



BANK OF ENGLAND

August 2018

Enforcement Decision Making Committee

Policy Statement
PS/EDMC2018

Enforcement Decision Making Committee

August 2018

Contents

1	Overview	1
2	Feedback to responses	4
3	Statutory obligations	5
	Appendices	7
	Appendix 1: Procedures - The Enforcement Decision Making Committee	8
	Appendix 2: Amendments to the Prudential Regulation Authority's approach to enforcement: statutory statements of policy and procedure (January 2016)	19
	Appendix 3: Amendments to Statutory statements of procedure in respect of the Bank of England's supervision of financial market infrastructures (June 2014)	24

1 Overview

1.1 This Policy Statement provides feedback to responses to CP/EDMC2017.¹

1.2 It also sets out final procedures for the Enforcement Decision Making Committee (the EDMC) in the document at Appendix 1. Final amendments to the PRA Decision-Making Framework are detailed at Appendix 2. Final amendments to the FMI Decision-Making Framework are detailed at Appendix 3.

1.3 In CP/EDMC2017 the Bank of England (the Bank) proposed:

The EDMC will be the Bank's decision making body in relation to contested enforcement cases within the statutory regimes operated by the Bank in relation to: (1) Prudential Regulation; (2) Financial Market Infrastructures (FMI); and (3) Resolution. The EDMC will strengthen the Bank's enforcement processes by ensuring a functional separation between the Bank's investigation teams and the Bank's decision makers in contested enforcement cases. The EDMC will be a committee of the Bank, made up of individuals who are not employees of the Bank and who will be independent from the Bank's existing executive management structure.

EDMC - remit

1.4 The Bank has a number of sanctioning powers within the various statutory frameworks under which it operates. The legislation uses a variety of terms to denote these sanctioning powers, including disciplinary powers,² disciplinary measures,³ financial penalties⁴ and regulatory sanctions.⁵ Accordingly, in order to provide certainty, the remit of the EDMC is exclusively defined by means of a schedule of statutory provisions set out in this document. These relevant provisions all permit the imposition of some form of penalty, censure or sanction in response to a contravention of a relevant rule or requirement or in response to some other form of misconduct. A reference in this paper to an 'enforcement' matter or 'disciplinary enforcement' matter is therefore a reference to the exercise of a power listed in the schedule of statutory provisions. The schedule may be amended from time to time to add or remove provisions in response to any material changes to the relevant legislation.

1.5 The EDMC will be the Bank's decision making committee for '*contested*' enforcement cases with respect to PRA, FMI and Resolution cases. Contested cases are those in which the Bank has not settled with the relevant subject(s) after an initial investigative stage. There may be a variety of reasons why a case has not

1 'Procedure for Enforcement Decision Making Committee', November 2017: www.bankofengland.co.uk/paper/2017/procedure-for-the-enforcement-decision-making-committee.

2 Section 66 of the Financial Services and Markets Act 2000 (FSMA).

3 Part XIV of FSMA.

4 Section 206 of FSMA.

5 Section 83ZR of the Banking Act 2009.

settled, including: (i) the parties have been engaged in settlement discussions but cannot agree on the terms and conditions of the settlement agreement within an appropriate timeframe; (ii) the Bank does not consider it appropriate to invite settlement due to the circumstances of the particular case; and/or (iii) the subject does not wish to engage in settlement discussions with the Bank. It will also be the decision making committee for certain Scottish and Northern Ireland banknotes regimes matters pursuant to the Scottish and Northern Ireland Banknote Statement of Penalty Policy in effect from time to time. This has been subject to separate consultation.

1.6 A decision by the EDMC panel to give a decision notice may, where provided by the relevant legislation, be referred to the Upper Tribunal by the firm or individual in question. The EDMC panel is therefore the final part of the administrative decision making process within the Bank before any external scrutiny of the decision in judicial proceedings.

Selection, appointment, remuneration and governance

1.7 Members of the EDMC will be wholly independent of the Bank's current executive and will not be employees of the Bank. EDMC members will be appointed by, and accountable to, the Court of the Bank of England (Court). Appointments will be made by Court following an open and competitive application process.

1.8 EDMC members will be appointed for renewable, fixed, three year periods. EDMC members will not serve more than two consecutive appointment terms. Only Court may remove individual members of the EDMC prior to the expiry of the fixed term period. Individual members may only be removed if Court is satisfied that the member is unable or unfit to discharge his or her functions as a member.

