

**Bank of England PRA**

# Regulatory Investigations Guide

January 2024

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# 1. Introduction

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1.1 This guide provides an overview of the Bank of England's ('Bank') investigation and enforcement processes.<sup>1</sup>

1.2 It is intended as a reference for firms and individuals subject to Bank investigation ('subjects') or potential subjects, and their advisors. It is subject to (and should be read alongside) the law, the 'Bank investigation referral criteria',<sup>2</sup> the 'Bank of England's approach to enforcement: Policy Statement' PS1/24,<sup>3</sup> the 'Bank of England's approach to enforcement: statements of policy and procedure' (the 'Bank Approach to Enforcement'),<sup>4</sup> and the Bank of England 'Procedures - The Enforcement Decision Making Committee'<sup>5</sup> (the 'EDMC Procedures') as amended or supplemented from time to time and any other relevant Bank publications.

1.3 The purpose of this document is to provide procedural information which may help subjects understand more fully the Bank's processes as recommended by HM Treasury's 'Review of enforcement decision-making at the financial services regulators: final report'.<sup>6</sup>

## Key stages

1.4 This guide sets out the usual stages in a regulatory enforcement investigation and, should it arise, subsequent enforcement sanction. These relevant enforcement sanctions are set out in the Bank Approach to Enforcement and the EDMC Procedures, as amended or supplemented from time to time and include imposing financial penalties, public censures, suspending or restricting firms' permissions, taking disciplinary actions for individuals' misconduct, and prohibiting individuals. Not all stages will be relevant to every investigatory matter. The summary at the end of this guide sets out the process.

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<sup>1</sup> The Bank (including where it acts in its capacity as the PRA) has a range of investigatory, enforcement and criminal powers under various statutory regimes, such as Financial Services and Markets Act 2000 ('FSMA'), the Banking Act 2009 ('BA09') and the Financial Services (Banking Reform) Act 2013.

<sup>2</sup> <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/pru-statutory-powers/bank-of-england-investigation-referral-criteria.pdf>

<sup>3</sup> <https://www.bankofengland.co.uk/prudential-regulation/publication/2024/january/the-bank-of-england-approach-to-enforcement-policy-statement>

<sup>4</sup> <http://www.bankofengland.co.uk/prudential-regulation/publication/2024/january/the-bank-of-england-approach-to-enforcement-statements-of-policy-and-procedure>

<sup>5</sup> <https://www.bankofengland.co.uk/prudential-regulation/publication/2024/january/procedures-the-enforcement-decision-making-committee>

<sup>6</sup> December 2014: <https://www.gov.uk/government/calls-for-evidence/review-of-enforcement-decision-making-at-the-financial-services-regulators-call-for-evidence>.

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## 2. Opening an investigation

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2.1 The Bank considers whether it should investigate a matter when it becomes aware of circumstances in which, realistically, it might be appropriate to do so. This could arise out of any information reaching the Bank, whether through supervision, self-reporting, whistleblowing<sup>7</sup>, external liaison, or other channels.

2.2 To open an investigation, the Bank must be satisfied that there is a legal basis for doing so (including that any relevant statutory test is met), and that an investigation is an appropriate response in the circumstances. In making this assessment the Bank examines the list of considerations set out in the 'Bank Investigation Referral Criteria'.<sup>8</sup>

2.3 The purpose of opening an investigation is to gather relevant facts, using the Bank's investigative powers. From this, the Bank will decide what, if any, further action to take. A decision to open an investigation does not indicate that the Bank has concluded that breaches have occurred or that enforcement action is likely to follow. After opening an investigation, the Bank may take the decision that no further action is necessary. If the Bank decides to take action following an investigation, it may either be a supervisory or enforcement action, or a combination of both.

2.4 Practically, the decision to investigate - and what to investigate - is typically taken jointly by a senior representative of the referring area and a senior representative of the Enforcement team. The Bank may consult colleagues with relevant knowledge or expertise, such as policy experts and supervisory specialists, as well as other organisations (while respecting any relevant confidentiality requirements), to inform this decision. The Bank will also liaise with and notify the FCA or other UK or international regulators as appropriate. It may be that, depending on the circumstances, the Bank decides to open an investigation only in light of further information it receives.

