



ACCOUNTANCY AND ACTUARIAL DISCIPLINE BOARD

THE ACCOUNTANCY SCHEME REVIEW FEEDBACK STATEMENT

OCTOBER 2009

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One – Introduction

The Accountancy and Actuarial Discipline Board¹ (AADB) is an operating body of the Financial Reporting Council (FRC). The FRC is the UK's independent regulator responsible for promoting confidence in corporate reporting and governance and the principal independent regulator of the accountancy and actuarial professions in the UK. The work of the FRC is funded by the accountancy and actuarial professions, major users of accountancy and actuarial services, and, in relation to its accountancy and audit responsibilities, the government.

The AADB is the UK's independent, investigative and disciplinary body for accountants and actuaries. Its focus is on the investigation and hearing of public interest cases where there may have been misconduct on the part of Members or Member firms of the accountancy profession in the UK or Ireland who are subject to its disciplinary scheme and members of the actuarial profession in the UK.

The AADB consultation paper 'The Accountancy Scheme Review' was published for public consultation on 17 January 2008 with a deadline for comment on 11 April 2008.

The Board of the AADB (the Board) undertook its review of the Accountancy Scheme with the following aims and objectives:

- to ensure the continued provision of “a demonstrably fair, independent and expert system for investigating and, where appropriate, hearing significant public interest disciplinary cases” (AADB Aims and Objectives); and
- to uphold the principles of fairness, transparency and proportionality, which are considered to be the hallmarks of effective, independent regulation.

The purpose of the consultation was to obtain the views of the accountancy and actuarial professions, the wider business community, regulatory and governmental bodies and other parties with an interest in professional discipline arrangements on the AADB's proposals for changes to its Accountancy Scheme.

The consultation paper sought views on eight proposals for change which are summarised in Annex A. A total of 28 responses to the consultation paper were received. A full list of those who responded is at Annex B.

The AADB believes that the responses will be of interest to others and has therefore made them available on its website at www.frc.org.uk/aadb/publications.

¹ Formerly the Accountancy Investigation and Discipline Board (AIDB)

Any change to the Accountancy Scheme requires the agreement of the six professional bodies who participate in the Scheme (the Participants) and of the FRC. The AADB's proposals, revised to take account of the consultation responses, have been the subject of detailed discussion with the Participants over the intervening period. The Board initially anticipated that it would reach agreement with the Participants considerably more quickly than has proved to be the case in practice.

The Board recognises the wider public interest in how the AADB exercises its functions and is therefore publishing this report setting out its response to both the consultation and the subsequent discussions with the Participants.

The AADB is concerned by the amount of time that has passed since it published its initial consultation paper in January 2008. The need to obtain the agreement of each of the Participants in order to amend the Accountancy Scheme has had significant implications for the speed, efficiency and effectiveness with which changes considered by the Board to be desirable for the Accountancy Scheme can be implemented.

The Board has however welcomed the input of the Participants who, in the course of the discussions, raised many important and valid points in respect of the proposed changes. The Board has taken these points on board and made changes where appropriate. The Board considers there are tangible benefits to detailed consultation with the Participants and that these will have a positive bearing on the future operation of the Accountancy Scheme.

At the same time, the Board is disappointed by the protracted nature of the discussions, and the length of time it has taken to reach agreement with the Participants over the future shape of the Accountancy Scheme. It is concerned about the lack of control which it and the FRC have over investigative and disciplinary procedures which are intended to operate independently and in the public interest. The Board considers that, as a matter of public interest, this aspect of the current arrangements should be reviewed. The FRC committed itself to reviewing the regulatory framework for professional discipline and enforcement of standards in its 2009/2010 Plan, April 2009, available on its website at www.frc.org.uk.

An Impact Assessment of the final proposals can be found at section four. This indicates that some of the changes will affect the costs falling on those subject to investigation and disciplinary proceedings and the Participants. In addition, all organisations who contribute to FRC funding will be affected. The wider business community and the public may also be indirectly affected.

Two – Consultation responses

Responses to the AADB consultation were received from:

- The Consultative Committee of Accountancy Bodies (CCAB) on behalf of the Participants;
- The Actuarial Profession;
- 7 large accountancy firms;
- 5 law firms;
- 7 members of the AADB Tribunal Panel;
- 1 bank, the CBI, the Hundred Group of Finance Directors, the Board for Actuarial Standards/Professional Oversight Board Stakeholder Interests Working Group, the FSA and two senior lawyers.

Many of the responses, particularly those from the accountancy firms, answered all of the questions posed by the consultation paper; others limited their comments to the matters which raised particular concerns for them.

There was a fair degree of consistency in the views expressed by those who responded. Respondents were broadly supportive of the underlying principles behind the AADB's proposals, but had reservations about some of the detail. The proposals that attracted the most concern were the suggested change to the definition of "*act of misconduct*" and the proposal to restrict the tribunal's discretion to award costs against the AADB to circumstances of 'misfeasance'.

Other areas attracting considerable comment were the procedure proposed for taking the decision to proceed with a formal complaint and a disciplinary hearing before a tribunal, in particular the creation of a *Disciplinary Decisions Committee*, and the proposed change to the tribunal's voting arrangements.

A number of the other proposals were broadly welcomed by a majority of those who responded. In relation to the test for proceeding with a formal complaint, a majority of respondents focused their comments on the proposed desirability consideration. This received considerable support. Many respondents suggested factors which should be taken into account when considering desirability. Responses appear to indicate that opinion is divided about whether it is appropriate to include ill health as a factor.

Additional detail on the comments expressed in the consultation responses is provided in relation to each proposal in section 3 of this paper.

Three – The AADB’s response

As indicated in chapter two, many of the responses were supportive of the changes proposed or of the thinking behind them. Concerns were expressed by the Participants that the effect of the proposals would, or at least could, result in a lower threshold for disciplinary proceedings under the Accountancy Scheme and more cases being investigated and prosecuted by the AADB. This influenced their response to a number of issues.

It must be right that it is for the external public interest regulator to decide which cases it investigates and prosecutes. However, it is worth reinforcing the point that the AADB is not seeking a broader remit.

There is no evidence that the AADB has sought to investigate inappropriate cases. In the five years of its existence, it has taken on only twelve accountancy cases, four of which were referred to the AADB by one or more of the Participants. Of the cases taken on by the Board under its power to initiate investigations, all but one relate to matters which are also the subject of investigations by other bodies including the FSA, SFO and Inspectors appointed under the Companies Act 1985.

Against a background of attempts to reach consensus with the Participants, the AADB has finalised proposals for the main amendments to the Accountancy Scheme; the proposals and the reasons for them are set out in detail below. In the course of discussions a number of other more minor changes were suggested by both the AADB and the Participants and these are also marked up on the draft Accountancy Scheme at Appendix A. The revised proposals take account of the discussions with the Participants and the other comments received. The Board understands that the Participants have now agreed to put these changes to their Councils for approval.

“Misconduct”

The current definition of misconduct in the Accountancy Scheme reads as follows:

‘act of misconduct’ means any Member’s or Member Firm’s conduct in the course of his or its professional, business or financial activities (including as a partner, member, director or employee in or of any organisation or as an individual), which falls short of the standards reasonably to be expected of a Member or Member Firm.

In its consultation paper, the Board proposed that the current definition of ‘act of misconduct’ in the Accountancy Scheme should be replaced by the following definition of ‘Relevant Conduct’ as

“an act or omission, or series of acts or omissions by a Member or Member Firm in the course of his or its professional, business or financial activities which -:

- (i) is likely to damage public confidence in the accountancy profession,*

- (ii) is likely to bring discredit on himself or itself, the accountancy profession, or (in the case of an individual) his employer,
- (iii) fails to comply with any relevant law, charter, bye-law, regulation or guidance,
- (iv) fails to comply with applicable accounting, auditing, ethical or other standards, or
- (v) falls short of the standards of professional conduct, competence, or integrity reasonably to be expected of a Member or Member Firm."

A number of important concerns were raised in the consultation responses about aspects of the proposed definition of "Relevant Conduct". It was argued that the proposed definition expanded the scope of the Accountancy Scheme and lowered the bar of what constitutes misconduct; that elements of the proposed definition were too broad and subjective; that the inclusion of 'guidance' in sub-paragraph (iii) could see Members subject to disciplinary action for breaches that were trivial or for departures from non—mandatory guidance; and that the definition should capture the materiality of the misconduct and require that a 'falling short of standards' should be serious or significant in order to amount to misconduct.

The Board considered carefully the concerns raised, agreed that the definition should be reconsidered and that the term "misconduct" should be retained. A revised definition was prepared which addressed many of the concerns expressed by those who responded to the consultation.

The Board considered that the central and most important element of the proposed definition was the part that defined "Relevant Conduct" as "falls short of the standards of professional conduct reasonably to be expected of a Member or Member Firm", which is closest to the existing definition of "act of misconduct" in the Accountancy Scheme. The revised definition was therefore based on the existing definition of "act of misconduct", expanded to make it clear that a failure to comply, for example with a standard or regulation, could in itself constitute misconduct.

The revised definition proposed by the AADB read as follows:

"Misconduct means an act or omission or series of acts or omissions, by a Member or Member Firm which falls short of the standards of professional conduct reasonably to be expected of a Member or Member Firm.

Misconduct includes, but is not limited to, failure to comply with:

- (i) any relevant law, charter, bye-law, rule, or regulation; or
- (ii) any applicable accounting, auditing, ethical or other standard;

[other than a failure which is trivial,] to the extent that such failure falls short of the standards of professional conduct reasonably to be expected of a Member or Member Firm.

In considering whether there has been a failure to comply with any applicable accounting, auditing, ethical or other standard, regard shall be had to any relevant guidance."

There was consensus between the Participants and the Board over the revised definition as set out above, in all respects except one. The Participants considered that the definition should specify that misconduct must be "serious" to result in disciplinary action being taken against the Member or Member Firm concerned. The Board offered the option of inserting the words '*other than a failure which is trivial*' as indicated in square brackets in the definition set out above. This was not acceptable to the Participants who proposed instead that the Accountancy Scheme should define misconduct as conduct which '*seriously falls short of the standards of conduct reasonably to be expected*'.

The Board disagrees and considers this could prove to be detrimental to the effectiveness of the Accountancy Scheme. The Board considers that it is not in the public interest for it to adopt a potentially more demanding definition of misconduct than that currently in the Accountancy Scheme and those used by the Participants in their own disciplinary schemes. To do so would run the risk that a tribunal might interpret "serious misconduct" in a way which amounts to requiring that a higher threshold be met by the AADB than under the present Accountancy Scheme and indeed by the Participants under their own disciplinary schemes in order to find that a Member or Member Firm has committed an act of misconduct.

The Board however agrees that a situation where it is necessary to take disciplinary action against each and every trivial breach of a standard or departure from guidance would be undesirable. It considers that the definition in the Accountancy Scheme should apply only to conduct which falls short of standards "*reasonably to be expected*", thus importing an element of materiality. It considers that it should be sufficient that conduct falls below the "*standards.... reasonably to be expected*", for a finding of misconduct to be made.

The Board accepts that it may be appropriate for the seriousness of any misconduct to be considered, along with a number of other factors, in deciding whether to bring a disciplinary complaint under the Accountancy Scheme and considers that the appropriate time to consider this is at the conclusion of the investigation. It is only then that the full facts and circumstances of the case will be known. Accordingly the Board proposes that, amongst other things, regard should be had to the seriousness of the misconduct when considering the desirability of bringing a formal complaint and that this should be set out in guidance issued by the Board.

The Participants have indicated they regard the existing definition in the Accountancy Scheme as acceptable. The AADB respects this position and has agreed to retain the current definition of '*act of misconduct*' (see above) and paragraph 5(4) of the current Accountancy Scheme which requires Executive Counsel to have regard to any rules or guidance when considering whether the conduct of a Member or Member Firm may have fallen short of the standards reasonably to be expected of him or it.

Preliminary Enquiries

A decision to investigate a Member or Member Firm will have significant consequences, not least for that Member or Member Firm. The Board was concerned that its decisions should, in all cases, be as fully informed as possible. From past experience, it considered that there are likely to be circumstances where additional information, which could not be obtained without preliminary enquiries, is needed.

The Board proposed a new power whereby it can ask Executive Counsel to make preliminary enquiries before deciding whether to begin an investigation in order to ensure that the Board has sufficient information to decide whether to institute an investigation. Such a power already exists in the Actuarial Scheme where its use has caused no difficulties and corresponding provisions are included in the schemes of the Participants.