1.9 The EDMC may eventually consist of up to nine members appointed by Court, of which typically three would be legally qualified. Court will also appoint one of the legally qualified members as chair of the committee (the EDMC Chair) and one of the legally qualified members as deputy chair (the EDMC Deputy Chair) for the duration of his or her term. The Bank will keep the overall size of the EDMC, and the number of legally qualified members within it, under review.

1.10 EDMC members will receive reasonable remuneration for services discharged.

Operation of the EDMC

1.11 The EDMC will meet as often as necessary to discharge its functions. A panel of at least three EDMC members will be convened to hear and resolve each contested enforcement case. In line with the recommendation made by HM Treasury, at least one panel member will be legally qualified and will be

selected to lead the panel hearing that particular case (the Panel Lead).¹ Each panel member will have a vote and decisions will be made by majority vote. If the votes are evenly split, the Panel Lead will have the casting vote.

1.12 To ensure access to relevant legal advice, EDMC panels will be supported by a lawyer of appropriate seniority from within the Bank's Legal Directorate who - to the satisfaction of the Panel Lead - has not been involved in, and is sufficiently independent of, the matter under consideration. Where deemed appropriate by the Panel Lead, external legal advisers may also be appointed to support an EDMC panel. EDMC panels will also be provided with appropriate administrative support from within the Bank.

Who does this Policy Statement affect?

1.13 This Policy Statement will be of interest to authorised deposit takers and insurance firms, their professional advisers, their auditors and actuaries, and approved persons within the Senior Managers Regime. This Policy Statement will also be relevant to any other firms or individuals who may be interested in the enforcement regimes operated by the Bank, including in relation to: central counterparties, recognised payment systems, critical service providers, securities settlement systems and banks authorised under the Scottish and Northern Ireland banknote issuance regime pursuant to Part 6 of the Banking Act 2009.

Is this of interest to consumers?

1.14 This Policy Statement does not directly affect consumers. However, as these proposals concern the transparency of the Bank's approach to enforcement decision making and its enforcement process in relation to contested matters, they may be of general interest to consumers and the organisations which represent them.

Equality and diversity considerations

1.15 We have assessed the equality and diversity impacts of the proposals and do not consider that they give rise to any concerns.

The Bank's requirements under the Financial Services Markets Act 2000 (FSMA)

1.16 The Bank, including in its capacity as the PRA, is required by FSMA to have regard to any representations made to the proposals in a consultation, to publish an account, in general terms, of those representations and its response to them, and to publish details of any significant differences in the draft statement as made.

¹ This responds to recommendation 34 of HM Treasury's 'Review of enforcement decision-making at the financial services regulators: final report' ('the HMT Review'), December 2014: www.gov.uk/government/uploads/system/uploads/attachment_data/file/389063/enforcement_review_response_final.pdf.

Having considered the representations no material changes to the draft statement are included. Chapter 2 sets out feedback to responses received on the Bank's proposals.

2 Feedback to responses

2.1 We received three responses to CP/EDMC2017.

2.2 The respondents all supported establishing a unified EDMC and made a number of representations. In summary, these concerned:

- requesting affirmation of the independence of the legal and administrative support available to the EDMC;
- requesting greater clarity regarding the mechanism for determining whether or not a case is 'contested'; and
- suggesting that a firm or individual should be able to object (with good cause) to a specific panel member selected to hear a contested case.

2.3 In relation to independence of legal support, the arrangements described in paragraph 3.5 of 'Procedures - The Enforcement Decision Making Committee' (Appendix 1) ensure that the EDMC panels hearing any particular matter will be supported by a lawyer of appropriate seniority who has not been involved in the matter under consideration. Where deemed appropriate by the Panel Lead, external legal advisers may also be appointed to support an EDMC panel.

2.4 In relation to non-legal support to the EDMC, this will involve administrative tasks such as room bookings, diary management, provision of papers in advance of meetings, and so on; we do not consider that it is either necessary or an efficient use of public money to establish a dedicated administrative support function for the EDMC panels which is separated from the wider administrative resources of the Bank.