### **Appointment of investigators**

2.5 Usually, once the Bank has decided to investigate, it will appoint persons to conduct the investigation<sup>9</sup> and, where required, send a Notice of Appointment to the subject of the investigation as soon as practicable. This Notice will be accompanied by information explaining to the subject of the investigation the circumstances and considerations which have given rise to the Bank opening the investigation.

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<sup>7</sup> <https://www.bankofengland.co.uk/whistleblowing>.

<sup>8</sup> <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/pru-statutory-powers/bank-of-england-investigation-referral-criteria.pdf>. The list of considerations set out in the referral criteria is not exhaustive and not all the considerations will apply in every case, and the weighting the Bank gives to each will depend on the individual circumstances and situation.

<sup>9</sup> For the avoidance of doubt, references to investigations include 'inspections' for the purposes of Part 5 and Part 5A of BA09.

2.6 Following the publication of the Bank's Approach to Enforcement in January 2024, the Bank has introduced an Early Account Scheme ('EAS') to expedite the early information-gathering phases of investigations in appropriate cases. Participants in the EAS will produce a detailed factual account ('Account') of the matters under investigation and related evidence within an agreed period - usually within six months of the subject being compelled to produce the Account.<sup>10</sup> Subjects who participate in the EAS may receive an enhanced settlement discount ('ESD') of up to a 50% on financial penalties, if they also choose to make early admissions.<sup>11</sup>

2.7 Not all cases will be appropriate for the EAS and participation will be at the Bank's discretion. If a subject wishes to participate in the EAS, they must inform the Bank in writing that they are interested in doing so. The timeframe for giving such a notification will ordinarily be within 28 days of receipt of the Notice of Appointment of Investigators. During this period, the Bank would expect to hold a scoping meeting with the subject.

### Scoping meeting

2.8 As soon as practicable after the appointment of its investigators, the Bank will invite the subject of the investigation to attend a scoping meeting. At this meeting the Bank will typically:

- explain the investigative process;
- outline the nature of its concerns;
- introduce members of the investigating team and their respective roles; and
- discuss its information requirements.

2.9 Regarding the timing of the scoping meeting, it will usually take place once investigators are in a position to share indicative plans on the direction of the investigation, and potentially the timetabling of key milestones. However, this will depend on the circumstances of the case, the degree of information in the hands of the Bank, and the preference of the subject of the investigation. For certain investigations it may be appropriate and helpful for supervisors and/or other members of the referring area to be present at these meetings, such attendance would be agreed upon by the investigators in each instance.

2.10 The Bank welcomes any admissions from subject of the investigation at the scoping meeting or at an early stage of the investigation. Where it considers it appropriate to do so, the Bank may, in accordance with its policies on the imposition of financial penalties, reduce any financial penalty in respect of this type of co-operation.<sup>12</sup>

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<sup>10</sup> See Chapter 2 of Annex 1 of the Bank's Enforcement Approach.

<sup>11</sup> See Chapter 8 of Annex 1 of the Bank's Enforcement Approach.

<sup>12</sup> See for example, Chapter 8 of Annex 1 and Chapter 2 of Annex 2 of the Bank's Enforcement Approach.

## Scoping of the Account

2.11 Where the Bank has agreed to a subject entering into the EAS, the Bank will invite the subject of the investigation to a meeting to discuss the scope of the Account. At this meeting the Bank and the Subject will discuss:

- the likely relevant period of the suspected breach(es);
- events and individuals likely to be relevant;
- the scope and nature of potentially relevant evidence;
- the date by which the Account will be provided;
- a plan for regular communication to discuss progress and scope of the Account
- where relevant, the role of any external party who will undertake work to compile the Account;
- the approach to interviews; and
- an appropriate senior manager (where the subject is a firm or FMI) and the scope of their attestation in relation to the Account.

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## 3. Process and progress of investigation

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### Investigative powers

3.1 Once appointed, the investigator has a variety of evidence-gathering powers. These may include powers to compel attendance at an interview to answer questions, to compel the production of documents, and otherwise to compel the provision of information.

3.2 While a subject's co-operation with an investigation is highly valued by the Bank, the Bank will generally use its statutory powers to require the production of documents, the provision of information or the answering of questions in interview, rather than relying on voluntary compliance by the subject. This is for reasons of fairness, transparency and efficiency.

