



The Actuarial Profession

making financial sense of the future

Consultation Response

Accountancy and Actuarial Discipline Board

Sanctions Guidance to Tribunals

11 July 2012

About the Institute and Faculty of Actuaries

The Institute and Faculty of Actuaries is the chartered professional body for actuaries in the United Kingdom. A rigorous examination system is supported by a programme of continuous professional development and a professional code of conduct supports high standards, reflecting the significant role of the Profession in society.

Actuaries' training is founded on mathematical and statistical techniques used in insurance, pension fund management and investment and then builds the management skills associated with the application of these techniques. The training includes the derivation and application of 'mortality tables' used to assess probabilities of death or survival. It also includes the financial mathematics of interest and risk associated with different investment vehicles – from simple deposits through to complex stock market derivatives.

Actuaries provide commercial, financial and prudential advice on the management of a business' assets and liabilities, especially where long term management and planning are critical to the success of any business venture. A majority of actuaries work for insurance companies or pension funds – either as their direct employees or in firms which undertake work on a consultancy basis – but they also advise individuals and offer comment on social and public interest issues. Members of the profession have a statutory role in the supervision of pension funds and life insurance companies as well as a statutory role to provide actuarial opinions for managing agents at Lloyd's.

Anna Colban
Secretary to the AADB
Financial Reporting Council
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11 July 2012

Dear Ms Colban,

I am writing on behalf of the Institute and Faculty of Actuaries (Institute and Faculty) in response to the AADB's consultation on the sanctions guidance to panels in relation to the AADB's Accountancy Scheme.

Our response is provided in the context of our experience of the Institute and Faculty's Disciplinary Scheme and the AADB's Actuarial Scheme. We note that a similar review is intended in relation to the Actuarial Scheme and thought that it would be helpful to share our views on the applicability of the guidance to the Actuarial Scheme at this time.

We will first respond to the specific questions raised, before providing our more general comments on the consultation paper.

1. *Do you agree with the Board's objectives and approach to sanctions guidance?*

Yes, the Institute and Faculty welcomes the aims of the guidance, particularly the aim to increase consistency. We note that this is a difficult area and that some agreed guidance on relevant factors would be helpful for Tribunals.

2. *Do you agree that Tribunals need a clear framework for sanctions which reflects the nature of its cases and the wider context in which the accountancy profession operates today?*

Although we have limited insight in to the needs of the Accountancy Scheme, the approach being taken appears to be logical and we welcome the attempt to update the framework to fit within the modern accountancy profession. We would also highlight that, in our experience, there are few cases involving actuaries that are comparable, therefore a clear framework for sanctions could be particularly helpful for Tribunals.

3. *Do you agree that the sanctions imposed by Tribunals should act as a credible deterrent and be proportionate to the seriousness of the misconduct and to all the circumstances of the case, including the financial resources of Members and the size and financial resources of Member Firms?*

We have no experience of basing sanctions on the size and financial resources of the member, or the member's firm, and are therefore unable to provide substantive comment on this issue. We do agree though with this approach in principle, where it is clear that the responsibility for failure lies partly or wholly with the firm. We are however concerned about the potential complexities and, in addition, consider that basing fines on revenues may lengthen the process, raise the levels of proof

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required and increase the frequency of appeals. We would want to be satisfied that such an approach does achieve the objective of proportionate deterrent that enhances public protection.

The Institute and Faculty regulates individuals and not firms, with the exception of the Designated Professional Body regime which is treated separately for disciplinary purposes. Such an approach would therefore be impossible to implement effectively in relation to our members, although the misconduct of each member in a firm in relation to a failing experienced by a firm would be investigated and treated appropriately.

We are also concerned about the deterrent effect of the fines and whether this should be within the role of a disciplinary scheme or regulator. We consider that there is a need to carefully balance the protection of the public against the deterrent effect of a sanction.

4. *Have we included the sorts of factors in the sanctions guidance that you would expect to see taken into account by Tribunals?*

We feel that the list of factors is helpful, however these shouldn't be positioned as being prescriptive or complete. We consider that it is important to leave scope for judgement to a panel to recognise other factors that may appropriate to the individual circumstances.

5. *Are there any factors you believe Tribunals should take into account when deciding sanction that we have overlooked?*

We would suggest that the reputation of the profession is added explicitly, as well as the length of the practising period of the individual (an experienced practitioner should be more heavily penalised, whereas a more recently qualified practitioner may require close supervision as well as sanction at a lower level). We also note that the publicity of a determination imposes a wider cost on the individual, such that their employment prospects might be affected, and therefore serves as a strong deterrent factor.

6. *Do you agree that there needs to be an adjustment in the level of fines imposed in AADB cases?*

We do not have sufficient insight or experience of the Accountancy Scheme to offer meaningful comment in response to questions 6 – 9.

7. *If so, what adjustment do you consider to be appropriate?*
N/A

8. *What is your view of the alternative mechanisms proposed for calculating fines?*

N/A.

9. *What level of turnover / income do you consider would be appropriate in respect of each mechanism?*

N/A

10. *Do you agree that Tribunals should not take account of the costs that it is considering awarding against a Member or Member Firm when determining the appropriate level for a Fine?*

We agree with this approach.

11. *Do you have any other comments about the proposed structure or content of the sanctions guidance?*

The guidance appears to be fairly comprehensive, which can be helpful, however we would question whether this is potentially restrictive. It appears that the AADB is leaning away from a principles based approach, which may be more appropriate for the fine related aspects of the guidance, but may raise concerns about the flexibility of the scheme.

We note that the Accountancy Scheme includes the repayment or waiver of client fees as a sanction. There is concern that this is a move to compensating the client, which is not a feature of the Institute and Faculty's Disciplinary Scheme and could complicate matters if the client instigates a legal case for damages separately.

Paragraph 27 of the indicative sanctions guidance states that one of the factors to be considered when ordering a fine will normally be whether a fine was ordered in similar previous cases. This appears to suggest that a precedent system is in operation and may create a basis for challenging levels of fine. We would suggest that this reference is removed and that each case is instead decided on its own merits.

Overall, the Institute and Faculty welcomes the proposals contained in the consultation and appreciates the work that has gone in to preparing the indicative sanctions guidance for the AADB's Accountancy Scheme. We would also welcome similar directional guidance in relation to the Actuarial Scheme. We note however that there are a number of significant differences between the Accountancy Scheme and the Actuarial Scheme, in particular the Accountancy Scheme is on a much bigger scale and includes a member firm dimension which is absent from the role of the Institute and Faculty at present. Care should therefore be taken in adapting the work that has already been carried out to the actuarial area.

We look forward to working with you in the development of this guidance.

Yours faithfully,



Derek Cribb
Chief Executive
Institute and Faculty