

Investigation Referral Criteria

January 2024

The Bank's investigation referral criteria¹

1. As indicated in the 'Bank of England's approach to enforcement: statement of policy and procedure' (the 'Bank's Enforcement Approach'),² we will use our investigatory powers where it is appropriate to do so to advance the Bank of England ('the Bank')'s relevant objectives.³ The rationale for enforcement sanctions that may follow an investigation is also set out in the Bank's various supervisory approach documents.⁴ References to the Bank includes the Bank acting in its capacity as the Prudential Regulation Authority (the 'PRA') unless otherwise specified.
2. We have regard to the considerations set out in the table below to allow us to reach as well-rounded a decision on the appropriateness of an investigation as possible. This is because, in any given situation, there may be a range of possible responses by the Bank. The appropriateness of using its investigation tools will, therefore, need to be measured against:
 - their anticipated benefits in advancing the Bank's objectives;
 - the alternative courses of action available to the Bank; and
 - the proportionality of opening an investigation, given the level of resources it may require and the level of intrusion and cost to the subject.
3. The list of considerations set out in the table below is not exhaustive. Not all the considerations will apply in every case, and the weighting the Bank will

¹ The publication of the criteria and framework responds to the recommendations (in particular recommendations 1, 3, 4 and 5) made by HM Treasury in its 'Review of enforcement decision-making at the financial services regulators: final report', December 2014:

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

² <http://www.bankofengland.co.uk/prudential-regulation/publication/2024/january/the-bank-of-england-approach-to-enforcement-statements-of-policy-and-procedure>

³ These include, primarily, the Bank's financial stability objective under section 2A of the Bank of England Act 1998 ('to protect and enhance the stability of the financial system of the United Kingdom'), the PRA's general objective under section 2B of the Financial Services and Markets Act 2000 ('promoting the safety and soundness of PRA-authorized persons' – that is, firms) and, where relevant, the PRA's insurance objective ('contributing to the securing of an appropriate degree of protection for those who are or may become policyholders'). The Bank also has various secondary objectives that apply in matters such as making policy.

⁴ For more information on the Bank's supervisory approach with respect to the PRA-regulated firms, financial market infrastructures and participants in the wholesale cash distribution market, 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): <https://www.bankofengland.co.uk/prudential-regulation/publication/pras-approach-to-supervision-of-the-banking-and-insurance-sectors>, [Financial market infrastructure supervision](https://www.bankofengland.co.uk/financial-stability/financial-market-infrastructure-supervision): <https://www.bankofengland.co.uk/financial-stability/financial-market-infrastructure-supervision>, and [Statement of policy on the Bank's supervisory approach to market oversight for wholesale cash distribution](https://www.bankofengland.co.uk/paper/2023/sop/sop-on-the-banks-supervisory-approach-to-market-oversight-for-wholesale-cash-distribution): <https://www.bankofengland.co.uk/paper/2023/sop/sop-on-the-banks-supervisory-approach-to-market-oversight-for-wholesale-cash-distribution>, respectively. Any future supervisory approach documents (for example, with respect to regulatory powers conferred on the Bank under the Financial Services and Markets Act 2023) will be published on the Bank's website: www.bankofengland.co.uk.

give to each will depend on the individual circumstances and situation. Some matters will give rise to other valid considerations which will be taken into account. The considerations set out in the table below continue to act as a reference point during the progress of an investigation.

4. A decision to open an investigation does not mean the Bank has decided that there has been a breach of a rule, requirement, direction or compliance failure, nor what sanction, if any, should be imposed. Our focus in investigation is on gathering facts, conducted with an objective and dispassionate mindset. The Bank does not consider an investigation to be a success only if a sanction is ultimately imposed.

Considerations
<p>Centrality of the issue to the Bank's objectives and approach</p> <p>The Bank advances its objectives by applying the approach set out in the approach to supervision documents⁵ to the supervision of firms, financial market infrastructures (FMIs⁶) and the individuals who run them. The Bank's various supervisory approach documents reflect the different focuses of the regulatory regimes under which the Bank has supervisory and enforcement powers. However, one common thread across the Bank's approach to supervision is to stress the importance of firms, FMIs and, where applicable, senior individuals being transparent, open and straightforward in their dealings with the Bank.</p> <p>For investigations into PRA-regulated firms and individuals (for example, with respect to possible breaches of the PRA rules), the Bank stresses that an adherence by firms to the PRA Fundamental Rules is vital, that failure to comply with the Fundamental Rules may result in enforcement action, and that a firm's senior management must observe all the conduct rules or standards that apply to them.</p> <p>The Bank, in its capacity as the PRA, attaches particular weight to issues that relate to the PRA's Strategic Goals;⁷ would present a risk to, or materially compromise, the delivery of its objectives; would undermine the ability or willingness of firms to be open and straightforward with the PRA; or would affect the PRA's ability to supervise.</p>

⁵ See footnote 4 above.