The Board welcomed the agreement of the Participants that decisions to investigate cases should be made on the basis of the fullest available information. Nevertheless the Participants expressed strong reservations about this proposed power. The Participants have concerns that a power for the AADB to conduct preliminary enquiries will lead to confusion in the minds of those subject to enquiry and of other regulators, and that there would be a risk that matters might 'fall between two stools' if both the AADB and the Participants had power simultaneously.

The Participants are of the view that the proper approach is for the relevant Participant to procure the information at the behest of and in conjunction with the AADB.

The Board noted that the majority of the consultation responses received were broadly in favour of the proposal for the AADB to have its own power of preliminary enquiry and did not foresee particular difficulties in its application or express any concerns about it. There was some limited concern that preliminary enquiries might cross over into something more akin to an investigation if the boundaries were not clearly defined.

The Board is not persuaded that a power for the AADB to conduct preliminary enquiries would result in duplication or in matters "falling between the cracks" in the regulatory structure and in any case considers that such risks would be avoided by maintaining good communication channels between the AADB and the Participants. Moreover where, as sometimes occurs, Members and Member Firms of more than one Participant are involved in a case it is likely to be more efficient for any necessary preliminary enquiries to be made by the AADB rather than by two or more Participants separately.

The Board remains of the view that a power for the AADB to conduct preliminary enquiries will enhance the fairness and efficiency of the Accountancy Scheme and further strengthen the robustness of the Board's decisions. The Board is mindful that the public must perceive it to be independent of the profession, and is concerned to introduce a streamlined and efficient process for conducting preliminary enquiries. It is concerned to keep delay and inefficiency to a minimum and to be in a

position to respond quickly to potential misconduct particularly where Members or Member Firms of more than one Participant are involved.

The Board notes that Schedule 10 of the Companies Act 2006 requires the investigation and bringing of disciplinary proceedings in matters of public interest in relation to statutory audit cases to be done independently of the professional bodies and it has been advised that these requirements would extend to the conduct of preliminary enquiries. The Board therefore concludes that joint enquiries in these cases, or indeed Participants acting on behalf of the AADB in relation to preliminary enquiries, would not comply with the requirements of the Companies Act.

The Board accepts that there will be circumstances in which it is appropriate for a preliminary enquiry to be conducted by the relevant Participant, for example if a Participant is already conducting its own enquiry, but it does not agree that this will always be the correct approach. However, it is clearly desirable that the processes should be transparent and clear to all concerned, not least to the public and those who may be investigated. The Board believes that this can best be achieved by agreeing a protocol with the Participants which sets out the circumstances in which the AADB will conduct its preliminary enquiries and how it would use the power in practice, whilst at the same time complying with the requirements of the Companies Act. The protocol will set out clear roles and responsibilities for the AADB and the Participants and explain clearly when the AADB expects to use the power.

The Board has made it clear to the Participants that the protocol must not constrain in any way the Board's ability to exercise its power to initiate investigations of its own accord. It considers this would be contrary to the public interest and the independence of the AADB. The Participants have signalled their agreement that the protocol will govern the exercise by the AADB of the preliminary enquiries power only and will not extend to the use of the Board's power to initiate or assume investigations, which the Accountancy Scheme does not fetter in this way. The Accountancy Scheme requires the Board to consult with the relevant Participant(s) in such circumstances, thus ensuring that they will always be informed before an investigation is begun and have the opportunity to submit their views. The Board has therefore proposed to the Participants a protocol which it considers meets the objectives of co-operation, transparency and efficiency while respecting the AADB's independence and the Board's ability to act of its own volition; the proposed protocol is at Annex C.

The proposed protocol essentially makes the preliminary enquiry power a reserve power of the AADB. It provides that, before exercising its powers to conduct a preliminary enquiry the Board will inform the relevant Participant that it needs additional information in order to decide whether or not a matter meets the criteria for an AADB investigation. If the Participant prefers to seek the information required itself, it will obtain it within the timescales set down in the protocol and furnish any information obtained to the AADB. If the Participant does not wish or fails to obtain the information sought, the AADB may conduct its own preliminary enquiries.

The Board considers that the proposed protocol demonstrates the willingness on the part of the AADB to work constructively with the Participants in dealing with matters that potentially fall within its remit. The Participants have welcomed this approach in principle. There remains disagreement about how the protocol may be changed in future. The Board considers that as the disciplinary body for public interest cases it has a duty to ensure that it retains its ability to act at its own instigation to remedy arrangements which may not work as effectively and efficiently in practice as anticipated at the outset. However, the Participants insist future changes to the protocol should be possible only with their agreement, thereby giving them a veto. This is the only basis upon which the Participants will agree to give the AADB a power to conduct its own preliminary enquiries. The AADB considers that this situation is unsatisfactory, but is persuaded that it is preferable to have a preliminary enquiry power, albeit one that is constrained, than to have none.

Accordingly it is proposed that the Accountancy Scheme will give the AADB a power of its own to conduct preliminary enquiries but will provide that the power may only be exercised in accordance with a protocol agreed with the Participants. Further, it will provide that amendments to any protocol may be made by agreement only. The parties to the protocol may choose to withdraw with six months notice. In the event a Participant withdraws, the AADB will not be able to make preliminary enquiries in relation to that Participant's Members and Member Firms. For those Members and Member Firms who are subject to the use of the power by the AADB, it is intended that the obligation to cooperate with AADB investigations will be extended to include preliminary enquiries.

The Decision to Proceed with Formal Complaints

At present, the decision to deliver a formal complaint rests with Executive Counsel on completion of his investigation and having considered the representations or observations of the Member or Member Firm.

The Board was concerned that where Executive Counsel has investigated a matter, he may not be perceived to be properly independent and hence wholly objective when determining whether a formal complaint should be delivered. The Board also considered that the fairness of the Accountancy Scheme would be strengthened by an independent assessment of the formal complaint and the evidence in support of that complaint before a matter proceeds to a disciplinary tribunal.

The Board had proposed that the decision to deliver a formal complaint should be considered by a separate and independent committee, the *Disciplinary Decisions Committee (DDC)*, comprising a senior lawyer, an accountant and a lay person.

In broad terms, the consultation responses indicated strong support in principle for introducing an additional check and balance into the Accountancy Scheme at the point of the decision to lay a formal complaint. There was disagreement, however, about whether the *DDC* was the most appropriate means of achieving this. Some felt that the benefits of enhanced fairness and independence of process outweighed the additional cost and delay that would result; others felt strongly that the *DDC* was an

expensive and cumbersome way of achieving the Board's objectives and suggested that a review by senior counsel independent of the investigation would be a more appropriate way to introduce a check and balance on the actions of Executive Counsel.

Important reservations were also expressed by the Participants and the Actuarial Profession about the proposed *DDC*. Key concerns related to the additional costs and delay, to the extent of the powers proposed for the *DDC*, to the risk that the *DDC* would operate as a mini-Tribunal and/or that it would seek to interfere in the investigation, create additional opportunities for challenge, and undermine the role of Executive Counsel.

The Board notes that a separation of the conduct of the investigation from the decision to prosecute or a review of the decision to prosecute by a lawyer who has not been involved in conducting the investigation is in line with the practice adopted by a range of other disciplinary bodies and prosecuting authorities. The Board nevertheless understood the concerns about the proposed *DDC* expressed by the Participants and others.

The Board therefore considered alternatives to the *DDC* for achieving its objective of a simple check and balance in a cost-effective and efficient manner. The Board sought to formulate a process which retains the benefits of enhanced fairness and an added protection for respondents which an independent assessment of the formal complaint and the evidence in support of that complaint will provide, but which reduces the complexity of the process and minimises the risk of delay.

A number of consultation responses emphasised the value of accounting expertise in the decision to proceed with a formal complaint. However, the Board notes that the decision is essentially a legal one. To the extent that there are technical accounting issues involved, these will be dealt with in the evidence supporting the formal complaint. It is common practice for lawyers to take prosecution decisions in cases which concern subject matters in which they themselves are not experts.

The Board considers that, in order to minimise delay it would be preferable for the decision to bring formal complaints to remain vested in one individual. The Board was attracted by a process that would have separated the decision to bring complaints from the investigation and given responsibility for confirming the Executive Counsel's decision to a legally qualified case assessor who had not been involved in the investigation. However, the Participants were concerned about duplication with the role of Executive Counsel, that there would be insufficient reliance on accounting expertise if the process were to involve a lawyer acting alone and that the costs of such a change would outweigh the benefits involved. They proposed a structure involving both lawyers and accountants with far greater powers to intervene in an investigation than envisaged by the Board. The Board was concerned that such a complex process would inevitably lead to delays in AADB cases reaching tribunal and would not meet its objective for a simple, efficient and cost-effective check and balance on the decision to bring complaints.

This is a sensitive part of the overall disciplinary process. In view of the differences of opinion as to how the Board's objectives would best be met, the Board considers it would be preferable to retain flexibility to develop its thinking over time and in the light of experience. There is agreement between the Board and the Participants that some mechanism by which Executive Counsel has the opportunity to test his decision before proceeding with a formal complaint is desirable.

Accordingly, it is proposed that the decision to bring complaints should remain vested in Executive Counsel and that revised arrangements in respect of the decision to bring formal complaints should be implemented via procedural guidelines to be issued by the Board in accordance with the Accountancy Scheme. At present, Executive Counsel is required by the Board to consult external counsel before bringing a formal complaint. This is an important safeguard. The Board's objective is to find a way to further strengthen these arrangements.

The Board will consult with the Participants as to the content of any procedural guidelines pertaining to the decision to bring formal complaints and, in the interests of transparency, will publish any such procedural guidelines it subsequently adopts.

Reduction of Scope of Investigations

The Accountancy Scheme provides that the Board may, following a report from Executive Counsel and consultation with the relevant Participant, widen the scope of an investigation to include matters which are discovered during the investigation. However, there is no express power to reduce the scope of an investigation.

To assist in the fair and efficient operation of the Scheme, the Board proposed to make express provision for the scope of an investigation to be reduced on request by Executive Counsel. The reduction in the scope of the investigation should not result in any increased costs and accordingly, it was not proposed that there should be any requirement to consult with the relevant Participant before considering such a request and making a decision. However, the Participant will be informed of the decision once it has been made.

Responses to the consultation were strongly supportive of this proposal. A small number of responses, mainly from accountancy firms, suggested that the power to seek a reduction in the scope of an investigation should be extended to Members and Member Firms. The Board was not persuaded that it would be appropriate to extend such a power to those who may be the subject of an investigation and accordingly the Board considers that the power to seek a reduction in scope from the Board should be conferred upon Executive Counsel alone.

The Test for delivering Formal Complaints

The Accountancy Scheme provides that following his investigation, Executive Counsel shall deliver a formal complaint if he considers that a Member or Member Firm "*appears to have committed an act of*

misconduct". The Board proposed that a more straightforward test, similar to the test operated by other bodies including the Crown Prosecution Service, the "realistic prospect" test, should be introduced.

The Board also proposed that, in order to align the provisions of the Accountancy Scheme with the requirements of the Companies Act 2006 (Schedule 10, Part 3), there should also be consideration of the desirability of proceeding to a hearing when the decision to proceed with a formal complaint is taken.

Consultation responses indicated broad support for the 'realistic prospect' test and for the introduction of a desirability consideration. In relation to the desirability consideration a number of those who responded felt that desirability should be taken into account at an earlier stage in the process and that Executive Counsel should be required to consider the desirability of a hearing, alongside the 'realistic prospect' test. Several responses sought clarification over the threshold to be applied in relation to the 'realistic prospect' test.

Taking account of the support expressed in the consultation responses, the Board remains persuaded that the 'realistic prospect' test is clearer than the present test, would support the fairness of the Accountancy Scheme and should therefore replace the present test in the Accountancy Scheme.

The Board reflected on whether 'realistic prospect' should mean that a case was 'more likely than not' to succeed at tribunal, or whether it should mean that the prospect of success was merely 'not fanciful'. The Board considers that, for the purposes of the Accountancy Scheme, 'realistic prospect' should mean that a Tribunal is 'more likely than not' to find the allegations proved. This is the same test as in the Code for Crown Prosecutors and is well understood. It will introduce a higher threshold than the 'not fanciful' alternative which is used in some disciplinary schemes, for example the Royal Pharmaceutical Society. Some argue, however, that there should be an even higher threshold for proceeding, although there are a variety of views as to what that might be. Predicting the outcome of litigation is not an exact science, and those attempting it will always allow for the uncertainty inherent in the process. However, the Board considers it is appropriate for cases to proceed if the Executive Counsel, after weighing all the factors and the likely outcome, considers that a disciplinary tribunal is more likely than not to uphold the formal complaint and that a hearing is desirable.

