



BANK OF ENGLAND
PRUDENTIAL REGULATION
AUTHORITY

Regulatory investigations guide

April 2019

Contents

1	Introduction	1
2	Opening an investigation	1
3	Process and progress of investigation	3
4	Decisions at the conclusion of an investigation	5
5	Settlement discussions and settled outcomes	5
6	Contested matters and the Enforcement Decision Making Committee	6
7	Referral to the Upper Tribunal	7
8	Published information	7
9	Flowchart	8

1 Introduction

1.1 This guide provides, at a high level, a ‘roadmap’ of the PRA’s investigation and enforcement processes.

1.2 It is intended as a reference for firms and individuals subject to PRA investigation (‘subjects’) or potential subjects, and their advisors. It is subject to (and should be read alongside) the law, the ‘PRA investigation referral criteria’,¹ the ‘Prudential Regulation Authority’s approach to enforcement: statutory statements of policy and procedure’ (hereinafter ‘PRA approach to enforcement’),² the Bank of England’s ‘Enforcement Decision Making Committee - Policy Statement PS/EDMC2018’³ (the ‘EDMC Procedures’) and any other relevant PRA publications.⁴

1.3 The purpose of this document is to provide procedural information which may help subjects understand more fully the PRA’s processes as recommended by HM Treasury in ‘Review of enforcement decision-making at the financial services regulators: final report’.⁵

Key stages

1.4 This guide sets out the key stages in an investigation and, should it arise, subsequent enforcement sanction. By ‘enforcement sanction’ the PRA means any of the decisions that could be taken by the Bank of England’s Enforcement Decision-Making Committee (‘EDMC’) on its behalf. These are fully set out in the EDMC Procedures 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 matter. The flowchart at the end of this guide sets out the process.

2 Opening an investigation

2.1 The PRA 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 PRA, whether through supervision, self-reporting, whistleblowing, external liaison, or other channels.

2.2 In order to open an investigation, the PRA must be satisfied that the statutory test set out in the Financial Services and Markets Act 2000 (‘FSMA’), is met, and that an investigation is an appropriate response in the circumstances. In making this assessment the PRA takes into account the considerations set out in the PRA Investigation Referral Criteria.

2.3 The purpose of opening an investigation is to gather relevant facts, using the PRA’s investigative powers. From this, the PRA will decide what, if any, further action to take. A

¹ April 2019, available on the PRA’s statutory powers webpage at <https://www.bankofengland.co.uk/prudential-regulation/prudential-regulation-statutory-powers>.

² PRA Statement of Policy: <https://www.bankofengland.co.uk/prudential-regulation/publication/2013/the-pra-approach-to-enforcement-statutory-statements-of-policy-and-procedure-sop>.

³ August 2018: <https://www.bankofengland.co.uk/paper/2018/enforcement-decision-making-committee-policy-statement>.

⁴ Available on the prudential regulation section of the Bank of England’s website:

<https://www.bankofengland.co.uk/prudential-regulation>.

⁵ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/389063/enforcement_review_response_final.pdf.

decision to open an investigation does not indicate that the PRA has concluded that breaches have occurred or that enforcement action will follow. If it decides to take action following an investigation, it may be of a supervisory nature, be imposing an enforcement sanction, or a combination.

2.4 Practically, the decision to investigate - and the decision on what to investigate - is typically taken jointly by a senior supervisor and a senior representative of the enforcement area of the PRA, although on occasion it may be escalated to one of the decision-making committees (in line with the PRA's approach to decision-making). The PRA 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 PRA will also liaise with and notify the FCA. It may be that, depending on the circumstances, the PRA decides to open an investigation only in light of further information it receives.

Appointment of investigators

2.5 Once the PRA has decided to investigate, it will appoint its investigators and, as required, send a Notice of Appointment of Investigators to the subject as soon as practicable. This Notice will be accompanied by information explaining to the subject the circumstances and considerations which have given rise to the PRA opening the investigation.

Scoping meeting

2.6 As soon as practicable after the appointment of its investigators, the PRA will invite the subject to attend a scoping meeting. At this meeting the PRA 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.

2.7 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 PRA, and the preference of the subject. It may be appropriate and helpful for supervisors to be present at these meetings, which the investigators would agree with supervisors in each instance.

2.8 The PRA welcomes any admissions from subjects at the scoping meeting or at an early stage of the investigation. Where it considers it appropriate to do so, the PRA may, in accordance with its policy on the imposition of financial penalties,⁶ reduce any financial penalty in respect of this type of co-operation.

⁶ 'Statement of the PRA's policy on the imposition and amount of financial penalties under the Act' at Appendix 2 to the PRA approach to enforcement.

3 Process and progress of investigation

Investigative powers

3.1 Once appointed, the investigator has a variety of evidence-gathering powers under FSMA. These 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 PRA, the PRA 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 The PRA takes a more flexible approach to using its formal powers in respect of third parties.

3.4 Depending on the nature and complexity of the matter, the PRA may issue an information requirement first in draft and take into account any comments from the recipient of the information requirement 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.

3.5 The PRA may seek the remedies to which it is entitled if the recipient of an information or interview requirement fails to comply.

Other powers

3.6 The PRA may also, where appropriate:

- use its power under section 166 of FSMA to commission reports by skilled persons to assist its enforcement functions; and/or
- obtain information and/or evidence from overseas regulators.

3.7 As set out in the PRA approach to enforcement, there are circumstances in which the PRA may use its investigative powers on behalf of an overseas regulator.