⁶ In this context, the term 'FMIs' include not only the FMIs supervised by the Bank, but also certain service providers supervised by the Bank (for example, specified service providers to operators of recognised payment systems).

⁷ These are published in the PRA Business Plan, available at <https://www.bankofengland.co.uk/prudential-regulation>.

In respect of individuals, the Bank, in its capacity as the PRA, considers particularly:

- whether circumstances suggest potential breaches of rules on integrity and openness, or indicate concerns about an individual's fundamental fitness and propriety;
- the seniority of the individual in relation to the firm and the extent of their responsibility for the matters giving rise to the breach and/or the business area affected by it; and
- their current position in the firm/industry.

As far as possible, the Bank takes a similar approach with respect to investigations under its other regulatory remits. For example, in considering whether to open an FMI investigation, the Bank attaches particular weight to issues that relate to its priorities with respect to FMI supervision.⁸

Appropriateness of using investigation tools and powers

The Bank's investigative tools and powers enable it to obtain information from a wider range of sources than its other tools for obtaining information, such as simply by request. Situations often arise which combine enforcement and other supervisory concerns, and the question is whether it is best to use the investigative tools and powers either instead of other information-gathering powers or alongside them.

The Bank considers a number of factors to determine if an investigation is the appropriate tool. Considerations may include:

- whether an investigation is the most proportionate way of uncovering, and responding to, the relevant facts in light of the Bank's objectives;
- the firm's, FMI's and/or individual's past supervisory record;
- the firm's, FMI's and/or individual's response to the issue: for example, whether the firm, FMI or individual has taken steps to remediate the problems or apparent breaches; and
- whether an effective investigation can be carried out; i.e. whether the sources of evidence are likely to be available, accessible and of the necessary quality and integrity (e.g. not decayed or unavailable due to duration of time).

⁸ These are published in the Bank's Annual Report on its supervision of financial market infrastructures. For example, see [The Bank of England's supervision of financial market infrastructures - Annual Report 2023: <https://www.bankofengland.co.uk/news/2023/december/supervision-of-financial-market-infrastructures-annual-report-2023>](https://www.bankofengland.co.uk/news/2023/december/supervision-of-financial-market-infrastructures-annual-report-2023).

Impact / potential impact of issue on the resilience of the financial sector or financial stability

The Bank (other than when it is acting in its capacity as the PRA) has a statutory objective of protecting and enhancing the stability of the financial system of the UK. In its capacity as the PRA, the Bank has statutory objectives of promoting the safety and soundness of the firms it regulates and contributing to the securing of an appropriate degree of protection for insurance policyholders. In advancing these, the Bank's approach to supervision enables it to prioritise its resources on those FMIs or firms with the greatest potential to have an adverse effect on financial stability, whether through failing or through the way in which they carry on their business.

When considering opening an investigation, the Bank may give weight to:

- the systemic significance of the FMI or firm (including, where relevant, its 'Category', or the seniority of the individual with respect to the FMI or firm; and
- whether the FMI(s), firm(s) and/or individual(s) are exhibiting behaviours which are particularly indicative of a more widespread or systemic shortcoming in standards.

Position of other enforcement bodies and resourcing prioritisation

The Bank seeks to use its resources in an efficient way and also recognises it may be efficient and effective to work in collaboration with other agencies or authorities.

The Bank therefore considers, in relation to an issue, whether such other agencies or authorities are investigating, or likely to investigate; and accordingly, how the Bank will best advance its objectives, in light of the actions of others.

The Bank will also consider the range of other investigations it is undertaking, or considering, at any one time and take this into account when considering if an investigation can or should be properly resourced.

Other considerations

The Bank will also consider whether there are any other, overriding reasons why opening, or not opening, an investigation would advance or pose a risk to, its objectives.