

## Statement of Policy

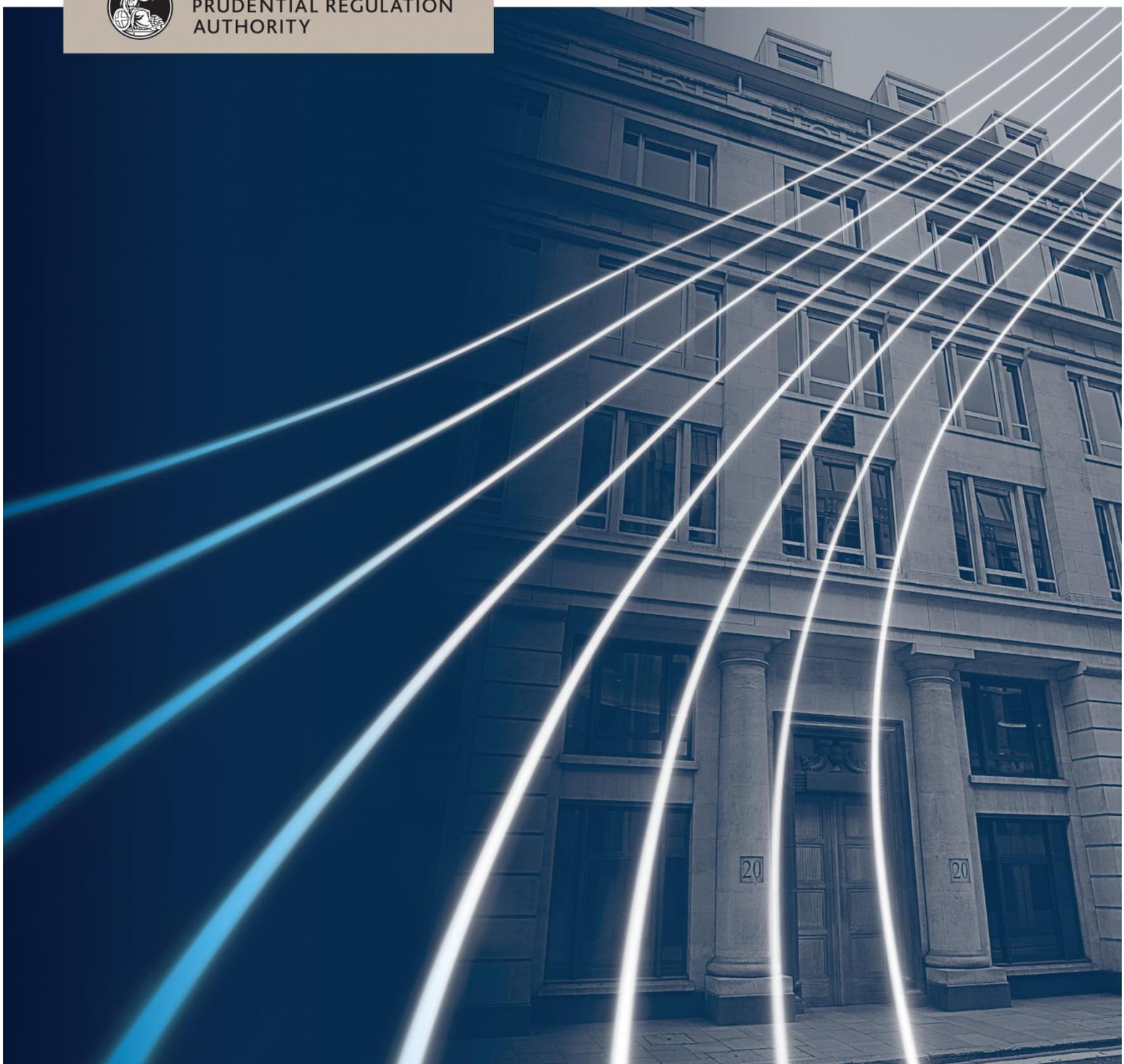
# The Prudential Regulation Authority's approach to enforcement: statutory statements of policy and procedure

March 2019

(Updating August 2018)



BANK OF ENGLAND  
PRUDENTIAL REGULATION  
AUTHORITY





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# Introduction

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1. This Prudential Regulation Authority ('PRA') Statement of Policy was first published on 1 April 2013 and included statutory statements of policy and procedure<sup>1</sup> in relation to:

- (a) Statutory notices and decision making;
- (b) Financial penalties;
- (c) Suspensions and restrictions;
- (d) Settlement;
- (e) Publicity of regulatory action; and
- (f) Conduct of interviews pursuant to section 169(7) of the Act.<sup>2</sup>

2. Following the publication on 21 January 2016 of Policy Statement (PS) 1/16 '*Engagement between external auditors and supervisors and commencing the PRA's disciplinary powers over external auditors and actuaries*',<sup>3</sup> this Statement of Policy has been updated to:

- (a) present the PRA's statements of policy as chapters rather than appendices, to be consistent with other PRA policy publications; and
- (b) reflect the statements of policy set out in PS1/16 with:
  - (i) an amendment to the statement of the PRA's policy on statutory notices and the allocation of decision making under the Act, as set out in paragraph 16A in Chapter 1; and
  - (ii) a new statement of the PRA's policy on the imposition and amount of financial penalties under the Act on persons who are, or have been, auditors or actuaries of a PRA-authorised person, appointed under or as a result of a statutory provision, as set out in Chapter 7.

3. Following publication on 3 August 2018 of the Bank of England Policy Statement 'PS/EDMC2018'<sup>4</sup> this Statement of Policy has been updated to reflect the policy changes in PS/EDMC2018 which establish the Enforcement Decision Making Committee.

4. Following the publication on 5 March 2019 of Policy Statement 'PS 6/19'<sup>5</sup>, this Statement of Policy has been updated to apply the PRA's policy on the imposition and amount of financial penalties under the Act (as set out in Chapter 2) to the imposition and amount of financial penalties under section 142S of the Act.

5. This Statement of Policy includes the original content from the April 2013 version with the amendments and additions set out in PS1/16, the amendments and additions set out in PS/EDMC2018 and the additions set out in PS/6/19.

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<sup>1</sup> The April 2013 version is available at [www.bankofengland.co.uk/pru/Pages/publications/approachenforcement.aspx](http://www.bankofengland.co.uk/pru/Pages/publications/approachenforcement.aspx).

<sup>2</sup> 'the Act' means the Financial Services and Markets Act 2000 (as amended).

<sup>3</sup> Available at [www.bankofengland.co.uk/pru/Pages/publications/ps/2016/ps116.aspx](http://www.bankofengland.co.uk/pru/Pages/publications/ps/2016/ps116.aspx)

<sup>4</sup> 'Enforcement Decision Making Committee', August 2018: [www.bankofengland.co.uk/paper/2018/enforcement-decision-making-committee-policy-statement](http://www.bankofengland.co.uk/paper/2018/enforcement-decision-making-committee-policy-statement).

<sup>5</sup> Available at <https://www.bankofengland.co.uk/prudential-regulation/publication/2018/occasional-consultation-paper>

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

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## Introduction

1. This statement of policy is issued by the Prudential Regulation Authority ('PRA') in accordance with the requirements of section 395 of the Act<sup>1</sup> that requires the PRA to issue a statement of its procedure in relation to the issuance of statutory notice decisions. Statutory notice decisions are those which give rise to an obligation to issue a supervisory, warning or decision notice under sections 395(1)(a) and 395(1)(b) of the Act.

2. In discharging its general functions, the PRA must, so far as is reasonably possible, act in a way which advances its statutory objectives.<sup>2</sup> The PRA is also required to have regard to certain regulatory principles.<sup>3</sup>

In settling this statement of policy, the PRA recognises the desirability of:

- (a) upholding and encouraging high standards of behaviour that are consistent with persons who are subject to the PRA's regulatory requirements and standards, meeting and continuing to meet those requirements and standards; and
- (b) demonstrating the benefits of such behaviour.

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.

4. The procedure permits a decision which gives rise to an obligation to give a statutory notice to be taken otherwise as mentioned above if the person taking the decision is of a level of seniority laid down by the procedure and the PRA considers that, in the particular case, it is necessary in order to advance any of its objectives.

5. In urgent statutory notice cases, a decision can be taken by two decision makers including one who has not been directly involved in establishing the evidence on which that decision is based.

## Introduction to Statutory Notices

6. If the PRA proposes to exercise certain statutory powers, it must give written notice to the person in relation to whom the power is exercised.

7. Notices are divided into the following categories:

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1 'the Act' means the Financial Services and Markets Act 2000 (as amended).

2 As set out in sections 2B and 2C of the Act.

3 As set out in sections 2G and 3B of the Act.

NOTICE	DESCRIPTION	ACT REFERENCE
Warning Notice	States the action which the PRA proposes to take giving reasons for the proposed action and giving the opportunity for representations.	Section 387
Decision Notice	States the reasons for the action that the PRA has decided to take. The PRA may also give a further decision notice which relates to a different action in respect of the same matter if the recipient consents.  The notice also gives an indication of any right to have the matter referred to the Tribunal <sup>4</sup> and the procedure for such a reference.	Section 388
Notice of Discontinuance	Identifies the proceedings set out in a warning or decision notice and which are not being taken or being discontinued.	Section 389
Final Notice	Sets out the terms of the action that the PRA is taking.	Section 390
Supervisory Notice	Details action that the PRA has taken or proposes to take.	Section 395(13)

8. The requirement in section 395 of the Act to publish a procedure for the giving of notices does not extend to the giving of a notice of discontinuance or final notice.

## Decision Making

### Decision Making Committees

9. Decisions as to whether to give a statutory notice will be taken by an appropriate decision making committee (DMC). The PRA will ensure that the level of seniority of the decision maker is appropriate to the importance, complexity and urgency of the decision.

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

- (a) The Prudential Regulation Committee (the PRC) excluding the Financial Conduct Authority Chief Executive Officer;
- (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).

11. The DMCs will also take decisions associated with a statutory notice including decisions to:

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<sup>4</sup> 'Tribunal' means the Upper Tribunal (Tax and Chancery Chamber) or any successor body.

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- (a) set or extend time for making representations;
- (b) give copies of the statutory notice to any third party setting out that party's rights and time limits to make representations;
- (c) grant access to PRA material relevant to the statutory notice under section 394 of the Act; and
- (d) publicise the notice.<sup>5</sup>

12. In all cases, the DMCs will make decisions by having regard to the relevant facts, the law and the PRA's priorities and policies.

13. The PRA will make appropriate records of those decisions, including records of meetings and the representations (if any) of the recipient(s) of the notice and materials considered by the decision makers.

## Decision Making Framework

### Choice of Committee and Categorisation of Decisions

14. The PRA divides all the firms it supervises into five categories of impact.<sup>6</sup>

15. Statutory notice decisions will be divided into one of four 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. <sup>7</sup> 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' <sup>8</sup> 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).

<sup>5</sup> For further information on publicity notices see the statement of the PRA's approach to publicity of regulatory action.

<sup>6</sup> As set out in the PRA's approach to banking supervision and the PRA's approach to insurance supervision (as may be amended or supplemented from time to time).

<sup>7</sup> 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.

<sup>8</sup> August 2018: [www.bankofengland.co.uk/paper/2018/procedures-the-enforcement-decision-making-committee](http://www.bankofengland.co.uk/paper/2018/procedures-the-enforcement-decision-making-committee).

## Disciplinary Powers in relation to Auditors and Actuaries

16A. SRPC will ordinarily act as the DMC 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 where it considers it appropriate to do so.

## Warning Notices and First Supervisory Notices

### General

17. If PRA staff consider that action requiring a warning or first supervisory is appropriate, they will recommend to the relevant DMC that the notice be given.

18. In the case of a supervisory notice, the PRA staff will recommend whether the action should take effect immediately, on a specified date, or when the matter is no longer open to review.

19. In relation to a supervisory notice which does not take effect immediately, a matter is open to review<sup>9</sup> when:

- (a) the period during which a person may refer a matter to the Tribunal is still running; or
- (b) the matter has been referred to the Tribunal but has not been dealt with; or
- (c) the matter has been referred to the Tribunal and dealt with but the period during which an appeal may be brought against the Tribunal's decision is still running; or
- (d) such an appeal has been brought but has not been determined.

### Approach of the Decision Making Committee

20. The DMC will:

- (a) consider whether the material on which the recommendation is based is adequate to support it; the decision maker may seek additional information about or clarification of the recommendation;
- (b) if the Act requires the PRA to consult the FCA, take into consideration the FCA's views on the issue;
- (c) satisfy itself that the action recommended is appropriate in all the circumstances;
- (d) decide whether to give the notice and settle the terms of any notice including whether and in what form to publicise the notice.

21. If the PRA decides to issue a warning or first supervisory notice, the PRA will ensure that the notice meets the requirements set out in the Act.

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<sup>9</sup> As set out in section 391(8) of the Act.

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22. If the PRA decides to take no further action and the PRA had previously informed the person concerned that it intended to recommend action, the PRA will communicate this promptly to the person concerned.

### Decision Notices and Second Supervisory Notices

#### Approach of the Decision Making Committee

23. If a DMC is asked to decide whether to give a decision notice or a second supervisory notice it will:

- (a) review the material before it;
- (b) consider any representations made (whether written, oral or both) and any comments by PRA staff in respect of those representations;
- (c) if the Act requires the PRA to consult the FCA, take into consideration the FCA's views on the issue;
- (d) decide whether to give the notice and settle the terms of any notice including whether, and in what form, to publicise the notice.

24. Save where the DMC decides otherwise, the same committee that issued the warning notice or first supervisory notice will determine whether to issue a decision notice or a second supervisory notice and will decide questions concerning publicity.

25. If the PRA decides to issue a decision notice, it will ensure that the notice meets the requirements set out in the Act.

### Default Procedures

26. If the PRA receives no response or representations within the period specified in the warning notice, the decision maker may regard the allegations or matters in that notice as undisputed and issue a decision notice accordingly.

27. A person who has not previously made any response or representations to the PRA may nevertheless refer the PRA's decision to the Tribunal.

28. If the PRA receives no response or representations within the period specified in the first supervisory notice, the PRA will not automatically give a second supervisory notice. The outcome of the default procedure depends on whether the relevant action takes effect immediately or at a future point in time. If the action:

- (a) took effect immediately or on a specified date which has already passed, it continues to have effect subject to any decision on a referral to the Tribunal; or
- (b) was to take effect at a specified date which is still in the future, it takes effect on that date subject to any decision on referral to the Tribunal; or
- (c) was to take effect when the matter was no longer open for review, it takes effect when the period to make representations or refer the matter to the Tribunal expires, unless the matter has been referred to the Tribunal.

29. In exceptional circumstances, a person who has received a decision notice or against whom action detailed in the warning notice has taken effect may show on reasonable grounds that the person to whom the notice relates did not receive the warning notice or that he had reasonable grounds for not responding within the specified period. In these circumstances, if the DMC considers it appropriate, with the consent of the person to whom the notice relates, it may decide to revoke the decision notice and the matter may be considered afresh or it may decide to give a further decision or supervisory notice.

## Further Decision Notice

30. Following the giving of a decision notice but before the PRA takes action to which the decision notices relates, the PRA may give the person concerned a further decision notice relating to a different action concerning the same matter.<sup>10</sup> The PRA may only do this if the person receiving the further decision notice gives his/her consent.<sup>11</sup> In these circumstances the following procedure will apply:

- (a) PRA staff will recommend to the appropriate DMC that a further decision notice be given;<sup>12</sup>
- (b) the DMC will consider whether the action proposed in the further decision notice is appropriate in the circumstances;
- (c) if the DMC decides that the proposed action is inappropriate, it will decide not to give the further decision notice. In this case the original decision notice will stand and the person's rights in relation to that notice will be unaffected. If the person's consent has already been obtained, the PRA will notify the person of the decision not to give the further decision notice;
- (d) if the DMC decides that the action proposed is appropriate then subject to the person's consent being (or having been) obtained, the PRA will issue a further decision notice;
- (e) a person who had the right to refer the matter to the Tribunal under the original decision notice will have that right under the further decision notice. The time period in which the reference to the Tribunal may be made will begin from the date on which the further decision notice is given.

## Third party rights and access to PRA material

31. In certain warning and decision notices<sup>13</sup> there are additional procedural rights relating to third parties<sup>14</sup> and to disclosure of PRA material.<sup>15</sup> These are generally cases in which the warning notice or decision notice is given on the PRA's own initiative rather than in response to an application or notification made to the PRA.

## The nature and procedure of the DMCs

### Composition of DMCs (other than the EDMC)<sup>16</sup>

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 PRC where some members will be non-executives.

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10 As set out in section 388 (3) of the Act.

