



LONDON SOCIETY
OF CHARTERED
ACCOUNTANTS

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Regulation and Ethics Review Panel

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Dear Anna,

SANCTIONS GUIDANCE TO TRIBUNALS

I am writing as Chairman of the Regulation and Ethics Review Panel (RERP) of the London Society of Chartered Accountants (LSCA). The LSCA is by far the largest of the 22 district societies affiliated to the Institute of Chartered Accountants in England and Wales (ICAEW). It has a membership of 30,000, representing nearly one quarter of all ICAEW members, and also provides services to other ICAEW members who live or work in London. London members, like those of the ICAEW as a whole, comprise a mixture of those working in all sizes of practice and those working in businesses, both large and small, or otherwise not in practice. They also include many of the ablest and most senior Chartered Accountants, together with a wide range of specialists.

RERP welcomes the opportunity to comment briefly on this consultation paper.

GENERAL COMMENTS

We welcome in general the proposal of the Accountancy and Actuarial Discipline Board (AADB) to issue sanctions guidance to Tribunals but have concerns about the emphasis given to the levying of increased fines as the main means of providing deterrence to firms and members and about the basis on which they are to be levied..

We accept that the primary purpose of sanctions in a disciplinary context is not to punish but to protect the public interest and that deterrence is one of the underlying principles to be considered in determining sanctions. Other principles, which may be of relevance in this context, include the elimination of any financial gain or benefit from non-compliance and the sanction being proportionate to the nature of the offence and the harm caused. We also welcome the adoption by the AADB of a principles-based approach rather than a tariff-based approach and the flexible way in which the guidance is meant to be used by Tribunals.

We do not dispute that past levels of fines may no longer be relevant in the current climate within which firms and our members operate and that some increase may be called for in some cases, so as to provide an appropriate deterrent against future misconduct. However, we question the logic of attempting to link fines to a percentage of the turnover of the consolidated group and can foresee difficulties in applying this approach in practice where complex national and international structures are involved.

The level of fines needs to be considered on a case-by-case basis by the Tribunal, having regard to the sanctions guidelines and to the full range of available sanctions as well as to a number of other factors, including the ability of the firm and/or the member to pay. There is no reason to believe that a simple percentage of group revenue would result in a fair or proportionate fine in the majority of cases. We note that reference is made in the draft guidance to the fee charged for the work done and to the actual harm caused in determining the seriousness of the misconduct, which could impact on the amount of the fine levied, but these factors do not themselves act as the primary basis of assessment.

If a revenue-based calculation is to be persisted with, then the AADB should consider in more detail what constitutes the relevant revenue, for example, the turnover or profit of the audit division from auditing similar entities in the period when the misconduct occurred, rather than the group annual turnover per the latest published set of consolidated financial statements.

SPECIFIC COMMENTS

Question 1: We agree with the AADB's objectives and approach to sanctions guidance.

Question 2: We 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.

Question 3: We 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.

Question 4: You seem to have included the sorts of factors in the sanctions guidance that we would expect to see taken into account by Tribunals. We question, however, whether you have given adequate consideration to the need for the Tribunal to have regard to any regulatory sanctions that had already been imposed on the firm. We would not think it to be in the public interest were RSBs to be precluded from taking appropriate and prompt regulatory action simply because the case had been referred to an AADB Tribunal.

Question 5: There are no factors we believe Tribunals should take into account when deciding sanctions that you have overlooked other than as set out in our response to question 4 above.

Question 6: We agree that there may well need to be an adjustment in the level of fines imposed in some AADB cases as stated by you in the preliminary impact assessment (paragraph 5.3). We find it impossible at this stage to quantify the impact given that not even indicative percentages of turnover have been included in the consultation paper and given the wide degree of desirable discretion that will remain vested in the Tribunals.

Question 7: Any increase in the level of fines should not be such as to impose disproportionate financial penalties which become punitive without justification in terms of the seriousness of the offence and the need to provide deterrence. We are not in a position to quantify what might be an appropriate adjustment.

Question 8: We have already expressed our reservations about the use of a percentage of group revenue in determining the level of a fine (see above). As regards the three bases suggested (fixed starting point, range and maximum starting point), we have no strong preference but would urge the need to avoid an overly complex system, which both members of Tribunals and defendants find difficult to understand.

Question 9: We feel unable to give a sensible response to this question (see our responses to questions 7 and 8 above).

Question 10: We agree that a Tribunal should not take account of the costs that it is considering awarding against a member or member firm when making its initial determination of the appropriate level of the fine. The total financial burden on the firm does, however, include having to meet these costs and the Tribunal should have regard to this in assessing the ability of the firm to pay the fine.

Question 11: The guidance seems to focus almost exclusively on the impact of disciplinary sanctions on practising firms and individual members in practice. The number of chartered accountants employed in business outweighs those engaged in practice and many are in senior positions as directors of listed companies. The guidance needs to consider the potential impact of heavy financial sanctions in such cases. Non-accountant directors may find that they are in an advantaged position by comparison.

If you would like to discuss any of our comments in further detail, or wish additional clarification of our views, please do not hesitate to contact me.

Yours sincerely,

Bruce Picking

Chairman, Regulation and Ethics Review Panel