

The ECB's Draft Non-Compliance and Sanctions Rules

Arrangement of Rules

Section	Page
Overriding Objective	3
Supervised action plan	3
Investigation and early disposal	3
Consensual Orders	4
<i>Standards Panel</i>	4
Constitution and decision making	5
Proof of certain matters	5
Decision of <i>Standards Panel</i>	5
Sanctions and publication	6
Appeals	7
Grounds	7
Lodging and responding to an appeal	7
Impact on sanction	7
Consideration by <i>Independent Assessor</i>	8
Decision of <i>Independent Assessor</i>	8
General powers of management of the <i>Standards Panel</i>	8
Service of documents	9
Glossary	10

Non-Compliance and Sanctions Rules

Overriding objective

1. These *rules* are in place to assist the *ECB* in achieving the objective of dealing with *compliance issues* justly and proportionately. This includes: (1) dealing with *compliance issues* proportionately within the context of securing fair treatment for those experiencing enforcement action; and (2) ensuring *compliance issues* are dealt with fairly and expeditiously. This overriding objective should be considered at all times when interpreting these *rules* and throughout the non-compliance and sanctions process.

Supervised action plan

2. When the *ECB* becomes aware of a *compliance issue*, where appropriate, it will seek to resolve this with the *enforcement firm* by the use of a supervised action plan.
3. Where the *compliance issue* cannot be resolved by a supervised action plan with the *enforcement firm*, or the *enforcement firm* does not comply with that plan, the *ECB* will decide whether to further investigate the *compliance issue*.

Investigation and early disposal

4. If the *ECB* decides to investigate the *compliance issue*, it will:
 - (a) send to the *respondent* an investigation letter setting out the *compliance issue*;
 - (b) send to the *respondent* a copy of relevant evidence in the possession of the *ECB* in relation to the *compliance issue*; and
 - (c) invite the *respondent* to submit written representations within 21 days, or any specified longer period which the *ECB* may agree with the *respondent*.
5. After the expiry of the time limit for the *respondent* to submit a response under Rule 4(c), the *ECB* will consider any written representations by the *respondent* and any further evidence received and either:
 - (a) close the case where the *ECB* considers that one or more of the criterion for closure set out within Rule 6 applies;
 - (b) in appropriate cases, invite the *respondent* to approve and sign a *consensual order* prepared by the *ECB* which sets out a brief summary of the facts surrounding the *compliance issue* and the proposed sanction(s); or
 - (c) refer the *compliance issue* to a *Standards Panel* where, in the view of the *ECB*, it would not be appropriate to close the case under Rule 6 and it has not been possible or it would not be appropriate to dispose of the case by a *consensual order*.

6. Following the conclusion of the *ECB's* investigation, the *ECB* will close the *compliance issue* if:
 - (a) it considers that there is no realistic prospect of proving the *compliance issue* to the civil standard (i.e. on the balance of probabilities);
 - (b) it considers that it is not in the public interest for the *compliance issue* to proceed further under the *rules*; or
 - (c) it considers that it would be contrary to the overriding objective at Rule 1 for the *compliance issue* to proceed further under the *rules*.
7. Where the *ECB* decides to close the case, it will inform the *respondent* of this decision as soon as practicable.

Consensual orders

8. Where the *respondent* returns a signed *consensual order*, the matter will be concluded as per the agreed terms in the *consensual order* without the need for further process under these *rules*.
9. Where a *consensual order* is finalised as per the agreed terms therein, the right to appeal under these *rules* is removed.

Standards Panel

10. Where the *ECB* decides to refer the *compliance issue* to a *Standards Panel*, the *ECB* will:
 - (a) notify the *respondent* of this as soon as reasonably practicable;
 - (b) send the *respondent* a copy of the *ECB's* submissions on non-compliance and sanction;
 - (c) invite the *respondent* to submit any written representations responding to the *ECB's* submissions on non-compliance and sanction within 21 days, or any specified longer period which the *ECB* may agree with the *respondent*.
11. The *Standards Panel* will consist of at least three *ECB* Board Members.
12. The *Standards Panel* will be assisted by an independent *Legal Adviser*. The *Legal Adviser* will not take part in any decision-making or voting, which will be carried out exclusively by the *Standards Panel*.
13. As soon as practicable after the expiry of the time limit for the *respondent* to submit a response under Rule 10(c), the *Standards Panel* will consider at a meeting any *compliance issue* referred to it by the *ECB* under Rule 5(c).
14. The *Standards Panel* will meet in private, with the assistance of a *Legal Adviser*, to consider the relevant material, including any written submissions made by the *respondent* and the *ECB's* submissions on non-compliance and sanction, without the attendance of the *respondent* or members of the public.