11 As set out in section 388(4) of the Act.

12 Either before or after obtaining the person's consent.

13 As set out in section 392 of the Act.

14 As set out in section 393 of the Act.

15 As set out in section 394 of the Act.

16 The composition of the EDMC is set out in 'Procedures - The Enforcement Decision Making Committee', August 2018: [www.bankofengland.co.uk/paper/2018/procedures-the-enforcement-decision-making-committee](http://www.bankofengland.co.uk/paper/2018/procedures-the-enforcement-decision-making-committee).

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33. A DMC will usually be composed of at least 3 members who will include a chairperson although the size may vary depending on the nature of the particular matter under consideration.

34. The members of a DMC will usually meet in person but may, in appropriate cases, discuss cases in writing or by telephone or by email or other electronic means.

35. A DMC will have a secretariat.

### General procedures

36. The chairperson of a DMC will determine the manner in which a decision will be taken ensuring that it is dealt with fairly and expeditiously.

37. A DMC will aim to reach a consensus on the decisions they are asked to consider. Each member of a DMC is entitled to vote on the matter under consideration. In the event that a consensus cannot be reached by a DMC, a decision will be taken based on a majority vote and the chairperson of the DMC will have the casting vote in a tie.<sup>17</sup>

38. In a situation where a DMC member has to recuse him/herself from a DMC due to a conflict of interest, the chairperson will determine whether a new member should be appointed or whether to continue deciding the matter with the remaining DMC members. This determination will be based on, amongst other issues, the complexity of the case and the stage the case has reached.

39. If a DMC considers it relevant to its consideration, it may ask PRA staff to provide any or all of the following:

- (a) additional information about the matter (which may require the PRA staff to undertake further investigations); or
- (b) further explanation of any aspect of the PRA staff recommendation or accompanying papers; or
- (c) information about the PRA priorities and policies; or
- (d) legal advice.

40. A DMC cannot require individuals to attend before it, provide documents or give evidence. It will make decisions based on all the relevant information available to it.

### Procedure for warning notices and first supervisory notices

41. If PRA staff consider that action is appropriate, they will make a recommendation to the appropriate DMC that a warning notice or supervisory notice should be given.

42. As set out above, the appropriate DMC will be selected to decide the case.

43. As set out above, the DMC will consider whether it is right in all the circumstances to give the statutory notice.

44. If the matter requires the PRA to consult the FCA, the PRA will take into consideration the FCA's views on the issue.

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<sup>17</sup> Save in relation to settled cases where a decision by the relevant DMC to approve and conclude a binding settlement agreement must be unanimous.

45. If the DMC decides that the PRA should give a warning notice or first supervisory notice, the DMC will:

- (a) settle the wording of the notice;
- (b) make any relevant statutory notice associated decisions; and
- (c) consider whether it is desirable to publicise the notice as provided in the PRA's approach to publicity of regulatory action.<sup>18</sup>

46. The PRA will make appropriate arrangements for:

- (a) the notice to be given;
- (b) disclosure of the FCA's views on the matter or its reasons if it proposes to refuse consent or to give conditional consent where the Act requires it;
- (c) the disclosure of the substantive communications between the DMC and the PRA staff who made the recommendation on which the DMC's decision is based. This may include providing copies in electronic format.

### **Procedure for representations**

47. A warning notice or a first supervisory notice will specify that the time for making representations will be no less than 14 days.

48. The PRA will also, when giving the warning or first supervisory notice specify a time within which the recipient is required to indicate whether (s)he wishes to make oral representations.

49. The recipient of the warning notice or first supervisory notice may request an extension of time allowed for making representations. Such a request should normally be made within 14 days of the notice being given.

50. If a request is made for an extension of time for making representations, the chairperson of the allocated DMC will decide whether it is fair in all the circumstances to allow an extension, and if so, how much additional time is to be allowed for making representations. In reaching his/her decision (s)he may take account of any recommendation by PRA staff responsible for the matter.

51. The PRA will notify the relevant party and the PRA staff responsible for the matter of the decision in writing.

52. If the recipient of the warning or first decision notice indicates that (s)he wishes to make oral representations the PRA will seek to arrange a date suitable to the recipient of the notice and the DMC that will hear the representations.

53. The chairperson of the relevant meeting will ensure that the meeting is conducted so as to enable:

- (a) the recipient of the warning or first supervisory notice, or any third party who has the right to do so, to make representations;

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<sup>18</sup> For further information on the publicity process see the statement of the PRA's approach to publicity of regulatory action.

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- (b) the relevant DMC members to raise with those present any points or questions about the matter; and
- (c) the recipient to respond to points made by the DMC.

54. The chairperson may ask the recipient of the notice to limit his/her representations or response in length or to particular issues.

55. The recipient of the warning notice or supervisory notice may choose to be legally represented at the meeting, but this is not a requirement.

56. In appropriate cases, the chairperson of the DMC hearing the oral representations may require the recipient of the warning or first supervisory notice to provide additional information in writing after the meeting. If (s)he does so, (s)he will specify the time within which that information is to be provided.

57. During the hearing the DMC may ask either side to comment on issues raised if it feels it is necessary to help its understanding of the case.

58. The relevant PRA staff will attend the oral hearing for the recipient of the notice but will not respond to any representations at the meeting unless asked to do so by the DMC.

59. The relevant PRA staff may provide the DMC with a written response to the oral representations no later than 7 days after the hearing.

60. Save in exceptional circumstances, whilst a matter is still on-going, the DMC will not, after the PRA has given a warning or first supervisory notice, meet with the PRA staff responsible for the case without other relevant parties being present or otherwise having the opportunity to respond.

61. Save in exceptional circumstances, the DMC will not, after having received any written response from the relevant PRA staff to the oral representations, meet or discuss the matter with the PRA staff responsible for the case.

62. If such exceptional circumstances arise, the DMC will disclose such meetings or discussions with the recipient of the notice and permit him the opportunity to respond.

63. Where the decision being considered is one that requires FCA consent, the PRA, in consultation with the FCA will decide whether it is more appropriate for the FCA rather than the PRA to hear the representations and will advise the recipient of the notice accordingly.

### **Procedure for decision notices and second supervisory notices**

64. If no representations are made in response to the warning notice or first supervisory notice, the PRA will regard as undisputed the allegations or matters set out in the notice and the default procedure set out above will apply.

65. However, if the representations are made, the relevant DMC will consider as set out above, whether or not to give the decision notice or a second supervisory notice.

66. If the relevant DMC decides that the PRA will give a decision notice or a second supervisory notice it will:

- (a) include in the notice a brief summary of how it has dealt with the key representations made;

- (b) make any relevant statutory notice associated decisions, including whether the PRA is required to give a copy of the notice to any third party; and
- (c) consider whether it is desirable to publicise the notice as provided in the PRA's approach to publicity of regulatory action.

67. The PRA will make the appropriate arrangements for the distribution of the notice to all the relevant parties.

68. If the relevant DMC decides that the PRA should not give a decision notice or a second supervisory notice it will notify the relevant parties (including the PRA staff) of the decision in writing.

## Discontinuance of PRA actions

69. PRA staff responsible for recommending action to the relevant DMC will continue to assess the appropriateness of the proposed action in light of any new information or representations they receive and any material change in the facts or circumstances relating to a particular matter. It may be therefore that they decide to give a notice of discontinuance to a person to whom a warning notice or a decision notice has been given. The decision to give a notice of discontinuance does not require the agreement of the relevant DMC, but the PRA staff will inform the relevant DMC of the discontinuance of the proceedings.

## Urgent statutory notice cases<sup>19</sup>

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.

71. 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.

## Settlement decision-making procedure

### General Procedure

72. A person who is or may be subject to enforcement action may wish to discuss the proposed action with PRA staff through settlement discussions.<sup>20</sup>

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.

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<sup>19</sup> This does not apply to cases within the remit of the EDMC.

<sup>20</sup> For further information on the settlement process see the statement of the PRA's settlement decision-making procedure and policy for the determination of the amount of penalties and the period of suspensions or restrictions in settled cases.

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### **Procedure in relation to decision makers involved in settlement decision making**

74. Where the PRA staff has reached an in-principle settlement agreement with the person subject to enforcement action, the terms of any proposed settlement will be put in writing and agreed in principle by the PRA staff and the person concerned.

75. A summary of the case coupled with the terms of the in-principle settlement agreement will be sent to the appropriate DMC.

76. The DMC that will consider the settlement will be determined in accordance with paragraph 16 above.

77. Where the DMC requires clarification of or changes to the proposed settlement agreement, further settlement discussions may be required to seek to agree a modified proposed settlement agreement. The PRA shall, in its discretion, determine the nature and timing of its input to such further discussions.

78. The DMC may:

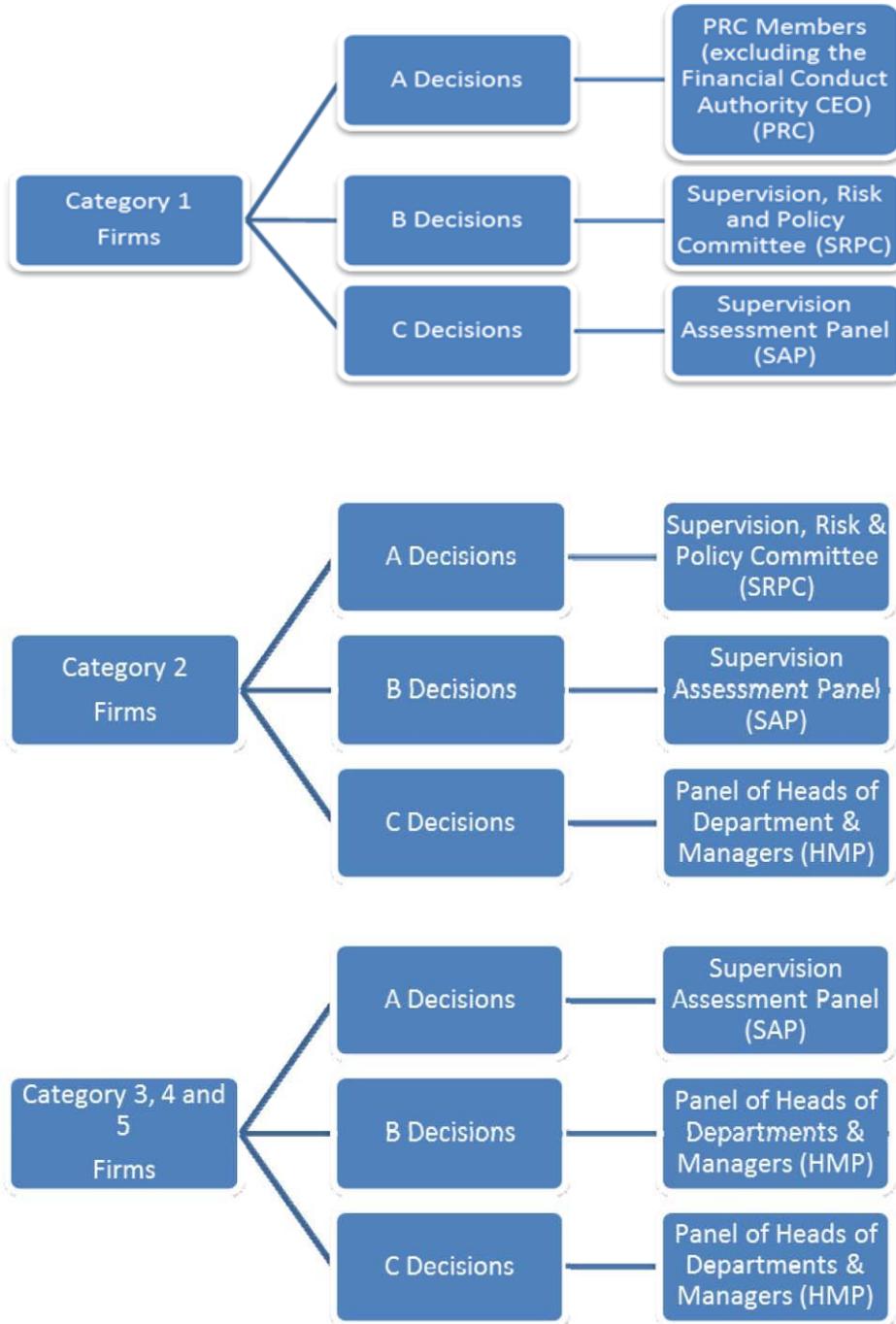
- (a) endorse the proposed settlement by deciding to give the relevant statutory notices based on the terms of the settlement;
- (b) decline the proposed settlement.

79. Where the DMC declines to endorse a settlement agreement, it may invite PRA staff and the person concerned to enter into further discussions to try and achieve an outcome the settlement decision makers would be prepared to endorse.

80. If a settlement decision is reached that the DMC is willing to endorse, the DMC will issue the relevant statutory notices based on the terms of the settlement.

81. If a settlement decision is not reached and the matter remains contested, the EDMC will not be privy to any details from the settlement discussions.

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



## 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)

## 2 Statement of the PRA's policy on the imposition and amount of financial penalties under the Act

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### Introduction and interpretation

1. This statement of policy is issued by the Prudential Regulation Authority (the 'PRA') in accordance with the requirements of sections 63C(1), 69(1), 142V, 192N(1) and 210(1) of the Act.<sup>1</sup> It sets out the PRA's policy on the imposition and amount of penalties under sections 63A, 66, 142S, 192K and 206 of the Act.

2. In applying this statement of policy, the PRA may have regard to the following general principles and considerations:

- (a) In discharging its general functions, the PRA must, so far as is reasonably possible, act in a way which advances its statutory objectives.<sup>2</sup> The PRA is also required to have regard to certain regulatory principles.<sup>3</sup>
- (b) The desirability of:
  - (i) upholding and encouraging high standards of behaviour that are consistent with persons<sup>4</sup> who are subject to the PRA's regulatory requirements and standards, meeting and continuing to meet those requirements and standards;<sup>5</sup> and
  - (ii) demonstrating the benefits of such behaviour.
- (c) The need to ensure that where disciplinary measures, including penalties, are imposed by the PRA:
  - (i) they properly reflect the seriousness of the breach of the PRA's regulatory requirements;
  - (ii) they are proportionate to the breach;
  - (iii) they, and the threat of similar disciplinary measures for any future misconduct, are effective in deterring the person who committed the breach, and others who are subject to the PRA's regulatory requirements, from committing similar or other breaches; and
  - (iv) they are in the public interest.
- (d) Where relevant, published statements of the PRA's approach to carrying out its role in respect of persons who are subject to its regulatory requirements and standards.<sup>6</sup>

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1 'the Act' means the Financial Services and Markets Act 2000 (as amended).

2 As set out in sections 2B and 2C of the Act.

3 As set out in sections 2H and 3B of the Act.

4 Unless inconsistent with the subject or context, in this statement of policy words importing the singular number include the plural and vice versa, and words importing the masculine gender only include the feminine.

5 In relation to the possible imposition of financial penalties on PRA-authorized persons, the PRA may have regard to the impact or likely impact of a penalty or a particular level of penalty on the person concerned, including their ability to comply with the PRA's regulatory requirements and to remain safe and sound going forward if a penalty or a particular level of penalty was to be imposed.

6 In this regard, see in particular the PRA's approach to banking supervision and the PRA's approach to insurance supervision (as may be amended or supplemented from time to time).

## Determining whether the PRA will take action for a penalty

3. The PRA will consider all relevant facts and circumstances of each case when determining whether to take action against a person for a penalty under section 63A, 66, 142S(2), 192K or 206 of the Act (and/or other appropriate enforcement action). Factors that may be relevant for this purpose include:

- (a) The general principles and considerations set out in paragraph 2 above.
- (b) The impact or potential impact of the misconduct on the stability of the financial system.<sup>7</sup>
- (c) The seriousness of the breach of the PRA's regulatory requirements, including:
  - (i) its impact or potential impact on and any threat or potential threat it posed or continues to pose to the advancement of the PRA's statutory objectives and any effect action for a penalty could have on the advancement of those objectives;
  - (ii) its duration or frequency;
  - (iii) whether it was deliberate or reckless;
  - (iv) whether the person has derived any economic benefits from or in consequence of the breach;
  - (v) whether it reveals serious or systemic weaknesses or potential weaknesses in the person's business model, financial strength, governance, risk or other management systems and/or internal controls relating to all or part of the person's business; and
  - (vi) whether there is more than one issue which, considered individually, may not justify the imposition of a penalty but, when considered together, may do so.
- (d) The extent of the person's responsibility for the breach.
- (e) The conduct of the person after the breach was committed, including:
  - (i) how promptly, comprehensively and effectively the person brought the breach to the attention of the PRA and/or any other relevant regulatory or law enforcement agencies;
  - (ii) the degree of co-operation the person showed during the investigation of the breach by the PRA and/or any other relevant regulatory or law enforcement agencies;
  - (iii) the nature, extent and effectiveness or likely effectiveness of any remedial action the person has taken or will take in respect of the breach and how promptly it was or will be taken;
  - (iv) the likelihood that the same or a similar type of breach (whether on the part of the person in question or other persons who are subject to the PRA's regulatory requirements) will recur if action for a penalty (and/or other appropriate enforcement action) is not taken by the PRA and/or any other relevant regulatory or law enforcement agencies;
  - (v) whether the person has promptly and effectively complied with any requests or requirements of the PRA and/or any other relevant regulatory or law enforcement agencies relating or relevant to their behaviour, including as to any remedial action; and

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<sup>7</sup> As set out in section 11 of the Act, 'the financial system' refers to the financial system operating in the United Kingdom and includes: (a) financial markets and exchanges, (b) regulated activities, and (c) other activities connected with financial markets and exchanges.

