



FINANCIAL REPORTING COUNCIL

DISCIPLINARY SCHEMES PROPOSED CHANGES

A CONSULTATION PAPER

JUNE 2012

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Appendix A Draft Accountancy Scheme

Appendix B Draft Actuarial Scheme

1 Introduction

- 1.1 The Financial Reporting Council (FRC) is the UK's independent regulator of the accountancy and actuarial professions in the UK and is responsible for promoting high quality corporate governance and reporting to foster investment. One of its core functions is the operation of two separate yet similar disciplinary Schemes¹, one covering the accountancy profession and the other the actuarial profession. These Schemes provide for the investigation of situations where there may have been misconduct by a member of one of these two professions and, if appropriate, the pursuit of disciplinary proceedings.
- 1.2 Following the restructuring of the FRC with effect from 2 July 2012, responsibility for operating the disciplinary Schemes will transfer from the Accountancy and Actuarial Discipline Board (AADB) to the FRC through the Conduct Committee, which will assume day to day responsibility for the oversight and maintenance of the disciplinary arrangements.
- 1.3 The disciplinary Schemes have been in operation since 2004 and 2007 respectively and, with the benefit of that experience, the FRC is proposing a number of changes to the way in which the disciplinary Schemes operate. The primary objective of these changes is to enhance the efficiency and effectiveness of the disciplinary arrangements. Many of the main changes now proposed were foreshadowed in the joint BIS/FRC consultation on the future role of the FRC.
- 1.4 Most of the changes apply to both the Accountancy and Actuarial Schemes. The draft changes to the Accountancy Scheme can be found at Appendix A. The draft changes to the Actuarial Scheme can be found at Appendix B.
- 1.5 Responses are encouraged from the professional bodies, firms, individual members, members of the tribunal Panel, other regulators and anyone with an interest in or views on the subject covered in this paper. Responses are sought by **19 September 2012**. Details of how to respond can be found in section 6. A response to the consultation will be published later in 2012.

¹ The disciplinary schemes are currently operated by the Accountancy and Actuarial Discipline Board.

2 Disciplinary Framework

- 2.1 Following the consultation on the proposals to restructure the FRC and its operations, the Government and FRC confirmed that the FRC would continue to investigate potential acts of misconduct by accountants, accountancy firms and actuaries where the public interest test was satisfied.
- 2.2 As part of the FRC reform process, changes to the Schemes will be required to enable them to be operated by the FRC, as opposed to the AADB. These initial changes will provide for the Conduct Committee to be responsible for the following functions:
- Deciding whether an investigation should be launched;
 - Deciding the scope of any investigation;
 - Publishing decisions at various points in the disciplinary process;
 - Oversight of progress on cases and budgets generally; and
 - Oversight of the operation of the Schemes and supporting Regulations.
- 2.3 In addition, the Government/FRC consultation response confirmed that the FRC would consult on changes designed to enhance the effectiveness and efficiency of the operation of the Schemes. These changes, which are the subject of this consultation, include:
- (i) enhanced independence from the professional bodies by removing the requirement that the professional bodies must agree future changes to the Schemes and removing requirements in the Schemes for consultation with the professional bodies at various points in the disciplinary process;
 - (ii) a procedure to facilitate the early resolution of cases without the need for a tribunal hearing;
 - (iii) new arrangements for the monitoring of individual cases by members of a Case Management Committee (CMC);
 - (iv) changes to procedures for terminating investigations and for informing those under investigation of the allegations against them;
 - (v) changes to the provisions relating to the publication of disciplinary decisions;
 - (vi) changes to the arrangements for selecting members of the tribunal panel, but not individual tribunals; and

- (vii) proposals for a new power to issue interim orders.
- 2.4 Executive Counsel² will continue to be responsible for deciding whether to file a Formal Complaint. Executive Counsel will also be responsible for deciding whether a particular case is suitable for early resolution and for conducting any negotiations designed to bring about such early resolution. In performing these functions Executive Counsel will be required to consult those members of the CMC appointed to monitor the particular investigation.
- 2.5 The FRC has indicated that it would consider the scope of the disciplinary arrangements and consult on revised public interest guidelines on which cases the FRC should investigate. This guidance is not dealt with in this document and will be the subject of a separate consultation.
- 2.6 The AADB is currently consulting on Sanctions Guidance for Tribunals. This consultation will end on 11 July 2012. The FRC's response following that consultation will be developed by the Conduct Committee following the transfer of the Schemes to the FRC.

² References to the Executive Counsel include an appointed Alternate Executive Counsel.

3 Proposed Changes to the Schemes

Paragraph references are to the draft amended Accountancy Scheme at Appendix A.

- 3.1 This section sets out the main changes proposed for the Schemes in more detail and the reasons for the proposed changes. In addition, a number of more minor drafting changes which are designed to promote clarity and improve the way in which the Schemes operate, along with certain consequential amendments, are proposed and can be seen at Appendix A (draft Accountancy Scheme) and Appendix B (draft Actuarial Scheme).
- 3.2 The FRC is committed to upholding the principles of fairness, transparency and proportionality in its disciplinary arrangements. The Government and the FRC believe it is important that the disciplinary arrangements operated by the FRC should be, and should be seen to be, independent of the professions concerned. There are a number of provisions in the current Schemes that require either the agreement of or consultation with the professional bodies. To ensure that the Schemes are, and are seen to be, independent of the profession, the FRC proposes to amend the Schemes by amending or removing the following provisions.

INDEPENDENCE

Launching an investigation (Paragraph 5(8))

- 3.3 The FRC proposes to remove the requirement that, where it proposes to launch an investigation on its own initiative, it must consult with the relevant professional body, as currently required by paragraph 5(8).
- 3.4 The FRC recognises that consultation with the professional bodies can add value to the process and, in certain circumstances, may lead to a more informed decision being made. However, such consultations can add up to three months to the process of starting an investigation. The proposed amendment will enable the FRC to act more swiftly in launching an investigation in appropriate cases.
- 3.5 The FRC expects that there will continue to be close liaison between the professional bodies and FRC staff about situations that may warrant investigation (in particular when it is unclear whether the matter in question meets the public interest test). The FRC welcomes this liaison and notes that the proposed amendment will not preclude that from happening. It will merely remove the formal requirement under the Scheme which leads to unnecessary delay in starting investigations.

Preliminary enquiries (Paragraph 5(10))

- 3.6 Under the Accountancy Scheme only, the power to conduct preliminary enquiries may only be exercised in accordance with a protocol agreed with the professional bodies. However, no such protocol has been agreed.
- 3.7 The FRC believes that, where it deems it appropriate, it should be able to conduct preliminary enquiries without pre-conditions that might prevent it from acting where it considers that necessary. Furthermore, the FRC considers that fettering the ability of the independent disciplinary body to exercise its powers creates a risk that the arrangements would not comply with the requirements of Schedule 10, Companies Act 2006 (which requires any investigations to be conducted independently of the professional bodies). For these reasons, the FRC proposes to remove the requirement for a protocol to govern the conduct of preliminary enquiries under the Accountancy Scheme.
- 3.8 For the avoidance of doubt, preliminary enquiries undertaken as a precursor to a possible disciplinary investigation are separate and distinct from supervisory inquiries which may be initiated by the FRC. Supervisory enquiries can relate to any or all of the matters that fall within the FRC's remit and responsibilities and may, therefore, result in a range of different actions depending on the particular circumstances.

Scope Extensions (Paragraph 6(8))

- 3.9 The scope of an investigation is regularly amended once the investigation team has identified the key areas for investigation and refined the issues involved. Being required to consult the relevant professional body or bodies on amendments to the scope of a particular investigation (as currently required) leads to delays of 1-2 months. In practice, the professional bodies are rarely sufficiently informed once an investigation has commenced to offer an informed opinion as regards changes to the investigation scope. The FRC is therefore proposing the removal of this requirement to consult.

Amending the Scheme (Paragraph 18)

- 3.10 The FRC proposes to replace the requirement to obtain the consent of the professional bodies to any changes in the Scheme with provisions that:
- require the FRC to consult with each professional body on changes to the Scheme; and

- establish a mechanism for resolving any disputes that may arise from such changes to the Scheme.
- 3.11 The FRC recognises the legitimate interest that the professional bodies have in the operation, and in particular the funding, of the Schemes. The FRC, therefore, proposes to amend the Schemes to provide that where, notwithstanding consultation, one or more of the professional bodies continues to object to a proposed amendment to the Scheme, that disagreement will be referred to a suitably qualified individual, such as a recently retired member of the Supreme Court or other recently retired, senior member of the judiciary, to determine the disagreement (having regard to the objectives of the Scheme), acting as independent adjudicator.

OPERATIONAL EFFECTIVENESS

Procedures for concluding cases without a Tribunal hearing (Paragraphs 6(12)-6(18))

- 3.12 The FRC believes that it is important to introduce a mechanism that would allow cases to be concluded, at Executive Counsel's discretion, without the need for a public hearing before a Disciplinary Tribunal. It is anticipated that this will save time and costs in appropriate cases.
- 3.13 The procedure proposed is based on the following principles:
- The decision whether or not to enter into "settlement discussions" is a matter for Executive Counsel using his discretion having regard to the public interest;
 - The decision whether or not to execute a "settlement agreement" reached between Executive Counsel and a Member or Member Firm shall be taken by at least two decision makers ("Settlement Approvers") drawn from the Case Management Committee, but who have not participated in monitoring the investigation in question. It is important, to ensure public confidence in the disciplinary process, that decisions to conclude cases without a Tribunal hearing should be, and appear to be, taken by individuals with an appropriate level of objectivity and separation from those who have been involved in monitoring the conduct of the investigation and from those who have agreed the terms of the settlement;
 - Any decision by the Settlement Approvers to approve a settlement agreement must be unanimous;

- The opportunity to seek a settlement will be available up until a complaint is served on the Member or Member Firm. Thereafter, any settlement will require the approval of the Tribunal expected to hear the complaint.
- No Member or Member can be required to enter into settlement discussions;
- A Member or Member Firm will always retain the right to have their case heard by a Tribunal; and
- Any settlement agreements executed by the FRC will be published so as to provide for continued transparency in the disciplinary process.

Case Management Committee (Paragraphs 6(4) - 6(6))

3.14 In its publication “Future Structure and Regulatory Procedures” the FRC stated that the Conduct Committee would be supported by a Case Management Committee (CMC) to assist with individual disciplinary cases. The conduct of any investigation will continue to be the responsibility of the Executive Counsel³, who will consult with those members of the CMC appointed to assist with that investigation as appropriate.

3.15 The role of the CMC will include the following:

- Before making any decision to deliver a Formal Complaint, the Executive Counsel will present the case to the CMC for review. The role of the CMC is to provide input and challenge to the Executive Counsel when reaching a decision on the adequacy of the evidence.
- Where it is determined that there is evidence available to proceed the Executive Counsel will consult with the CMC on whether:
 - i. it is in the public interest to proceed to a tribunal hearing. Following such consultation, the Executive Counsel will decide whether to deliver a Formal Complaint; or
 - ii. it would be appropriate to consider early resolution of the matter by inviting the relevant Member or Member Firm to enter into ‘settlement discussions’.

Notification of the intention to file a disciplinary complaint (paragraph 6(10))

- 3.16 Under the Scheme, before delivering a Formal Complaint the Executive Counsel is required to notify those under investigation of the complaint he proposes to deliver and consider any representations made before deciding whether to deliver a Formal Complaint. This requirement has proved to be a source of significant delay.
- 3.17 However, the FRC recognises that Members and Member Firms need to be informed of the allegations that they are likely to face before a Formal Complaint is served: (i) for reasons of fairness; (ii) to enable Members and Member Firms to engage with any settlement talks Executive Counsel might be minded to enter into; and (iii) more generally to give the Member or Member Firm concerned an opportunity to submit representations if he or it wishes to do so prior to a complaint being referred to a disciplinary tribunal.
- 3.18 The FRC proposes to amend this provision to clarify its purpose and introduce time limits within which Members and Member Firms must respond. This should reduce the potential for delay and support speedier progress of cases through the disciplinary process so thereby promoting the delivery of disciplinary outcomes in a more timely manner.

Interim Orders (Paragraph 13)

- 3.19 Circumstances could arise where, for reasons of public interest, it would be desirable to seek an interim order against a Member or Member Firm. No such power currently exists in the Schemes although the FRC notes that a number of the professional bodies have such powers in their own disciplinary schemes. The amended Schemes therefore contain provisions enabling Executive Counsel to seek an interim order so as to ensure that, in appropriate cases, swifter action can be taken to protect the public. It is envisaged that interim orders would be reserved for the most exceptional circumstances. Interim orders could only be imposed by a Disciplinary Tribunal.

Costs post Admissions (Paragraph 7(8)(ii))

- 3.20 The Schemes provide that costs shall not be awarded against Members and Member Firms once admissions have been made. Although intended to act as an incentive to make admissions and so save unnecessary expense, this has not occurred in practice, primarily because by the stage that admissions

are made, the savings to be made are relatively small as the costs of running an uncontested hearing are unlikely to exceed £50,000⁴.

- 3.21 The FRC therefore proposes to remove the provision from the Scheme. The FRC notes that the loss of opportunity to reduce costs by making admissions should be mitigated by the introduction of procedures for concluding a case without a Tribunal hearing.

Tribunal Appointments (Paragraph 9(1))

- 3.22 The function of appointing individual Tribunals was transferred from the AADB to an independent Convener in 2010 in order to further strengthen the separation of functions and safeguards in the disciplinary process.
- 3.23 Although not part of the original proposal for a Convener, the function of maintaining the Tribunal Panel from which individual Tribunals are appointed also transferred to the Convener. While this has the merit of added independence, a number of practical difficulties have arisen in the intervening period that have led the FRC to conclude that the Panel could be more effectively maintained if responsibility for the appointment of its members lay with the Conduct Committee. Individual Tribunals will continue to be appointed from that Panel by an independent Convener.

Obligations of Members and Member Firms to Cooperate with Executive Counsel (Paragraphs 12(1) and 12(2))

- 3.23 The Schemes require Members and Member Firms to cooperate with Executive Counsel. Experience has shown that there are circumstances where it would be desirable, or even necessary, to secure the cooperation of Former Members and Former Member Firms in order to progress a public interest investigation. At present, it is not clear that Former Members and Former Member Firms could be required to cooperate with the Executive Counsel. The FRC therefore proposes to amend the Schemes to extend the obligations under paragraphs 12(1) and 12(2) to Former Members and Former Member Firms.

⁴ The FRC notes that the Disciplinary Tribunal which heard the complaint against PricewaterhouseCoopers LLP in relation to JP Morgan Securities Limited was critical of this provision and queried whether it properly reflects the public interest.

Decision to launch an investigation

3.24 In reviewing the scope of the disciplinary arrangements, the FRC concluded that there would be merit in reviewing the test that must be satisfied before an investigation can be started. At present, other than where Members or Member Firms have failed to comply with their obligations to cooperate under the Scheme, Members and Member Firms are liable to investigation where:-

- (i) (a) *the matter raises or appears to raise important issues affecting the public interest in the United Kingdom ("the first criterion"); and*
- (b) *the matter needs to be investigated to determine whether there may have been an act of misconduct ("the second criterion");*

3.25 The second limb of this test ("the misconduct criterion") lacks clarity and this may lead to confusion or uncertainty as to the sorts of cases the FRC investigates. In particular, the FRC considers that, as a result of the wide nature of the criterion, potential misconduct of any nature and significance might be regarded as sufficient to support the commencement of an investigation. Whereas the FRC's view is that investigations should only be commenced if there are reasonable grounds for suspecting⁵ that misconduct has occurred which, if established through the investigation, would be sufficient to justify the commencement of disciplinary proceedings.

3.26 If the misconduct criterion were to be amended in this way, the FRC expects that it would generally undertake a preliminary enquiry to ensure that reasonable grounds for suspecting such misconduct existed. Such preliminary enquiries would have three potential advantages:

1. the Conduct Committee would be better informed when deciding whether to commence an investigation;
2. The information obtained through a preliminary enquiry should enable the Conduct Committee to focus the scope of an investigation more tightly and reduce the need to amend the scope of investigations at a later stage. That would help to increase the speed and efficiency of investigations; and

⁵ The "reasonable grounds for suspecting" test has the benefit of existing in both legislation and regulation and, as a result, it is well understood.

3. There are likely to be fewer investigations that do not lead to disciplinary proceedings. This is important for those under investigation, who are often concerned about the possibility of reputational damage, as decisions to investigate are usually announced publicly.

This would also align the independent disciplinary process more closely with the processes of the professional bodies, all of whom conduct initial enquiries before deciding whether to refer the case in question to the next stage of the disciplinary process.

- 3.27 The FRC is not proposing that any change should be made to the first criterion (the public interest requirement) because that requirement is established by Schedule 10, Companies Act 2006. Although no such statutory requirements exist for the Institute and Faculty of Actuaries, the FRC wishes to keep the two Schemes closely aligned, particularly in relation to the criteria for decision making. There may, however, be merit in reversing the order of two criteria so as to underline the need for there to be a link between the suspected misconduct and the public interest.

Sanctions (Appendix One – Schedule of Sanctions)

- 3.28 The FRC is considering whether there is merit in broadening the range of possible sanctions available under the Schemes. Examples of additional sanctions under consideration include placing conditions on a licence, such as a requirement to retrain.

4 Impact Assessment

4.1 This section sets out the FRC's assessment of the perceived benefits and the extent of any additional costs that may be incurred as a result of implementing its proposals for changes to the Schemes.

4.2 The FRC disciplinary arrangements deal with events of low probability but which, when they do occur, have a profound impact on those involved. Such events also have the potential to cause serious public concern and to undermine public confidence in the accountancy and/or actuarial professions in the UK.

4.3 The FRC considers that the proposed changes to the Schemes will deliver benefits to the professional bodies and their members and member firms, to the FRC and to the public, because they should enhance the independence, the effectiveness and the efficiency of the Schemes. In particular, the FRC believes that the proposed changes will enhance the robustness of the procedures prescribed by the Schemes and lead to disciplinary outcomes being delivered more quickly, thereby promoting confidence in the disciplinary arrangements.

4.4 The FRC does not believe that the changes it is proposing:

- to increase the independence of the disciplinary arrangements;
- to conclude cases without the need for a tribunal hearing;
- to facilitate the timely completion of investigations and disciplinary proceedings; and
- to apply for interim orders,

will have any discernible effect on the overall cost of an investigation or disciplinary hearing. Indeed, in the FRC's view, these amendments to the Schemes are likely to result in a more streamlined, and therefore less expensive, process.

4.5 Although it is not possible to quantify these potential financial savings, the FRC:

- estimates that the proposals could lead to a saving of 6 months or more in an average case;

- believes that the introduction of a mechanism for concluding cases without a Tribunal hearing will provide the greatest potential for cost savings. Such savings will vary, depending on the size of the case. In an average case against a Member who reaches a settlement agreement, the savings might be between £30,000 and £50,000. In a larger case they are likely to be considerably more. Based on the cases it is currently handling, the FRC estimates that up to two Tribunal hearings per annum could be avoided if the proposed procedure is introduced.