Constitution and decision making

15. As soon as a member of the *Standards Panel* or the *Legal Adviser* becomes aware of the possibility of any *conflict of interest*, they should declare this to the *ECB* and the *respondent*.
16. Unless the *ECB* and the *respondent* agree that it is not necessary, where a member of the *Standards Panel* or the *Legal Adviser* declares the possibility of a *conflict of interest*, they should be recused from the meeting.
17. The standard of proof is the civil standard (i.e. on a balance of probabilities) and where facts relating to a *compliance issue* are in dispute, the burden of proving those facts will rest on the *ECB*.
18. The *Standards Panel* will only find a *compliance issue* proven where it is satisfied that it has been found proven to the civil standard (i.e. on a balance of probabilities). Otherwise, no finding will be made.
19. A simple majority decision of the *Standards Panel* is required to make a finding that a *compliance issue* is found proven. Otherwise, no finding will be made.
20. If it considers it to be necessary, the *Standards Panel* may seek further evidence from the *ECB* or the *respondent* before deciding whether the *compliance issue* is found proven.

Proof of certain matters

21. Where a criminal finding has been made in respect of the *respondent*, a copy of the formal findings provided by an officer of the Court will be conclusive evidence of that criminal finding and of the findings of fact upon which it is based.
22. Where the *respondent* has been the subject of a judgment of any civil court in any jurisdiction, a copy of the judgment provided by an officer of the Court will be conclusive evidence of that judgment and of the findings of fact upon which it is based.
23. Where the *compliance issue* relates to a finding or decision of a regulatory body, a certificate as to that finding or decision signed by an officer of that regulatory body, or publication of it on the website of the regulatory body or in any other official publication will be conclusive evidence of the order.

Decision of the *Standards Panel*

24. The *ECB* will notify the *respondent* in writing of the decision of the *Standards Panel* and the reasons for its decision within five working days of the conclusion of the meeting of the *Standards Panel*.
25. The *respondent* will:
 - (a) have a right of appeal against a finding by the *Standards Panel* that a *compliance issue* is proven and/or a sanction is imposed, including the decision to publish a sanction, but only on one or more of the grounds set out in Rule 31; and
 - (b) be notified of that right of appeal and its consequences when they are notified of the decision under Rule 24.

Sanctions and publication

26. The *Standards Panel* may direct that any one or more of the following sanctions be imposed upon the *respondent* and the date from which any sanction(s) will take effect:
- (a) a *note of concern*;
 - (b) directions with which the *respondent* must comply for a specified period;
 - (c) an order that the *respondent's* accreditation with the *ECB* be suspended for a specified period of up to five years;
 - (d) an order that the *respondent's* accreditation with the *ECB* be removed (the *respondent* may apply for re-accreditation after a reasonable period of time has elapsed, as specified by the *Standards Panel*);
 - (e) an order that a *note of concern* under Rule 26(a) or directions under Rule 26(b) will be published by the *ECB*.
27. Where the *Standards Panel* imposes a sanction under Rule 26(c) (suspension) or Rule 26(d) (removal), or such a sanction is agreed between the parties under a *consensual order*, this will be published, as it is in the public interest to do so.
28. In exceptional circumstances, the *Standards Panel* may decide that the publication of a sanction of suspension or removal is inappropriate or that the name of the *respondent* should be anonymised.
29. Where the *Standards Panel* imposes a sanction under Rule 26(a) (*note of concern*) or Rule 26(b) (directions), it will consider whether to also impose a publication sanction under Rule 26(e). In making this decision, the *Standards Panel* will weigh up the public interest in publication in the circumstances of the particular case, against the likely impact of publication on the *respondent*.
30. Where the *Standards Panel* decides to publish its decision, the *respondent* will be notified of this at least five working days before publication.

Appeals

Grounds

31. Where the *Standards Panel* has determined that a *compliance issue* has been found proven and/or a sanction has been imposed on a *respondent*, the *respondent* may appeal to the *Independent Assessor* on one or more of the following grounds:

- (a) the decision was based on an error of law and/or fact;
- (b) the decision was unjust because of a serious procedural error and/or procedural irregularity;
- (c) the decision was irrational; and/or
- (d) new material evidence has come to light which was not reasonably available at the time of the original decision.

Lodging and responding to an appeal

32. The *respondent* must serve a written notice of appeal on the *ECB* within 21 days of the decision to be appealed. Appeals served after 21 days will not be valid and will be dismissed unless the *Independent Assessor* is satisfied that there are exceptional circumstances which justify extending this time period.

33. The notice of appeal must state the grounds of the appeal and be signed by or on behalf of the *respondent*. A notice of appeal which is not in writing; does not contain the grounds of appeal; and/or is not signed by or on behalf of the *respondent* will not be valid and will be dismissed.

34. The *ECB* must file and serve any notice of response responding to the notice of appeal no later than 21 days after receiving the notice of appeal.

Impact on sanction

35. The fact that an appeal has been made has no effect on the enforcement of the sanction of the *Standards Panel* save that a decision to publish may be deferred until after the *Independent Assessor's* decision, at the *Independent Assessor's* discretion.

36. If either party wishes there to be a stay in the enforcement of the sanction then that party must apply to the *Independent Assessor* in writing for such a stay setting out the circumstances which justify a stay being granted.