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- (vi) the nature and extent of any false, incomplete or inaccurate information given by the person and whether the information has or appears to have been given in an attempt knowingly or recklessly to mislead the PRA and/or any other relevant regulatory or law enforcement agencies.
- (f) The previous disciplinary and/or supervisory record of the person including:
  - (i) any previous enforcement or other regulatory action<sup>8</sup> by the PRA, the Financial Conduct Authority ('FCA') and/or any predecessor regulators resulting in an adverse finding against the person;
  - (ii) any private warning<sup>9</sup> given to the person by the PRA, FCA and/or any predecessor regulators;
  - (iii) any previous agreement or undertaking by the person to act or behave or refrain from acting or behaving in a particular way and their compliance with it; and
  - (iv) the general supervisory record of the person or specific aspects of it relevant to the behaviour in question.
- (g) Relevant guidance or other information or materials provided by the PRA, FCA and/or any predecessor regulators, which were in force at the time of the behaviour in question.<sup>10</sup>
- (h) Any relevant action by other domestic and/or international regulatory authorities or law enforcement agencies (including whether, if such agencies are taking or propose to take relevant action in respect of the behaviour in question, it is necessary or desirable for the PRA also to take its own separate action, including action for a penalty):
  - (i) Certain misconduct by PRA-authorized firms or approved persons may result in breaches of the rules and requirements of the PRA, the FCA or other domestic or overseas regulatory or law enforcement agencies. Such cases may result in investigation and enforcement action by the PRA and/or such other agencies.
  - (ii) When deciding how to proceed in such cases, the PRA will examine the facts and circumstances of the case in question and the threat the misconduct posed or continues to pose to the advancement of its statutory objectives. Where required by the Act or appropriate, the PRA will also consult or co-operate with the FCA<sup>11</sup> and/or any other relevant regulatory or law enforcement agencies.
  - (iii) The PRA will determine, in the light of these matters and the principles and considerations set out in paragraph 2 above, whether it is appropriate for the PRA to investigate and take enforcement or other legal action in respect of the misconduct. In appropriate cases, the PRA in conjunction with the FCA and/or any other relevant regulatory or law enforcement

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8 Including any action taken by the PRA, FCA and/or any predecessor regulators using their own-initiative powers (by means of a variation of an authorised person's Part 4A permission, the imposition of a requirement or otherwise), or any request or requirement to take remedial action, and how promptly and effectively such action has been taken.

9 Private warnings are a non-statutory tool. Subject to the facts and circumstances of the case in question, the PRA may decide to give a person a private warning rather than taking formal disciplinary or other enforcement action against him. A private warning by the PRA is not a formal determination of whether the PRA's regulatory requirements have been breached. Where the PRA is minded to give a private warning, it will normally set out in writing its concerns and afford the person a reasonable opportunity to respond to those concerns prior to any private warning being given.

10 The PRA may have regard to any relevant guidance or other materials provided by it, the FCA and/or any predecessor regulators, whether in the form of general guidance issued publicly or advice given to individual firms or individuals. For example, where this helps to illustrate ways in which a person can comply (or could at the relevant time have complied) with relevant regulatory requirements or the standards of behaviour expected of them.

11 See in this regard the memorandum of understanding between the FCA and the PRA (the 'MoU') as may be amended or supplemented from time to time.

agencies will determine whether any joint or co-ordinated investigation and enforcement or other legal action is required.

### Public censures

4. Pursuant to sections 66(3)(b), 142S(3), 192K(3) and 205 of the Act, where a person has breached the PRA's regulatory requirements, the PRA may publish a statement of his misconduct (a 'public censure').

5. In deciding whether it is appropriate to issue a public censure rather than impose a penalty (and/or take other appropriate enforcement action), the PRA may have regard to:

- (a) The general principles and considerations set out in paragraph 2 above.
- (b) The factors set out in paragraph 3 above (determining whether the PRA will take action for a penalty).
- (c) The factors set out in paragraphs 12 to 36 below (determining the appropriate level of penalty).

6. Other considerations that may be relevant include the approach of the PRA in any similar previous cases.<sup>12</sup>

### Action for a penalty against approved persons under section 66 of the Act

7. The PRA's regulatory approach is based on forward-looking judgments with disciplinary and other enforcement action directed at reducing or preventing current and potential future risks to the advancement of its statutory objectives, particularly risks to the stability of the financial system. A key element of the PRA's approach is the personal responsibility of a PRA-authorized firm's senior management to ensure that the firm is run prudently. PRA-authorized firms and individuals within them who perform significant-influence functions must each comply with the PRA's regulatory requirements and standards, which contribute to the advancement of the PRA's statutory objectives.

8. In addition to the factors set out in paragraph 3 above (determining whether the PRA will take action for a penalty), additional considerations that may be relevant when the PRA is deciding whether to take action for a penalty pursuant to section 66 of the Act (and/or other appropriate enforcement action) against a person approved to perform a significant-influence function in relation to the carrying on by a PRA-authorized firm of a regulated activity (a 'significant-influence function') include:

- (a) The approved person's significant influence function, position, role and responsibilities within the relevant firm.
- (b) Whether the person's behaviour calls into question his fitness and propriety.
- (c) The PRA's determination of whether action by it for a penalty (and/or other appropriate enforcement action) against the approved person and/or the relevant PRA-authorized person is or is likely to be an appropriate and effective regulatory response to the behaviour in question.

### Action for a penalty against persons who perform a controlled function without approval under section 63A of the Act

9. In addition to the factors set out in paragraph 3 above (determining whether the PRA will take action for a penalty), additional considerations may be relevant when the PRA is deciding whether to take action

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<sup>12</sup> Subject to the particular facts and circumstances of the case in question, the PRA will seek to achieve a consistent approach to its decisions on whether to impose a penalty or issue a public censure.

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for a penalty under section 63A of the Act (and/or other appropriate enforcement action) against a person who has at any time performed a controlled function without approval.<sup>13</sup> These include:

- (a) The circumstances in which the person performed a controlled function without approval. This may include an assessment of the role and any culpability on the part of the authorised person for whom the controlled function was performed.
- (b) Whether, while performing a controlled function without approval, the person committed misconduct in respect of which, had he been approved, the PRA could have taken action against him pursuant to section 66 of the Act and, if so, the nature and seriousness of the misconduct.
- (c) Whether, at the time the person performed a controlled function without approval, he knew, or could reasonably be expected to have known, that he was doing so.
- (d) The circumstances in which the PRA would expect to be satisfied that a person could reasonably be expected to have known that he was performing a controlled function without approval include:
  - (i) the person had previously performed a similar role at the same or another authorised person for which he had been approved;
  - (ii) the authorised person for whom the controlled function was performed or another authorised person had previously applied for approval for him to perform the same or a similar controlled function;
  - (iii) the person's seniority and/or experience was such that he could reasonably be expected to have known that he was performing a controlled function without approval; and
  - (iv) the authorised person for whom the controlled function was performed had sufficiently defined and apportioned responsibilities so the person's role, and the responsibilities associated with it, were sufficiently clear.
- (e) The length of the period during which the person performed a controlled function without approval.
- (f) Whether the person's only misconduct was to perform a controlled function without approval.
- (g) Whether the person is an individual.
- (h) The PRA's determination of whether action by it for a penalty (and/or other appropriate enforcement action) against the person who has performed a controlled function without approval and/or the authorised person in question is or is likely to be an appropriate and effective regulatory response to the misconduct in question.

### **Action against qualifying parent undertakings under section 192K of the Act**

10. Under section 192(K)(1) of the Act, where the PRA is satisfied that a person who is or has been a qualifying parent undertaking (a 'QPU') has contravened:

- (a) a requirement of a direction given to that person by the PRA under section 192C of the Act; or
- (b) rules made by the PRA under section 192J of the Act;

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<sup>13</sup> Contrary to section 63A(2) of the Act.

the PRA may, under section 192K(2) and (3) of the Act, impose on that QPU or any person who was knowingly concerned in the contravention, a penalty of such amount as it considers appropriate or, alternatively, publish a public censure.

11. In addition to the factors set out in paragraph 3 above (determining whether the PRA will take action for a penalty), additional considerations may be relevant when the PRA is deciding whether to take action for a penalty or public censure under section 192(K) of the Act. These include:

- (a) The role or influence of the QPU in determining, directing or affecting the affairs of the relevant qualifying authorised person,<sup>14</sup> any other company within the group<sup>15</sup> of companies of which they form part or the group of companies as a whole (including but not limited to their risk profile and resilience).
- (b) The effect or potential effect of the contravention on the QPU, the relevant qualifying authorised person, any other company within the group of companies of which they form part or the group of companies as a whole.
- (c) The impact or potential impact of the matters set out in (a) and (b) above on the advancement of the PRA's statutory objectives.

## Determining the appropriate level of penalty

12. Where, in the light of the matters set out in paragraphs 2 to 11 above relevant to the case in question, the PRA has decided to impose a penalty, it will be calculated in accordance with a five-step approach, which can be summarised as follows:

- (a) Step 1: where relevant, the disgorgement of any economic benefits derived from the breach.
- (b) Step 2: in addition to any disgorgement at step 1, the determination of a starting point figure for a punitive penalty having regard to the seriousness of the breach and the size and financial position of the firm<sup>16</sup> or the income of the individual<sup>17</sup> that committed the breach.
- (c) Step 3: where appropriate, an adjustment to the figure determined at step 2 to take account of any aggravating, mitigating or other relevant circumstances.
- (d) Step 4: where appropriate, an upwards adjustment to the figure determined following steps 2 and 3, to ensure that the penalty has an appropriate and effective deterrent effect.
- (e) Step 5: if applicable, one or both of the following factors may be applied to the figure determined following steps 2, 3 and 4:
  - (i) a settlement discount<sup>18</sup> (see the statement of the PRA's settlement decision-making procedure and policy for the determination and amount of penalties and the period of suspensions or restrictions in settled cases);
  - (ii) an adjustment based on any serious financial hardship which the PRA considers payment of the penalty would cause the firm or individual (see paragraphs 30 to 36 below).

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14 As defined in and pursuant to section 192A of the Act.

15 As defined in section 421 of the Act.

16 Unless inconsistent with the subject or context, references in this policy to a 'firm' is to a person subject to the PRA's regulatory requirements and on whom the PRA may impose a penalty pursuant to sections 192K or 206 of the Act.

17 Unless inconsistent with the subject or context, references in this policy to an 'individual' is to a person subject to the PRA's regulatory requirements and on whom the PRA may impose a penalty pursuant to sections 63A or 66 of the Act.

18 Any such discount does not apply to the disgorgement of any economic benefits derived by the firm or individual from the breach (step 1).

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13. These steps will apply in all cases, although the detail of the application of one or more of them may differ for cases against firms or individuals.<sup>19</sup>

14. The PRA recognises that the overall penalty arrived at pursuant to its five-step approach must be appropriate and proportionate to the relevant breach. The PRA may decrease the level of the penalty which would otherwise be determined following steps 2 and 3 if it considers that it is disproportionately high having regard to the seriousness, scale and effect of the breach. In determining any deterrence uplift at step 4, the PRA will also ensure that the overall penalty is not disproportionate.

15. The PRA may decide to impose a penalty on a PRA-authorised person that is a mutual (such as a building society, credit union or friendly society). Whether a firm is a mutual will not, in itself, result in an increase or decrease the level of penalty which would otherwise apply. It may however be a relevant factor when the PRA is assessing, for example, whether to take action for a penalty and/or the impact or likely impact of a penalty (and/or other appropriate enforcement action).

16. Part 3 (Penalties and Fees) of Schedule 1ZB to the Act provides *inter alia* that the PRA may not, in determining its policy with respect to the amounts of penalties to be imposed by it under the Act, take account of expenses which it incurs, or expects to incur, in discharging its functions.

## The five steps for calculating penalties to be imposed on firms or individuals

### Step 1 - disgorgement

17. Where relevant and where it is practicable to ascertain and quantify them, the PRA will seek to deprive a firm or individual of any economic benefits derived from or attributable to the breach of its regulatory requirements, including any profit made or loss avoided. The PRA may also charge interest on such benefits.<sup>20</sup>

### Step 2 – the seriousness of the breach

18. In addition to any figure in respect of disgorgement established at step 1, the PRA will determine at step 2 a starting point figure for a punitive penalty having regard to:

- (a) the seriousness of the breach by the relevant firm or individual, including any threat or potential threat it posed or continues to pose to the advancement of the PRA's statutory objectives; and
- (b) a suitable indicator of the size and financial position of the firm; or
- (c) the income of the individual.<sup>21</sup>

19. In respect of firms:

- (a) A suitable indicator of the size and financial position of the firm may include, but is not limited to, the firm's total revenue or its revenue in respect of one or more areas of its business.<sup>22</sup>
- (b) In those cases where the PRA considers that revenue is an appropriate indicator of the size and financial position of the firm, ordinarily it will calculate the firm's revenue during its last business year, that is, the financial year preceding the date when the breach ended<sup>23</sup> ('relevant revenue').

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<sup>19</sup> See paragraphs 17 to 36 below.

<sup>20</sup> The PRA will determine on a case by case basis whether interest should be charged and, if so, the interest rate that should apply and the period for which interest should be payable. In determining an interest rate, the PRA may have regard to the rates applied by the civil courts or other regulatory authorities.

<sup>21</sup> Where the PRA determines that an individual's income is not an appropriate basis for determining a penalty at step 2 that properly reflects the seriousness of the breach, it may use an alternative. For example, the net worth of the individual.

<sup>22</sup> Where the PRA determines that revenue is not an appropriate indicator of the size and financial position of the firm for the purpose of determining a penalty for the breach, it may use an appropriate alternative indicator.

- (c) The PRA will apply an appropriate percentage rate to the firm's relevant revenue to produce a figure at step 2 that properly reflects the nature, extent, scale and gravity of the breach.<sup>24</sup>

20. In respect of individuals:

- (a) The PRA will ordinarily determine a figure at step 2 based on the individual's annual income. 'Annual income' means the gross amount of all benefits, including any deferred benefits, received by the individual from the employment in connection with which the breach of the PRA's requirements occurred.
- (b) In determining an individual's annual income:
  - (i) 'benefits' include, but are not limited to, salary, bonus, pension contributions, share options and share schemes; and
  - (ii) 'employment' includes, but is not limited to, employment as an adviser, director, partner, consultant or contractor.
- (c) Ordinarily, the PRA will calculate the individual's annual income during the tax year preceding the date when the breach ended<sup>25</sup> ('relevant income').
- (d) The PRA will apply an appropriate percentage rate to the individual's relevant income to produce a figure at step 2 that properly reflects the nature, extent, scale and gravity of the breach.<sup>26</sup>

21. In determining a percentage rate reflecting the seriousness of the breach in cases involving firms or individuals, the factors to which the PRA may have regard include, as appropriate:

- (a) The effect or potential effect of the breach on the advancement of the PRA's statutory objectives.
- (b) The duration or frequency of the breach in relation to the nature of the requirement contravened.
- (c) Whether the breach was deliberate or reckless.
- (d) The extent of the person's responsibility for the breach.
- (e) Whether the person against whom action is to be taken is an individual.
- (f) Whether the breach forms part of a course or pattern of non-compliant behaviour.<sup>27</sup>
- (g) Whether the breach reveals serious or systemic weaknesses or potential weaknesses in the firm's business model, financial strength, governance, risk or other management systems and internal controls relating to all or part of its business.<sup>28</sup>
- (h) The seniority or experience of the individual and the extent of his responsibility for the matters giving rise to the breach and/or the business area affected by it.

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23 In this connection, the PRA may have regard to any relevant considerations. These may include, for example, (a) any unusual features of the business year in question; or (b) where the breach is continuing, the PRA may have regard to the firm's relevant revenue in its last and/or current business year.

24 The PRA has a discretion to determine an appropriate seriousness percentage. In general, the more serious and widespread the breach and the greater the threat or potential threat it posed or continues to pose to the advancement of the PRA's statutory objectives, the higher the percentage is likely to be, subject to the overall penalty being appropriate and proportionate to the relevant breach.

25 Where the breach is continuing, the PRA may, for example, have regard to the individual's annual income in the last and/or current tax year.