3.3 Depending on the nature and complexity of the matter, the Bank may issue an information requirement first in draft and, where appropriate, take into account comments from the recipient before finalising the information requirement. The information requirement will typically cover both the type of information required and the form in which it is to be provided, as well as the deadline.

3.4 The Bank may pursue sanctions in the event of failure to comply with an information requirement or a requirement to attend an interview.

### Other powers

3.5 The Bank may also, where appropriate:

- use its statutory powers to obtain an independent report (for example, a skilled person's report under section 166 of FSMA or an independent report under section 195 of the Banking Act 2009) to assist its enforcement functions; and/or
- obtain information and/or evidence from domestic and/or overseas regulators.<sup>13</sup>

3.6 As set out in the Bank Approach to Enforcement, there are circumstances in which the Bank may use its investigative powers on behalf of an overseas regulator.

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<sup>13</sup> See also the discussion on use of section 166 reports in the PRA's approach to banking supervision and the PRA's approach to insurance supervision: <https://www.bankofengland.co.uk/prudential-regulation/publication/pras-approach-to-supervision-of-the-banking-and-insurance-sectors>

## **Other sources of information**

3.7 The Bank investigators will also seek to obtain any relevant information from supervisors and other colleagues at the outset of an investigation and as it progresses. The investigation team also maintains an open dialogue with the referring area (e.g. supervisors) by which potentially material information can be shared promptly. The investigation team informs the referring area periodically of progress and of key milestones and will consult with them if it proposes a material change to the investigation. However, the investigation itself will not usually be carried out by the referring area. This is to ensure functional separation between supervisors and investigators. The investigation team holds at least quarterly updates with the referring area to discuss investigation progress, scope review and consider whether the appropriate subjects are being investigated. These are attended by at least a senior member of the investigation team, with other enforcement colleagues as appropriate, and by one or more senior members of the referring area.

## **Interaction with the subject**

3.8 The investigation team will continue to communicate with the subject of the investigation over the course of an investigation. The Bank aims to give periodic updates at least on a quarterly basis, covering the steps taken in the investigation to date, as well as the next steps in the investigation and indicative timelines. The subject may request face-to-face meetings and it may sometimes be appropriate for members of the referring area (e.g., supervisors) to attend any progress meetings or calls that are held.

3.9 The investigation team will notify the subject of the investigation of changes in the scope of investigation and of the appointment of any additional investigators over the course of the investigation, where required by relevant legislation.

## **Joint investigations with the FCA**

3.10 In some instances, it may be appropriate for both the Bank (usually in its capacity as the PRA) and FCA to open investigations into a particular matter. The Bank considers at a senior level, and on a case-by-case basis, whether it is appropriate for there to be a joint or single investigation. It does this in consultation with the FCA, and taking all relevant matters into consideration.

3.11 Both the Bank and the FCA could investigate the same or related matters where, for example, circumstances suggest a breach of both PRA and FCA rules or requirements. In addition, each regulator will assess whether proportionality and the importance of the matter to their distinct statutory objectives, amongst other factors, weigh in favour of each regulator conducting an investigation. The scope of each regulator's investigation will reflect their own regulatory remit and statutory objectives, and the nature of coordination between the regulators will depend on the circumstances of each case.

3.12 However, in joint cases, the Bank and FCA co-operate to attempt to ensure that the subject is not prejudiced or unduly inconvenienced by the fact that there are multiple investigating authorities. For example, each regulator's investigation team will keep the other, and their respective supervisory teams, informed about the progress of the investigations. Discussions with the subject will normally occur with the representatives of both regulators present.

3.13 Both the Bank and FCA will seek to ensure that, as far as possible, their respective processes occur in a co-ordinated and timely manner. The Bank and FCA also consult each other around their proposed findings, conclusions and, where relevant, proposed enforcement sanctions.

### **Confidentiality**

3.14 A Bank investigation is a confidential matter and the subject of the investigation should treat it as such. However, this does not stop the subject from seeking professional advice or from notifying other people, including regulators, where they are required to do so (e.g., by law, regulatory rules, or contracts), including to appropriate regulators. The subject is asked to inform the Bank in advance of the proposed nature and recipient of any notifications they plan to make.