2.5 In relation to the question of whether or not a case is contested, and therefore whether it falls to be decided by the EDMC, 'Procedures - The Enforcement Decision Making Committee' (Appendix 1) explains that a contested case is one in which the Bank has not settled with the relevant subject(s) after an initial investigative stage. There is no decision as such – a matter is contested if, as matter of fact, a settlement agreement has not been concluded. There may be a variety of reasons why a case has not settled, including: (i) the parties have been engaged in settlement discussions but cannot agree the terms and conditions of the settlement agreement within an appropriate timeframe; (ii) the Bank does not consider it appropriate to invite settlement due to the circumstances of the particular case; and/or (iii) the subject does not wish to engage in settlement discussions with the Bank. If a matter has not settled (for whatever reason) then it is

contested and therefore, if the Bank wishes to pursue enforcement action in relation to that matter, it will fall to be decided by the EDMC.

2.6 One representation suggested the addition of a mechanism to enable a firm or individual to object (with good cause) to a particular panel member selected to hear a case. The EDMC procedure includes a number of safeguards designed to ensure that conflicts and potential conflicts across EDMC panel members are identified, reported and managed. EDMC panel members will be required to declare actual and/or potential conflicts of interest before participating in the panel hearing a specific matter. Actual and/or potential conflicts will be disclosed to the EDMC Chair and to the Bank's Conflicts Officer, who will seek to manage any such conflicts of interest. The Bank will record and document all disclosures of actual and/or potential conflicts and the steps taken to manage them. In addition, the EDMC will be required at least once a year to submit a report to Court, which will subsequently be published, on (among other things) any situations in which a member was unable to hear a matter because of an actual or potential conflict. The EDMC procedure imposes a responsibility on each Panel Lead to oversee the fair and expeditious determination of the matters under consideration (see paragraph 4.5 of 'Procedures - The Enforcement Decision Making Committee' (Appendix 1)). In our view, these procedures are broad enough to safeguard the fairness of the process and therefore a specific provision enabling a party to object to an individual panel member is not necessary.

3 Statutory obligations

3.1 In order to implement the proposals to create the EDMC, it will be necessary for the Bank to delegate its decision-making function in relation to contested enforcement cases to the EDMC and to amend existing statements of policy and procedure.

3.2 When making rules and determining the general policy and principles by which it performs its functions, the Bank in its capacity as the PRA must comply with a number of statutory and public law obligations; it is required to:

- have regard to the regulatory principles and certify that the policy proposals accord with these;¹
- provide a cost benefit analysis unless it considers the relevant costs to be of no more than minimal significance;²
- prepare a statement setting out its opinion whether or not the impact of the proposed rule on mutual societies will be significantly different where the PRA proposes a rule which would apply both to mutual societies, and other authorised persons; and

1 Section 2H(2) FSMA.

2 Section 138(L) FSMA.

- have due regard to the need to eliminate discrimination and to promote equality of opportunity in carrying out its policies, services and functions in accordance with the Equality Act 2010.

3.3 FSMA¹ requires the Bank in its capacity as the PRA, so far as reasonably possible, to act in a way that advances its statutory objectives, namely the:

- general objectives to promote the safety and soundness of PRA-authorized persons, and for insurance, to contribute to ensuring that policyholders are appropriately protected; and
- secondary objective to facilitate effective competition in the markets for services provided by PRA-authorized persons in carrying on regulated activities.

3.4 The Bank does not anticipate that there will be an impact on competition in the markets for services provided by PRA-authorized persons in carrying on regulated activities as a result of the proposed amendments. Further, the Bank considers that the impact of the proposed amendments on mutual societies will not be significantly different from the impact on other firms.

3.5 These proposals are consistent with the regulatory principles to which the Bank must have regard, including under FSMA,² by clearly setting out its approach to decision making in contested enforcement cases. These proposals also meet the Bank's duty to follow principles of good governance in managing its affairs.³

3.6 In developing these proposals, the Bank has had regard to applicable regulatory principles including as set out in FSMA. A principle of key relevance to these proposals is that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction.

3.7 The Bank has not produced a full cost benefit analysis because the relevant costs are considered to be of no more than minimal significance. Any resulting increase in costs to the Bank will be minimal on the basis that the EDMC will meet on an as-needed basis, its members will be remunerated on a time-spent basis and that administrative and legal support will largely be provided from existing Bank resources. Moreover, the costs of engaging senior decision-makers together with legal and administrative support arises in respect of any contested enforcement decision-making under the current framework, regardless of the introduction of an EDMC model.