26 The PRA has a discretion to determine an appropriate seriousness percentage. In general, the more serious and widespread the breach and the greater the threat or potential threat it posed or continues to pose to the advancement of the PRA's statutory objectives, the higher the percentage is likely to be, subject to the overall penalty being appropriate and proportionate to the relevant breach.

27 For example, in relation to consistently late, inaccurate or inadequate reporting.

28 For example, the adequacy of the firm's capital and liquid assets relative to its risk profile.

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- (i) Whether the individual failed to act with integrity, abused a position of trust or committed a breach of any applicable professional code of conduct.
- (j) In relation to action under section 66 of the Act, the PRA may have regard to the factors set out in paragraphs 7 and 8 above.
- (k) In relation to action under section 63A of the Act, the PRA may have regard to the factors set out in paragraph 9 above.
- (l) In relation to action under section 192K of the Act, the PRA may have regard to the factors set out in paragraphs 10 and 11 above.

### Penalties for the late or incomplete submission of reports

22. The PRA attaches considerable importance to the timely<sup>29</sup>, accurate and complete<sup>30</sup> submission by firms of reports required under the PRA's rules. This is because the information they contain is essential to the effectiveness of the PRA's forward-looking, judgement-based approach to the exercise of its functions.

23. In addition to the factors set out in step 2 for cases against firms or individuals, the following considerations may be relevant where the PRA is considering the imposition of a penalty on a firm or individual for the late, inaccurate or incomplete submission of reports (whether in isolation or together with other enforcement action such as the cancellation of the firm's permission or the withdrawal of an individual's approval):

- (a) The length of time after the due date that the report in question is submitted and the implications or potential implications of that default.
- (b) The nature and extent of any omissions, inaccuracies or incomplete information in the report.
- (c) Any repeated failures to submit accurate and complete reports or to do so on time.
- (d) Any failure or persistent failure fully, promptly and adequately to engage with the PRA's supervisors in connection with the preparation and/or submission of reports or matters ancillary thereto.

### Step 3 – adjustment for any aggravating, mitigating or other relevant factors

24. In cases involving firms or individuals, the PRA may increase or decrease the starting point figure for a punitive penalty determined at step 2 (excluding any amount to be disgorged pursuant to step 1) to take account of any factors which may aggravate or mitigate the breach or other factors which may be relevant to the breach or the appropriate level of penalty in respect of it. Any such adjustment will normally be made by way of a percentage adjustment to the figure determined at step 2.

25. Factors that may aggravate or mitigate the breach include:

- (a) The conduct of the firm or individual in bringing (or failing to bring) promptly, effectively and comprehensively to the PRA's attention (or, where relevant, the attention of any other relevant regulatory or law enforcement agencies) the full facts, circumstances and implications or potential implications of the breach.
- (b) The nature, timeliness and adequacy of the firm's response to any supervisory interventions by the PRA and any remedial actions proposed or required by the PRA's supervisors.

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29 The PRA may treat a report as not received where the method by which it is submitted to the PRA does not comply with the prescribed method of submission.

30 The PRA may treat a report which is materially incomplete or inaccurate as not received until it has been submitted in a form which is materially complete and accurate.

- (c) The degree of co-operation the firm or individual showed during the investigation of the breach by the PRA (or, where relevant, any other relevant regulatory or law enforcement agencies) and the impact of this on the PRA's ability to conclude its enforcement process promptly and efficiently.
- (d) Whether the firm's senior management was aware of the breach (or could reasonably be expected to have been aware of the breach) and, if so, the nature and extent of their knowledge of or involvement in it and the timeliness, adequacy and effectiveness of any steps taken by them to address it and/or the consequences of it.
- (e) The previous disciplinary record and general supervisory history of the firm or individual, both in respect of the PRA's regulatory requirements and, where relevant, those of any other relevant regulatory or law enforcement agencies, including the reporting or non-reporting of concerns in relation to the issue giving rise to the breach in question.
- (f) The nature and impact or likely impact of any compliance or training policy or programme or other remedial steps taken by the firm or individual since the breach was identified meaningfully to address it and reduce the risk of future breaches or, where they occur, the effective management of the consequences of them (including whether these were taken on the firm's or individual's own initiative or that of the PRA or any other relevant regulatory or law enforcement agencies).
- (g) In relation to a contravention of section 63A of the Act, whether the individual's firm or another firm has previously withdrawn an application for the individual to perform the same or a similar significant influence function or another controlled function or has had such an application rejected by the PRA, FCA or any predecessor regulators.

26. Other relevant factors may include any action taken against the firm by other domestic and/or international regulatory authorities or law enforcement agencies relevant to the breach of the PRA's regulatory requirements. This may include any penalties or fines or other disciplinary measures imposed by those agencies.

#### **Step 4 – adjustment for deterrence**

27. If the PRA considers the penalty determined following steps 2 and 3 is insufficient effectively to deter the person who committed the breach and/or others who are subject to the PRA's regulatory requirements from committing similar or other breaches, it may increase the penalty at step 4 by making an appropriate deterrence adjustment to it.

28. The circumstances in which the PRA may make a deterrence adjustment to the penalty include:

- (a) Where the PRA considers the value of the penalty is too small in relation to the breach to achieve effective deterrence.
- (b) Where previous action by the PRA, FCA and/or any predecessor regulators in respect of the same or a similar breach has failed to improve or sufficiently improve the relevant standards of the subject of the PRA's action and/or relevant industry standards.
- (c) Where the PRA considers it likely that, in the absence of a deterrence adjustment, the same or a similar breach will be committed in the future by the relevant firm or individual or by other members of the regulated community more widely.

#### **Step 5 – application of any applicable reductions for early settlement or serious financial hardship**

##### **Settlement discount**

29. The PRA and the firm or individual on whom a penalty is to be imposed may seek to agree the amount of the penalty and any other appropriate settlement terms. In recognition of the benefits of such

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agreements, the PRA's settlement policy provides that the amount of the penalty which would otherwise have been payable may, subject to the stage at which a binding settlement agreement is reached, be reduced.<sup>31</sup>

### Serious financial hardship

30. Where a firm or individual claims that payment of a penalty determined by the PRA will cause them serious financial hardship (the onus is on the firm or individual to satisfy the PRA that this would be the case), in exceptional circumstances the PRA may reduce the penalty.

31. Where the PRA agrees in principle to consider a firm's or individual's written and/or oral representations as to serious financial hardship, the firm or individual must:

- (a) promptly provide to the PRA relevant, comprehensive and verifiable evidence that payment of the penalty will cause them serious financial hardship; and
- (b) co-operate fully with the PRA and promptly, transparently and comprehensively comply with any requests by it for further information or evidence concerning and relevant to a proper assessment of their financial position or other relevant circumstances.

32. In respect of firms, in assessing whether the penalty would cause the firm serious financial hardship the factors which the PRA may have regard to include:

- (a) the firm's financial strength and viability; and
- (b) any impact payment of the penalty would or would be likely to have on the firm's ability to meet and continue to meet the PRA's regulatory requirements and standards.

33. The PRA may, in addition to imposing a penalty, withdraw a PRA-authorized person's authorisation under section 33 of the Act. Such action by the PRA would not affect its assessment of the appropriate penalty in relation to a breach of its requirements. However, where the PRA's withdrawal of a PRA-authorized person's authorisation results in it having less earning potential, this may be a relevant factor in assessing whether the penalty will cause the person serious financial hardship.

34. In respect of individuals, in assessing whether the proposed penalty would cause the individual serious financial hardship the factors which the PRA may have regard to include:

- (a) The individual's ability to pay the penalty over a reasonable period (normally no more than three years).
- (b) The PRA's starting point is that an individual may suffer serious financial hardship only if during that period his net annual income will fall below £14,000 and his capital<sup>32</sup> will fall below £16,000 as a result of payment of the penalty.<sup>33</sup>

35. The PRA may, in addition to imposing a penalty, make a prohibition order under section 56 of the Act or withdraw an individual's approval under section 63 of the Act. Such action would reflect the PRA's assessment of the individual's fitness to perform regulated activity or suitability for a particular role and would not affect its assessment of the appropriate penalty in relation to a breach of its requirements.

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<sup>31</sup> Any applicable settlement discount applied at stage 5 will not apply to the disgorgement of any economic benefits determined at step 1.

<sup>32</sup> The PRA will consider as capital anything that could provide the individual with a source of income, including savings, property (including personal possessions), investments and land. The PRA will normally consider as capital the equity that an individual has in the home in which he lives as his only or principal residence, but will consider any representations by the individual about this, including as to the position of any other occupants of the property or the practicability of re-mortgaging or selling the property within a reasonable period.

<sup>33</sup> The PRA will keep these income and capital thresholds under review and will consider all relevant facts and circumstances in determining whether they should be modified in a particular case. Where a penalty is reduced, it will be reduced to an amount which the individual can pay without going below the income and capital threshold levels that apply in that case. If an individual has no income, any reduction in the penalty will be to an amount that the individual can pay without going below the capital threshold.

However, where the effect of the PRA making a prohibition order against an individual or withdrawing his approval is or is likely to result in the individual having less earning potential, this may be a relevant factor in assessing whether the penalty will cause the individual serious financial hardship.

36. The PRA will consider agreeing to defer the due date for payment of the penalty or accepting payment by instalments where, for example, the firm or individual requires a reasonable time to realise a particular asset to enable the totality of the penalty to be paid within a reasonable period.

# 3 Statement of the PRA's policy on the imposition of suspensions or restrictions under the Act and the period for which they are to have effect

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## Introduction and interpretation

1. This statement of policy is issued by the Prudential Regulation Authority (the 'PRA') in accordance with the requirements of sections 69(1) and 210(1) of the Act.<sup>1</sup> It sets out the PRA's policy on the imposition and period of suspensions or restrictions under sections 66 and 206A of the Act.

2. In applying this statement of policy, the PRA may have regard to the following general principles and considerations:

- (a) In discharging its general functions, the PRA must, so far as is reasonably possible, act in a way which advances its statutory objectives.<sup>2</sup> The PRA is also required to have regard to certain regulatory principles.<sup>3</sup>
- (b) The desirability of:
  - (i) upholding and encouraging high standards of behaviour that are consistent with persons who are subject to the PRA's regulatory requirements and standards, meeting and continuing to meet those requirements and standards;<sup>4</sup> and
  - (ii) demonstrating the benefits of such behaviour.
- (c) The need to ensure that where disciplinary measures, including suspensions or restrictions, are imposed by the PRA:
  - (i) they properly reflect the seriousness of the breach of the PRA's regulatory requirements;
  - (ii) they are proportionate to the breach;
  - (iii) they, and the threat of similar disciplinary measures for any future misconduct, are effective in deterring the person who committed the breach, and others who are subject to the PRA's regulatory requirements, from committing similar or other breaches; and
  - (iv) they are in the public interest.
- (d) Where relevant, published statements of the PRA's approach to carrying out its role in respect of persons who are subject to its regulatory requirements and standards.<sup>5</sup>

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1 'the Act' means the Financial Services and Markets Act 2000 (as amended).

2 As set out in sections 2B and 2C of the Act.

3 As set out in sections 2H and 3B of the Act.

4 In relation to the possible imposition of suspensions or restrictions on PRA-authorised persons, the PRA may have regard to the impact or likely impact of the sanction on the person concerned, including their ability to comply with the PRA's regulatory requirements and to remain safe and sound going forward if a suspension or restriction was to be imposed.

5 In this regard, see in the PRA's approach to banking supervision and the PRA's approach to insurance supervision (as may be amended or supplemented from time to time).

3. Unless inconsistent with the subject or context, in this statement of policy:

- (a) 'approved person' means a person in relation to whom an approval is given under section 59 of the Act.<sup>6</sup>
- (b) 'authorised person' means a person who is authorised for the purposes of the Act.<sup>7</sup>
- (c) 'restriction' means a limitation or other restriction imposed by the PRA, for such period as it considers appropriate (up to the maximum periods set out in the Act), on:
  - (i) the carrying on of a regulated activity by an authorised person;<sup>8</sup> or
  - (ii) the performance by an approved person of any function to which any approval relates.<sup>9</sup>
- (d) 'suspension' means the suspension by the PRA, for such period as it considers appropriate (up to the maximum periods set out in the Act), of:
  - (i) any permission which an authorised person has to carry on a regulated activity;<sup>10</sup> or
  - (ii) any approval of the performance by an approved person of any function to which the approval relates.<sup>11</sup>
- (e) Words importing the singular number include the plural and vice versa, and words importing the masculine gender only include the feminine.

## Determining whether the PRA will take action for a suspension or restriction and ancillary matters

4. The PRA will consider all relevant facts and circumstances of each case when determining whether to take action against an authorised person under section 206A of the Act or an approved person under section 66 of the Act for a suspension or restriction (and/or other appropriate enforcement action). Factors that may be relevant for this purpose include:

- (a) The general principles and considerations set out in paragraph 2 above.
- (b) The impact or potential impact of the misconduct on the stability of the financial system.<sup>12</sup>
- (c) The seriousness of the breach of the PRA's regulatory requirements, including:
  - (i) its impact or potential impact on and any threat or potential threat it posed or continues to pose to the advancement of the PRA's statutory objectives and any effect action for a penalty could have on the advancement of those objectives;
  - (ii) its duration or frequency;
  - (iii) whether it was deliberate or reckless;
  - (iv) whether the person has derived any economic benefits from or in consequence of the breach;

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6 As set out in sections 66(5A) and 66(6) of the Act.

7 As set out in sections 31(1) and (2) of the Act.

8 Pursuant to section 206A(1)(b) of the Act.

9 Pursuant to section 66(3)(ab) of the Act.

10 Pursuant to section 206A(1)(a) of the Act.

11 Pursuant to section 66(3)(aa) of the Act.

12 As set out in section 11 of the Act, 'the financial system' refers to the financial system operating in the United Kingdom and includes: (a) financial markets and exchanges, (b) regulated activities, and (c) other activities connected with financial markets and exchanges.

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- (v) whether it reveals serious or systemic weaknesses or potential weaknesses in the person's business model, financial strength, governance, risk or other management systems and/or internal controls relating to all or part of the person's business; and
  - (vi) whether there is more than one issue which, considered individually, may not justify the imposition of a penalty but, when considered together, may do so.
- (d) The extent of the person's responsibility for the breach.
- (e) The conduct of the person after the breach was committed, including:
- (i) how promptly, comprehensively and effectively the person brought the breach to the attention of the PRA and/or any other relevant regulatory or law enforcement agencies;
  - (ii) the degree of co-operation the person showed during the investigation of the breach by the PRA and/or any other relevant regulatory or law enforcement agencies;
  - (iii) the nature, extent and effectiveness or likely effectiveness of any remedial action the person has taken or will take in respect of the breach and how promptly it was or will be taken;
  - (iv) the likelihood that the same or a similar type of breach (whether on the part of the person in question or other persons who are subject to the PRA's regulatory requirements) will recur if action for a penalty (and/or other appropriate enforcement action) is not taken by the PRA and/or any other relevant regulatory or law enforcement agencies;
  - (v) whether the person has promptly and effectively complied with any requests or requirements of the PRA and/or any other relevant regulatory or law enforcement agencies relating or relevant to their behaviour, including as to any remedial action; and
  - (vi) the nature and extent of any false, incomplete or inaccurate information given by the person and whether the information has or appears to have been given in an attempt knowingly or recklessly to mislead the PRA and/or any other relevant regulatory or law enforcement agencies.
- (f) The previous disciplinary and/or supervisory record of the person including:
- (i) any previous enforcement or other regulatory action<sup>13</sup> by the PRA, the Financial Conduct Authority ('FCA') and/or any predecessor regulators resulting in an adverse finding against the person;
  - (ii) any private warning<sup>14</sup> given to the person by the PRA, FCA and/or any predecessor regulators;
  - (iii) any previous agreement or undertaking by the person to act or behave or refrain from acting or behaving in a particular way and their compliance with it; and
  - (iv) the general supervisory record of the person or specific aspects of it relevant to the behaviour in question.

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13 Including any action taken by the PRA, FCA and/or any predecessor regulators using their own-initiative powers (by means of a variation of an authorised person's Part 4A permission, the imposition of a requirement or otherwise), or any request or requirement to take remedial action, and how promptly and effectively such action has been taken.

14 Private warnings are a non-statutory tool. Subject to the facts and circumstances of the case in question, the PRA may decide to give a person a private warning rather than taking formal disciplinary or other enforcement action against him. A private warning by the PRA is not a formal determination of whether the PRA's regulatory requirements have been breached. Where the PRA is minded to give a private warning, it will normally set out in writing its concerns and afford the person a reasonable opportunity to respond to those concerns prior to any private warning being given.

