

8 December 2014

---

# The Actuarial Scheme

The FRC is responsible for promoting high quality corporate governance and reporting to foster investment. We set the UK Corporate Governance and Stewardship Codes as well as UK standards for accounting, auditing and actuarial work. We represent UK interests in international standard-setting. We also monitor and take action to promote the quality of corporate reporting and auditing. We operate independent disciplinary arrangements for accountants and actuaries; and oversee the regulatory activities of the accountancy and actuarial professional bodies.

The FRC does not accept any liability to any party for any loss, damage or costs howsoever arising, whether directly or indirectly, whether in contract, tort or otherwise from any action or decision taken (or not taken) as a result of any person relying on or otherwise using this document or arising from any omission from it.

© The Financial Reporting Council Limited 2014

The Financial Reporting Council Limited is a company limited by guarantee.

Registered in England number 2486368. Registered Office:

8th Floor, 125 London Wall, London EC2Y 5AS

<b>Contents</b>	<i>Page</i>
Scheme .....	1
Interpretation.....	1
The Conduct Committee .....	4
Case Management Committee.....	5
Liability to Investigation and Disciplinary Proceedings .....	5
Decision to Investigate .....	6
Investigation.....	8
Settlement.....	11
Disciplinary Proceedings.....	13
Appeals.....	14
Disciplinary and Appeal Tribunals .....	16
Standard of Proof.....	20
Payments.....	20
Obligations of Members .....	21
Interim Orders.....	22
Proof of Certain Matters .....	24
Legal Representation of Members .....	25
Disclosure of Information .....	25
Transitional Arrangements .....	26
Amendment and Termination of this Scheme.....	26
<b>Appendix 1</b>	
FRC Scheme Schedule of Sanctions .....	27
<b>Appendix 2</b>	
FRC Scheme Schedule of Interim Orders .....	28

## Scheme

- 1(1)** This is the Scheme of the FRC for the Actuarial Profession as amended by the FRC with effect from 8 December 2014.<sup>1</sup>
- 1(2)** To safeguard the public interest, maintain public confidence in the actuarial profession and uphold proper standards of conduct, this Scheme provides a system for:-
- (i) the investigation of Members' conduct in the course of their professional activities (including as a partner, member, director, consultant, agent or employee in or of any organisation or as an individual) or otherwise, including such conduct before they became Members, and
  - (ii) if warranted following such investigation, bringing disciplinary proceedings against Members.
- 1(3)** This Scheme applies to any matter referred to the FRC under paragraph 6(2), or assumed by the Conduct Committee under paragraph 6(8) and to all steps and proceedings arising, directly or indirectly, therefrom or in consequence thereof or in relation thereto.
- 1(4)** Every Member and Former Member shall have the obligations in relation to this Scheme set out in paragraphs 14(1) and 14(2) and such obligations shall apply regardless of the capacity in which he is acting.
- 1(5)** This Scheme is governed by, and shall be construed in accordance with, the laws of England and Wales.

## Interpretation

- 2(1)** In this Scheme, unless inconsistent with the subject or context:-

**Accountancy Scheme** means the Scheme of the Financial Reporting Council for the accountancy profession with such amendment or amendments as may time to time be made thereto.

**Accountancy Member** means a member or member firm as defined in the Accountancy Scheme.

**Adverse Finding** means a finding by a Disciplinary Tribunal that a Member has committed Misconduct, or has failed to comply with any of his obligations under paragraphs 14(1) or 14(2).

**Appeal Tribunal** means a tribunal appointed by the Convener under paragraph 10(7)(ii) to consider an appeal against a decision of a Disciplinary Tribunal, or a Joint Appeal Tribunal appointed by the Convener under paragraph 11(7) (as the context requires).

**Appellant** means a Member who gives or has given notice of appeal under paragraph 10(1).

**conduct** includes efficiency and competence, and includes a failure to act as well as a positive act.

**Case Management Committee** means the Case Management Committee of the FRC.

---

<sup>1</sup> The Scheme was originally adopted by the AADB on 13 September 2007. It was amended with effect from 13 October 2011 and 18 October 2012. It was amended by the FRC on 1 July 2013 and 1 June 2014.

**Conduct Committee** means the Conduct Committee of the FRC established under the articles of association of the FRC.

**Convener** means a person, appointed to that office by the Nominations Committee, who shall be responsible for the appointment of Tribunals under this Scheme and for the appointment of the person for the purposes of paragraph 8(4)(i) or paragraph 10(4).

**Deputy Executive Counsel** means a legally qualified person, appointed to that office by the Nominations Committee.

**Disciplinary Tribunal** means a tribunal appointed by the Convener under paragraph 9(2), or a Joint Disciplinary Tribunal appointed by the Convener under paragraph 11(5) (as the context requires).

**Effective Date** means 13 September 2007.

**employ** includes engage the services of, and **employee** shall be construed accordingly.

**Executive Counsel** means a legally qualified officer of the FRC, appointed to that office by the Nominations Committee. Any references in this Scheme to the Executive Counsel shall also be interpreted as referring to the Deputy Executive Counsel where one or more Deputy Executive Counsel has been appointed.

**FRC** means the Financial Reporting Council Limited, a company limited by guarantee incorporated in England and Wales, number 2486368 and any other body which takes over the functions of the FRC.

**Firm** means a body corporate, a partnership, a limited liability partnership or an unincorporated practice of a sole practitioner.

**Formal Complaint** means:-

- (i) the formal document prepared by the Executive Counsel detailing the allegation or allegations that a Member has committed Misconduct or failed to comply with any of his obligations under paragraphs 14(1) or 14(2);
- (ii) for the purposes of paragraphs 9, 10 and 11 of this Scheme, the Formal Complaint as amended by a decision made for the purposes of paragraph 9(4).

**Former Member** means a person who was a Member at the time of the alleged Misconduct but has ceased to be a Member.

**Group of the Case Management Committee** means a group appointed by the Chairman of the Case Management Committee in accordance with paragraph 7(5) or by the Conduct Committee in accordance with paragraph 8(3).

**Joint Appeal Tribunal** means a tribunal appointed by the Convener under paragraph 11(6) to consider appeals against a decision of a Joint Disciplinary Tribunal.

**Joint Disciplinary Tribunal** means a tribunal appointed by the Convener under paragraph 11(5).

**Joint Tribunal** means a Joint Disciplinary Tribunal or a Joint Appeal Tribunal (as the context requires).

**Member** means:-

- (i) a member of one or more of the Participants, or
- (ii) any other person who is subject to the provisions of the constitution, including regulations made thereunder, of one or more of the Participants in so far as such provisions relate to the systems of discipline and professional conduct, and regulation, operated thereby, or
- (iii) where paragraph 5(6) or 5(7) applies, a Former Member.

**Misconduct** means an act or omission or series of acts or omissions, by a Member in the course of his professional activities (including as a partner, member, director, consultant, agent, or employee in or of any organisation or as an individual) or otherwise, which falls significantly short of the standards reasonably to be expected of a Member or has brought, or is likely to bring, discredit to the Member or to the actuarial profession.

**Nominations Committee** means the Nominations Committee of the FRC.

**Participant** means:-

- (i) the Institute and Faculty of Actuaries (formerly the Institute of Actuaries); or
- (ii) the Faculty of Actuaries in Scotland (prior to its merger on 1 August 2010 with the Institute and Faculty of Actuaries); or
- (iii) any other actuarial body admitted by the FRC to this Scheme.

**Proposed Formal Complaint** means the draft of the Formal Complaint referred to in paragraph 7(10)(ii)(a).

**Regulations** mean regulations made by the Conduct Committee from time to time.

**Representative** means a person who is engaged or requested to represent a Member under investigation or before a Tribunal.

**Proposed Settlement Agreement** means a formal document agreed by Executive Counsel and the Member detailing:

- (i) the particulars of fact and act or acts of misconduct admitted by the Member; and
- (ii) the sanction or sanctions and the reasons therefore; and
- (iii) any costs that the Member will pay to the FRC towards the cost of the investigation, and/or settlement negotiations and/or disciplinary proceedings.

**Settlement Agreement** means a Proposed Settlement Agreement which has been approved by the person appointed in accordance with the provisions of paragraph 8(4) or by the Tribunal in accordance with paragraph 8(5), as the case may be.

