Accountancy and Actuarial Discipline Board

Sanctions Guidance to Tribunals

A Consultation Paper

April 2012

Contents

1 Introduction

1.1 The Accountancy and Actuarial Discipline Board[1] (AADB) is the UK's independent, investigative and disciplinary body for accountants and actuaries. Its focus is on investigating cases which raise or appear to raise important issues affecting the public interest and, where appropriate, having disciplinary complaints heard by a tribunal.

1.2 The AADB is an operating body of the Financial Reporting Council (FRC). The 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.

1.3 The AADB operates two separate yet similar disciplinary schemes, one covering the accountancy profession and the other the actuarial profession.

1.4 Under both Schemes the Board has the power to give guidance to Tribunals in respect of the exercise of their functions. Tribunals are required under the Scheme to have regard to any guidance issued by the Board.

1.5 Sanctions are one area in which it is considered appropriate and, indeed necessary, for the Board to give guidance to tribunals. There is considerable precedent for such guidance amongst other regulators and in the criminal arena. Sentencing guidelines are used in the criminal courts and provide a structured approach to determining the appropriate sentence while still allowing for judicial discretion. Sanctions Guidance has been adopted by a number of other disciplinary regulators, including the General Medical Council and several of the AADB's Participants. The FSA also sets out its approach to sanctions in some detail in its *Decisions Procedures and Penalties Manual*.

1.6 The Solicitors Disciplinary Tribunal was recently criticised by the High Court for the fact that it had not published 'Indicative Sanctions Guidance'. In *Hazelhurst & Ors v Solicitors Regulation Authority* [2011] EWHC 462 Admin, at paragraph 38 of her judgment, Mrs. Justice Davies DBE held: *'It is of note that the SDT has not published Indicative Sanctions Guidance. Such guidance identifies the purpose, parameters and range of sanctions. It permits those who appear before it to better understand the proceedings and the thinking of the SDT. It assists the transparency of the proceedings. Such guidance has been used by other regulatory bodies for some years and is a valuable reference point both for the tribunal and for those who appear in front of it, as practitioners or advocates.'*

[1] Formerly the Accountancy Investigation and Discipline Board (AIDB)

1.7 A number of the cases currently under investigation by the AADB are reaching the stage where they may be referred to a disciplinary tribunal. Furthermore, the recent case against PwC LLP in relation to JP Morgan Securities Limited highlighted the need for the Board to issue guidance as a matter of priority[2].

1.8 The Board intends to issue 'Indicative Sanctions Guidance' following consultation to assist disciplinary and appeal tribunals to determine an appropriate sanction in cases where misconduct has been proved.

1.9 The FRC is currently being restructured. In preparing this policy and guidance, the FRC and AADB have taken this into account. This consultation and the guidance subsequently issued will be finalised by the Conduct Committee in the event of any changes to the structure of the FRC that are implemented in the intervening period.

1.10 This consultation relates to sanctions guidance to be issued under the AADB's Accountancy Scheme. The intention would be to subsequently also issue sanctions guidance under the Actuarial Scheme. Draft Guidance can be found at Appendix A.

1.11 Responses are encouraged from the professional bodies, firms, individual members, members of the AADB's tribunal panel, other regulators and anyone with an interest in or views on the subject covered in this paper. Responses are sought by [**xx June 2012**]. Details of how to respond can be found in section 6. A response to the consultation will be published later in 2012.

[2] In paragraph 32 of its report the Tribunal observed that "There is no explicit guidance in relation to the exercise of the power to impose a financial penalty under the Accountancy Scheme of the AADB."

2 Sanctions under the Accountancy scheme

2.1 The Accountancy Scheme confers an unfettered discretion on the Tribunal to impose whatever sanction, or combination of sanctions, it sees fit. There are no binding rules setting floors or ceilings which constrain the Tribunal's discretion. The sanctions currently available to tribunals are set out at Appendix 1 of the Accountancy Scheme. These are reproduced below for ease of reference, in the same order as set out in the Accountancy Scheme:

Members

- Reprimand
- Severe Reprimand
- Exclusion as a Member of one or more Participants and that the exclusion be for a recommended period of time
- Fine – amount specified by the Tribunal (and in the event of a 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 an 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 a 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 a 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 an 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."

