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Reaching determinations in respect of Proposed Settlement Agreements under the Accountancy Scheme, Actuarial Scheme and Audit Enforcement Procedure

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Reaching a determination whether it would be appropriate for a Proposed Settlement Agreement to be entered into under the Accountancy Scheme, Actuarial Scheme or the Audit Enforcement Procedure

Introduction

1. This guidance is issued by the Financial Reporting Council (“the FRC”)’s Conduct Committee under the Accountancy Scheme and the Actuarial Scheme (“Scheme” or “Schemes”), and the Audit Enforcement Procedure (“the AEP”). Terms defined in the Schemes and the AEP shall have the same meaning in this guidance.
- 2A Pursuant to paragraph 8 of the Schemes, where, following settlement discussions, terms of settlement are agreed between the Executive Counsel and a Member and/or Member Firm (as applicable):-
 - a) prior to the delivery of a Formal Complaint;
 - i. the Executive Counsel shall deliver a Proposed Settlement Agreement (“PSA”) to the Conduct Committee, and
 - ii. the Conduct Committee shall send a copy of the PSA to the Convener who shall appoint a Legal Chair from the Tribunal Panel to consider the PSA and determine whether it would be appropriate for the PSA to be entered into;
 - b) after delivery of a Formal Complaint;
 - i. the Executive Counsel shall deliver a PSA to the Tribunal to which the determination of that Formal Complaint has been allocated; and
 - ii. that Tribunal shall take such steps as it considers necessary to determine whether it would be appropriate for the PSA to be entered into.
- 2B Pursuant to Part 6 of the AEP, where, following settlement discussions, terms of settlement are agreed between the Executive Counsel and a Respondent after issuance of a Notice of Investigation but prior to the issue of a Final Decision Notice:-
 - a) Executive Counsel shall issue a Proposed Settlement Decision Notice (“PSDN”) to the Respondent;
 - b) The Respondent shall provide to Executive Counsel written agreement to the PSDN;
 - c) Executive Counsel shall deliver the PSDN to the Convener within 14 days of the Respondent’s written agreement;
 - d) The Convener shall as soon as practicable appoint an Independent Reviewer to consider the PSDN and determine whether it is appropriate to issue the PSDN as a Final Settlement Decision Notice (“FSDN”).
3. This document is intended to provide guidance to the Convener, Legal Chairs and Tribunals on the process to be followed and approach to be taken when reaching a determination whether to approve a PSA or PSDN. In addition, it is designed to:
 - a) promote clarity, consistency and transparency in the decision-making in respect of PSAs and PSDNs; and

- b) ensure that the parties to PSAs and PSDNs are aware from the outset of the approach likely to be taken by a Legal Chair, Tribunal or Independent Reviewer (as appropriate) when determining whether to approve a PSA or PSDN.

The process in respect of PSAs received by the Conduct Committee prior to the delivery of a Formal Complaint

- 4. Where the Conduct Committee receives a PSA prior to the delivery of the Formal Complaint, pursuant to paragraph 8(4)(i) of the Schemes, the Committee Secretary, on behalf of the Conduct Committee, shall send it to the Convener who shall as soon as practicable appoint a Legal Chair from the Tribunal Panel to consider the PSA.
- 5. The Convener:
 - a) provides the Legal Chair appointed with the PSA and any supporting documents, and the contact details of the parties or their legal representatives;
 - b) provides the Conduct Committee with details of the person appointed and notifies the parties to the PSA.

Thereafter, the Convener has no role in the process and no Secretary is appointed.

- 6. Pursuant to paragraph 8(4)(ii) of the Schemes, the Legal Chair appointed shall determine whether it would be appropriate for the PSA to be entered into having regard to the matters set out at paragraph 17 below.
- 7. The Legal Chair appointed may make direct contact with the parties with any queries or requests for information in relation to:
 - a) the facts stated in the PSA;
 - b) the financial means of the Respondent(s), if appropriate;
 - c) any precedents emerging from Tribunal decisions and approved PSAs.
- 8. Once the Legal Chair has reached a determination in draft form, they may provide this to the parties as a confidential draft for error correction.
- 9. Thereafter, and pursuant to paragraph 8(4)(iii) of the Schemes, the Legal Chair shall inform the Conduct Committee of their decision, and the reasons therefore, by sending an electronic or paper copy of the signed decision to the Committee Secretary. Once this has been received, the Committee Secretary shall provide it to the Conduct Committee who will in turn provide the decision to the parties and the relevant Participant(s).

The process in respect of PSAs received by a Tribunal to which the hearing of (a) Formal Complaint(s) has(/have) been allocated

- 10. Under paragraph 8(5) of the Schemes, after delivery of a Formal Complaint, the Tribunal to which the determination of that Formal Complaint has been allocated shall take all such steps as it considers necessary to determine whether it would be appropriate for the PSA to be entered into.