**Tribunal** means a Disciplinary Tribunal, an Appeal Tribunal, Joint Disciplinary Tribunal or a Joint Appeal Tribunal (as the context requires).

**Tribunal Panel** means the panel appointed pursuant to paragraph 11(1).

**UK connected company** means:

- (i) any company registered in any part of the United Kingdom, listed in any part of the United Kingdom on a recognised investment exchange for the purposes of the Financial Services and Markets Act 2000 or with an established place of business in any part of the United Kingdom;
- (ii) any company in the same group (as defined in section 1261 of the Companies Act 2006) as such a company;
- (iii) any associate (as defined in section 1260 of the Companies Act 2006) of such a company or such a group company.

**UK connected business** means:

- (i) any sole trader, firm, partnership, or other organisation constituted under the law of any part of the United Kingdom or with an established place of business in any part of the United Kingdom; and
- (ii) any associate (as defined in section 1260 of the Companies Act 2006) of such a sole trader, firm or partnership.

**2(2)** Any reference to a statute includes that statute as amended from time to time; any statute re-enacting or replacing it; and any statutory instruments, regulations or rules made under that statute or any statute re-enacting or replacing it.

**2(3)** Words importing the singular number include the plural and vice versa, and words importing the masculine gender only include the feminine.

**2(4)** In this Scheme, any reference to a "document" shall mean anything in which information of any description is recorded, including but not limited to: electronic documents, including email and other electronic communications; word processed documents and databases; documents stored on portable devices such as memory sticks and mobile phones; documents readily accessible from computer systems and other electronic devices and media; documents stored on servers and back-up systems and electronic documents that have been 'deleted'. It also includes Metadata and other embedded data.

## **The Conduct Committee**

**3** The Conduct Committee shall have power to:-

- (i) make such Regulations for the operation and administration of this Scheme, and thereafter to amend such Regulations from time to time, provided that there shall have been consultation by the Conduct Committee with the Participants prior to any amendments, and provided further that, in the event of any inconsistency between Regulations and this Scheme, the terms of the Scheme shall prevail;
- (ii) provide the Executive Counsel, the Case Management Committee, the Convener and any Tribunal with guidance concerning the exercise of their duties under this Scheme, who shall have regard to any such guidance issued;
- (iii) authorise any Tribunal to employ any person whose services may reasonably be required to assist the Tribunal;
- (iv) authorise the remuneration of the members of any Tribunal, the Convener and any other persons;

- (v) delegate to the Chairman of the Conduct Committee its powers under paragraphs 3(iii) and 3(iv) above; and
- (vi) do all such other things as the Conduct Committee considers incidental or conducive to the operation of this Scheme.

### **Case Management Committee**

- 4(1) The Case Management Committee shall be appointed by the Conduct Committee and shall comprise not more than twelve and not less than six individuals. The persons appointed to the Case Management Committee shall include, but not be limited to, persons having legal, accounting or actuarial expertise and experience.
- 4(2) The Chairman of the Case Management Committee shall be appointed by the Board of the FRC.
- 4(3) The Case Management Committee or a Group of the Case Management Committee shall:
  - (i) monitor the conduct of any investigation and/or disciplinary proceeding and the merits of the approach taken by Executive Counsel;
  - (ii) advise the Executive Counsel of any factors that the Executive Counsel should consider when deciding whether to proceed with a Formal Complaint, including whether it would be in the public interest to proceed with that Formal Complaint;
  - (iii) be entitled to call for and receive any information that it considers necessary to discharge its responsibilities under this Scheme;
  - (iv) advise the Executive Counsel on the appropriateness of settlement discussions; and
  - (v) on request, provide advice to the Conduct Committee or to the Executive Counsel on any matter relating to their respective responsibilities under this Scheme.

### **Liability to Investigation and Disciplinary Proceedings**

- 5(1) A Member shall be liable to investigation under this Scheme only where, in the opinion of the Conduct Committee:-
  - (i) (a) the matter raises or appears to raise important issues affecting the public interest in the United Kingdom (“the first criterion”); and
  - (b) there are reasonable grounds to suspect that there may have been Misconduct (“the second criterion”); or
  - (ii) it appears that the Member has failed to comply with any of his obligations under paragraphs 14(1) or 14(2) below.
- 5(2) In deciding whether a matter satisfies the first criterion, the Conduct Committee shall, amongst other things, consider whether it appears to give rise to serious public concern or to damage public confidence in the actuarial profession in the United Kingdom. The Conduct Committee shall also be entitled to consider all the circumstances of the matter including, but not limited to, its nature, extent, scale and gravity.

- 5(3)** In considering whether there are reasonable grounds to suspect that there may have been Misconduct by a Member, regard shall be had in particular to any law, whether statutory or otherwise, or regulation of any sort, and to any charter, bye-law, rule, regulation or guidance of any of the Participants or any guidance or standard of the FRC .
- 5(4)** A Member shall be liable to disciplinary proceedings under this Scheme if, following an investigation, the Executive Counsel considers:
- (i) that there is a realistic prospect that a Disciplinary Tribunal will make an Adverse Finding against a Member; and
  - (ii) that a hearing is desirable in the public interest.
- 5(5)** A Member shall only be liable to investigation and/or disciplinary proceedings under this Scheme if he is, when a Formal Complaint is delivered to the Conduct Committee under paragraph 7(11), or was, at the time of any alleged Misconduct:-
- (i) a citizen or subject of the United Kingdom; or
  - (ii) working in the United Kingdom; or
  - (iii) working in or involved in providing services to a UK-connected company or UK-connected business.
- 5(6)** A Member will be liable to investigation and disciplinary proceedings under this Scheme:
- (i) regardless of whether the alleged Misconduct took place before or after the Effective Date; and
  - (ii) regardless of whether he was a Member at the time of the alleged Misconduct.
- 5(7)** A Former Member will be liable to investigation and disciplinary proceedings under this Scheme as if he were a Member.
- 5(8)** If a Participant ceases to be a Participant at a time when any investigation or proceedings under this Scheme are proceeding against one of their Members, then for the purpose of the application of the provisions of this Scheme to that investigation or proceedings (to its conclusion, up to and including any appeal and the enforcement of any order of a Tribunal), the former Participant shall be regarded and treated for the purposes of this Scheme as if it remained a Participant.

### **Decision to Investigate**

- 6(1)** An investigation under this Scheme may be instituted in either of the circumstances described in paragraphs 6(2) and 6(8).
- 6(2)** Where a Participant:-
- (i) receives a complaint regarding one or more of its Members alleging misconduct and/or becomes aware of a matter in which it appears that there may have been misconduct by one or more of its Members; and
  - (ii) considers that the matter raises or appears to raise important issues affecting the public interest in the United Kingdom; and

- (iii) is satisfied that no disciplinary proceedings (going beyond an investigation) have been instituted by a Participant in relation to the conduct in question;

the Participant shall refer that matter to the FRC and request the Conduct Committee to institute an investigation. Such a request from a Participant may be published by the Conduct Committee if it thinks fit, unless this would not, in the opinion of the Conduct Committee, be in the public interest. In the event that a Participant is in doubt as to whether a particular matter should be referred to the FRC, the Participant shall consult with the Conduct Committee for guidance.