1 Section 2B(2), 2C(2) and 2H(1) FSMA.

2 Section 3B(g) FSMA.

3 Section 3C FSMA.

Appendices

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- 1 **'Procedures – The Enforcement Decision Making Committee', also available at: www.bankofengland.co.uk/paper/2018/procedures-enforcement-decision-making-committee**

 - 2 **Amendments to the 'Prudential Regulation Authority's approach to enforcement: statutory statements of policy and procedure' (January 2016). Updated document available at: www.bankofengland.co.uk/prudential-regulation/publication/2013/the-pra-approach-to-enforcement-statutory-statements-of-policy-and-procedure-sop**

 - 3 **Amendments to 'Statutory statements of procedure in respect of the Bank of England's supervision of financial market infrastructures' (June 2014). Updated document available at: www.bankofengland.co.uk/statement/2014/statutory-statements-of-procedure-in-respect-of-the-boe-supervision-of-fmi-policy-statement**
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Appendix 1

Procedures – The Enforcement Decision Making Committee

Enforcement Decision Making Committee

1 Introduction

1.1 The Enforcement Decision Making Committee (EDMC) is a committee of the Bank of England. The Court of the Bank of England (Court) manages the affairs of the Bank. Court's responsibilities are set out in the Bank of England Act 1998 (the 1998 Act).¹ Court's responsibilities include determining the Bank's objectives and strategy, and ensuring the effective discharge of the Bank's functions and the most efficient use of its resources. Court also keeps under review the Bank's performance in relation to its objectives and the exercise of the Bank's statutory functions. Court delegates to the Governor the day-to-day management of the Bank, including the discharge of statutory functions, while reserving certain key decisions to itself.

1.2 The EDMC is being created by Court to help the Bank discharge its responsibilities and strengthen its enforcement processes by ensuring a functional separation between the Bank's investigation teams and the Bank's decision makers in contested enforcement cases within the following statutory regimes operated by the Bank: (1) Prudential Regulation; (2) Financial Market Infrastructure (FMI); and (3) Resolution.² References to the Bank in this document include references to the separate regimes operated by the Bank unless otherwise stated. The EDMC will also act in Scottish and Northern Ireland banknote regime enforcement cases, pursuant to the Scottish and Northern Ireland Banknote Statement of Penalty Policy in effect from time to time and with such remit and scope as may be provided for in that policy.

1.3 The EDMC acts for and with the full authority of the PRC and also reports to the PRC in matters related to the PRA within its remit.

1 These 'matters reserved to Court' (7 February 2017) are set out in this document - www.bankofengland.co.uk/about/Documents/pdfs/court matters.pdf.

2 Please note the proposed the use of the EDMC under the Scottish and Northern Ireland Banknote Statement of Penalty Policy has been subject to separate consultation.

2 Scope

2.1 The remit of the EDMC is exclusively defined by means of a schedule of statutory provisions set out at paragraph 2.2 below. The schedule may be amended from time to time to add or remove provisions in response to changes to the relevant legislation.

2.2 Table of statutory decisions within the remit of the EDMC in contested cases:

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)

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)
Proposal to publish details of a compliance failure	s.197 (1) Banking Act 2009	Warning Notice	s. 201 (1) (a) Banking Act 2009
Decision to publish details of a compliance failure	s.197 (1) Banking Act 2009	Notice	s. 201 (1) (d) Banking Act 2009
Proposal to require the payment of a penalty in respect of a compliance failure	s.198(1) Banking Act 2009	Warning Notice	s.201 (1) (a) Banking Act 2009
Decision to require the payment of a penalty in respect of a compliance failure	s.198(1) Banking Act 2009	Notice	s.201 (1) (d) Banking Act 2009
Proposal to give a closure order	s. 199 (2) Banking Act 2009	Warning Notice	s.201 (1) (a) Banking Act 2009
Decision to give a closure order	s. 199 (2) Banking Act 2009	Notice	s.201 (1) (d) Banking Act 2009
Proposal to impose a management disqualification	s. 200 Banking Act 2009	Warning Notice	s. 201 (1) (a) Banking Act 2009

