



BANK OF ENGLAND

3 August 2018: The final policy was published in Policy Statement PS/EDMC18 'Enforcement Decision Making Committee' available at <https://www.bankofengland.co.uk/paper/2018/enforcement-decision-making-committee-policy-statement>

November 2017

Procedure for the Enforcement Decision Making Committee

A Consultation Paper



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Responses are requested by 2 February 2018.

Please address any comments or enquiries to:

Ref: CP/EDMC2017

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Contents

1	Overview	3
2	Summary of the Bank's proposals	5
3	One Bank	8
4	Statutory obligations	10
5	Responses and next steps	11
	Appendix 1: Draft EDMC procedure document	12
	Appendix 2: Draft amendments to the Prudential Regulation Authority's approach to enforcement; statutory statements of Policy, Strategy and Procedure (EDMC 18) (January 2016)	25
	Appendix 3: Draft amendments to Statutory statements of procedure in respect of the Bank of England's supervision of financial market infrastructures (June 2014)	29
	Appendix 4: Representations made in relation to consultation paper CP/EDMC 2016 and the Bank's response	30

3 August 2016. The final statutory statements of Policy, Strategy and Procedure (EDMC 18) (January 2016) 'Enforcement Decision Making Committee' available at <https://www.bankofengland.co.uk/paper/2018/enforcement-decision-making-committee-policy-statement>

1 Overview

1.1 In July 2016, the Bank of England issued a consultation paper¹ which proposed the establishment of an Enforcement Decision Making Committee (EDMC) to strengthen the independence and robustness of the decision making process by the Bank in contested enforcement cases. Responses to the proposal were all supportive of the establishment of an EDMC. The Bank is now issuing for consultation the detailed statement of procedure, together with the detailed amendments to the existing statements of policy and procedure, which are necessary to implement the proposals.

Who does this consultation affect?

1.2 This consultation will be of interest to authorised deposit takers and insurance firms, their professional advisers, their auditors and actuaries, and approved persons with Senior Managers Regime. This consultation will also be relevant to any other firms or individuals who may be interested in the enforcement jurisdiction of the regimes operated under the auspices of the Bank, including: central counterparties, recognised payment systems, critical service providers, securities settlement systems and banks authorised under the Scottish and Northern Ireland banknote issuance regime pursuant to Part 6 of the Banking Act 2009.

Is this of interest to consumers?

1.3 This consultation does not directly affect consumers. However, as these proposals concern the transparency of the Bank's approach to enforcement decision making and its enforcement process, they may be of general interest to consumers and the organisations which represent them.

Equality and diversity considerations

1.4 We have assessed the likely equality and diversity impacts of the proposals and do not consider that they give rise to any concerns, but we would welcome your comments.

¹ CP/EDMC2016 - "Establishment of the Enforcement Decision Making Committee" which can be found online at <http://www.bankofengland.co.uk/publications/Documents/other/edmc/cpedmc2016.pdf>

Cost benefit analysis (CBA)

1.5 The proposal to create the EDMC responds directly to a recommendation from HM Treasury¹ and is focused on enhancing the Bank's approach to, and securing objectivity in, decision making in contested enforcement cases. The Bank considers that any resulting increase in costs to the Bank through the operating and staffing of the EDMC will be minimal and therefore is not required to produce a full cost benefit analysis. The Bank is fully mindful of the principle that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction.

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¹ Recommendation 34 of HM Treasury's Review of enforcement decision-making at the financial services regulators: final report issued in December 2014 (the HMT Review). See online at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/389063/enforcement_review_response_final.pdf

2 Summary of the Bank's proposals

2.1 The EDMC will be the Bank's decision making body in relation to contested enforcement cases within the statutory regimes operated by the Bank in relation to: (1) Prudential Regulation; (2) Financial Market Infrastructure (FMI); and (3) Resolution.¹ The EDMC will strengthen the Bank's enforcement processes by ensuring a functional separation between the Bank's investigation teams and the Bank's decision makers in contested enforcement cases. The EDMC will be a committee of the Bank, made up of individuals who are not employees of the Bank and who will be independent from the Bank's existing executive management structure.

EDMC - remit

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2.2 The Bank has a number of sanctioning powers within the various statutory frameworks under which it operates. The legislation uses a variety of terms to denote these sanctioning powers, including disciplinary powers,² disciplinary measures,³ financial penalties⁴ and regulatory sanctions.⁵ Accordingly, in order to provide certainty, the remit of the EDMC is exclusively defined by means of a schedule of statutory provisions set out in this document. These relevant provisions all permit the imposition of some form of penalty, censure or sanction in response to a contravention of a relevant rule or requirement or in response to some other form of misconduct. A reference in this paper to an 'enforcement' matter or 'disciplinary enforcement' matter is therefore a reference to the exercise of a power listed in the schedule of statutory provisions. The schedule may be amended from time to time to add or remove provisions in response to any material changes to the relevant legislation.

2.3 The EDMC will be the Bank's decision making committee for '*contested*' enforcement cases with respect to PRA, FMI and Resolution cases. Contested cases are those in which the Bank has not settled with the relevant subject(s) after an initial investigative stage. There may be a variety of reasons why a case has not settled, including: (i) the parties have been engaged in settlement discussions but cannot agree on the terms and conditions of the settlement agreement within an appropriate timeframe; (ii) the Bank does not consider it appropriate to invite settlement due to the circumstances of the particular case; and/or (iii) the subject does not wish to engage in settlement discussions with the Bank.

¹ Please note the Bank has proposed the use of the EDMC for Scottish and Northern Ireland banknote issuance enforcement cases but this will be subject to separate consultation.