37. The *Independent Assessor* may order a stay in the enforcement of the sanction where exceptional circumstances exist which mean that it would be unjust to enforce the sanction pending determination of the appeal. Such a decision of the *Independent Assessor* cannot be appealed and will take immediate effect.

Consideration by *Independent Assessor*

38. The *Independent Assessor* will consider the appeal in private on the papers which the parties have submitted.

39. The *Independent Assessor* will not consider evidence that was not originally before the *Standards Panel* unless new evidence of a material nature has become available which could not reasonably have been available previously. The *Independent Assessor* will have discretion as to whether or not to consider any such new evidence.

Decision of *Independent Assessor*

40. The *Independent Assessor* may:

- (a) dismiss the appeal;
- (b) allow the appeal and quash the original decision appealed against;
- (c) vary the sanction imposed by the *Standards Panel* to one or more sanctions of greater or lesser severity;
- (d) remit the *compliance issue* back to the *Standards Panel* for reconsideration at a meeting where there are exceptional circumstances which require the case to be reconsidered, such as where new evidence of a material nature has come to light which was not reasonably available at the time of the original decision.

41. The *ECB* will give to the *respondent* notice of the *Independent Assessor's* decision and the reasons for their decision as soon as practicable.

42. All decisions of the *Independent Assessor* are final, will take immediate effect and are binding on all parties.

43. There is no further right of appeal under these *rules* from a decision of the *Independent Assessor*.

General powers of management of the *Standards Panel*

44. The *Standards Panel* may: -

- (a) extend or shorten the time for compliance with any *rule*;
- (b) adjourn or bring forward a meeting;
- (c) require a party or a party's representative to provide further evidence or respond to the *Standards Panel's* questions;
- (d) direct that part of any proceedings be dealt with as separate proceedings;
- (e) stay the whole or part of any proceedings;

- (f) order that two or more *compliance issues* against the same *respondent* be considered at the same meeting where they are of a similar kind or are founded on the same facts;
- (g) order that *compliance issues* against two or more *respondents* be considered at the same meeting where it would be just to do so, and the *compliance issues* arise out of the same circumstances;
- (h) exclude an issue from consideration;
- (i) dismiss or determine a *compliance issue* after a decision on a preliminary issue; and/or
- (j) take any other step or make any other order for the purpose of managing or dealing with the case and furthering the objective in Rule 1.

Service of documents

- 45. Notices or other documents will be sent electronically, unless it is agreed between the *respondent* and the *ECB* that they should be sent by post.
- 46. Notices and other documents sent by prepaid post will be deemed to be received by the addressee on the third working day after the date of posting to an address within the UK and on the fifth working day after the date of posting to an address outside the UK.
- 47. In the absence of any undeliverable report, notices and documents sent electronically will be deemed to have been received immediately after the point of sending.
- 48. In proving service of a notice or other documents, it will be sufficient to show that the notice was properly addressed and sent to the last address (including any email address) notified by the *respondent* to the *ECB* and recorded on the *ECB's* database of accredited *enforcement firms*.

Glossary

Term	Definition
Compliance issue	Means an issue with apparent non-compliance with the <i>ECB's</i> Professional Values and Standards of Practice which the <i>ECB</i> becomes aware of, or which is identified by the <i>ECB</i> from monitoring or supervision visits.
Conflict of interest	Means an interest which might influence, or be perceived to influence, the judgement of a <i>Standards Panel</i> member in carrying out their panel member duties, or the independence of the <i>Legal Adviser</i> in providing legal advice to the <i>Standards Panel</i> .
Consensual order	Means an agreement prepared by the <i>ECB</i> for acceptance by the <i>respondent</i> for the disposal of a <i>compliance issue</i> on agreed terms.
ECB	Means the Enforcement Conduct Board.
Enforcement Agent	Means an individual who is responsible for seeking to recover money owed in order to satisfy a writ, warrant or liability order, including by taking control of goods.
Enforcement Firm	Means a business or organisation that employs or engages <i>enforcement agents</i> .
Enforcement process	Means the process of seeking to recover money owed in order to satisfy a writ, warrant or liability order, including by taking control of goods.
Independent Assessor	Means an independent person who has been appointed by the <i>ECB</i> to determine any appeal against a sanction imposed by the <i>Standards Panel</i> in accordance with these <i>rules</i> .
Legal Adviser	Means a person appointed by the <i>ECB</i> to give independent advice to the <i>Standards Panel</i> on questions of law arising in connection with any matter under consideration by the <i>Standards Panel</i> .
Note of concern	Means a note, published on the <i>ECB's</i> website, which sets out the concerns of the <i>Standards Panel</i> in relation to an <i>enforcement firm</i> arising from a <i>compliance issue</i> .
Respondent	Means an <i>enforcement firm</i> in relation to whom a <i>compliance issue</i> is being considered.
Rules	Means these Non-Compliance and Sanctions Rules.
Standards Panel	Means a panel drawn from the <i>ECB</i> Board Members to consider a <i>compliance issue</i> in accordance with these <i>rules</i> .