

Financial Reporting Council

Board for Actuarial Standards & Professional Oversight Board

Stakeholder Interest Working Group

RESPONSE TO THE AADB'S ACCOUNTANCY SCHEME REVIEW

1. The FRC's joint BAS-POB Stakeholder Interest Group discussed and welcomed the Consultation Paper at its meeting on 6 March 2008, and agreed the following response.
2. Whilst the focus of the Group is clearly the Accountancy and Actuarial Discipline Board's role as it affects actuaries, given that the decisions on accountants are likely to have some read-across to the Actuarial Scheme, and that the changes adopted for the Accountancy Scheme could be proposed for the Actuarial Scheme, it is clearly relevant to submit our views at this stage.
3. In general, there was welcome for the major proposals although with some concerns regarding the working of the new Disciplinary Decisions Committee.
4. Regarding misconduct, the Group agreed in principle with the proposal to require a tribunal to find that any allegations proved amounted to 'relevant conduct' before making an adverse finding. However, we would hope that an improvement to the term 'relevant conduct' might be found as its current meaning is unclear. A more descriptive term might work better, such as undesirable, unbecoming or unacceptable. It might be helpful to try a range of possibilities with both practitioners and lay people to ascertain which best represents the intention of the AADB.
5. On the decision to lay a formal complaint, the group welcomed the creation of the Disciplinary Decisions Committee to bring a fresh "pair of eyes" to the investigation carried out by the Executive Counsel as this separates the investigation from a subsequent decision. However, as proposed, it is actually a "review" rather than a decision making role which is allotted to the DDC which both contradicts its name and, more seriously, means that there is not the separation between investigation and the decision to proceed which is normal for other jurisdictions (such as the Bar Standards Board, where the Complaints Panel, having seen the recommendation of the investigating barrister, decides whether or not the case should proceed to any form of hearing).
6. The thinking behind the proposal that the Disciplinary Decisions Committee should not be able to overrule the Executive Counsel's decision not to deliver a formal complaint, or his/her decision to request that a complaint be withdrawn and a case closed, is unclear. It is certainly neither transparent, nor good governance, for such decisions to be taken by a single individual who is also the

investigator, and without review by any lay or accountable person. Given that this Board deals with public interest cases, such closed decision-making is unlikely to gain public confidence.

7. As indicated above, the present draft confusingly expresses the function of the Disciplinary Decisions Committee as reviewing the decision of Executive Counsel. We would favour strengthening the separation between the investigator and the decision maker such that the Disciplinary Decisions Committee makes the decision whether to lay a formal complaint, rather than simply reviewing the decision of Executive Counsel; it will always require a higher level of discomfort for any such committee to overturn Counsel's decision rather than, on the basis of Counsel's advice, to take the decision itself. The responsibility associated with a review is lower than that for decision-making. It should be the DDC which is accountable for any decision to lay a complaint. This is also important for our recommendation in paragraph 9 below.
8. On the test for delivering a formal complaint, the Group gave broad support to the two-fold test proposed for the DDC but emphasised that the Desirability Criteria should cover a wider range of public interest factors than the limited examples given in the paper (and should include likely detriment, and previous experience). Furthermore, it will be important to balance the public interest factors *for* proceeding against any factors against proceeding.
9. On the important issue of the award of costs, the Group believes it is not in the public interest for the regulator to be constrained from pursuing a case for fear of costs associated with losing a case; this would run completely counter to its wider role. Clearly, good internal governance of the AADB Scheme is vital to win the confidence of all stakeholders that proper, and accountable, decision-making would guide any decision to prosecute a case; hence the other recommendations in the paper are essential for this. The Group supported the proposal that the tribunal's discretion to award costs against the AADB be restricted to circumstances of 'misfeasance'.
10. The Stakeholder Interest Working Group looks forward to an on-going dialogue with the AADB, particularly as it turns its attention to questions directly affecting actuaries.