- 6(3)** Upon receipt of a reference pursuant to paragraph 6(2), the Conduct Committee shall, as soon as is reasonably practicable and ordinarily within two months of the date of the reference, decide whether to accept or decline the reference.
- 6(4)** The decision of the Conduct Committee to accept or decline the reference shall depend on whether, in its opinion, the criteria at paragraph 5(1), taking account of the considerations in paragraph 5(2), are met in relation to the matter referred.
- 6(5)** Where the Conduct Committee decides to accept a reference made pursuant to paragraph 6(2), it shall, within fourteen days thereafter, give notice in writing of its decision to the Participants.
- 6(6)** If, in the opinion of the Conduct Committee, it is appropriate that the matters that form the subject of the investigation should extend beyond those contained within the reference from the Participant, or that any matters contained within the reference from the Participant should be excluded from the investigation, the Conduct Committee may decide either to include or exclude any such matters from the investigation as appropriate.
- 6(7)** Where the Conduct Committee decides to decline a reference made pursuant to paragraph 6(2) it:-
  - (i) shall give notice in writing of its decision and the reasons for it to the relevant Participant within fourteen days; and
  - (ii) may, if it thinks it appropriate to do so, publish its decision.
- 6(8)** Where a Participant is conducting an investigation into the conduct of a Member of which the Conduct Committee is aware, or the Conduct Committee otherwise becomes aware of matters relating to the conduct of a Member, and in either case the Conduct Committee is of the opinion that the criteria at paragraph 5(1), taking account of the considerations in paragraph 5(2), have been met, the Conduct Committee may decide that the matter shall be dealt with by the FRC in accordance with this Scheme.
- 6(9)** Where the Conduct Committee decides, pursuant to paragraph 6(8), that a matter should be dealt with by the FRC it shall give notice in writing of its decision and the reasons for it to the Participants. Upon receipt of such notice, the relevant Participant shall forthwith suspend any investigation relating to the matter on its part. Where the Conduct Committee decides, pursuant to paragraph 6(8), that it is not appropriate for the matter to be dealt with by the FRC in accordance with this Scheme, it shall advise the relevant Participant of that decision, giving its reasons, so that that Participant can decide whether it should investigate, or continue to investigate, that matter.

- 6(10)** Where the Conduct Committee considers that it has insufficient information about a matter to determine whether a Member is liable to investigation under paragraph 5(1):-
- (i) it may direct the Executive Counsel to make preliminary enquiries for the purpose provided for in this Scheme before deciding whether or not the matter should be investigated; and
  - (ii) it shall inform the relevant Participant where any direction is made to the Executive Counsel at (i) above; and
  - (iii) where a matter has also been referred to the FRC pursuant to paragraph 6(2), the time in which the Conduct Committee shall be required to decide whether or not to investigate the matter for the purposes of paragraph 6(3) shall be extended by such period as shall be reasonable for the required preliminary enquiries to be carried out.

## **Investigation**

- 7(1)**
- (i) For the purposes of exercising its powers under paragraph 6, the Conduct Committee and the Executive Counsel on its behalf, has power to require any Participant to provide to the Executive Counsel such documents or other information in its possession, or under its control, as the Conduct Committee or the Executive Counsel, as the case may be, shall reasonably think fit and as the Participant can lawfully provide.
  - (ii) The power in paragraph 7(1)(i) shall include the power to require the Participant to:-
    - (a) permit the inspection and taking of copies of the documents or other information; and
    - (b) supply copies of such documents or other information at its own expense to the extent that it is reasonable in all the circumstances.
- 7(2)** Where a reference is accepted by the Conduct Committee under paragraph 6(3):-
- (i) the scope of the investigation shall be set out within the notice given by the Conduct Committee referred to in paragraph 6(5);
  - (ii) in accordance with paragraph 6(6), the scope shall not be restricted to the matters referred by the Participant under paragraph 6(2) and shall include or exclude any issues relating to the matter as the Conduct Committee shall see fit;
  - (iii) the relevant Participant shall supply to the Conduct Committee any documents or other information which are in the possession, or under the control, of that Participant which may reasonably be required for the purposes of the investigation and which the Participant can lawfully provide.
- 7(3)** Where the Conduct Committee decides under paragraph 6(8) that a matter shall be dealt with by the FRC in accordance with this Scheme:-
- (i) the scope of the investigation shall be set out within the notice given by the Conduct Committee pursuant to paragraph 6(9); and

- (ii) the relevant Participant shall supply to the Conduct Committee any documents or other information which is in the possession, or under the control, of that Participant which may reasonably be required for the purposes of the investigation and which the Participant can lawfully provide.

**7(4)** In either case identified at paragraphs 7(2) and 7(3), the Conduct Committee:-

- (i) shall provide a copy of the notice to the Case Management Committee and a copy, together with any material obtained pursuant to paragraphs 7(2)(iii) or 7(3)(ii), to the Executive Counsel to be dealt with in accordance with this Scheme;
- (ii) shall inform the Member concerned of its decision to refer his conduct for investigation by Executive Counsel and provide the Member concerned with relevant details of the scope of the investigation; and
- (iii) may, if it thinks it appropriate to do so, publish the fact of its decision to investigate.

**7(5)** Upon receipt of the notice sent in accordance with paragraph 7(4)(i), the Chairman of the Case Management Committee shall appoint at least three of its members to form a Group of the Case Management Committee to perform the functions set out in paragraph 4(3)(i) and (ii) in relation to the investigation and/or disciplinary proceedings.

**7(6)** Upon receipt of the documents provided pursuant to paragraph 7(4)(i) the Executive Counsel shall conduct an investigation into the matter, and shall enquire into such facts and circumstances as the Executive Counsel considers necessary to fulfil the scope of the investigation set out by the Conduct Committee. In conducting that investigation, the Executive Counsel shall have regard to, but not be bound by, the views expressed and the advice given by the Case Management Committee or the Group of the Case Management Committee.

**7(7)** The Executive Counsel shall have power on behalf of the FRC to employ any person whose services may reasonably be required to assist the Executive Counsel for the purposes of conducting the preliminary enquiries, investigation or subsequent disciplinary or appeal proceedings.

**7(8)** (i) If, in the course of an investigation, the Executive Counsel discovers facts or circumstances which appear to warrant investigation but to be outside the scope of the investigation set out by the Conduct Committee then:-

- (a) the Executive Counsel shall report those facts and circumstances to the Conduct Committee; and
- (b) the Conduct Committee may direct that the scope of the Executive Counsel's investigation shall include such facts or circumstances and shall inform the relevant Participant(s) and the Members concerned accordingly.

(ii) If, in the course of an investigation, the Executive Counsel considers that the scope of that investigation, as set out by the Conduct Committee under paragraph 7(2) or 7(3) of the Scheme (and whether or not already amended in accordance with paragraph 7(8)(i) above) should be narrowed, then:-

- (a) the Executive Counsel shall report to the Conduct Committee with his reason(s) for considering that the scope should be so narrowed; and

(b) the Conduct Committee may direct that the scope of the Executive Counsel's investigation shall be narrowed and shall inform the relevant Participant(s) and the Members concerned accordingly.

(iii) Where the Conduct Committee directs either under paragraph 7(8)(i)(b) or 7(8)(ii)(b) that the scope of the Executive Counsel's investigation shall be amended, the Conduct Committee may if it thinks fit publish its direction, unless this would not, in the opinion of the Conduct Committee, be in the public interest.

**7(9)** (i) If, in the course of an investigation, it appears to the Executive Counsel that the scope of the investigation needs to be amended to include the conduct of a further Member, then:-

(a) the Executive Counsel shall report the facts and matters relied upon to the Conduct Committee; and

(b) the Conduct Committee may direct that the scope of the Executive Counsel's investigation shall include the conduct of such further Member and shall inform the relevant Participant and the further Member concerned accordingly.;

(iv) Where the Conduct Committee directs under paragraph 7(9)(i)(b) that the scope of the Executive Counsel's investigation shall be amended to include the conduct of such further Member the Conduct Committee may, if it thinks fit, publish its decision unless this would not, in the opinion of the Conduct Committee, be in the public interest.

**7(10)** (i) If, following his investigation, the Executive Counsel considers that:-

(a) there is a realistic prospect that a Disciplinary Tribunal will make an Adverse Finding against a Member; and

(b) a hearing is desirable in the public interest,

the Executive Counsel shall notify the Member concerned of his intention to deliver a Formal Complaint to the Conduct Committee.

(ii) The notice sent in accordance with paragraph 7(10)(i) shall:

(a) be accompanied by a draft of the Formal Complaint that he proposes to deliver to the Conduct Committee; and

(b) invite the Member to make written representations to him within the period of eight weeks from the date on which the notice is sent to the Member.

(iii) The Executive Counsel may, in his absolute discretion, extend the time limit for the Member to make written representations.

**7(11)** If the Executive Counsel:

(i) having reviewed any representations received for the purposes of paragraph 7(10), still considers that:-

- (a) there is a realistic prospect that a Disciplinary Tribunal will make an Adverse Finding against a Member; and
  - (b) a hearing is desirable in the public interest; or
- (ii) has not received any representations from the Member within the period specified in the notice sent under paragraph 7(10)(ii), or as extended under paragraph 7(10)(iii),

he shall deliver a Formal Complaint against the Member to the Conduct Committee.