- 4.6 The proposals to enable the FRC to conduct preliminary enquiries will strengthen the public's perception of the FRC's independence from those it regulates and support objectivity in its decision-making. Although some costs may result from such preliminary enquiries, these are likely to be small in comparison with the cost of a full investigation and must be balanced against the benefit to the Conduct Committee of having more information upon which to base its decision whether to investigate. Furthermore, if a full investigation follows, the information gathered as a result of the preliminary enquiries is likely to be relevant to the investigation and would in any event have been sought at that stage. In these circumstances the cost of conducting preliminary enquiries is unlikely to be additional.
- 4.7 The FRC considers that the involvement of members of the Case Management Committee in monitoring investigations will have a number of benefits. It will ensure an additional element of objectivity and expertise in assessing the merits of a case and its prospects. A lay member is also likely to be involved and will be able to advise on whether technical terms and concepts are being presented in a way that is likely to make the case comprehensible to a lay person. The FRC does not consider that this will lead to significant costs over and above the costs currently incurred in the course of an investigation.

5 Questions

The FRC would welcome views on the following questions:

1. Should the Schemes be amended as set out in paragraphs 3.3 to 3.11 above so as to enhance the independence of the disciplinary arrangements?
2. Are the proposals to conclude cases without the need for a tribunal hearing appropriate (paragraphs 3.12 to 3.13 above)?
3. Do you agree with the role envisaged for the Case Management Committee (paragraph 3.15)?
4. Are the proposals to facilitate the timely completion of investigations and disciplinary proceedings appropriate (paragraphs 3.16 to 3.18 above)?
5. Should the Executive Counsel be able to seek an interim order against a member or member firm? If so, are the proposed provisions (paragraph 3.19) appropriate?
6. Do you have any comments on the proposals to amend the investigation test (paragraphs 3.24 – 3.29)?
7. Do you have any other comments on the proposed Schemes or the points raised in this paper?

6 How to respond

Please send your response by **19 September 2012** to:

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London WC2B 4HN

Tel: 020 7492 2451
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This consultation paper is available online at <http://www.frc.org.uk/publications/>.

Publication of response

The FRC will publish a response to this consultation in 2012.

Representative groups

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, will be published. If you want the information that you provide to be treated as confidential or you do not wish your response to be published, please make this clear in your response. If you send an e-mail response which includes an automatically generated notice stating that the content is to be treated as confidential you should make it clear in the body of your message whether or not you wish your comments to be treated as confidential.

Acknowledgement of Response

An acknowledgement will be sent to any individual or organisation submitting a response to this consultation.

Questions

Any questions about the issues raised in this consultation document should be directed to **Anna Colban** at the above email address.

APPENDIX A

The
Financial Reporting
Council

The Accountancy Scheme

DRAFT 27.06.12

DATED:

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FINANCIAL REPORTING COUNCIL

ACCOUNTANCY SCHEME

Scheme

1(1) This ~~is the is the~~ Scheme of the FRC for the accountancy profession as further amended by the FRC with ~~shall take of the FRC for the accountancy profession originally adopted by the Accountancy and Actuarial Discipline Board on 13 May 2004 with the agreement in writing of the FRC and the Participants and with effect on and from the Effective Date and first amended with effect from 13 September 2007, further amended with effect from 26 February 2010 and further amended with effect from 8 December 2011. The Scheme is amended and adopted as further amended by the FRC with effect from [] 2012.~~¹

1(2) To ~~safeguard the public interest by maintaining and enhancing the standards of conduct of Members and of Member Firms~~ protect the public, maintain public confidence in the accountancy profession and uphold proper standards of conduct, this Scheme provides a system for:-

- (i) the investigation of Members' and of Member Firms' conduct in the course of their professional, business or financial activities (including as a partner, member, director, consultant, agent or employee in or of any organisation or as an individual), including such conduct before they became Members and Member Firms, and
- (ii) if warranted following such investigation, bringing disciplinary proceedings against Members and Member Firms.

1(3) This Scheme applies to any matter referred to the FRC under paragraph 5(2), or assumed by the Conduct Committee under paragraph 5(8) and to all steps

¹ The Scheme was originally adopted by the AADB on 13 May 2004, and amended by the AADB on 13 September 2007, 26 February 2010, 8 December 2011 and [] 2012. It was amended by the FRC on [] 2012.

and proceedings arising, directly or indirectly, therefrom or in consequence thereof or in relation thereto.

1(4) Every Member, ~~and every~~ Member Firm, ~~Former Member, and Former Member Firm and Successor Member Firm~~ shall have the obligations in relation to this Scheme set out in paragraphs 12(1) and 12(2) and such obligations shall apply regardless of the capacity in which he or it is acting.

1(5) This Scheme is governed by, and shall be construed in accordance with, the laws of England and Wales.

Interpretation

2(1) In this Scheme, unless inconsistent with the subject or context:-

~~*act of misconduct* means any Member's or Member Firm's conduct in the course of his or its professional, business or financial activities (including as a partner, member, director, consultant, agent or employee in or of any organisation or as an individual), which falls short of the standards reasonably to be expected of a Member or Member Firm.~~

AADB means The Accountancy and Actuarial Discipline Board Limited (formerly The Accountancy Investigation and Discipline Board Limited), a company limited by guarantee incorporated in England and Wales, number 5081857.

Adverse Finding means a finding by a Disciplinary Tribunal that a Member or Member Firm has committed Misconduct ~~an act of misconduct~~, or has failed to comply with any of his or its obligations under paragraphs 12(1) or 12(2).

Alternate Executive Counsel means a legally qualified person, appointed to that role by the Conduct Committee.

Appeal Tribunal means a tribunal appointed by the Convener under ~~sub~~ paragraph 8(7)(ii); to consider an appeal against a decision of a Disciplinary Tribunal.

Appellant means a Member or Member Firm who or which gives or has given notice of appeal under paragraph 8(1).

the Board means the Accountancy and Actuarial Discipline Board established under the articles of association of the AADB.

Case Management Committee means the Case Management Committee of the FRC established by the Conduct Committee of the FRC.

~~conduct includes efficiency and competence, and includes a failure to act as well as a positive act.~~

Conduct Committee means the Conduct Committee of the FRC established under the articles of association of the FRC.

~~the Board means the Accountancy and Actuarial Discipline Board established under the articles of association of the AADB.~~

Convener means ~~a~~the person, appointed to that office by the Nominations Committee of the FRC, who shall be responsible for the appointment of Tribunals under this Scheme and for the appointment of the person for the purposes of paragraph 8(4).

Disciplinary Tribunal means a tribunal appointed by the Convener under paragraph 7(2).

Effective Date means:-

- (i) for Members and Member Firms of the ICAEW: 13th May 2004
- (ii) for Members and Member Firms of CIMA: 25th May 2004
- (iii) for Members and Member Firms of ACCA: 13th May 2004

- (iv) for Members and Member Firms of CIPFA: 11th June 2004
- (v) for Members and Member Firms of the ICAI: 7th December 2005
- (vi) for Members and Member Firms of ICAS: 1st December 2005

employ includes engage the services of, and **employee** shall be construed accordingly.

Executive Counsel means a legally qualified officer of the FRC, appointed to that office by the Nominations Committee of the FRC. Any references in this Scheme to the Executive Counsel shall also be interpreted as referring to the Alternate Executive Counsel where one or more Alternate Executive Counsel has been appointed.

FRC means the Financial Reporting Council Limited, a company limited by guarantee incorporated in England and Wales, number 2486368 and any other body which takes over functions of the FRC.

Firm means a body corporate, a partnership, a limited liability partnership or an unincorporated practice of a sole practitioner.

Formal Complaint means:-

- (i) the formal document prepared by the Executive Counsel detailing the allegation or allegations that a Member or Member Firm has committed Misconduct ~~an act of misconduct~~ or failed to comply with any of his or its obligations under ~~sub~~-paragraphs 12(1) or 12(2);
- (ii) for the purposes of paragraphs 7, 8 and 9 of this Scheme, the Formal Complaint as amended by a decision made for the purposes of paragraph 7(4).

Former Member means a person who was a Member at the time of the alleged M~~is~~conduct but has ceased to be a Member.

Former Member Firm means a firm which was a Member Firm at the time of the alleged Misconduct but has ceased to be a Member Firm.

Group of the Case Management Committee means a group appointed by the Chairman of the Case Management Committee in accordance with paragraph 6(5).

Member means:-

- (i) a member of one or more of the -Participants, or
- (ii) any other person who is subject to the provisions of the constitution, including regulations made thereunder, of one or more of the Participants in so far as such provisions relate to the systems of discipline and professional conduct, and regulation, operated thereby, or
- (iii) where paragraph 4(76) applies, a Former Member.

Member Firm means:-

- (i) a Firm which is subject to the provisions of the constitution, including regulations made thereunder, of one or more of the Participants in so far as such provisions relate to the systems of discipline and professional conduct, and regulation, operated thereby, or two or more Members working together under a formal agreement, or
- (ii) where paragraph 4(67) applies, a Former Member Firm.

Member of the Same Group means :

- (i) as regards any company, a company which is from time to time a holding company or a Subsidiary of that company or a Subsidiary of that holding company ;

(ii) as regards any other body corporate or a partnership, an Associate of that body corporate or partnership.

and "Associate" shall have the meaning given in Section 1260 of the Companies Act 2006; and " Subsidiary" shall have the meaning given in Section 1159 of the Companies Act 2006; and " Holding Company" shall have the meaning given in Section 1159 of the Companies Act 2006.

Misconduct means an act or omission or series of acts or omissions, by a Member or Member Firm in the course of his or its professional, business or financial activities (including as a partner, member, director, consultant, agent, or employee in or of any organisation or as an individual), which falls short of the standards reasonably to be expected of a Member or Member Firm.

Nominations Committee means the Nominations Committee of the FRC.

Panel means the panel appointed by the Conduct Committee pursuant to paragraph 9(1).

Participant means any accountancy body which is participating in this Scheme.

Regulations mean regulations made by the Conduct Committee from time to time.

Representative means a ~~solicitor, advocate or counsel or a Member or any other~~ person who is engaged or requested to represent a Member or a Member Firm under investigation or before a Tribunal.

Proposed Settlement Agreement means the formal document prepared by the Executive Counsel and agreed by the Member or Member Firm detailing:

(i) the particulars of fact and Misconduct admitted by the Member or Member Firm; and

(ii) the sanction or sanctions and the reasons therefore; and

- (iii) any costs that the Member or Member Firm will pay to the FRC towards the cost of the investigation.

Settlement Agreement means a Proposed Settlement Agreement which has been approved by the Settlement Approvers under paragraph 6(16).

Settlement Approver means a member of the Case Management Committee appointed by the Conduct Committee under paragraph 6(14), who must not be a member of the Group of the Case Management Committee appointed to monitor Executive Counsel's investigation in relation to that case.

Successor Member Firm means any Firm that acquires, directly or indirectly, control of a Member Firm or Former Member Firm or the practice of a Member Firm or Former Member Firm.

Tribunal means a Disciplinary Tribunal or an Appeal Tribunal (as the context requires) ~~appointed on behalf of the FRC by the Convener.~~

~~**UK-connected company** means:-~~

- ~~(i) — any company registered in any part of the United Kingdom, listed in any part of the United Kingdom on a recognised investment exchange for the purposes of the Financial Services and Markets Act 2000 or with an established place of business in any part of the United Kingdom;~~
- ~~(ii) — any company in the same group (as defined in section 1261 of the Companies Act 2006) as such a company; and~~
- ~~(iii) — any associate (as defined in section 1260 of the Companies Act 2006) of such a company or such a group company.~~

~~UK-connected business means:~~

- ~~(i) any sole-trader, firm, partnership or other organisation constituted under the law of any part of the United Kingdom or with an established place of business in any part of the United Kingdom; and~~
- ~~(ii) any associate (as defined in section 1260 of the Companies Act 2006) of such a sole-trader, firm or partnership.~~

2(2) Any reference to a statute includes: that statute as amended from time to time; any statute re-enacting or replacing it; and any statutory instruments, regulations or rules made under that statute or any statute re-enacting or replacing it.

2(3) Words importing the singular number include the plural and vice versa, and words importing the masculine gender only include the feminine.

2(4) In this Scheme, any reference to a "document" shall mean anything in which information of any description is recorded, including but not limited to: electronic documents, including email and other electronic communications; word processed documents and databases; documents stored on portable devices such as memory sticks and mobile phones; documents readily accessible from computer systems and other electronic devices and media; documents stored on servers and back-up systems and electronic documents that have been 'deleted'. It also includes Metadata and other embedded data.

The Conduct Committee

3(1) The Conduct Committee shall have power to:-

- (i) make such Regulations for the operation and administration of this Scheme, and thereafter to amend such Regulations from time to time, provided that there shall have been consultation by the Conduct Committee with the Participants prior to any amendments, and

provided further that, in the event of any inconsistency between Regulations and this Scheme, the terms of the Scheme shall prevail;

~~(ii) agree a protocol with one or more Participants to govern the operation of paragraph 5(10) provided that, in the event of any inconsistency between any protocol and this Scheme, the terms of the Scheme shall prevail and provided further that no party may withdraw from a protocol unless they have provided 6 months notice in writing to the other parties.~~

(iii) provide the Executive Counsel, the Case Management Committee, the Convener and any Tribunal with guidance concerning the exercise of their duties under this Scheme, who shall have regard to any such guidance issued;

~~(i~~ii) authorise any Tribunal to employ any person whose services may reasonably be required to assist the Tribunal;

~~(i~~iv) authorise the remuneration of the members of any Tribunal, the Convener and any other persons;

(v) delegate to the Chairman of the Conduct Committee its powers under paragraphs 6(8)(i), 6(8)(ii), 6(9)(i) and 6(9)(ii).

~~(vi~~ii) delegate to the Chairman of the Conduct Committee its powers under ~~sub~~ paragraphs 3(~~iii~~iv) and 3(~~i~~iv) above; and

~~(vii~~ii) do all such other things as the Conduct Committee considers incidental or conducive to the operation of this Scheme.

Liability to Investigation and Disciplinary Proceedings

4(1) A Member or Member Firm shall be liable to investigation under this Scheme only where, in the opinion of the Conduct Committee:-

(i) (a) the matter raises or appears to raise important issues affecting the public interest in the United Kingdom (“the first criterion”); and

(b) the matter needs to be investigated to determine whether there may have been Misconduct ~~an act of misconduct~~ (“the second criterion”); or

(ii) it appears that the Member or Member Firm has failed to comply with any of his or its obligations under paragraphs 12(1) or 12(2) below.

4(2) In deciding whether a matter satisfies the first criterion, the Conduct Committee shall, amongst other things, consider whether it appears to give rise to serious public concern or to damage public confidence in the accountancy profession in the United Kingdom. The Conduct Committee shall also be entitled to consider all the circumstances of the matter including, but not limited to, its nature, extent, scale and gravity.

4(3) A Member or Member Firm shall be liable to disciplinary proceedings under this Scheme if, following an investigation, the Executive Counsel considers:

(i) that there is a realistic prospect that a Disciplinary Tribunal will make an Adverse Finding against a Member or Member Firm; and

~~(iii)~~ (ii) that a hearing is desirable in the public interest.

4(4) In considering the question of whether the conduct of a Member or Member Firm may have fallen short of the standards reasonably to be expected of him

or it, regard shall be had in particular to any law, whether statutory or otherwise, or regulation of any sort, and to any charter, bye-law, rule, regulation or guidance which applies to him or it.

~~4(5)~~ A Member shall be liable to disciplinary proceedings under this Scheme only if he is, when a Formal Complaint is delivered to the Conduct Committee under paragraph 6(9), or was, at the time of any alleged act of misconduct:-

~~(i) a citizen or subject of the United Kingdom; or~~

~~(ii) working in the United Kingdom; or~~

~~(iii) working in a United Kingdom registered audit firm; or~~

~~(iv) working in, involved in providing services to or involved in auditing a UK connected company or UK connected business~~

~~4(5)~~ 4(6) A Member or Member Firm will be liable to investigation and disciplinary proceedings under this Scheme:

(i) regardless of whether the alleged Misconduct ~~act of misconduct~~ took place before or after the Effective Date; and

(ii) regardless of whether he or it was a Member or Member Firm at the time of the alleged Misconduct ~~act of misconduct~~, provided that, where the alleged Misconduct ~~act of misconduct~~ took place before the Effective Date, the Participant's rules at the Effective Date provide for investigation and discipline of ~~alleged~~ M~~isconduct~~ that took place prior to the Member or Member Firm becoming a Member or Member Firm of the Participant.

~~4(6)~~ 4(7) A Former Member or Former Member Firm will be liable to investigation and disciplinary proceedings under this Scheme as if he or it were a Member or Member Firm in respect of either any alleged Misconduct ~~act of misconduct~~

which took place while he or it was a Member or Member Firm or any alleged failure to comply with any of his or its obligations under paragraphs 12(1) or 12(2):

- (i) if he or it ceased to be a Member or Member Firm after the Effective Date, even if the rules of the Participant to which the Former Member or Former Member Firm belonged provide otherwise; and
- (ii) if he or it ceased to be a Member or Member Firm before the Effective Date, only so far as the Participant's rules at the Effective Date provide for liability to investigation and disciplinary proceedings in respect of alleged Misconduct by a Former Member or Former Member Firm.

4(7) A Successor Member Firm will be liable to investigation and disciplinary proceedings under this Scheme as if it were a Member Firm in respect of either any alleged Misconduct or any alleged failure to comply with any of its obligations under paragraph 12(1) or 12(2) by the Member Firm or Former Member Firm of which it has acquired control.

4(8) A Member Firm shall not avoid liability to investigation and disciplinary proceedings under this Scheme by reason of having established and operated appropriate working practices and procedures, if its conduct (by reason of the conduct of any partner, member, director, consultant, agent or employee acting with actual or ostensible authority) may constitute Misconduct~~an act of misconduct~~.

4(9) If a Participant ceases to be a Participant at a time when any investigation or proceedings under this Scheme are proceeding against one of their Members or Member Firms, then for the purpose of the application of the provisions of this Scheme to that investigation or proceedings (to its conclusion, up to and including any appeal and the enforcement of any order of a Tribunal), the former Participant shall be regarded and treated for the purposes of this Scheme as if it remained a Participant.

4(10) For the avoidance of doubt:

- (i) anything said, done or omitted by an employee of a Member Firm within the scope of his employment, either actual or ostensible, or as an agent of the Member Firm within the scope of his authority, either actual or ostensible, shall be taken as having been said, done or omitted by that Member Firm;
- (ii) ~~N~~othing in this paragraph will remove the liability to investigation or disciplinary proceedings for a Member who is an employee or agent of a Member Firm.

Decision to Investigate

5(1) An investigation under this Scheme may be instituted in either of the circumstances described in paragraphs 5(2) and 5(8).

