

26 June 2012

29 JUN 2012

Ms Anna Colban
Secretary to the AADB
Financial Reporting Council
5th Floor, Aldwych House
71-91 Aldwych
London WC2B 4HN

Dear Anna

Sanctions Guidance to Tribunals – Consultation

I write with CIMA's comments, further to those in my email dated 29 March.

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

- Yes, save for our additional comments, including those previously made on 29 March, for example with reference to the Board's policy of encouraging high standards (paragraph 3.5 on page 7 of the consultation paper and in the draft guidance Appendix A paragraph 8, last bullets), would an appropriate substitute be "to ensure" rather than "to encourage"?
- Also, with reference to the last and penultimate bullets of the same paragraphs, should the reference to "standards" in the Appendix A bullets be augmented to "professional standards"?
- Then, with reference to Appendix A paragraph 10 on page 24, in the last bullet should the reference be to "**future** misconduct"?

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?

- Yes.

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3. Do you agree that the sanctions imposed by Tribunals should add 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?

- Yes, save that the 'deterrent' aspect might best remain inherent in the sanctioning process as we perceive it has always been, rather than be a separate consideration with the potential, in our view, to obscure the usual 'adjustments' stage (aggravating/mitigating factors) which is demonstrably clear and fair. We refer also to the Board's reference in paragraph 3.6 on page 7 of the consultation paper and in the draft guidance Appendix A paragraph 9, that the primary purpose of sanctions in a disciplinary context is not to punish but to protect the public interest, (although sanctions may have a punitive effect).

- With reference to paragraph 4.19 of the consultation document on page 17, and Appendix A paragraph 29 onwards, presumably two Members found guilty of similar complaints and both facing fines will be in the same position, regardless that one is a Member of the same institute as his employer Member Firm which is also facing a fine in related proceedings? That is, presumably the fact that a Member Firm also faces a fine does not impact upon the level of fine that the individual Member employee might be facing?

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4. **Have we (the Board) included the sorts of factors in the sanctions guidance that you would expect to see taken into account by Tribunals?**
 - Might it be beneficial to include in the guidance on the approach to determining sanctions (Appendix A paragraph 22, introduced in paragraph 4.1 on page 12 of the consultation paper) a reminder to Tribunals of the fundamental aims in decision making of fairness, natural justice, proportionality and the tenets of protecting the public, maintaining confidence in the profession and upholding standards?
 - Also, with reference to the Summary of Approach to Determining Sanction / Summary of the Decision Making Process (Appendix A paragraph 22 on page 27, as introduced in the consultation document in paragraph 4.1 on page 12), will the consequence of the proposed general approach including the “deterrent” factor be that the Tribunal in each case will be precluded from considering the scale of sanctions by way of moving from the lowest upwards, as appropriate?
 - Reputational damage and personal gain do not appear to be systematically referred to in the Sanctions Guidance Appendix A, but they appear relevant.
 - Then, with reference to circumstances that might mitigate from the seriousness of the matter (the introduction to this in paragraph 4.8 on page 13 of the consultation paper gives examples), acting under pressure from others and evidence of remorse are not systematically referred to in Appendix A, but again they appear relevant.
5. **Are there any factors you believe Tribunals should take into account when deciding sanction that we have overlooked?**
 - See above. Also, of course the guidance is intended to be considered alongside any precedents emerging from cases decided by the AADB tribunals (Appendix A paragraph 6). Could the precedents factor be highlighted further in the Appendix A document? As well as Sanctions Guidance being important to settlement agreements (page 19 **Preliminary Impact Assessment** paras 5.7 – 5.8), we think that precedents emerging from cases decided by the AADB Tribunals will also be important.

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6. **Do you agree that there needs to be an adjustment in the level of fines imposed in AADB cases?**
 - Yes.
7. **If so, what adjustment do you consider to be appropriate?**
 - It should be in line with other regulatory action taken, for example the FSA and other regulators worldwide.
8. **What is your view of the alternative mechanisms proposed for calculating fines?**
 - We think on balance that the mechanisms proposed in green are better aligned with the idea of sanctions guidance; they are comprehensive and reflect a graduated approach to determination.
9. **What level of turnover / income do you consider would be appropriate in respect of each mechanism?**
 - There is an issue with annual turnover if profits have taken an unhappy dip that year. Would an average turnover over a period of years be more suitable?
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?**
 - Yes
11. **Do you have any other comments about the proposed structure or content of the sanctions guidance?**
 - Regarding the consultation document **Preliminary Impact Assessment** on page 19, might there be any element of mitigation, therefore possibly an impact on sanction, should a respondent agree to a settlement? Paragraph 5.8 appears to discount this, whereas self reporting and cooperation by a respondent can impact on a sanction within the Tribunal setting.
 - Also, we are aware that the FRC will be exploring the scope for broadening the range of sanctions available under the Scheme. Looking at paragraph 2.1 on page 3 of the consultation paper and in the draft guidance Appendix A paragraph 16 on page 25, we are reminded that the Scheme has no provision for “no sanction”, which we consider might, on rare occasions, be a fair decision where misconduct is proved. This would give the Tribunal complete flexibility.
 - Following finalisation of the Sanctions Guidance (paragraph 1.9 on page 2 of the consultation paper), presumably going forward there will also be an ongoing alignment exercise, to ensure that the Scheme (or its equivalent in the future) and the Sanctions Guidance document remain consistent.

- Finally, the sanctions guidance will serve the Tribunals for all cases. As it will be a public document, might a reminder be useful within Appendix A to the Scheme's definition of "member" (which of course includes registered students in the case of some Participant bodies)?

CIMA will await the outcome of the consultation with interest.

Yours sincerely



Robin Vaughan
Executive Director, Governance & Professional Standards