**7(12)** Notwithstanding any settlement discussions that the Executive Counsel may initiate under paragraph 8, a Member may, either voluntarily or at the invitation of the Executive Counsel at any stage of the investigation, make an admission in respect of any alleged particulars of fact, any alleged Misconduct or any alleged failures to comply with his obligations under paragraphs 14(1) or 14(2) and such admissions, if accepted by the Executive Counsel, shall constitute proof before a Disciplinary Tribunal against the Member making the admission.

**7(13)** The Executive Counsel shall, if such an admission is made prior to a Formal Complaint being delivered to the Conduct Committee, prepare and deliver to the Conduct Committee with the Formal Complaint a statement of agreed facts. Such statement of agreed facts must be signed by the Executive Counsel and the Member concerned and give sufficient particulars to enable the admissions to be properly understood.

**7(14)** If at any stage during or following an investigation, the Executive Counsel considers:-

- (i) that there is no realistic prospect that a Tribunal will make an Adverse Finding against a Member; or
- (ii) a hearing is not desirable in the public interest;

he shall inform the Conduct Committee of his decision, together with the reasons for that decision, and the Conduct Committee shall notify the Member and the Participants of the decision.

**7(15)** The Conduct Committee shall publish the outcome of the Executive Counsel's investigation as soon as practicable and in such manner as it thinks fit, unless this would not, in the opinion of the Conduct Committee, be in the public interest.

## **Settlement**

**8(1)** At any time after the commencement of an investigation or after the delivery of a Formal Complaint and prior to the final determination of a Formal Complaint:-

- (i) the Executive Counsel, at his sole discretion, and having regard to the public interest, may enter into settlement discussions (whether initiated by the Executive Counsel or by the Member involved) in accordance with the terms of this Scheme; and
- (ii) the Executive Counsel shall advise the Chairman of the Case Management Committee of the commencement of such settlement discussions.

**8(2)** Where, following settlement discussions, terms of a settlement are agreed between the Executive Counsel and the Member:-

- (i) prior to the delivery of a Formal Complaint, the Executive Counsel shall deliver a Proposed Settlement Agreement to the Conduct Committee;
  - (ii) after delivery of a Formal Complaint, the Executive Counsel shall deliver a Proposed Settlement Agreement to the Tribunal to which the determination of that Formal Complaint has been allocated.
- 8(3)** Where terms of a settlement are not agreed between the Executive Counsel and the Member, the Executive Counsel shall proceed to take the steps at paragraphs 7(10) and 7(11).
- 8(4)** Upon receipt of a Proposed Settlement Agreement prior to the delivery of a Formal Complaint:
- (i) the Conduct Committee shall send a copy of the Proposed Settlement Agreement to the Convener who shall as soon as practicable appoint a person from the Tribunal Panel to consider the Proposed Settlement Agreement. That person shall be a lawyer (a current or former member of the judiciary, a barrister, an advocate or a solicitor). The Convener shall provide the Conduct Committee with details of the person appointed and notify Executive Counsel and each Member concerned.
  - (ii) The person appointed under paragraph 8(4)(i) shall determine whether it would be appropriate for the Proposed Settlement Agreement to be entered into having regard to the purpose for which the Scheme has been established as set out in paragraph 1(2) and to any guidance issued by the Conduct Committee under paragraph 3 (ii).
  - (iii) As soon as reasonably practicable, the person appointed under paragraph 8(4)(i) shall inform the Conduct Committee of his decision, together with the reasons for that decision, and the Conduct Committee shall notify the Executive Counsel, the Member and the relevant Participant(s) of the decision and the reasons therefore.
  - (iv) Where approved, the Settlement Agreement shall take effect from the next working day after the date on which the notice under paragraph 8(4)(iii) is sent to the Member.
- 8(5)** Upon receipt of a Proposed Settlement Agreement after delivery of a Formal Complaint, the Tribunal to which the determination of that Formal Complaint has been allocated shall take such steps as it considers necessary to determine whether it would be appropriate for the Proposed Settlement Agreement to be entered into having regard to the purpose for which the Scheme has been established as set out in paragraph 1(2) and to any guidance issued by the Conduct Committee under paragraph 3(1)(ii). As soon as reasonably practicable, the Tribunal shall advise the Conduct Committee of its decision. The Conduct Committee shall inform the Executive Counsel, the Member and the relevant Participant(s) of the Tribunal's decision. Where approved, the Settlement Agreement shall take effect from the next working day after the date on which notice of the decision is given to the Member in accordance with this paragraph.
- 8(6)** Any Settlement Agreement shall be published by the Conduct Committee as soon as practicable and in such manner as it thinks fit unless this would not, in the opinion of the Conduct Committee, be in the public interest.

## **Disciplinary Proceedings**

- 9(1)** Where the Executive Counsel delivers to the Conduct Committee a Formal Complaint in accordance with paragraph 7(11) or paragraph 14(3), the Conduct Committee shall serve the Formal Complaint on the Member concerned and shall, as soon as practicable, send a copy of the Formal Complaint to the Convener.
- 9(2)** The Convener shall, as soon as practicable following receipt of the Formal Complaint, appoint a Disciplinary Tribunal to hear the Formal Complaint in accordance with the provisions of this Scheme and provide the Conduct Committee with details of the Disciplinary Tribunal appointed and notify Executive Counsel and each Member concerned.
- 9(3)** Subject to this Scheme, the procedure adopted by a Disciplinary Tribunal to deal with any Formal Complaint shall be in accordance with the Regulations.
- 9(4)** The Disciplinary Tribunal may amend the Formal Complaint either before or during the hearing subject to the requirements of a fair hearing and in the interests of justice.
- 9(5)** A Member may, either voluntarily or at the invitation of the Disciplinary Tribunal or the Executive Counsel at any stage during a hearing before a Disciplinary Tribunal make an admission in respect of any alleged particulars of fact, any alleged Misconduct or any alleged failures to comply with his obligations under paragraphs 14(1) or 14(2) and such admissions shall constitute proof before a Disciplinary Tribunal against the Member making the admission.
- 9(6)** In coming to a decision the Disciplinary Tribunal may take into account any relevant evidence, whether or not such evidence would be admissible in a court. The Disciplinary Tribunal will at all times apply the rules of natural justice.
- 9(7)** After hearing the Formal Complaint, the Disciplinary Tribunal shall, in relation to the Member who is the subject of the Formal Complaint, either:-
- (i) make an Adverse Finding in respect of some or all of the alleged Misconduct or failures to comply with the Member's obligations under paragraphs 14(1) or 14(2) forming the subject matter of the Formal Complaint, or
  - (ii) dismiss the Formal Complaint.
- 9(8)** Where the Disciplinary Tribunal makes an Adverse Finding in relation to a Member then:-
- (i) it may order such sanctions against the Member as are contained within the schedule of sanctions at Appendix 1 to this Scheme as it considers appropriate;
  - (ii) in addition to the sanctions at Appendix 1 to this Scheme, any order made pursuant to paragraph (i) above, may include an order that the Member be required to pay, in the manner set out in paragraph 13, the whole or part of the costs of, and incidental to, the investigation and the hearing of the Formal Complaint before the Disciplinary Tribunal. The amount to be paid by the Member shall be determined by the Disciplinary Tribunal. In considering any such application the Disciplinary Tribunal shall have no regard to any settlement discussions or proposals or offers; and
  - (iii) the Tribunal may make no order against the Member, or no order except for the payment of costs, if it considers that to be appropriate in all the circumstances.

