



PRA investigation referral criteria¹

1. As indicated in the 'PRA approach to supervision documents',² the PRA will use its investigatory powers where it is appropriate to do so to advance the PRA's objectives, provided that the legal tests for using the powers are met. The rationale for enforcement sanctions that may follow an investigation is also set out in the PRA approach documents.³
2. In practice, to help the PRA determine whether or not it is appropriate to investigate a matter, it has regard to the considerations set out in the table below. This is because, in any given situation, there may be a range of possible responses by the PRA. The appropriateness of using its investigation tools will, therefore, need to be measured against:
 - their anticipated benefits in advancing the PRA's objectives;
 - the alternative courses of action available to the PRA; and
 - the proportionality of opening an investigation, given the level of resources it may require and the level of intrusion and cost to the subject.
3. The list of considerations set out in the table below is not exhaustive. Not all the considerations will apply in every case, and the weighting the PRA gives to each will depend on the individual circumstances and situation. Some matters will give rise to other valid considerations which will be taken into account. The considerations set out in the table below continue to act as a reference point during the progress of an investigation.
4. A decision to open an investigation does not mean the PRA has decided that its rules have been breached, nor what sanction, if any, should be imposed. The PRA's focus in investigation is on gathering facts, conducted with an objective and dispassionate mindset. The PRA does not consider an investigation to be a success only if a sanction is ultimately imposed.

¹ The publication of the criteria and framework responds to the recommendations (in particular recommendations 1, 3, 4 and 5) made by HM Treasury in its 'Review of enforcement decision-making at the financial services regulators: final report', December 2014: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/389063/enforcement_review_response_final.pdf.

² 'The PRA's approach to banking supervision' and 'The PRA's approach to insurance supervision' are available at <https://www.bankofengland.co.uk/prudential-regulation/publication/2018/pra-approach-documents-2018>.

³ See paragraphs 211-216 of 'The PRA's approach to banking supervision', and paragraphs 235-240 of 'The PRA's approach to insurance supervision'.

Considerations

Centrality of the issue to the PRA's objectives and approach

The PRA advances its objectives by applying the approach set out in the PRA approach to supervision documents⁴ to the supervision of firms and the individuals who run them. The PRA's approach stresses the importance of firms and senior individuals being open and straightforward in their dealings with the PRA. It also stresses that an adherence by firms to the Fundamental Rules is vital, that failure to comply with the Fundamental Rules may result in enforcement action, and that a firm's senior management must observe all the conduct rules or standards that apply to them.

The PRA attaches particular weight to issues that: relate to the PRA's Strategic Goals;⁵ would present a risk to, or materially compromise, the delivery of its objectives; or would undermine the ability or willingness of firms to be open and straightforward with the PRA.

In respect of individuals, the PRA considers particularly:

- whether circumstances suggest potential breaches of rules on integrity and openness, or indicate concerns about an individual's fundamental fitness and propriety;
- the seniority of the individual in relation to the firm; and
- their current position in the firm/industry.

Appropriateness of using investigation tools and powers

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

The PRA considers a number of factors to determine if an investigation is the appropriate tool.

Considerations may include:

- whether an investigation is the most proportionate way of uncovering, and responding to, the relevant facts in light of the PRA's objectives;
- the firm's and/or individual's past supervisory record;
- the firm's and/or individual's response to the issue: for example, whether the firm or individual has taken steps to remediate the problems or apparent breaches; and

⁴ See footnote 2 above.

⁵ As defined in the PRA Business Plan, available on the prudential regulation section of the Bank's website at <https://www.bankofengland.co.uk/prudential-regulation>.

Considerations
<ul style="list-style-type: none"> whether an effective investigation can be carried out; ie whether the sources of evidence are likely to be available, accessible and of the necessary quality and integrity (eg not decayed or unavailable due to duration of time).
<p>Impact / potential impact of issue on the resilience of the financial sector</p>
<p>In delivering its objective to promote the safety and soundness of the firms it regulates, the PRA's approach to supervision enables it to prioritise its resources on those firms with the greatest potential to have an adverse effect on financial stability, whether through failing or through the way in which they carry on their business. When considering opening an investigation, the PRA may, therefore, give weight to whether the:</p> <ul style="list-style-type: none"> firm is of systemic significance and its 'Category',⁶ or whether the individual is a senior manager in such a firm; and firm(s) and/or individual(s) are exhibiting behaviour(s) which is particularly indicative of a more widespread or systemic shortcoming in standards.
<p>Position of other enforcement bodies and resourcing prioritisation</p>
<p>The PRA seeks to use its resources in an efficient way and also recognises it may be efficient and effective to work in collaboration with other agencies.⁷</p> <p>The PRA therefore considers, in relation to an issue, whether other agencies are investigating, or likely to investigate; and accordingly, how the PRA will best advance its objectives, in light of the actions of others.</p> <p>The PRA will also consider the range of other investigations it is undertaking, or considering, at any one time and take this into account when considering if an investigation can or should be properly resourced.</p>
<p>Other considerations</p>
<p>The PRA will also consider whether there are any other, overriding reasons why opening, or not opening, an investigation would advance, or pose a risk to, its objectives.</p>

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⁶ The 'Categories' are set out in Chapter 3 in each of the PRA's approach to supervision documents.

⁷ See Chapter 2 in each of the PRA's approach to supervision documents.