



Financial Reporting Council

The Audit Enforcement Procedure

Consultation on proposed amendments to the procedure and related guidance

April 2023

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General Information

The Financial Reporting Council (FRC) operates the Audit Enforcement Procedure (AEP). The FRC has reviewed the AEP and intends to amend it. Through this consultation, the FRC seeks feedback and comment on these proposed amendments.

Consultation details

Consultation opened: 3 April 2023

Respond by: 5 May 2023

Enquiries and responses to:

General Counsel Team
The Financial Reporting Council
8th Floor, 125 London Wall London
EC2Y 5AS

Email: AEPconsultation@frc.org.uk

The FRC would particularly welcome the views of statutory auditors and audit firms and other regulatory bodies, including professional associations.

When responding, please state whether you are responding as an individual or representing the views of an organisation.

Confidentiality and data protection

Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018 and the Environmental Information Regulations 2004).

The FRC's usual policy is to make responses received to our consultations publicly available. If you want the information that you provide to be treated as confidential, please tell us, but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request. We will process your personal data in accordance with all applicable data protection laws. Please see our [privacy policy](#).

Introduction

The FRC is the 'competent authority' for audit in the UK.¹

As competent authority, the FRC is responsible (amongst other things) for investigations and imposing and enforcing sanctions (Enforcement Action) in respect of statutory auditors and statutory audit firms (Statutory Auditors).² The AEP was developed to implement the FRC's competent authority enforcement responsibilities. It first took effect on 17 June 2016 and, following a post-implementation review in 2021, took effect in an amended form on 5 January 2022.³

Where a question is raised as to whether a Statutory Auditor has breached a *Relevant Requirement* (as defined in the AEP), the FRC, through its Executive Counsel, may carry out *Enforcement Action* under the AEP.

The FRC has retained to itself responsibility for *Enforcement Action* in respect of the conduct by Statutory Auditors of audit work for public interest entities, AIM-listed companies with an average market capitalisation of over €200 million and Lloyds Syndicates. *Enforcement Action* relating to other categories of audit work has been delegated by the FRC to the Association of Chartered Certified Accountants, Chartered Accountants Ireland, the Institute of Chartered Accountants in England and Wales and the Institute of Chartered Accountants of Scotland under a series of delegation agreements available on the FRC website. The FRC may, however, reclaim and take over any such delegated *Enforcement Action*.

This consultation addresses amendments that the FRC is proposing to make to the AEP, the Guidance for the Case Examiner⁴ and the Hearings Guidance.⁵

The main purpose of the proposed changes is to effect changes to the decision-making remit of the Board and the Case Examiner under Part 2 of the AEP (Initial Stages). Under the current AEP, where the Case Examiner determines that information raises a question as to whether a Statutory Auditor has breached a *Relevant Requirement*, the Case Examiner has discretion to determine whether to take no further action, arrange constructive engagement or refer the matter to the Board.⁶ The Board's functions under the AEP have been delegated to the FRC's Conduct Committee which has responsibility for overseeing the Case Examiner activities and ensuring that appropriate cases are referred to it. References in this consultation to Board should be read as referring to the FRC's Board and/or Conduct Committee, as appropriate.

1 Regulation 2, Statutory Auditors and Third Country Auditors Regulations 2016 (as amended).

2 Regulation 3(1)(l) and (m), Statutory Auditors and Third Country Auditors Regulations 2016 (as amended).

3 <https://www.frc.org.uk/getattachment/26e687a9-05a1-47bd-861d-497b22678c24/FRC-Audit-Enforcement-Procedure-January-2022.pdf>

4 <https://www.frc.org.uk/getattachment/b48ec8d3-37d0-47b9-b358-04e33d4a9afb/Guidance-for-the-Case-Examiner.pdf>

5 <https://www.frc.org.uk/getattachment/bc584ef2-31cc-45a8-8852-4e5e1c47023a/Hearing-Guidance.pdf>

6 There is also an option to refer the matter to Executive Counsel to apply for an Interim Order to be made by a Tribunal.

The amendments that are proposed would give the Board a power to issue guidance which the Case Examiner would have to take into account before exercising their Rule 5 powers. This change is expected to enhance the Board's ability to oversee and engage with the Case Examiner's activities. Other amendments proposed are:

- an extension of the period within which the Board can reconsider certain decisions under Rule 134;
- to the Guidance for the Case Examiner to reflect the above-mentioned changes to Part 2 of the AEP; and
- to the Hearings Guidance to deal with the parameters of factual evidence under Rule 34.