- 9(9)** Where the Disciplinary Tribunal dismisses the Formal Complaint it may, on the application of a Member, order that the FRC pay a specified sum in respect of legal costs that were reasonably incurred by the Member subsequent to the Formal Complaint being served on the Member.
- 9(10)** The Disciplinary Tribunal's discretion to award costs to a Member concerned pursuant to paragraph 9(9) shall be restricted to circumstances where the Tribunal finds that no reasonable person would have delivered or pursued all or a substantial part of a Formal Complaint under the terms of this Scheme. In considering any such application the Disciplinary Tribunal shall have no regard to any settlement discussions or proposals or offers.
- 9(11)** (i) The Disciplinary Tribunal shall make a report, which shall be signed by its Chairman, setting out its decision and reasons and any related orders made pursuant to paragraphs 9(7), 9(8) and 9(9) and send it to the Conduct Committee.
- (ii) The Conduct Committee shall send a copy of the Disciplinary Tribunal's report to any Member concerned, the Executive Counsel, and the relevant Participant.
- 9(12)** (i) Unless the Disciplinary Tribunal shall otherwise decide, an Adverse Finding in relation to a Member and any order under paragraph 9(8) against a Member shall take effect 29 days after the date on which the finding or order is notified to the Member.
- (ii) Notwithstanding paragraph 9(12)(i), the Disciplinary Tribunal shall decide the extent to which the order shall apply even if the Member appeals against the order provided that the Disciplinary Tribunal considers that that is necessary in the public interest. To the extent to which the order does not apply, it shall be suspended in the event of a notice of appeal being lodged under paragraph 10(1).
- (iii) If the person appointed under paragraph 10(4) refuses leave to appeal, the order shall take effect from the date notification of that refusal is sent to the proposed Appellant.
- 9(13)** The Conduct Committee shall publish the report or reports prepared by the Disciplinary Tribunal for the purposes of paragraph 9(11) as soon as practicable and in such manner as it thinks fit unless this would not, in the opinion of the Conduct Committee, be in the public interest.

## **Appeals**

- 10(1)** If the Disciplinary Tribunal makes an Adverse Finding in relation to any Member, with or without any order under paragraph 9(8), then subject to paragraph 10(2) the Member may, within 28 days after the date on which the Adverse Finding and any order are notified to him give to the Conduct Committee notice of appeal against the finding and/or order.
- 10(2)** An appeal under paragraph 10(1) against a decision of the Disciplinary Tribunal can be made only on the following grounds:-
- (i) that the decision of the Disciplinary Tribunal was perverse or wrong in law; and/or
- (ii) that there was injustice because of a serious procedural or other irregularity in the proceedings before the Disciplinary Tribunal; and/or

- (iii) that significant and relevant new evidence has come to light which was not previously available to the Appellant and could not have become available to him or it on the making of reasonable enquiry; and/or
- (iv) that the sanction imposed pursuant to paragraph 9(8) was manifestly unreasonable.

**10(3)** Any notice of appeal shall:-

- (i) be in writing;
- (ii) identify the finding and/or order appealed against; and
- (iii) state the grounds of appeal.

Neither the scope of the appeal nor the grounds so stated shall be amended or changed except with the leave of the Appeal Tribunal appointed to hear the appeal.

**10(4)** Upon receipt of a notice of appeal, the Conduct Committee shall send the notice of appeal to the Convener who shall as soon as practicable appoint a person from the Tribunal Panel to consider whether to give leave to appeal. That person shall be a current or former member of the judiciary or a Queen's Counsel, and shall not sit on any subsequent Appeal Tribunal in connection with the case. The Convener shall provide the Conduct Committee with details of the person appointed and notify Executive Counsel and each Member concerned.

**10(5)** If the notice of appeal was not given to the Conduct Committee within the 28 day period set out in paragraph 10(1), the person appointed under paragraph 10(4) shall refuse leave to appeal unless there are good reasons for giving leave to appeal out of time.

**10(6)** Unless the person appointed under paragraph 10(4) has refused leave to appeal under paragraph 10(5), he shall give leave to appeal if he is satisfied that there is an arguable case for appeal on one or more of the grounds set out in paragraph 10(2).

**10(7)** (i) Following his decision to give leave to appeal under paragraph 10(6), or to refuse leave to appeal, the person appointed under paragraph 10(4) shall notify the Conduct Committee and provide reasons in writing for his decision and the Conduct Committee shall notify each Member concerned, the Executive Counsel, the relevant Participant and the Convener; and

- (ii) if the person appointed under paragraph 10(4) gives leave to appeal, the Convener shall, as soon as practicable, appoint an Appeal Tribunal to hear the appeal in accordance with the provisions of this Scheme and provide the Conduct Committee with details of the Appeal Tribunal appointed and notify the Executive Counsel and each Member concerned.

**10(8)** Subject to this Scheme, the procedure adopted by an Appeal Tribunal to deal with any appeal shall be in accordance with the Regulations.

**10(9)** A Member may, either voluntarily or at the invitation of the Appeal Tribunal or the Executive Counsel at any stage of the appeal make an admission in respect of any alleged particulars of fact, any alleged Misconduct or any alleged failures to comply with his obligations under paragraphs 14(1) or 14(2) and such admissions shall constitute proof before an Appeal Tribunal against the Member making the admission.

- 10(10)** In coming to its decision the Appeal Tribunal may take into account any relevant evidence, whether or not such evidence would be admissible in a court. The Appeal Tribunal will at all times apply the rules of natural justice.
- 10(11)** An appeal shall be by way of a review only and not by way of a rehearing, providing always that the Appeal Tribunal shall hear evidence adduced pursuant to paragraph 10(2)(iii). Subject to the above, the Appeal Tribunal shall have in relation to an appeal all the powers of the Disciplinary Tribunal as set out in paragraph 9(8).
- 10(12)** On an appeal the Appeal Tribunal shall have power to:-
- (i) affirm, vary, substitute or rescind any Adverse Findings or orders of the Disciplinary Tribunal in relation to or against any Appellant, save that the Appeal Tribunal may not exercise its powers to impose a greater penalty than that imposed by the Disciplinary Tribunal so that, taking the case as a whole, save as to costs, the Appellant is not more severely dealt with on appeal than he or it was dealt with by the Disciplinary Tribunal;
  - (ii) if it is of the view that it is necessary in the interests of justice to do so in the light of the new evidence adduced pursuant to paragraph 10(2)(iii), order that the matter be reheard by the Disciplinary Tribunal which made the relevant Adverse Findings or orders or failing that by a fresh Disciplinary Tribunal;
  - (iv) order that any Appellant be required to pay, in the manner set out in paragraph 13 below, the whole or part of the costs of, and incidental, to the appeal, the amount to be so paid to be as determined by the Appeal Tribunal.
- 10(13)** The Appeal Tribunal shall make a report, which shall be signed by its Chairman, setting out its decision and reasons and any related orders made pursuant to paragraph 10(12) and send it to the Conduct Committee which shall then send a copy to the Member concerned, the Executive Counsel, and the relevant Participant(s).
- 10(14)** A decision of the Appeal Tribunal shall take effect from the next working day after the date on which the Appeal Tribunal's report is sent to the Member.
- 10(15)** At any time before the Appeal Tribunal gives its decision in respect of the appeal of an Appellant in accordance with paragraph 10(14), such Appellant may withdraw his appeal by notice in writing to the Appeal Tribunal. Thereupon, the Appeal Tribunal shall affirm the Adverse Findings and/or orders of the Disciplinary Tribunal in relation to or against the Appellant, which are the subject of the appeal and may make an order under paragraph 10(12)(iii) in relation to the whole or part of the costs of and incidental to the appeal.
- 10(16)** The Conduct Committee shall publish the report sent to it by the Appeal Tribunal pursuant to paragraph 10(13) as soon as practicable and in such manner as it thinks fit unless this would not, in the opinion of the Conduct Committee, be in the public interest.

## **Disciplinary and Appeal Tribunals**

- 11(1)** (i) The Nominations Committee shall from time to time appoint not less than four (4) individuals (all of whom shall be independent of the Conduct Committee) to form an appointment committee to appoint individuals (having the appropriate qualifications and experience to sit on a Tribunal) to be members of the Tribunal Panel. The appointment committee shall include at least one lawyer (whether judge, barrister or solicitor), one accountant and one actuary (neither of whom shall be in practice).

- (ii) Appointment to the Tribunal Panel shall be for an initial period of at least three years and the terms of appointment shall be as set out in the Regulations.