2.2 Broadly speaking these sanctions can be said to fall into four categories:

i. Sanctions which signal disapproval of the Member or Member Firm's conduct;
ii. Sanctions which affect a Member or Member Firms' ability to practise or to act in particular capacities or perform certain functions;
iii. Sanctions that affect a Member's entitlement to hold themselves out as a chartered accountant; and
iv. Monetary sanctions.

2.3 After hearing the Formal Complaint AADB tribunals must either make a finding of misconduct, or dismiss the Formal Complaint. Where it makes a finding of misconduct it may order such sanctions as are contained in the schedule of sanctions at Appendix 1 to the Accountancy Scheme as it considers appropriate[3].

2.4 AADB Tribunals are not required to make a determination that a Member or Member Firm's fitness is impaired before imposing a sanction that will affect the ability of that Member or Member Firm to practise or to act in a specified capacity or to perform certain functions. They are entitled to impose any sanction from the Schedule that they consider appropriate once they have found misconduct proved.

2.5 At present there is no written guidance or policy on determination of sanction to which AADB Tribunals can refer. In practice, Tribunals are likely to have regard to the sanctions awarded by previous AADB Tribunals, under the Joint Disciplinary Scheme[4] and/or to the sanctions guidance of the accountancy professional bodies.

2.6 The Board considers it has a responsibility to ensure that the sanctions handed down by AADB tribunals maintain relevance in the wider context in which the independent disciplinary regime operates. The precedents to which AADB Tribunals are currently likely to have regard are in some cases twenty years old and in the Board's view the majority are out of date. The Board considers that going forward sanctions should be evaluated within a framework that is consistent with the current environment. Sanctions that are and are seen to be relevant to current times are important for public confidence in the profession and the disciplinary regime and also play a role in creating a perception of fairness within the

[3] Except where the misconduct occurred before the date on which the Member or Member Firm became subject to the AADB Scheme. In those circumstances the Tribunal may not impose a sanction that is more severe than that which would have been imposed under the regime operated by the relevant professional body.

[4] The Joint Disciplinary Scheme was the AADB's predecessor body that covered Members and Member Firms of the ICAEW and the ICAS. It was replaced by the independent AADB following a government review.

profession. A perception that accountants who commit misconduct get off too lightly could undermine confidence in the profession.

2.7 Given the purpose of the AADB's Accountancy Scheme, its independent status and public interest remit, the nature and importance of the cases it deals with and considerations such as proportionality and deterrence, the Board also questions whether it is appropriate for AADB Tribunals to pay more than a passing regard to past sanctions handed down by the JDS and/or to the sanctions guidelines of the accountancy bodies. However, in the absence of alternative reference points in the form of AADB issued guidance and/or a bank of more recent precedents set by AADB Tribunals, it seems likely that this will continue. The Board therefore considers issuing its own indicative sanctions guidance to be a priority.

2.8 AADB Tribunals are required under the Accountancy Scheme to have regard to guidance issued to them by the Board. That does not mean that Tribunals must follow sanctions guidance rigidly in all circumstances. The guidance is advisory, rather than binding. It is intended to form a framework which assists tribunals to adopt a consistent approach and to focus its attention on the relevant issues, factors and circumstances. The Tribunal is the decision maker on any sanction to be imposed and is entitled to depart from the guidance if it considers that to be appropriate, although it should explain why it has done so.

3 Sanctions Policy

3.1 The FRC and the AADB are committed to upholding the five Hampton principles of good regulation proposed by Sir Philip Hampton5: proportionality, accountability, consistency, transparency and targeting. Sanctions guidance issued by the Board will be consistent with these regulatory principles and with the overarching principles of fairness and natural justice.