- (g) Relevant guidance or other information or materials provided by the PRA, FCA and/or any predecessor regulators, which were in force at the time of the behaviour in question.<sup>15</sup>
- (h) Any relevant action by other domestic and/or international regulatory authorities or law enforcement agencies (including whether, if such agencies are taking or propose to take relevant action in respect of the behaviour in question, it is necessary or desirable for the PRA also to take its own separate action, including action for a suspension or restriction):
  - (i) Certain misconduct by PRA-authorized firms or approved persons may result in breaches of the rules and requirements of the PRA, the FCA or other domestic or overseas regulatory or law enforcement agencies. Such cases may result in investigation and enforcement action by the PRA and/or such other agencies.
  - (ii) When deciding how to proceed in such cases, the PRA will examine the facts and circumstances of the case in question and the threat the misconduct posed or continues to pose to the advancement of its statutory objectives. Where required by the Act or appropriate, the PRA will also consult or co-operate with the FCA<sup>16</sup> and/or any other relevant regulatory or law enforcement agencies.
  - (iii) The PRA will determine, in the light of these matters and the principles and considerations set out in paragraph 2 above, whether it is appropriate for the PRA to investigate and take enforcement or other legal action in respect of the misconduct. In appropriate cases, the PRA in conjunction with the FCA and/or any other relevant regulatory or law enforcement agencies will determine whether any joint or co-ordinated investigation and enforcement or other legal action is required.

5. The Act confers on the PRA a wide discretion as to the nature and ambit of any suspension or restriction which it may impose.<sup>17</sup> Subject to the exercise of that discretion, the nature of the breach of the PRA's regulatory requirements and to the particular facts and circumstances of the case in question, the PRA may suspend or restrict an authorised person or an approved person from carrying on one or more regulated activities or controlled functions.

6. In appropriate cases, in addition to or instead of taking disciplinary action against an authorised person or an approved person, including action for a suspension or restriction, the PRA may:

- (a) exercise its requirement power, vary or cancel a PRA-authorized person's Part 4A permission; or
- (b) exercise its powers to make a prohibition order or withdraw a person's approval in respect of a significant-influence function performed by him in relation to the carrying on by a PRA-authorized person of a regulated activity to which the approval relates.

## Public censures

7. Pursuant to sections 66(3)(b) and 205 of the Act, where a person has breached the PRA's regulatory requirements, the PRA may publish a statement of his misconduct (a 'public censure').

8. In deciding whether it is appropriate to issue a public censure rather than take action for a suspension or restriction (and/or take other appropriate enforcement action), the PRA may have regard to:

- (a) The general principles and considerations set out in paragraph 2 above.

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15 The PRA may have regard to any relevant guidance or other materials provided by it, the FCA and/or any predecessor regulators, whether in the form of general guidance issued publicly or advice given to individual firms or individuals. For example, where this helps to illustrate ways in which a person can comply (or could at the relevant time have complied) with relevant regulatory requirements or the standards of behaviour expected of them.

16 See in this regard the memorandum of understanding between the FCA and the PRA (the 'MoU') as may be amended or supplemented from time to time.

17 See paragraphs 3(c) and (d) of this statement of policy.

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- (b) The factors set out in paragraphs 4 to 6 above (determining whether the PRA will take action for a suspension or restriction and ancillary matters).
- (c) The factors set out in paragraphs 10 and 11 below (determining the period of suspension or restriction).

9. Other considerations that may be relevant include the approach of the PRA in any similar previous cases.<sup>18</sup>

### Determining the period of a suspension or restriction

10. Where, in the light of the matters set out in paragraphs 2 to 10 above relevant to the case in question, the PRA has decided to impose a suspension or restriction, it will determine the period of the suspension or restriction that is appropriate for and proportionate to the breach concerned and an effective deterrent. In doing so, the factors to which the PRA may have regard include, as appropriate:

- (a) The effect or potential effect of the breach on the advancement of the PRA's statutory objectives.
- (b) The duration or frequency of the breach in relation to the nature of the requirement contravened.
- (c) The seriousness of the misconduct by the authorised person or approved person in question in relation to the nature of the obligation breached.<sup>19</sup>
- (d) Whether the breach was deliberate or reckless.
- (e) Whether or not the subject of the PRA's action is an individual.
- (f) Whether the breach forms part of a course or pattern of non-compliant behaviour.<sup>20</sup>
- (g) Whether the breach reveals serious or systemic weaknesses or potential weaknesses in the firm's business model, financial strength, governance, risk or other management systems and internal controls relating to all or part of its business.<sup>21</sup>
- (h) The seniority or experience of the individual and the extent of his responsibility for the matters giving rise to the breach and/or the business area affected by it.
- (i) Whether the individual failed to act with integrity, abused a position of trust or committed a breach of any applicable professional code of conduct.

11. Additional matters that may be relevant include:

- (a) Aggravating, mitigating or other relevant factors

The PRA may have regard to any relevant factors that may aggravate or mitigate the breach and/or other factors which may be relevant to it or the appropriate period of a suspension or restriction in respect of it.<sup>22</sup>

- (b) The possible impact of a suspension or restriction on the person in breach

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18 Subject to the particular circumstances of the case in question, the PRA will seek to achieve a consistent approach to its decisions on whether to impose a suspension or restriction or issue a public censure.

19 Considerations that may be relevant for this purpose include those set out at step 2 ('the seriousness of the breach') of the PRA's policy on the imposition and amount of financial penalties under the Act.

20 For example, in relation to consistently late, inaccurate or inadequate reporting.

21 For example, the adequacy of the firm's capital and liquid assets relative to its risk profile.

22 Considerations that may be relevant for this purpose include those set out at step 3 ('adjustment for any aggravating, mitigating or other relevant factors') of the PRA's policy on the imposition and amount of financial penalties under the Act.

The PRA may have regard to the possible impact of a suspension or restriction on the authorised person or approved person who is or was in breach of its regulatory requirements. Relevant considerations may include, as appropriate:

- (i) any loss or potential loss of revenue or profits that the authorised person may incur as a result of not being able to carry on the suspended or restricted regulated activity and any material impact this may have on its safety and soundness;
  - (ii) any material impact a suspension or restriction could have on other aspects of the authorised person's business and any material impact this may have on its safety and soundness;
  - (iii) the anticipated reasonable costs of any reasonable measures the authorised person would have to undertake to comply with a suspension or restriction and any material impact such costs may have on its safety and soundness;
  - (iv) any other economic costs that the authorised person may incur, such as an obligation to pay salaries or other sums to employees who would be unable to work or to work full-time during the period of the suspension or restriction, and any material impact such costs may have on its safety and soundness; and
  - (v) whether the suspension or restriction would or would be likely to cause the authorised person or approved person serious financial hardship.<sup>23</sup>
- (c) The potential for a suspension or restriction to have a wider impact

The PRA may have regard to any possible wider impact of a suspension or restriction. Relevant considerations could include any material impact a suspension or restriction could have on:

- (i) persons other than the person in breach, including other authorised persons; or
- (ii) the stability of the financial system.

## **Delaying the commencement of the period of a suspension or restriction**

12. In appropriate cases, the PRA may delay the commencement of the period of a suspension or restriction. Factors that may be relevant to the PRA's assessment of whether such action would be appropriate include the likely impact of the suspension or restriction or the timing and practical application of the matters set out in paragraph 11(b) and (c) above.

## **The interaction between the power to impose a suspension or restriction and the power to impose a penalty or public censure**

13. The PRA will consider the overall impact and deterrent effect of any disciplinary measure or combination of measures that it imposes in any given case. Where the PRA is minded to impose a combination of disciplinary or disciplinary and other enforcement measures, it will ensure that the combined impact of those measures is appropriate and proportionate to the breach in question.

## **Settlement**

14. The PRA and the person on whom a suspension or restriction may be imposed may seek to agree the period of it and any other appropriate settlement terms. In recognition of the benefits of such

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<sup>23</sup> Considerations that may be relevant for this purpose include those set out at step 5 ('application of any applicable reductions for...serious financial hardship') of the PRA's policy on the imposition and amount of financial penalties under the Act.

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agreements, the statement of the PRA's settlement decision-making procedure and policy for the determination and amount of penalties and the period of suspensions or restrictions in settled cases provides that the period of suspension or restriction which would otherwise have been imposed may, subject to the terms of the policy including the stage at which a binding settlement agreement is concluded, be reduced.

## 4 Statement of the PRA's settlement decision-making procedure and policy for the determination of the amount of penalties and the period of suspensions or restrictions in settled cases

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### Introduction and interpretation

1. This statement of procedure and policy is issued by the Prudential Regulation Authority (the 'PRA') in accordance with the requirements of sections 63C(1), 69(1), 192N(1), 210(1) and 395(5) of the Act<sup>1</sup>. It deals specifically with the settlement of enforcement action by the PRA and supplements, and should be read in conjunction with, the PRA's:

- (a) policy on the imposition and amount of penalties under the Act;
- (b) policy on the imposition and period of suspensions or restrictions under the Act; and
- (c) statement of policy on statutory notices and the allocation of decision making under the Act.

2. Unless inconsistent with the subject or context, in this statement of policy, words importing the singular number include the plural and vice versa, and words importing the masculine gender only include the feminine.

### The PRA's approach to settlement

3. In discharging its general functions, the PRA must, so far as is reasonably possible, act in a way which advances its statutory objectives.<sup>2</sup> The PRA is also required to have regard to certain regulatory principles,<sup>3</sup> including the need for it to use its resources in the most efficient and economical way.

4. Having regard to those overarching statutory requirements, the PRA recognises the potential scope for, benefits of and public interest in the timely and comprehensive settlement on appropriate terms, and particularly the early settlement, of enforcement action which it may take against persons who are subject to its regulatory requirements. Such agreements can:

- (a) expedite the procedure under the Act for the final determination of enforcement action by the PRA;
- (b) save time and resources (for the PRA and the subject of enforcement action by it); and
- (c) facilitate the prompt and comprehensive conclusion of enforcement action by the PRA and the communication of regulatory outcomes to the person concerned, the regulated community more widely and the public.

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1 'the Act' means the Financial Services and Markets Act 2000 (as amended).

2 As set out in sections 2B and 2C of the Act.

3 As set out in sections 2H and 3B of the Act.

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5. In the course of enforcement action, the PRA has a wide discretion whether or not to enter into or continue settlement discussions and, where an agreement in principle can be reached, conclude a binding settlement agreement. In exercising its discretion, the matters to which the PRA may have regard include:

- (a) its statutory objectives;
- (b) the terms of this policy and any relevant guidance or other materials issued by the PRA;
- (c) the facts and circumstances of the case in question;<sup>4</sup> and
- (d) the public interest.

6. Neither the PRA nor the subject of enforcement action by it can be required to enter into or continue settlement discussions or conclude a settlement agreement.

7. In recognition of the matters set out in paragraphs 3 to 5 above, the PRA operates a scheme to award discounts for the early settlement of enforcement action involving the imposition of penalties or suspensions or restrictions under the Act, details of which are set out in paragraphs 26 to 29 below.

### **The key characteristics of a settlement of enforcement action by the PRA**

8. Regulatory enforcement action by the PRA is conducted pursuant to and in accordance with the statutory scheme set out in the Act. The process leading up to the imposition of a disciplinary sanction has a number of prescribed stages and requires the PRA to give the subject of the action prescribed statutory notices.

9. The fact that the PRA agrees to enter into or continue settlement discussions will not entitle the subject of its investigation to a suspension of or delay in the progress of the enforcement process.

10. A settlement of regulatory enforcement action ordinarily will involve a regulatory decision by the PRA. Where a disciplinary measure is to be imposed, that decision will normally give rise to a statutory obligation on the PRA to give the person concerned the requisite statutory notices and the PRA will do so. The fact that the matter settles will not remove or otherwise alter that obligation.<sup>5</sup>

11. The stage the enforcement process has reached when any settlement discussions take place is likely to affect the nature and extent of the information concerning the breaches or suspected breaches of the PRA's regulatory requirements which the PRA will have supplied to the subject of its investigation. For example, where a warning notice has been given, ordinarily the person concerned will have received:

- (a) first, written details of the PRA's findings following its investigation;<sup>6</sup>
- (b) second, a warning notice and the related documentation which the PRA is required to supply pursuant to section 394 of the Act.

12. Subject to the particular facts and circumstances of the case in question, including the stage the enforcement process has reached and the nature of the information provided by the PRA to the subject of its enforcement action, the PRA will take reasonable steps to ensure that he is provided with sufficient information to understand the essential elements of the case against him and make an informed decision as to whether or not to settle the case.

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4 Relevant considerations may include the PRA's assessment of the probability of settlement discussions leading to the core facts being agreed and an effective and timely regulatory outcome being secured.

5 Nor will it alter the potential relevance of the matter to any subsequent cases by the PRA which give rise to the same or similar issues.

6 This will generally take the form of one or more investigation reports.

13. The PRA will only agree to settle an enforcement action by it when the terms of the settlement would, in its view, represent an appropriate regulatory outcome. Generally, the PRA will require a settlement to be sufficiently comprehensive to enable it to terminate the totality of its investigation and all proposed disciplinary or other enforcement action pursuant to it against the person under investigation.<sup>7</sup>

14. Subject to and in accordance with the terms of section 391 of the Act, save in exceptional circumstances, a settlement of regulatory enforcement action by the PRA will involve the publication by the PRA of one or more of the relevant statutory notices or the matters to which they relate.

## **The timing of settlement discussions with the PRA**

15. Subject to paragraph 16 below, the PRA may, at any stage of an enforcement action by it, enter into and pursue settlement discussions and conclude a binding settlement agreement or decline to enter into or discontinue settlement discussions. For example, the PRA may enter into settlement discussions with the subject of regulatory enforcement action following an investigation of a suspected breach of its regulatory requirements but prior to the giving of a warning notice or following a warning notice but before a decision notice. In exercising its discretion, the PRA will have regard to all relevant factors, including those set out in paragraphs 3, 4 and 5 above.

16. The PRA will not normally agree to enter into substantive settlement discussions or conclude a binding settlement agreement until:

- (a) it has a sufficient understanding of the nature, seriousness and impact or potential impact of the suspected breach of its regulatory requirements; and
- (b) it is able to make a reasonable assessment of any action, including remedial or disciplinary measures that should be taken in consequence of it.

## **The conduct of settlement discussions and PRA decision making in relation to whether to conclude a binding settlement agreement**

### **Settlement discussions and in principle settlement agreements**

17. Where the PRA enters into settlement discussions with the subject of enforcement action by it, ordinarily those discussions will be conducted and progressed by one or more of the investigators appointed by the PRA and/or any other members of the PRA's staff responsible for the conduct of the matter.

18. The PRA and the subject of its enforcement action will determine and agree the basis of any settlement discussions. Ordinarily, the PRA will require any settlement discussions to be conducted on a without prejudice basis such that if a binding settlement agreement is not concluded, the parties will not be permitted to refer to or seek to rely on any admissions, concessions, offers or proposals made in the course of settlement discussions.

19. Where the parties are able to reach an agreement in principle, the terms of the proposed settlement will be put in writing and agreed by them (the 'proposed settlement agreement').

20. The proposed settlement agreement may include:

- (a) particulars of the breach of the PRA's regulatory requirements admitted by the person concerned;

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<sup>7</sup> In determining the suitability of settlement, as part of its broad discretion, the PRA may, for example, have regard to the number of parties under investigation for the same or similar breaches or suspected breaches of its regulatory requirements and the potential for a settlement of one investigation adversely to affect any ongoing investigations.

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- (b) the PRA's conclusions concerning the breach;
- (c) details of any disciplinary or other measures to be imposed by the PRA, including any settlement discount that would apply if a binding settlement agreement is concluded,<sup>8</sup> or any other action, such as remedial action, to be undertaken by the person concerned; and
- (d) details of all outstanding statutory notices to be given to the person concerned and a draft of one or more of them.

### Concluding a settlement agreement

21. The PRA's decision whether or not to approve and conclude an in principle settlement agreement will, in accordance with its statement of policy on statutory notices and the allocation of decision making under the Act, be reached by an appropriate decision-making committee ('DMC').

22. The proposed settlement agreement will be submitted by the PRA's investigators and/or any other members of the PRA's staff responsible for the conduct of the matter to the DMC.

23. Any decision by the DMC to approve and conclude a binding settlement agreement<sup>9</sup> must be unanimous.

24. In cases where a binding settlement agreement is approved and concluded by the DMC and the PRA will give the subject of its investigation a warning notice or a decision notice, the DMC will also decide whether a copy of the notice is required to be given to:

- (a) any third parties in accordance with section 393 of the Act;<sup>10</sup>
- (b) in the case of action under section 66(3)(aa) or (ab) of the Act, any other interested parties.<sup>11</sup>

25. Subject to the stage the enforcement process has reached when a binding settlement agreement is concluded, the agreement may provide for the subject of the PRA's action to waive and not exercise any subsisting rights:

- (a) to contest or further to contest that action, including the facts and matters set out in any statutory notices which have been or are to be given to them by the PRA;
- (b) to make representations to the relevant DMC;
- (c) to be given access to 'PRA material' or 'secondary material' pursuant to section 394 of the Act;
- (d) to object to the giving of any decision notice;
- (e) to refer the matter to the Tribunal<sup>12</sup> and/or otherwise seek to challenge any aspect of the matter, including by way of a claim for judicial review.