² Section 66 of the Financial Services and Markets Act 2000 (FSMA)

³ Part XIV of FSMA

⁴ Section 206 of FSMA

⁵ Section 83ZR of the Banking Act 2009

2.4 A decision by the EDMC panel to give a decision notice may, where provided by the relevant legislation, be referred to the Upper Tribunal by the firm or individual in question. The EDMC panel is therefore the final part of the administrative decision making process within the Bank before external scrutiny of the decision in judicial proceedings.

Selection, appointment, remuneration and governance

2.5 Members of the EDMC will be wholly independent of the Bank's current executive and will not be employees of the Bank. Members will be answerable to the Court of Directors of the Bank of England (Court). Appointments will be made by Court following an open and competitive application process. EDMC members will be appointed for renewable, fixed, three year periods. EDMC members will not serve more than two consecutive appointment terms.

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Only Court may remove individual members of the EDMC prior to the expiry of the fixed term period. Individual members may only be removed if Court is satisfied that the member is unable or unfit to discharge their functions as a member. The EDMC may eventually consist of up to nine members appointed by Court, of which typically three would be legally qualified. The Bank proposes to recruit five members initially. Of these, at least two members would be legally qualified. Court will also appoint one of the legally qualified members as chairperson of the committee (the EDMC Chairperson) for the duration of his or her term. The Bank will keep the overall size of the EDMC, and the number of legally qualified members within it, under review. EDMC members will receive reasonable remuneration for their services as well as reasonable expenses.

Operation of the EDMC

2.6 The EDMC will meet as often as necessary to discharge its functions. A panel of at least three EDMC members will be convened to hear and resolve each contested enforcement case. At least one panel member will be legally qualified and will be selected as chairperson for the panel hearing that particular case (the Panel Lead).¹ Each panel member will have a vote and decisions will be made by majority vote. If the votes are evenly split, the Panel Lead will have the casting vote.

2.7 To ensure access to relevant legal advice, EDMC panels will be supported by a lawyer of appropriate seniority from within the Bank's Legal Directorate who has not been involved in the matter under consideration. The Panel Lead will ensure that the legal support is sufficiently independent of the matter under consideration. Where deemed necessary by the Panel Lead,

¹ This responds to recommendation 34 of the HMT Review.

external legal advisers may also be appointed to support an EDMC panel. EDMC panels will also be provided with appropriate administrative support from within the Bank.

2.8 More details of the proposed procedures are set out in the **EDMC Procedure** document at Appendix 1. Consequential amendments to the PRA Decision-Making Framework are at Appendix 2.

2.9 The consultation and proposed procedures only focus on the operation of the EDMC and therefore relate wholly and exclusively to matters which are brought before the EDMC. The procedures do not, therefore, discuss or consider other matters relating to the investigative and enforcement processes, such as selection of matters for investigation, investigative processes, approaches to settlement; or our policies on financial penalties and other sanctions.

~~The PRA has committed to producing a further guide to its enforcement processes, outside of~~
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the operation of the EDMC during the course of 2018.

3 One Bank

3.1 The Bank's proposals go beyond the recommendations set out in the HMT Review as they extend the proposed EDMC model consistently across all four of the regulatory areas in which the Bank has been granted enforcement powers. These areas are Prudential Regulation, Financial Markets Infrastructure, Resolution and, in due course, the Scottish and Northern Ireland banknote issuance regime.¹

3.2 We set out below a summary of the regimes under which the Bank has regulatory and disciplinary enforcement powers.

Prudential Regulation

3.3 The Prudential Regulation Authority (the PRA) EDMC 8 Prudential Regulation Making Committee' available at <https://www.bankofengland.co.uk/paper/2018/enforcement-decision-making-committee-policy-statement> takers, insurers and designated investment firms operating in the United Kingdom.

3.4 On 1 March 2017, the PRA ceased to be a wholly owned subsidiary of the Bank, becoming instead a part of the Bank. This was a result of implementing certain parts of the Bank of England and Financial Services Act 2016 (the Act). Under the Act, the PRA's governing body is now the Prudential Regulation Committee. As set out in *The PRA's approach documents to Banking and Insurance Supervision*² the PRA's approach to enforcement is consistent with its preference for 'ex ante remedial action'. The PRA's existing procedure for the allocation of decision making and the issuance of statutory notices in relation to disciplinary enforcement action is set out in the document entitled *The PRA's approach to enforcement: statutory statements of policy and procedure*³ dated January 2016. The proposed amendments to that document are set out in appendix 2.

Financial Market Infrastructure

3.5 The Bank is responsible for the supervision of central counterparties, recognised payment systems and securities settlement systems and the associated policy making in relation to FMIs.⁴ The Bank's risk-based, forward-looking supervision of FMIs plays an important role in maintaining UK financial stability and promoting the effective functioning of financial markets by enhancing the stability and resilience of these key entities. The role that disciplinary

¹ There will be a separate consultation with respect to the Scottish and Northern Ireland banknote issuance regime.

² See online at: <http://www.bankofengland.co.uk/publications/Pages/other/prasupervisoryapproach.aspx>

³ See online at: <http://www.bankofengland.co.uk/pradocuments/publications/sop/2016/approachenforcementupdate.pdf>

⁴ The legislative framework for the Bank's supervision of FMIs is set out in Part 18 of FSMA (for recognised clearing houses) and Part 5 of the Banking Act 2009 (for recognised payment systems). The Bank undertakes its supervision of FMIs as part of pursuing its Financial Stability objective (under section 2A(1) of the Bank of England Act 1998) to protect and enhance the stability of the financial system of the UK.

enforcement can play in pursuit of the Bank's objectives is set out in *The Bank of England's approach to the supervision of financial market infrastructures, April 2013*.¹

Resolution

3.6 The Bank is the UK's resolution authority.² Resolution regimes enable the authorities to resolve failed financial institutions in a way that protects critical economic functions without severe systemic disruption and without exposing the taxpayer to loss.