Parts 2 and 8 of the AEP, the Guidance for the Case Examiner and the Hearings Guidance, each marked up with the amendments that are proposed, are appended to this consultation document.

The FRC seeks feedback and comment on the proposed amendments. The FRC intends to bring the amended versions of the AEP and guidance into force early in Spring/Summer 2023. These versions may also include minor, grammatical (non-substantive) changes which are not reflected in this consultation.

The drafts of the guidance documents that are appended to this consultation are made available for the purpose of illustrating the effect of the changes that are being considered. The formal consultation, however, relates to the changes to the AEP itself only. The FRC's Board or Conduct Committee may amend guidance without consultation.

Proposed amendments to the AEP

Part 2 – Initial Stages

Requirement to take due account of guidance

The FRC is proposing to amend Rule 5 of the AEP so that, where the Case Examiner determines that information raises a question as to whether a *Relevant Requirement* has been breached, they would be required to decide on next steps (whether to take no further action, pursue constructive engagement or make a referral to the Board⁷) after having taken due account of any relevant guidance issued to the Case Examiner by the FRC's Board.

A proposed new Rule 5A would provide that, without prejudice to the Board's power to issue guidance under Rule 167, the Board may, from time-to-time, issue guidance to the Case Examiner concerning the exercise of their Rule 5 powers. The power is expected to enhance the Board's ability to oversee Case Examiner activities and the referral of appropriate cases to the Board under Rule 5(d).

Referrals to Executive Counsel under Rule 5(c)

It is proposed to clarify Rule 5(c) so that, where the Case Examiner refers a matter to the Executive Counsel under it, it is clear that the Executive Counsel is to consider applying for an Interim Order; the intention is not that such a referral would oblige the Executive Counsel to apply for an Interim Order.

Board decisions

It is proposed that Rules 6 to 10 are amended so that the options available to the Board in respect of a matter that has been referred to it under Rule 5(d) (to decide to take no further action, direct the Case Examiner to pursue constructive engagement or to open an investigation) are more clearly set out than under the current AEP (where the Board is obliged to consider constructive engagement first, then investigation and is finally obliged to take no further action where it determines that there is not a good reason to investigate).

Part 8 – Reconsideration

It is proposed that the period within which the Board may, under Rule 134, reconsider certain decisions to pursue constructive engagement or to take no further action is extended from 4 to 6 months. The current 4-month period is considered to be too short a period to facilitate an effective reconsideration process by non-executive bodies. The proposed short extension by 2 months is intended to address this point.

The above-mentioned proposed changes to Parts 2 and 8 of the AEP are reflected in Appendix A.

⁷ See footnote 6 above.

Proposed amendments to the Guidance for the Case Examiner

Determining whether a question arises

The FRC's Board is proposing to amend the Guidance for the Case Examiner by introducing a new paragraph 10A which would require the Case Examiner to consider, where a matter raises a question of breach, whether the matter is a *Referral Case*. The new paragraph will include guidance as to what is to be considered a *Referral Case* and provide that the Case Examiner should make a referral of such cases to the Board.

The proposed changes are expected to enhance the Board's ability to oversee Case Examiner activities and the referral of appropriate cases to the Board. Under the proposed changes, the Board would retain its powers to open investigations, direct the Case Examiner to pursue constructive engagement and to decide on no further action in respect of any matter that is referred to it. It would, in addition, have greater prospective engagement with the Case Examiner across a wider range of matters, including those for which an investigation might not be appropriate.

Consequential amendments are proposed to subsequent paragraphs to clarify the hierarchy of the decision-making process and the relevant Reporting Requirements.

A clarificatory amendment is also proposed to paragraph 2 (Introduction).

The above-mentioned proposed changes to the Guidance for the Case Examiner are reflected in Appendix B.

Proposed amendments to the Hearings Guidance

Factual Evidence

The Board is proposing to introduce a new paragraph 5A to the Hearings Guidance to clarify that factual evidence under Rule 34 of the AEP does not include witness statements where those statements are prepared or to be prepared by individuals who may give evidence in the matter. This additional guidance is intended to streamline the process, and avoid circumstances where evidence is required to be adduced earlier than it would be required in the litigation process under the AEP.