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## 4. Review point decisions

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4.1 At the conclusion of an enforcement investigation, or at certain review points (such as provision of the Account and related evidence in the EAS), the investigators will consider all the evidence gathered and – having consulted with relevant referring area, policy and other subject matter experts – report internally on their findings. They will also recommend to decision makers within the Bank what steps should follow.

4.2 The possible recommendations include, among others:

- to discontinue the investigation;
- imposing an enforcement sanction against the subject, which may prompt without prejudice settlement discussions or a referral to the EDMC for contested proceedings;
- imposing requirements on, or taking other supervisory measures against, the subject of an investigation; and
- opening additional investigations.

4.3 The recommendation will be considered by senior management in the enforcement and relevant referring areas and may be escalated to one of the decision-making committees (in line with the Bank's approach to decision making). The subject of the investigation will be notified of this decision.

## 5. Settlement discussions and settled outcomes

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5.1 The Bank's settlement policy and decision-making procedure for cases where the outcome of the enforcement investigation is accepted by the subject ('uncontested cases') are set out in the Bank Approach to Enforcement.<sup>14</sup> The Bank has published separate statements of policy and procedure for cases where settlement is not considered appropriate or is not achieved ('contested cases'), which are dealt with by the Bank's Enforcement Decision Making Committee.<sup>15</sup>

5.2 Settlement may be of mutual benefit to the Bank and to the subject of the investigation; for example, by saving resources and time. The Bank offers a discount on any financial penalty achieved by settlement within the time-period it specifies for settlement discussions in the Bank approach to enforcement. The Bank is also able, when assessing any financial penalties, to take into account co-operation by the subject during the investigation; for example, their willingness to make early admissions. In addition, in appropriate cases the Bank may provide an enhanced discount to EAS participants that make early admissions leading to settlement.

### Settlement decision making

5.3 Decisions relating to settlement, including the decision to enter into settlement discussions, will be taken by a Decision Making Committee ('DMC') selected in accordance with the Bank's decision-making policy.

5.4 The DMC has the authority to enter a settlement agreement and to issue all necessary statutory notices. It approves the basis upon which the Bank wishes to enter into settlement discussions, it sets the period for settlement talks (and considers any requests from subjects to extend this period), and it makes the final decision to agree any settlement, and on what terms (including any delegations). It also determines the publication that follows a settled matter.

### Settlement agreement

5.5 The Bank conducts settlement communications on a 'without prejudice' basis. This means that neither the Bank nor the other parties involved can rely on any admissions or

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<sup>14</sup> <http://www.bankofengland.co.uk/prudential-regulation/publication/2024/january/the-bank-of-england-approach-to-enforcement-statements-of-policy-and-procedure>

<sup>15</sup> <https://www.bankofengland.co.uk/prudential-regulation/publication/2024/january/procedures-the-enforcement-decision-making-committee>

statements made during settlement discussions if the matter is subsequently considered by the EDMC or the Upper Tribunal on a 'contested' basis.

5.6 The rationale for the 'without prejudice' status of the Bank's settlement discussions is that such discussions will facilitate settlement if parties can speak freely, secure in the knowledge that what they have said and, in particular, any admissions made to try to settle the matter, may not be used against them should the settlement discussions fail.

5.7 Where the Bank and the subject of the investigation are able to reach an agreement in principle, the terms of the proposed settlement will be put in writing. The proposed settlement agreement amounts to an agreement between the subject and the Bank that the Bank will issue the necessary statutory notices providing for the enforcement sanction, reflecting the benefit of any applicable settlement discount. The subject would also agree to waive certain procedural rights to further information or challenge. The settlement agreement typically also covers how the subject may be notified before any publication occurs.

5.8 At this point, the Bank would seek to inform to the subject of the investigation as to when any statutory notice is likely to be issued.<sup>16</sup>

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<sup>16</sup> Depending on the regulatory regime, this will refer to warning, decision and final notices required under sections 387, 388 and 389, respectively, of FSMA or warning notices or notices required under section 201 BA09.