3.7 The Bank has proposed that decisions on contested resolution enforcement cases will be taken by the EDMC, once it is established. The Bank has taken account of provisions in the Bank Recovery and Resolution Directive and the Capital Requirements Directive which require operational independence between the Bank's resolution function and its other functions,

3 August 2018: The final policy was published in Policy Statement PS/EDMC18 'Enforcement Decision Making Committee' available including its capacity as the PRU.³ The Bank will continue to place a safeguard whereby any

panel constituted under the EDMC will not be permitted to concurrently hear a prudential and a resolution contested disciplinary enforcement case concurrently.

Scottish and Northern Ireland banknotes

3.8 The Bank also proposes to use the EDMC in enforcement cases in relation to Scottish and Northern Ireland banknotes issuance by the banks who are authorised to issue their own banknotes (the authorised banks), pursuant to Part 6 of the Banking Act 2009, the Scottish and Northern Ireland Banknote Regulations 2009 and related rules.⁴ On the basis of the relatively limited number of authorised banks and the distinct nature of the Scottish and Northern Ireland Banknote regime, the Bank will conduct a separate consultation with the authorised banks.

¹ See online at: <http://www.bankofengland.co.uk/financialstability/Documents/fmi/fmisupervision.pdf>.

² The Resolution Directorate of the Bank coordinates use by the Bank of its powers under the UK Banking Act 2009 in relation to the resolution of failing UK banks, building societies, investment firms and central counterparties (and group companies), having regard to the statutory objectives of the Special Resolution Regime (SRR).

³ See further the Bank's statement on structural separation between the resolution and supervision functions of the Bank of England (March 2017) - <http://www.bankofengland.co.uk/about/Documents/statementstructuralseparation.pdf>

⁴ For the Scottish and Northern Ireland Banknote regime, the Bank has the power to impose financial penalties under section 222 of the Banking Act 2009. Full details of these penalties are set out in the Statement of Penalty Policy for Scottish and Northern Ireland banknotes.

4 Statutory obligations

4.1 In order to implement the proposals to create the EDMC, it will be necessary for the Bank, (including in its capacity as the PRA) to delegate its decision-making function in relation to contested enforcement cases to the EDMC and to amend existing statements of policy and procedure.

4.2 When making rules and determining the general policy and principles by which it performs its functions, the Bank in its capacity as PRA must comply with a number of statutory and public law obligations; it is required to:

- have regard to the regulatory principles and certify that the policy proposals accord with these;¹

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- provide a cost-benefit analysis unless it considers the relevant costs to be of no more than minimal significance;²
- prepare a statement setting out its opinion whether or not the impact of the proposed rule on mutual societies will be significantly different where the PRA proposes a rule which would apply both to mutual societies, and other authorised persons; and
- have due regard to the need to eliminate discrimination and to promote equality of opportunity in carrying out its policies, services and functions in accordance with the Equalities Act 2010.

4.3 The Financial Services and Markets Act 2000 (FSMA)³ requires the Bank in its capacity as the PRA, so far as reasonably possible, to act in a way that advances its statutory objectives, namely:

- the general objectives to promote the safety and soundness of PRA-authorised persons, and for insurance, to contribute to ensuring that policyholders are appropriately protected; and
- the secondary objective to facilitate effective competition in the markets for services provided by PRA-authorised persons in carrying on regulated activities.

¹ Section 2H(2) FSMA.

² Section 138(L) FSMA.

³ Section 2B(2), 2C(2) and 2H(1) FSMA.

4.4 These proposals advance the Bank's statutory objectives and the regulatory principles to which it must have regard when carrying out certain of its functions,¹ by clearly setting out its approach to decision making in contested enforcement cases. These proposals also meet the Bank's duty to follow principles of good governance in managing its affairs.² The Bank does not anticipate that there will be an impact on competition in the markets for services provided by PRA-authorized persons in carrying on regulated activities as a result of the proposed amendments. Any resulting increase in costs to the Bank will be minimal on the basis that the EDMC will meet on an as-needed basis, that its members will be remunerated on a time-spent basis, and that administrative and legal support will largely be provided from existing Bank resources. Moreover, the need for legal and administrative support, for example, would arise in respect of any contested enforcement decision-making under the current framework, regardless of the introduction of an EDMC model, and so only represents a marginal increase.

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Therefore we have not produced a full cost-benefit analysis. In developing these proposals, the Bank has had regard to the regulatory principles as set out in FSMA. A principle of key relevance to these proposals is that a burden or restriction which is imposed on a person, or on the carrying on of an activity, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction. Further, the impact of the proposed amendments on mutual societies will not be significantly different from the impact on other firms.

5 Responses and next steps

5.1 This consultation closes on **2 February 2018**. The Bank invites feedback on the proposals set out in this consultation. Please address any comments or enquiries to CP_2017EDMC@bankofengland.co.uk

¹ Section 3B(g) FSMA.

² Section 3C FSMA.

Appendix 1

Draft EDMC procedure document

Enforcement Decision Making Committee

1 Introduction

1.1 The Enforcement Decision Making Committee (EDMC) is a committee of the Court of the Bank of England (Court). Court manages the affairs of the Bank. Court's responsibilities are set out in the Bank of England Act 1998 (the 1998 Act).¹ Court's responsibilities include determining the Bank's objectives and strategy, and ensuring the effective discharge of the Bank's functions and the most efficient use of its resources. Court also keeps under review the Bank's performance in relation to its objectives and the exercise of the Bank's statutory functions. Court delegates to the Governor the day-to-day management of the Bank, including the discharge of statutory functions, while reserving certain key decisions to itself.