The Participants agree that there is nothing objectionable about the 'realistic prospect' test itself, but are concerned by the AADB's proposal that it should be defined as *'a prospect which is more likely to occur than not'*. They consider that the decision to bring complaints should require there to be consideration of all the relevant circumstances of the case and are keen to ensure that the threshold for referring a case to a disciplinary tribunal is not set too low.

The Board contends that the difference of opinion is based on a misunderstanding of how the 'realistic prospect' test would be applied in practice. The Board agrees that a merits based approach based on the interpretation of the 'realistic prospect' test set out in the Code for Crown Prosecutors is called for in applying the realistic prospect test. The Board proposes to set out in guidance how the 'realistic

prospect' test should be interpreted with reference to the Code for Crown Prosecutors and relevant case law as appropriate.

In addition, the Board reaffirms its view that there must be a consideration of the desirability of proceeding to a hearing before the decision to proceed with a formal complaint is taken. The Board also agrees with the suggestion made in a number of the consultation responses that Executive Counsel should consider the desirability of a hearing in addition to his assessment of the evidence. The Board therefore proposes that Executive Counsel will consider not only whether there is a realistic prospect that a Tribunal will make an adverse finding against a Member or Member Firm, but also whether a hearing is desirable in the public interest.

The Scheme will provide the Board with the power to issue guidelines and it is proposed that desirability guidelines will be issued by the Board. In considering whether a hearing is desirable, Executive Counsel will be required to have regard to this guidance.

Appointment of Tribunals

The Accountancy Scheme provides that, following the delivery of a formal complaint by Executive Counsel, the Board will appoint a disciplinary tribunal and in the event that leave to appeal is given, the Board will appoint an appeal tribunal.

The Board proposed that, in order to enhance the fairness and independence of the Accountancy Scheme, the appointment of tribunal and appeal tribunal members should be carried out by a person independent and separate from the Board, known as "*the Convener*".

Consultation responses indicated broad based support for this proposal. There was some concern about whether the expense of "*the Convener*" was justified but most responses agreed that the extra distance between the Board and the appointment of tribunals and appeal tribunals was nevertheless desirable for reasons of fairness and independence.

The Board noted in particular the suggestion made by the Actuarial Profession that "*the Convener*" should also appoint the individuals to the tribunal panel.

The Board reflected further on the need for and the role of "*the Convener*". It concluded that, as the Board is responsible for initiating investigations into possible misconduct and setting the budgets for those investigations, fairness would be enhanced if the appointment of tribunal and appeal tribunal members were carried out independently of the Board. In addition, the Board considers that "*the Convener*" should also be charged with appointing the individuals to the tribunal panel. The Board considers that if "*the Convener*" is involved in selecting and appointing the tribunal panel, he or she will be better placed when selecting the members of individual tribunals to match the expertise and skills of the tribunal members to the case in question.

Accordingly, the Board proposes that the appointment of individuals to the tribunal panel, of members of that panel to tribunals and appeal tribunals and of the lawyer who considers the issue of leave to appeal should be carried out by “*the Convener*” who will in turn be appointed by the FRC Nominations Committee. He will be subject to the same independence safeguards as individuals who are appointed to the tribunal panel.

Award of costs against the AADB

The Board accepts that the question as to whether costs should be awarded against a regulator bringing disciplinary proceedings in the public interest is difficult. A balance must be maintained between fairness to a successful respondent and ensuring that the regulator is not constrained from bringing proceedings because of the possibility that costs may be awarded against it.

The Board was guided by the recent decision in *Baxendale-Walker v Law Society*. The Board also noted the provisions for cost awards used by other disciplinary and regulatory bodies. The Board was concerned not to compromise fairness to respondents but was satisfied that it would be appropriate to limit the tribunal’s discretion. The Board therefore proposed that the tribunal’s discretion to award costs in favour of a successful respondent should be restricted to circumstances of “misfeasance”.

Consultation responses demonstrated broad agreement that an appropriate balance must be maintained between the regulator and the respondent and that the usual ‘costs follow the event’ rule should not apply to regulators. There was significant support for restricting the discretion of the tribunal to award costs against the AADB where a case has been brought in good faith. However, there was strong opposition to restricting the tribunal’s discretion to circumstances of ‘misfeasance’, which was considered by many to tip the balance too far in favour of the AADB. Many of the responses suggested a test of ‘unreasonableness’ or a test closer to that set out in the Financial Services and Markets Act 2000 (“*vexatiously, frivolously or unreasonably*”) would be more appropriate.

The Board therefore considered alternative tests and is persuaded that “unreasonableness” would make a suitable alternative and has the advantage of being well defined in law. Overall the Board considers that “unreasonableness” strikes a more appropriate balance between the need for fairness to a successful respondent and to ensure that the AADB is not constrained from bringing disciplinary proceedings in the public interest because of the possibility that costs may be awarded against it.

Accordingly the Board proposes that the disciplinary tribunal’s discretion to award costs in favour of a successful respondent shall be restricted to circumstances in which the decision to bring or pursue a formal complaint was ‘unreasonable’ in the sense that no reasonable body properly directing itself would have pursued the same matter (the *Wednesbury*² sense).

In reaching this view, the Board took account of the existing provision for assistance for respondents in paragraph 15 of the Accountancy Scheme.

² Associated Provincial Picture Houses Limited v Wednesbury Corporation [1948] 1 KB 223 CA

Tribunal Chairman's Casting Vote

The Accountancy Scheme provides that any matter to be decided by a tribunal shall be decided by a majority of votes and in the case of an equality of votes, the chairman shall have a second vote.

The Board was concerned that the continued inclusion in the Accountancy Scheme of the chairman's second vote could lead to a decision being unfairly influenced by one individual. Other disciplinary schemes require that any application from either party to a tribunal should be agreed by a majority of the tribunal members for it to be successful. This applies equally to all parties appearing before a tribunal and therefore promotes fairness. The Board therefore proposed that all matters to be decided by a tribunal should be decided by a majority of votes and that the chairman should have no second vote.

The Participants expressed concerns about unforeseen consequences of removing the power for the chairman to cast a second vote in the event of a tie. Other consultation responses indicated considerable support for this proposal with a majority believing the proposal to be fair although there was some concern that, in the event of a tied vote, the proposal could lead to an unclear outcome for a respondent or that it could prove to be impossible to resolve procedural issues.

Taking account of these views the Board reconsidered whether it was appropriate to remove the chairman's second vote. The Board remains persuaded that a majority vote is the fairest solution in relation to a tribunal's determination of whether to make an adverse finding against a respondent and whether to make an award of costs against the AADB because it is fair and affects all parties equally and so that no respondent will have an adverse finding made against them or sanctions imposed as a result of a second vote. By the same token, a majority will be required to find that the AADB has acted 'unreasonably'.

The Board also considers that, although it is important to consider the possibility of a hung vote, this is a remote possibility that could only occur with a five member tribunal (any tribunal must have at least one legal, one lay and one accountant member), and the risks involved do not outweigh the benefit of additional fairness. In relation to procedural issues, however, the Board is persuaded that, in the interests of an effective and efficient disciplinary process, there are merits in providing for the chairman to have a second vote.

The Board therefore proposes that an adverse finding and an award of costs against the AADB shall only be made on the basis of a majority vote, but that the chairman's second vote shall be retained for all other issues.

Referrals from the Joint Disciplinary Scheme (JDS)

The only comments on this proposal were from the Participants who had no objection. This power will be removed from the Accountancy Scheme.

Four – Impact Assessment

This section sets out the Board's assessment of the perceived benefits and any additional costs that may be incurred as a result of implementing its final proposals to amend the Accountancy Scheme.

The focus of this impact assessment is purely on the costs and benefits which the Board anticipates will arise as a result of the changes it now proposes to the Accountancy Scheme.

Some of the Board's preliminary regulatory impact assessment, published with its consultation paper 'The Accountancy Scheme Review', remains valid and is not repeated here. Where proposals have significantly altered, a revised assessment of their impact has been prepared. The Board considers that the overall impact on costs of its final proposals will be lower than the impact of the previous set of proposals.

The AADB deals with events of low probability but which, when they do occur, have a profound impact on those involved. They also have the potential to cause serious public concern and to undermine public confidence in the accountancy profession in the UK.

An AADB investigation and any subsequent disciplinary proceedings arising out of such events will have a profound impact and consequences for those Members and Member Firms concerned.

The Board believes that its proposals will reinforce the existing disciplinary arrangements and further strengthen the ability of the AADB to deal with cases of significant public interest effectively and will therefore protect the public interest. The direct impact of the changes proposed will, however, fall on the Participants, their Members and Member Firms and individuals and firms involved in an investigation or disciplinary hearing in one capacity or another.

Costs and Benefits of the Proposed Changes

The Board believes that its proposals for changes to the Accountancy Scheme will deliver benefits to the Participants and their Members and Member Firms, to the AADB and FRC and to the public, by further enhancing the robustness of the procedures and the fairness already built into the Accountancy Scheme and thereby protecting the reputation, effectiveness of and confidence in the disciplinary arrangements.

It remains difficult to quantify accurately the financial costs that may be involved in individual cases. The AADB has so far concluded two cases and has limited data upon which to draw.

The Board remains of the view that a number of the changes it is proposing will have no discernible effect on the overall cost of an investigation or disciplinary hearing, either in terms of time or in financial terms; and that the proposed changes may result in cost and time savings in some instances, as well as other non-financial benefits, for example in relation to preliminary enquiries. There may be cost implications in respect of some of the proposals, as detailed in the paragraphs below.

The costs of operating the AADB Accountancy Scheme can be divided into two broad categories:

Core costs are the general operating costs of the AADB and include the remuneration of the Board, the Secretary to the Board, Executive Counsel and his staff, office and equipment costs, travel and other expenses; and

Case costs are the costs attributable to individual cases and include reference costs, investigation costs, disciplinary tribunal costs, prosecution costs and appeal tribunal costs.

The AADB's core costs are funded from the FRC's core operating costs. Case costs of particular matters are funded by the relevant Participant(s). Details of the FRC's sources of funding can be found in its publication, "Regulatory Strategy: Our Role and Approach", April 2009, available on the FRC website at www.frc.org.uk.

Requiring Executive Counsel to consider whether a hearing is desirable will introduce an additional step to the disciplinary process thus adding some time and cost to the process, although the Board expects this to be minimal in relation to the overall task. Any additional costs will be part of the case costs. Similarly there may be some minor additional costs to the Member or Member Firm as a result of the need to address the issue of desirability.

The Board anticipates that there will be a small cost involved in appointing and retaining "*the Convener*". It now proposes to expand the duties of "*the Convener*" to include the selection and appointment of the panel of tribunal members. This additional, and rather time-consuming, task will increase the cost of "*the Convener*". However, as tribunal panel members are appointed for a term of three years and such term is renewable, this task will only have to be performed once every few years. These additional costs must be balanced against the costs that would in any case be incurred if the Board continued to appoint the members of the tribunal panel. Typically several Board members would be involved in such a process and would be remunerated for their efforts.

The Board believes that the cost implications of the proposed change to the provision regarding costs awards in favour of successful respondents will fall on the individuals and firms who successfully defend a formal complaint and who will in future have to demonstrate "unreasonableness" in order to recover their costs. It is therefore possible that there may be cases under the amended Accountancy Scheme where a disciplinary complaint is dismissed but the tribunal will not award costs against the AADB, in circumstances where costs may have been awarded under the current Accountancy Scheme.

The Board considers it appropriate that unless the successful respondent can demonstrate "unreasonableness" on the part of the AADB, the costs of the proceedings should be borne by the parties involved in the case rather than as core costs. The FRC will benefit from the additional safeguard against large and unpredictable costs awards.

The Board takes into consideration that the Accountancy Scheme includes a provision for a Member to apply to a tribunal for the reasonable costs of his legal representation to be met by the AADB. A tribunal can require the AADB to meet such costs if it concludes that it is not reasonable to expect the Member to conduct his own defence and that he cannot afford legal representation, but only if, in all the circumstances, the absence of legal representation would be contrary to the rules of natural justice.

Funding the Costs of the Board's Proposals

With the exception of the cost of conducting preliminary enquiries and of selecting and remunerating "*the Convener*" to appoint members of tribunals, the Board takes the view that the additional costs of implementing its proposals to amend the Accountancy Scheme will arise as a result of investigations and should therefore be treated as case costs.

The Board remains of the view that the costs of retaining and remunerating "*the Convener*" should be funded by core costs.

The cost of conducting preliminary enquiries will similarly fall within core costs as these will be conducted by permanent AADB staff before a decision to investigate has been taken. Where as a result of preliminary enquiries, a full investigation is deemed by the Board to be unnecessary, the cost savings will accrue predominantly to the Participants and the Members or Member Firms, and to a lesser extent to the FRC.