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## 6. Contested matters and the Enforcement Decision Making Committee

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6.1 A contested enforcement case is a case that is not resolved by way of a settlement agreement. Contested enforcement cases are decided by the EDMC<sup>17</sup> on behalf of the Bank.<sup>18</sup> The EDMC and its members are independent of the Bank's Executive.

6.2 Ahead of the matter being put before the EDMC by the Bank, investigators will share their preliminary findings with the subject of the investigation, providing a reasonable period for response and comment. Investigators will consider these and take them into account when deciding whether, and if so on what basis, to put the matter before the EDMC. There is no set form for this, as it may vary from case to case, but it will be sufficient to ensure that the Bank and subject are able to focus on such matters of fact, liability or penalty as are in dispute.

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<sup>17</sup> The full procedures of the EDMC are set out in the EDMC Procedures.

<sup>18</sup> See paragraph 5.1 above.

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## 7. Referral or appeal to the Upper Tribunal

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7.1 If the EDMC issues a Decision Notice under FSMA, the subject has the right to refer the matter to the Upper Tribunal (Tax and Chancery Chamber) (the 'Tribunal'). If the EDMC issues a Notice under BA09, the subject has the right to appeal to the Tribunal.

7.2 The Tribunal is an independent judicial body. A firm or individual may refer a contested matter to the Tribunal earlier under the 'expedited procedure' set out in the EDMC Procedures as amended or supplemented from time to time.

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## 8. Published information

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8.1 As set out in the Bank Approach to Enforcement, the Bank recognises the importance of providing an appropriate degree of transparency concerning its enforcement activities. For this reason, and, where applicable, in accordance with its obligations under relevant legislation (e.g., FSMA), the Bank would ordinarily publicise any decision and final notices issued, often accompanied by a news release.

8.2 However, the Bank would not normally make public the fact it is investigating a particular matter, or the identity of any subject, or its preliminary findings. The Bank has the discretion to publish information about the matter to which certain warning notices relate, which it would exercise in accordance with the Bank policy.

## 9. Summary of steps

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### **Step 1: Decision to open investigation**

The Bank opens an investigation where it is appropriate to do so, having regard to its investigation referral criteria. The decision is taken at a senior level, involving staff from the Bank's referring area (such as Supervision) and Enforcement.

### **Step 2: Commencement of investigation**

The Bank appoints persons to conduct the investigation and, where required, sends a Notice of Appointment of Investigators to the subject of the investigation as soon as practicable. The investigators invite the subject to an initial 'scoping meeting' to explain the investigation process. The subject may make early admissions, which can potentially attract credit when the Bank assesses any enforcement action (such as a penalty). The subject may request to participate in the EAS.

### **Step 3: Process and progress of investigation**

The investigators request information and documents from the subjects and third parties, and may conduct interviews. In appropriate cases and where agreed with the subject, the Bank may use its powers to obtain a detailed factual account of the matter under investigation and related evidence from the subject of the investigation, via the EAS. The investigators regularly liaise with the subject of the investigation, the referring area, other providers of information and other regulators, as appropriate. In particular, the Bank will work closely and co-operatively with the FCA in joint investigations.

### **Step 4: Periodic review and conclusions of investigation**

The Bank may opt either to close the investigation or seek settlement (or it may, albeit not typically, proceed straight to a contested EDMC process), or pursue supervisory action outside of enforcement.

### **Step 5: Closure or settlement discussions**

If the Bank closes the investigation, the subject of the investigation will be notified.

Alternatively, if the Bank considers it appropriate to seek settlement, the investigators indicate to the subject, in advance, the Bank's intent to offer settlement discussions. During these discussions, the subject has a draft statutory enforcement notice to consider on a 'without prejudice' basis.

**Step 6: Uncontested or contested outcome**

If the subject of the investigation agrees to an enforcement outcome within a specified period, they may benefit from a discount on the amount of any financial penalty or duration of any suspension or restriction. The Bank will issue the required statutory enforcement notices.

If agreement cannot be reached (or if the matter has, unusually, proceeded directly to the EDMC), the Bank presents the matter to the EDMC. The EDMC will operate in line with its procedures and may issue a financial penalty and/or other sanction or decide to take no further action.

If the EDMC decides to issue a statutory enforcement notice, the subject may dispute the EDMC's findings and challenge the matter in the Upper Tribunal.