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1.2 The EDMC is being created by Court to help the Bank discharge its responsibilities and strengthen its enforcement processes by ensuring a functional separation between the Bank's investigation teams and the Bank's decision makers in contested enforcement cases within the following statutory regimes operated by the Bank: (1) Prudential Regulation; (2) Financial Market Infrastructure (FMI); and (3) Resolution.² References to the Bank in this document include references to the separate regimes operated by the Bank unless otherwise stated.

1.3 The EDMC acts for and with the full authority of the PRC and also reports to the PRC in matters related to the PRA within its remit.

¹ These "matters reserved to Court" (7 February 2017) are set out in this document - <http://www.bankofengland.co.uk/about/Documents/pdfs/court-matters.pdf>

² Please note the Bank has proposed the use of the EDMC for Scottish and Northern Ireland banknote issuance enforcement cases but this will be subject to separate consultation.

2 Scope

2.1 The remit of the EDMC is exclusively defined by means of a schedule of statutory provisions set out at paragraph 2.2 below. The schedule may be amended from time to time to add or remove provisions in response to changes to the relevant legislation.

2.2 Table of statutory decisions within the remit of the EDMC in contested cases:

Description	Statutory provision	Type of Notice	Notice requirement
<p>3 August 2018: The final policy was published in Policy Statement PS/EDMC18 "Enforcement Decision Making Committee" https://www.bankofengland.co.uk/2018/enforcement-decision-making-committee-policy-statement/</p> <p>Proposal to make a prohibition order against an individual</p>	FSMA s.56	Warning Notice	FSMA s.57(1)
Decision to make a prohibition order against an individual	FSMA s.56	Decision Notice	FSMA s.57(3)
Proposal to impose a penalty on a person for performing a controlled function without approval	FSMA s.63A	Warning Notice	FSMA s.63(B)(1)
Decision to impose a penalty on a person for performing a controlled function without approval	FSMA s.63A	Decision Notice	FSMA s.63(B)(3)
Proposal to take disciplinary action if it appears to the regulator a person is guilty of misconduct.	FSMA s.66	Warning Notice	FSMA s.67(1)
Decision to take disciplinary action if it appears to the regulator a person is guilty of misconduct.	FSMA s.66	Decision Notice	FSMA s.67(4)
Proposal to impose penalty or issue censure on a qualifying parent undertaking	FSMA s.142S	Warning Notice	FSMA s.142T(1)
Decision to impose penalty or issue censure on a qualifying parent undertaking	FSMA s.142S	Decision Notice	FSMA s.142T(4)
Proposal to impose a financial penalty or publicly censure qualified parent undertakings	FSMA s.192k	Warning Notice	FSMA s.192(L)(1)

Decision to impose a financial penalty or publicly censure qualified parent undertakings	FSMA s. 192k	Decision Notice	FSMA s.192(L)(4)
Proposal to publish a statement of public censure in relation to an authorised person	FSMA s.205	Warning Notice	FSMA s.207(1)
Decision to publish a statement of public censure in relation to an authorised person	FSMA s.205	Decision Notice	FSMA s.208(1)
Proposal to impose a financial penalty on an authorised person	FSMA s.206	Warning Notice	FSMA s.207(1)
Decision to impose a financial penalty on an authorised person	FSMA s.206	Decision Notice	FSMA s.208(1)
Proposal to suspend any permission of, or impose limitations or restrictions on, an authorised person	FSMA s. 206A	Warning Notice	FSMA s.207(1)
Decision to suspend permission, or impose limitations or restrictions on an authorised person	FSMA s. 206A	Decision Notice	FSMA s.208(1)
Proposal to censure publicly a recognised body	FSMA s.312E	Warning Notice	FSMA s.312G(1)
Decision to censure publicly a recognised body	FSMA s.312E	Decision Notice	FSMA s.312H(1)
Proposal to impose a financial penalty	FSMA s.312F	Warning Notice	FSMA s.312G(1)
Decision to impose a financial penalty	FSMA s.312F	Decision Notice	FSMA.s 312H(1)
Proposal to take disciplinary action against an auditor or actuary	FSMA s.345A	Warning Notice	FSMA s.345B(1)
Decision to take disciplinary action against an auditor or actuary	FSMA s.345A	Decision Notice	FSMA s.345B(4)
Proposal to publish details of a compliance failure	s.197 (1) Banking Act 2009	Warning Notice	s. 201 (1) (a) Banking Act 2009
Decision to publish details of a compliance failure	s.197 (1) Banking Act 2009	Notice	s. 201 (1) (d) Banking Act 2009
Proposal to require the payment of a penalty in respect of a compliance failure	s.198(1) Banking Act 2009	Warning Notice	s.201 (1) (a) Banking Act 2009