The above-mentioned proposed changes to the Hearings Guidance are reflected in Appendix C.

Consultation Questions

AEP

1. Do you have any comments on the proposed changes to the AEP described above and set out in Appendix A? Please respond by reference to specific Rule numbers of the amended AEP.
2. Do you agree with the proposed amendments to the AEP? Please respond by reference to specific Rule numbers of the amended AEP.
3. Do you have any general comments on the amended AEP?
4. Do you have any other comments on the issues raised in this consultation?

Preliminary impact assessment

A full impact assessment has not been produced for this consultation as no, or no significant, impact on the private, voluntary or public sector is foreseen.

The amendments proposed to the AEP and related guidance are expected to support a clear, effective and robust enforcement process. Some of the amendments are minor, clarificatory or consequential only. The more significant amendments concern the introduction of a specific power to issue guidance to the Case Examiner. They do not extend the FRC's scope to pursue *Enforcement Action*.

In light of the above, no significant impact on the private, voluntary or public sector is foreseen, however we welcome comments.

Groups affected by this Consultation

During the initial development of this consultation, the FRC has given due consideration to the impact it will have on different groups.

The FRC does not consider that the proposals in this consultation highlight any specific issues in relation to:

- Age;
- Disability;
- Gender Reassignment;
- Marriage and Civil Partnership;
- Pregnancy and maternity;
- Race;
- Religion or belief;
- Sex; or
- Sexual orientation.

We will take account of the evidence gathered through this consultation in developing final policy proposals and any potential impacts on the protected characteristics.

Next Steps

This consultation will run from 3 April 2023 to 5 May 2023.

The FRC will carefully consider all submissions received in response to this consultation before finalising its policy approach.

Appendices

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Appendix A

Part 2 – Initial Stages

Initial Action by Case Examiner

3. On receipt of information about a Statutory Auditor or Statutory Audit Firm, and in order to determine whether there is a question as to whether the Statutory Auditor or Statutory Audit Firm has breached a Relevant Requirement the Case Examiner may:
 - (a) give notice in writing to require any Statutory Auditor or Statutory Audit Firm to provide information and/or to create documents which relate to the Statutory Audit of, or the performance of Third Country Audit Functions in respect of, the annual accounts or the consolidated accounts of any audited person;
 - (b) request any specialist advice;
 - (c) request or receive from any other person any information which may be material to an investigation; and
 - (d) in relation to the Statutory Audit of a Public Interest Entity, give notice in writing to any person specified below requiring that person to provide information and documents:
 - (i) any person involved in the activities of a Statutory Auditor (including any person to whom a Statutory Auditor has outsourced such activities);
 - (ii) any Public Interest Entity;
 - (iii) any subsidiary or parent of a Public Interest Entity or any other subsidiary of a company of which a Public Interest Entity is a subsidiary; and
 - (iv) any person otherwise having a connection to a Statutory Auditor carrying out the Statutory Audit of the annual accounts or consolidated accounts of a Public Interest Entity.
4. Where the Case Examiner determines that the information about a Statutory Auditor or Statutory Audit Firm does not raise a question as to whether either has breached a Relevant Requirement, the Case Examiner shall take no further action.
5. Where the Case Examiner determines that the information about a Statutory Auditor or Statutory Audit Firm raises a question as to whether either has breached a Relevant Requirement, the Case Examiner **may shall, having taken due account of any guidance issued to the Case Examiner by the Board in accordance with Rule 5A, determine whether to:**
 - (a) take no further action;

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- (b) arrange Constructive Engagement with the Statutory Auditor or Statutory Audit Firm;
 - (c) refer the matter to Executive Counsel to **apply consider making an application** for an Interim Order to be made by a Tribunal; or
 - (d) refer the matter to the Board.

5A. Without prejudice to the Board's power to issue guidance under Rule 167, the Board may, from time to time, issue guidance to the Case Examiner under this Rule 5A concerning the matters which the Case Examiner should refer to the Board in accordance with Rule 5(d).