3.2 These principles were incorporated into a mandatory code of practice, the '*Regulators Compliance Code*' ("the Code") which came into force in April 2008. Although the FRC is not bound by the Code, the latter nevertheless emphasises the need for all '*regulators*', defined as '*any organisation that exercises a regulatory function*', to adopt a positive and proactive approach to compliance by responding proportionately to regulatory breaches. Amongst other matters, the Code prescribes that regulators should '*be transparent in the way in which they apply and determine penalties.*'

3.3 A second report, the Macrory report, was commissioned by the government in direct response to the Hampton Review. Professor Macrory's final report of November 2006, 'Regulatory justice: making sanctions effective', emphasises the need for transparency in relation to the enforcement policy of regulators. Professor Macrory recommended that the following principles should underpin any regulatory sanctioning regime:

1. Aim to change the behaviour of the offender;
2. Aim to eliminate any financial gain or benefit from non-compliance;
3. Be responsive and consider what is appropriate for the particular offender and the regulatory issue;
4. Be proportionate to the nature of the offence and the harm caused;
5. Aim to restore the harm caused by the regulatory non-compliance, where appropriate; and
6. Aim to deter future non-compliance.

3.4 The Board considers that in determining the appropriate sanction, Tribunals should have regard to these principles and to the purposes of sanctioning in a professional disciplinary context. The Board's proposals for sanctions guidance have therefore been developed taking account of the generally applicable principles which have been established in the area of sanctioning policy as discussed above and its own policy objectives.

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[5] 'Reducing Administrative Burdens: Effective Inspection and Enforcement' , March 2005

3.5 The Board notes that the Supreme Court has ruled [6] that in the area of professional discipline and regulation, sanctions are imposed for a number of purposes. The Board considers that AADB sanctions are imposed:

- To protect the public from Members and Member Firms whose conduct has fallen short of the standards reasonably to be expected of Members and Member Firms;
- To maintain and promote public and market confidence in the accountancy profession and the quality of corporate reporting;
- To declare and uphold proper standards of conduct amongst Members and Member Firms; and
- to encourage high standards of conduct amongst Members and Member Firms.

3.6 The primary purpose of sanctions in a disciplinary context is therefore not to punish but to protect the public interest. Nevertheless, unless sanctions have an impact on those on whom they are imposed, they will be unlikely to act as a credible deterrent to future misconduct.

3.7 The Board's policy objectives in issuing sanctions guidance are to promote transparency, clarity, accessibility, predictability and a consistent approach by Tribunals to determining sanction, with a view to securing the imposition of proportionate sanctions that will have an appropriate and credible deterrent effect and will bolster public and market confidence in the accountancy profession and the disciplinary regime.

3.8 The Board considers that its sanctions policy and approach should be clear to all parties, particularly Tribunals and Respondents, and to the public. Sanctions guidance will ensure that all parties are aware from the outset of the approach to be taken by the Tribunal to the question of sanction.

3.9 Although not a sanction in the same sense, the FRC intends to look at whether the disciplinary regime should acquire the power to seek interim orders in certain circumstances with a view to protecting the public. This would require changes to the Accountancy Scheme and will be considered alongside other changes following the restructuring of the FRC and consulted on in due course.

3.10 Sanctions guidance will allow Tribunals hearing a wide range of different types of case involving different sorts of misconduct to be consistent in their approach to determining the appropriate sanction while still allowing for the exercise of Tribunal discretion, which is required in order to be compliant with Schedule 10 of the Companies Act 2006. It is intended that the sanctions guidance should act as a

[6] At paragraph 60 of its judgement in R (on the application of Coke-Wallis) v The Institute of Chartered Accountants in England and Wales, [2011] UKSC 1, on appeal from [2009] EWCA Civ 730

road map for Tribunals, steering them through the decision-making process and helping them to focus their attention on the relevant issues. The proposed sanctions guidance at Appendix A therefore sets out the decision making process Tribunals should adopt and a number of procedural steps for tribunals to follow.

3.11 In the course of developing sanctions guidance, consideration has been given to the approach that is likely to be most suited to the AADB's needs. The AADB has few precedents of its own from which to draw. Each AADB case is different and there is little uniformity in the types of issues and sorts of conduct involved. As it is not possible to foresee every possible permutation of case and conduct which the AADB may encounter in future, any sanctions guidance needs to be flexible enough to deal with a wide range of cases with differing sets of circumstances and types of conduct, many of which are as yet unknown.