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Decision to require the payment of a penalty in respect of a compliance failure	s.198(1) Banking Act 2009	Notice	s.201 (1) (d) Banking Act 2009
Proposal to give a closure order	s. 199 (2) Banking Act 2009	Warning Notice	s.201 (1) (a) Banking Act 2009
Decision to give a closure order	s. 199 (2) Banking Act 2009	Notice	s.201 (1) (d) Banking Act 2009
Proposal to impose a management disqualification	s. 200 Banking Act 2009	Warning Notice	s. 201 (1) (a) Banking Act 2009
Decision to impose a management disqualification	s. 200 Banking Act 2009	Notice	s.201 (1) (d) Banking Act 2009
Proposal to publish a statement that a person has failed to comply with a relevant requirement	s. 83ZR(1)(a) Banking Act 2009	Warning Notice	s. 83ZT(1) Banking Act 2009
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Decision to publish a statement that a person has failed to comply with a relevant requirement	s. 83ZR(1)(a) Banking Act 2009	Decision Notice	s. 83ZU (1) Banking Act 2009
Proposal to impose a financial penalty	s. 83ZR(1)(b) Banking Act 2009	Warning Notice	s. 83ZT(1) Banking Act 2009
Decision to impose a financial penalty	s. 83ZR(1)(b) Banking Act 2009	Decision Notice	s. 83ZU (1) Banking Act 2009
Proposal to direct a person to refrain from certain conduct in future	s. 83ZR(1)(c) Banking Act 2009	Warning Notice	s. 83ZT(1) Banking Act 2009
Decision to direct a person to refrain from certain conduct in future	s. 83ZR(1)(c) Banking Act 2009	Decision Notice	s. 83ZU (1) Banking Act 2009
Proposal to prohibit a person from holding offices or positions of responsibility in respect of a bank or banks	s. s. 83ZR(1)(d) Banking Act 2009	Warning Notice	83ZT(1) Banking Act 2009
Decision to prohibit a person from holding offices or positions of responsibility in respect of a bank or banks	s. 83ZR(1)(d) Banking Act 2009	Decision Notice	83ZU (1) Banking Act 2009

3 Selection, appointment, remuneration, governance and support

3.1 EDMC members will be appointed for renewable, fixed three year periods. EDMC members will not be employees of the Bank, however they will receive reasonable remuneration for their services as well as reasonable expenses. Appointments will be made by Court following an open and competitive application process. The EDMC may eventually consist of up to nine members appointed by Court, of which typically three would be legally qualified.¹ Court will also appoint one of the legally qualified members as chairperson of the committee (the EDMC Chairperson) for the duration of his or her term. The Bank will keep the overall size of the EDMC, and the number of legally qualified members within it, under review.

3.2 The EDMC will meet as often as necessary to discharge its functions. It may do so, in appropriate cases, in writing or by telephone or email or other electronic means.

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3.3 Members of the EDMC will be wholly independent of the current executive. EDMC members shall not sit on any other committee, panel or board of the Bank. Members will be appointed pursuant to a contract for services and answerable to Court in respect of their performance under those contracts.

3.4 The EDMC will submit a statement to Court, at least once a year, with a copy also provided to the PRC, which will subsequently be published, to report on at least the following:

- how often the Committee has met and which members have sat in which matters;
- resourcing, recruitment and profile;
- costs incurred;
- number of matters brought to it from the PRA, FMI and Resolution respectively;
- number of statutory notices respectively dealt with;
- whether EDMC decisions have been subject to subsequent successful challenge;
- situations where a member was unable to hear a matter because of an actual or perceived conflict;
- any other matters which Court considers relevant to the operation of the committee and of which it informs the EDMC Chairperson; and
- any other matters on which the Committee feels it needs to bring to Court's attention.

¹ The Bank proposes to recruit five members initially. Of these, at least two members would be legally qualified.

The EDMC Chairperson and any members of the EDMC may be called to Court, individually or collectively, to answer questions on the functioning of the EDMC. The PRC may, with Court's agreement, also request additional information from the EDMC and its members.

Only Court may remove individual members of the EDMC prior to the expiry of the fixed term period. Individual members may be removed if Court is satisfied that the member is unable or unfit to discharge their functions as a member.

3.5 To ensure access to relevant legal advice, EDMC panels will be supported by a lawyer of appropriate seniority from within the Bank's Legal Directorate who has not been involved in the matter under consideration. The chairperson of each panel (the Panel Lead) will ensure that the legal support is sufficiently independent of the matter under consideration. Where

deemed necessary by the Panel lead, external legal advisers may also be appointed to support an EDMC panel.

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3.6 The Bank will provide administrative support for the EDMC and the EDMC panels, as appropriate. For each contested enforcement case the Bank will appoint a support team on an ad-hoc basis to provide administrative support.

4 Operation of the EDMC

EDMC Panels

4.1 Panels of at least three EDMC members will be convened by the EDMC Chairperson to hear contested enforcement cases. The composition and size of the EDMC panels may vary depending on the nature of the particular matter under consideration. Typically a panel will consist of three EDMC members. Complex cases may require a larger panel. The EDMC Chairperson will make an initial assessment of the papers and determine if a larger panel is warranted. The EDMC Chairperson may nominate any of the legally qualified EDMC members to act as Panel Lead hearing a particular case. If the EDMC Chairperson is unable to participate due to a conflict, the panel shall be drawn together by the next most senior lawyer on the

EDMC

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4.2 EDMC members will be subject to a conflicts of interest policy. This policy is intended to ensure that actual and/or potential conflicts of interest between panel members and the matters upon which they are deciding are highlighted and addressed. This conflicts of interest policy will require members to declare actual and/or potential conflicts of interest (such as certain financial and business relationships) to the Bank prior to appointment, to update these declarations at regular intervals thereafter and prior to participating in the panel hearing a specific case. Potential conflicts will be disclosed to the EDMC Chairperson and the Bank's Conflict Officer who will ensure that all panel members hearing any particular matter are free from actual or potential conflicts of interest. The Bank will record and document all disclosures of potential conflicts and the steps taken to manage them.

4.3 EDMC panel members will not receive or have access to any non-public information from the Bank other than strictly in connection with matters being brought before them.