**11(2)** Subject to paragraph 11(8), a Tribunal shall be appointed from the Tribunal Panel by the Convener and shall be composed as follows:-

- (i) Each Tribunal shall consist of either three or five persons as the Conduct Committee in its absolute discretion thinks fit.
- (ii) The Chairman of a Disciplinary Tribunal must be a lawyer (a current or former member of the judiciary, a barrister, an advocate or a solicitor). The Chairman of an Appeal Tribunal must be a current or former member of the judiciary or a Queen's Counsel.
- (iii) A three-person Tribunal must comprise in addition to the Chairman:-
  - (a) a person who is neither a lawyer nor an actuary; and
  - (b) an actuary.
- (v) A five-person Tribunal must include in addition to the Chairman:-
  - (a) at least one person who is neither a lawyer or an actuary; and
  - (b) two (but no more than two) actuaries.
- (v) Each actuary appointed to a Tribunal shall be a Member.
- (vi) No serving member of the governing body of, or any officer or employee of, any of the Participants shall be appointed as a Convener or to a Tribunal. However, former members of the governing bodies and former officers or employees of Participants shall not be precluded from such appointment provided that at least two years has elapsed since the termination of the appointment or employment.
- (vii) No person who is a member, director or officer of the FRC, or of any subsidiary company of the FRC, or a member appointed to any committee of the FRC, or any subsidiary company of the FRC, shall be appointed as a Convener or to a Tribunal. A former member, board or committee member, director or officer as aforesaid shall not be precluded from such appointment provided that at least two years has elapsed since the termination of the appointment or employment.
- (viii) No person who has been concerned with the investigation or the proceedings before a Tribunal shall be appointed to that Tribunal and no person who has been appointed to a Disciplinary Tribunal shall be appointed to an Appeal Tribunal convened to consider an appeal from that Disciplinary Tribunal.

**11(3)** Subject to paragraph 11(2), if more than one Disciplinary Tribunal is appointed to hear Formal Complaints arising out of the same matter, any of the members appointed to one of the Disciplinary Tribunals may be appointed to the other or others.

**11(4)** Where there are two or more notices of appeal against Adverse Findings and/or orders made by the same Disciplinary Tribunal, the Convener may appoint the same Appeal Tribunal to hear some or all of the appeals. Subject to paragraph 11(2), if more than one

Appeal Tribunal is appointed to hear appeals against Adverse Findings and/or orders which are in any way connected or associated, any of the members appointed to one Appeal Tribunal may be appointed to the other or others.

### ***Joint Tribunal***

**11(5)** Where the Executive Counsel has delivered a Formal Complaint under the Accountancy Scheme and a Formal Complaint under this Scheme, and:

- (i) there is a common question of law or fact; or
- (ii) the acts or omissions which form the subject matter of the Formal Complaints arise wholly or in part out of the same event or events; or
- (iii) there is a compelling reason in the opinion of the Conduct Committee why the Formal Complaints should be heard by a Joint Tribunal

the Conduct Committee may instruct the Convener to appoint a Joint Disciplinary Tribunal under this Scheme and the Accountancy Scheme to hear the Formal Complaints together.

**11(6)** The Chairman of the Joint Tribunal may direct either on his own initiative or upon reading or hearing the representations of one or more of the parties that the Formal Complaints under joint consideration should be considered separately if:

- (i) it is not desirable for the Formal Complaints to be heard together in the circumstances; and/or
- (ii) a Joint Tribunal would be inconsistent with dealing with the matter justly and at proportionate cost.

Where the Chairman of the Joint Disciplinary Tribunal decides to hear the Formal Complaints separately, the Chairman shall notify the Conduct Committee of his decisions and the reasons therefore. Where the Chairman of the Joint Tribunal rejects a parties' application to hear the Formal Complaints separately he shall give reasons.

**11(7)** Where there are two or more notices of appeal against one or more Adverse Findings and/or orders made by the same Joint Disciplinary Tribunal by a Member under this Scheme and an Accountancy Member, the Conduct Committee may instruct the Convener to appoint a Joint Appeal Tribunal under this Scheme and the Accountancy Scheme to hear some or all of the appeal[s] together.

**11(8)** A Joint Tribunal shall be appointed by the Convener from the Tribunal Panel. A Joint Tribunal shall consist of five persons the majority of whom shall be lay, that is being a person who is neither an accountant nor an actuary and must include in addition to the Chairman:-

- (i) one (but not more than one) accountant;
- (ii) one (but not more than one) actuary.

and paragraph 11(2)(iv)(b) shall not apply.

**11(9)** A Joint Tribunal may only make such orders against an Accountancy Member as are provided for within the Accountancy Scheme.

- 11(10)** Subject to the provisions of this Scheme, at any time before the hearing of a Formal Complaint or an appeal, the Chairman of the relevant Tribunal shall give such pre-hearing directions as are necessary or desirable for securing the just, expeditious and economical disposal of the Formal Complaint or appeal.
- 11(11)** A session of a hearing shall be postponed if (whether by reason of incapacity or otherwise):-
- (i) the Chairman is unable to be present; or
  - (ii) there shall not be present at least three members of the Tribunal; or
  - (iii) there shall not be amongst members of the Tribunal present at least one lawyer, one actuary and one lay person who is neither a lawyer nor an actuary.
- 11(12)(i)** If a session of a hearing can and does proceed in the absence of a Tribunal member, that member shall not participate in any further sessions or consideration of the matter and shall cease to be a member of the Tribunal.
- (ii) If a session is postponed pursuant to paragraph 11(10), or if for any other reason any of the Tribunal members may not be able to attend any session, and it appears to the members of the Tribunal that the facts resulting in the postponement will not change or may result in an unreasonable delay in the conduct of a hearing, this shall be reported to the Conduct Committee which shall consider whether in all the circumstances it would be appropriate and consistent with ensuring a fair hearing of the matter to appoint a new Chairman, a new Tribunal member or a new Tribunal (as appropriate).
  - (iii) In any such case where the Conduct Committee decides that it would be appropriate and consistent with ensuring a fair hearing of the matter, the Convener shall appoint a new Chairman, Tribunal member or Tribunal (as appropriate). In the case of the appointment of a new Tribunal, any of the members of the original Tribunal may be appointed to the new Tribunal.
  - (iv) The Convener shall provide the Conduct Committee with details of any new Chairman, Tribunal Member, or Tribunal (as appropriate) and notify Executive Counsel and each Member concerned.
- 11(13)(i)** Save as provided for in paragraph 11(6) and 11(10), any matter to be decided by a Tribunal shall be decided by a majority of votes.
- (ii) No member of a Tribunal may abstain from voting on any issue before the Tribunal.
  - (iii) Where the Tribunal has cast an even number of votes in respect of their determination of:
    - (a) whether to make an Adverse Finding, then no Adverse Finding shall be made;
    - (b) whether to make an award of costs under paragraph 9(9), then no award of costs shall be made.
  - (iv) Where the Tribunal has cast an even number of votes in respect of any other issue, the Chairman shall have a second vote.

**11(14)** The Tribunal shall sit in public but shall have an absolute discretion to exclude the public (including the press) from all or part of the hearing to the extent it considers necessary where, in the opinion of the Tribunal, the circumstances are such that publicity would prejudice the interests of justice.

**11(15)(i)** The Executive Counsel shall act as complainant (before a Disciplinary Tribunal) and respondent (before an Appeal Tribunal) and shall bring evidence against the Member in respect of the subject matter of the Formal Complaint or appeal before the Tribunal.

(ii) Every Tribunal shall give any Member the subject of a Formal Complaint before it a reasonable opportunity to hear the evidence against him, to cross-examine witnesses called by the Executive Counsel, to call witnesses and lead evidence in his defence and to make representations orally or in writing to the Tribunal.

(iii) Any such Member shall be entitled to be represented by a Representative at all hearings of the Tribunal.

(iv) Any witness called by the Member, including the Member, may be cross-examined by the Executive Counsel.

**11(16)** The Tribunal may decide any issue of fact or law and draw any inference of fact which it considers is supported by the evidence.

**11(17)** The Tribunal shall exclude from a hearing any evidence

(i) obtained in the course of settlement negotiations between the Executive Counsel and the parties to the matter save where a separate admission is made in accordance with paragraphs 9(5) or 10(9) above; and

(ii) which, in its opinion, it is necessary to exclude in order to:-

a) ensure fairness between the parties; and

b) preserve the interests of justice.

