



Chartered Accountants  
Regulatory Board

Our Ref: SGTCONSPAP/HB/cma

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**Private & Confidential**

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Dear Anna

**Re: Sanctions Guidance to Tribunals: A Consultation Paper**

CARB is responsible for the regulation of members, member firms, students and affiliates of Chartered Accountants Ireland, independently, openly and in the public interest. As Disciplinary Procedure is one of CARB's core responsibilities, CARB is pleased to respond to the above named consultation paper.

**Overarching comments**

CARB's objectives as set out in its Regulatory Strategy 2011-2015 includes the following:

Discipline: To ensure the thorough investigation of complaints against Chartered Accountants in a fair and proportionate manner to determine if any misconduct has occurred and take disciplinary action when required.

CARB therefore welcomes the FRC's acknowledged commitment to the five Hampton Principles.

CARB believes that the provision of information to the public can only be beneficial and supports the FRC's intention to develop and publish guidance on sanctions. However, CARB believes that it is of fundamental importance that the independent decision making powers of the Tribunals are in no way fettered. CARB would be concerned if the Tribunals and the public were of the, in our opinion, mistaken belief that the sanctions referred to in the guidance should always be applied, as the circumstances of each case may be different.

We have one significant concern on the proposals set out in the consultation paper, namely the manner in which the FRC proposes that fines should be calculated. We are concerned that the mechanism appears to be both complicated and prescriptive. Further, we do not believe that the reason for this fundamental change is clearly set out in the consultation paper. Whilst accepting that the punishment, including the level of fine, should act as a deterrent we believe that this point has been somewhat overstated. In particular, the proposals to calculate fines by reference to the turnover of the individual or firm, and particular, the reference to group turnover will, in our opinion, result in an unjustifiable and disproportionate increase in the level of fines.

## **Responses to specific questions**

### Question 1

We support the FRC's intention to produce guidance on sanctions as a tool to assist the Tribunals in determining an appropriate sanction where misconduct has been proven. As stated previously we have a number of issues relating to the proposed approach to fines.

### Question 2

We agree a clear framework is desirable. We do not necessarily believe the proposals in relation to fees achieves this goal.

We also believe that it must be clear that this framework is purely for guidance and does not in any way set out a mandatory approach for the Tribunals.

### Question 3

We agree that the level of sanctions should be fair and proportionate and should reflect both the seriousness of the misconduct and whether their misconduct arose as a result of error or wilful or reckless behaviour.

We agree that the member/firms financial means and ability to pay are of relevance to the Tribunals however, as previously stated, we have reservations about setting the level of fine as a percentage of the turnover or income of the member or firm.

### Question 4

We generally agree with the factors included in the guidance. We note however that the guidance does not include reference to early settlement which is discussed in the proposed changes to the current AADB disciplinary scheme.

### Question 5

We believe that the list is at present reasonably comprehensive but it cannot be expected that it will remain so. It should be recognised that as each case is unique different circumstances may appear to be relevant to an individual Tribunal.

### Question 6

We note the FRC's concerns that historically the level of fines has been low, however, as previously stated, we do not believe that the proposals of the FRC represent a measured and proportional response to addressing this.

### Question 7

As discussed previously, there should be consideration of alternative mechanisms for calculating fines and discretion to the Tribunals to the level of fines based on the individual and specific circumstances of each case.

### Question 8 & 9

As stated previously we do not agree with the proposals to link the fine to the income of a member or the turnover (or group turnover) of a member firm. We accept that ability to pay is a factor to be borne in mind once the level of fine has been arrived at.

In our opinion, the level of fine should:

- (i). Relate to the seriousness of the finding – including whether the misconduct was a result of error or reckless/wilful behaviour; and
- (ii). Any benefit the member has derived from the misconduct, for example, the fee earned from the audit engagement where the matter related to audit performance.

As stated above, we believe a more appropriate measure is the fee earned by the member or member firm.

We note that the consultation paper states that the level of fine should be a credible deterrent and that this can only be achieved by reference to the income. We believe that in JP Morgan Securities Limited case the Tribunal laid out relevant principles which would benefit other Tribunals.

#### Question 10

We agree that the decision regarding the level of fines and level of costs should be determined independent of each other.

#### Question 11

We have no further comments to these above.

If you wish to discuss this response further please do not hesitate to contact me.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Heather Briers', with a long horizontal flourish extending to the right.

**Heather Briers**  
**Director**  
**Chartered Accountants Regulatory Board**