5(2) Where a Participant:-

- (i) considers that a matter raises or appears to raise important issues affecting the public interest in the United Kingdom; and
- (ii) considers that the matter needs to be investigated to determine whether one or more of its Members or Member Firms may have committed Misconduct ~~an act of misconduct, in relation to that matter.~~

then the Participant shall refer that matter to the FRC and request that the Conduct Committee institute ~~commission~~ an investigation. Such a request from a Participant ~~shall~~ may be published by the Conduct Committee if it thinks fit, unless this would not, in the opinion of the Conduct Committee, be in the public interest. In the event that a Participant is in doubt as to whether a particular matter should be referred to the FRC then the Participant shall consult with the Conduct Committee for guidance.

- 5(3) Upon receipt of a reference pursuant to paragraph 5(2), the Conduct Committee shall, as soon as is reasonably practicable and ordinarily within two months of the date of the reference, decide whether to accept or decline the reference.
- 5(4) The decision of the Conduct Committee to accept or decline the reference shall depend on whether, in its opinion, the criteria at paragraph 4(1), taking account of the considerations in paragraph 4(2), are met in relation to the matter referred.
- 5(5) Where the Conduct Committee has decided to accept a reference made pursuant to paragraph 5(2), it shall, within fourteen days thereafter, give notice in writing of its decision to the Participants.
- 5(6) If, in the opinion of the Conduct Committee, it is appropriate that the matters that form the subject of the investigation should extend beyond those contained within the reference from the Participant, or that any matters contained within the reference from the Participant should be excluded from the investigation, the Conduct Committee may decide either to include or exclude any such matters from the investigation as appropriate.
- 5(7) Where the Conduct Committee has decided to decline a reference made pursuant to paragraph 5(2) it ~~shall~~:-
- (i) ~~shall~~ give notice in writing of its decision and the reasons for it to the relevant Participant within fourteen days; and
 - (ii) ~~may, if it thinks fit,~~ publish its decision unless this would not, in the opinion of the Conduct Committee, be in the public interest.
- 5(8) Where a Participant is conducting an investigation into the conduct of a Member or Member Firm of which the Conduct Committee is aware, or the Conduct Committee otherwise becomes aware of matters relating to the conduct of a Member or Member Firm, and in either case the Conduct

Committee is of the opinion that the grounds for an investigation under paragraph 4(1), taking account of the considerations in paragraph 4(2), have been met, the Conduct Committee may, ~~after consultation with any Participant whose Members or Member Firms may be concerned in an investigation,~~ decide that the matter shall be dealt with by the FRC in accordance with this Scheme.

5(9) Where the Conduct Committee has decided pursuant to paragraph 5(8), that a matter should be dealt with by the FRC it shall give notice in writing of its decision and the reasons for it to the Participants. Upon receipt of such notice, the relevant Participant shall forthwith suspend any investigation relating to the matter on its part.

5(10) ~~(i)~~ Where the Conduct Committee considers that it has insufficient information about a matter to determine whether a Member or Member Firm is liable to investigation under paragraph 4(1):-

~~(i)~~ ~~(i)~~ it may, ~~subject as follows,~~ direct the Executive Counsel to make preliminary enquiries before deciding whether or not the matter should be investigated; and

~~(ii)~~ it shall inform the relevant Participant where any direction is made to the Executive Counsel at ~~(i)~~ above; and

~~(iii)~~ ~~(e)~~ where a matter has also been referred to the FRC pursuant to paragraph 5(2), the time in which the Conduct Committee shall be required to decide whether or not to investigate the matter for the purposes of paragraph 5(3) shall be extended by such period as shall be reasonable for the required preliminary enquiries to be carried out.

~~(ii) Paragraph 5(10) may only be exercised in respect of Members or Member Firms of a Participant in accordance with the terms of a protocol to be agreed between the Conduct Committee and that Participant. Amendment of any~~

~~protocol from time to time shall be by agreement between the parties to the protocol.~~

Investigation

6(1) (i) For the purposes of exercising its powers under paragraph 5, the Conduct Committee and the Executive Counsel on its behalf, has power to require any Participant to provide to the Executive Counsel such documents or other information in its possession, or under its control, as the Conduct Committee or the Executive Counsel, as the case may be, shall reasonably think fit and as the Participant can lawfully provide.

(ii) The power in ~~sub~~-paragraph 6(1)(i) shall include the power to require the Participant to:-

(a) permit the inspection and taking of copies of the documents or other information; and

(b) supply copies of such documents or other information at its own expense to the extent that it is reasonable in all the circumstances.

~~For the avoidance of doubt, documents or other information includes, without limitation, any books, documents, records, telephone recordings or computer held information of whatsoever kind.~~

6(2) Where a reference is accepted by the Conduct Committee under paragraph 5(3):-

(i) the scope of the investigation shall be set out within the notice given by the Conduct Committee referred to at paragraph 5(5);

- (ii) in accordance with paragraph 5(6), the scope shall not be restricted to the matters referred by the Participant under paragraph 5(2) and shall include or exclude any issues relating to the matter as the Conduct Committee shall see fit;
- (iii) the relevant Participant shall supply to the Conduct Committee any documents or other information which are in the possession, or under the control, of that Participant which may reasonably be required for the purposes of the investigation and which the Participant can lawfully provide.

6(3) Where the Conduct Committee decides under paragraph 5(8) that a matter shall be assumed by the FRC to be dealt with in accordance with this Scheme:-

- (i) the scope of the investigation shall be set out within the notice ~~in writing~~ given by the Conduct Committee as referred to at paragraph 5(9); and
- (ii) the relevant Participant shall supply to the Conduct Committee any documents or other information which is in the possession, or under the control, of that Participant which may reasonably be required for the purposes of the investigation and which the Participant can lawfully provide.

6(4) In either case identified at paragraphs 6(2) and 6(3), the Conduct Committee shall:-

- (i) provide a copy of the notice ~~in writing~~ to the Case Management Committee and a copy, together with any material obtained pursuant to ~~sub~~-paragraphs 6(2)(iii) or 6(3)(~~ii~~), to the Executive Counsel to be dealt with in accordance with this Scheme;
- (ii) inform the Member or Member Firm concerned of its decision to refer their conduct for investigation by ~~its~~ Executive Counsel and provide

the Member or Member Firm concerned with relevant details of the scope of the investigation; and

- (iii) publish the fact of its decision to investigate unless this would not, in the opinion of the Conduct Committee, be in the public interest.

6(5) Upon receipt of the notice sent in accordance with paragraph 6(4)(i), the Chairman of the Case Management Committee shall appoint at least three of its members to form a Group of the Case Management Committee to perform the functions set out in paragraph 6(6)(ii) in relation to the investigation.

6(6) Upon receipt of the documents provided pursuant to ~~sub~~-paragraph 6(4)(i);:-

(i) -the Executive Counsel shall conduct an investigation into the matter, and shall enquire into such facts and circumstances as the Executive Counsel considers necessary to fulfil the scope of the investigation set out by the Conduct Committee;:- and

(ii) the Group of the Case Management Committee appointed under paragraph 6(5) shall monitor Executive Counsel's investigation, including, where applicable, any settlement discussions and up to delivery of a Formal Complaint.

6(7) The Executive Counsel shall have power on behalf of the FRC to engage any person whose services may reasonably be required to assist the Executive Counsel for the purposes of conducting the investigation or subsequent disciplinary or appeal proceedings.

6(8) (i) If, in the course of an investigation, the Executive Counsel discovers facts or circumstances which appear to warrant investigation but to be outside the scope of the investigation set out by the Conduct Committee then:-

- (a) the Executive Counsel shall report those facts and circumstances to the Conduct Committee; and
 - (b) the Conduct Committee, ~~after consultation with the relevant Participant (but within the Conduct Committee's sole discretion);~~ may direct ~~that~~ the scope of the Executive Counsel's investigation shall include such facts or circumstances and shall inform the relevant Participant(s) and the Members and/or Member Firms concerned accordingly.
- (ii) If, in the course of an investigation, the Executive Counsel considers that the scope of that investigation, as set out by the Conduct Committee under paragraph 6(2) or 6(3) of the Scheme (and whether or not already amended in accordance with ~~sub~~-paragraph 6(~~7~~8)(i) above) should be narrowed, then:-
- (a) the Executive Counsel shall report to the Conduct Committee with his reason(s) for considering that the scope should be so narrowed; and
 - (b) the Conduct Committee may direct that the scope of the Executive Counsel's investigation shall be narrowed and shall inform the relevant Participant(s) and the Members and/or Member Firms concerned accordingly.
- (iii) Where the Conduct Committee directs either under paragraph 6(8)(i)(b) or 6(8)(ii)(b) that the scope of the Executive Counsel's investigation shall be amended, the Conduct Committee may if it thinks fit publish its direction, unless this would not, in the opinion of the Conduct Committee, be in the public interest.
- 6(9) (i) If, in the course of an investigation, it appears to the Executive Counsel that the scope of the investigation needs to be amended to include the conduct of a further Member and/or Member Firm, then:-

(a) the Executive Counsel shall report the facts and matters relied upon to the Conduct Committee; and

(b) the Conduct Committee may direct that the scope of the Executive Counsel's investigation shall include the conduct of such further Member and/or Member Firm and shall inform the relevant Participant and the further Member and/or Member Firm concerned accordingly.;

(ii) Where the Conduct Committee directs under paragraph 6(9)(i)(b) that the scope of the Executive Counsel's investigation shall be amended to include the conduct of such further Member and/or Member Firm the Conduct Committee may, if it thinks fit, publish its decision unless this would not, in the opinion of the Conduct Committee, be in the public interest.

6(108) (i) If, following his investigation, the Executive Counsel considers:-

(ia) that there is a realistic prospect that a Disciplinary Tribunal will make an Adverse Finding against -a Member or Member Firm; and

(ib) that a hearing is desirable in the public interest,

then the Executive Counsel shall notify the Members or Member Firms concerned of his intention to deliver a Formal Complaint he proposes to deliver to the Conduct Committee.

(ii) The notice sent in accordance with paragraph 6(10)(i) shall:

(a) set out the substance of the allegation(s) against the Member or Member Firm; and

(b) ~~give~~invite ~~each the~~ Member or Member Firm ~~an opportunity~~ to make written representations to him within the period of eight weeks from the date on which the notice is sent to the Member or Member Firm. ~~such reasonable time as the Executive Counsel shall specify.~~

(iii) The Executive Counsel may, in his absolute discretion, extend the time limit for the Member of Member Firm to make written representations.

6(119) If, the Executive Counsel,:

(i) ~~having~~ reviewed any representations received for the purposes of paragraph 6(~~108~~) ~~above, the Executive Counsel~~ still considers:-

(~~ia~~) that there is a realistic prospect that a Disciplinary Tribunal will make an Adverse Finding against a Member or Member Firm; and

(~~ib~~) that a hearing is desirable in the public interest; ~~or;~~

(ii) has not received any representations from the Member or Member Firm within the period specified in the notice sent under paragraph 6(10)(ii), or as extended under paragraph 6(10)(iii).

he shall deliver a Formal Complaint against the Member or Member Firm to the Conduct Committee.

6(120) Following service of the notice under paragraph 6(10) and prior to delivery of a Formal Complaint under paragraph 6(11):-

(i) the Executive Counsel, at his sole discretion, and having regard to the public interest, may decide that the matter is appropriate for settlement discussions under the terms of this Scheme; and

(ii) where Executive Counsel so decides, he shall:

(a) notify the Member or Member Firm concerned that he is prepared to enter into settlement discussions; and

(b) provide a copy of such notice to the Group of the Case Management Committee appointed to monitor the case.

6(13) Where, following settlement discussions:-

(i) terms of a settlement are agreed between the Executive Counsel and the Member or Member Firm, the Executive Counsel shall deliver a Proposed Settlement Agreement to the Conduct Committee.

(ii) terms of a settlement are not agreed between the Executive Counsel and the Member or Member Firm, the Executive Counsel shall proceed to deliver a Formal Complaint in accordance with paragraph 6(11).

6(14) Upon receipt of a Proposed Settlement Agreement the Conduct Committee shall appoint at least two Settlement Approvers, of whom:

(i) at least one must be legally qualified; and

(ii) one, but not more than one, may be a Member.

6(15) The Settlement Approvers shall consider the appropriateness of the Proposed Settlement Agreement having regard to the purpose for which the Scheme has been established as set out in paragraph 1(2) and to any guidance issued by the Conduct Committee under paragraph 3(1)(ii).

6(16) A Proposed Settlement Agreement must be approved by all Settlement Approvers appointed pursuant to paragraph 6(14) for it to become effective. In any other case, a Proposed Settlement Agreement shall be treated as having been rejected by the Settlement Approvers.

6(17) As soon as reasonably practicable, the Settlement Approvers shall inform the Conduct Committee of their decision, together with the reasons for that decision, and the Conduct Committee shall notify the Executive Counsel, the Member or Member Firm and the relevant Participant(s) accordingly.

6(18) Where approved, the Settlement Agreement shall take effect from the next working day after the date on which the notice under paragraph 6(17) is sent to the Member or Member Firm.

~~6(10) If the Executive Counsel either following his investigation, or having reviewed any written representations supplied by the Member or Member Firm in accordance with paragraph 6(8) above considers:-~~

~~(i) — that there is no realistic prospect that a Tribunal will make an Adverse Finding against a Member or Member Firm; or~~

~~— (ii) — a hearing is not desirable in the public interest,~~

~~he shall not deliver to the Conduct Committee a Formal Complaint and shall provide his reasons for his decision to the Conduct Committee in a report which shall be signed and dated by him. The Conduct Committee shall supply a copy of any such report to any Member or Member Firm concerned and each Participant.~~

6(19) Notwithstanding ~~the~~ any settlement ~~process~~ discussions that the Executive Counsel may initiate under paragraph 6(12), a Member or Member Firm may, either voluntarily or at the invitation of the Executive Counsel at any stage of the investigation ~~(including, for the avoidance of doubt, during a hearing before a Disciplinary or Appeal Tribunal)~~, make an admission in

respect of any alleged particulars of fact, any alleged Misconduct ~~acts of misconduct~~ or any alleged failures to comply with his or its obligations under paragraphs 12(1) or 12(2) and such admissions, if accepted by the Executive Counsel, shall constitute proof before a Disciplinary Tribunal against the Member or Member Firm making the admission.

6(120) The Executive Counsel shall, if such an admission is made prior to a Formal Complaint being delivered~~submitted~~ to the Conduct Committee, prepare and deliver to the Conduct Committee with the Formal Complaint a statement of agreed facts. Such statement of agreed facts must be signed by the Executive Counsel and the Member or Member Firm concerned and give sufficient particulars ~~sufficient~~ to enable the admissions to be properly understood.

6(212) If at any stage during or following an investigation, the Executive Counsel considers:-

(i) that there is no realistic prospect that a Tribunal will make an Adverse Finding against a Member or Member Firm; or

(ii) a hearing is not desirable in the public interest;

he shall inform the Conduct Committee of his decision, together with the reasons for that decision, and the Conduct Committee shall notify the Member or Member Firm and the Participants of the decision.

6(2213) The Conduct Committee shall publish the outcome of the Executive Counsel's investigation, and, where applicable, any Settlement Agreement as soon as practicable and in such manner as it thinks fit, unless this would not, in the opinion of the Conduct Committee, be in the public interest.

Disciplinary Proceedings

- 7(1) Where the Executive Counsel delivers to the Conduct Committee a Formal Complaint in accordance with paragraph 6(911) or paragraph 12(3), the Conduct Committee shall serve the Formal Complaint on the Member or Member Firm concerned and shall, as soon as practicable, send a copy of the Formal Complaint to the Convener.
- 7(2) The Convener shall, as soon as practicable following receipt of the Formal Complaint, appoint a Disciplinary Tribunal to hear the Formal Complaint in accordance with the provisions of this Scheme and provide the Conduct Committee with details of the Disciplinary Tribunal appointed and notify Executive Counsel and each Member or Member Firm concerned.
- 7(3) Subject to this Scheme, the procedure adopted by a Disciplinary Tribunal to deal with any Formal Complaint shall be in accordance with the Regulations.
- 7(4) The Disciplinary Tribunal may amend the Formal Complaint either before or during the hearing subject to the requirements of a fair hearing and in the interests of justice.
- 7(5) A Member or Member Firm may, either voluntarily or at the invitation of the Disciplinary Tribunal or the Executive Counsel at any stage during a hearing before a Disciplinary Tribunal make an admission in respect of any alleged particulars of fact, any alleged Misconduct or any alleged failures to comply with his or its obligations under paragraphs 12(1) or 12(2) and such admissions shall constitute proof before a Disciplinary Tribunal against the Member or Member Firm making the admission.
- 7(65) In coming to a decision the Disciplinary Tribunal may take into account any relevant evidence, whether or not such evidence would be admissible in a court. The Disciplinary Tribunal will at all times apply the rules of natural justice.

7(67) After hearing the ~~Formal~~ Complaint, the Disciplinary Tribunal shall, in relation to the Member or Member Firm which is the subject of the Formal Complaint, either:-

- (i) make an Adverse Finding in respect of some or all of the alleged Misconduct ~~acts of misconduct~~ or failures to comply with the Member's or Member Firm's obligations under paragraphs 12(1) or 12(2) forming the subject matter of the Formal Complaint, or
- (ii) dismiss the Formal Complaint.

7(78) Where the Disciplinary Tribunal makes an Adverse Finding in relation to a Member or Member Firm then:-

- (i) it may order such sanctions against the Member or Member Firm as are contained within the schedule of sanctions at Appendix 1 to this Scheme as it considers appropriate; but, if the Misconduct ~~act of misconduct~~ occurred before the Effective Date, only in exceptional circumstances may the Disciplinary Tribunal impose a sanction more severe than could have been imposed under the relevant Participant's rules at the Effective Date;
- (ii) in addition to the sanctions at Appendix 1 to this Scheme, any order made pursuant to ~~sub~~-paragraph (i) above, may include an order that the Member or Member Firm be required to pay, in the manner set out in paragraph 11, the whole or part of the costs of, and incidental to, the investigation and the hearing of the Formal Complaint before the Disciplinary Tribunal. The amount to be paid by the Member or Member Firm ~~shall is to~~ be determined by the Disciplinary Tribunal. In considering any such application the Disciplinary Tribunal shall have no regard to any settlement discussions or proposals or offers.
~~provided that, where the Member or Member Firm has made an admission under paragraph 6(11), no such order for costs may be made in relation~~

~~to any costs incurred after the date of the admission which relate to the subject matter of the admission;~~ and

- (iii) the Tribunal may make no order against the Member or Member Firm, or no order except for the payment of costs, if it considers that to be appropriate in all the circumstances.

7(89) Where the Disciplinary Tribunal dismisses ~~the~~^a Formal Complaint it may, on the application of a Member or Member Firm concerned, order that the FRC pay a specified sum in respect of legal costs that were reasonably incurred by the Member or Member Firm subsequent to the Formal Complaint being served on the Member or Member Firm. ~~for the purposes of paragraph 7(1).~~

7(910) The Disciplinary Tribunal's discretion to award costs to a Member or Member Firm concerned shall be restricted to circumstances where the Tribunal finds that no reasonable person would have ~~delivered~~^{referred} or pursued a Formal Complaint under the terms of this Scheme. In considering any such application the Disciplinary Tribunal shall have no regard to any settlement discussions or proposals or offers.

