedure and policy is issued by the Prudential Regulation Authority (PRA). It deals with the question of publication of statutory notice decisions by the PRA in relation to supervisory decisions.<sup>17</sup>
2. In discharging its general functions, the PRA must, so far as is reasonably possible, act in a way which advances its statutory objectives.<sup>18</sup> The PRA is also required to have regard to certain regulatory principles,<sup>19</sup> including the desirability in appropriate cases of the PRA publishing information relating to persons on whom requirements are imposed under the Act, 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.
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 regulatory action in relation to supervisory decisions 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.

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<sup>17</sup> 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).

<sup>18</sup> As set out in sections 2B and 2C of the Act.

<sup>19</sup> As set out in sections 2H and 3B of the Act.

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## Publication of regulatory action in relation to supervisory decisions – Warning Notices

4. The general position under section 391 of the Act is that neither the PRA nor the person to whom a Warning Notice is given or copied may publish the notice, or any details concerning it. However, in relation to certain categories of Warning Notice,<sup>20</sup> section 391 of the Act does permit the PRA, after consulting the persons to whom a relevant Warning Notice is given or copied, to publish such information as it considers appropriate about the matter to which the notice relates.

5. The PRA will consider a number of factors in determining whether it is appropriate to exercise its discretion in favour of publication, including the extent to which publication 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.

6. In accordance with section 391 of the Act, 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-authorized persons; or
- c) prejudicial to securing the appropriate degree of protection for policyholders.

## Publication at the conclusion of regulatory action in relation to supervisory decisions – Supervisory, Decision and Final Notices

7. Section 391 of the Act also requires the PRA to publish – in such manner as it considers appropriate – information about the matters to which a Supervisory Notice,<sup>21</sup> a Decision Notice, and a Final Notice relate.

8. However, section 391 of the Act 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-authorized persons; or

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<sup>20</sup> The categories of warning notice to which the power applies are set out in section 391(1ZB) of the Act.

<sup>21</sup> As defined in section 395(13) of the Act.

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c) prejudicial to securing the appropriate degree of protection for policyholders.

9. The PRA will consider the circumstances of each case, but, subject to paragraph 7 above, will ordinarily publish action in relation to supervisory decisions 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 publication

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

11. Such representations should normally be made in writing,<sup>22</sup> and should contain detailed information – with reference to the test in section 391 of the Act – as to why it would not be appropriate for the PRA to publish details of the relevant notice.

12. The PRA will not normally decide against publication solely because it is claimed that:

- a) publication could have negative impact on a person's reputation; or
- b) a person will apply (or is likely to apply) for some or all of the matter to be dealt with in private when they refer it to the Tribunal.

## Who will take decisions on publication?

13. In relation to information concerning a Warning Notice published pursuant to the PRA's power under section 391 of the Act, section 395(2) provides that the PRA's decision-making policies must be designed to ensure that the decision to publish 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.

14. The PRA's statement of procedure on decision-making provides that the decision to publish that a Warning Notice has been issued will be taken by the same committee as took the decision to issue the Warning Notice itself.<sup>23</sup>

15. In relation to Decision Notices, Final Notices, and Supervisory Notices, any decision concerning publication will normally be taken by the same committee as took the decision to issue the notice itself.

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<sup>22</sup> If a person wishing to make representations to the PRA on any of the matters set out in this section is unable to provide representations in writing, for example due to that person having a disability, the PRA may allow representations to be made in person or by some other suitable means.

<sup>23</sup> For further information about the decision-making process, see the statement of the PRA's policy on statutory notices and the allocation of decision-making under the Act.

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## What form will publication take?

16. In relation to information concerning a Warning Notice published pursuant to the PRA's power under section 391 of the Act, the information placed in the public domain will normally include:

- a) sufficient details as to the identity of the firm concerned for it to be clear to whom the matter relates. This will include, but may not be limited to, the name of the firm or a firm 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 concerned; and
- c) a statement making clear that the issue of a Warning Notice is not a final decision,<sup>24</sup> and that if, following representations, the PRA decides to issue a Decision Notice, the subject of the notice has the option to refer the matter to the Tribunal to have the matter considered afresh.