### The PRA's settlement discount scheme

26. Where the PRA proposes to impose a financial penalty or a suspension or restriction under the Act and a proposed settlement agreement is negotiated by the parties, approved by the PRA's DMC and

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<sup>8</sup> Determined in accordance with the PRA's settlement discount scheme set out in paragraphs 26 to 28 of this policy.

<sup>9</sup> Where the PRA's DMC requires clarification of or changes to the proposed settlement agreement, further settlement discussions may be required. The PRA shall, in its discretion, determine the nature and timing of its input to such further discussions.

<sup>10</sup> The PRA's DMC will also consider any representations made by third parties, pursuant to section 393(3) of the Act, in response to any notice given them.

<sup>11</sup> 'Other interested parties' has the meaning set out in section 67(9) of the Act.

<sup>12</sup> 'Tribunal' means the Upper Tribunal (Tax and Chancery Chamber) or any successor body.

concluded, the person concerned will be entitled to a reduction in the amount or period of the relevant sanction, determined by the PRA in accordance with paragraph 28 below.

27. Subject to the stage the enforcement process has reached when any settlement discussions are concluded, generally the PRA's approach will be to determine, pursuant to its statement of policy on the imposition and amount of penalties or the imposition and period of suspensions and restrictions, as appropriate, the amount or period of the sanction that it is proposing to impose<sup>13</sup> (the 'pre-discount sanction').

28. Where the pre-discount sanction and all other settlement terms are:

- (a) agreed in principle as part of a proposed settlement agreement;
- (b) approved by the DMC; and
- (c) a binding settlement agreement is concluded;

the PRA will reduce the pre-discount sanction by a percentage, determined by the PRA as set out below:

Stage	Discount	Description
1	30%	Stage 1 means the period from the commencement of an enforcement investigation by the PRA until: <ul style="list-style-type: none"> <li>(a) the PRA has communicated to the subject of its investigation the essential nature of the case against him and allowed him what it considers to be a reasonable opportunity to understand it; and</li> <li>(b) the PRA has allowed what it considers to be a reasonable opportunity for the parties to reach a settlement agreement.</li> </ul>
2	20%	Stage 2 means the period from the end of stage 1 until the expiry of the period (including any extensions of it) for making written representations in response to the giving of a warning notice or, if sooner, the date on which such representations are received by the PRA.
3	10%	Stage 3 means the period from the end of stage 2 until the giving of a decision notice.
4	0%	Stage 4 means the period following the end of stage 3, including any proceedings before the Tribunal and any appeals from any rulings of the Tribunal.

29. Ordinarily, the pre-discount sanction, the percentage reduction and the reduced sanction will each be recorded in writing in the binding settlement agreement.

<sup>13</sup> Where a warning notice has been given to the subject of the PRA's enforcement action, it will set out the penalty which the PRA is minded to impose.

## 5 Statement of the PRA's approach to publicity of regulatory action

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### Introduction

1. This statement of procedure and policy is issued by the Prudential Regulation Authority ('PRA'). It deals with the question of publicity of statutory notice decisions by the PRA.<sup>14</sup>

2. In discharging its general functions, the PRA must, so far as is reasonably possible, act in a way which advances its statutory objectives.<sup>15</sup> The PRA is also required to have regard to certain regulatory principles,<sup>16</sup> including the desirability in appropriate cases of the PRA publishing information relating to persons on whom requirements are imposed under the Act, as a means of contributing to the advancement of its objectives and the principle that the PRA should exercise its functions as transparently as possible.

3. Having regard to those overarching statutory requirements, the PRA recognises the potential scope for, benefits of and public interest in an appropriate degree of transparency concerning enforcement and other regulatory action which it takes, in terms of:

- (a) reinforcing publicly the PRA's statutory objectives and its policies;
- (b) informing the financial services industry of behaviour on the part of firms or individuals which it considers to be unacceptable;
- (c) deterring future and/or more widespread breaches of its regulatory requirements; and
- (d) informing society as a whole of the action it is taking and the reasons for it.

### Publicity during PRA investigations

4. This section of the policy applies from the point the PRA has appointed investigators (for example under section 167 – 169 of the Act) until it has decided to issue a Warning Notice.

5. The PRA will not normally make public:

- (a) the fact that it is or is not investigating a particular firm or individual and/or matter;
- (b) the identity of the firm or individual and/or details of the matter under investigation; or
- (c) any of the findings or conclusions of an investigation,

except as set out in the remainder of this statement of procedure and policy.

6. In determining whether to make a public announcement, the PRA may have regard to a variety of factors, including the extent to which publicity would in its view be likely to:

- (a) advance its statutory objectives;

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14 Unless inconsistent with the subject or context, references in this statement of policy and procedure to 'the Act' are to the Financial Services and Markets Act 2000 (as amended).

15 As set out in sections 2B and 2C of the Act.

16 As set out in sections 2H and 3B of the Act.

- (b) assist the investigation, for example by bringing forward witnesses; or
- (c) deter more widespread breaches of its regulatory requirements.

7. In determining whether to make a public announcement, the PRA will also consider any potential prejudice risk of unfairness and/or disproportionate damage that it believes may be caused to any persons who are, or who are likely to be, a subject of the investigation and/or to third parties.<sup>17</sup>

8. In circumstances where the existence of a PRA investigation has entered the public domain, and:

- (a) the PRA subsequently concludes that no further action is warranted; or
- (b) the action the PRA proposes to take is materially different to that which previously entered the public domain,

it may (either on its own initiative, or at the request of the subject of the investigation) take reasonable steps to publicise that fact.

## Publicity of regulatory action – Warning Notices

9. The general position under section 391 of the Act is that neither the PRA nor the person to whom a Warning Notice is given or copied may publish the notice, or any details concerning it. However in relation to certain categories of Warning Notice,<sup>18</sup> section 391 of the Act does permit the PRA, after consulting the persons to whom a relevant Warning Notice is given or copied, to publicise such information as it considers appropriate about the matter to which the notice relates.

10. The PRA will consider a number of factors in determining whether it is appropriate to exercise its discretion in favour of publicity, including the extent to which publicity would in its view be likely to:

- (a) advance its statutory objectives;
- (b) where applicable, enhance financial stability;
- (c) provide a signal to firms as to the types of behaviour it considers to be unacceptable; and
- (d) prevent more widespread breaches of its regulatory requirements.

11. In accordance with section 391 of the Act, the PRA will not publish information if in its opinion publication would be:

- (a) unfair to the persons concerned;
- (b) prejudicial to the safety and soundness of PRA-authorized persons; or
- (c) prejudicial to securing the appropriate degree of protection for policyholders.

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<sup>17</sup> Who may have or acquire rights in relation to the matter by virtue of section 393 of the Act.

<sup>18</sup> The categories of Warning Notice to which the power applies are set out in section 391(1ZB) of the Act.

## Publicity at the conclusion of regulatory action – Supervisory, Decision and Final Notices

12. Section 391 of the Act also requires the PRA to publish – in such manner as it considers appropriate – such information as it considers appropriate about the matters to which a Supervisory Notice,<sup>19</sup> a Decision Notice and a Final Notice relate.

13. However, section 391 of the Act provides that the PRA may not publish information concerning a Decision or Final Notice if in its opinion publication would be:

- (a) unfair to the persons concerned;
- (b) prejudicial to the safety and soundness of PRA-authorised persons; or
- (c) prejudicial to securing the appropriate degree of protection for policyholders.

14. The PRA will consider the circumstances of each case, but, subject to paragraph 12 above, will ordinarily publicise enforcement action when this has led to the issue of a Decision Notice, as well as where it has led to the issue of a Final Notice.

## Making representations on issues of publicity

15. Where it proposes to publish details of a Warning, Decision, Final or Supervisory Notice, the PRA will consider any representations made to it (whether as a result of a formal requirement to consult under the Act, or otherwise) by the subject of the notice and any person to whom the notice is copied.

16. Such representations should normally be made in writing,<sup>20</sup> and should contain detailed information – with reference to the test in section 391 of the Act – as to why it would not be appropriate for the PRA to publish details of the relevant notice.

17. The PRA will not normally decide against publication solely because it is claimed that:

- (a) publication could have a negative impact on a person's reputation; or
- (b) a person will apply (or is likely to apply) for some or all of the matter to be dealt with in private when they refer it to the Tribunal.

## Who will take decisions on publicity?

18. In relation to information concerning a Warning Notice publicised pursuant to the PRA's power under section 391 of the Act, section 395(2) provides that the PRA's decision-making policies must be designed to ensure that the decision to publicise that a Warning Notice has been issued is taken in accordance with a procedure which is, as far as possible, the same as that applicable to a decision which gives rise to an obligation to give a Warning Notice.

19. The PRA's statement of procedure on decision making provides that the decision to publicise that a Warning Notice has been issued will be taken by the same committee as took the decision to issue the Warning Notice itself.<sup>21</sup>

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<sup>19</sup> As defined in section 395(13) of the Act.

<sup>20</sup> If a person wishing to make representations to the PRA on any of the matters set out in this section is unable to provide representations in writing, for example due to that person having a disability, the PRA may allow representations to be made in person or by some other suitable means.

<sup>21</sup> For further information about the decision-making process see the statement of the PRA's policy on statutory notices and the allocation of decision making under the Act.

20. In relation to Decision Notices, Final Notices and Supervisory Notices, any decision concerning publicity will normally be taken by the same committee as took the decision to issue the Notice itself.

## What form publicity will take?

21. In relation to information concerning a Warning Notice publicised pursuant to the PRA's power under section 391 of the Act, the information placed in the public domain will normally include:

- (a) sufficient details as to the identity of the firm or individual concerned for it to be clear to whom the matter relates. This will include, but may not be limited to, the name of the firm or individual or a Firm Reference Number;
- (b) a brief summary of the facts which the PRA is relying on as giving rise to the decision to take regulatory action against the firm or individual concerned; and
- (c) a statement making clear that the issue of a Warning Notice is not a final decision,<sup>22</sup> and that if, following representations, the PRA decides to issue a Decision Notice, the subject of the notice has the option to refer the matter to the Tribunal to have the matter considered afresh.

22. In relation to Decision Notices, Final Notices and Supervisory Notices, publicity will generally include placing the relevant notice on the PRA's web-site. The notice may be accompanied by a press release.

23. In relation to Final Notices and Supervisory Notices, the PRA will also consider what matters it should notify to the FCA for inclusion on the FCA's public register.<sup>23</sup>

## Reviewing whether continuing publicity remains appropriate

24. Where it has published details of a Warning, Decision, Final or Supervisory Notice, the PRA will on request review those notices and any related press releases that are published on its website to determine whether – at the time of the request – continued publication is appropriate, or whether they should be removed or amended.

25. In determining whether continued publicity remains appropriate, the PRA will in particular take into account:

- (a) whether it has continuing concerns in respect of the person and any risk they might pose to its statutory objectives;
- (b) the seriousness of the person's misconduct;
- (c) the nature of the action taken by it and the level of any sanction imposed on the person;
- (d) whether the person is a firm or an individual;
- (e) the extent to which the publication continues adequately to set out its position and/or expectations regarding behaviour in a particular area;
- (f) public interest in the case (both at the time of publication and subsequently);
- (g) whether continued publication is necessary for the purposes of deterrence and/or advancing its statutory objectives;

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<sup>22</sup> A Warning Notice is akin to a 'minded to' decision.

<sup>23</sup> Section 347A of the Act requires the PRA to provide the FCA with certain information relating to any prohibition order it may make relating to an individual.

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- (h) how much time has passed since publication; and
- (i) any representations made by the person on the continuing impact on them of the publication.

## 6 Statement of policy on the conduct of interviews pursuant to section 169(7) of the Act

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### Introduction and interpretation

1. This statement of policy is issued by the Prudential Regulation Authority ('PRA') in accordance with the requirements of sections 169(9) and 169(11) of the Act.<sup>1</sup> It has been approved by Her Majesty's Treasury in accordance with section 169(10) of the Act.

2. This statement of policy applies when, pursuant to section 169 of the Act ('Assistance to overseas regulators'), the PRA has:

- (a) appointed an investigator under section 169(1)(b) of the Act to investigate any matter at the request of an overseas regulator; and
- (b) given a section 169(7) direction or is considering doing so.

3. The PRA operates within a global and European environment and institutional framework and seeks to promote co-operation with overseas regulators. It views the provision of assistance to overseas regulators as an essential part of the advancement of its statutory objectives and the discharge of its general functions.

4. Unless inconsistent with the subject or context, in this statement of policy:

- (a) 'interview' means an interview conducted for the purposes of an investigation under section 169(1)(b) of the Act in relation to which the PRA has given a direction under section 169(7) of the Act;
- (b) 'investigator' means one or more competent persons who may be appointed or are appointed by the PRA under section 169(1)(b) of the Act;
- (c) 'overseas regulator' has the meaning set out in section 195 of the Act;<sup>2</sup>
- (d) 'section 169(7) direction' means a direction given by the PRA under section 169(7) of the Act to an investigator appointed under section 169(1)(b) of the Act, to permit a representative of an overseas regulator to attend and take part in an interview; and
- (e) words importing the singular number include the plural and vice versa, and words importing the masculine gender only include the feminine.

### Appointment of an investigator and confidentiality of information

5. Under section 169(1)(b) of the Act, the PRA may appoint an investigator to investigate any matter at the request of an overseas regulator. The Act permits the PRA to appoint as an investigator its employees, officers and servants or other competent persons. Where the investigator appointed by the PRA is not its employee, officer or servant, the PRA may choose to:

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<sup>1</sup> 'the Act' means the Financial Services and Markets Act 2000 (as amended).

<sup>2</sup> Section 195 of the Act provides that an overseas regulator is an authority in a country or territory outside the United Kingdom (i) which is a home state regulator; or (ii) which exercises any function of a kind set out in section 195(4) of the Act.

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- (a) require that an employee, officer or servant of the PRA is present at the interview;
- (b) appoint that person as an investigator.

6. The powers of an investigator so appointed by the PRA include the PRA's compulsory interview power, that is, the power to require persons to attend at a specified time and place and answer questions.<sup>3</sup>

7. Where the PRA appoints an investigator in response to a request from an overseas regulator it may, under section 169(7) of the Act, direct him to permit a representative of the overseas regulator to attend and take part in an interview conducted for the purposes of the investigation.

8. Pursuant to section 169(8) of the Act, the PRA may only give a section 169(7) direction if it is satisfied that any information that may be obtained by the overseas regulator as a result of an interview will be subject to safeguards equivalent to those contained in Part XXIII of the Act (Public Record, Disclosure of Information and Co-operation).

### **Use of the PRA's power of direction under section 169(7) of the Act**

9. The PRA may need to consider whether to use its section 169(7) power of direction:

- (a) at or around the time that it considers a request from an overseas regulator to appoint an investigator; or
- (b) after it has appointed an investigator. For example, at the request of the overseas regulator or on the recommendation of the investigator.

10. Subject to the facts and circumstances of the case in question, before giving a section 169(7) direction, the PRA may determine, in conjunction with the overseas regulator, how this statement of policy will apply to the conduct of the interview. For example, the PRA may at this stage determine whether and to what extent a representative of the overseas regulator will be able to participate in the interview. Ordinarily, the overseas regulator will be notified of any such determination made by the PRA when its section 169(7) direction is given.

11. The PRA's section 169(7) direction may contain the identity of the representative of the overseas regulator who is permitted to attend the interview and/or information as to the role that he will play in it.

12. If the PRA envisages that there will be more than one interview in the course of its investigation, the section 169(7) direction may also specify which interviews the representative of the overseas regulator will be permitted to attend.

### **Conduct of interviews and ancillary matters**

13. The PRA's investigator will have conduct of the interview and will act on behalf of the PRA and under the PRA's control.

14. The PRA's investigator will determine the venue and timing of the interview. The interviewee will be provided with written notification of these matters in advance of the interview.

15. The PRA's investigator may decide which documents or other information should be put to the interviewee and whether it is appropriate to give the interviewee sight of such documents or other information before the interview takes place.

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<sup>3</sup> In this regard, see also paragraph 21 below.

16. The PRA may instruct the investigator to permit a representative of the overseas regulator to assist in the preparation of the interview.

17. Where the PRA considers it appropriate to do so, it may permit the representative of the overseas regulator to attend and ask questions of the interviewee in the course of the interview. The interview will be conducted in accordance with the terms of the section 169(7) direction and, as set out in paragraph 10 above, any relevant determination.

