



Financial Reporting Council

Audit Enforcement Procedure

Guidance for the Case Examiner

June 2023

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Guidance for the Case Examiner

Introduction

1. The Case Examiner is required to undertake a number of initial actions at the beginning of a case under the Audit Enforcement Procedure (“the AEP”)¹. Most importantly they are required under Rules 4 and 5 to determine whether the information raises a question as to whether a Statutory Auditor or Statutory Audit Firm has breached a Relevant Requirement.
2. For the avoidance of doubt, matters within the knowledge of the FRC do not automatically fall to be considered by the Case Examiner. Furthermore, information about a Statutory Auditor or Statutory Audit Firm may be received from many sources and can be passed to the Case Examiner from internal sources within the FRC as well as third party complaints or concerns being raised, and the Case Examiner may then consider these under the AEP.
3. [This paragraph has been deleted].
4. This document provides guidance as to the decisions and actions a Case Examiner must take when determining how information should be handled at the outset of a case. The purpose of this guidance is to ensure that consistent and proportionate decisions are taken, although it is recognised that every situation will have its own unique facts and circumstances.
5. This guidance will be referred to by the Case Examiner and may be helpful for anyone interested or involved in the AEP.
6. The Case Examiner's role includes ensuring that anyone wishing to provide information to the FRC is provided with clear information about the role and scope of the FRC's functions and ensuring that there are no barriers to relevant complaints being made or information being provided.

Initial checks

7. On receipt of information the Case Examiner should confirm whether the information relates to a Statutory Auditor and/or Statutory Audit Firm and concerns a matter within the scope of the FRC’s retained regulatory activity.

Determining whether a question arises

8. The Case Examiner has powers to make enquiries and obtain specialist advice (i.e. instruct experts) to help them determine whether information raises a question as to whether a Relevant Requirement has been breached. Where necessary the Case Examiner may seek legal advice. The enquiries and advice should be limited to assisting the Case Examiner with the

¹ This Guidance adopts the definitions used in the AEP.

determination of whether the information raises a question as to whether a Relevant Requirement has been breached.

9. The Case Examiner will have regard to the Relevant Requirements (as defined in the AEP) and will assess whether the information received raises a question of a breach of these requirements.
10. The Case Examiner may communicate with the potential Respondent (or their representatives) about the information received.
- 10A. Where the Case Examiner considers that information raises a question as to whether a Statutory Auditor or Statutory Audit Firm has breached a Relevant Requirement, the Case Examiner shall:
 - i) if they determine to refer the matter to the Board in accordance with Rule 5(d), proceed to do so;
 - ii) in circumstances where paragraph 10Ai) does not apply, and before deciding which course of action to adopt under Rule 5 of the AEP, determine whether the matter in respect of which the question of a breach is raised is a Referral Case (as defined in this paragraph). Where the Case Examiner determines that a matter is a Referral Case, they shall refer that matter to the Board in accordance with Rule 5(d) of the AEP.

The Case Examiner shall determine that a matter is a Referral Case if they consider that **a decision to take no further action or to pursue Constructive Engagement in respect of it may be contentious, high-profile or may risk undermining confidence in the FRC's (or the wider) regulatory regime.**

When determining whether a case is a Referral Case, the Case Examiner shall take account of all relevant factors including (without limitation) the following factors (the existence of any of which would be likely to indicate that a case is a Referral Case):

- a) there has been a Grade 4 AQR referral in relation to the relevant audit;
- b) the case relates to an audited entity in administration or which has been liquidated or is in insolvency proceedings;
- c) there has been a complaint or referral from another UK or international regulator or a public authority (e.g. the FCA or the SFO) in relation to the case;
- d) the case relates to an event which is high profile or has attracted or is likely to attract significant media or political attention or the attention of other regulators; and/or
- e) a decision to open an investigation or a decision to pursue Constructive Engagement would be 'finely balanced'.

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11. In respect of cases where the Case Examiner considers that a question of breach is raised and the matter has not been referred to the Board under Rule 5(d) (including on the basis that it is a Referral Case), the Case Examiner has discretion to seek Constructive Engagement with the Statutory Auditor or Statutory Audit Firm as a way of resolving the matter, or to take no further action and close the matter.
 12. Where the Case Examiner determines that the information does not raise a question as to whether there has been a breach of a Relevant Requirement, they shall (as provided in Rule 4 of the AEP) take no further action.

Constructive Engagement

13. For cases where the Case Examiner considers that a question of breach is raised and the matter has not been referred to the Board under Rule 5(d) (including on the basis that it is a Referral Case), Constructive Engagement will be at the discretion of the Case Examiner.
- 13A. Constructive Engagement will be suitable for cases where there has been a minor, technical breach of the Relevant Requirements. Such cases will usually be at the lower end of the spectrum of possible breaches.
14. Constructive Engagement may be appropriate where there is no real concern about harm to investor, market or public confidence in the statutory audit process and where there is no evidence of financial detriment to anyone.
15. Constructive Engagement is focused on ensuring that less serious breaches have been rectified and the risk of repetition has been adequately addressed. It may take any form, including written advice, warning letters or discussion or correspondence with the individual Statutory Auditor or Statutory Audit Firm aimed at ensuring that the possible breach is not repeated.

Interim Orders

16. Under Rule 5(c) the Case Examiner has the power to refer a matter to Executive Counsel who would then consider whether to apply for an Interim Order to be made by a Tribunal. Interim Orders are orders which impose restrictions on the Respondent pending the outcome of the FRC's investigation or proceedings. An Interim Order can only be made by the Tribunal.
17. The procedure for Interim Orders is set out in Part 5 of the AEP. The Case Examiner's role is to conduct an early risk assessment to identify whether a case should be referred to Executive Counsel to apply for an Interim Order.
18. Factors which might indicate that a case should be referred for an Interim Order include:
 - a) suspected serious breaches of the Relevant Requirements

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- b) ongoing risk of harm to investor, market or public confidence in the truth and fairness of the financial reporting of an entity;
 - c) ongoing risk of significant financial detriment or other harm for those reliant on the Statutory Auditor or Statutory Audit Firm's compliance with the Relevant Requirements.

This list is non-exhaustive and referral is at the discretion of the Case Examiner.

Referral to Board

- 19. [This paragraph has been deleted].
- 20. The Case Examiner will prepare the papers which will go to the Board for its decision as to whether:
 - a) to direct the Case Examiner to attempt to resolve the matter through Constructive Engagement with the Statutory Auditor or Statutory Audit Firm;
 - b) there is a good reason to investigate the matter; or
 - c) no further action is to be taken in relation to the matter.
- 21. To assist the Board with its functions, papers to the Board should summarise the information, identify the possible breaches, make recommendations as to no further action, Constructive Engagement, or investigation as the case may be and refer to the applicable test and guidance.
- 22. [This paragraph has been deleted].

Reporting Requirements

- 23. The Case Examiner shall provide data to the Board and report those matters where they have, without referral to the Board under Rule 5(d):
 - a) determined that the information about a Statutory Auditor or Statutory Audit Firm does not raise a question as to whether a Relevant Requirement has been breached; or
 - b) determined in respect of cases where a question as to whether a breach of a Relevant Requirement is raised, to take no further action or to resolve the matter using Constructive Engagement.
- 24. The Board shall be entitled to request further details on a sampling basis of any such cases by way of oversight.

24A. Under Part 8 of the AEP (Reconsideration), the Board may reconsider a decision by the Case Examiner (or by the Board itself) to take no further action or to resolve a matter using Constructive Engagement.

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