17. In relation to Decision Notices, Final Notices, and Supervisory Notices, publication will generally include placing the relevant notice on the PRA's website. The notice may be accompanied by a press release.

18. 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.

## Reviewing whether continuing publication remains appropriate

19. Where it has published details of a Warning, Decision, 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.

20. In determining whether continued publication 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;
- 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;

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<sup>24</sup> A warning notice is akin to a 'minded to' decision.

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- f) public interest in the case (both at the time of publication and subsequently);
  - g) whether continued publication is necessary for the purposes of deterrence and/or advancing its statutory objectives;
  - 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

## 4. Annex – statement of policy updates

This annex details changes that have been made to the previous PRA statement of policy (SoP) entitled 'The Prudential Regulation Authority's approach to enforcement: statutory statements of policy and procedure':

1. The PRA SoP was published on 1 April 2013 and included statutory statements of policy and procedure<sup>25</sup> in relation to:

- a) Statutory notices and decision-making
- b) financial penalties
- c) suspensions and restrictions
- d) settlement
- e) publication or regulatory action
- f) conduct of interviews pursuant to section 169(7) of the Act<sup>26</sup>

2. Following publication of Policy Statement (PS) 1/16 – Engagement between external auditors and supervisors and commencing the PRA's disciplinary powers over external auditors and actuaries<sup>27</sup> on 21 January 2016, this SoP has been updated to:

- a) present the PRA's statements of policy as chapters rather than appendices, to be consistent with other PRA policy publications; and
- b) reflect the statements of policy set out in PS1/16 with:
  - (i) an amendment to the statement of the PRA's policy on statutory notices and the allocation of decision-making under the Act, 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 on persons who are, or have been, auditors or actuaries

<sup>25</sup> The April 2013 version is available at [www.bankofengland.co.uk/prudential-regulation/publication/2013/the-pra-approach-to-enforcement-statutory-statements-of-policy-and-procedure-sop](https://www.bankofengland.co.uk/prudential-regulation/publication/2013/the-pra-approach-to-enforcement-statutory-statements-of-policy-and-procedure-sop).

<sup>26</sup> 'The Act' means the Financial Services and Markets Act 2000 (as amended).

<sup>27</sup> Available at [www.bankofengland.co.uk/prudential-regulation/publication/2015/engagement-between-external-auditors-and-supervisors-and-commencing-the-pras-disciplinary-powers](https://www.bankofengland.co.uk/prudential-regulation/publication/2015/engagement-between-external-auditors-and-supervisors-and-commencing-the-pras-disciplinary-powers).



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

3. Following the publication of the Bank of England PS/EDMC2018<sup>28</sup> on 3 August 2018, this SoP has been updated to reflect the policy changes in PS/EDMC2018 which establish the Enforcement Decision Making Committee.
4. Following the publication of PS6/19<sup>29</sup> on 5 March 2019, this SoP has been updated to apply the PRA's policy on the imposition and amount of financial penalties under the Act (as set out in Chapter 2) to the imposition and amount of financial penalties under section 142S of the Act.
5. Following the publication of PS23/19<sup>30</sup> on 4 October 2019, this SoP 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 SoP 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 PS6/19.

## 2023

### May 2023

Following publication of the Bank of England PS[xxxx] on [\*\*\*], this SoP has been updated to reflect the policy changes in [PS/xxxx] which separate out the PRA's approach to Enforcement and the PRA's allocation of decision-making and approach to supervisory decisions.

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<sup>28</sup> 'Enforcement Decision Making Committee', August 2018:

<https://www.bankofengland.co.uk/paper/2018/enforcement-decision-making-committee-policy-statement>.

<sup>29</sup> March 2019: <https://www.bankofengland.co.uk/prudential-regulation/publication/2018/occasional-consultation-paper>.

<sup>30</sup> October 2019: <https://www.bankofengland.co.uk/prudential-regulation/publication/2019/enforcement-changes-to-the-pras-settlement-policy>.