Decision to impose a management disqualification	s. 200 Banking Act 2009	Notice	s.201 (1) (d) Banking Act 2009
Proposal to publish a statement that a person has failed to comply with a relevant requirement	s. 83ZR(1)(a) Banking Act 2009	Warning Notice	s. 83ZT(1) Banking Act 2009
Decision to publish a statement that a person has failed to comply with a relevant requirement	s. 83ZR(1)(a) Banking Act 2009	Decision Notice	s. 83ZU (1) Banking Act 2009
Proposal to impose a financial penalty	s. 83ZR(1)(b) Banking Act 2009	Warning Notice	s. 83ZT(1) Banking Act 2009
Decision to impose a financial penalty	s. 83ZR(1)(b) Banking Act 2009	Decision Notice	s. 83ZU (1) Banking Act 2009
Proposal to direct a person to refrain from certain conduct in future	s. 83ZR(1)(c) Banking Act 2009	Warning Notice	s. 83ZT(1) Banking Act 2009
Decision to direct a person to refrain from certain conduct in future	s. 83ZR(1)(c) Banking Act 2009	Decision Notice	s. 83ZU (1) Banking Act 2009
Proposal to prohibit a person from holding offices or positions of responsibility in respect of a bank or banks	s. s. 83ZR(1)(d) Banking Act 2009	Warning Notice	83ZT(1) Banking Act 2009
Decision to prohibit a person from holding offices or positions of responsibility in respect of a bank or banks	s. 83ZR(1)(d) Banking Act 2009	Decision Notice	83ZU (1) Banking Act 2009

3 Selection, appointment, remuneration, governance and support

3.1 EDMC members will be appointed for renewable, fixed three year periods. EDMC members will not be employees of the Bank. Remuneration will reflect services discharged. Appointments will be made by Court following an open and competitive application process. The EDMC may eventually consist of up to nine members appointed by Court, of which typically three would be legally qualified. Court will also appoint one of the legally qualified members as chair of the committee (the EDMC Chair) and one of the legally qualified members as deputy chair (the EDMC Deputy Chair) for the duration of his or her term. The Bank will keep the overall size of the EDMC, and the number of legally qualified members within it, under review.

3.2 The EDMC will meet as often as necessary to discharge its functions, which will be determined and kept under review by Court. It may do so, in appropriate cases, in writing or by telephone or email or other electronic means.

3.3 Members of the EDMC will be wholly independent of the current executive. EDMC members shall not sit on any other committee, panel or board of the Bank. Members will be appointed, as office holders, pursuant to a letter of appointment and answerable to Court in respect of their performance.

3.4 The EDMC will submit a statement to Court, at least once a year, with a copy also provided to the PRC, which will subsequently be published, to report on at least the following:

- how often the Committee has met and which members have sat in which matters;
- resourcing, recruitment and profile;
- costs incurred;
- number of matters brought to it from the PRA, FMI and Resolution, and in respect of the S&NI banknote regime, respectively;
- number of statutory notices respectively dealt with;
- whether EDMC decisions have been subject to subsequent successful challenge;
- situations where a member was unable to hear a matter because of an actual or perceived conflict;
- any other matters which Court considers relevant to the operation of the committee and of which it informs the EDMC Chair; and
- any other matters on which the Committee feels it needs to bring to Court's attention.

The EDMC Chair and any members of the EDMC may be called to Court, individually or collectively, to answer questions on the functioning of the EDMC. The PRC may, with Court's agreement, also request additional information from the EDMC and its members or may request the EDMC or the Chair to review aspects of the PRA's enforcement activity.

Only Court may remove individual members of the EDMC prior to the expiry of the fixed term period. Individual members may be removed if Court is satisfied that the member is unable or unfit to discharge his/her functions as a member.

3.5 A legally qualified member of the EDMC will be selected to lead the panel hearing any particular case (the Panel Lead). To ensure access to relevant legal advice, EDMC panels will be supported by a lawyer of appropriate seniority from within the Bank's Legal Directorate who has not been involved in the matter under consideration and, to the satisfaction of the Panel Lead, is sufficiently independent of the matter under consideration. Where deemed appropriate by the Panel Lead, external legal advisers may also be appointed to support an EDMC panel.

3.6 The Bank will provide administrative support for the EDMC and the EDMC panels, as appropriate. For each contested enforcement case the Bank will appoint a support team on an ad-hoc basis to provide administrative support.