**11(18)** All Tribunal hearings shall be conducted in accordance with the laws of England and Wales.

### **Standard of Proof**

**12** The standard of proof to be applied by a Tribunal is the civil standard of proof.

### **Payments**

**13(1)** Where a Tribunal makes an order for the payment of a fine and/or costs against a Member, or the terms of a Settlement Agreement include a fine and/or costs, then:-

(i) such monies shall be due from and paid by him even if he ceased to be a Member on or after the date of the report of the Disciplinary Tribunal;

(ii) such monies shall be paid to the FRC, and applied in the manner agreed between the FRC and the Participants;

- (iii) in the case of an order of a Disciplinary Tribunal against which no appeal has been made, or which has not been suspended pending an appeal or against which an appeal has been rejected under paragraph 10(5), or leave to appeal has not been given under paragraph 10(6), such fine and/or costs shall be paid when the order takes effect under paragraph 9(12)(i) and in the event that such fine and/or costs, or part thereof, shall not have been paid on the due date, interest shall be paid thereon at the rate applicable to judgment debts in England and Wales from the due date until the actual date of payment;
- (iv) in the case of an order of a Disciplinary Tribunal against which there is an appeal and an order of an Appeal Tribunal, such fine and/or costs (except to the extent that the order of the Disciplinary Tribunal may be varied, substituted or rescinded by the Appeal Tribunal) shall be paid not later than 28 days after the date on which the relevant Appeal Tribunal decision under paragraph 10(13) is notified to the Member and in the event that such fine or costs, or part thereof, shall not have been paid on the due date, interest shall be paid thereon at the rate applicable to judgment debts in England and Wales from the due date until the actual date of payment;
- (v) the FRC will endeavour to collect and (if necessary) enforce the payment of fines and/or costs unless it shall at its discretion decide (but only after prior consultation with the relevant Participant) not to seek or continue to seek enforcement of such payment.

**13(2)** Where a Disciplinary Tribunal makes an order for the payment of costs against the FRC, those costs shall be paid not later than 28 days after the date when the order takes effect and in the event that such costs, or part thereof, shall not have been paid on the due date, interest shall be paid thereon at the rate applicable to judgment debts in England and Wales from the due date until the actual date of payment.

### **Obligations of Members**

- 14(1)** (i) Every Member and Former Member shall at all times co-operate fully with the Executive Counsel and with any Tribunal appointed pursuant to this Scheme.
- (ii) Without prejudice to the generality of paragraphs 14(1)(i), such full co-operation shall include complying with any notice served pursuant to paragraph 14(2).
- 14(2)** The Executive Counsel shall have power by notice served on any Member or Former Member to call on him (to the extent that he can lawfully do so):-
- (i) to provide:
    - (a) to the Executive Counsel or to any person appointed or employed by him or by the Conduct Committee on behalf of the FRC, such information and explanation relevant to any matter under investigation or preliminary enquiry pursuant to paragraph 6(10) or following the service of a Formal Complaint orally and/or in writing as the Executive Counsel shall require; and
    - (b) evidence to a Tribunal orally and/or in writing as the Executive Counsel or the Tribunal shall require;
  - (ii) to permit the inspection and taking of copies of documents and other information relevant to the matter under investigation which are in the possession or under the control of such Member or Former Member; and

- (iii) to the extent reasonable, to supply copies of documents and other information (in whatever form it may be held, including any associated software necessary to facilitate review by Executive Counsel) at his own expense;

and it shall be the duty of any Member or Former Member on whom such a notice is served under this paragraph to comply with it within 14 days of the date of the notice or such longer period as the Executive Counsel may allow.

**14(3)** If, at any time, the Executive Counsel considers that:-

- (i) there are grounds upon which a Disciplinary Tribunal could make an Adverse Finding that a Member or Former Member, whether or not he or it is within the scope of any investigation, has failed to carry out any obligation under paragraph 14(1) and 14(2); and
- (ii) it is appropriate for those grounds, or some of them, to be presented to a Disciplinary Tribunal,

he shall take the steps at paragraphs 7(10) and 7(11).

**14(4)** Where a Formal Complaint under paragraph 7(11) specifies grounds which the Executive Counsel alleges justify an Adverse Finding by reference to paragraph 5(1)(ii), the Conduct Committee may direct that the Formal Complaint be heard by the Disciplinary Tribunal which is hearing or is to hear another Formal Complaint.

**14(5)** Where paragraph 14(3)(i) applies the references in paragraphs 7(10) and 7(11) to a Member shall be treated as referring respectively to a Former Member.

### **Interim Orders**

**15(1)** Where, at any stage in the period between:

- (i) the making of a decision to investigate under paragraph 6(3) or 6(8); and
- (ii) the making of a decision by the Disciplinary Tribunal under paragraph 9(7);

the Executive Counsel is of the opinion that a Disciplinary Tribunal should consider making an Interim Order in relation to a Member, he shall present an application to the Conduct Committee.

**15(2)** Where the Executive Counsel presents an application in accordance with paragraph 15(1), the Conduct Committee shall serve notice of the application on the Member concerned and shall, as soon as reasonably practicable, send a copy of the application to the Convener.

**15(3)** The Convener shall, as soon as reasonably practicable following receipt of an application for an Interim Order, appoint a Disciplinary Tribunal to hear the application in accordance with the provisions of this Scheme and provide the Conduct Committee with details of the Disciplinary Tribunal appointed and notify the Executive Counsel and each Member concerned.

**15(4)** Subject to this Scheme, the procedure adopted by a Disciplinary Tribunal to deal with an application for an Interim Order shall be in accordance with the Regulations.

- 15(5)** After hearing the application for an Interim Order, the Disciplinary Tribunal may, where it thinks fit, having regard to:
- (i) the purposes for which the Scheme has been established as set out in paragraph 1(2); and
  - (ii) the need to protect the public and/or meet the public interest; and
  - (iii) any guidance issued by the Conduct Committee under paragraph 3(ii), make such Interim Order against the Member as is contained within the schedule of Interim Orders at Part 1 of Appendix 2 to this Scheme, for such period or until the occurrence of such event as it defines.
- 15(6)** (i) The Disciplinary Tribunal shall make a report, which shall be signed by its Chairman, setting out its decision and reasons and send it to the Conduct Committee.
- (iii) The Conduct Committee shall send a copy of the Disciplinary Tribunal's report to the Member concerned, the Executive Counsel and the relevant Participant.
- 15(7)** Unless the Disciplinary Tribunal shall otherwise decide, an Interim Order in relation to a Member shall take effect from the date on which the Interim Order is notified to the Member.
- 15(8)** The Disciplinary Tribunal appointed under paragraph 15(3) shall review any Interim Order within 6 months from the date it took effect and thereafter at 6 monthly intervals until such time as it has expired or been discharged. Such review shall be dealt with in accordance with the Regulations.
- 15(9)** The Executive Counsel or the Member may apply at any time for an Interim Order to be reviewed on the grounds of a change in circumstances since the Interim Order was made. Such application shall be dealt with in accordance with the Regulations.
- 15(10)** On a review of an Interim Order, the Disciplinary Tribunal may make such decision as is contained within Part 2 of Appendix 2 to this Scheme and shall report to the Conduct Committee in accordance with paragraph 15(6).
- 15(11)** Unless the Disciplinary Tribunal shall otherwise decide, a decision on a review of an Interim Order in relation to a Member shall take effect from the date on which the decision is notified to the Member.
- 15(12)** A Member may appeal against an Interim Order made under paragraph 15(5) or following a review under paragraph 15(10) in the same manner and on the same grounds as against any Adverse Finding of the Disciplinary Tribunal.
- 15(13)** The Conduct Committee shall publish the report or reports prepared by the Disciplinary Tribunal for the purposes of paragraph 15(6) or 15(10) as soon as practicable and in such manner as it thinks fit unless this would not, in the opinion of the Conduct Committee, be in the public interest.

## **Proof of Certain Matters**

**16(1)** The fact that a Member:-

- (i) has, before a Court of competent jurisdiction in the United Kingdom, been convicted of a criminal offence, or
- (ii) has, before a Court outside the United Kingdom, been convicted of an offence which would have constituted a criminal offence had the matter been prosecuted in the United Kingdom,

shall for the purposes of this Scheme be conclusive evidence of Misconduct by the Member, whether or not he was a Member at the time of the conduct resulting in the conviction.