~~Decision to Investigate~~ **Board Decisions**

- 6. Where a matter is referred under Rule 5(d), the Board shall **consider determine** 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.
- 7. ~~Following Where, following~~ a direction under Rule 6(a), and if the Case Examiner is unable to resolve the matter to the Case Examiner's satisfaction, the Case Examiner shall return the matter to the Board.
- 8. Where ~~the Board has not made a direction under Rule 6, or~~ a matter has been returned to ~~the Board~~ pursuant to Rule 7, the Board must consider whether there is a good reason to investigate the matter.
- 9. Where the Board considers that there is a good reason to investigate the matter **in accordance with Rule 6(b) or Rule 8**, it shall:
 - (a) determine the scope of the investigation; andeither
 - (b) refer the matter for investigation by Executive Counsel; or
 - (c) direct whether the investigation should be delegated to the appropriate Recognised Supervisory Body. Where the Board has delegated the investigation to a Recognised Supervisory Body the Recognised Supervisory Body may, on behalf of the FRC, exercise the powers set out in Rule 14.
- 10. ~~Where the Board considers that there is not a good reason to investigate the matter, it shall take no further action. [Not used].~~

Notice of Investigation

11. Where the Board refers a matter for investigation, the Board shall send both Executive Counsel and the Respondent a Notice of Investigation (which will be copied to the Respondent's Recognised Supervisory Body) which shall state:
 - (a) the scope of the investigation; and
 - (b) whether the investigation has been delegated to a Recognised Supervisory Body.

Part 8 – Reconsideration

131. Subject to Rule 134 the Board may reconsider any decision made in respect of Rules 5(a), 5(b), 6(a), and 6(c) ~~10~~ where it appears that:
- (a) either:
 - (i) the decision was materially flawed, for any reason, in whole or in part; or
 - (ii) significant and relevant new evidence which could not have been adduced previously has been received within three years of the decision under reconsideration;and
 - (b) it is necessary in the public interest or to prevent injustice to reconsider the decision.
132. Where the Board decides to reconsider a decision, it shall provide the Respondent with any new relevant evidence or information and invite the Respondent to submit written representations regarding the reconsideration.
133. Where the Board reconsiders a decision it:
- (a) must take into account any representations made by the Respondent; and
 - (b) may:
 - (i) decide the original decision should stand;
 - (ii) substitute for all or part of the original decision any decision which the Decision Maker could have made under the Rule in question; or
 - (iii) where the Board was not the Decision Maker, remit the matter back to the Decision Maker for a fresh decision where the matter shall follow the same procedure under this AEP applicable to that Decision Maker.
134. Other than in respect of Rule 131(a)(ii), a reconsideration pursuant to Rule 131 must take place no later than ~~four~~ six months beginning from the date of the relevant decision. The Board shall notify the Respondent in writing, as soon as is reasonably practicable, of its decision in respect of reconsideration and the reasons for that decision.

Appendix B

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. ~~Specifically, if the Case Examiner becomes aware of reviews or inspections undertaken by the Audit Quality Review team, they will not take any steps under the AEP unless the matter is formally referred to them by the AQR team.~~ ~~However~~ 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.

¹ This Guidance adopts the definitions used in the AEP.

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 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 10A(i) 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

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- (e) a decision to open an investigation or a decision to pursue Constructive Engagement would be 'finely balanced'.
11. In respect of cases ~~W~~where the Case Examiner considers that ~~the information raises~~ a question of a 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 ~~they have~~ discretion to seek ~~e~~Constructive ~~e~~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 ~~e~~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 ~~e~~Engagement will be ~~entirely~~ at the discretion of the Case Examiner.
- 13A. ~~It~~ 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 ~~lowest~~ lower end of the spectrum of possible breaches.
14. Constructive ~~e~~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 ~~e~~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 ~~investigation and delegation~~ 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, ~~covering reports~~ 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 for investigation and may make recommendations as to investigation.~~
- 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 resolved~~ the matter using ~~e~~Constructive ~~e~~Engagement.
- 24. The Board shall be entitled to request further details on a sampling basis of any such cases by way of oversight.

24A. ~~The~~ 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 ~~e~~Constructive ~~e~~Engagement.

Issued by the Conduct Committee with effect from XX XXXX 2023

Appendix C

Hearing Guidance

Procedure at first instance hearings before Tribunal

1. The Audit Enforcement Procedure (AEP) sets out the procedure for hearings before the Tribunal (Hearings) in Parts 4, 5, and 11.
2. [This paragraph has been deleted].
3. Notwithstanding this procedure, the Tribunal may allow the Parties to make additional submissions at any time.
4. [This paragraph has been deleted].
5. [This paragraph has been deleted].