The Board notes that the Accountancy Scheme includes provision for a tribunal to order a Member or Member Firm against whom it makes an adverse finding to pay the whole or part of the costs of the investigation and the hearing of the formal complaint before the disciplinary tribunal. In the event that a tribunal makes an adverse finding, the AADB will seek to recover costs where appropriate. Under the terms of an agreement with the Participants, case costs recovered in this manner are automatically returned to them and are not retained by the AADB. In view of this provision, if the tribunal makes an adverse finding, it is anticipated that the costs of these changes, or at least a proportion of them, may ultimately fall on the Members and Member Firms who were parties in the case rather than on the membership of the Participants as a whole.

Five – Next Steps

Discussions with the Participants are continuing on the detailed drafting of the Scheme and the proposed protocol on preliminary enquiries. Attached at Appendix A is the Accountancy Scheme draft upon which those discussions are based. The final amended Accountancy Scheme will be published once it has been approved.

The Participants have provided an indicative timetable for adopting the amended Accountancy Scheme over the autumn of 2009, subject to final agreement on the detailed drafting. At this time the AADB anticipates that the revised Accountancy Scheme will come into effect at the latest in January 2010.

Questions or comments related to the contents of this consultation response may be addressed to the Board Secretary, Anna Colban on Tel. 0207 492 2451 or at a.colban@frc-aadb.org.uk.

Annex A

Summary of original proposals

The main changes proposed by the Board are as follows:

- a change to the definition of conduct rendering a Member or Member Firm liable to disciplinary proceedings and the replacement of “misconduct” with the term “Relevant Conduct”;
- a new power to conduct preliminary enquiries before making a decision to investigate;
- changes to the procedures relating to the decision to lay complaints, including the formation of a *Disciplinary Decisions Committee (DDC)*;
- a new power for the Board to reduce the scope of an investigation;
- new tests to be applied by Executive Counsel before delivering a Formal Complaint; and by the *DDC* before a matter proceeds to a disciplinary tribunal;
- new procedures to appoint disciplinary and/or appeal tribunal members by an independent *Convener*;
- restriction of the tribunal’s discretion to award costs against the Board to circumstances where there has been “misfeasance” on the part of Executive Counsel, the *DDC* or any person engaged to assist with the investigation or tribunal;
- removal of the tribunal chairman’s casting vote; and
- removal of the power relating to transfer of cases from the Joint Disciplinary Scheme.

Annex B

List of Respondents to the Consultation

The following organisations and individuals responded to the consultation paper:

Organisation / Individual	Type
Actuarial Profession	Professional Body
BDO Stoy Hayward LLP	Accountancy Firm
Baker Tilly UK Group LLP	Accountancy Firm
Barlow Lyde & Gilbert LLP	Law Firm
Actuarial Stakeholder Group of Board for Actuarial Standards / Professional Oversight Board	Other
David Blunt QC	Member of AADB Tribunal Panel
Stephen Boughton	Member of AADB Tribunal Panel
CCAB	Representative / Professional Body (representing all the Participants in the Accountancy Scheme)
CBI	Representative Body
Deloitte & Touche LLP	Accountancy Firm
Ernst & Young LLP	Accountancy Firm
FSA (Enforcement Arm)	Regulator
Grant Thornton UK LLP	Accountancy Firm
Arthur Harverd	Member of AADB Tribunal Panel
Roger Henderson QC	Individual
Herbert Smith LLP	Law Firm
The Hundred Group of Finance Directors	Representative Body
KPMG LLP	Accountancy Firm
Patrick Lawrence QC	Individual
Mayer Brown International LLP	Law Firm
Eugene McGivern	Member of AADB Tribunal Panel
PricewaterhouseCoopers LLP	Accountancy Firm
Reynolds Porter Chamberlain LLP	Law Firm
Robert Rhodes QC	Member of AADB Tribunal Panel
Simmons & Simmons	Law Firm
Standard Chartered	Bank
George Staple QC	Member of AADB Tribunal Panel
Christopher Whittington	Member of AADB Tribunal Panel

Annex C

Proposed protocol for preliminary enquiries

1. This Protocol is made pursuant to paragraph [3(1)(ii)] of the AADB Scheme for the accountancy profession (the Scheme).
2. The Scheme makes provision for the AADB Board (the Board) to begin an investigation in one of two ways:
 - (iii) a matter can be referred by one of the Participants under paragraph [5(2)]; or
 - (iv) the Board can become aware of a matter in some other way and consider under paragraph [5(8)] whether it meets the criteria for an AADB investigation.
3. To assist the Board in exercising its powers under paragraphs [5(3)] and [5(8)] of the Scheme, the Board has power to instruct Executive Counsel to conduct preliminary enquiries before it decides whether the criteria for an AADB investigation at paragraph [4(1)], taking account of the considerations at paragraph [4(2)], are met. This power is set out in paragraph [5(10)] of the Scheme.
4. The objective of this protocol is to ensure there is co-operation between the AADB and the relevant Participants regarding matters which might meet the criteria for an AADB investigation and where the Board considers that preliminary enquiries are necessary.
5. Nothing in this protocol shall inhibit or interfere with the Board's exercise of its power to initiate an investigation pursuant to paragraph [5(8)] of the Scheme.
6. The Participants and the AADB will liaise as soon as practicable concerning any matter which any of them considers might meet the criteria for investigation by AADB and will share information held, subject to any legal or other restrictions.
7. Where a relevant Participant refers a matter pursuant to paragraph [5(2)] of the Scheme and the Board considers that further information is required from the relevant Member or Member Firm in order to form a view about whether the matter meets the criteria for investigation by the AADB, the AADB will discuss with the Participant the nature of the information required and request it to obtain the information from the Member or Member Firm concerned.
8. Where the AADB becomes aware of any matter which has not been referred under paragraph [5(2)] and which it considers might meet the criteria for an AADB investigation then the AADB may consider the matter in accordance with paragraph [5(8)] of the Scheme. If, in the course of considering a matter under paragraph [5(8)], the AADB considers that additional information is required from the relevant Member or Member Firm to enable the AADB to determine whether the grounds for an investigation are met, before exercising its powers under paragraph [5(10)] of the Scheme, it will inform the relevant Participant and request it to obtain that information from the Member or Member Firm concerned.

9. As soon as practicable upon receipt of a request for additional information, and normally within 60 days, the Participant shall then obtain from the Member or Member Firm concerned the information requested and provide it to Executive Counsel on behalf of the Board. The Board shall then consider whether the grounds for an AADB investigation are met and if it considers that further information is still required, instruct Executive Counsel to conduct preliminary enquiries pursuant to paragraph [5(10)].
10. If the Participant does not wish, or fails within a reasonable time to obtain the information requested from the Member or Member Firm, then the Board may instruct Executive Counsel to conduct preliminary enquiries pursuant to paragraph [5(10)].
11. Where a matter concerns Members or Member Firms of more than one Participant, the AADB will consult with the relevant Participants as regards the most appropriate course of action. In these circumstances, the AADB may decide to exercise its power under paragraph [5(10)] of the Scheme without delay and paragraphs [7 and 8] above shall not apply.
12. Preliminary enquiries by the AADB will be limited to the information necessary to allow the Board to decide whether or not the grounds for an AADB investigation are met. They shall be completed as soon as reasonably practicable, normally within 60 days.
13. When preliminary enquiries are to be carried out by the AADB it will not normally be appropriate for a Participant to conduct or continue its own enquiries into the matter. However, if it is considered necessary for this to happen, the Participant will liaise with the AADB regarding its enquiries to avoid duplication where possible and to ensure that nothing is done which might prejudice the AADB's preliminary enquiries or any subsequent investigation by the AADB.
14. Where a Participant has already instituted disciplinary proceedings in relation to the conduct in question, the AADB would not normally expect to investigate the matter.
15. This Protocol may be amended by the AADB with the agreement of each of the Participants who are parties to it.
16. Any party to this protocol may withdraw from the Protocol upon giving six months notice and upon expiry of that notice shall not be bound by the protocol.

APPENDIX A

**The
Accountancy
and Actuarial
Discipline Board**

**The Accountancy Scheme ~~adopted~~
~~on 13 May 2004 and amended on~~
~~13 September 2007~~**

DATED:

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ACCOUNTANCY AND ACTUARIAL DISCIPLINE BOARD

ACCOUNTANCY SCHEME

Scheme

- 1(1) This ~~is the~~ Scheme ~~is made and adopted by the managing board of The Accountancy Investigation and Discipline Board Limited, now the AADB (for the "Board")~~ accountancy profession adopted by the Board on 13 May 2004 with the agreement in writing of ~~The Financial Reporting Council~~ the FRC and the Participants and , with effect on and from the Effective Date and first amended with effect from 13 September 2007 and further amended with effect from [Date Board accept amendments].
- 1(2) To safeguard the public interest by maintaining and enhancing the standards of conduct of Members and of Member Firms, this Scheme provides a system for:-
- (i) the investigation of Members' and of Member Firms' conduct in the course of their professional, business or financial activities (including as a partner, member, director or employee in or of any organisation or as an individual), including such conduct before they became Members and Member Firms, and
 - (ii) if warranted following such investigation, bringing disciplinary proceedings against Members and Member Firms.
- 1(3) This Scheme applies to any matter referred to the AADB under paragraph ~~65~~(2), or assumed by the AADB under paragraph ~~65~~(8) and to all steps and proceedings arising, directly or indirectly, there-from or in consequence thereof or in relation thereto.
- 1(4) Every Member and every Member Firm shall have the obligations in relation to this Scheme set out in paragraphs ~~123~~(1) and ~~123~~(2).
- 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:-

act of misconduct means any Member's or Member Firm's conduct in the course of his or its professional, business or financial activities (including as a partner, member, director or employee in or of any organisation or as an individual), which falls short of the standards reasonably to be expected of a Member or Member Firm.

~~*adverse finding* means a finding by a Disciplinary Tribunal that a Member or Member Firm has committed an act of misconduct or has failed to comply with any of his or its obligations under paragraph 13(2).~~

AADB means The Accountancy and Actuarial Discipline Board Limited (formerly The Accountancy Investigation and Discipline Board Limited), a company limited by guarantee incorporated in England and Wales, number 5081857, and any other body which takes over the functions of the AADB.

~~*AADB Participant* means a Participant who is participating in this Scheme.~~

~~*Adverse Finding* means a finding by a Disciplinary Tribunal that a Member or Member firm has committed an act of misconduct, or has failed to comply with any of his or its obligations under paragraphs 12(1) or 12(2).~~

Alternate Executive Counsel means a legally qualified person, appointed to that ~~office~~role by the ~~Nominations Committee of The Financial Reporting Council.~~Board.

Appeal Tribunal means a tribunal appointed by the ~~Board Convener~~under sub-paragraph 89(7)(ii), to consider an appeal against a decision of a Disciplinary Tribunal.

Appellant means a Member or Member Firm who or which gives or has given notice of appeal under paragraph 89(1).

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

the Board means the Accountancy and Actuarial Discipline Board established under the articles of association of the AADB and the equivalent Board of any other body which takes over the functions of the AADB.

Convener means the person, appointed to that office by the Nomination Committee of the FRC, who shall be responsible for the appointment of Tribunals under this Scheme and for the appointment of the person for the purposes of sub-paragraph 8(4).

Disciplinary Tribunal means a tribunal appointed by the ~~Board~~ Convener under paragraph 78(12).

Effective Date ~~for a Participant, its Members and/or Member Firms, means the earliest date by which both of the following events have occurred:-~~

~~(i) — the adoption of the Scheme by the AADB~~ (i) for Members and Member Firms of the ICAEW: 13th May 2004

~~(ii) — the acceptance or approval of the Scheme in writing by or on behalf of the governing body of that Participant.~~ (ii) for Members and Member Firms of CIMA: 25th May 2004

(iii) for Members and Member Firms of ACCA: 13th May 2004

(iv) for Members and Member Firms of CIPFA: 11th June 2004

(v) for Members and Member Firms of the ICAI: 7th December 2005

(vi) for Members and Member Firms of ICAS: 1st December 2005

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

Executive Counsel:-

(i) ~~means a legally qualified officer of the AADB, appointed to that office by the Nominations Committee of *The Financial Reporting Council; and* the FRC~~

(ii) ~~in relation to any matter where that officer is unable or unwilling to act, because of volume of work, actual or possible conflict of interest or any other reason whatsoever, includes the Alternate Executive Counsel or, where there is more than one Alternate Executive Counsel, the Alternate Executive Counsel designated in relation to any matter by the Board and Any~~ references in this Scheme to the Executive Counsel shall also be interpreted as referring to the Alternate Executive Counsel in those circumstances where one or more Alternate Executive Counsel has been appointed.