4.4 Any panel constituted under the EDMC will not be permitted to hear a prudential and resolution contested enforcement case concurrently. This is in keeping with the provisions of the Bank Recovery and Resolution Directive and the Capital Requirements Directive which require operational independence between the Bank's resolution function and its other functions, including its in its capacity as the PRA.¹

¹ See further the Bank's statement on structural separation between the resolution and supervision functions of the Bank of England (March 2017) - <http://www.bankofengland.co.uk/about/Documents/statementstructuralseparation.pdf>

EDMC Procedure: general

4.5 All panel members are required to act in a suitable manner to determine fairly and expeditiously any matter which it is considering. This shall be overseen by the Panel Lead.

4.6 Each member of an EDMC panel is entitled to vote on the matter under consideration. Each panel member will have one vote and decisions will be made by majority vote. If the votes are evenly split, the Panel Lead hearing a particular case will have the casting vote.

4.7 The Bank will manage and retain appropriate records of the decisions taken by the EDMC in accordance with the Bank's Record Management Policy.¹

5 EDMC Procedure: warning notices

3 August 2018: The final policy was published in Policy Statement PS/EDMC18 'Enforcement Decision Making Committee' available at <https://www.bankofengland.co.uk/contested-enforcement/cases/2018/bank-staff-consider-that-action-requiring-a-warning-notice-is-appropriate>

If Bank staff consider that action requiring a warning notice is appropriate they will make a recommendation to the EDMC panel that the notice should be given. The EDMC panel:

- will consider independently and afresh whether the material on which the recommendation is based is adequate to support it;
- may seek additional information about, or clarification of, the recommendation, which may necessitate additional work by the relevant Bank staff such as those active on the preceding investigation;
- will decide whether to issue the notice and the terms of any notice given; and
- will endeavour to hear and decide matters fairly and expeditiously.

5.2 If the EDMC panel decides to give a warning notice, the EDMC will determine the wording of the warning notice, and will ensure that the warning notice complies with any relevant statutory provisions. The timing of the warning notice is a matter for the Panel Lead. If the EDMC decides to give a warning notice, the EDMC will also make any relevant statutory notice associated decisions;²

5.3 If Bank staff consider that it is appropriate to publish information about the matter to which a warning notice given by an EDMC panel relates, they will make a recommendation to the EDMC panel that such information should be published. The EDMC will decide whether it is

¹ See online at <http://www.bankofengland.co.uk/about/Documents/humanresources/recordsmanagepol.pdf>

² By which we mean a decision which is associated with a decision to give a statutory notice, including a decision: (a) to determine or extend the period for making representations; (b) to determine whether a copy of the statutory notice needs to be given to any third party and the period for the third party to make representations; and (c) to grant or refuse access to Bank material.

appropriate in all the circumstances to publish information about the matter to which the warning notice relates and what information is to be published by the Bank. The EDMC will consult the parties before making a decision and will notify the parties of the decision once taken.

5.4 If the EDMC panel decides that the Bank should give a warning notice the Bank, through the administrative support it provides to the EDMC, will make appropriate arrangements for the notice to be given; and will make appropriate arrangements for the disclosure of the substance of any communications between the EDMC and the Bank staff who made the recommendation on which the EDMC's decision is based.¹ For the avoidance of doubt, such disclosure would not extend to the substance of any communications between the EDMC and its independent legal adviser over which Legal Professional Privilege applies.

3 August 2018: The final policy was published in Policy Statement PS/EDMC18 'Enforcement Decision Making Committee' available at <https://www.bankofengland.co.uk/paper/2018/enforcement-decision-making-committee-policy-statement>

5.5 The EDMC will not, after the Bank has given a warning notice and whilst the case is still ongoing, meet with or discuss the matter with the Bank staff responsible for the case without other parties to the proceedings being present or otherwise having the opportunity to respond.

6 Procedure: representations

6.1 The recipient of a warning notice has the right to make representations in relation to the warning notice. A warning notice will specify the time allowed for making representations. This will not be less than 21 days, except in urgent cases and where permitted by statute,² the period may be reduced to 14 days. Representations will usually be in writing, however it will be open to the recipient of a warning notice to ask the EDMC for permission to make oral representations. It is for the Panel Lead to determine whether to give such permission. The warning notice will specify a time within which the recipient is required to indicate whether they wish to make oral representations.

Request for extension of time

6.2 The recipient of a warning notice may request an extension of the time allowed for making written or oral representations. Such a request must normally be made within seven days of the warning notice being given. If a request is made, the Panel Lead will decide whether to allow an extension, and, if so, how much additional time is to be allowed for making

¹ Such disclosure may mean materials which led to the issue of the Warning Notice which may include written presentations to the EDMC, documentation and emails in addition to minutes of the meeting of the EDMC.

² For example, Section 387(2) FSMA.

representations. In reaching a decision as to an extension of time, the Panel Lead will take into account all relevant factors, including the legal and factual complexity of the case, as well as whether there are any factors outside the control of the firm or individual that would materially impact on their ability to respond within the period set out in the warning notice.

Representations

6.3 If a request for an oral representations meeting is received within the time specified in the notice, a meeting will be arranged at which the relevant EDMC members will hear the representations. Decisions on such requests will be made by the Panel Lead. Any dates will be fixed having regard to all the relevant factors, including the need for the EDMC to deal with matters fairly, efficiently and expeditiously and any particular issues about the timing of the meeting which have been raised by any party to the proceedings.

3 August 2018: The final policy was published in Policy Statement PS18/EDMC to 'Enforcement Decision Making Committee' available at <https://www.bankofengland.co.uk/paper/2018/enforcement-decision-making-committee-policy-statement>

6.4 It will be usual for the panel that is to consider any representations and is to decide whether to give a decision notice¹ to comprise the same members of the EDMC who previously considered the matter.