**16(2)** Production of a certificate to the Tribunal purporting to be under the hand of a competent officer of court in the UK or overseas that a person or other legal entity has been convicted of a criminal offence shall be conclusive evidence of the offence committed.

**16(3)** The fact that a Member:-

- (i) has had an adverse finding made against him or it in respect of his or its conduct in proceedings conducted by or before a regulatory body performing its functions under the Financial Services and Markets Act 2000, the Insolvency Act 1986, the Companies Act 1989 or the Companies Act 2006, or any similar or analogous legislation in any other jurisdiction; or
- (ii) has had a disqualification order made against him under the Company Directors Disqualification Act 1986 or has been restricted or prohibited from being a director of a company by reason of an order made against him under the Companies Act 1990 of the Republic of Ireland or the Directors Disqualification (Northern Ireland) Order 2002, or any similar or analogous legislation in any other jurisdiction,

shall, for the purposes of this Scheme, be conclusive evidence of Misconduct by the Member, whether or not he was a Member at the time of the conduct resulting in, or at the time of, the disciplinary proceedings or disqualification order.

**16(4)** Without prejudice to paragraphs 16(1) and 16(3), a finding of fact:-

- (i) in any report of an inspector appointed under the Companies Act 1985;
- (ii) in any civil or criminal proceedings before a Court of competent jurisdiction in or outside the United Kingdom;
- (iii) in any proceedings before, or report by, any of the bodies mentioned in paragraph 16(5);
- (iv) in any proceedings before, or report by, any regulatory, professional or disciplinary body outside the United Kingdom; or
- (v) in any report or proceedings which, in the opinion of the relevant Tribunal, corresponds or correspond to any report or proceedings referred to in paragraphs 16(4)(i) to (iv) (inclusive) above,

shall, for the purposes of this Scheme, be prima facie evidence of the facts found.

**16(5)** The bodies referred to at paragraph 16(4)(iii) are:-

- (i) The Prudential Regulation Authority;
- (ii) The Financial Conduct Authority;
- (iii) The Financial Services and Markets Tribunal;
- (iv) The Pensions Regulator;
- (v) any recognised professional body within the meaning of the Insolvency Act 1986;
- (vi) any recognised supervisory body within the meaning of the Companies Act 2006;
- (vii) any designated professional body within the meaning of the Financial Services and Markets Act 2000;
- (viii) any body replacing, additional to or pre-dating a body identified in paragraphs 16(5)(i) to (vi) and performing the same or broadly similar functions, and whose regulatory arrangements are of a similar standing.

**16(6)** Paragraphs 16(1) to 16(5) (inclusive) are without prejudice to the generality of paragraphs 9(6) and 10(10) and nothing in paragraph 16(4) shall affect the evidential status of any report or other document not referred to in paragraph 16(4).

### **Legal Representation of Members**

**17** If, on the application of a Member, a Tribunal concludes that:-

- (i) it is not reasonable to expect a Member to conduct his defence or pursue his appeal without legal representation because, for example, of the complexities of the issues involved; and
- (ii) the Member has established that he cannot afford (and does not have adequate insurance cover for) legal representation,

the Tribunal may require the FRC to meet the reasonable costs of that Member's legal representation at the hearing before the Tribunal.

### **Disclosure of Information**

**18(1)** The Regulations may make provision enabling the FRC or the Executive Counsel to disclose information and explanation and supply evidence, whether originally oral or in writing, obtained under this Scheme to the FRC for any purpose connected with its remit, to any regulatory body or prosecuting authority, or any person, body or authority carrying out any role similar to that of regulation or prosecution, in any part of the world. Any such provision shall contain such safeguards as the FRC considers appropriate.

**18(2)** A Member shall treat as confidential all information which is not in the public domain and which is provided by the FRC (whether through the Executive Counsel or otherwise) in the course of a preliminary enquiry, an investigation or disciplinary proceedings under this Scheme.

- 18(3)** A Member shall only disclose information to persons other than their legal representatives (and those assisting such legal representatives) with the express consent of Executive Counsel. A breach of confidentiality which has the potential to adversely affect the conduct of the investigation or disciplinary proceedings shall be evidence of a failure to cooperate with the Executive Counsel for the purposes of paragraph 14(1) save where such disclosure is required by law, court order or another regulatory body having jurisdiction over the Member.

### **Transitional Arrangements**

- 19(1)** The provisions of this further amended Scheme will have immediate effect.
- 19(2)** Any steps taken under any previous version of the Scheme shall be deemed to have been taken by the FRC or the Conduct Committee, as appropriate, under this Scheme as amended by the FRC with effect from 8 December 2014.

### **Amendment and Termination of this Scheme**

- 20(1)** This Scheme may be amended by a resolution of the Board of the FRC. Such amendments shall be subject to public consultation (unless the nature of the proposed amendment is such that the Participants agree that public consultation would be unnecessary).
- 20(2)** Amendments to the Scheme which are the subject of a dispute between the FRC and one or more of the Participants shall be resolved by an independent adjudicator (such as a recently retired High Court Judge), who shall determine whether the proposed amendment is appropriate to achieve the purpose for which the Scheme has been established (as set out in paragraph 1(2)).
- 20(3)** The identity of the independent adjudicator shall be agreed by the parties to the adjudication. The independent adjudicator shall adopt a procedure that includes the making of written (but not oral) submissions by the parties to the adjudication.
- 20(4)** The decision of the independent adjudicator shall be binding on the FRC and the Participant(s) concerned.
- 20(5)** The Scheme may be terminated by the FRC by giving notice of not less than six months expiring on 31st December in any year.

## **Appendix 1**

### **FRC Scheme Schedule of Sanctions**

The following sanctions may be made by a Tribunal as referred to in paragraph 9(8)(i):

Reprimand

Severe Reprimand

Condition – The Tribunal may order a Member to comply with any direction that it considers, in its absolute discretion, appropriate. By way of example and without limitation to the Tribunal's discretion, such direction may require a Member to undertake education or training, to comply with particular requirements when practising (including restrictions on the nature of any work undertaken or clients represented).

Exclusion as a Member of one or more Participants and that the exclusion be for a recommended specified period of time

Fine – amount specified by the Tribunal (and in the event of non-payment in full, including any interest, of a fine and/or cost order within the time specified for payment exclusion as a Member of one or more Participants)

Waiver/repayment of client fees

Order that a Member be ineligible for a prescribed period for a practising certificate or registration or authorisation or a licence (for the practice of any activity requiring such a certificate, registration, authorisation or licence)

Order that a Member's practising certificate or registration or authorisation or licence be withdrawn (for the practice of any activity requiring such a certificate, registration, authorisation or licence). The Tribunal may recommend that such certificate, registration, authorisation or licence not be reinstated for a specified period of time.

## **Appendix 2**

### **FRC Scheme Schedule of Interim Orders**

#### ***Part 1:***

The following Interim Orders may be made by a Disciplinary Tribunal as referred to in paragraph 15(6):

Order that conditions be attached to a Member's practising certificate or registration or authorisation or licence (for the practice of any activity requiring such a certificate, registration, authorisation or licence).

Order that a Member's practising certificate or registration or authorisation or licence be suspended (for the practice of any activity requiring such a certificate, registration, authorisation or licence).

Order that a Member be suspended from membership.

#### ***Part 2:***

The following orders may be made on a review of an Interim Order by a Disciplinary Tribunal as referred to in paragraph 15(10):

Order to revoke an Interim Order

Order to revoke or vary any conditions attached to a Member's practising certificate or registration or authorisation or licence (for the practice of any activity requiring such a certificate, registration, authorisation or licence).

Where it thinks fit, having regard to the matters set out in paragraph 15(5)(i)-(iii), replace an order for conditions with an order for suspension or replace an order for suspension with an order for conditions.

Order that the period of the Interim Order be extended.



**Financial Reporting Council**

8th Floor  
125 London Wall  
London  
EC2Y 5AS

+44 (0)20 7492 2300

[www.frc.org.uk](http://www.frc.org.uk)