



BANK OF ENGLAND

Mr Stuart Forsyth v (1) the Financial Conduct Authority (2) the Prudential Regulation Authority, Upper Tribunal (Tax and Chancery Chamber) - Reference Nos: FS/2019/021 & FS/2019/022

PRA actions in response to recommendations made by the Upper Tribunal pursuant to section 133A(5) of the Financial Services and Markets Act 2000:

1. *The PRA should consider whether its staff are adequately trained and have an adequate understanding of the importance of proper records management in the context of potential enforcement proceedings and the consequences that could follow if those procedures are not followed.*

The PRA accepts this recommendation. We have undertaken a full review of applicable training, policies and procedures and have implemented improvements so as to reinforce the importance of effective record keeping in the context of potential or live enforcement proceedings. Failure to follow records management policies may be a disciplinary offence.

2. *The PRA should review its procedures for dealing with requests for disclosure of documents made after the usual disclosure process has been completed.*

The PRA has updated disclosure training and guidance on dealing with requests for disclosure of documents made after the usual disclosure process has been completed. Training is conducted on an annual basis.

3. *The PRA should review the adequacy of its Disclosure Memorandum in its current form and whether it is fit for purpose as it is currently being used. Legally privileged material should be kept separate to other material.*

The PRA has reviewed the Disclosure Memorandum and revised it to provide clearer guidance to those undertaking investigations and reviewing documents to ensure greater consistency across case teams.

The Bank/PRA's systems allows for potentially legally privileged material to be classified as such and, therefore, clearly identified without it being necessary to separate it.

4. *The PRA should make an assessment as to when the relevant limitation period begins which should be regularly reviewed as new information comes to its attention.*

The PRA has updated guidance and training to emphasise the importance of reviewing the original limitation assessment after new information comes to light.

5. *The recommendations set out above are equally applicable to the PRA, as appropriate. In addition, the PRA should undertake a full review of its processes for the recording of supervisory and other information that may be relevant to possible enforcement actions.*

As outlined in the response to Recommendation 1, the PRA has undertaken a full review of applicable training, policies and procedures and has implemented improvements to reinforce



BANK OF ENGLAND

the importance of effective record keeping in the context of potential or live enforcement proceedings.

6. *The approach to joint investigations should be reviewed. Where the conduct concerned falls equally within the scope of both Regulators consideration should be given as to whether there should be a single investigation by one of the Regulators and a single regulatory decision.*

On a case-by-case basis, the PRA will continue to consider at a senior level whether it is appropriate for there to be a joint investigation or a single investigation, in consultation with the FCA and taking all relevant matters into consideration.