7(1011) (i) The Disciplinary Tribunal shall make a report, which shall be signed by its Chairman, setting out its ~~written~~ decision and reasons and any related orders made pursuant to paragraphs ~~7(6),~~ 7(7), ~~and~~ 7(8) and 7(9) and send it to the Conduct Committee.

(ii) The Conduct Committee ~~which~~ shall send a copy of the Disciplinary Tribunal's report to any Member or Member Firm concerned, the Executive Counsel, and the relevant Participant.

7(1112) (i) Unless the Disciplinary Tribunal shall otherwise decide, an Adverse Finding in relation to a Member or Member Firm and any order under paragraph 7(~~7~~⁸) against a Member or Member Firm shall take effect 29 days after the date on which the finding or order is notified to the Member or Member Firm.

- (ii) The Disciplinary Tribunal shall decide the extent to which the order shall apply even if the Member or Member Firm appeals against the order provided that the Disciplinary Tribunal considers that immediate action is necessary in the public interest. To the extent to which the order does not apply, it shall be suspended in the event of a notice of appeal being lodged under paragraph 8(1).
- (iii) If the person appointed under paragraph 8(4) refuses leave to appeal, the order shall take effect from the date notification of that refusal is sent to the proposed Appellant.

7(1213) The Conduct Committee shall publish the report or reports prepared by the Disciplinary Tribunal for the purposes of paragraph 7(1011) as soon as practicable and in such manner as it thinks fit unless this would not, in the opinion of the Conduct Committee, be in the public interest.

Appeals

8(1) If the Disciplinary Tribunal makes an Adverse Finding in relation to any Member or Member Firm, with or without any order under paragraph 7(78), then subject to paragraph 8(2) the Member or Member Firm may, within 28 days after the date on which the Adverse Finding and /or any order are is notified to him or it, give to the Conduct Committee notice of appeal against the finding and/or order.

8(2) An appeal under paragraph 8(1) against a decision of the Disciplinary Tribunal can be made only on the following grounds:-

- (i) that the decision of the Disciplinary Tribunal was perverse or wrong in law; and/or
- (ii) that there was injustice because of a serious procedural or other irregularity in the proceedings before the Disciplinary Tribunal; and/or

(iii) that significant and relevant new evidence has come to light which was not previously available to the Appellant and could not have become available to him or it on the making of reasonable enquiry; and/or

(iv) that the sanction imposed pursuant to paragraph 7(87) was manifestly unreasonable.

8(3) Any notice of appeal shall:-

(i) be in writing;

(ii) identify the finding and/or order appealed against; and

(iii) state the grounds of appeal.

Neither the scope of the appeal nor the grounds so stated shall be amended or changed except with the leave of the Appeal Tribunal appointed to hear the appeal.

8(4) Upon receipt of a notice of appeal, the Conduct Committee shall send the notice of appeal to the Convener who shall as soon as practicable appoint a person from the Panel to consider whether to give leave to appeal. That person shall be a former member of the judiciary or a Queen's Counsel, and shall not sit on any subsequent Appeal Tribunal in connection with the case.

8(5) If the notice of appeal was not given to the Conduct Committee within the 28 day period set out in paragraph 8(1), the person appointed under paragraph 8(4) shall refuse leave to appeal unless there are good reasons for giving leave to appeal out of time.

8(6) Unless the person appointed under paragraph 8(4) has refused leave to appeal under paragraph 8(5), he shall give leave to appeal if he is satisfied that there

is an arguable case for appeal on one or more of the grounds set out in paragraph 8(2).

- 8(7) (i) Following his decision to give leave to appeal under paragraph 8(6), or ~~to refuse not to give~~ leave to appeal, the person appointed under paragraph 8(4) shall notify the Conduct Committee and provide reasons in writing for his decision and the Conduct Committee shall notify each Member or Member Firm concerned, the Executive Counsel, the relevant ~~each~~ Participant and the Convener; and
- (ii) if the person appointed under paragraph 8(4) gives leave to appeal, the Convener shall, as soon as practicable, appoint an Appeal Tribunal to hear the appeal in accordance with the provisions of this Scheme and provide the Conduct Committee with details of the Appeal Tribunal appointed and notify the Executive Counsel and each Member or Member Firm concerned.

8(8) Subject to this Scheme, the procedure adopted by an Appeal Tribunal to deal with any ~~Formal Complaint or~~ appeal shall be in accordance with the Regulations.

8(9) A Member or Member Firm may, either voluntarily or at the invitation of the Appeal Tribunal or the Executive Counsel at any stage of the appeal make an admission in respect of any alleged particulars of fact, any alleged Misconduct or any alleged failures to comply with his or its obligations under paragraphs 12(1) or 12(2) and such admissions shall constitute proof before an Appeal Tribunal against the Member or Member Firm making the admission.

8(~~9~~10) In coming to its decision the Appeal Tribunal may take into account any relevant evidence, whether or not such evidence would be admissible in a court. The Appeal Tribunal will at all times apply the rules of natural justice.

8(~~10~~11) An appeal shall be by way of a review only and not by way of a rehearing, providing always that the Appeal Tribunal shall hear evidence

adduced pursuant to ~~sub~~-paragraph 8(2)(iii). Subject to the above, the Appeal Tribunal shall have in relation to an appeal all the powers of the Disciplinary Tribunal as set out in paragraph 7(~~7~~8).

~~8(11)~~8(12) On an appeal the Appeal Tribunal shall have power to:-

- (i) affirm, vary, substitute or rescind any Adverse Findings or orders of the Disciplinary Tribunal in relation to or against any Appellant, save that the Appeal Tribunal may not exercise its powers to impose a greater penalty than that imposed by the Disciplinary Tribunal so that, taking the case as a whole, save as to costs, the Appellant is not more severely dealt with on appeal than he or it was dealt with by the Disciplinary Tribunal;
- (ii) if it is of the view that it is necessary in the interests of justice to do so in the light of the new evidence adduced pursuant to ~~sub~~-paragraph 8(2)(iii), order that the matter be reheard by the Disciplinary Tribunal which made the relevant Adverse Findings or orders or failing that by a fresh Disciplinary Tribunal;
- (iii) order that any Appellant be required to pay, in the manner set out in paragraph 11 below, the whole or part of the costs of, and incidental, to the appeal, the amount to be so paid to be as determined by the Appeal Tribunal.

~~8(12) If the Appeal is allowed the Appeal Tribunal may, on the application of the Member or Member Firm, order that the FRC pay a specified sum in respect of legal costs that were reasonably incurred by the Member or Member Firm subsequent to the Formal Complaint being served on the Member or Member Firm for the purposes of paragraph 7(1).~~

~~8(13) The Appeal Tribunal's discretion to award costs to the Member or Member Firm concerned shall be restricted to the circumstances set out in paragraph 7(9) above~~

8(13) The Appeal Tribunal shall make a report, which shall be signed by its Chairman, setting out its ~~written~~ decision and reasons and any related orders made pursuant to paragraphs ~~8(11) or~~ 8(12) and send it to the Conduct Committee which shall then send a copy to the Member or Member Firm concerned, the Executive Counsel, and ~~the Conduct Committee which shall then send a copy to the~~ relevant Participant(s).

8(1345) A decision of the Appeal Tribunal shall take effect from the next working day after the date on which the Appeal Tribunal's report ~~notification~~ is sent to the Member or Member Firm.

8(1615) At any time before the Appeal Tribunal gives its decision -in respect of the appeal of an Appellant in accordance with paragraph 8(14), such Appellant may withdraw his or its appeal by notice in writing to the Appeal Tribunal. Thereupon, the Appeal Tribunal shall affirm the Adverse Findings and/or orders of the Disciplinary Tribunal in relation to or against the Appellant, which are the subject of the appeal ~~and may make an order under sub-paragraph 8(11)(iii) in relation to the whole or part of the costs of and incidental to the appeal.~~

8(1716) The Conduct Committee shall publish the report sent to it by the Appeal Tribunal pursuant to paragraph 8(143) as soon as practicable and in such manner as it thinks fit unless this would not, in the opinion of the Conduct Committee, be in the public interest.

Disciplinary and Appeal Tribunals

- 9(1)** (i) The Conduct Committee ~~Convener~~ shall ensure that a Panel is maintained comprising individuals who have the appropriate qualifications and experience to sit on a Tribunal.
- (ii) Appointment to the Panel shall be made by the Conduct Committee ~~Convener~~ and shall be for an initial period of at least three

years and the terms of appointment shall be as set out in the Regulations.

9(2) A Tribunal shall be appointed from the Panel by the Convener and shall be composed as follows:-

(i) Each Tribunal shall consist of either three or five persons as the Conduct Committee in its absolute discretion thinks fit.

(ii) The Chairman of a Disciplinary Tribunal ~~shall~~ **must** be a lawyer (a former member of the judiciary, a barrister, an advocate or a solicitor). The Chairman of an Appeal Tribunal must be a former member of the judiciary or a Queen's Counsel.

(iii) A three-person Tribunal must comprise in addition to the Chairman:-

(a) a lay person (who is neither a lawyer nor an accountant); and

(b) an accountant.

(iv) A five-person Tribunal must include in addition to the Chairman:-

(a) at least one lay person (who is neither a lawyer or an accountant); and

(b) two (but no more than two) accountants.

(v) Each accountant appointed to a Tribunal shall be a Member ~~of one or more of the Participants~~.

(vi) No serving member of the governing body of, or any officer or employee of, any of the Participants shall be appointed as a Convener or to a Tribunal. However, former members of the governing bodies and former officers or employees of Participants shall not be

precluded from such appointment provided that at least ~~two~~ ~~one~~ years has elapsed since the termination of the appointment or employment.

(vii) No person who is a member, director or officer of the FRC, or of any subsidiary company of the FRC, or a member appointed to any ~~Operating Board or~~ committee of the FRC or any subsidiary company of the FRC, shall be appointed as a Convener or to a Tribunal. A former member, board or committee member, director or officer as aforesaid shall not be precluded from such appointment provided that at least ~~two~~ ~~one~~ years has elapsed since the termination of the appointment or employment.

(viii) No person who has been concerned with the investigation or disciplinary proceedings leading to the Adverse Finding and/or order which is the subject of ~~an~~ the appeal, or with any earlier proceedings relevant thereto, shall be appointed ~~as a Convener~~ or to a Tribunal.

9(3) Subject to ~~sub~~ paragraphs 9(2)(i) to 9(2)(viii) inclusive, if more than one Disciplinary Tribunal is appointed to hear Formal Complaints arising out of the same matter, any of the members appointed to one of the Disciplinary Tribunals may be appointed to the other or others.

9(4) Where there are two or more notices of appeal against Adverse Findings and/or orders made by the same Disciplinary Tribunal, the Convener may appoint the same Appeal Tribunal to hear some or all of the appeals. Subject to ~~sub~~ paragraphs 9(2)(i) to 9(2)(viii) inclusive, if more than one Appeal Tribunal is appointed to hear appeals against Adverse Findings and/or orders which are in any way connected or associated, any of the members appointed to one Appeal Tribunal may be appointed to the other or others.

9(5) Subject to the provisions of this Scheme, at any time before the hearing of a Formal Complaint or an appeal, the Chairman of the relevant Tribunal shall give such pre-hearing directions as are necessary or desirable for securing the just, expeditious and economical disposal of the Formal Complaint or appeal.

9(6) A session of a hearing shall be postponed if (whether by reason of incapacity or otherwise):-

- (i) the Chairman is unable to be present; or
- (ii) there shall not be present at least three members of the Tribunal; or
- (iii) there shall not be amongst members of the Tribunal present at least one lawyer, one accountant and one lay person who is neither a lawyer nor an accountant.

9(7) (i) If a session of a hearing can and does proceed in the absence of a Tribunal member, that member shall not participate in any further sessions or consideration of the matter and shall cease to be a member of the Tribunal.

- (ii) If a session is postponed pursuant to paragraph 9(6), or if for any other reasons any of the Tribunal members may not be able to attend any session, and it appears to the members of the Tribunal that the facts resulting in the postponement will not change or may result in an unreasonable delay in the conduct of a hearing, this shall be reported to the Conduct Committee which ~~Convener~~ who shall consider whether in all the circumstances it would be appropriate and consistent with ensuring a fair hearing of the matter to appoint a new Chairman, a new Tribunal member or a new Tribunal (as appropriate).

- (iii) In any such case where the Conduct Committee ~~Convener~~ decides that it would be appropriate and consistent with ensuring a fair hearing of the matter, ~~he~~ the Convener shall appoint a new Chairman, Tribunal member or Tribunal (as appropriate). In the case of the appointment of a new Tribunal, any of the members of the original Tribunal may be appointed to the new Tribunal.

- (iv) The Convener shall provide the Conduct Committee with details of any new Chairman, Tribunal Member, or Tribunal (as appropriate) and notify Executive Counsel and each Member or Member Firm concerned.
- 9(8)**
- (i) Save as provided for in paragraph 9(5), any matter to be decided by a Tribunal shall be decided by a majority of votes.
 - (ii) No member of a Tribunal may abstain from voting on any issue before the Tribunal.
 - (iii) Where the Tribunal has cast an even number of votes in respect of their determination of:
 - (a) whether to make an Adverse Finding, then no Adverse Finding shall be made;
 - (b) whether to make an award of costs under paragraph 7(~~9~~~~8~~) ~~or~~ 8(~~1~~~~2~~), then no award of costs shall be made.
 - (iv) Where the Tribunal has cast an even number of votes in respect of any other issue, the Chairman shall have a second vote.
- 9(9)** The Tribunal shall sit in public but shall have an absolute discretion to exclude the public (including the press) from all or part of the hearing to the extent it considers necessary where, in the opinion of the Tribunal, the circumstances are such that publicity would prejudice the interests of justice.
- 9(10)** (i) The Executive Counsel shall act as complainant (before a Disciplinary Tribunal) ~~and~~ ~~or~~ respondent (before an Appeal Tribunal) and shall bring evidence against the Member or Member Firm in respect of the subject matter of the Formal Complaint or appeal before the Tribunal.

(ii) Every Tribunal shall give any Member or Member Firm the subject of a Formal Complaint before it a reasonable opportunity to hear the evidence against him or it, to cross-examine witnesses called by the Executive Counsel, to call witnesses and lead evidence in his or its defence and to make representations orally or in writing to the Tribunal.

(iii) Any such Member or Member Firm shall be entitled to be represented by a Representative at all hearings of the Tribunal.

(iv) Any witness called by the Member or Member Firm, including the Member, may be cross-examined by the Executive Counsel.

9(11) The Tribunal may decide any issue of fact or law and draw any inference of fact which it considers is supported by the evidence.

9(12) The Tribunal may exclude from a hearing any evidence which, in its opinion, it is necessary to exclude in order to:-

- (i) ensure fairness between the parties; and
- (ii) preserve the interests of justice.

9(13) All Tribunals shall be conducted in accordance with the laws of England and Wales.

Standard of Proof

10 The standard of proof to be applied by a Tribunal is the civil standard of proof.

Payments

11(1) Where a Tribunal makes an order for the payment of a fine and/or costs against a Member or Member Firm, then:-

- (i) in the case of a Member, such monies shall be due from and paid by him even if he ceased to be a Member on or after the date of the report of the Disciplinary Tribunal;
- (ii) in the case of a Member Firm, such monies:-
 - (a) shall be due from the Member Firm concerned; and/or
 - (b) shall be jointly and severally due from, and shall be paid by, those Members who were partners in, members of, directors of or the proprietor of such Member Firm during any part of the time relevant to the Adverse Finding or thereafter, whether or not they were Members or it was a Member Firm during any part of that time; and/or
 - (c) shall be jointly and severally due from, and shall be paid by, any Successor Member Firm and/or any Member of the Same Group as the Member Firm or the Successor Member Firm and/or those Members who were partners in, members of, directors of or the proprietor of such entity during any part of the time relevant to the Adverse Finding or thereafter, whether or not they were Members or it was a Successor Member Firm or Member of the Same Group as the Member Firm or the Successor Member Firm during any part of that time;
 - (d) shall be so due from, and shall be paid by, the Member Firm and the individuals referred to in ~~sub~~-paragraph 11(1)(ii)(b) even if it ceased to be a Member Firm or they ceased to be Members on or after the date of the report of the Disciplinary Tribunal;
- (iii) in either case, such monies shall be paid to the FRC, and applied in the manner agreed between the FRC and the Participants;

- (iv) in the case of an order of a Disciplinary Tribunal against which no appeal has been made, or which has not been suspended pending an appeal or against which an appeal has been rejected under paragraph 8(5), such fine and/or costs shall be paid ~~not later than 28 days after the date~~ when the order takes effect under ~~sub~~-paragraph 7(~~11~~12)(i) and in the event that such fine and/or costs, or part thereof, shall not have been paid on the due date, interest shall be paid thereon at the rate applicable to judgment debts in England and Wales from the due date until the actual date of payment;
- (v) in the case of an order of a Disciplinary Tribunal against which there is an appeal and an order of an Appeal Tribunal, such fine and/or costs (except to the extent that the order of the Disciplinary Tribunal may be varied, substituted or rescinded by the Appeal Tribunal) shall be paid not later than 28 days after the date on which the relevant Appeal Tribunal decision under paragraph 8(~~14~~13) is notified to the Member or Member Firm and in the event that such fine or costs, or part thereof, shall not have been paid on the due date, interest shall be paid thereon at the rate applicable to judgment debts in England and Wales from the due date until the actual date of payment;
- (vi) the FRC will endeavour to collect and (if necessary) enforce the payment of fines and/or costs unless it shall at its discretion decide (but only after prior consultation with the relevant Participant) not to seek or continue to seek enforcement of such payment;
- (vii) in the event of non-payment in full, including any interest, of a fine and/or cost order within the time specified for payment, the Member concerned shall be excluded as a Member of one or more Participants and in the case of a Member Firm the removal of registration by one or more Participants shall be recommended.

- 11(2) Where a Disciplinary Tribunal makes an order for the payment of costs against the FRC, those costs shall be paid not later than 28 days after the date when the order takes effect and in the event that such costs, or part thereof, shall not have been paid on the due date, interest shall be paid thereon at the rate applicable to judgment debts in England and Wales from the due date until the actual date of payment.

Obligations of Members and Member Firms

- 12(1) (i) Every Member, Former Member, and every Member Firm, and Former Member Firm and Successor Member Firm shall at all times co-operate fully; ~~and every Member Firm and every Former Member Firm shall use its best endeavours to ensure that every employee of that Member Firm or Former Member Firm shall co-operate fully,~~ with the Executive Counsel and with any ~~Disciplinary Tribunal or Appeal Tribunal~~ appointed ~~established~~ pursuant to this Scheme.

(ii) Every Member Firm, Former Member Firm and Successor Member Firm shall use its best endeavours to ensure that every employee of that Member Firm, Former Member Firm, or Successor Member Firm shall at all times co-operate fully with the Executive Counsel and with any Tribunal appointed pursuant to this Scheme,

(iii) Without prejudice to the generality thereof of paragraphs 12(1)(i) and 12(1)(ii), such full co-operation shall include complying with any notice served pursuant to paragraph 12(2).