Financial Reporting Council means the Financial Reporting Council Limited (“FRC”), a company limited by guarantee incorporated in England and Wales, number 2486368 and any other body which takes over 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******Complaint*** means the formal document prepared by the Executive Counsel and submitted to a Disciplinary Tribunal setting out the grounds (including particulars sufficient to enable such grounds to be properly understood by a Disciplinary Tribunal and the Members or Member Firms concerned) to support any allegation by the Executive Counsel that a Member or Member Firm has committed an act of misconduct.:-~~

- (i) the formal document prepared by the Executive Counsel detailing the allegation or allegations that a Member or Member Firm has committed an act of misconduct or

failed to comply with any of his or its obligations under sub-paragraphs 12(1) or 12(2).

(ii) for the purposes of paragraphs 7, 8 and 9 of this Scheme, the Formal Complaint as amended by a decision made for the purposes of paragraph 7(4).

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

Former Member Firm means a firm which was a Member Firm at the time of the alleged misconduct but has ceased to be a Member Firm.

~~JDS means the Joint Disciplinary Scheme established by some of the Participants and which became effective on 21 January 1993 with the objective of promoting the highest possible standards of professional and business conduct, efficiency and competence.~~

Member means:-

- (i) a member of one or more of the ~~AADB~~ Participants, or
- (ii) ~~other than in sub-paragraph 10(2)(v),~~ any other person who is subject to the provisions of the constitution, including regulations made thereunder, of one or more of the ~~AADB~~ Participants in so far as such provisions relate to the system of discipline and professional conduct, and regulation, operated thereby, or

(iii) where sub-paragraph 4(7) applies, a Former Member.

Member Firm means:-

(i) a Firm which is subject to the provisions of the constitution, including _____ regulations made thereunder, of one or more of the ~~AADB~~ Participants _____ in so far as such provisions relate to the systems of discipline and _____ professional conduct,

and regulation, operated thereby, or two or more _____ Members working together under a formal agreement, or

(ii) where sub-paragraph 4(7) applies, a Former Member Firm.

Panel means the panel appointed pursuant to paragraph ~~240~~(1).

Participant means a member of the Consultative Committee of Accountancy Bodies ~~and any other relevant accountancy body with the extension that, if an accountancy body ceases to be a Participant or an AADB Participant at a time when any investigation or proceedings under which is participating in this Scheme are proceeding, 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), that body shall be regarded and treated as if it remained an AADB Participant.~~

Regulations means regulations made by the Board, ~~as may be amended~~ from time to time.

Representative means a solicitor, advocate or counsel or a Member or any other person who is engaged or requested to represent a Member or a Member Firm under investigation or before a Tribunal.

~~**The Financial Reporting Council** means The Financial Reporting Council Limited, a company limited by guarantee and registered in England No. 2486368, and any other body which takes over the functions of The Financial Reporting Council.~~

Tribunal means a Disciplinary Tribunal or an Appeal Tribunal (as the context requires) appointed on behalf of the AADB by the ~~Board~~Convener.

UK-connected company means:-

- (ai) 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;
- (bii) any company in the same group (as defined in section 531261 of the Companies Act 19892006) as such a company; and
- (eiii) any associate (as defined in section 521260 of the Companies Act 19892006) of such a company or such a group company.

UK-connected business means:

- (ai) 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
- (bii) any associate (as defined in section 521260 of the Companies Act 19892006) 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.

Scope of the Scheme

~~3(1) A Member or Member Firm shall be liable to investigation on the grounds set out in paragraph 5(1) below.~~

~~3(2) A Member or Member Firm shall be liable to disciplinary proceedings on the grounds set out in paragraph 5(3) below.~~

~~3(3) For the avoidance of doubt, anything said, done or omitted by:-~~

~~(i) an employee of a Member Firm within the scope of his employment, actual or ostensible; or~~

~~(ii) an agent of the Member Firm within the scope of his authority, actual or ostensible,~~

~~shall be taken as having been said, done or omitted by that Member Firm.~~

~~3(4) A Member Firm shall not avoid liability to disciplinary proceedings under this Scheme by reason of having established and operated appropriate working practices and procedures, if its conduct (by reason of the conduct of any partner, director or employee acting with actual or ostensible authority) is found to have fallen short of the standards reasonably to be expected of a Member Firm.~~

~~3(5) A Member or Member Firm will be liable to investigation and discipline under this Scheme regardless of whether the act of misconduct took place before or after the Effective Date.~~

~~3(6) A Member will be subject to investigation and discipline under this Scheme regardless of whether he was a Member at the time of the act of misconduct:-~~

~~—— (i) if that act of misconduct took place after the Effective Date, even if the rules of the Participant to which the Member belongs provide otherwise; and~~

~~—— (ii) if that act of misconduct took place before the Effective Date, only so far as the Participant's rules at the Effective Date provide for investigation and discipline of an act of misconduct that took place when a Member was not a Member.~~

~~3(7) A Former Member or Former Member Firm will be subject to investigation and discipline under this Scheme as if he or it were a Member or Member Firm:~~

~~(i) if he or it ceased to be a Member or Member Firm after the Effective Date, even if the rules of the Participant to which the Former Member or Former Member Firm belonged provide otherwise: and~~

~~(ii) if he or it ceased to be a Member or Member Firm before the Effective Date, only so far as the Participant's rules at the Effective Date provide for investigation and discipline of an act of misconduct by a Former Member or Former Member Firm.~~

The Board

43(1) Without prejudice to the generality of the powers of the Board under the AADB Memorandum and Articles of Association, the Board shall have power to:-

(i) ~~to~~ make such Regulations ~~as the Participants shall agree with the Board~~ for the operation and administration of this Scheme, and thereafter to amend such Regulations from time to time, provided that ~~they are not inconsistent with this Scheme and that~~ there shall have been prior consultation by the Board 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) ~~agree a protocol with one or more Participants to govern the operation of paragraph 5(10) provided that, in the event of any inconsistency between any protocol and this Scheme, the terms of the Scheme shall prevail and provided further that no party may withdraw from a protocol unless they have provided 6 months notice in writing to the other parties.~~

- (iii) ~~to provide the Executive Counsel with procedural guidelines, the Convener and any Tribunal with guidance concerning the discharge exercise of his-their duties under this Scheme, who shall have regard to any such guidance issued;~~
- (iv) ~~to authorise any Tribunal to employ any person whose services may reasonably be required to assist the Tribunal;~~
- (v) ~~to authorise the remuneration of the members of any Tribunal, the Convener and any other persons;~~
- (vi) ~~to delegate to the Chairman of the Board its powers under sub-paragraphs 4(3(iv)) and 4(3(iv), paragraphs 8(1), 9(4), and sub-paragraph 9(7)(ii)) above; and~~
- (vii) ~~to do all such other things as the Board considers incidental or conducive to the operation of this Scheme.~~

Grounds Liability for Investigation and Disciplinary Proceedings

5(4)(1) A Member or Member Firm shall be liable to investigation under this Scheme only where, in the opinion of the Board:-

- (i) (a) the matter raises or appears to raise important issues affecting the public interest in the United Kingdom (“the first criterion”); and
 - (b) the matter needs to be investigated to determine whether there may have been an act of misconduct (“the second criterion”); or
- (ii) it appears that the Member or Member Firm has failed to comply with any of his or its obligations under paragraph paragraphs 12(1) or 13(2) below.

5(4)(2) In deciding whether a matter ~~raises or appears to raise important issues affecting the public interest in the United Kingdom for the purposes of sub-paragraph 5(1)(i)(a)~~ satisfies the first criterion, the Board shall, amongst other things, consider whether it appears to give rise to

serious public concern or to damage public confidence in the accountancy profession in the United Kingdom. The Board shall also be entitled to consider all the circumstances of the matter including, but not limited to, its nature, extent, scale and gravity.

~~5~~4(3) A Member or Member ~~firm~~Firm shall be liable to disciplinary proceedings under this Scheme if, following an investigation, the Executive Counsel considers ~~that:-~~;

~~(i) — there are grounds for delivering to the Board a formal complaint under paragraph 7(7) below alleging an act or acts of misconduct by that Member or Member Firm;~~
~~or~~(i) — that there is a realistic prospect that a Tribunal will make an Adverse Finding against a Member or Member Firm; and

~~(ii) — there are grounds for submitting to a Disciplinary Tribunal a formal complaint under paragraph 7(7) below alleging that the Member or Member Firm has failed to carry out any of its obligations under paragraph 13(2) below~~(ii) — that a hearing is desirable in the public interest.

~~5~~4(4) In considering the question of whether the conduct of a Member or Member Firm may have fallen short of the standards reasonably to be expected of him or it, 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 AADB Participants~~, which applies to him or it.

4(5) A Member shall be liable to disciplinary proceedings under this Scheme only if he is, when a Formal Complaint is delivered to the Board under paragraph 6(9), or was, at the time of any alleged act of misconduct:-

(i) — a citizen or subject of the United Kingdom; or

(ii) — working in the United Kingdom; or

(iii) — working in a United Kingdom registered audit firm; or

(iv) working in, involved in providing services to or involved in auditing a UK-connected company or UK-connected business.

4(6) A Member or Member Firm will be liable to investigation and disciplinary proceedings under this Scheme:

(i) regardless of whether the alleged act of misconduct took place before or after the Effective Date, and

(ii) regardless of whether he or it was a Member or Member Firm at the time of the alleged act of misconduct, provided that, where the alleged act of misconduct took place before the Effective Date, the Participant's rules at the Effective Date provide for investigation and discipline of alleged misconduct that took place prior to the Member or Member Firm becoming a Member or Member Firm of the Participant.

4(7) A Former Member or Former Member Firm will be liable to investigation and disciplinary proceedings under this Scheme as if he or it were a Member or Member Firm in respect of any alleged act of misconduct which took place while he or it was a Member or Member Firm:

(i) if he or it ceased to be a Member or Member Firm after the Effective Date, even if the rules of the Participant to which the Former Member or Former Member Firm belonged provide otherwise; and

(ii) if he or it ceased to be a Member or Member Firm before the Effective Date, only so far as the Participant's rules at the Effective Date provide for liability for investigation and disciplinary proceedings in respect of alleged misconduct by a Former Member or Former Member Firm.

4(8) A Member Firm shall not avoid liability to investigation and disciplinary proceedings under this Scheme by reason of having established and operated appropriate working practices and procedures, if its conduct (by reason of the conduct of any partner, director or employee acting with actual or ostensible authority) may constitute an act of misconduct.

4(9) 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 or Member Firms, 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.

4(10) For the avoidance of doubt:

- (i) anything said, done or omitted by an employee of a Member Firm within the scope of his employment, either actual or ostensible, or as an agent of the Member Firm within the scope of his authority, either actual or ostensible shall be taken as having been said, done or omitted by that Member Firm;
- (ii) Nothing in this paragraph will remove the liability for investigation or disciplinary proceedings for a Member who is an employee or agent of a Member Firm.

Decision to Investigate

~~65(1) Without prejudice to paragraph 13(3), an~~ An investigation under this Scheme may be instituted in either of the circumstances described in paragraphs ~~65(2)~~ and ~~65(8)~~.

~~65(2) Where an AADB Participant:-~~

- ~~(i) considers that a matter raises or appears to raise important issues affecting the public interest in the United Kingdom; and~~
- ~~(ii) considers that one or more of its Members or Member Firms may have committed an act of misconduct in relation to that matter; and~~
- ~~(iii) is satisfied that no disciplinary proceedings (going beyond an investigation) have been instituted by an AADB Participant in relation to the conduct in question;~~

then the ~~AADB~~-Participant shall refer that matter to the AADB and request that the Board commission ~~AADB conduct~~ an investigation. Such a request from a Participant shall be published by the Board if it thinks fit. In the event that ~~an AADB a~~ Participant is in doubt as to whether a particular matter should be referred to the AADB then the ~~AADB~~-Participant shall consult with the Board ~~AADB~~ for guidance.

~~65(3)~~ Upon receipt of a reference pursuant to paragraph ~~65(2)~~, the Board 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.

~~65(4)~~ The decision of the Board to accept or decline the reference shall depend on whether, in its opinion, the criteria at paragraph ~~54(1)~~, taking account of the considerations in paragraph ~~54(2)~~, are met in relation to the matter referred.

~~65(5)~~ Where the Board has decided to accept a reference made pursuant to paragraph ~~65(2)~~, it shall, within fourteen days thereafter, give notice in writing of its decision to the ~~AADB~~ Participants.