Factual Evidence

- 5A. Rule 34 of the AEP provides that within 56 days of receipt of notification of the appointment of the Tribunal, or such other period of time as may be agreed between the Parties, Executive Counsel shall serve on the Respondent and the Tribunal an Allegation, together with any factual evidence on which Executive Counsel relies. For the avoidance of doubt, factual evidence under Rule 34 does not include witness statements which have been prepared or are to be prepared for the purpose of that witness giving evidence as part of the hearing or other step in the matter.

Deliberations

6. At any stage when the Tribunal needs to deliberate, this must be undertaken in the absence of the Parties. A Convener may attend the Tribunal during their private deliberations.

Convener

7. [This paragraph has been deleted].
8. The Convener will keep a record, or ensure a record is kept, of all decisions made by the Tribunal and the Appeal Tribunal and the reasons for them. Record of Hearing
9. The Tribunal, assisted by the Convener, must ensure all Hearings are recorded in writing or electronic form. Any Party to the proceedings must, on application to the Tribunal, be furnished with a transcript of the record of any part of the Hearing at which he was entitled to be present.
10. The only exception to the above provision is that the private deliberations of the Tribunal must not be recorded.

Witness Evidence

11. A party may not call a person to be a witness unless that party has provided to the other party a written statement of evidence provided by the witness (which includes an attestation and signature by the person making it) in accordance with Case Management Directions unless the Tribunal determines otherwise.¹
12. The Chair or the Tribunal may refuse to allow a witness to give evidence or to give evidence on a particular matter if the Chair or the Tribunal is not satisfied that the witness is in a position to produce relevant testimony or is satisfied that all parts of the evidence that a witness is to provide, or to provide on a particular matter, should have been disclosed to the other party at an earlier stage of the proceedings.
13. The Tribunal may, upon the application of the Party calling a witness, direct any details which may identify that the witness shall not be revealed in public.²
14. Witnesses are required to take an oath, or to affirm, before they give their oral evidence.
15. In accordance with the Case Management Directions, a witness's statement shall stand as their evidence in chief.
16. Witnesses, other than the Respondent:
 - (a) will usually be examined by the Party calling them;
 - (b) may be cross examined;
 - (c) may then be re-examined by the Party calling them;
 - (d) may then be questioned by the Tribunal. Questions from the Tribunal should be concise, relevant and focused. It is not appropriate for Tribunal members to conduct "fishing expeditions" or to rehearse evidence without good reason;
 - (e) the Parties may then question the witness on matters arising out of the Tribunal's questions, with the Party calling the witness given the last opportunity to do so;
 - (f) any further questioning of a witness is to be at the discretion of the Tribunal.
17. The Tribunal may wish to give warnings to witnesses that they should not discuss the case with anyone during any breaks in their evidence and to remind witnesses that they are still under oath when the hearing resumes. This could also include an additional warning to witnesses, once their evidence has concluded, not to discuss their testimony with any witnesses who are still to be called.

¹ Rule 50 of the Audit Enforcement Procedure.

² Rule 54 of Audit Enforcement Procedure.

Special Measures³

18. Where the Chair and/or Tribunal consider that the quality of a witness's evidence is likely to be adversely affected, the Tribunal may adopt such measures as it considers necessary to receive evidence from the witness. This could include: a witness whose first language is not English; a witness with a physical disability who requires assistance to give evidence; a witness who complains of intimidation; a witness who is significantly impaired in relation to intelligence or social functioning; and any witness under the age of 18.
19. Measures adopted by the Tribunal may include, but are not limited to: the use of video links, the use of pre-recorded evidence as the evidence in chief of a witness, provided that the witness is present at the hearing for cross-examination and questioning; and use of interpreters (including signers and translators).

Disruptive Behaviour

20. Rule 71 provides that the Tribunal may exclude any person whose conduct has disrupted or is likely to disrupt proceedings. The Tribunal may permit the person to return, if at all, subject to certain conditions.

Non Attendance of a Witness

21. Where a witness refuses to attend or does not attend without having provided any prior warning of their non-attendance, the reasons for a witness's refusal or non-attendance may need to be investigated and the Tribunal may consider adjourning for a short time while enquiries are made.