11. The Executive Counsel shall deliver the PSA to the Tribunal by sending it to the Tribunal Secretary and the Tribunal Secretary will provide the PSA and associated documents to the Tribunal as soon as is practicable.
12. Paragraph 8(5) of the Schemes requires the Tribunal to take such steps as it considers necessary to determine whether it would be appropriate for the PSA to be entered into, having regard to the purpose for which the applicable Scheme has been established and to any guidance issued by the Conduct Committee. Such steps may include requesting further information from the parties in respect of the matters set out at paragraph 7 above or convening a hearing to receive submissions from the parties.
13. If the terms of the PSA are based on admissions of fact and acts of Misconduct that are different to those set out in the Formal Complaint(s), the Tribunal will also be asked to approve any proposed amendment to the Formal Complaint(s) further to regulation 24 of the Accountancy Regulations, or regulation 23 of the Actuarial Regulations, as applicable
14. Once the Tribunal has reached a determination in draft form, this may be provided to the parties as a confidential draft for error correction.
15. Thereafter, as soon as reasonably practicable, the Tribunal shall advise the Conduct Committee of its decision. Although paragraph 8(5) of the Schemes does not expressly require the Tribunal to give reasons for its decision, the Tribunal should do so to preserve the integrity of the decision.

The approach to be taken when reaching a determination whether to approve a PSA

16. Where the PSA is considered prior to the delivery of a Formal Complaint, inevitably the Legal Chair must place trust in the assessment made by the Executive Counsel as to whether the Misconduct admitted properly reflects the evidence. Where the PSA is considered following the delivery of a Formal Complaint, the Tribunal may be in a similar position where the PSA is entered into at an early stage in proceedings.
17. When reaching a determination whether to approve a PSA, the Legal Chair or Tribunal, as applicable, in addition to this guidance, shall have regard to the:
 - a) purpose for which the applicable Scheme has been established as set out in paragraph 1(2) of the Schemes which are to protect the public, maintain public confidence in the accountancy profession and uphold proper standards of conduct; and
 - b) applicable Sanctions Guidance.
18. In deciding whether to approve a PSA, the decision-maker, be that the Legal Chair or the Tribunal, is required to determine whether:
 - a) the nature and seriousness of the Misconduct, and any aggravating and mitigating factors, are fairly summarised in the PSA;
 - b) the sanctions agreed fall within the range of appropriate sanctions for the Misconduct that has been admitted.
19. Where the PSA is considered prior to the delivery of a Formal Complaint, and the Legal Chair does not approve the PSA, the Executive Counsel may proceed to deliver a Formal Complaint or the parties may agree on the terms of a different PSA which shall be delivered to the Conduct

Committee, (see paragraph 2(a) above), and the process as described at paragraphs 4 to 9 shall be followed.

20. Where the PSA is considered after the delivery of a Formal Complaint, and the Tribunal does not approve the PSA, the matter will proceed to a hearing of the Formal Complaint, although the parties may enter into a further PSA in the meantime which shall be delivered to the Tribunal, (see paragraph 2(a) above), and the process as described at paragraphs 10 to 15 above shall be followed.

The process in respect of PSDNs received by the Convener

21. The Convener:
 - a) provides the Independent Reviewer with the PSDN, and
 - b) notifies the Parties to the PSDN of the identity of the Independent Reviewer.
22. Pursuant to Rule 107 of the AEP, the Independent Reviewer shall determine whether it would be appropriate to approve the issue of the PSDN as a FSDN by the Executive Counsel, having regard to the matters set out at paragraph 23 below.
23. The Independent Reviewer may direct queries or make requests for information in relation to:
 - a) the facts stated in the PSDN;
 - b) the financial means of the Respondent(s), if appropriate;
 - c) any precedents emerging from Tribunal decisions and approved PSAs or PSDNs.via the Convener, who will communicate directly with the Parties.
24. Once the Independent Reviewer has reached a determination in draft form, they may provide this to the Parties as a confidential draft for error correction.
25. If the Independent Reviewer has determined that it is appropriate to approve the issue of the PSDN as a FSDN, they shall notify Executive Counsel and the Board accordingly, usually via the Convener.
26. In the event that the Independent Reviewer determines that it is not appropriate to approve the issue of the PSDN as a FSDN, having taken the steps set out in Rule 109 of the AEP, they shall notify the Parties and provide reasons in writing for the decision, usually via the Convener.

The approach to be taken when reaching a determination whether to approve the issue of a PSDN

27. The Independent Reviewer must place trust in the assessment made by the Executive Counsel as to whether the breaches of Relevant Requirements admitted properly reflects the evidence.
28. When reaching a determination whether to approve the issue of a PSDN as a FSDN, the Independent Reviewer, in addition to this guidance, shall have regard to the Sanctions Policy for the AEP.
29. In deciding whether to approve a PSDN as a FSDN, the Independent Reviewer is required to determine whether:

- a) the nature and seriousness of the breaches of Relevant Requirements, and any aggravating and mitigating factors, are fairly summarised in the PSDN;
- b) the sanctions agreed fall within the range of appropriate sanctions for the breaches that have been admitted.

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