18. If the PRA's section 169(7) direction permits a representative of the overseas regulator to attend an interview and ask the interviewee questions:

- (a) the PRA's investigator will retain control of the interview throughout;
- (b) the PRA's investigator will instigate and conclude the interview, introduce everyone present and explain the procedure of the interview. He will warn the interviewee of the possible consequences of refusing to answer questions and the uses to which any answers that are given can and cannot be put. He will always ask appropriate preliminary questions, such as those establishing the identity of the interviewee and any legal or other representative of him;
- (c) the PRA's investigator will determine the duration of the interview and when, if at all, there should be any breaks in the course of it;
- (d) where the representative of the overseas regulator wishes to ask the interviewee questions about documents or other information during the interview and the PRA's investigator wishes to inspect such documents or other information before or during the interview, he will be given an adequate opportunity to do so;<sup>4</sup>
- (e) the PRA's investigator may, where he considers it appropriate to do so, suspend the interview, ask the representative of the overseas regulator to leave the interview or terminate the interview and, if appropriate, reschedule it for another occasion. In making such decisions, the PRA's investigator will consider the relevant circumstances of the case in question including: the terms of the PRA's direction, any relevant determination pursuant to paragraph 10 above and/or agreement made with the overseas regulator as to the conduct of the interview and the contents of this statement of policy; and
- (f) the PRA's investigator has responsibility for making a record of the interview. The record should note the times and duration of any breaks in the interview and any periods when the representative of the overseas regulator was either present or not present.

19. Subject to paragraph 20 below, the PRA will in general provide written notice of the appointment of an investigator to the person under investigation pursuant to section 169(1)(b) of the Act. Whether or not the interviewee is the person under investigation, the PRA's investigator will ordinarily:

- (a) inform the interviewee of the provisions of the Act under which he has been appointed, the identity of the requesting overseas regulator and the general nature of the matter under investigation;
- (b) inform the interviewee if a representative of the overseas regulator is to attend and take part in any interview;
- (c) provide the interviewee with a copy of any section 169(7) direction; and

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<sup>4</sup> If the PRA's investigator wishes to inspect such documents or other information and has not been able to do so before the interview is due to take place, he may delay the interview until he has had an opportunity to do so. In that event, the interviewee will be notified as soon as practicable as to any changes to the arrangements for the interview.

(d) provide the interviewee with a copy of this statement of policy.

20. Notification of any of the matters set out in paragraph 19(a) to (c) above may not be provided in advance of the interview if the PRA believes that the circumstances of the case are such that notification could result in the interview or the PRA's investigation more generally being frustrated or prejudiced.

21. When the PRA's investigator has exercised the PRA's compulsory interview power:

(a) at the outset of the interview, the interviewee will be given an appropriate warning. Amongst other things, the warning must state that the interviewee is obliged to answer all questions put to him during the interview, including any put to him by the representative of the overseas regulator. The warning will also, in accordance with section 174 of the Act, deal with the admissibility of statements made to the investigator; and

(b) the PRA's investigator will require the interviewee to answer the questions put to him during the interview. Where the PRA has given an appropriate direction under section 169(7) of the Act, questions may also be put to the interviewee by the representative of the overseas regulator. The interviewee will also be required to answer these questions. The PRA's investigator may intervene at any stage during questioning by the representative of the overseas regulator.

## Language

22. Any interview will, in general, be conducted in English. Where the interviewee's first language is not English, at the request of the interviewee arrangements will be made for the questions to be translated into the interviewee's first language and for his answers to be translated back into English.

23. If a translator is employed at the request of the representative of the overseas regulator, the translation costs will normally be met by the overseas regulator. Where the interview is being conducted in pursuance of an EU law obligation, the translation costs will be met by the PRA.

24. Ordinarily, in all cases, the meeting of any translation costs will be agreed in advance with the overseas regulator.

## Recording of interviews

25. All compulsory interviews by the PRA will be recorded. The method of recording will be decided on and arranged by the PRA's investigator. The costs of recording the interview will be addressed in a similar manner to that set out in paragraphs 23 and 24 above.

26. The PRA will not normally provide the overseas regulator with transcripts of the recording of interviews unless specifically agreed to, but a copy of the recording will normally be provided where requested.

27. The interviewee will be provided with a copy of the recording of the interview but will only be provided with transcripts of the recording or translations of any transcripts if he meets the costs of producing them.

## Representation at interviews

28. The interviewee may be accompanied at a section 169(7) interview by a qualified lawyer or a non-legally qualified observer of his choice. The presence at the interview of a representative of the overseas regulator may mean that the interviewee wishes to be represented or accompanied by a person either from or familiar with that regulator's jurisdiction. The costs of any such representation are the responsibility of the interviewee and will not be met by the PRA.

29. As far as reasonably practicable, the arrangements for the interview should accommodate the attendance of a representative of the interviewee. However, the PRA reserves the right to proceed with the interview if the interviewee cannot find a suitable representative within a reasonable time or no such person is willing or able to attend at a suitable venue and/or a suitable time.

# 7 Statement of the PRA's policy on the imposition and amount of financial penalties under the Act on persons who are, or have been, auditors or actuaries of a PRA- authorised person, appointed under or as a result of a statutory provision

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## Introduction and interpretation

1. This statement of policy is issued by the Prudential Regulation Authority ('PRA') in accordance with the requirements of section 345D of the Act.<sup>1</sup> It sets out the PRA's policy on the imposition and amount of penalties under section 345A(4)(c) of the Act on persons who are, or have been, auditors or actuaries of a PRA-  
authorised person, appointed under or as a result of a statutory provision (auditors or actuaries).<sup>2</sup>

2. The auditor or actuary who is so appointed, and to whom this statement of policy applies, may be an individual or a firm, depending on the specific terms of the relevant appointment. For this reason, where it is a firm (rather than the individual) who is appointed under, or as a result of a statutory provision, the PRA does not consider that it has powers to impose penalties on (or to issue a public censure of or seek to disqualify) individual auditors and actuaries employed by, or holding partnership with, that firm. Similarly, if an individual actuary (or less commonly, auditor) is appointed, the PRA would not seek to impose a financial penalty (or to issue a public censure of or seek to disqualify) a firm which employs that individual or in which he is a partner.

3. In applying this statement of policy, the PRA may have regard to the following general principles and considerations:

- (a) In discharging its general functions, the PRA must, so far as is reasonably possible, act in a way which advances its statutory objectives.<sup>3</sup> The PRA is also required to have regard to certain regulatory principles.<sup>4</sup>
- (b) The desirability of:
  - (i) upholding and encouraging high standards of behaviour that are consistent with persons<sup>5</sup> who are subject to the PRA's regulatory requirements and standards, meeting and continuing to meet those requirements and standards;<sup>6</sup> and
  - (ii) demonstrating the benefits of such behaviour.

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1 'the Act' means the Financial Services and Markets Act 2000 (as amended).

2 As set out in section 342 of the Act.

3 As set out in sections 2B and 2C of the Act.

4 As set out in sections 2H and 3B of the Act.

5 Unless inconsistent with the subject or context, in this statement of policy words importing the singular number include the plural and vice versa, and words importing the masculine gender only include the feminine.

6 In relation to the possible imposition of financial penalties on auditors and actuaries, the PRA may have regard to the impact or likely impact of a penalty or a particular level of penalty on the person concerned, including their continuing ability to provide services of an appropriate standard to PRA-  
authorised persons going forward.

- (c) The need to ensure that where disciplinary measures, including penalties, are imposed by the PRA:
  - (i) they properly reflect the seriousness of the breach of the PRA's regulatory requirements;
  - (ii) they are proportionate to the breach;
  - (iii) they, and the threat of similar disciplinary measures for any future misconduct, are effective in deterring the person who committed the breach, and others who are subject to the PRA's regulatory requirements, from committing similar or other breaches; and
  - (iv) they are in the public interest.
- (d) Where relevant, published statements of the PRA's approach to arrangements governing its interactions with auditors and actuaries who are subject to its regulatory requirements and standards.<sup>7</sup>

## Determining whether the PRA will take action for a penalty

4. The PRA will consider all relevant facts and circumstances of each case when determining whether to take action against an auditor or actuary for a penalty under section 345A(4)(c) of the Act (and/or other appropriate enforcement action). Factors that may be relevant for this purpose include:

- (a) The general principles and considerations set out in paragraph 3 above.
- (b) The impact or potential impact of the misconduct on the stability of the financial system.<sup>8,9</sup>
- (c) The seriousness of the breach of the PRA's regulatory requirements, including:
  - (i) its impact or potential impact on and any threat or potential threat it posed or continues to pose to the advancement of the PRA's statutory objectives and any effect action for a penalty could have on the advancement of those objectives;
  - (ii) its duration or frequency;
  - (iii) whether it was deliberate or reckless;
  - (iv) whether the auditor or actuary has derived any economic benefits from or in consequence of a breach (including, in instances where, in the opinion of the PRA, the auditor or actuary appears to have allowed commercial considerations to take precedence over that auditor's or actuary's duty to the PRA, economic benefits in the form of fee income);
  - (v) whether it reveals serious or systemic weaknesses or potential weaknesses in the auditor's or actuary's management of the provision to PRA-authorized persons of audit or actuarial services which relate to requirements imposed on those persons or on the auditor or actuary by the PRA and/or the governance and controls relating to the oversight of all or part of those services; and

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<sup>7</sup> In this regard, see in particular PRA Supervisory Statement LSS7/13 '*The relationship between the external auditor and the supervisor: a code of practice*', April 2013; [www.bankofengland.co.uk/pru/Pages/publications/codeofpractice.aspx](http://www.bankofengland.co.uk/pru/Pages/publications/codeofpractice.aspx).

<sup>8</sup> As set out in section 11 of the Act, 'the financial system' refers to the financial system operating in the United Kingdom and includes: (a) financial markets and exchanges, (b) regulated activities, and (c) other activities connected with financial markets and exchanges.

<sup>9</sup> Misconduct by auditors or actuaries which could have an impact on financial stability might include, for example, failure promptly to draw the PRA's attention to matters which may be material to the exercise of functions by the PRA, including failure to notify the PRA in good time that a firm is failing to meet threshold conditions, may no longer be a going concern or is in breach of PRA rules.

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- (vi) whether there is more than one issue which, considered individually, may not justify the imposition of a penalty but, when considered together, may do so.
- (d) The extent of the auditor's or actuary's responsibility for the breach.
- (e) The conduct of the auditor or actuary after the breach was committed, including:
  - (i) how promptly, comprehensively and effectively the auditor or actuary brought the breach to the attention of the PRA and/or any other relevant regulatory or professional body<sup>10</sup> or law enforcement agency;
  - (ii) the degree of co-operation the auditor or actuary showed during the investigation of the breach by the PRA and/or any other relevant regulatory or professional body or law enforcement agency;
  - (iii) the nature, extent and effectiveness or likely effectiveness of any remedial action the auditor or actuary has taken or will take in respect of the breach and how promptly it was or will be taken;
  - (iv) the likelihood that the same or a similar type of breach (whether on the part of the person in question or other auditors and actuaries who are subject to the PRA's regulatory requirements) will recur if action for a penalty (and/or other appropriate enforcement action) is not taken by the PRA and/or any other relevant regulatory or professional body or law enforcement agency;
  - (v) whether the auditor or actuary has promptly and effectively complied with any requests or requirements of the PRA and/or any other relevant regulatory or professional body or law enforcement agency relating or relevant to their behaviour, including as to any remedial action; and
  - (vi) the nature and extent of any false, incomplete or inaccurate information given by the person and whether the information has or appears to have been given in an attempt knowingly or recklessly to mislead the PRA and/or any other relevant regulatory or professional body or law enforcement agency.
- (f) The previous disciplinary record and/or regulatory relationships of the auditor or actuary including:
  - (i) any previous enforcement or other regulatory action<sup>11</sup> by the PRA, the Financial Conduct Authority ('FCA'), any predecessor regulators, the Financial Reporting Council ('FRC') and/or professional body resulting in an adverse finding against the auditor or actuary;
  - (ii) any private warning given to the auditor or actuary by the PRA, FCA and/or any predecessor regulators;<sup>12</sup>
  - (iii) any previous agreement or undertaking by the auditor or actuary to act or behave or refrain from acting or behaving in a particular way and their compliance with it; and

10 'Professional body' would include, but is not limited to, accounting and actuarial bodies covered by the disciplinary scheme of the Financial Reporting Council.

11 Including any requests made by the PRA, FCA and/or any predecessor regulators to take remedial action, and how promptly and effectively such action has been taken.

12 Private warnings are a non-statutory tool. Subject to the facts and circumstances of the case in question, the PRA may decide to give an auditor or actuary a private warning rather than taking formal action against him. A private warning by the PRA is not a formal determination of whether the PRA's regulatory requirements have been breached. Where the PRA is minded to give a private warning, it will normally set out its concerns in writing and afford the person a reasonable opportunity to respond to those concerns prior to any private warning being given.

- (iv) the general disciplinary record of the auditor or actuary, or specific aspects of it relevant to the behaviour in question, and the auditor's or actuary's approach to being open and co-operative with the PRA, FCA or any predecessor regulators.
- (g) Relevant guidance or other information or materials provided by the PRA, FCA and/or any predecessor regulators, and/or relevant auditing standards, ethical standards and related practice notes and bulletins issued by the FRC, which were in force at the time of the behaviour in question.<sup>13</sup>
- (h) The PRA's determination of whether action by it for a penalty (and/or other appropriate enforcement action) against the auditor or actuary is or is likely to be an appropriate and effective regulatory response to the behaviour in question.
- (i) Any relevant action by other domestic and/or international regulatory authorities or law enforcement agencies (including whether, if such agencies are taking or propose to take relevant action in respect of the behaviour in question, it is necessary or desirable for the PRA also to take its own separate action, including action for a penalty):
  - (i) Certain misconduct by auditors and actuaries may result in breaches of the rules and requirements of the PRA, the FCA or other domestic or overseas regulatory or law enforcement agencies. Such cases may result in investigation and enforcement action by the PRA and/or such other agencies.
  - (ii) When deciding how to proceed in such cases, the PRA will examine the facts and circumstances of the case in question and the threat the misconduct posed or continues to pose to the advancement of its statutory objectives. Where required by the Act or appropriate, the PRA will also consult or co-operate with the FCA<sup>14</sup> and/or any other relevant regulatory or professional body or law enforcement agency.
  - (iii) The PRA will determine, in the light of these matters and the principles and considerations set out in paragraph 3 above, whether it is appropriate for the PRA to investigate and take enforcement or other legal action in respect of the misconduct. In appropriate cases, the PRA in conjunction with the FCA and/or any other relevant regulatory or professional body or law enforcement agency will determine whether any joint or co-ordinated investigation and enforcement or other legal action is required.

## Public censures

5. Pursuant to section 345A(4)(b) of the Act, where an auditor or actuary has breached the PRA's regulatory requirements, the PRA may publish a Statement of Misconduct (a 'public censure').
6. In deciding whether it is appropriate to issue a public censure rather than impose a penalty (and/or take other appropriate enforcement action), the PRA may have regard to:
  - (a) The general principles and considerations set out in paragraph 3 above.
  - (b) The factors set out in paragraph 4 above (determining whether the PRA will take action for a penalty).
  - (c) The factors set out in paragraphs 8 to 33 below (determining the appropriate level of penalty).

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<sup>13</sup> The PRA may have regard to any relevant guidance or other materials provided by it, the FCA, any predecessor regulators, and/or the FRC, whether in the form of general guidance issued publicly or advice given to particular auditors or actuaries. For example, where this helps to illustrate ways in which an auditor or actuary can comply (or could at the relevant time have complied) with relevant regulatory requirements or the standards of behaviour expected of them.

<sup>14</sup> See in this regard the memorandum of understanding between the FCA and the PRA (the 'MoU') as may be amended or supplemented from time to time.

7. Other considerations that may be relevant include the approach of the PRA in any similar previous cases.<sup>15</sup>

## Determining the appropriate level of penalty

8. Where, in the light of the matters set out in paragraphs 3 and 4 above relevant to the case in question, the PRA has decided to impose a penalty, it will be calculated in accordance with a five-step approach, which can be summarised as follows:

- (a) Step 1: where relevant, the disgorgement of any economic benefits derived from the breach.
- (b) Step 2: in addition to any disgorgement at step 1, the determination of a starting-point figure for a punitive penalty having regard to the seriousness of the breach, whether the auditor or actuary that committed the breach is a firm, a sole trader or an individual working in a firm and the financial position of that auditor or actuary.
- (c) Step 3: where appropriate, an adjustment to the figure determined at step 2 to take account of any aggravating, mitigating or other relevant circumstances.
- (d) Step 4: where appropriate, an upwards adjustment to the figure determined following steps 2 and 3, to ensure that the penalty has an appropriate and effective deterrent effect.
- (e) Step 5: if applicable, one or both of the following factors may be applied to the figure determined following steps 2, 3 and 4:
  - (i) a settlement discount;<sup>16</sup>
  - (ii) an adjustment based on any serious financial hardship which the PRA considers payment of the penalty would cause the auditor or actuary (see paragraphs 28 to 34 below).