Respondent as a Witness

22. The Tribunal may not compel the Respondent to be a witness; the Respondent is entitled to rely on his privilege against self-incrimination. This does not undermine the FRC's power to require the Respondent to provide information in accordance with Schedule 2 of the Statutory Auditors and Third Country Auditors Regulations 2016.
23. Where the Respondent is a witness, they:
 - (a) will usually be examined by the person representing them or, if there is no such person, must be questioned by the Tribunal through the Chair;
 - (b) may then be cross examined;
 - (c) may then be re-examined by the person representing them (if any);³ Rule 57 of the Audit Enforcement Procedure.
 - (d) may then be questioned, with leave of the Chair, by the Tribunal whether or not they are represented.

³ Rule 57 of the Audit Enforcement Procedure.

Non Attendance of the Respondent⁴

24. Where the Respondent has failed to attend a Hearing, the Chair or Tribunal may continue in the Respondent's absence if:
- (a) it is satisfied that notification of the Hearing was properly given; and
 - (b) it is fair in all the circumstances to do so.
25. The Tribunal should demonstrate that it appreciates that the discretion to proceed in the Respondent's absence is to be exercised with a high degree of care and caution.⁵
26. Lord Bingham of Cornhill in the case of *R v Jones (Anthony Williams)*⁶ stated that *"the discretion to commence a trial in the absence of a defendant should be exercised with the utmost care and caution"*. The same judgment provided a helpful list of factors that should be considered before proceeding in the absence of the person.

"Whilst the list was not exhaustive, it provided an invaluable guide. The Court of Appeal had said that in exercising the discretion, fairness to the Defendant was of prime importance, but fairness to the prosecution should also be taken into account. The judge should have regard to all the circumstance, including:

- (a) *The nature and circumstances of the Defendant's behaviour in absenting himself from the trial or disrupting it, and in particular whether the behaviour was voluntary and so plainly waived the right to be present;*
- (b) *whether the adjournment would resolve the matter;*
- (c) *the likely length of such an adjournment;*
- (d) *whether the Defendant, though absent, wished to be represented or had waived his right to representation;*
- (e) *whether the Defendant's representatives were able to receive instructions from him and the extent to which they could present his defence [...];*
- (f) *the extent of the disadvantage to the Defendant in not being able to present his account of events;*
- (g) *the risk of the jury [i.e. the Committee] reaching an improper conclusion about the absence of the Defendant;*
- (h) *the general public interest that a trial should take place within a reasonable time;*
- (i) *the effect of the delay on the memories of witnesses;*
- (j) *where there was more than one defendant, and not all had absconded, the undesirability of having separate trials."*

4 Rule 68 of the Audit Enforcement Procedure.

5 *Raheem v Nursing and Midwifery Council* [2010] EWHC 2549; *Adeogba v GMC* [2014] EWHC 3872 (Admin).

6 [2002] UKHL 5.

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27. The Respondent (who is an individual) may claim ill health as a reason for their non-attendance. The Respondent has the right to be present when the case is put against them and it is wrong for a Tribunal, in the face of unchallenged medical evidence submitted by the Respondent that he/she is not fit to attend a hearing, to proceed in their absence.⁷ However, the mere fact that a Respondent claims illness does not, of itself, require an adjournment of proceedings.⁸
28. [This paragraph has been deleted].

Unrepresented Respondents

29. It should have been identified at an early stage of the proceedings, through agreed Case Management Directions and/or a Case Management Hearing, that a Respondent is or is likely to be unrepresented. It is possible that a case involving an unrepresented Respondent may have more directions than usual to ensure effective case management.
30. The Tribunal should not make assumptions about the merits of the case on the basis that the Respondent has not obtained representation.
31. It may be necessary to provide further explanation on the procedure of a Hearing than in other cases. However, the Tribunal should be mindful of its responsibility to act fairly and judicially to both parties and the possible inadvertent appearance of bias in its communications to the parties.
32. The Tribunal should communicate clearly and avoid legal jargon or abbreviations.
33. [This paragraph has been deleted].
34. [This paragraph has been deleted].
35. [This paragraph has been deleted].
36. [This paragraph has been deleted].
37. [This paragraph has been deleted].
38. [This paragraph has been deleted].
39. [This paragraph has been deleted].
40. [This paragraph has been deleted].
41. [This paragraph has been deleted].
42. [This paragraph has been deleted].

Issued by the Conduct Committee with effect from XX XXXX 2023

⁷ *Brabazon-Denning v UKCC* [2001] 1HRLR 6.

⁸ *Yusuf v RPSGB* [2009] EWHC 867.



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