- 12(2) The Executive Counsel shall have power by notice served on any Member, Former Member, or Member Firm, or Former Member Firm or Successor Member Firm to call on him or it ~~to provide~~ (to the extent that ~~such Member or Member Firm~~ he or it can lawfully do so):-

(a) to provide:

(~~ia~~) to the Executive Counsel or to any person appointed or employed by him or by the Conduct Committee on behalf of the FRC, such information and explanation relevant to any matter under investigation or preliminary enquiry pursuant to paragraph 5(10) or following the service of a Formal Complaint orally and/or in writing as the Executive Counsel shall require; and

(~~ib~~) evidence to a Tribunal orally and/or in writing as the Executive Counsel or the Tribunal shall require; and

(bii)

~~The foregoing power of the Executive Counsel by notice to call on any Member, Former Member, or Member Firm or Former Member Firm to provide information and/or explanation and/or evidence shall include the power to call on him or it:-~~

(a) ~~to permit the inspection and taking of copies of the books, documents and other, records, telephone recordings or computer held information of whatsoever kind relevant to the matter under investigation which are in the possession or under the control of such Member, Former Member, or Member Firm, or Former Member Firm or Successor Member Firm; and~~

(~~iiib~~) to the extent reasonable, to supply copies of ~~such books, documents, records, telephone recordings or computer held and other~~ information ~~of whatsoever kind~~ at his or its own expense; and

and it shall be the duty of any Member, Former Member, or Member Firm, or Former Member Firm or Successor Member Firm on whom such a notice is served under this ~~this~~ paragraph ~~12(2)~~ to comply with it within ~~the period of~~ 14 days ~~beginning with~~ of the date of ~~service~~ the notice or such longer period as the Executive Counsel may allow.

12(3) If, at any time, the Executive Counsel considers that:-

(i) there are grounds upon which a Disciplinary Tribunal could make an Adverse Finding that a Member, Former Member, Member Firm, Former Member Firm or Successor Member Firm, whether or not he or it is within the scope of any investigation, has failed to carry out any obligation under paragraph 12(1) and 12(2); and

(ii) it is appropriate for those grounds, or some of them, to be presented to a Disciplinary Tribunal,

he shall take the steps at paragraphs 6(10) and 6(11).

12(4) Where a Formal Complaint under paragraph 6(11) specifies grounds which the Executive Counsel alleges justify an Adverse Finding by reference to paragraph 4(1)(ii), the Conduct Committee may direct that the Formal Complaint be heard by the Disciplinary Tribunal which is hearing or is to hear another Formal Complaint.

12(5) Where paragraph 12(3)(i) applies the references in paragraphs 6(10) and 6(11) to a Member or Member Firm shall be treated as referring respectively to a Former Member or Former Member Firm or to a Successor Member Firm.

Interim Orders

13(1) Where, at any stage in the period between:

(i) the making of a decision to investigate under paragraph 5(3) or 5(8);
and

(ii) the making of a decision by the Disciplinary Tribunal under paragraph 7(7);

the Executive Counsel is of the opinion that a Disciplinary Tribunal should consider making an Interim Order in relation to a Member or Member Firm, he shall present an application to the Conduct Committee.

13(2) Where the Executive Counsel presents an application in accordance with paragraph 13(1), the Conduct Committee shall serve notice of the application on the Member or Member Firm concerned and shall, as soon as reasonably practicable, send a copy of the application to the Convener.

13(3) The Convener shall, as soon as reasonably practicable following receipt of an application for an Interim Order, appoint a Disciplinary Tribunal to hear the application in accordance with the provisions of this Scheme and provide the Conduct Committee with details of the Disciplinary Tribunal appointed and notify the Executive Counsel and each Member or Member Firm concerned.

13(4) Subject to this Scheme, the procedure adopted by a Disciplinary Tribunal to deal with an application for an Interim Order shall be in accordance with the Regulations.

13(5) After hearing the application for an Interim Order, the Disciplinary Tribunal may, where it thinks fit, having regard to:

(i) the purposes for which the Scheme has been established as set out in paragraph 1(2); and

(ii) the public interest; and

(iii) any guidance issued by the Conduct Committee under paragraph 3(1)(ii),

make such Interim Order against the Member or Member Firm as is contained within the schedule of Interim Orders at Part 1 of Appendix 2 to this Scheme, for such period or until the occurrence of such event as it defines.

13(6) (i) The Disciplinary Tribunal shall make a report, which shall be signed by its Chairman, setting out its decision and reasons and send it to the Conduct Committee.

(ii) The Conduct Committee shall send a copy of the Disciplinary Tribunal's report to the Member or Member Firm concerned, the Executive Counsel and the relevant Participant.

13(7) Unless the Disciplinary Tribunal shall otherwise decide, an Interim Order in relation to a Member or Member Firm shall take effect from the date on which the Interim Order is notified to the Member or Member Firm.

13(8) The Disciplinary Tribunal appointed to consider the particular matter shall review any Interim Order within 6 months from the date it took effect and thereafter at 6 monthly intervals until such time as it has expired or been discharged. Such review shall be dealt with in accordance with the Regulations.

13(9) The Executive Counsel or the Member or Member Firm may apply at any time for an Interim Order to be reviewed on the grounds of a change in circumstances since the Interim Order was made. Such application shall be dealt with in accordance with the Regulations.

13(10) On a review of an Interim Order the Disciplinary Tribunal may make such decision as is contained within Part 2 of Appendix 2 to this Scheme and shall report to the Conduct Committee in accordance with paragraph 13(6).

13(11) Unless the Disciplinary Tribunal shall otherwise decide, a decision on a review of an Interim Order in relation to a Member or Member Firm shall take effect from the date on which the decision is notified to the Member or Member Firm.

13(12) A Member or Member Firm may appeal against an Interim Order made under paragraph 13(5) or following a review under paragraph 13(10) in the same manner as against any Adverse Finding of the Disciplinary Tribunal.

Proof of Certain Matters

143(1) The fact that a Member or Member Firm:-

- (i) has, before a Court of competent jurisdiction in the United Kingdom, been convicted of ~~an indictable~~ a criminal offence, or
- (ii) has, before a Court outside the United Kingdom, been convicted of an offence which would have constituted ~~an indictable~~ a criminal offence had the matter been prosecuted in the United Kingdom,

shall for the purposes of this Scheme be conclusive evidence of Misconduct ~~an act of misconduct~~ by the Member or Member Firm, whether or not he or it was a Member or Member Firm at the time of the conduct resulting in the conviction.

1314(2) Production of a certificate to the Tribunal purporting to be under the hand of a competent officer of court in the UK or overseas that a person or other legal entity has been convicted of a criminal offence shall be conclusive evidence of the offence committed.

1314(3) The fact that a Member or Member Firm:-

- (i) has had an adverse finding made against him or it in respect of his or its conduct in proceedings before a regulatory body performing its functions under ~~the Financial Services Act 1986~~, the Financial Services and Markets Act 2000, the Insolvency Act 1986, the Companies Act 1989 or the Companies Act 2006, or any similar or analogous legislation in any other jurisdiction; or
- (ii) has had a disqualification order made against him under the Company Directors Disqualification Act 1986 or has been restricted or prohibited from being a director of a company by reason of an order made against

him under the Companies Act 1990 of the Republic of Ireland or the Directors Disqualification (Northern Ireland) Order 2002, or any similar or analogous legislation in any other jurisdiction,

shall, for the purposes of this Scheme, be conclusive evidence of an act of misconduct by the Member or Member Firm, whether or not he or it was a Member or Member Firm at the time of the conduct resulting in, or at the time of, the disciplinary proceedings or disqualification order.

1314(4) Without prejudice to paragraphs 1314(1) and 1314(3), a finding of fact:-

- (i) in any report of an inspector appointed under the Companies Act 1985;
- (ii) in any civil or criminal proceedings before a Court of competent jurisdiction in or outside the United Kingdom;
- (iii) in any proceedings before, or report by, any of the bodies mentioned in paragraph 134(5);
- (iv) in any proceedings as a result of which an accountant was notified by or on behalf of the Council of the Law Society that he was not qualified to give an accountant's report within the meaning of section 34 (accountant's report) of the Solicitors Act 1974 or equivalent provision in Scotland, Northern Ireland or Ireland;
- (v) in any proceedings before, or report by, any regulatory, professional or disciplinary body outside the United Kingdom; or
- (vi) in any report or proceedings which, in the opinion of the relevant Tribunal, corresponds or correspond to any report or proceedings referred to in ~~sub~~-paragraphs 14(4)(i) to (v) (inclusive) above,

shall, for the purposes of this Scheme, be prima facie evidence of the facts found.

1314(5) The bodies referred to at ~~sub~~-paragraph 134(4)(iii) are:-

- (i) The Financial Services Authority;
- (ii) The Financial Services and Markets Tribunal;
- (iii) The Conduct Committee of the FRC~~Financial Reporting Review Panel~~;
- (iv) any recognised professional body within the meaning of the Insolvency Act 1986;
- (v) any recognised supervisory body within the meaning of the Companies Act 2006
- (vi) any designated professional body within the meaning of the Financial Services and Markets Act 2000;
- (vii) any body replacing, additional to or pre-dating a body identified in ~~sub~~-paragraphs 134(5)(i) to (vi) and performing the same or broadly similar functions, and whose regulatory arrangements are of a similar standing.

143(6) Paragraphs 1314(1) to 1314(5) (inclusive) are without prejudice to the generality of paragraphs 7(56) and 8(910) and nothing in paragraph 134(4) shall affect the evidential status of any report or other document not referred to in paragraph 143(4).

Legal Representation of Members

145 If a Tribunal concludes that:-

- (i) it is not reasonable to expect a Member to conduct his defence or pursue his appeal without legal representation because, for example, of the complexities of the issues involved; and
- (ii) the Member has established that he cannot afford (and does not have adequate insurance cover for) legal representation,

the Tribunal may, ~~on the after~~ application of the Member, require the FRC to meet the reasonable costs of that Member's legal representation at the hearing before the Tribunal but only if, in all the circumstances, the absence of legal representation would be contrary to the rules of natural justice.

Member Firms

1516 If a Member Firm ceases to be a Member Firm, discontinues its business or ceases to exist, the rights and the obligations which would otherwise have fallen on such Member Firm may be exercised and shall be discharged respectively by the Members who were partners in, directors or members of such Member Firm at any time from the beginning of the time relevant to the matter under investigation until it ceased to be a Member Firm, discontinued its business or ceased to exist.

Disclosure of Information

1617 The Regulations may make provision enabling the FRC or the Executive Counsel to disclose information and explanation and supply evidence, whether originally oral or in writing, obtained under this Scheme to any regulatory body or prosecuting authority, or any person, body or authority carrying out any role similar to that of regulation or prosecution, in any part of the world.

Any such provision shall contain such safeguards as the FRC considers appropriate.

167(2) A Member or Member Firm shall treat all information which is not in the public domain which comes to his or its knowledge in the course of a preliminary enquiry, an investigation or disciplinary proceedings under this Scheme as confidential.

17(3) A Member or Member Firm shall only disclose information to persons other than their legal representatives with the prior consent of Executive Counsel. A breach of confidentiality which has the potential to adversely affect the conduct of the investigation or disciplinary proceedings shall be evidence of a failure to cooperate with the Executive Counsel for the purposes of paragraph 12(1).

Transitional Arrangements

~~17~~18(1) The provisions of this further amended Scheme will have immediate effect.

~~17~~18(2) Any steps taken by the AADB or the Board under any previous version of the Scheme shall be deemed to have been taken by the FRC or the Conduct Committee, as appropriate, under this Scheme as amended by the FRC with effect from [] 2012.

~~17(3) Any regulations made, and guidance provided, by the Board under the Scheme that is in force immediately before the transfer of the Scheme to the FRC takes effect shall continue in force and shall be treated as if it had been made or provided by the Conduct Committee under paragraph 3(1)(i) or (ii), as appropriate, with all references to the Board in such regulations and guidance being treated as being references to the Conduct Committee.~~

Amendment and Termination of this Scheme

1819 This Scheme may be amended by the FRC, ~~with the agreement in writing of the governing body of~~ following consultation with each of the Participants, or terminated by the FRC by giving notice of not less than six months expiring on 31st December in any year. Amendments to the Scheme which are the subject of a dispute between the FRC and one or more of the Participants shall be presented to [an independent adjudicator], who shall determine whether the proposed amendment is appropriate to achieve the purpose for which the Scheme has been established (as set out in paragraph 1(2)). The decision of [an independent adjudicator] shall be binding on the FRC and the Participant(s) concerned.

FRC Scheme Schedule of Sanctions

The following sanctions may be made by a Tribunal as referred to in ~~sub-~~ paragraph 7(78)(i):

Members

Reprimand

Severe Reprimand

Exclusion as a Member of one or more Participants and that the exclusion be for a recommended specified period of time

Fine – amount specified by the Tribunal (and in the event of non-payment in full, including any interest, of a fine and/or cost order within the time specified for payment exclusion as a Member of one or more Participants)

Waiver/repayment of client fees

Order that a Member be ineligible for a prescribed period for a practising certificate or registration or authorisation or a licence (for the practice of any activity requiring such a certificate, registration, authorisation or licence)

Order that a Member's practising certificate or registration or authorisation or licence be withdrawn (for the practice of any activity requiring such a certificate, registration, authorisation or licence). The Tribunal may recommend that such certificate, registration, authorisation or licence not be reinstated for a specified period of time.

Member Firms

Reprimand

Severe Reprimand

Fine – amount specified by the Tribunal (and in the event of non-payment in full, including any interest, of a fine and/or cost order within the time specified for payment the failure shall have the same consequences for each Member who was a sole practitioner in, a partner in, a member (of a limited liability partnership) of, or a director of the firm at the relevant time as it would if the fine or costs had been imposed on him individually)

Waiver/repayment of client fees

Order that a Member Firm be ineligible for a prescribed period for registration or authorisation or a licence (for the practice of any activity requiring such registration, authorisation or licence)

Order that a Member Firm's registration or authorisation or licence be withdrawn (for the practice of any activity requiring such registration, authorisation or licence). The Tribunal may recommend that such registration, authorisation or licence not be reinstated for a specified period of time.

FRC Scheme Schedule of Interim Orders

PART 1:

The following Interim Orders may be made by a Disciplinary Tribunal as referred to in paragraph 13(6):

Members

Order that conditions be attached to a Member's practising certificate or registration or authorisation or licence (for the practice of any activity requiring such a certificate, registration, authorisation or licence).

Order that a Member's practising certificate or registration or authorisation or licence be suspended (for the practice of any activity requiring such a certificate, registration, authorisation or licence).

Order that a Member be suspended from membership.

Member Firms

Order that conditions be attached to a Member Firm's registration or authorisation or licence (for the practice of any activity requiring such registration, authorisation or licence).

Order that a Member Firm's registration or authorisation or licence be suspended (for the practice of any activity requiring such registration, authorisation or licence).

PART 2:

The following orders may be made on a review of an Interim Order by a Disciplinary Tribunal as referred to in paragraph 13(10):

Members

Order to revoke an Interim Order

Order to revoke or vary any conditions attached to a Member's practising certificate or registration or authorisation or licence (for the practice of any activity requiring such a certificate, registration, authorisation or licence).

Where it thinks fit, having regard to the matters set out in paragraph 13(5)(i)-(iii), replace an order for conditions with an order for suspension or replace an order for suspension with an order for conditions.

Order that the period of the Interim Order be extended.

Member Firms

Order to revoke an Interim Order.

Order to revoke or vary any conditions attached to a Member Firm's registration or authorisation or licence (for the practice of any activity requiring such registration, authorisation or licence).

Where it thinks fit, having regard to the matters set out in paragraph 13(5)(i)-(iii), replace an order for conditions with an order for suspension or replace an order for suspension with an order for conditions.

Order that the period of the Interim Order be extended.

APPENDIX B

The
Financial
Reporting Council

The Actuarial Scheme

DRAFT 27.06.12

DATED:

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FINANCIAL REPORTING COUNCIL
SCHEME FOR THE ACTUARIAL PROFESSION

Scheme

1(1) This is the Scheme of the FRC for the Actuarial Profession as further amended by the FRC ~~originally adopted by the Accountancy and Actuarial Discipline Board on 13th September 2007 and effective from that date and first amended with effect from 13th October 2011. The Scheme is amended by the Board and transferred by the AADB to the FRC~~ with effect from [] 2012¹.

1(2) ~~To safeguard the public interest by maintaining and enhancing the standards of conduct of Members~~ protect the public, maintain public confidence in the Actuarial Profession and uphold proper standards of conduct, this Scheme provides a system for:-

- (i) the investigation of Members' conduct in the course of their professional, business or financial activities (including as a partner, member, director, consultant, agent or employee in or of any organisation or as an individual), including such conduct before they became Members; and
- (ii) if warranted following such investigation, bringing disciplinary proceedings against Members.

1(3) This Scheme applies to any matter referred to the FRC under paragraph 5(2), or assumed by the Conduct Committee under paragraph 5(8) and to all steps and proceedings arising, directly or indirectly, therefrom or in consequence thereof or in relation thereto.

¹ The Scheme was originally adopted by the AADB on 13 September 2007, and amended by the AADB on 13 October 2011 and [] 2012. It was amended by the FRC on [] 2012.

1(4) Every Member and Former Member shall have the obligations in relation to this Scheme set out in paragraphs 12(1) and 12(2) and such obligations shall apply regardless of the capacity in which he is acting.

1(5) This Scheme is governed by, and shall be construed in accordance with, the laws of England and Wales.

Interpretation

2(1) In this Scheme, unless inconsistent with the subject or context:-

~~*act of misconduct* means any Member's conduct in the course of his professional, business or financial activities (including as a partner, member, director or employee in or of any organisation or as an individual), which falls short of the standards reasonably to be expected of a Member.~~

AADB means The Accountancy and Actuarial Discipline Board Limited, a company limited by guarantee incorporated in England and Wales, number 5081857.

Adverse Finding means a finding by a Disciplinary Tribunal that a Member has committed **Misconduct** ~~an act of misconduct~~ or has failed to comply with any of his obligations under paragraph 12(1) or 12(2).

Alternate Executive Counsel means a legally qualified person, appointed to that role by the Conduct Committee.

Appeal Tribunal means a tribunal appointed by the Convener under paragraph 8(7)(ii), to consider an appeal against a decision of a Disciplinary Tribunal.

Appellant means a Member who gives or has given notice of appeal under paragraph 8(1).

the Board means the Accountancy and Actuarial Discipline Board established under the articles of association of the AADB .

Case Management Committee means the Case Management Committee of the FRC established by the Conduct Committee of the FRC.

~~*conduct* includes efficiency and competence, and includes a failure to act as well as a positive act.~~

Conduct Committee means the Conduct Committee of the FRC established under the FRC's articles of association.

Convener means a person appointed to that office by the Nominations Committee of the FRC, who shall be responsible for the appointment of Tribunals under this Scheme and for the appointment of the person for the purposes of paragraph 8(4).

