

Operational Oversight Model Post Consultation

ECB Operational Oversight Model

The ECB's mission is to ensure that all those who experience enforcement action are treated fairly. We have developed standards for enforcement action that we expect all ECB accredited firms to meet, in order to support fairness for those experiencing enforcement action. Our operational oversight model is the means by which we will ensure that accredited firms and Enforcement Agents are meeting these standards, as well as providing accountability for those who do not.

Risk-based oversight

The ECB takes a risk-based approach to oversight, which is focused on gathering evidence from a wide range of sources in order to provide ongoing, dynamic and reliable assessments of the risk profile of each accredited firm. This assessment would then inform our ongoing approach to oversight and allow us to identify specific areas of non-compliance with our standards that require a targeted response, either through the ECB's monitoring and oversight or enforcement tools.

Monitoring the market and gathering evidence

Monitoring the market in order to gather a wide range of evidence to inform our risk assessments, is central to our oversight model. Our monitoring and evidence gathering will include the following sources:

- 1) Data returns from accredited firms – we receive periodic data returns from ECB accredited firms. These will help us to identify trends, changes and potential outliers.
- 2) Monitoring and oversight – as set out in further detail below, the ECB's monitoring and oversight function will undertake on-site oversight visits and targeted information requests, in order to assess levels of compliance with our standards and identify any areas of concern. This will generate significant evidence to inform our risk assessments.
- 3) Self-assessments of compliance with our standards and other self-reported non-compliance, from accredited firms.
- 4) ECB complaints handling – our investigation of complaints will result in identification of evidence of bad practice or breaches of the ECB's standards. This could relate to behaviour on the doorstep, in call centres or in written material. It could also relate to the quality of first tier complaints handling and/or how firms respond to identified issues with agents.
- 5) Debt advice case notes and referrals – the ECB receives regular reports from the national debt advice charities with anonymised case notes about cases that involve enforcement action where the debt adviser considers there may have been bad practice. We could also receive specific referrals on a case by case basis from debt advisers where there is a specific concern, which may include some supporting information or evidence.

- 6) Whistleblowers – the ECB will develop a whistleblower policy so that we can safely receive intelligence from those within industry about practices that they are concerned about.
- 7) Referrals from other regulators and other bodies – the ECB welcomes referrals from any other regulators or bodies with intelligence about potential breaches of the ECB's standards or poor enforcement practice. This could be from organisations such as the FCA, Local Government and Social Care Ombudsman or others.
- 8) Press and social media – we will take account of any reliable intelligence that arises from press investigations or other media activity.

Drawing from such a wide range of sources will give the ECB a rich overall view of risk and potential issues. All evidence that we receive will be triaged and categorised to take account of its reliability and relevance to our oversight. We would always seek to verify specific concerns prior to taking any targeted action in response. For example, high level issues raised from debt advice case notes, without supporting evidence, may help to identify potential trends or areas for the ECB to factor into its overall assessment of risk. On the other hand, if there is a specific, more detailed allegation, along with some supporting evidence, this could be sufficient for the ECB to consider more targeted follow-up.

Assessing risk

The ECB will maintain a specific, dynamic risk assessment of each firm that it accredits, which will be based on an assessment of the evidence available from all of the sources outlined above. This assessment will not be public and will be for the ECB's own purposes in terms of informing its approach to monitoring and oversight for each firm. However, we will keep accredited firms informed of our live risk assessment of them.

At a high level, each firm will be assessed by the ECB as either Low, Medium or High risk. To make this assessment, the ECB will consider a number of factors, including the likelihood of non-compliance with the ECB's standards, the size and scale of the business (relevant to the impact of any non-compliance), the firm's engagement with the ECB and whether it is taking ownership of any issues, a firm's track record and any previous issues.

This assessment, in turn, will inform the level of proactive monitoring and oversight that the firm will receive. The ECB will prioritise its monitoring and oversight resources towards firms that are considered to be higher risk. However, this assessment will only be a guide and will not be determinative. Given that the ECB will be overseeing a relatively small number of firms (40-50), it will be able to take a tailored approach based on specific facts.

The ECB will conduct periodic reviews of the risk assessment of each firm to help ensure that they remain up to date and accurate. We will also aim to review the assessment at the point that any significant new evidence is received, so that we can respond swiftly to new or emerging concerns.

Risk-based monitoring and oversight

The risk assessment will influence the level of proactive, risk-based monitoring and oversight that the ECB will undertake for each firm.

This could entail an on-site monitoring visit, aimed at assessing compliance with the ECB's standards and identifying concerns or potential areas for improvement. This might be a more general visit covering a range of areas, or it could be a more targeted look at a specific area (such as complaints handling, internal controls and monitoring etc.). Monitoring and oversight could also entail targeted requests for information or assurance on a specific matter, which might be undertaken remotely.