6.5 If for any reason, one or more panel members who participated at the warning notice stage, cannot participate at subsequent stages, including consideration of the representations, the panel may continue to deal with the matter if it still has three members (including the Panel Lead) who participated at the previous stage. If the panel drops below three members, to ensure that the panel is quorate the Panel Lead will ensure that new EDMC members are added. If the Panel Lead becomes unavailable, the EDMC Chairperson will oversee arrangements to ensure that the panel is quorate.

6.6 The Panel Lead will ensure that the meeting is conducted so as to enable:

- (i) the recipient of the warning notice to make representations;
- (ii) the relevant Bank staff to respond to those representations where appropriate;
- (iii) the EDMC members to raise with those present any points or questions about the matter (whether in response to particular representations or more generally about the matter); and

¹ Please note for the purposes of the EDMC procedure, 'decision notice' also refers to written notice required by section 201(1)(d) Banking Act 2009 following issuance of a warning notice under section 201(1)(a).

- (iv) the recipient of the warning notice to respond to any points made by Bank staff or the EDMC members in steps (ii) and (iii) above.

6.7 The Panel Lead has full overall control of the proceedings and may ask the recipient of the warning notice or Bank staff to limit the length of their oral representations (or response) or to limit the oral representations (or response) to particular issues arising from the warning notice. The recipient of the warning notice may wish to be legally represented at the meeting, but this is not a requirement.

6.8 In appropriate cases, the EDMC panel via the Panel lead may ask the recipient of the warning notice or the relevant Bank staff to provide additional information to the panel in writing after the meeting. The panel will specify the time within which that information is to be

provided. If additional information is supplied to the EDMC panel as a result of such a request, copies will be provided to all parties.

3 August 2018. The final policy was published in Policy Statement PS/EDMC 18 'Enforcement Decision Making Committee' available at <https://www.bankofengland.co.uk/paper/2018/enforcement-decision-making-committee-policy-statement>

7 Expedited and Default procedures

7.1 The recipient of a warning notice is not obliged to make written or oral representations in response to a warning notice. Recipients of a warning notice who wish to expedite the procedure may expressly notify the EDMC panel in writing that they do not wish to make representations to the EDMC panel and that they intend to have the matter referred to the Upper Tribunal.¹

7.2 On receipt of such notification in writing, the EDMC panel may proceed to determine whether to issue a decision notice without waiting for the time allowed for making representations to expire. The EDMC panel shall decide whether to give the decision notice in the light of any representations by any third party and any submissions from Bank staff.

7.3 If no representations are made in response to the warning notice within the specified time, and no written notification is received regarding a request to use the expedited procedure, the EDMC panel will determine whether to issue a decision notice.

7.4 In line with the PRA's current settlement policy, it may be possible for recipients of a warning notice nevertheless to settle the matter before the EDMC panel issues a decision notice.

¹ Where FSMA applies, this notification will require confirmation by the recipient of the warning notice that they will not exercise any rights under section 387(2) of FSMA.

8 Procedure: decision notices

8.1 In any case in which representations are made, the EDMC panel will consider all of the material before it, including any written and oral representations, and will consider whether it is right in all the circumstances to give a decision notice. If the EDMC panel decides to give a decision notice the EDMC panel will settle the wording of the notice which will include a brief summary of the key representations made and how they have been dealt with.

8.2 If the EDMC panel decides to give a decision notice, the EDMC panel will make any relevant statutory notice associated decisions.¹

8.3 If the EDMC panel decides that a decision notice should not be given, the relevant parties will be notified in writing of that decision, and where appropriate the Bank will give a notice of

3 August 2018: The final policy was published in Policy Statement PS/EDMC18 'Enforcement Decision Making Committee' discontinuance of action to the person to whom the warning notice was given available at <https://www.bankofengland.co.uk/paper/2018/enforcement-decision-making-committee-policy-statement>

Discontinuance of action by the Bank

8.4 Bank staff responsible for recommending action to the EDMC panel will continue to assess the appropriateness of the proposed action in the light of new information or representations received and any material change in the facts or circumstances relating to a particular matter. The Bank may decide to give a notice of discontinuance to a person to whom a warning notice or decision notice has been given. The Bank will inform the EDMC panel and the relevant parties of any decision to discontinue the proceedings.

8.5 Generally parties will not be entitled to any compensation or costs if the Bank decides not to proceed with disciplinary action. However, if parties consider they may have a complaint, and want further information about making a complaint about the Bank, the Bank has a complaints scheme, details of which are available online.²

Upper Tribunal proceedings

8.6 A decision by the EDMC panel to give a decision notice may, where provided by the relevant legislation, lead to a reference to the Upper Tribunal. The proceedings before the Upper Tribunal are not however a matter for the EDMC panel. It is the responsibility of the

¹ By which we mean a decision which is associated with a decision to give a statutory notice, including a decision: (a) to determine or extend the period for making representations; (b) to determine whether a copy of the statutory notice needs to be given to any third party and the period for the third party to make representations; and (c) to grant or refuse access to Bank material.

² Please see <http://www.bankofengland.co.uk/about/Pages/complaints/default.aspx>

recipient of the decision notice to seek to refer the matter to the Upper Tribunal under the relevant legislation if they so wish. If the matter is not referred to the Upper Tribunal within the time required under the relevant legislation, the Bank will take the action to which the decision notice relates.