~~65(6)~~ If, in the opinion of the Board, it is appropriate that the matters that form the subject of the investigation should extend beyond those contained within the reference from the ~~AADB~~ Participant, or that any matters contained within the reference from the ~~AADB~~-Participant should be excluded from the investigation, the Board may decide either to include or exclude any such matters from the investigation as appropriate.

~~65(7)~~ Where the Board has decided to decline a reference made pursuant to paragraph ~~65(2)~~ it shall:-

(i) give notice in writing of its decision and the reasons for it to the relevant Participant
~~the decision~~ within fourteen days; and

~~(ii) promptly state in writing its decision and the reasons for it and supply a copy thereof to the relevant AADB Participant; and~~

(iii) if it thinks fit publish its decision.

65(8) Where ~~an AADB-a~~ Participant is conducting an investigation into the conduct of a Member or Member Firm of which the Board is aware, or the Board otherwise becomes aware of matters relating to the conduct of a Member or Member Firm, and, in either case, the Board:-

(i) is of the opinion that the grounds for an investigation under paragraph ~~5(4)(1)~~, taking account of the considerations in paragraph ~~54(2)~~, have been met; ~~and~~

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

the Board may, after consultation with any ~~AADB~~-Participant whose Members or Member Firms may be concerned in an investigation, decide that the matter shall be dealt with by the AADB in accordance with this Scheme.

65(9) Where the Board has decided pursuant to paragraph ~~65(8)~~, that a matter should be dealt with by the AADB it shall give notice in writing of its decision and the reasons for it to the ~~AADB~~-Participants. Upon receipt of such notice, the relevant ~~AADB~~-Participant shall forthwith suspend any investigation relating to the matter on its part.

5(10) (i) Where the Board considers that it has insufficient information about a matter to determine whether a Member or Member Firm is liable for investigation under paragraph 4(1):-

(a) it may, subject as follows, direct the Executive Counsel to make preliminary enquiries before deciding whether or not the matter should be investigated; and

(b) it shall inform the relevant Participant where any direction is made to the Executive Counsel at (a) above; and

(c) where a matter has also been referred to the Board pursuant to paragraph 5(2), the time in which the Board shall be required to decide whether or not to investigate the matter for the purposes of paragraph 5(3) shall be extended by such period as shall be reasonable for the required preliminary enquiries to be carried out.

(ii) Paragraph 5(10) may only be exercised in respect of Members or Member Firms of a Participant in accordance with the terms of a protocol to be agreed between the Board and that Participant. Amendment of any protocol from time to time shall be by agreement between the parties to the protocol.

Investigation

~~76~~**(1)** (i) ~~To assist the Board in~~ For the purposes of exercising its powers under paragraph ~~6,~~ 5, the Board and the Executive Counsel on its behalf, has power to require any ~~AADB~~ Participant to provide to him such documentary documents or other information in its possession, or under its control, as the Board or the Executive Counsel, as the case may be, shall reasonably think fit and as the ~~AADB~~ Participant can lawfully provide.

(ii) The ~~foregoing power of the Board, and the Executive Counsel on its behalf, to require any AADB Participant to provide documentary information~~ in sub-paragraph 6(1)(i) shall include the power to ~~call on it~~ require the Participant to:-

(a) ~~to~~ permit the inspection and taking of copies of the documentary documents or other information; and

(b) ~~to the extent reasonable, to~~ supply copies of such documentary documents or other information at its own expense to the extent that it is reasonable in all the circumstances.

For the avoidance of doubt, documentary documents or other information includes, without limitation, any books, documents, records, telephone recordings or computer held information of whatsoever kind.

~~7(6)(2)~~ Where a reference is accepted by the Board under paragraphs ~~6(5)(3) and 6(4)~~:-

- (i) the scope of the investigation shall be set out within the notice ~~in writing~~ given by the Board referred to at paragraph ~~6(5)(5)~~;
- (ii) in accordance with paragraph ~~5(6(6), such notice)~~, the scope shall not be ~~limited by the terms of the reference given by the AADB~~ restricted to the matters referred by the Participant under paragraph ~~6(5)(2)~~ and shall include or exclude any ~~matters-issues~~ relating to the matter as the Board shall see fit; ~~and~~
- (iii) the relevant ~~AADB~~ Participant shall supply to the Board any material documents or other information which ~~are~~ is in the possession, or under the control, of that ~~AADB~~ Participant which may reasonably be required for the purposes of the investigation and which the ~~AADB~~ Participant can lawfully provide.

~~7(6)(3)~~ Where the Board decides under paragraph ~~6(5)(8)~~ that a matter shall be assumed by the AADB to be dealt with in accordance with this Scheme:-

- (i) the scope of the investigation shall be set out within the notice in writing given by the Board as referred to at paragraph ~~6(5)(9)~~; and
- (ii) the relevant ~~AADB~~ Participant shall supply to the Board any documents or other information ~~material~~ which is in the possession, or under the control, of that ~~AADB~~ Participant which may reasonably be required for the purposes of the investigation.

~~76~~(4) In either case identified at paragraphs ~~76~~(2) and ~~76~~(3), the Board shall:-

- ~~(i)~~ (i) ~~transmit~~provide a copy of the notice in writing, together with any ~~further~~ material obtained pursuant to sub-~~paragraph 7~~paragraphs 6(2)(iii) or 6(3)(ii), to the Executive Counsel to be dealt with in accordance with this Scheme; ~~and~~
- (ii) inform the Member or Member Firm concerned of its decision to refer their conduct for investigation by its Executive Counsel and provide the Member or Member Firm concerned with relevant details of the scope of the investigation; and
- (iii) publish the fact of its decision to investigate unless this would not, in the opinion of the Board, be in the public interest.

~~76~~(5) Upon receipt of the documents ~~transmitted~~provided pursuant to sub-paragraph ~~76~~(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 ~~appropriate for~~necessary to fulfil the ~~purposes~~scope of ~~conducting~~ the investigation. ~~set out by the Board.~~

~~6~~(6) The Executive Counsel shall have power on behalf of the AADB to engage any person whose services may reasonably be required to assist the Executive Counsel for the purposes of conducting the investigation or subsequent disciplinary or appeal proceedings.

~~6~~(7)(~~6~~) (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 ~~that he is conducting~~set out by the Board then:-

- ~~(ia)~~ (i) the Executive Counsel shall report those facts and circumstances to the Board; and
- ~~(ib)~~ (ii) the Board, after consultation with the relevant ~~AADB~~ Participant (but within the Board's sole discretion), may direct ~~in writing~~ that the scope of the Executive Counsel's investigation shall include such facts or circumstances

and shall inform the ~~AADB~~ Participants and the Members or Member Firms 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 Board under paragraph 6(2) or 6(3) of the Scheme (and whether or not already amended in accordance with sub-paragraph 6(7)(i) above) should be narrowed , then:-

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

(b) the Board may direct that the scope of the Executive Counsel's investigation shall be narrowed and shall inform the Participants and the Members or Member Firms concerned accordingly.

6(8) If, following his investigation, the Executive Counsel considers ~~that any Members or Member Firms concerned appear to have committed an act of misconduct or to have failed to comply with its obligations under paragraph 13(2), then the Executive Counsel shall, subject to paragraphs 7(8) and 7(9), in the order set out below:- :-~~

(a)

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

(ii) that a hearing is desirable in the public interest,

then the Executive Counsel shall notify the Members or Member Firms concerned of his findings and the reasons for them the Formal Complaint he proposes to deliver to the Board and give each Member or Member Firm an opportunity to make written representations to him within such reasonable time as the Executive Counsel shall specify;

(b) ~~consider whether the written representations provided by the Members or Member Firms concerned have given a satisfactory response to his findings;~~6(9) If having reviewed any

representations received for the purposes of paragraph 6(8) above, the Executive Counsel still considers:-

~~(e) — if, in the opinion of the Executive Counsel, the written representations provided have not given a satisfactory response, notify the Board thereof(i) _____ that there is a realistic prospect that a Tribunal will make an Adverse Finding against a Member or Member Firm; and~~

~~(d) — deliver to the Board a formal complaint against any Member or Member Firm concerned, which may be based on his amended findings having regard to sub-paragraphs 7(7)(b) and 7(7)(c);(ii) _____ that a hearing is desirable in the public interest,~~

~~7(8) — A Member shall be liable to be disciplined under this Scheme only if he is, when a formal complaint is delivered under sub-paragraph 7(7)(d), or was, at the time of any alleged act of misconduct, _____ the shall deliver a Formal Complaint against the Member or Member Firm to the Board.~~

~~(a) — a citizen or subject of the United Kingdom; or~~

~~(b) — working in the United Kingdom; or~~

~~(c) — working in a United Kingdom registered audit firm; or~~

~~(d) — working in, involved in providing services to or involved in auditing a UK connected company or UK connected business.~~

~~7(9) — Notwithstanding that the Executive Counsel considers that a Member appears:-~~

~~(i) — to have committed an act of misconduct; and~~

~~(ii) — to be within one or more of the four categories listed in paragraph 7(8),~~

~~the Executive Counsel shall take into account the existence and nature of other authorities and bodies outside the United Kingdom to which the Member may be subject for acts of misconduct. If, in consequence, the Executive Counsel is of the opinion that it would be inappropriate for the Member's conduct to be dealt with under the Scheme, the Executive Counsel may decide not to deliver a formal complaint in respect of the Member's conduct.~~

~~76(10) If the Executive Counsel either following his investigation, or having reviewed any written representations supplied by the Member or Member Firm in accordance with paragraph 6(8) above considers:-~~

~~(i) that there is no realistic prospect that a Tribunal will make an Adverse Finding against a Member or Member Firm; or~~

~~(ii) a hearing is not desirable in the public interest,~~

~~he shall not deliver to the Board a Formal Complaint and shall provide his reasons for his decision to the Board in a report which shall be signed and dated by him. The Board shall supply a copy of any such report to any Member or Member Firm concerned and each Participant.~~

~~6(11) A Member or Member Firm may, either voluntarily or at the invitation of the Executive Counsel at any stage of the investigation (including, for the avoidance of doubt, during the hearing before the a Disciplinary or Appeal Tribunal), make an admission in respect of any alleged particulars of fact, any some or all of the alleged acts of misconduct or any alleged failures to comply with his or its obligations under paragraph paragraphs 12(1) or 123(2) and such admissions, if accepted by the Executive Counsel, shall constitute proof before a Disciplinary Tribunal against the Member or Member Firm making the admission of the act of misconduct or failure to comply.~~

~~(ii) Any such admission shall (if made prior to a formal complaint being submitted to the Board by the Executive Counsel) be referred to in any formal complaint delivered by the Executive~~

~~Counsel to the Board. Such formal complaint must include a statement agreed with the Executive Counsel giving particulars sufficient to enable the admitted act or acts of misconduct or failure to comply~~6(12)The Executive Counsel shall, if such an admission is made prior to a Formal Complaint being submitted to the Board, prepare and deliver to the Board with the Formal Complaint a statement of agreed facts. Such statement of agreed facts must be signed by the Executive Counsel and the Member or Member Firm concerned and give particulars sufficient to enable the admissions to be properly understood.

~~7(11) (i) — If, following his investigation, the Executive Counsel does not deliver a formal complaint under paragraph 7(7) against a Member or Member Firm who or which has been investigated, he shall report that fact to the Board and such report shall include a statement of his reasons therefore. Any such report shall be dated and signed by the Executive Counsel.~~

~~(ii) — The Board shall supply a copy of any such report to any Member or Member Firm concerned and each AADB Participant.~~

67(123) The Board 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 Board, be in the public interest.

Disciplinary Proceedings

~~78(1) Where the Executive Counsel notifies the Board and delivers to the Board a formal Complaint in accordance with paragraph 67(79), the Board shall serve the formal Complaint on the Member or Member Firm concerned and shall, as soon as practicable, send the Formal Complaint to the Convener appoint a Disciplinary Tribunal to hear the formal complaint in accordance with the provisions of this Scheme.~~

~~87(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 Board with details of the Tribunal appointed and notify Executive Counsel and each Member or Member Firm concerned.

7(3) Subject to this Scheme, the procedure adopted by a Disciplinary Tribunal to deal with any ~~F~~formal ~~C~~complaint shall be in accordance with the Regulations.

78(34) 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.

7(5) In coming to ~~its~~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.