Higher risk firms will be prioritised for monitoring visits and a higher level of ongoing interaction with the ECB's monitoring and oversight team. However, even low risk firms should expect ongoing engagement with the team and periodic monitoring visits, as these will be a valuable means of testing the accuracy of risk assessments and identifying any areas of concern or possible avenues for improvement.

As set out above, the evidence gathered from monitoring visits and information requests will also be fed back in to our dynamic risk assessments of firms.

Addressing non-compliance with our standards

As well as informing our overall assessment of the risk profile of each accredited firm, monitoring and risk assessment could identify specific areas of non-compliance with the ECB's standards that require a targeted response.

In these circumstances, the ECB will be able to deploy either its monitoring and oversight tools or its enforcement tools to address the matter.

In line with good regulatory practice and proportionality, the ECB would always seek to reserve the use of enforcement tools to the most serious or persistent cases of non-compliance. Similarly, when considering deployment of enforcement tools, the ECB would carefully consider which tool was most appropriate and proportionate in the circumstances, reserving the enforcement tools with the biggest consequences and impact for the most serious and/or most enduring areas of non-compliance.

Monitoring and oversight tools

Where the ECB uncovers non-compliance with its standards, it will usually seek to provide the firm with an opportunity to demonstrate that it has taken ownership of the concern and will put in place meaningful and appropriate improvements to address the past non-compliance and prevent recurrence in the future. In cases where the firm concerned demonstrates a genuine desire to engage with the issue and address it, this is the approach that is most likely to prevent ongoing concerns.

The exact means by which this could be achieved would differ on a case by case basis but is likely to involve:

- ECB identification of the issue and request for firm to provide a written response, demonstrating acceptance of the issue, meaningful engagement with the concern and a proposed action plan for remedying it.
- ECB assessment of the adequacy of the response and whether it is sufficient to avoid the need for enforcement action.
- If an action plan is accepted, the ECB would agree a proportionate plan for the ECB to oversee adequate completion of the action plan and monitoring of the impact of the changes.

The details of oversight and monitoring activity such as this would not be published.

If at any of the above steps the ECB is not satisfied with the firm's response, it would be able to escalate the case for investigation under the ECB's Non-Compliance and Sanctions Rules.

In some cases, where the non-compliance is not already self-evident, the ECB may undertake a targeted review of a particular area of non-compliance to better understand the facts surrounding the issue. Where this is the case, the ECB will set out for the firm concerned the steps it is taking, how and why and the likely timeframes of the targeted review.

Enforcement tools

All enforcement action taken by the ECB would be taken within the Non-Compliance and Sanctions Rules.

As set out in these rules, the ECB's enforcement tools include the ability to impose one or more of the following sanctions:

- Note of Concern – this would involve issuing a formal note of the identified non-compliance to the firm.
- Directions – specifying specific action that the ECB directs a firm to take to address identified non-compliance.
- Decision to publish a Note of Concern or Direction.
- Suspension of accreditation.
- Removal of accreditation.

The ECB could pursue more than one of these sanctions in tandem. It may also pursue one sanction initially and then escalate to an additional sanction as a result of ongoing failure to address the underlying issue.

The decision to publish a Note of Concern or Direction will be taken by the panel with consideration given to the commercial impact on the firm balanced against the risk to people experiencing enforcement. This decision will usually be taken as a form of escalation following failure to address underlying issues but it may be taken in tandem with the decision to issue the Note of Concern or Direction when appropriate.

The Non-Compliance and Sanctions Rules set out the process and safeguards around the ECB's exercise of its sanctioning powers. They also provide a route for accredited firms to appeal a decision to impose a sanction.

All decisions to suspend accreditation and remove accreditation will be published.

Thematic issues and trends

So far this document has explained how the ECB will assess and respond to the risk profiles of specific enforcement firms. However, it will also be important that the ECB is using the overall evidence and data that it receives from its market monitoring and supervision to inform its overall approach to oversight, including the content of the standards that we are setting.

Our oversight framework will therefore also involve analysis of market or thematic trends across accredited firms. For example, we might identify that there are specific standards that are more regularly attracting non-compliance.

The ECB's research programme will also feed into this wider assessment of thematic issues and trends.

There will be two main outputs from this wider thematic analysis:

- 1) It may inform the need for additions or refinements to our standards.
- 2) It may identify the need for thematic supervision exercises to target a specific area of risk (e.g. we might do some thematic supervision visits to look at complaints handling).

Sharing and promoting good practice

The ECB's oversight model will also be focused on identifying and sharing good practice that we encounter, in order to encourage learning and improvement across the sector.