Other sources of information

3.8 The PRA 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 PRA investigation team also maintains an open dialogue with supervisors by which potentially material information can be shared promptly. The investigation team informs supervisors 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 supervisors. The PRA holds at least quarterly updates with the referring supervisory area to discuss progress with the investigation and to review its scope and 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 supervisors.

Interaction with the subject

3.9 The PRA will continue to communicate with the subject during the course of an investigation. The PRA 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 be appropriate for supervisors to attend any progress meetings or calls that are held.

3.10 The PRA will notify the subject of changes in the scope of investigation and of the appointment of any additional investigators during the course of the investigation, as required by FSMA.

Joint investigations with the FCA⁷

3.11 In some cases, it may be appropriate for both the PRA and FCA to open investigations into a particular matter. This could arise, for example, where circumstances suggest a breach of both PRA and FCA rules; and where it is appropriate in light of the PRA and FCA's objectives for both regulators to investigate.

3.12 In such cases, the PRA and FCA will co-operate in their investigations to attempt to ensure that the subject is not prejudiced or unduly inconvenienced by the fact that there are two investigating authorities. For example, the PRA and FCA investigation teams will keep each other and their respective supervisory teams informed about the progress of the investigations; and individual investigators may be appointed to investigate on behalf of both authorities. The PRA and FCA will seek to avoid duplication of information requests and have regard to each other's timetables. Discussions with the subject will normally occur with the representatives of both regulators present (which may be an investigator appointed by both authorities). Where the PRA and FCA are investigating related but distinct matters, and require distinct information, they will indicate to the subject precisely which of them is seeking what information, or asking the questions.

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

Confidentiality

3.14 A PRA investigation is a confidential matter and the subject 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 (eg by law, regulatory rules, or contracts), including to appropriate regulators. The subject is asked to inform the PRA in advance of the proposed nature and recipient of any notifications they plan to make.

⁷ The PRA will add more detail in this section in future iterations of this guide, once it has more experience of joint contested cases with the FCA, and EDMC.

4 Decisions at the conclusion of an investigation

4.1 At the conclusion of an investigation, or at certain review points, the investigators will consider all the evidence gathered and – having consulted with relevant supervisors, policy and other experts – report to the PRA on their findings. They will also recommend to decision makers within the PRA what steps should follow.

4.2 The possible recommendations include, among others:

- taking no further action;
- imposing an enforcement sanction against the subject, which may prompt settlement discussions or the steps towards a contested process;
- imposing requirements on, or taking other supervisory measures against, a firm; and
- opening additional investigations.

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

5 Settlement discussions and settled outcomes

5.1 The PRA's settlement policy is set out in its Statutory Statement of Policy,⁸ within the PRA approach to enforcement. Settlement may be of mutual benefit to the PRA and to the subject of the investigation; for example, by saving resources and time. The PRA offers a discount on any financial penalty achieved by settlement within the time-period it specifies for settlement discussions in the PRA approach to enforcement. The PRA 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. The PRA usually invites the subject to enter settlement discussions when it has a sufficient understanding of the matter to make a reasonable assessment of the enforcement sanction that should apply.

Settlement decision making

5.2 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 PRA's decision-making policy.

5.3 The DMC has the authority to enter a settlement agreement and to issue all necessary statutory notices. It approves the basis upon which the PRA 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.

⁸ 'Statement of the PRA's settlement decision-making procedure and policy for the determination of the amount of penalties and the period of suspension or restriction in settled cases' at Appendix 4 to the PRA approach to enforcement.

Settlement agreement

5.4 The PRA conducts settlement communications on a ‘without prejudice’ basis. This means that neither the PRA nor the other parties involved can rely on any admissions or statements made during settlement discussions if the matter is subsequently considered by the EDMC or the Upper Tribunal on a ‘contested’ basis.

5.5 The rationale for the ‘without prejudice’ status of the PRA’s settlement discussions is that such discussions (and, it is hoped, settlement itself) will be facilitated 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.

5.6 Where the PRA and the subject 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 PRA that the PRA 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.

5.7 At this point, the PRA would seek to give guidance to the subject of when the warning notice,⁹ decision notice,¹⁰ and final notice¹¹ would be issued.

6 Contested matters and the Enforcement Decision Making Committee

6.1 A contested enforcement case is a case that is not resolved by way of a settlement agreement. Contested PRA enforcement cases are decided by the EDMC on behalf of the Bank of England. The EDMC and its members are independent from the PRA’s executive management structure.

6.2 Ahead of the matter being put before the EDMC by the PRA, investigators will share their preliminary findings with the subject, 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 PRA and subject are able to focus on such matters of fact, liability or penalty as are in dispute.

6.3 The full procedures of the EDMC are set out in the Bank of England’s EDMC Procedures.

⁹ As defined by s.387 of FSMA.

¹⁰ As defined by s.388 of FSMA.

¹¹ As defined by s.389 of FSMA.

7 Referral to the Upper Tribunal

7.1 Following a Decision Notice issued by the EDMC, the subject has the right to refer the matter to the Upper Tribunal (Tax and Chancery Chamber) (the 'Tribunal').

7.2 The Tribunal is an independent judicial body and will consider the case afresh. A firm or individual may refer a contested matter to the Tribunal earlier under the 'expedited procedure' set out in the EDMC Procedures.

8 Published information

8.1 As set out in the PRA's Statutory Statement of Policy, 'Statement of the approach to publicity of regulatory action' ('the PRA publicity policy'),¹² the PRA recognises the importance of providing an appropriate degree of transparency concerning its enforcement activities. For this reason, and in accordance with its obligations under FSMA, the PRA would ordinarily publicise any decision and final notices issued, often accompanied by a news release.

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

¹² At Appendix 5 to the PRA approach to enforcement.

9 Flowchart

