



Financial Reporting Council

Accountancy and Actuarial Schemes

Guidance on the Provision of Unused Material

February 2023

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1. Introduction

- 1.1 This Guidance is issued by the Board of the Financial Reporting Council (the “**FRC**”) under the Accountancy Scheme and the Actuarial Scheme (together “**the Schemes**”).¹ This document provides guidance with respect to the provision of material in FRC disciplinary cases taken under the Schemes. There is separate guidance for cases taken under the Audit Enforcement Procedure.
- 1.2 This Guidance is subject to the provisions of the Schemes and should be read in conjunction with the Schemes and the Regulations thereunder. In the event of any conflict, the provisions of the Schemes and any Regulations thereunder shall prevail.

2. Definitions

- 2.1 This Guidance adopts the definitions used in the Schemes. In addition, it uses the following definitions:
 - i) **Evidence:** material which Executive Counsel relies on to prove or disprove a matter in issue.
 - ii) **Unused Material:** material in Executive Counsel’s possession which has been obtained in connection with, and is relevant to, the investigation, but which Executive Counsel does not rely upon as Evidence.
 - iii) **The Disclosure Test:** whether the Unused Material is capable of assisting the Respondent’s case or undermining Executive Counsel’s case.
 - iv) **Disclosable Material:** material which meets the Disclosure Test.

3. Provision of material prior to Tribunal Proceedings

- 3.1 If Executive Counsel serves a draft of the Formal Complaint in accordance with Paragraph 7(10)(ii)(a) (“**Proposed Formal Complaint**”), it will be accompanied by:
 - i) The Evidence cited in the Proposed Formal Complaint.
 - ii) Any Disclosable Material which has by then been identified as such in the course of the investigation.
- 3.2 If Executive Counsel serves a Formal Complaint in accordance with paragraph 7(11), it will be accompanied by any *additional* Evidence cited in the Formal Complaint, and / or any further Disclosable Material which has by then been identified as such.

4. Service and provision of material at the Tribunal stage

¹ This Guidance replaces the guidelines issued by the FRC in July 2013.

4.1 After service of a Formal Complaint and the appointment of a Disciplinary Tribunal pursuant to Paragraph 9(2) of the Schemes, Executive Counsel will, in accordance with directions to be agreed or set by the Tribunal:

- i) serve copies of any factual Evidence Executive Counsel will rely on before the Tribunal, where this Evidence has not already been served on the Respondent;
- ii) serve the Respondent with any expert report Executive Counsel will rely on before the Tribunal, together with any Evidence exhibited to the expert report and all documents and instructions given to the expert which are material to the opinions expressed in the report or upon which those opinions are based;
- iii) provide the Respondent with a list of the categories of the Unused Material in Executive Counsel's possession, identifying those which contain Unused Material which has not been provided to the Respondents to date;
- iv) provide a disclosure protocol setting out Executive Counsel's proposed approach to the review of the categories of Unused Material; and
- v) following the review process, serve copies of or provide access to the Disclosable Material.

4.2 The material set out in 4.1 above may be provided or served in hard or soft copy or via access to a secure electronic data hosting site. In cases where there is more than one Respondent, the Disclosable Material will be provided to all Respondents where appropriate and permitted by law.

4.3 In accordance with paragraph 11(10) of the Scheme and paragraph 22(a)(iii) of the Regulations thereunder, the Chair of the Tribunal may give pre-hearing directions about the disclosure of documents. Pursuant to 22(b) of the Regulations any party may apply for pre-hearing directions in writing to the Tribunal, with copies to the other parties. When considering an application for disclosure of documents, the Disclosure Test shall apply.

4.4 The duty of disclosure is a continuing one. Throughout the course of the Tribunal proceedings and, in particular, after receipt of documents setting out the Respondent's defence, Executive Counsel will keep under review the question of whether there is further Disclosable Material.

5. Obtaining information from third parties

5.1 Executive Counsel has no obligation to seek material from a third party.

5.2 Executive Counsel will consider a request from a Respondent to do so, where the Respondent can establish there are reasonable grounds to believe that the material sought is relevant and will meet the Disclosure Test.

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- 5.3 In determining whether or not to accede to such a request, to seek material from a third party, Executive Counsel will consider the following (non-exhaustive) factors:
- i) any steps taken by the Respondent to obtain the material;
 - ii) if Executive Counsel has specific powers to seek the material or has available a statutory gateway for information sharing; or is otherwise better placed than the Respondent to request the material;
 - iii) whether the request imposes a disproportionate resource burden on Executive Counsel and/or the third party from whom the material is being sought; and
 - iv) whether there are any restrictions on the use of the material imposed by the third party.
- 5.4 Executive Counsel will seek the material where, in all the circumstances, the fairness of the proceedings require it.
- 5.5 Where Executive Counsel declines to seek material from a third party, following a request from a Respondent to do so, written reasons will be provided to the Respondent.

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