78(46) After hearing the ~~formal complaint~~ Formal Complaint, the Disciplinary Tribunal shall, in relation to the Member or Member Firm which is the subject of the ~~formal complaint~~ Formal Complaint, either:-

- (i) make an ~~adverse finding~~ Adverse Finding in respect of some or all of the alleged acts of misconduct or failures to comply with the Member's or Member Firm's obligations under paragraphs 123(1) or 12(2) forming the subject matter of the formal complaint, or,
- (ii) dismiss the ~~f~~Formal ~~e~~Complaint.

78(57) Where the Disciplinary Tribunal makes an ~~adverse finding~~ Adverse Finding in relation to a Member or Member Firm, then:-

- (i) it may order such sanctions against the Member or Member Firm as are contained within the schedule of sanctions at Appendix 1 to this Scheme as it considers appropriate; but, if the act of misconduct occurred before the Effective Date, only in exceptional circumstances may the Disciplinary Tribunal impose a sanction more

severe than could have been imposed under the relevant Participant's rules at the Effective Date;

- (ii) in addition to the sanctions at Appendix 1 to this Scheme, any order made pursuant to sub-paragraph (i) above, may include an order that the Member or Member Firm be required to pay, in the manner set out in paragraph 11~~2~~, the whole or part of the costs of, and incidental to, the investigation and the hearing of the ~~formal complaint~~ Formal Complaint before the Disciplinary Tribunal. The amount to be paid by the Member or Member Firm is to be determined by the Disciplinary Tribunal provided that, where the Member or Member Firm has made an admission under paragraph 7~~(106(11))~~, no such order for costs may be made in relation to any costs incurred after the date of the admission which relate to the subject matter of the admission; and
- (iii) the Tribunal may make no order against the Member or Member Firm, or no order except for the payment of costs, if it considers that to be appropriate in all the circumstances.

~~78(68)~~ If Where the Disciplinary Tribunal dismisses a the formal complaint Formal Complaint it may, on the Member's or Member Firm's application having regard to all the circumstances including the conduct of the Member or Member Firm and the Executive Counsel (including, in the case of the latter, the circumstances in which the formal complaint came to be preferred and the manner of its presentation) at its absolute discretion concerned, order that the Board ~~to~~ pay a specified sum in respect of legal costs that were reasonably incurred by the Member or Member Firm subsequent to the ~~formal complaint~~ Formal Complaint being served on the Member or Member Firm for the purposes of paragraph 7(1).

~~8(7)~~ Following its decision under paragraph 8(4), the Disciplinary Tribunal shall prepare a report on the Member or Member Firm concerned setting out the Tribunal's decision or decisions and the reasons for it or them and any related order or orders and send the report to the Board which shall then send a copy to the Member or Member Firm concerned and to the AADB Participant.

78(9) The Tribunal's discretion to award costs to a Member or Member Firm concerned shall be restricted to circumstances where the Tribunal finds that no reasonable person would have referred or pursued a Formal Complaint under the terms of this Scheme.

78(10) The Disciplinary Tribunal shall make a report setting out its written decision and reasons and any related orders made pursuant to paragraphs 7(6), 7(7), and 7(8) and send it to the Member or Member Firm concerned, the Executive Counsel, and the Board which shall then send a copy to the Participants.

7(11) (i) Unless the Disciplinary Tribunal shall otherwise decide, an ~~adverse finding~~ Adverse Finding in relation to a Member or Member Firm and any order under paragraph ~~87(57)~~ against a Member or Member Firm shall take effect 29 days after the date on which the finding or order is notified to the Member or Member Firm.

(ii) The Disciplinary Tribunal shall decide the extent to which the order shall apply even if the Member or Member Firm appeals against the order provided that the Tribunal considers that immediate action 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 9(1).

(iii) If the person appointed under paragraph 9(4) refuses leave to appeal, the order shall take effect from the date notification of that refusal is sent to the proposed ~~appellant~~. ~~If the person appointed under paragraph 9(4) grants leave to appeal, the order shall take effect (subject to the relevant Appeal Tribunal decision) from the next working day after the date notification of the relevant Appeal Tribunal decision is sent to the Appellant.~~

78(912) The Board shall publish the report or reports prepared by the Disciplinary Tribunal for the purposes of paragraph 7(10) as soon as practicable and in such manner as it thinks fit unless this would not, in the opinion of the Board, be in the public interest.

Appeals

89(1) If ~~a~~the Disciplinary Tribunal makes an ~~adverse finding~~Adverse Finding in relation to any Member or Member Firm, with or without any order under paragraph ~~78(57)~~, then subject to paragraph **89(2)** the Member or Member Firm may, within 28 days after the date on which the finding and/or order is notified to him or it (provided always that a longer period may be allowed as set out in paragraph **89(5)** below), give to the Board notice of appeal against the finding and/or order.

89(2) An appeal under paragraph **89(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~~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 ~~78(57)~~ was manifestly unreasonable.

89(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.

~~8-9~~(4) Upon receipt of a notice of appeal, the Board shall send the notice of appeal to the Convener who shall as soon as practicable appoint a person to consider whether to give leave to appeal. That person shall be a former member of the judiciary or a Queen's Counsel, and shall not sit on any subsequent Appeal Tribunal in connection with the case.

~~89~~(5) If the notice of appeal was not given to the Board within the 28 day period set out in paragraph ~~89~~(1), the person appointed under paragraph ~~89~~(4) shall refuse leave to appeal unless there are good reasons for giving leave to appeal out of time.

~~89~~(6) Unless ~~he has refused leave to appeal under paragraph 9(5)~~, the person appointed under paragraph ~~89~~(4) has refused leave to appeal under paragraph 8(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 ~~89~~(2).

~~89~~(7) (i) Following his decision to give leave to appeal under paragraph ~~89~~(6), or not to give leave to appeal, the person appointed under paragraph ~~89~~(4) shall notify the Board ~~of~~ and provide reasons in writing for his decision or decisions and the Board shall notify each Member or Member ~~firm~~Firm concerned ~~and~~, each ~~AADB~~ Participant; and the Convener; and

(ii) ~~the Board, once in receipt of such notice for~~ if the person appointed under paragraph 8(4) gives leave to appeal, shall, if leave to appeal is given the Convener shall, as soon as practicable, appoint an Appeal Tribunal-

~~(iii) — The order of the relevant Disciplinary Tribunal shall apply if leave to~~ hear the appeal is not given in accordance with the provisions of this Scheme and provide the Board with details of the Tribunal appointed and notify the Executive Counsel and each Member or Member Firm concerned.

89(8) Subject to this Scheme, the procedure adopted by an Appeal Tribunal to deal with any ~~formal complaint~~Formal Complaint or appeal shall be in accordance with the Regulations.

98(9) 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.

89(10) 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 sub-paragraph **89(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 **78(57)**.

89(11) On an appeal the Appeal Tribunal shall have power to:-

- (i) affirm, vary, substitute or rescind any ~~adverse findings~~Adverse Findings or orders of the Disciplinary Tribunal in relation to or against any Appellant;
- ~~(ii) — substitute in relation to or against such Appellant, any other adverse findings and/or orders which it considers appropriate and which the Disciplinary Tribunal could have made under paragraph 8(5);~~
- ~~(iii) —, save that the Appeal Tribunal shall so may not exercise its powers under subsections 9(10)(i) and 9(10)(ii) 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 appellantAppellant is not more severely dealt with on appeal than he or it was dealt with by the Disciplinary Tribunal;~~
- ~~(ivii)~~ 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 sub-paragraph **89(2)(iii)**, order that the matter be reheard by the Disciplinary Tribunal which made the relevant ~~a~~Adverse ~~f~~Findings or orders or failing that by a fresh Disciplinary Tribunal;

(v)iii) order that any Appellant be required to pay, in the manner set out in paragraph 112 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;

~~(vi) should it grant the appeal, on the Member's or Member Firm's application having regard to all the circumstances including the conduct~~

8(12) If the Appeal is allowed the Appeal Tribunal may, on the application of the Member or Member Firm and the Executive Counsel (including, in the case of the latter, the circumstances in which the formal complaint came to be preferred and the manner of its presentation) at its absolute discretion, order that the Board to pay a specified sum in respect of legal costs that were reasonably incurred by the Member or Member Firm subsequent to the formal complaint-Formal Complaint being served on the Member or Member Firm for the purposes of paragraph 7(1).

8(13) The Appeal Tribunal's discretion to award costs to the Member or Member Firm concerned shall be restricted to the circumstances set out in paragraph 7(9) above.

89(142) Following its decision under paragraph 9(11), the Appeal Tribunal shall prepare a report on the Member, Member Firm, Members or Member Firms concerned setting out the Appeal Tribunal's decision or decisions and any related order or orders and send the report or reports to the Board which shall then send a copy to the Member or Member Firm concerned and to the AADB Participants. The Appeal Tribunal shall make a report setting out its written decision and reasons and any related orders made pursuant to paragraphs 8(11) or 8(12) and send it to the Member or Member Firm concerned, the Executive Counsel, and the Board which shall then send a copy to the Participants.

89(153) The A decision or decisions of the Appeal Tribunal shall take effect from the next working day after the date it is announced notification is sent to the Member or Member Firm.

~~89(1416)~~ At any time before the ~~date of a report which sets out the~~ Appeal Tribunal gives its decision ~~of an Appeal Tribunal~~ in respect of the appeal of an Appellant in accordance with paragraph ~~89(1214)~~, such Appellant may ~~abandon~~ withdraw his or its appeal by notice in writing to the Appeal Tribunal. Thereupon, the Appeal Tribunal shall affirm ~~under sub-paragraph 8(5)(i) and 8(5)(ii) any adverse findings~~ 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 sub-paragraph ~~89(11)(v)-iii~~ in relation to the whole or part of the costs of and incidental to the appeal.

~~89(1517)~~ The Board shall publish the report prepared sent to it by the Appeal Tribunal pursuant to paragraph 8(14) as soon as practicable and in such manner as it thinks fit unless this would not, in the opinion of the Board, be in the public interest.

Disciplinary and Appeal Tribunals

~~910(1)~~ (i) ~~The Board shall maintain a Panel of individuals who are appointed by the Board~~ Convener shall ensure that a Panel is maintained from time to time and who, in the opinion of the Board, comprising individuals who have the appropriate qualifications and experience to sit on a Tribunal.

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

~~910(2)~~ A Tribunal shall be appointed from the Panel by the Convener and shall be composed as follows:-

(i) Each Tribunal shall consist of either three or five persons as the Board in its absolute discretion thinks fit.

- (ii) The Chairman of a Disciplinary Tribunal shall be a lawyer (~~either~~ a former member of the judiciary, a barrister, an advocate or a solicitor). The ~~chairman~~Chairman of an Appeal Tribunal must be a former member of the judiciary or a Queen's Counsel.
- (iii) A three-person Tribunal must comprise in addition to the Chairman:-
 - (a) a lay person (who is neither a lawyer nor an accountant); and
 - (b) an accountant.
- (iv) A five-person Tribunal must include in addition to the Chairman:-
 - (a) at least one lay person (who is neither a lawyer or an accountant); and
 - (b) two (but no more than two) accountants.
- (v) Each accountant appointed to a Tribunal shall be a Member of one or more of the Participants with appropriate experience.
- (vi) No serving member of the governing body of, or any officer or ___ employee of, any of the ~~AADB~~ Participants shall be appointed as a Convener or to a Tribunal. However, former members of the governing bodies and ___ former officers or employees of ~~AADB~~ Participants shall not be precluded from such appointment-provided that at least one year has elapsed since the termination of the appointment or employment.
- (vii) No person who is a member, director or officer of ~~any of The Auditing Practices Board Limited, The Financial Reporting Council Limited, The Accounting Standards Board Limited, The Professional Oversight Board for Accountancy Limited, The Financial Reporting Review Panel Limited or the AADBFRFC,~~ or ~~a member of the Council of The Financial Reporting Council Limited~~ of any subsidiary company of the FRC, or a member appointed to any Operating Board of the FRC or any

subsidiary company of ~~The Financial Reporting Council Limited~~ the FRC, shall be appointed as a Convener or to a Tribunal. A former member, board member, director or officer as aforesaid shall not be precluded from such appointment provided that at least one year has elapsed since the termination of the appointment or employment.

(viii) No person who has been concerned with the investigation or disciplinary proceedings leading to the ~~adverse finding~~ Adverse Finding and/or order which is the subject of the appeal, or with any earlier proceedings relevant thereto, shall be appointed as a Convener or to a Tribunal.

910(3) Subject to sub-paragraphs 910(2)(i) to 910(2)(viii) ~~(inclusive)~~, if more than one Disciplinary Tribunal is appointed to hear ~~formal complaints~~ Formal Complaints arising out of the same matter, any of the members appointed to one of the Tribunals may be appointed to the other or others.

