



BANK OF ENGLAND

August 2018

Procedures - The Enforcement Decision Making Committee

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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 use of the EDMC under the Scottish and Northern Ireland Banknote Statement of Penalty Policy has been subject to separate consultation and is available on the Bank of England website at <https://www.bankofengland.co.uk/banknotes/scottish-and-northern-ireland-banknotes>.

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.

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/statementsstructuralseparation.pdf.

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.¹

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.²

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.³ For the avoidance of doubt, such disclosure would not extend to the substance of any

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

2 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.

3 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.

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,¹ 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.

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.

1 For example, Section 387(2) FSMA.

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
- (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

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).

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 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.²

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.

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.

2 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.

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.¹

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