4 Operation of the EDMC

EDMC Panels

4.1 Panels of at least three EDMC members will be convened by the EDMC Chair to hear contested enforcement cases. The composition and size of the EDMC panels may vary depending on the nature of the particular matter under consideration. Typically a panel will consist of three EDMC members. Complex cases may require a larger panel. The EDMC Chair will make an initial assessment of the papers and determine if a larger panel is warranted. The EDMC Chair may nominate any of the legally qualified EDMC members to act as Panel Lead hearing a particular case. If the EDMC Chair is unable to participate due to a conflict, the panel shall be drawn together by the Deputy Chair.

4.2 EDMC members will be subject to a conflicts of interest policy. This policy is intended to ensure that actual and/or potential conflicts of interest between panel members and the matters upon which they are deciding are highlighted and addressed. This conflicts of interest policy will require members to declare actual and/or potential conflicts of interest (such as certain financial and business relationships) to the Bank prior to appointment, to update these declarations at regular intervals thereafter and prior to participating in the panel hearing a specific case. Potential conflicts will be disclosed to the EDMC Chair and the Bank's Conflict Officer who will seek to manage any actual or potential conflicts of interest. The Bank will record and document all disclosures of potential conflicts and the steps taken to manage them.

4.3 EDMC panel members will not receive or have access to any non-public information from the Bank other than strictly in connection with matters being brought before them.

4.4 Any panel constituted under the EDMC will not be permitted to hear a prudential and resolution contested enforcement case concurrently. This is in keeping with the provisions of the Bank Recovery and Resolution Directive and the Capital Requirements Directive which require operational independence between the Bank's resolution function and its other functions, including in its capacity as the PRA.¹

EDMC Procedure: general

4.5 All panel members are required to act in a suitable manner to determine fairly and expeditiously any matter which it is considering. This shall be overseen by the Panel Lead.

4.6 Each member of an EDMC panel is entitled to vote on the matter under consideration. Each panel member will have one vote and decisions will be made by majority vote. If the votes are evenly split, the Panel Lead hearing a particular case will have the casting vote.

4.7 The Bank will manage and retain appropriate records of the decisions taken by the EDMC in accordance with the Bank's Record Management Policy.²

5 EDMC Procedure: warning notices

5.1 In contested enforcement cases, if Bank staff consider that action requiring a warning notice is appropriate they will make a recommendation to the EDMC panel that the notice should be given. The EDMC panel:

- will consider independently and afresh whether the material on which the recommendation is based is adequate to support it;
- may seek additional information about, or clarification of, the recommendation, which may necessitate additional work by the relevant Bank staff such as those active on the preceding investigation;
- will decide whether to issue the notice and the terms of any notice given; and
- will endeavour to hear and decide matters fairly and expeditiously.

5.2 If the EDMC panel decides to give a warning notice, the EDMC will determine the wording of the warning notice, and will ensure that the warning notice complies with any relevant statutory provisions. The timing of the warning notice is a matter for the Panel Lead. If the EDMC decides to give a warning notice, the EDMC will also make any relevant statutory notice associated decisions.³

1 See further the Bank's statement on structural separation between the resolution and supervision functions of the Bank of England (March 2017) - www.bankofengland.co.uk/about/Documents/statementstructuralseparation.pdf.

2 See www.bankofengland.co.uk/about/Documents/humanresources/recordsmanagepol.pdf.

3 By which we mean a decision which is associated with a decision to give a statutory notice, including a decision: (a) to determine or extend the period for making representations; (b) to determine whether a copy of the statutory notice needs to be given to any third party and the period for the third party to make representations; and (c) to grant or refuse access to Bank material.

5.3 If Bank staff consider that it is appropriate to publish information about the matter to which a warning notice given by an EDMC panel relates, they will make a recommendation to the EDMC panel that such information should be published. The EDMC will decide whether it is appropriate in all the circumstances to publish information about the matter to which the warning notice relates and what information is to be published by the Bank. The EDMC will consult the parties before making a decision and will notify the parties of the decision once taken.

5.4 If the EDMC panel decides that the Bank should give a warning notice the Bank, through the administrative support it provides to the EDMC, will make appropriate arrangements for the notice to be given; and will make appropriate arrangements for the disclosure of the substance of any communications between the EDMC and the Bank staff who made the recommendation on which the EDMC's decision is based.¹ For the avoidance of doubt, such disclosure would not extend to the substance of any communications between the EDMC and its independent legal adviser over which Legal Professional Privilege applies.

5.5 The EDMC will not, after the Bank has given a warning notice and whilst the case is still ongoing, meet with or discuss the matter with the Bank staff responsible for the case without other parties to the proceedings being present or otherwise having the opportunity to respond.