Disciplinary Tribunal means a tribunal appointed by the Convener under paragraph 7(2).

employ includes engage the services of, and *employee* shall be construed accordingly.

Executive Counsel means a legally qualified officer of the FRC, appointed to that office by the Nominations Committee of the FRC. Any references in this Scheme to the Executive Counsel shall also be interpreted as referring to the Alternate Executive Counsel where one or more Alternate Executive Counsel has been appointed.

FRC means the Financial Reporting Council Limited ("FRC"), a company limited by guarantee incorporated in England and Wales, number 2486368 and any other body which takes over functions of the FRC.

~~*Firm* means a body corporate, a partnership, a limited liability partnership or an unincorporated practice of a sole practitioner.~~

Formal Complaint means:

- (i) the formal document prepared by the Executive Counsel detailing the allegation or allegations that a Member has committed Misconduct ~~an act of misconduct~~ or failed to comply with any of his obligations under paragraphs 12(1) or 12(2);
- (ii) for the purposes of paragraphs 7, 8 and 9 of this Scheme, the Formal Complaint as amended by a decision made for the purposes of paragraph 7(4).

Former Member means a person who was a Member at the time of the alleged Misconduct but has ceased to be a Member.

Group of the Case Management Committee means a group appointed by the Chairman of the Case Management Committee in accordance with paragraph 6(5).

Member means:-

- (i) a member of one or more of the Participants,, or
- (ii) any other person who is subject to the provisions of the constitution, including regulations made thereunder, of one or more of the Participants in so far as such provisions relate to the system of discipline and professional conduct, and regulation, operated thereby, or
- (iii) where paragraph 4(7) applies, a Former Member.

Misconduct means an act or omission or series of acts or omissions, by a Member or Member Firm in the course of his or its professional, business or financial activities (including as a partner, member, director, consultant, agent, or employee in or of any organisation or as an individual), which falls short of the standards reasonably to be expected of a Member or Member Firm.

Nominations Committee means the Nominations Committee of the FRC.

Panel means the panel appointed by the Conduct Committee pursuant to paragraph 9(1).

Participant means:-

- (i) the Institute and Faculty of Actuaries (formerly the Institute of Actuaries);
or
- (ii) the Faculty of Actuaries in Scotland (prior to its merger on 1st August 2010 with the Institute and Faculty of Actuaries); or
- (iii) any other actuarial body admitted by the Board to this Scheme.

Proposed Settlement Agreement means the formal document prepared by the Executive Counsel and agreed by the Member detailing:

- (i) the particulars of fact and Misconduct admitted by the Member or Member Firm; and
- (ii) the sanction or sanctions and the reasons therefore; and
- (iii) any costs that the Member or Member Firm will pay to the FRC towards the cost of the investigation.

Regulations means regulations made by the Conduct Committee from time to time.

Representative means a ~~solicitor, advocate or counsel or a Member or any other~~ person who is engaged or requested to represent a Member under investigation or before a Tribunal.

Settlement Agreement means a Proposed Settlement Agreement which has been approved by the Settlement Approvers under paragraph 6(16).

Settlement Approver means a member of the Case Management Committee appointed by the Conduct Committee under paragraph 6(14), who must not be a member of the Group of the Case Management Committee appointed to monitor Executive Counsel's investigation in relation to that case.

The Actuarial Profession means:-

- (i) the Institute and Faculty of Actuaries (formerly the Institute of Actuaries);
and

- (ii) the Faculty of Actuaries in Scotland (prior to its merger on 1st August 2010 with the Institute and Faculty of Actuaries).

Tribunal means a Disciplinary Tribunal or an Appeal Tribunal (as the context requires) ~~appointed on behalf of the AADB by the Convener.~~

UK-connected company means:-

- (a) any company registered in any part of the United Kingdom, listed in any part of the United Kingdom on a recognised investment exchange for the purposes of the Financial Services and Markets Act 2000 or with an established place of business in any part of the United Kingdom;
- (b) any company in the same group (as defined in section 1261 of the Companies Act 2006) as such a company; and
- (c) any associate (as defined in section 1260 of the Companies Act 2006) of such a company or such a group company.

~~***UK-connected business*** means:~~

- ~~(a) any sole trader, firm, partnership or other organisation constituted under the law of any part of the United Kingdom or with an established place of business in any part of the United Kingdom; and~~
- ~~(b) any associate (as defined in section 1260 of the Companies Act 2006) of such a sole trader, firm or partnership.~~

2(2) Any reference to a statute includes: that statute as amended from time to time; any statute re-enacting or replacing it; and any statutory instruments, regulations or rules made under that statute or any statute re-enacting or replacing it.

2(3) Words importing the singular number include the plural and vice versa, and words importing the masculine gender only include the feminine.

2(4) In this Scheme, any reference to a "document" shall mean anything in which information of any description is recorded, including but not limited to: electronic documents, including email and other electronic communications; word processed documents and databases; documents stored on portable devices such as memory sticks and mobile phones; documents readily accessible from computer systems and other electronic devices and media; documents stored on servers and back-up systems and electronic documents that have been 'deleted'. It also includes Metadata and other embedded data.

The Conduct Committee

3(1) The Conduct Committee shall have power to:-

- (i) make such Regulations for the operation and administration of this Scheme, and thereafter to amend such Regulations from time to time, provided that there shall have been consultation by the Conduct Committee with the Participants prior to any amendments, and provided further that, in the event of any inconsistency between the Regulations and this Scheme, the terms of the Scheme shall prevail;
- (ii) provide the Executive Counsel, the Case Management Committee, the Convener and any Tribunal with guidance concerning the exercise of their duties under this Scheme, who shall have regard to any such guidance issued;
- (iii) authorise any Tribunal to employ any person whose services may reasonably be required to assist the Tribunal;
- (iv) authorise the remuneration of the members of any Tribunal and any other persons;
- (v) delegate to the Chairman of the Conduct Committee its powers under parasph 6(8)(i), 6(8)(ii), 6(9)(i) and 6(9)(ii);

(vi) delegate to the Chairman of the Conduct Committee its powers under sub-paragraphs 3(iii) and 3(iv) above; and

(vii) do all such other things as the Conduct Committee considers incidental or conducive to the operation of this Scheme.

Liability to Investigation and Disciplinary Proceedings

4(1) A Member shall be liable to investigation under this Scheme only where, in the opinion of the Conduct Committee:-

- (i) (a) the matter raises or appears to raise important issues affecting the public interest in the United Kingdom (“the first criterion”); and
- (b) the matter needs to be investigated to determine whether there may have been Misconduct ~~an act of misconduct~~ (“the second criterion”); or
- (ii) it appears that the Member has failed to comply with any of his obligations under paragraph 12(1) and 12(2) below.

4(2) In deciding whether a matter satisfies the first criterion, the Conduct Committee shall, amongst other things, consider whether it appears to give rise to serious public concern or to damage public confidence in the actuarial profession in the United Kingdom. The Conduct Committee shall also be entitled to consider all the circumstances of the matter including, but not limited to, its nature, extent, scale and gravity.

4(3) A Member shall be liable to disciplinary proceedings under this Scheme if, following an investigation, the Executive Counsel considers:-

- (i) that there is a realistic prospect that a Tribunal will make an Adverse Finding against a Member; and
- (ii) that a hearing is desirable in the public interest.

4(4) In considering the question of whether the conduct of a Member may have fallen short of the standards reasonably to be expected of him, regard shall be had in particular to any law, whether statutory or otherwise, or regulation of any sort, and to any charter, bye-law, rule, regulation or guidance of any of the Participants or any guidance or standard of the FRC, which applies to him.

~~4(5) A Member shall be liable to disciplinary proceedings under this Scheme only if he is, when a Formal Complaint is delivered to the Conduct Committee under paragraph 6(9), or was, at the time of any alleged act of misconduct:-~~

~~(i) a citizen or subject of the United Kingdom; or~~

~~(ii) working in the United Kingdom; or~~

~~(iii) working in or involved in providing services to a UK connected company or UK connected business.~~

4(56) A Member shall be liable to investigation and disciplinary proceedings under this Scheme:-

(i) regardless of whether the alleged Misconduct ~~act of misconduct~~ took place before or after 13th September 2007; and

(ii) regardless of whether he was a Member at the time of the alleged Misconduct ~~act of misconduct~~.

4(67) A Former Member shall be liable to investigation and disciplinary proceedings under this Scheme as if he were a Member in respect of either any alleged Misconduct which took place while he was a Member or any alleged failure to comply with any of his or its obligations under paragraphs 12(1) or 12(2).

4(7) If a Participant ceases to be a Participant at a time when any investigation or proceedings under this Scheme are proceeding against one of their Members, then for the purpose of the application of the provisions of this Scheme to that

investigation or proceedings (to its conclusion, up to and including any appeal and the enforcement of any order of a Tribunal), the former Participant shall be regarded and treated for the purposes of this Scheme as if it remained a Participant.

Decision to Investigate

5(1) An investigation under this Scheme may be instituted in either of the circumstances described in paragraphs 5(2) and 5(8).

5(2) Where a Participant

- (i) receives a complaint regarding one or more of its Members alleging misconduct and/or becomes aware of a matter in which it appears that there may have been misconduct by one or more of its Members; and
- (ii) considers that the matter raises or appears to raise important issues affecting the public interest in the United Kingdom; and
- (iii) is satisfied that no disciplinary proceedings (going beyond an investigation) have been instituted by a Participant in relation to the conduct in question;

then the Participant shall refer that matter to the FRC and request that the Conduct Committee give consideration to that matter. In the event that the Participant is in doubt as to whether a particular matter should be referred to the FRC, then the Participant shall consult with the Conduct Committee for guidance.

5(3) Upon receipt of a reference pursuant to paragraph 5(2), the Conduct Committee shall, as soon as is reasonably practicable and ordinarily within two months of the date of the reference, decide whether to accept or decline the reference.

5(4) The decision of the Conduct Committee to accept or decline the reference shall depend on whether, in its opinion, the criteria at paragraph 4(1), taking

account of the considerations in paragraph 4(2), are met in relation to the matter referred.

5(5) If, in the opinion of the Conduct Committee, it is appropriate that the matters that form the subject of the investigation should extend beyond those contained within the reference from the Participant, or that any matters contained within the reference from the Participant should be excluded from the investigation, the Conduct Committee may decide either to include or exclude any such matters from the investigation as appropriate.

5(6) Where the Conduct Committee has decided to accept a reference made pursuant to paragraph 5(2), it shall, within fourteen days thereafter, give notice in writing of its decision to the Participants.

5(7) Where the Conduct Committee has decided to decline a reference made pursuant to paragraph 5(2) it ~~shall~~:-

- (i) ~~shall~~ give notice in writing of its decision and the reasons for it to the relevant Participant within fourteen days; and
- (ii) ~~may~~, if it thinks fit, publish its decision unless this would not, in the opinion of the Conduct Committee, be in the public interest.

5(8) Where a Participant has received a complaint and/or is conducting an investigation into the conduct of one or more of its Members of which the Conduct Committee is aware, or the Conduct Committee otherwise becomes aware of matters relating to the conduct of a Member, and, in either case, the Conduct Committee, on consideration:-

- (i) is of the opinion that the criteria at paragraph 4(1), taking account of the considerations in paragraph 4(2), have been met; and
- (ii) is satisfied that no disciplinary proceedings (going beyond an investigation) have been instituted by a Participant in relation to the conduct in question,

the Conduct Committee may, ~~after consultation with any Participant whose Member(s) may be concerned with an investigation,~~ decide that the matter shall be dealt with by the FRC in accordance with this Scheme.

5(9) Where the Conduct Committee has decided pursuant to paragraph 5(8), that a matter should be dealt with by the FRC it shall give notice in writing of its decision and the reasons for it to the Participants. Upon receipt of such notice, the relevant ~~Participant~~ shall forthwith suspend any investigation relating to the matter on its part.

5(10) Where the Conduct Committee considers that it has insufficient information about a matter to determine whether a Member is liable to investigation under paragraph 4(1), it may direct the Executive Counsel to make preliminary enquiries before deciding whether or not the matter should be investigated. In that event the relevant ~~Participant~~ shall be informed accordingly by the Conduct Committee and the time in which the Conduct Committee shall be required to decide whether or not to investigate the matter shall be extended by such period as shall be reasonable for the required preliminary enquiries to be carried out.

Investigation

6(1)(i) For the purposes of exercising its powers under paragraph 5, the Conduct Committee, and the Executive Counsel on its behalf, has power to require any Participant to provide to the Executive Counsel such documents or other information in its possession, or under its control, as the Conduct Committee or the Executive Counsel, as the case may be, shall reasonably think fit and as the Participant can lawfully provide.

(ii) The power in ~~sub~~ paragraph 6(1)(i) shall include the power to require the Participant to :-

(a) permit the inspection and taking of copies of the documents or other information, and

- (b) supply copies of such documents or other information at its own expense to the extent that it is reasonable in all the circumstances .

~~For the avoidance of doubt, documents or other information includes, without limitation, any books, documents, records, telephone recordings or computer held information of whatsoever kind.~~

6(2) Where a reference is accepted by the Conduct Committee under paragraph 5(3):-

- (i) the scope of the investigation shall be set out within the notice given by the Conduct Committee referred to at paragraph 5(6);
- (ii) in accordance with paragraph 5(5), the scope shall not be restricted to the matters referred by the Participant under paragraph 5(2) and shall include or exclude any issues relating to the matter as the Conduct Committee shall see fit;
- (iii) the relevant Participant shall supply to the Conduct Committee any documents or other information which are in its possession, or under the control, of that Participant which may reasonably be required for the purposes of the investigation and which the Participant can lawfully provide.

6 (3) Where the Conduct Committee decides under paragraph 5(8) that a matter shall be assumed by the FRC to be dealt with in accordance with this Scheme:-

- (i) the scope of the investigation shall be set out within the notice in writing given by the Conduct Committee as referred to at paragraph 5(9); and
- (ii) the relevant Participant shall supply to the Conduct Committee any documents or other information which is in the possession, or under

the control, of that Participant which may reasonably be required for the purposes of the investigation.

6(4) In either case identified at paragraphs 6(2) or 6(3), the Conduct Committee shall:-

- (i) provide a copy of the notice in writing to the Case Management Committee and a copy, together with any material obtained pursuant to ~~sub~~-paragraphs 6(2)(iii) or 6(3)(ii), to the Executive Counsel to be dealt with in accordance with this Scheme;
- (ii) inform the Member concerned of its decision to refer their conduct for investigation by the Executive Counsel and provide the Member concerned with relevant details of the scope of the investigation; and
- (iii) publish the fact of its decision to investigate unless this would not, in the opinion of the Conduct Committee, be in the public interest.

6(5) Upon receipt of the notice sent in accordance with paragraph 6(4)(i), the Chairman of the Case Management Committee shall appoint at least three of its members to form a Group of the Case Management Committee to perform the functions set out in paragraph 6(6)(ii) in relation to the investigation.

6(6) Upon receipt of the documents provided pursuant to ~~sub~~-paragraph 6(4)(i):-

(i) -the Executive Counsel shall conduct an investigation into the matter, and shall enquire into such facts and circumstances as the Executive Counsel considers necessary to fulfil the scope the investigation set out by the Conduct Committee; ~~and~~

(ii) the Group of the Case Management Committee appointed under paragraph 6(5) shall monitor Executive Counsel's investigation, including, where applicable, any settlement discussions and up to delivery of a Formal Complaint.

6(76) The Executive Counsel shall have power on behalf of the FRC to engage any person whose services may reasonably be required to assist the Executive Counsel for the purposes of conducting the investigation or subsequent disciplinary or appeal proceedings.

6(87) (i) If, in the course of an investigation, the Executive Counsel discovers facts or circumstances which appear to warrant investigation but to be outside the scope of the investigation set out by the Conduct Committee then:-

(a) the Executive Counsel shall report those facts and circumstances to the Conduct Committee; and

(b) the Conduct Committee, ~~after consultation with the relevant Participant (but within the Conduct Committee's sole discretion),~~ may direct that the scope of the Executive Counsel's investigation shall include such facts or circumstances and shall inform the relevant Participants and the Member(s) concerned accordingly.

(ii) If, in the course of an investigation, the Executive Counsel considers that the scope of that investigation, as set out by the Conduct Committee under paragraphs 6(2) or 6(3) (and whether or not already amended in accordance with ~~sub~~-paragraph 6(87)(i) above), should be narrowed then:-

(a) the Executive Counsel shall report to the Conduct Committee with his reason(s) for considering that the scope should be so narrowed; and

(b) the Conduct Committee may direct that the scope of the Executive Counsel's investigation shall be narrowed and shall inform the relevant Participants and the Member(s) concerned accordingly.

(iii) Where the Conduct Committee directs either under paragraph 6(8)(i)(b) or 6(8)(ii)(b) that the scope of the Executive Counsel's investigation shall be amended, the Conduct Committee may if it

thinks fit publish its direction, unless this would not, in the opinion of the Conduct Committee, be in the public interest.

6(9) (i) If, in the course of an investigation, it appears to the Executive Counsel that the scope of the investigation needs to be amended to include the conduct of a further Member, then:-

(a) the Executive Counsel shall report the facts and matters relied upon to the Conduct Committee; and

(b) the Conduct Committee may direct that the scope of the Executive Counsel's investigation shall include the conduct of such further Member and shall inform the relevant Participant and the further Member concerned accordingly.;

(ii) Where the Conduct Committee directs under paragraph 6(9)(i)(b) that the scope of the Executive Counsel's investigation shall be amended to include the conduct of such further Member the Conduct Committee may, if it thinks fit, publish its decision unless this would not, in the opinion of the Conduct Committee, be in the public interest.

6(108) (i) If, following his investigation, the Executive Counsel considers:-

(a) that there is a realistic prospect that a **Disciplinary** Tribunal will make an Adverse Finding against a Member; and

(b) that a hearing is desirable in the public interest,

then the Executive Counsel shall notify the Member concerned of his intention to deliver a ~~the~~ Formal Complaint ~~he proposes to deliver~~ to the Conduct Committee.

(ii) The notice sent in accordance with paragraph 6(10)(i) shall:

(a) set out the substance of the allegation(s) against the Member; and

(b) _____ and give invite the Member an opportunity to make written representations to him within a period of eight weeks from the date on which the notice is sent to the Member such reasonable time as the Executive Counsel shall specify.

(iii) The Executive Counsel may, in his absolute discretion, extend the time limit for the Member of Member Firm to make written representations.

6(119) If, the Executive Counsel:

(i) _____ having reviewed any representations received for the purposes of paragraph 6(108) above, the Executive Counsel still considers:-

(a) _____ that there is a realistic prospect that a Disciplinary Tribunal will make an Adverse Finding against a Member; and

(b) _____ that a hearing is desirable in the public interest; or

(ii) _____ has not received any representations from the Member within the period specified in the notice sent under paragraph 6(10)(ii), or as extended under paragraph 6(10)(iii).

he shall deliver a Formal Complaint against the Member to the Conduct Committee.