910(4) Where there are two or more notices of appeal against ~~findings~~ Adverse Findings or orders made by the same Disciplinary Tribunal, the ~~Board~~ Convener may appoint the same Appeal Tribunal to hear some or all of the appeals. Subject to sub-paragraphs 910(2)(i) to 910(2)(viii) inclusive, 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.

910(5) Subject to the provisions of this Scheme, at any time before the hearing of a ~~formal complaint~~ 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~~ Formal Complaint or appeal.

910(6) 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 ~~accountant~~Member and one ~~lay~~lay person who is neither a lawyer nor ~~an~~an ~~accountant~~Member.

910(7)

- (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 10(6), or if for any other reasons 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 ~~Board~~ Convener who 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 ~~Board~~ Convener decides that it would be appropriate and consistent with ensuring a fair hearing of the matter, ~~the~~ 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 Board with details of any new Chairman, Tribunal Member, or Tribunal (as appropriate) and notify Executive Counsel and each Member or Member Firm concerned.

910(8) (i) Save as provided for in paragraph 9(5), Any matter to be decided by a Tribunal shall be decided by a majority of votes. ~~In the case of an equality 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 7(8) or 8(12), 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.

910(9) 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.

910(10) The Executive Counsel shall act as complainant (before a Disciplinary Tribunal) or respondent (before an Appeal Tribunal) and shall bring evidence against the Member or Member Firm in respect of the subject of the ~~formal complaint~~ Formal Complaint or appeal before the Tribunal. Every Tribunal shall give any Member or Member Firm the subject of a ~~formal complaint~~ Formal Complaint before it a reasonable opportunity to hear the evidence against him or it, to cross-examine witnesses called by the Executive Counsel, to call witnesses and lead evidence in his or its defence and to make representations orally or in writing to the Tribunal. Any such Member or Member Firm shall be entitled to be represented by a Representative at all hearings of the Tribunal.

910(11) The Tribunal may decide any issue of fact or law and draw any inference of fact which it considers is supported by the evidence.

910(12) The Tribunal may exclude from a hearing any evidence which, in its opinion, it is necessary to exclude in order to:-

- (i) ensure fairness between the parties; and
- (ii) preserve the interests of justice.

~~910(13) If the subject matter of a formal complaint to be heard arises wholly or mainly in Scotland, the Disciplinary Tribunal shall sit in Scotland, the Chairman shall be a former member of the Scottish judiciary, an advocate or a solicitor qualified in Scotland, and each non-accountant member shall be a person residing in Scotland.~~

~~9(13) All Tribunals shall be conducted in accordance with the laws of England and Wales.~~

Standard of Proof

~~110 The standard of proof on which a formal complaint, or any part thereof, is to be decided shall be applied by a Tribunal is the balance civil standard of probabilities. The more serious the allegation the higher the degree of probability that is required proof.~~

Payments

~~112(1) Where a Tribunal makes an order for the payment of a fine and/or costs against a Member or Member Firm, then:-~~

- ~~(i) in the case of a Member, 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) in the case of a Member Firm, such monies:-~~
 - ~~(a) shall be due from the Member Firm concerned; and/or~~
 - ~~(b) shall be jointly and severally due from, and shall be paid by, those Members who were partners in, members of, directors of or the proprietor of such Member Firm during any part of the time relevant to the ~~adverse finding~~ **Adverse Finding** or thereafter, whether or not they were Members or it was a Member Firm during any part of that time;~~

- (c) shall be so due from, and shall be paid by, the Member Firm and the individuals referred to in sub-paragraph ~~112(1)~~(i)(b) even if it ceased to be a Member Firm or they ceased to be Members on or after the date of the report of the Disciplinary Tribunal;
- (iii) in either case, such monies shall be paid to the AADB on behalf of ~~The Financial Reporting Council~~the FRC, and applied in the manner agreed between ~~The Financial Reporting Council~~the FRC and the ~~AADB~~-Participants;
- (iv) 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 ~~89~~(5), such fine and/or costs shall be paid not later than 28 days after the date when the order takes effect under sub-paragraph ~~78~~(~~81~~)(ii) 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;
- (v) 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 ~~is notified~~ under paragraph ~~89~~(~~14~~) is notified to the Member or Member Firm 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;
- (vi) the AADB 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;

- (vii) in the event of non-payment in full, including any interest, of a fine and/or cost order within the time specified for payment, the Member concerned shall be excluded as a Member of one or more ~~AADB~~-Participants and in the case of a Member Firm the removal of registration by one or more ~~AADB~~-Participants shall be recommended.

11(2) Where a Tribunal makes an order for the payment of costs against the AADB, 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 and Member Firms

~~123~~(1) Every Member and every Member Firm shall at all times co-operate fully, and every Member Firm shall use its best endeavours to ensure that every employee of that Member Firm shall co-operate fully, with the Executive Counsel and with any Disciplinary Tribunal or Appeal Tribunal established pursuant to this Scheme. Without prejudice to the generality thereof, such full co-operation shall include complying with any notice served pursuant to paragraph ~~123~~(2).

~~123~~(2) The Executive Counsel shall have power by notice served on any Member or Member Firm to call on him or it to provide (to the extent that such Member or Member Firm can lawfully do so):-

- (i) to the Executive Counsel or to any person appointed or employed by him or by the Board on behalf of the AADB, information and explanation relevant to any matter under investigation or preliminary enquiry pursuant to paragraph 5(10) orally and/or in writing as the Executive Counsel shall require, and
- (ii) evidence to a Tribunal orally and/or in writing as the Executive Counsel or the Tribunal shall require.

The foregoing power of the Executive Council by notice to call on any Member or Member Firm to provide information and/or explanation and/or evidence shall include the power to call on him or it:-

- (a) to permit the inspection and taking of copies of the books, documents, records, telephone recordings or computer held information of whatsoever kind relevant to the matter under investigation which are in the possession or under the control of such Member or Member Firm; and
- (b) to the extent reasonable, to supply copies of such books, documents, records, telephone recordings or computer held information of whatsoever kind at his or its own expense.

It shall be the duty of any Member or Member Firm on whom a notice is served under this paragraph 123(2) to comply with it within the period of 14 days beginning with the date of service or such longer period as the Executive Council may allow.

~~13(3) If, at any time, the Executive Council considers that:-~~

- ~~(i) there are grounds upon which a Disciplinary Tribunal could make an adverse finding that one or more Members or Member Firms, whether or not they are within the scope of any investigation, have failed to carry out any obligation under paragraph 13(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 sub paragraphs 7(7)(a) to 7(7)(d). Where a formal complaint under sub paragraph 7(7)(d) specifies grounds which the Executive Council alleges justify an adverse finding by reference to sub paragraph 5(1)(ii), that formal complaint may be heard by the Disciplinary Tribunal which is hearing or is to hear another formal complaint,~~

~~where the Board considers that to be appropriate when it appoints a Disciplinary Tribunal to hear the former formal complaint.~~

Proof of Certain Matters

~~134(1)~~ The fact that a Member or Member Firm:-

- (i) ~~_~~has, before a Court of competent jurisdiction in the United Kingdom, been convicted of an indictable offence, or
- (ii) has, before a Court outside the United Kingdom, been convicted ~~of~~ elsewhere of an offence which would have constituted an indictable offence had the matter been prosecuted in the United Kingdom ~~if the conduct in question had occurred there,~~

~~_____ shall for the purposes of this Scheme be conclusive evidence of an act of mis-conduct by the Member or Member Firm, whether or not he or it was a Member or Member Firm at the time of the conduct resulting in the conviction.~~

~~14(2) The fact that a Member or Member Firm has before a Court of competent jurisdiction in the United Kingdom or equivalent jurisdiction outside the United Kingdom been convicted of a summary only offence may be considered by a Tribunal as evidence when determining whether that Member or Member Firm has committed an act of misconduct, whether or not he or it was a Member or Member Firm at the time of the conduct resulting in the conviction~~

~~13(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.~~

~~134(3)~~ The fact that a Member or Member Firm:-

- (i) has had an adverse finding made against him or it in respect of his or its conduct in proceedings before a regulatory body performing its functions under the Financial

Services Act 1986, the Financial Services and Markets Act 2000, the Insolvency Act 1986, the Companies Act 1989 or the Companies Act ~~1989~~ 2006; or

- (ii) has had a disqualification order made against him under the Company Directors Disqualification Act 1986,

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

134(4) ~~A~~ Without prejudice to paragraphs 13(1) and 13(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 ~~the United Kingdom~~ or ~~any court~~ outside the United Kingdom;
- (iii) in any proceedings before, or report by, any of the bodies mentioned in paragraph 134(5);
- (iv) in any proceedings as a result of which an accountant was notified by or on behalf of the Council of the Law Society that he was not qualified to give an accountant's report within the meaning of section 34 (accountant's report) of the Solicitors Act 1974 or equivalent provision in Scotland, Northern Ireland or Ireland;
- (v) in any proceedings before, or report by, any regulatory, professional or disciplinary body outside the United Kingdom; or
- (vi) in any report or proceedings which, in the opinion of the relevant Tribunal, corresponds or correspond to any report or proceedings referred to in sub-~~paragraph~~ paragraphs (i) to (v) (inclusive) above,

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

134(5) The bodies referred to at sub-paragraph 134(4)(iii) are:-

- (i) The Financial Services Authority;
- (ii) The Financial Services and Markets Tribunal;
- ~~(iii) any recognised self-regulating organisation or recognised professional body within the meaning of the Financial Services Act 1986;~~
- ~~(iii)~~ (iv) The Financial Reporting Review Panel;
- ~~(iv)~~ (v) any recognised professional body within the meaning of the Insolvency Act 1986;
- ~~(vi)~~ (vi) any recognised supervisory body within the meaning of the Companies Act ~~1989;~~2006
- ~~(vi)~~ (vii) ~~Any~~any designated professional body within the meaning of the Financial Services and Markets Act 2000;
- ~~(viii)~~ (viii) ~~Any~~any body replacing, additional to or pre-dating a body identified in sub-paragraphs 134(5)(i) to (vii) and performing the same or broadly similar functions, and whose regulatory arrangements are of a similar standing.

14(6) Paragraphs 134(1) to 134(5) (inclusive) are without prejudice to the generality of paragraphs ~~78(35)~~ and ~~89(89)~~ and nothing in paragraph 134(4) shall affect the evidential status of any report or other document not referred to in paragraph 134(4).

Legal Representation of Members

145 If 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 after application require the AADB to meet the reasonable costs of that Member's legal representation at the hearing before the Tribunal but only if, in all the circumstances, the absence of legal representation would be contrary to the rules of natural justice.

Member Firms

156 If a Member Firm ceases to be a Member Firm, discontinues its business or ceases to exist, the rights and the obligations which would otherwise have fallen on such Member Firm may be exercised and shall be discharged respectively by the Members who were partners in, directors or members of such Member Firm at any time from the beginning of the time relevant to the matter under investigation until it ceased to be a Member Firm, discontinued its business or ceased to exist.

Disclosure of Information

167 The Regulations may make provision enabling the Board or the Executive Counsel to disclose information and explanation and supply evidence, whether originally oral or in writing, obtained under this Scheme 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 Board considers appropriate.

Transfers from the JDS

~~18~~ The Board shall be empowered to accept the transfer to it from the JDS of any matter previously referred to the JDS and thereafter to deal with it under the applicable JDS and related regulations.

Amendment and termination of this Scheme

Transitional Arrangements

17(1) The provisions of this further amended Scheme effective from [date Board accepts amendments] will have immediate effect, save that where necessary, any steps already taken under the Scheme as first amended with effect from 13 September 2007 shall continue to have effect as if taken under the further amended Scheme effective from [date Board accepts amendments].

Amendment and Termination of this Scheme

~~189~~ This Scheme may be amended by the Board, with the agreement in writing of ~~The Financial Reporting Council~~ the FRC and the governing body of each of the ~~AADB~~ Participants, or terminated by the Board by giving notice of not less than six months expiring on 31st December in any year.

Adopted on the
~~13th day of May 2004~~ by the AADB.

AADB Scheme Schedule of Sanctions

The following sanctions may be made by a Tribunal as referred to in [sub-paragraph 78\(57\)\(i\)](#).

Members

Reprimand

Severe Reprimand

Exclusion as a Member of one or more [AADB](#) 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 [AADB](#) 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.

Member Firms

Reprimand

Severe Reprimand

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 the failure shall have the same consequences for each Member who was a sole practitioner in, a partner in, a member (of a limited liability partnership) of, or a director of the firm at the relevant time as it would if the fine or costs had been imposed on him individually)

Waiver/repayment of client fees

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

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



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