6 Procedure: representations

6.1 The recipient of a warning notice has the right to make representations in relation to the warning notice. A warning notice will specify the time allowed for making representations. This will not be less than 21 days, except in urgent cases and where permitted by statute,² the period may be reduced to 14 days. Representations will usually be in writing, however it will be open to the recipient of a warning notice to ask the EDMC for permission to make oral representations. It is for the Panel Lead to determine whether to give such permission. The warning notice will specify a time within which the recipient is required to indicate whether they wish to make oral representations.

1 Such disclosure may mean materials which led to the issue of the Warning Notice which may include written presentations to the EDMC, documentation and emails in addition to minutes of the meeting of the EDMC.

2 For example, Section 387(2) FSMA.

Request for extension of time

6.2 The recipient of a warning notice may request an extension of the time allowed for making written or oral representations. Such a request must normally be made within seven days of the warning notice being given. If a request is made, the Panel Lead will decide whether to allow an extension, and, if so, how much additional time is to be allowed for making representations. In reaching a decision as to an extension of time, the Panel Lead will take into account all relevant factors, including the legal and factual complexity of the case, as well as whether there are any factors outside the control of the firm or individual that would materially impact on their ability to respond within the period set out in the warning notice.

Representations

6.3 If a request for an oral representations meeting is received within the time specified in the notice, a meeting will be arranged at which the relevant EDMC members will hear the representations. Decisions on such requests will be made by the Panel Lead. Any dates will be fixed having regard to all the relevant factors, including the need for the EDMC to deal with matters fairly, efficiently and expeditiously and any particular issues about the timing of the meeting which have been raised by any party to the proceedings.

6.4 It will be usual for the panel that is to consider any representations and is to decide whether to give a decision notice¹ to comprise the same members of the EDMC who previously considered the matter.

6.5 If for any reason, one or more panel members who participated at the warning notice stage, cannot participate at subsequent stages, including consideration of the representations, the panel may continue to deal with the matter if it still has three members (including the Panel Lead) who participated at the previous stage. If the panel drops below three members, to ensure that the panel is quorate the Panel Lead will ensure that new EDMC members are added. If the Panel Lead becomes unavailable, the EDMC Chair will oversee arrangements to ensure that the panel is quorate.

6.6 The Panel Lead will ensure that the meeting is conducted so as to enable:

- (i) the recipient of the warning notice to make representations;
- (ii) the relevant Bank staff to respond to those representations where appropriate;
- (iii) the EDMC members to raise with those present any points or questions about the matter (whether in response to particular representations or more generally about the matter); and

1 Please note for the purposes of the EDMC procedure, 'decision notice' also refers to written notice required by section 201(1)(d) Banking Act 2009 following issuance of a warning notice under section 201(1)(a).

(iv) the recipient of the warning notice to respond to any points made by Bank staff or the EDMC members in steps (ii) and (iii) above.

6.7 The Panel Lead has full overall control of the proceedings and may ask the recipient of the warning notice or Bank staff to limit the length of their oral representations (or response) or to limit the oral representations (or response) to particular issues arising from the warning notice. The recipient of the warning notice may wish to be legally represented at the meeting, but this is not a requirement.

6.8 In appropriate cases, the EDMC panel via the Panel Lead may ask the recipient of the warning notice or the relevant Bank staff to provide additional information to the panel in writing after the meeting. The panel will specify the time within which that information is to be provided. If additional information is supplied to the EDMC panel as a result of such a request copies will be provided to all parties.

7 Expedited and Default procedures

7.1 The recipient of a warning notice is not obliged to make written or oral representations in response to a warning notice. Recipients of a warning notice who wish to expedite the procedure may expressly notify the EDMC panel in writing that they do not wish to make representations to the EDMC panel and that they intend to have the matter referred to the Upper Tribunal.¹

7.2 On receipt of such notification in writing, the EDMC panel may proceed to determine whether to issue a decision notice without waiting for the time allowed for making representations to expire. The EDMC panel shall decide whether to give the decision notice in the light of any representations by any third party and any submissions from Bank staff.

7.3 If no representations are made in response to the warning notice within the specified time, and no written notification is received regarding a request to use the expedited procedure, the EDMC panel will determine whether to issue a decision notice.

7.4 In line with the PRA's current settlement policy, it may be possible for recipients of a warning notice nevertheless to settle the matter before the EDMC panel issues a decision notice.