9. These steps will apply in all cases, although the detail of the application of one or more of them may differ for cases against auditing and actuarial firms as opposed to individual auditors and actuaries.<sup>17</sup>

10. The PRA recognises that the overall penalty arrived at pursuant to its five-step approach must be appropriate and proportionate to the relevant breach. The PRA may decrease the level of the penalty which would otherwise be determined following steps 2 and 3 if it considers that it is disproportionately high having regard to the seriousness, scale and effect of the breach. In determining any deterrence uplift at step 4, the PRA will also ensure that the overall penalty is not disproportionate.

11. Part 3 (Penalties and Fees) of Schedule 1ZB to the Act provides *inter alia* that the PRA may not, in determining its policy with respect to the amounts of penalties to be imposed by it under the Act, take account of expenses which it incurs, or expects to incur, in discharging its functions.

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15 Subject to the particular facts and circumstances of the case in question, the PRA will seek to achieve a consistent approach to its decisions on whether to impose a penalty or issue a public censure.

16 Any such discount does not apply to the disgorgement of any economic benefits derived by the auditor or actuary from the breach (step 1).

17 See paragraphs 15 to 18.

## The five steps for calculating penalties to be imposed on auditors and actuaries

### Step 1 — disgorgement

12. Where relevant and where it is practicable to ascertain and quantify them, the PRA will seek to deprive an auditor or actuary of any economic benefits derived from or attributable to the breach of its regulatory requirements. The PRA may also charge interest on such benefits.<sup>18</sup>

13. For these purposes, in instances where, in the opinion of the PRA, the auditor or actuary appears to have allowed commercial considerations to take precedence over that auditor's or actuary's duty to the PRA, 'economic benefits' may include part or whole of:

- (a) the fee, including disbursements, payable to the auditor or actuary in respect of the engagement in which the misconduct occurred; and
- (b) the total fees, including disbursements, payable to the auditor or actuary in respect of any further engagements between the auditor or actuary and the PRA-authorized person who was party to the engagement in which the misconduct occurred (or members of its group), which run concurrently with, or commence within twelve months of the end of, the engagement in relation to which the misconduct occurred.

14. In assessing whether 'economic benefits' should include relevant fee income, the PRA will have regard to the extent to which an individual auditor or actuary working in a firm was in a position to benefit from such fee income.

### Step 2 — the seriousness of the breach

15. In addition to any figure in respect of disgorgement established at step 1, the PRA will determine at step 2 a starting-point figure for a punitive penalty having regard to:

- (a) the seriousness of the breach by the relevant auditor or actuary, including any threat or potential threat it posed or continues to pose to the advancement of the PRA's statutory objectives; and
- (b) a suitable indicator of the size and financial position of the audit or actuarial firm;<sup>19</sup> or
- (c) the income of the individual auditor or actuary.<sup>20</sup>

16. In respect of firms:

- (a) A suitable indicator of the size and financial position of the audit or actuarial firm may include, but is not limited to, the firm's total revenue or its revenue in respect of one or more areas of its business.<sup>21</sup>
- (b) In those cases where the PRA considers that revenue is an appropriate indicator of the size and financial position of the audit or actuarial firm, ordinarily it will calculate the audit or actuarial

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18 The PRA will determine on a case-by-case basis whether interest should be charged and, if so, the interest rate that should apply and the period for which interest should be payable. In determining an interest rate, the PRA may have regard to the rates applied by the civil courts or other regulatory authorities.

19 The firm size in this case would relate only to the UK firm and would not be by reference to the size of the network to which it belongs.

20 Where the PRA determines that an individual's income is not an appropriate basis for determining a penalty at step 2 that properly reflects the seriousness of the breach, it may use an alternative, for example, the net worth of the individual.

21 Where the PRA determines that revenue is not an appropriate indicator of the size and financial position of the firm for the purpose of determining a penalty for the breach, it may use an appropriate alternative indicator.

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firm's revenue during its last business year, that is, the financial year preceding the date when the breach ended<sup>22</sup> ('relevant revenue').

- (c) The PRA will apply an appropriate percentage rate to the audit or actuarial firm's relevant revenue to produce a figure at step 2 that properly reflects the nature, extent, scale and gravity of the breach.<sup>23</sup>

### 17. In respect of auditors and actuaries who are individuals:

- (a) The PRA will ordinarily determine a figure at step 2 based on the individual's annual income. 'Annual income' means either: (i) the pre-tax profit that the auditor or actuary made from their work as a sole trader; or (ii) the gross amount of all benefits, including any deferred benefits, received by the individual from the employment in connection with which the breach of the PRA's requirements occurred.
- (b) For the purposes of (a)(ii) above, 'benefits' include, but are not limited to salary, bonus, pension contributions, share options and share schemes, and 'employment' includes, but is not limited to, employment as an adviser, director, partner, consultant or contractor.
- (c) Ordinarily, the PRA will calculate the individual's annual income during the tax year preceding the date when the breach ended<sup>24</sup> ('relevant income').
- (d) The PRA will apply an appropriate percentage rate to the individual's relevant income to produce a figure at step 2 that properly reflects the nature, extent, scale and gravity of the breach.<sup>25</sup>

### 18. In determining a percentage rate reflecting the seriousness of the breach in cases involving auditors or actuaries, the factors to which the PRA may have regard include, as appropriate:

- (a) The effect or potential effect of the breach on the advancement of the PRA's statutory objectives.
- (b) The duration or frequency of the breach in relation to the nature of the requirement contravened.
- (c) Whether the breach was deliberate or reckless.
- (d) The extent of the auditor's or actuary's responsibility for the breach.
- (e) Whether the person against whom action is to be taken is an individual auditor or actuary.
- (f) Whether the breach forms part of a course or pattern of non-compliant behaviour.<sup>26</sup>
- (g) Whether the breach reveals serious or systemic weaknesses or potential weaknesses in the auditor's or actuary's management of the provision of audit and/or actuarial services to PRA-authorized persons and the governance and controls relating to the oversight of all or part of those services.
- (h) The seniority or experience of an individual auditor or actuary.

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22 In this connection, the PRA may have regard to any relevant considerations. These may include, for example, (a) any unusual features of the business year in question; or (b) where the breach is continuing, the PRA may have regard to the firm's relevant revenue in its last and/or current business year.

23 The PRA has the discretion to determine an appropriate seriousness percentage. In general, the more serious and widespread the breach and the greater the threat or potential threat it posed or continues to pose to the advancement of the PRA's statutory objectives, the higher the percentage is likely to be, subject to the overall penalty being appropriate and proportionate to the relevant breach.

24 Where the breach is continuing, the PRA may, for example, have regard to the individual's annual income in the last and/or current tax year.

25 The PRA has the discretion to determine an appropriate seriousness percentage. In general, the more serious or pervasive the breach (both in relation to the activities of the auditor or actuary concerned or in the wider market for audit and actuarial services) and the greater the threat or potential threat it posed or continues to pose to the advancement of the PRA's statutory objectives, the higher the percentage is likely to be, subject to the overall penalty being appropriate and proportionate to the relevant breach.

26 For example, in relation to consistently late, inaccurate or inadequate communication or notification of matters to the PRA.

- (i) Whether the auditor or actuary failed to act with integrity, abused a position of trust or committed a breach of any applicable professional code of conduct.

### Penalties for the late, inaccurate or incomplete reporting of matters to the PRA

19. The PRA attaches considerable importance to the timely,<sup>27</sup> accurate and complete<sup>28</sup> communication and/or notification of matters on which auditors and actuaries are required to report to the PRA under legislation<sup>29</sup> and/or PRA rules. This is because information reported by auditors and actuaries is essential to the effectiveness of the PRA's forward-looking, judgement-based approach to the exercise of its functions.

20. In addition to the factors set out in paragraphs 14–17 for cases against auditors and actuaries, the following considerations may be relevant where the PRA is considering the imposition of a penalty on an auditor or actuary for late, inaccurate or incomplete communications or notifications (whether in isolation or together with other enforcement action such as disqualification):

- (a) The length of time after which the communication or notification was made and the implications or potential implications of that default.
- (b) The nature and extent of any omissions, inaccuracies or incomplete information in the report.
- (c) Any repeated failures to submit accurate and complete reports or to do so on time.
- (d) Any failure or persistent failure fully, promptly and adequately to engage with the PRA in connection with the submission of communications and/or notifications or matters ancillary thereto.

### Step 3 — adjustment for any aggravating, mitigating or other relevant factors

21. In cases involving auditors or actuaries, the PRA may increase or decrease the starting-point figure for a punitive penalty determined at step 2 (excluding any amount to be disgorged pursuant to step 1) to take account of any factors which may aggravate or mitigate the breach or other factors which may be relevant to the breach or the appropriate level of penalty in respect of it. Any such adjustment will normally be made by way of a percentage adjustment to the figure determined at step 2.

22. Factors that may aggravate or mitigate the breach include:

- (a) The conduct of the auditor or actuary in bringing (or failing to bring) promptly, effectively and comprehensively to the PRA's attention (or, where relevant, the attention of any other relevant regulatory or law enforcement agencies) the full facts, circumstances and implications or potential implications of the breach.
- (b) The nature, timeliness and adequacy of the auditor's or actuary's response to any regulatory interventions by the PRA and any remedial actions proposed or required by the PRA.
- (c) The degree of co-operation the auditor or actuary showed during the investigation of the breach by the PRA (or, where relevant, any other relevant regulatory or professional body or law enforcement agency) and the impact of this on the PRA's ability to conclude its enforcement process promptly and efficiently.

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27 The PRA may treat a report as not received where the method by which it is submitted to the PRA does not comply with any prescribed method of submission.

28 The PRA may treat a report which is materially incomplete or inaccurate as not received until it has been submitted in a form which is materially complete and accurate.

29 Including, by way of non-exhaustive example, in Part XXII of FSMA, the FSMA 2000 (Communications by Auditors) Regulations 2001 and the FSMA 2000 (Communications by Actuaries) Regulations 2003.

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- (d) Where the auditor or actuary is a firm, whether the firm's senior management was aware of the breach (or could reasonably be expected to have been aware of the breach) and, if so, the nature and extent of their knowledge of or involvement in it and the timeliness, adequacy and effectiveness of any steps taken by them to address it and/or the consequences of it.
- (e) The previous disciplinary record and general supervisory history of the auditor or actuary, both in respect of the PRA's regulatory requirements and, where relevant, those of any other relevant regulatory or professional body or law enforcement agency, including the reporting or non-reporting of concerns in relation to the issue giving rise to the breach in question.
- (f) The nature and impact or likely impact of any compliance or training policy or programme or other remedial steps taken by the auditor or actuary since the breach was identified meaningfully to address it and reduce the risk of future breaches or, where they occur, the effective management of the consequences of them (including whether these were taken on the auditor or actuary's own initiative or that of the PRA or any other relevant regulatory or professional or law enforcement agency).

23. Other relevant factors may include any action taken against the auditor or actuary by other domestic and/or international regulatory authorities or law enforcement agencies relevant to the breach of the PRA's regulatory requirements. This may include any penalties or fines or other disciplinary measures imposed by those agencies.

### Step 4 — adjustment for deterrence

24. If the PRA considers the penalty determined following steps 2 and 3 is insufficient effectively to deter the auditor or actuary who committed the breach and/or others who are subject to the PRA's regulatory requirements from committing similar or other breaches, it may increase the penalty at step 4 by making an appropriate deterrence adjustment to it.

25. The circumstances in which the PRA may make a deterrence adjustment to the penalty include:

- (a) Where the PRA considers the value of the penalty is too small in relation to the breach to achieve effective deterrence.
- (b) Where previous action by the PRA, FCA, any predecessor regulators, FRC or professional body in respect of the same or a similar breach has failed to improve or sufficiently improve the relevant standards of the subject of the PRA's action and/or relevant industry standards.
- (c) Where the PRA considers it likely that, in the absence of a deterrence adjustment, the same or a similar breach will be committed in the future by the relevant auditor or actuary or by other members of the auditing or actuarial communities more widely.

### Step 5 — application of any applicable reductions for early settlement or serious financial hardship

#### Settlement discount

26. The PRA and the auditor or actuary on whom a penalty is to be imposed may seek to agree the amount of the penalty and any other appropriate settlement terms. In recognition of the benefits of such agreements, the PRA's settlement policy provides that the amount of the penalty which would otherwise have been payable may, subject to the stage at which a binding settlement agreement is reached, be reduced.<sup>30</sup>

27. The PRA will apply its statement of the PRA's settlement decision-making procedure and policy for the determination of the amount of penalties and the period of suspensions or restrictions in settled cases to

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<sup>30</sup> Any applicable settlement discount applied at stage 5 will not apply to the disgorgement of any economic benefits determined at step 1.

settlement with an auditor or actuary subject to a proposed penalty under section 345A(4)(c) of the Act, save that paragraph 1 of that statement shall be deemed to be amended to: (i) refer to the settlement of actions by the PRA to impose penalties under section 345A(4)(c); and (ii) be read in conjunction with:

- (a) this statement of the PRA's policy on the imposition and amount of financial penalties under the Act on persons who are, or have been, auditors or actuaries of a PRA-authorised person, appointed under or as a result of a statutory provision; and
- (b) the PRA's statement of policy on statutory notices and the allocation of decision making under the Act, with particular reference to the arrangements for decision making in relation to the use of PRA disciplinary powers under section 345A(4).

### Serious financial hardship

28. Where an auditor or actuary claims that payment of a penalty determined by the PRA will cause them serious financial hardship, in exceptional circumstances the PRA may reduce the penalty. The onus is on the firm or individual to satisfy the PRA that this would be the case and they must first ask whether the PRA will consider representations on this point.

29. Where the PRA agrees in principle to consider an auditor's or actuary's written and/or oral representations as to serious financial hardship, the firm or individual auditor or actuary must:

- (a) promptly provide to the PRA relevant, comprehensive and verifiable evidence that payment of the penalty will cause them serious financial hardship; and
- (b) co-operate fully with the PRA and promptly, transparently and comprehensively comply with any requests by it for further information or evidence concerning and relevant to a proper assessment of their financial position or other relevant circumstances.

30. In respect of firms, in assessing whether the penalty would cause the firm serious financial hardship the factors which the PRA may have regard to include:

- (a) the firm's financial strength and viability; and
- (b) any impact payment of the penalty would or would be likely to have on the firm's ability to meet and continue to meet the PRA's regulatory requirements and standards in providing services to PRA-authorised persons.

31. The PRA may, in addition to imposing a penalty, disqualify a firm under section 345A(a) of the Act. Such action by the PRA would not affect its assessment of the appropriate penalty in relation to a breach of its requirements. Where the PRA's disqualification of a firm from being the auditor or actuary of a PRA-authorised person or a particular class of PRA-authorised person results in that firm having less earning potential, this may be a relevant factor in assessing whether the penalty will cause the firm serious financial hardship.

32. In respect of individuals, in assessing whether the proposed penalty would cause the individual serious financial hardship, the factors which the PRA may have regard to include:

- (a) The individual's ability to pay the penalty over a reasonable period (normally no more than three years).

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- (b) The PRA's starting point is that an individual may suffer serious financial hardship only if during that period his net annual income will fall below £14,000 and his capital<sup>31</sup> will fall below £16,000 as a result of payment of the penalty.<sup>32</sup>

33. The PRA may also disqualify an individual auditor or actuary under section 345A(a) of the Act. Such action by the PRA would not affect its assessment of the appropriate penalty in relation to a breach of its requirements. Where the PRA's disqualification of an individual from being the auditor or actuary of a PRA-authorized person or a particular class of PRA-authorized person results or is likely to result in an individual having less earning potential, this may be a relevant factor in assessing whether the penalty will cause the individual serious financial hardship.

34. The PRA will consider agreeing to defer the due date for payment of the penalty or accepting payment by instalments where, for example, an auditor or actuary requires a reasonable time to realise a particular asset to enable the totality of the penalty to be paid within a reasonable period.

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31 The PRA will consider as capital anything that could provide the individual with a source of income, including savings, property (including personal possessions), investments and land. The PRA will normally consider as capital the equity that an individual has in the home in which he lives as his only or principal residence, but will consider any representations by the individual about this, including as to the position of any other occupants of the property or the practicability of remortgaging or selling the property within a reasonable period.

32 The PRA will keep these income and capital thresholds under review and will consider all relevant facts and circumstances in determining whether they should be modified in a particular case. Where a penalty is reduced, it will be reduced to an amount which the individual can pay without going below the income and capital threshold levels that apply in that case. If an individual has no income, any reduction in the penalty will be to an amount that the individual can pay without going below the capital threshold.