3 August 2018: The final policy was published in Policy Statement PS/EDMC18 'Enforcement Decision Making Committee' available at <https://www.bankofengland.co.uk/paper/2018/enforcement-decision-making-committee-policy-statement>

Appendix 2

Draft amendments to The Prudential Regulation Authority's approach to enforcement: statutory statements of policy and procedure (January 2016)

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

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.

3 August 2018: The final policy was published in Policy Statement PS/EDMC18 'Enforcement Decision Making Committee' available at <https://www.bankofengland.co.uk/paper/2018/enforcement-decision-making-committee-policy-statement>

10. There will be ~~five~~^{four} decision making committees responsible for the issue of statutory notices.

(a) The ~~PRCA Board~~ excluding the Financial Conduct Authority Chief Executive Officer (the ~~PRC Board~~)

(b) Supervision, Risk and Policy Committee (SRPC)

(c) Supervision and Assessment Panel (SAP)

(d) Panel of Heads of Departments and Managers (HMP)

(e) **Enforcement Decision Making Committee (EDMC)**

15. Statutory **notice** decisions will be divided into one of ~~four~~^{three} 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 D: Decisions which are statutory notice decisions in contested enforcement cases.¹All Type D decisions will be made by the EDMC, regardless of impact. The procedures set out in the document Procedures – The Enforcement Decision Making Committee will apply.

3 August 2018: The final policy was published in Policy Statement PS/EDMC18 'Enforcement Decision Making Committee' available at <https://www.bankofengland.co.uk/paper/2018/enforcement-decision-making-committee-policy-statement>

¹ 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.

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	FSMA s.205	Decision	FSMA s.208(1)

3 August 2018. The final policy was published in Policy Statement PS/EDMC18 'Enforcement Decision Making Committee' available at <https://www.fca.org.uk/paper/2018/enforcement-decision-making-committee-policy-statement>

public censure in relation to an authorised person		Notice	
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)

3 August 2018. The final censure was published in Policy Statement PS18/18 'Enforcement Decision Making Committee' available at <https://www.bankofengland.co.uk/paper/2018/enforcement-decision-making-committee-policy-statement>

Appendix 3

Draft amendments to Statutory statements of procedure in respect of the Bank of England's supervision of financial market infrastructures (June 2014)

4. The Bank has a tiered structure for decision making. Decisions may be made at different levels of seniority in the Bank depending on their impact and may involve representatives from across the Bank. Decisions in contested enforcement cases will be made by the Enforcement Decision Making Committee (EDMC).¹

3 August 2018: The final policy was published in Policy Statement PS/EDMC18 'Enforcement Decision Making Committee' available at <https://www.bankofengland.co.uk/paper/2018/enforcement-decision-making-committee-policy-statement>

¹ The procedure for the EDMC is set out in a separate document Procedures – The Enforcement Decision Making Committee. In the case of any ambiguity, this Policy Statement will take precedence in respect of the Bank's supervision of financial market infrastructures.

Appendix 4

Representations made in relation to consultation paper CP/EDMC 2016 and the Bank's response

A4.1 We received 4 responses to CP/ EDMC 2016. The responses were generally supportive of the concept of establishing a unified EDMC. The responses also raised a number of questions in relation to the independence of the EDMC, its remit, and publication of detailed EDMC procedures. In general terms the representations were received regarding:

- Fixed term protected tenures for EDMC members;
- Detailed procedures to deal with conflicts of interest;
- Whether particular statutory provisions will fall with the EDMC remit;

3 August 2018: The final policy was published in Policy Statement PS/EDMC18 'Enforcement Decision Making Committee' available at <https://www.bankofengland.co.uk/paper/2018/enforcement-decision-making-committee-policy-statement>

- The selection of EDMC panels and the role of the General Counsel of the Bank;
- The need for any legal and administrative support to the EDMC panels to be structurally separate from the Bank and the role of panel chairs in ensuring this;
- Disclosure of communications between the relevant staff responsible for the case and the EDMC and a ban on discussions between the relevant staff responsible for the case and the EDMC once the warning notice has been issued (as per FCA procedure);
- The minimum time in which to make representations following receipt of a warning notice and whether extensions of time can be requested; and
- A suggestion that EDMC panels considering representations should include at least one new member who did not participate at the previous stage (as per FCA procedure at the time the suggestion was made). We have not adopted this suggestion. We consider that it is preferable that the same decision makers should hear and consider all of the relevant evidence at each stage. Therefore in most cases we would expect the EDMC panel which hears the representations and decides whether or not to issue a decision notice to contain the same EDMC members who dealt with the matter at warning notice stage. This is subject to certain exceptions, as set out in Section 6 of the attached EDMC procedures document. We note that since this suggestion was made, the FCA has amended its procedure to remove the requirement that panels considering representations should include at least one new member who did not participate at the previous stage.

A4.2 We consider that the points raised are addressed in the draft EDMC Procedures document which is attached at appendix 1 and on which interested parties are invited to submit comments.

A4.3 Two representations were made which are not addressed in this consultation, regarding:

- Joint FCA and Bank investigative and enforcement activities;
- The process for referral of matters for investigation.

As set out in the joint PRA/FCA Policy Statement 2/17,¹ the regulators propose to provide more guidance in relation to joint investigations in due course. In addition the Bank will provide further guidance on referral of matters for investigation. These are being dealt with separately from the EDMC procedure and do not form part of this consultation

document.
3 August 2018. The final policy was published in Policy Statement PS/EDMC18 'Enforcement Decision Making Committee' available at <https://www.bankofengland.co.uk/paper/2018/enforcement-decision-making-committee-policy-statement>

¹ See online at: <http://www.bankofengland.co.uk/pr/Documents/publications/ps/2017/ps217.pdf>