6(12) Following service of the notice under paragraph 6(10) and prior to delivery of a Formal Complaint under paragraph 6(11):-

(i) _____ the Executive Counsel, at his sole discretion, and having regard to the public interest, may decide that the matter is appropriate for settlement discussions under the terms of this Scheme; and

(ii) _____ where Executive Counsel so decides, he shall:

(a) notify the Member concerned that he is prepared to enter into settlement discussions; and

(b) provide a copy of such notice to the Group of the Case Management Committee appointed to monitor the case.

6(13) Where, following settlement discussions:-

(i) terms of a settlement are agreed between the Executive Counsel and the Member, the Executive Counsel shall deliver a Proposed Settlement Agreement to the Conduct Committee.

(ii) terms of a settlement are not agreed between the Executive Counsel and the Member, the Executive Counsel shall proceed to deliver a Formal Complaint in accordance with paragraph 6(11).

6(14) Upon receipt of a Proposed Settlement Agreement the Conduct Committee shall appoint at least two Settlement Approvers, of whom:

(i) at least one must be legally qualified; and

(ii) one, but not more than one, may be a Member.

6(15) The Settlement Approvers shall consider the appropriateness of the Proposed Settlement Agreement having regard to the purpose for which the Scheme has been established as set out in paragraph 1(2) and to any guidance issued by the Conduct Committee under paragraph 3(1)(ii).

6(16) A Proposed Settlement Agreement must be approved by all Settlement Approvers appointed pursuant to paragraph 6(14) for it to become effective. In any other case, a Proposed Settlement Agreement shall be treated as having been rejected by the Settlement Approvers.

6(17) As soon as reasonably practicable, the Settlement Approvers shall inform the Conduct Committee of their decision, together with the reasons for that decision, and the Conduct Committee shall notify the Executive Counsel, the Member and the relevant Participant accordingly.

6(18) Where approved, the Settlement Agreement shall take effect from the next working day after the date on which the notice under paragraph 6(17) is sent to the Member.

~~6(10) If the Executive Counsel either following his investigation, or having reviewed any written representations supplied by the Member in accordance with paragraph 6(8) above considers:~~

~~(i) — that there is no realistic prospect that a Tribunal will make an Adverse Finding against a Member; or~~

~~(ii) — a hearing is not desirable in the public interest,~~

~~— he shall not deliver to the Conduct Committee a Formal Complaint and shall provide his reasons for his decision to the Conduct Committee in a report which shall be signed and dated by him. The Conduct Committee shall supply a copy of any such report to any Member concerned and the relevant Participant.~~

6(19) Notwithstanding any settlement discussions that the Executive Counsel may initiate under paragraph 6(12), a Member may, either voluntarily or at the invitation of the Executive Counsel at any stage of the investigation ~~(including, for the avoidance of doubt, during a hearing before a Disciplinary Tribunal or an Appeal Tribunal)~~, make an admission in respect of any alleged particulars of fact, any alleged Misconduct ~~acts of misconduct~~ or any alleged failures to comply with his obligations under paragraphs 12(1) or 12(2) and such admissions, if accepted by the Executive Counsel, shall constitute proof before a Tribunal against the Member making the admission.

6(~~2012~~) The Executive Counsel shall, if such an admission is made prior to a Formal Complaint being ~~delivered~~~~submitted~~ to the Conduct Committee, prepare and deliver to the Conduct Committee with the Formal Complaint a statement of agreed facts. Such statement of agreed facts must be signed by the Executive Counsel and the Member concerned and give sufficient particulars ~~suffieient~~ to enable the admissions to be properly understood.

6(21) If, at any stage during or following an investigation, the Executive Counsel considers:

(i) that there is no realistic prospect that a Tribunal will make an Adverse Finding against a Member; or

(ii) a hearing is not desirable in the public interest,

he shall inform the Conduct Committee of his decision, together with the reasons for that decision, and the Conduct Committee shall notify the Member or Member Firm and the Participants of the decision.

6(~~22~~~~13~~) The Conduct Committee shall publish the outcome of the Executive Counsel's investigation and, where applicable, any Settlement Agreement as soon as practicable and in such manner as it thinks fit, unless this would not, in the opinion of the Conduct Committee, be in the public interest.

Disciplinary Proceedings

7(1) Where the Executive Counsel delivers to the Conduct Committee a Formal Complaint in accordance with paragraph 6(~~11~~~~9~~) or paragraph 12(3), the Conduct Committee shall serve the Formal Complaint on the Member concerned and shall, as soon as practicable, send a copy of the Formal Complaint to the Convener.

7(2) The Convener shall, as soon as practicable following receipt of the Formal Complaint, appoint a Disciplinary Tribunal to hear the Formal Complaint in

accordance with the provisions of this Scheme and provide the Conduct Committee with details of the Disciplinary Tribunal appointed and notify Executive Counsel and each Member concerned.

7(3) Subject to this Scheme, the procedure adopted by a Disciplinary Tribunal to deal with any Formal Complaint shall be in accordance with the Regulations.

7(4) The Disciplinary Tribunal may amend the Formal Complaint either before or during the hearing subject to the requirements of a fair hearing and in the interests of justice.

7(5) A Member may, either voluntarily or at the invitation of the Disciplinary Tribunal or the Executive Counsel at any stage during a hearing before a Disciplinary Tribunal make an admission in respect of any alleged particulars of fact, any alleged Misconduct or any alleged failures to comply with his or its obligations under paragraphs 12(1) or 12(2) and such admissions shall constitute proof before a Disciplinary Tribunal against the Member or Member Firm making the admission.

7(6) In coming to a decision the Disciplinary Tribunal may take into account any relevant evidence, whether or not such evidence would be admissible in a court. The Disciplinary Tribunal will at all times apply the rules of natural justice.

7(7) After hearing the Formal Complaint, the Disciplinary Tribunal shall in relation to the Member who is the subject of the Formal Complaint, either:-

(i) make an Adverse Finding in respect of some or all of the alleged Misconduct ~~acts of misconduct~~ or failures to comply with the Member's obligations under paragraphs 12(1) or 12(2) forming the subject matter of the Formal Complaint, or

(ii) dismiss the Formal Complaint.

7(87) Where the Disciplinary Tribunal makes an Adverse Finding in relation to a Member, then:-

- (i) it may order such sanctions against the Member as are contained within the schedule of sanctions at Appendix 1 to this Scheme as it considers appropriate;
- (ii) in addition to the sanctions at Appendix 1 to this Scheme, any order made pursuant to ~~sub~~ paragraph (i) above, may include an order that the Member be required to pay, in the manner set out in paragraph 11, the whole or part of the costs of, and incidental to, the investigation and the hearing of the Formal Complaint before the Disciplinary Tribunal. The amount to be paid by the Member ~~shall~~^{is} to be determined by the Disciplinary Tribunal. In considering any such application the Disciplinary Tribunal shall have no regard to any settlement discussions or proposals or offers.
~~provided that, where the Member has made an admission under paragraph 6(11), no such order for costs may be made in relation to any costs incurred after the date of the admission which relate to the subject matter of the admission;~~ and
- (iii) the Tribunal may make no order against the Member, or no order except for the payment of costs, if it considers that to be appropriate in all the circumstances.

7(89) Where the Disciplinary Tribunal dismisses ~~the~~^a Formal Complaint it may, on the application of a Member concerned, order that the FRC pay a specified sum in respect of legal costs that were reasonably incurred by the Member subsequent to the Formal Complaint being served on the Member. ~~for the purposes of paragraph 7(1).~~

7(910) The Disciplinary Tribunal's discretion to award costs to a Member concerned shall be restricted to circumstances where the Tribunal finds that no reasonable person would have ~~delivered~~^{referred} or pursued a Formal Complaint under the terms of this Scheme. In considering any such application the Disciplinary

Tribunal shall have no regard to any settlement discussions or proposals or offers.

7(~~10~~11) (i) The Disciplinary Tribunal shall make a report, which shall be signed by its Chairman, setting out its ~~written~~ decision and reasons and any related orders made pursuant to paragraphs ~~7(6)~~, 7(7), ~~and~~ 7(8) and 7(9) and send it to the Conduct Committee.

(ii) The Conduct Committee shall send a copy of the Disciplinary tribunal's report to any Member concerned, the Executive Counsel, and the Conduct Committee which shall then send a copy to the relevant Participant.

7(~~11~~12) (i) Unless the Disciplinary Tribunal shall otherwise decide, an Adverse Finding in relation to a Member and any order under paragraph 7(~~7~~8) against a Member shall take effect 29 days after the date on which the finding or order is notified to the Member.

(ii) The Disciplinary Tribunal shall decide the extent to which the order shall apply even if the Member appeals against the order provided that the Disciplinary Tribunal considers that immediate action is necessary in the public interest. To the extent to which the order does not apply, it shall be suspended in the event of a notice of appeal being lodged under paragraph 8(1).

(iii) If the person appointed under paragraph 8(4) refuses leave to appeal, the order shall take effect from the date notification of that refusal is sent to the proposed Appellant.

7(~~12~~13) The Conduct Committee shall publish the report or reports prepared by the Disciplinary Tribunal for the purposes of paragraph 7(~~10~~11) as soon as practicable and in such manner as it thinks fit unless this would not, in the opinion of the Conduct Committee, be in the public interest.

Appeals

8(1) If the Disciplinary Tribunal makes an Adverse Finding in relation to any Member, with or without any order under paragraph 7(78), then subject to paragraph 8(2) the Member may, within 28 days after the date on which the Adverse Finding and/or any order is notified to him (provided always that a longer period may be allowed as set in paragraph 8(5) below), give to the Conduct Committee notice of appeal against the finding and/or order.

8(2) An appeal under paragraph 8(1) against a decision of the Disciplinary Tribunal can be made only on the following grounds:-

- (i) that the decision of the Disciplinary Tribunal was perverse, or wrong in law; and/or
- (ii) that there was injustice because of a serious procedural or other irregularity in the proceedings before the Disciplinary Tribunal; and/or
- (iii) that significant and relevant new evidence has come to light which was not previously available to the Appellant and could not have become available to him on the making of reasonable enquiry; and/or
- (iv) that the sanction imposed pursuant to paragraph 7(78) was manifestly unreasonable.

8(3) Any notice of appeal shall:-

- (i) be in writing;
- (ii) identify the finding and/or order appealed against; and
- (iii) state the grounds of appeal.

Neither the scope of the appeal nor the grounds so stated shall be amended or changed except with the leave of the Appeal Tribunal appointed to hear the appeal.

8(4) Upon receipt of a notice of appeal, the Conduct Committee shall send the notice of appeal to the Convener who shall as soon as practicable appoint a person from the Panel to consider whether to give leave to appeal. That person shall be a former member of the judiciary or a Queen's Counsel, and shall not sit on any subsequent Appeal Tribunal in connection with the case.

8(5) If the notice of appeal was not given to the Conduct Committee within the 28 day period set out in paragraph 8(1), the person appointed under paragraph 8(4) shall refuse leave to appeal unless there are good reasons for giving leave to appeal out of time.

8(6) Unless the person appointed under paragraph 8(4) has refused leave to appeal under paragraph 8(5), he shall give leave to appeal if he is satisfied that there is an arguable case for appeal on one or more of the grounds set out in paragraph 8(2).

8(7) (i) Following his decision to give leave to appeal under paragraph 8(6), or not to refuse—give leave to appeal, the person appointed under paragraph 8(4) shall notify the Conduct Committee and provide reasons in writing for his decision and the Conduct Committee shall notify each Member concerned, the Executive Counsel, the relevant Participant and the Convener; and

(ii) if the person appointed under paragraph 8(4) gives leave to appeal, the Convener shall, as soon as practicable, appoint an Appeal Tribunal to hear the appeal in accordance with the provisions of this Scheme and provide the Conduct Committee details of the Tribunal appointed and notify the Executive Counsel and each Member concerned-; and

(iii) tThe order of the relevant Disciplinary Tribunal shall apply if leave to appeal is not given.

8(8) Subject to this Scheme, the procedure adopted by an Appeal Tribunal to deal with any ~~Formal Complaint or~~ appeal shall be in accordance with the Regulations.

8(9) A Member may, either voluntarily or at the invitation of the Appeal Tribunal or the Executive Counsel at any stage of the appeal make an admission in respect of any alleged particulars of fact, any alleged Misconduct or any alleged failures to comply with his or its obligations under paragraphs 12(1) or 12(2) and such admissions shall constitute proof before an Appeal Tribunal against the Member making the admission.

8(10) In coming to its decision the Appeal Tribunal may take into account any relevant evidence, whether or not such evidence would be admissible in a court. The Appeal Tribunal will at all times apply the rules of natural justice.

8(11) An appeal shall be by way of a review only and not by way of a rehearing, providing always that the Appeal Tribunal shall hear evidence adduced pursuant to ~~sub~~-paragraph 8(2)(iii). Subject to the above, the Appeal Tribunal shall have in relation to an appeal all the powers of the Disciplinary Tribunal as set out in paragraph 7(~~7~~8).

8(~~11~~12) On an appeal the Appeal Tribunal shall have power to:-

- (i) affirm, vary, substitute or rescind any Adverse Findings or orders of the Disciplinary Tribunal in relation to or against any Appellant, save that the Appeal Tribunal may not exercise its powers to impose a greater penalty than that imposed by the Disciplinary Tribunal so that, taking the case as a whole, the Appellant is not more severely dealt with on appeal than he was dealt with by the Disciplinary Tribunal;
- (ii) if it is of the view that it is necessary in the interests of justice to do so in the light of the new evidence adduced pursuant to sub-paragraph 8(2)(iii), order that the matter be reheard by the Disciplinary Tribunal

which made the relevant Adverse Findings or orders or failing that by a fresh Disciplinary Tribunal;

- (iii) order that any Appellant be required to pay, in the manner set out in paragraph 11 below, the whole or part of the costs of, and incidental, to the appeal, the amount to be so paid to be as determined by the Appeal Tribunal.

~~8(12) If the appeal is allowed the Appeal Tribunal may, on the application of the Member, order that the FRC pay a specified sum in respect of legal costs that were reasonably incurred by the Member subsequent to the Formal Complaint being served on the Member for the purposes of paragraph 7(1).~~

~~8(13) The Appeal Tribunal's discretion to award costs to the Member concerned shall be restricted to the circumstances set out in paragraph 7(9) above.~~

8(~~13~~14) The Appeal Tribunal shall make a report, which shall be signed by its Chairman, setting out its ~~written~~ decision and reasons and any related orders made pursuant to paragraphs ~~8(11) or 8(12)~~ and send it to the Conduct Committee which shall then send a copy to the Member concerned, the Executive Counsel, and ~~the Conduct Committee which shall then send a copy to~~ the relevant Participant.

8(~~14~~15) A decision of the Appeal Tribunal shall take effect from the next working day after the date on which the Appeal Tribunal's report ~~notification~~ is sent to the Member concerned.

8(~~15~~16) At any time before the Appeal Tribunal gives its decision in respect of the appeal of an Appellant in accordance with paragraph 8(14), such Appellant may withdraw his appeal by notice in writing to the Appeal Tribunal. Thereupon, the Appeal Tribunal shall affirm the Adverse Findings and/or orders of the Disciplinary Tribunal in relation to or against the Appellant, which are the subject of the appeal ~~and may make an order under sub-~~

~~paragraph 8(11)(iii) in relation to the whole or part of the costs of and incidental to the appeal.~~

8(~~16~~¹⁷) The Conduct Committee shall publish the report sent to it by the Appeal Tribunal pursuant to paragraph 8(~~13~~⁴) as soon as practicable and in such manner as it thinks fit unless this would not, in the opinion of the Conduct Committee, be in the public interest.

Disciplinary and Appeal Tribunals

9(1) (i) The ~~Conduct Committee~~^{Convener} shall ensure that a Panel is maintained comprising individuals who have the appropriate qualifications and experience to sit on a Tribunal.

(ii) Appointment to the Panel shall be made by the ~~Conduct Committee~~^{Convener} and shall be for an initial period of at least three years and the terms of appointment shall be as set out in the Regulations.

9(2) A Tribunal shall be appointed from the Panel by the Convener and shall be composed as follows:-

(i) Each Tribunal shall consist of either three or five persons as the Conduct Committee~~in~~ its absolute discretion thinks fit.

(ii) The Chairman of a Disciplinary Tribunal ~~must~~^{shall} be a lawyer (a former member of the judiciary, a barrister, an advocate or a solicitor). The Chairman of an Appeal Tribunal must be a ~~former~~ member of the judiciary or a Queen's Counsel.

(iii) A three-person Tribunal must comprise in addition to the Chairman:-

(a) a lay person (who is neither a lawyer nor an actuary); and

(b) an actuary.

- (iv) A five-person Tribunal must include in addition to the Chairman:-
- (a) at least one lay person (who is neither a lawyer nor an actuary);
and
 - (b) two (but no more than two) actuaries.
- (v) Each actuary appointed to a Tribunal shall be a Member ~~of one or more~~
of the Participants.
- (vi) No serving member of the governing body of, or any officer or employee of, any Participant shall be appointed to a Tribunal or as a Convener. However, former members of the governing bodies and former officers or employees of any Participant shall not be precluded from such appointment provided that at least ~~two~~one years has elapsed since the termination of the said appointment or employment.
- (vii) No person who is a member, director, employee or officer of the FRC or of any subsidiary company of the FRC, or a member appointed to any Operating Board or committee of the FRC or of any subsidiary company of the FRC shall be appointed to a Tribunal or as a Convener. A former member, board or committee member, director, employee or officer as aforesaid shall not be precluded provided that at least one year has elapsed since the termination of the said appointment or employment.
- (viii) No person who has been concerned with the investigation or disciplinary proceedings leading to the Adverse Finding and/or order which is the subject of ~~an~~the appeal, or with any earlier proceedings relevant thereto, shall be appointed ~~as a Convener~~ or to a Tribunal.
- 9(3)** Subject to ~~sub~~-paragraphs 9(2)(i) to 9(2)(viii) (inclusive), if more than one Disciplinary Tribunal is appointed to hear Formal Complaints arising out of the same matter, any of the members appointed to one of the Disciplinary Tribunals may be appointed to the other or others.

9(4) Where there are two or more notices of appeal against Adverse Findings and/or orders made by the same Disciplinary Tribunal, the Convener may appoint the same Appeal Tribunal to hear some or all of the appeals. Subject to ~~sub~~-paragraphs 9(2)(i) to 9(2)(viii) inclusive, if more than one Appeal Tribunal is appointed to hear appeals against Adverse Findings and/or orders which are in any way connected or associated, any of the members appointed to one Appeal Tribunal may be appointed to the other or others.

9(5) Subject to the provisions of this Scheme, at any time before the hearing of a Formal Complaint or an appeal, the Chairman of the relevant Tribunal shall give such pre-hearing directions as are necessary or desirable for securing the just, expeditious and economical disposal of the Formal Complaint or appeal.

9(6) A session of a hearing shall be postponed if (whether by reason of incapacity or otherwise):-

- (i) the Chairman is unable to be present; or
- (ii) there shall not be present at least three members of the Tribunal; or
- (iii) there shall not be amongst members of the Tribunal present at least one lawyer, one actuary and one lay person who is neither a lawyer nor an actuary.