8 Procedure: decision notices

8.1 In any case in which representations are made, the EDMC panel will consider all of the material before it, including any written and oral representations, and will consider whether it is right in all the circumstances to give a decision notice. If the EDMC panel decides to give a decision notice the EDMC panel will settle the

¹ Where FSMA applies, this notification will require confirmation by the recipient of the warning notice that they will not exercise any rights under section 387(2) of FSMA.

wording of the notice which will include a brief summary of the key representations made and how they have been dealt with.

8.2 If the EDMC panel decides to give a decision notice, the EDMC panel will make any relevant statutory notice associated decisions.¹

8.3 If the EDMC panel decides that a decision notice should not be given, the relevant parties will be notified in writing of that decision, and where appropriate the Bank will give a notice of discontinuance of action to the person to whom the warning notice was given.

9 Discontinuance of action by the Bank

9.1 Bank staff responsible for recommending action to the EDMC panel will continue to assess the appropriateness of the proposed action in the light of new information or representations received and any material change in the facts or circumstances relating to a particular matter. The Bank may decide to give a notice of discontinuance to a person to whom a warning notice or decision notice has been given. The Bank will inform the EDMC panel and the relevant parties of any decision to discontinue the proceedings.

9.2 Generally parties will not be entitled to any compensation or costs if the Bank decides not to proceed with disciplinary action. However, if parties consider they may have a complaint, and want further information about making a complaint about the Bank, the Bank has a complaints scheme, details of which are available online.²

10 Upper Tribunal proceedings

10.1 A decision by the EDMC panel to give a decision notice may, where provided by the relevant legislation, lead to a reference to the Upper Tribunal. The proceedings before the Upper Tribunal are not however a matter for the EDMC panel. It is the responsibility of the recipient of the decision notice to seek to refer the matter to the Upper Tribunal under the relevant legislation if they so wish. If the matter is not referred to the Upper Tribunal within the time required under the relevant legislation, the Bank will take the action to which the decision notice relates.

1 By which we mean a decision which is associated with a decision to give a statutory notice, including a decision: (a) to determine or extend the period for making representations; (b) to determine whether a copy of the statutory notice needs to be given to any third party and the period for the third party to make representations; and (c) to grant or refuse access to Bank material.

2 See www.bankofengland.co.uk/about/Pages/complaints/default.aspx.

Appendix 2

Amendments to The Prudential Regulation Authority's approach to enforcement: statutory statements of policy and procedure (January 2016)

Introduction

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

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

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

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.

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

(a) The ~~Prudential Regulation Committee~~**A Board** excluding the Financial Conduct Authority Chief Executive Officer (the ~~PRC~~**Board**);

(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)

15. Statutory **notice** decisions will be divided into one of ~~four~~**three** 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.¹ 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* 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).

16A. SRPC will ordinarily will act as the decision making committee 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 PRA Board where it considers it appropriate to do so.

Composition of DMCs (other than the EDMC)¹⁵

32. All DMC members are PRA employees and part of its executive management structure other than the members of the Regulatory Sub-Committee of the PRA Board PRC where some members will be non-executives.

Urgent statutory notice cases^{17A}

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 same level 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.

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.

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. by the same DMC that is determining or would have normally determined the case

76. The DMC that will consider the settlement will be determined in accordance with paragraph 16 above. normally be at the same level committee structure DMC that would have decided the case had the matter been contested

¹ 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.

¹⁶ The composition of the EDMC is set out in the "Procedures - The Enforcement Decision Making Committee" document.

¹⁹ This does not apply to cases within the remit of the EDMC.

81. If a settlement decision is not reached and the matter remains contested, ~~if applicable, a differently constituted DMC at the same level will decide the case. Such DMC~~ the EDMC will not be privy to any details from the settlement discussions.

[Title]

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

[Graphics box at top right of diagram in Annex A:]

~~Board~~ PRC Members (excluding the Financial Conduct Authority CEO) (~~Board~~ PRC)

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)
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)

Appendix 3

Amendments to Statutory statements of procedure in respect of the Bank of England's supervision of financial market infrastructures (June 2014)

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 impact and may involve representatives from across the Bank. Decisions in contested enforcement cases will be made by the Enforcement Decision Making Committee (EDMC).¹

¹ The procedure for the EDMC is set out in a separate document 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.