9(7)(i) If a session of a hearing can and does proceed in the absence of a Tribunal member, that member shall not participate in any further sessions or consideration of the matter and shall cease to be a member of the Tribunal.

- (ii) If a session is postponed pursuant to paragraph 9(6), or if for any other reasons any of the Tribunal members may not be able to attend any session, and it appears to the members of the Tribunal that the facts resulting in the postponement will not change or may result in an unreasonable delay in the conduct of a hearing, this shall be reported to the Conduct Committee who shall consider whether in all the circumstances it would be appropriate and

consistent with ensuring a fair hearing of the matter to appoint a new Chairman, a new Tribunal member or a new Tribunal (as appropriate).

- (i) In any such case where the Conduct Committee decides that it would be appropriate and consistent with ensuring a fair hearing of the matter, it shall instruct the Convener to appoint a new Chairman, Tribunal member or Tribunal (as appropriate). In the case of the appointment of a new Tribunal any of the members of the original Tribunal may be appointed to the new Tribunal.
- (ii) The Convener shall provide the Conduct Committee with details of any new Chairman, Tribunal member or Tribunal and notify the Executive Counsel and each Member concerned.

9(8) (i) Save as provided for in paragraph 9(5), any matter to be decided by a Tribunal shall be decided by a majority of votes.

(ii) No member of a Tribunal may abstain from voting on any issue before the Tribunal.

(iii) Where the Tribunal has cast an even number of votes in respect of their determination of:

(a) whether to make an Adverse Finding, then no Adverse Finding shall be made;

(b) whether to make an award of costs under paragraph 7(8) or 8(12), then no award of costs shall be made.

~~(iii)~~ Where the Tribunal has cast an even number of votes in respect of any other issue, the Chairman shall have a second vote.

9(9) The Tribunal shall sit in public but shall have an absolute discretion to exclude the public (including the press) from all or part of the hearing to the extent it

considers necessary where, in the opinion of the Tribunal, the circumstances are such that publicity would prejudice the interests of justice.

9(10) (i) The Executive Counsel shall act as complainant (before a Disciplinary Tribunal) and ~~or~~ respondent (before an Appeal Tribunal) and shall bring evidence against the Member in respect of the ~~who is the~~ subject matter of the Formal Complaint or appeal before the Tribunal.

(ii) Every Tribunal shall give any Member the subject of a Formal Complaint before it a reasonable opportunity to hear the evidence against him, to cross-examine witnesses called by the Executive Counsel, to call witnesses and lead evidence in his defence and to make representations orally or in writing to the Tribunal.

(iii) Any such Member shall be entitled to be represented by a Representative at all hearings of the Tribunal.

(iv) Any witness called by the Member, including the Member, may be cross-examined by the Executive Counsel.

9(11) The Tribunal may decide any issue of fact or law and draw any inference of fact which it considers is supported by the evidence.

9(12) The Tribunal may exclude from a hearing any evidence which, in its opinion, it is necessary to exclude in order to:-

- (i) ensure fairness between the parties; and
- (ii) preserve the interests of justice.

9(13) All Tribunals shall be conducted in accordance with the laws of England and Wales.

Standard of Proof

10 The standard of proof to be applied by a Tribunal is the civil standard of proof.

Payments

11(1) Where a Tribunal makes an order for the payment of a fine and/or costs against a Member, then:-

- (i) such monies shall be due from and paid by him even if he ceased to be a Member on or after the date of the report of the Disciplinary Tribunal;
- (ii) such monies shall be paid to the FRC, and applied in the manner agreed between the FRC and the Participants;
- (iii) in the case of an order of a Disciplinary Tribunal against which no appeal has been made, or which has not been suspended pending an appeal or against which an appeal has been rejected under paragraph 8(5), such fine and/or costs shall be paid ~~not later than 28 days after the date~~ when the order takes effect under ~~sub~~-paragraph 7(~~12~~~~14~~)(i) and in the event that such fine and/or costs, or part thereof, shall not have been paid on the due date, interest shall be paid thereon at the rate applicable to judgment debts in England and Wales from the due date until the actual date of payment;
- (iv) in the case of an order of a Disciplinary Tribunal against which there is an appeal and an order of an Appeal Tribunal, such fine and/or costs (except to the extent that the order of the Disciplinary Tribunal may be varied, substituted or rescinded by the Appeal Tribunal) shall be paid not later than 28 days after the date on which the relevant Appeal Tribunal decision under paragraph 8(~~13~~~~14~~) is notified to the Member and in the event that such fine or costs, or part thereof, shall not have been paid on the due date, interest shall be paid thereon at the rate applicable to judgment debts in England and Wales from the due date until the actual date of payment;

- (v) the FRC will endeavour to collect and (if necessary) enforce the payment of fines and/or costs unless it shall at its discretion decide (but only after prior consultation with the relevant Participant) not to seek or continue to seek enforcement of such payment;
- (vi) in the event of non-payment in full or in part, including any interest, of a fine and/or costs order within the time specified for payment, the Executive Counsel shall provide a report to the relevant Participant.

11(2) Where a Disciplinary Tribunal makes an order for the payment of costs against the FRC, those costs shall be paid not later than 28 days after the date when the order takes effect and in the event that such costs, or part thereof, shall not have been paid on the due date, interest shall be paid thereon at the rate applicable to judgment debts in England and Wales from the due date until the actual date of payment.

Obligations of Members

12(1) (i) Every Member and Former Member shall at all times co-operate fully with the Executive Counsel and with any Disciplinary Tribunal or Appeal Tribunal appointed~~established~~ pursuant to this Scheme. Without prejudice to the generality thereof, such full co-operation shall include complying with any notice served pursuant to paragraph 12(2).

12(2) The Executive Counsel shall have power by notice served on any Member or Former Member to call on him ~~to provide~~ (to the extent that ~~he~~such Member can lawfully do so):-

(i) to provide:

(a) to the Executive Counsel or to any person appointed or employed by him or by the Conduct Committee on behalf of the FRC, such information and explanation relevant to any matter under investigation or preliminary enquiry pursuant to paragraph 5(10) or following the service of a

Formal Complaint orally and/or in writing as the Executive Counsel shall require; and

~~(ii)~~(b) evidence to a Tribunal orally and/or in writing as the Executive Counsel or the Tribunal shall require.

~~The foregoing power of the Executive Counsel by notice to call on any Member to provide information and/or explanation and/or evidence shall include the power to call on him:-~~

~~(a)~~(ii) to permit the inspection and taking of copies of the books, documents, and other ~~records, telephone recordings or computer held~~ information of whatsoever kind relevant to the matter under investigation which are in the possession or under the control of such Member or Former Member; and

~~(b)~~(iii) to the extent reasonable, to supply copies of ~~such books,~~ documents, ~~records, telephone recordings or computer held~~ and other information ~~of whatsoever kind~~ at his own expense.

and ~~it~~ shall be the duty of any Member or Former Member on whom such a notice is served under this paragraph ~~12(2)~~ to comply with it within ~~the period of~~ 14 days of beginning with the date of the notice service or such longer period as the Executive Counsel may allow.

12(3) If, at any time, the Executive Counsel considers that:-

(i) there are grounds upon which a Disciplinary Tribunal could make an Adverse Finding that a Member or Former Member, whether or not he or it is within the scope of any investigation, has failed to carry out any obligation under paragraph 12(1) and 12(2); and

(ii) it is appropriate for those grounds, or some of them, to be presented to a Disciplinary Tribunal,

he shall take the steps at paragraphs 6(10) and 6(11).

12(4) Where a Formal Complaint under paragraph 6(11) specifies grounds which the Executive Counsel alleges justify an Adverse Finding by reference to paragraph 4(1)(ii), the Conduct Committee may direct that that Formal Complaint be heard by the Disciplinary Tribunal which is hearing or is to hear another Formal Complaint.

12(5) Where paragraph 12(3)(i) applies the references in paragraphs 6(10) and 6(11) to a Member shall be treated as referring respectively to a Former Member.

Interim Orders

13(1) Where, at any stage in the period between:

(i) the making of a decision to investigate under paragraph 5(3) or 5(8);
and

(ii) the making of a decision by the Disciplinary Tribunal under paragraph 7(7);

the Executive Counsel is of the opinion that a Disciplinary Tribunal should consider making an Interim Order in relation to a Member, he shall present an application to the Conduct Committee.

13(2) Where the Executive Counsel presents an application in accordance with paragraph 13(1), the Conduct Committee shall serve notice of the application on the Member concerned and shall, as soon as reasonably practicable, send a copy of the application to the Convener.

13(3) The Convener shall, as soon as reasonably practicable following receipt of an application for an Interim Order, appoint a Disciplinary Tribunal to hear the application in accordance with the provisions of this Scheme and provide the

Conduct Committee with details of the Disciplinary Tribunal appointed and notify the Executive Counsel and each Member concerned.

13(4) Subject to this Scheme, the procedure adopted by a Disciplinary Tribunal to deal with an application for an Interim Order shall be in accordance with the Regulations.

13(5) After hearing the application for an Interim Order, the Disciplinary Tribunal may, where it thinks fit, having regard to:

(i) the purposes for which the Scheme has been established as set out in paragraph 1(2); and

(ii) the public interest; and

(iii) any guidance issued by the Conduct Committee under paragraph 3(1)(ii).

make such Interim Order against the Member as is contained within the schedule of Interim Orders at Part 1 of Appendix 2 to this Scheme, for such period or until the occurrence of such event as it defines.

13(6) (i) The Disciplinary Tribunal shall make a report, which shall be signed by its Chairman, setting out its decision and reasons and send it to the Conduct Committee.

(ii) The Conduct Committee shall send a copy of the Disciplinary Tribunal's report to the Member concerned, the Executive Counsel and the relevant Participant.

13(7) Unless the Disciplinary Tribunal shall otherwise decide, an Interim Order in relation to a Member shall take effect from the date on which the Interim Order is notified to the Member.

13(8) The Disciplinary Tribunal appointed to consider the particular matter shall review any Interim Order within 6 months from the date it took effect and

thereafter at 6 monthly intervals until such time as it has expired or been discharged. Such review shall be dealt with in accordance with the Regulations.

13(9) The Executive Counsel or the Member may apply at any time for an Interim Order to be reviewed on the grounds of a change in circumstances since the Interim Order was made. Such application shall be dealt with in accordance with the Regulations.

13(10) On a review of an Interim Order the Disciplinary Tribunal may make such decision as is contained within Part 2 of Appendix 2 to this Scheme and shall report to the Conduct Committee in accordance with paragraph 13(6).

13(11) Unless the Disciplinary Tribunal shall otherwise decide, a decision on a review of an Interim Order in relation to a Member shall take effect from the date on which the decision is notified to the Member.

13(12) A Member may appeal against an Interim Order made under paragraph 13(5) or following a review under paragraph 13(10) in the same manner as against any Adverse Finding of the Disciplinary Tribunal.

Proof of Certain Matters

143(1) The fact that a Member:-

(i) has, before a Court of competent jurisdiction in the United Kingdom been convicted of ~~an indictable~~a criminal offence, or

(ii) has, before a Court outside the United Kingdom, been convicted of an offence which would have constituted ~~an indictable~~a criminal offence had the matter been prosecuted in the United Kingdom,

shall for the purposes of this Scheme be conclusive evidence of ~~Misconduct an act of misconduct~~ by the Member, whether or not he was a Member at the time of the conduct resulting in the conviction.

143(2) Production of a certificate to the Tribunal purporting to be under the hand of a competent officer of court in the UK or overseas that a person or other legal entity has been convicted of a criminal offence shall be conclusive evidence of the offence committed.

143(3) The fact that a Member:-

(i) has had an adverse finding made against him in respect of his conduct, being a finding in proceedings before a regulatory body performing its functions under ~~the Financial Services Act 1986~~, the Financial Services and Markets Act 2000, the Insolvency Act 1986, the Companies Act 1989, the Companies Act 2006, the Pensions Act 1995 or the Pensions Act 2004, or any similar or analogous legislation in any other jurisdiction; or

(ii) has had a disqualification order made against him under the Company Directors Disqualification Act 1986 or under the Pension Schemes Act 1993, or has been restricted or prohibited from being a director of a company by reason of an order made against him under the Companies Act 1990 of the Republic of Ireland or the Directors Disqualification (Northern Ireland) Order 2002, or any similar or analogous legislation in any other jurisdiction,

shall, for the purposes of this Scheme, be conclusive evidence of Misconduct ~~an act of misconduct~~ by the Member, whether or not he was a Member at the time of the conduct resulting in, or at the time of the disciplinary proceedings or ~~or~~ disqualification order-.

143(4) Without prejudice to paragraphs 143(1) and 143(3) a finding of fact:-

- (i) in any report of an inspector appointed under the Companies Act 1985;
- (ii) in any civil or criminal proceedings before a Court of competent jurisdiction in or outside the United Kingdom;

- (iii) in any proceedings before, or report by, any of the bodies mentioned in paragraph 143(5);
- (iv) in any proceedings before, or report by, any regulatory, professional or disciplinary body outside the United Kingdom; or
- (v) in any report or proceedings which, in the opinion of the relevant Tribunal, corresponds or correspond to any report or proceedings referred to in sub-paragraphs 14(4) (i) to (iv) (inclusive) above,

shall, for the purposes of this Scheme, be prima facie evidence of the facts found.

143(5) The bodies referred to at sub-paragraph 143(4)(iii) are:-

- (i) The Financial Services Authority;
- (ii) The Financial Services and Markets Tribunal;
- (iii) The Pensions Regulator;
- (iv) The Conduct Committee of the FRC ~~Financial Reporting Review Panel~~;
- (v) any recognised professional body within the meaning of the Insolvency Act 1986;
- (vi) any recognised supervisory body within the meaning of the Companies Act 2006;
- (vii) any designated professional body within the meaning of the Financial Services and Markets Act 2000;
- (viii) any body replacing, additional to or pre-dating a body identified in sub-paragraphs 134(4)(i) to (vii) and performing the same or broadly

similar functions, and whose regulatory arrangements are of a similar standing.

13(6) Paragraphs ~~13~~⁴(1) to ~~13~~⁴(5) (inclusive) are without prejudice to the generality of paragraphs 7(~~5~~⁶) and 8(~~9~~¹⁰) and nothing in paragraph ~~14~~³(4) shall affect the evidential status of any report or other document not referred to in paragraph ~~13~~¹⁴(4).

Legal Representation of Members

~~14~~⁵ If a Tribunal concludes that:-

- (i) it is not reasonable to expect a Member to conduct his defence or pursue his appeal without legal representation because for example of the complexities of the issues involved; and
- (ii) the Member has established that he cannot afford (and does not have adequate insurance cover for) legal representation,

the Tribunal may, ~~on the~~^{after} application ~~of the Member~~^{of the Member}, require the FRC to meet the reasonable costs of that Member's legal representation at the hearing before the Tribunal but only if, in all the circumstances, the absence of legal representation would be contrary to the rules of natural justice.

Disclosure of Information

~~15~~⁶ The Regulations may make provision enabling the FRC or the Executive Counsel to disclose information and explanation and supply evidence, whether originally oral or in writing, obtained under this Scheme to any regulatory body or prosecuting authority, or any person, body or authority carrying out any role similar to that of regulation or prosecution, in any part of the world. Any such provision shall contain such safeguards as the FRC considers appropriate.

16(2) A Member shall treat all information which is not in the public domain which comes to his or its knowledge in the course of a preliminary enquiry, an investigation or disciplinary proceedings under this Scheme as confidential.

16(3) A Member shall only disclose information to persons other than their legal representatives with the prior consent of Executive Counsel. A breach of confidentiality which has the potential to adversely affect the conduct of the investigation or disciplinary proceedings shall be evidence of a failure to cooperate with the Executive Counsel for the purposes of paragraph 12(1).

Transitional Arrangements

~~17~~6(1) The provisions of this further amended Scheme ~~as amended by the Board and transferred by the AADB to the FRC~~ will have immediate effect.

~~17~~6(2) Any steps taken by the AADB or the Board under any previous version of the Scheme, including pursuant to any regulations made or guidance issued thereunder, shall be deemed to have been taken by the FRC or the Conduct Committee, as appropriate, under this Scheme, as amended by the Board and transferred by the AADB to the FRC with effect from [July 2012].

~~16(3) Any regulations made, and guidance provided, by the Board under the Scheme that is in force immediately before the transfer of the Scheme to the FRC takes effect shall continue in force and shall be treated as if it had been made or provided by the Conduct Committee under paragraph 3(1)(i) or (ii), as appropriate, with all references to the Board in such regulations and guidance being treated as being references to the Conduct Committee.~~

Amendment and termination of this Scheme

~~18~~7 This Scheme may be amended by the FRC, ~~with the agreement in writing of the governing bodies of~~ following consultation with each of the Participants, or terminated by the FRC by giving notice of not less than six months expiring on 31st December in any year. Amendments to the Scheme which are the subject of a dispute between the FRC and one or more of the Participants shall

be presented to [an independent adjudicator], who shall determine whether the proposed amendment is appropriate to achieve the purpose for which the Scheme has been established (as set out in paragraph 1(2)). The decision of [an independent adjudicator] shall be binding on the FRC and the Participant(s) concerned.

AADB Scheme Schedule of Sanctions

The following sanctions may be made by a Tribunal as referred to in paragraph 7(78)(i).

Reprimand.

Suspension from membership of one or more of the Participants. The Tribunal shall specify the period of suspension which shall not exceed five years.

Expulsion from membership of one or more of the Participants. The Tribunal shall specify the period which must elapse before an application for readmission as a Member may be submitted to the relevant Participant: such period shall not exceed five years.

Exclusion of a Former Member from membership of one or more of the Participants. The Tribunal shall specify the period which must elapse before an application for readmission as a Member may be submitted to the relevant Participant: such period shall not exceed five years.

Fine – amount specified by the Tribunal.

Suspension or withdrawal of any certificate issued pursuant to the Rules and Bye-Laws of the relevant Participant to the Member. The Tribunal may recommend that such certificate not be reinstated for a specified period of time and shall recommend that the suspension of such certificate be for a specified period of time.

FRC Scheme Schedule of Interim Orders

PART 1:

The following Interim Orders may be made by a Disciplinary Tribunal as referred to in paragraph 13(6):

Order that conditions be attached to a Member's certificate (for the practice of any activity requiring such a certificate) for a period not exceeding six months.

Order that a Member's certificate be suspended (for the practice of any activity requiring such a certificate) for a period not exceeding six months.

Order that a Member be suspended from membership for a period not exceeding six months.

PART 2:

The following orders may be made on a review of an Interim Order by a Disciplinary Tribunal as referred to in paragraph 13(10):

Order to revoke an Interim Order.

Order to revoke or vary any conditions attached to a Member's certificate (for the practice of any activity requiring such a certificate).

Where it thinks fit, having regard to the matters set out in paragraph 13(5)(i)-(iii), replace an order for conditions with an order for suspension or an order for suspension with an order for conditions.

Order that the period of the Interim Order be extended.



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