3.12 The Board concluded that a principles based approach rather than a tariff based approach would be more likely to provide the flexibility the AADB was seeking and that this should be supplemented by a mechanism for calculating fines to assist Tribunals in deciding what level of fine might be appropriate in a particular case. The proposed guidance at Appendix A has been drafted on that basis.

3.13 The Board intends to keep the sanctions guidance under review and revise it as appropriate in the light of experience and in response to regulatory or legal developments.

The Board would welcome views on the following questions:

1. **Do you agree with the Board's objectives and approach to sanctions guidance?**
2. **Do you agree that AADB Tribunals need a clear framework for sanctions which reflects the nature of its cases and the wider context in which the accountancy profession operates today?**

General Principles relating to Sanctions

3.14 The Board considers that, in order to achieve the purposes set out in paragraph 3.5, there are a number of general principles which should apply to all Tribunal decisions on sanctions. These are:

- The principle of proportionality – the sanction must be commensurate to the seriousness of the misconduct and proportionate to all the circumstances of the case;
- The principle of deterrence – the necessity to deter the Member or Member Firm who committed the misconduct and other Members or Member Firms from future misconduct; and

- The need for the public to have confidence that the AADB takes firm action in order to protect the public interest and promote compliance with professional standards of conduct.

Proportionality

3.15 AADB sanctions guidance will apply to acts of misconduct committed in a variety of circumstances with differing levels of seriousness. A key principle which the Board considers Tribunals should bear in mind is that the sanction imposed on a Member or Member Firm should reflect the misconduct they have committed, i.e. it should be proportionate to the seriousness of the misconduct.

3.16 In keeping with this principle, the most serious sanctions should be reserved for the most serious acts of misconduct. For example, the Board considers that misconduct involving dishonesty or a breach of integrity will tend to be at the more serious end of the spectrum and will consequently usually warrant a severe sanction. Dishonesty, whether this has resulted in a criminal conviction or not, is viewed by the Board to be incompatible with the professional duties of Members and Member Firms. So, for example, where dishonesty is proved against a Member, exclusion from membership should normally be considered by the Tribunal. The sanctions guidance will emphasise the importance of proportionality to tribunals.

3.17 The seriousness of the misconduct is one factor that is considered to be relevant to proportionality. The Board also considers that when determining monetary sanctions, the Member or Member Firm's financial resources, size and the effect of the sanction or combination of sanctions on that Member or Member Firm's or its business are further relevant factors.

Deterrence

3.18 The Board considers that Tribunals should seek to impose demonstrably proportionate sanctions that are an effective and credible deterrent to future misconduct. The public should feel assured by the outcomes of the disciplinary regime that proper standards of conduct are more likely to be upheld as a result of the action that was taken.

3.19 Sanctions that are and are perceived to be likely to deter future misconduct will be more likely to reassure the public and promote public confidence in the profession. The desired deterrent effect will only be achieved if the sanctions imposed have an appropriate impact on the Member and/or Member Firm concerned.

3.20 Under the Scheme disciplinary proceedings can be brought against both individual accountants and accountancy firms. The Scheme expressly provides that a Member Firm cannot avoid liability to investigation and disciplinary proceedings by reason of *'having established and operated appropriate working practices and*

procedures if its conduct (by reason of the conduct of any partner, director or employee acting with actual or ostensible authority) may constitute an act of misconduct.'

3.21 The Scheme also provides that anything said, done or omitted by an employee of a Member firm within the scope of his employment or as an agent of the Member Firm shall be taken as having been said, done or omitted by that Member Firm. Thus for the purposes of the Scheme the conduct of a Member Firm is indivisible from that of its partners, directors and employees. A Member Firm clearly has a responsibility to uphold appropriate standards of conduct by those who act on its behalf. It must also accept responsibility when those acting on its behalf fail to adhere to the standards of conduct reasonably to be expected of them.

3.22 Since 2009 company audit reports have been signed in the name of the lead audit partner on behalf of the Member Firm (prior to 2009 they were signed in the name of the Member Firm). In reality the audit work is done on behalf of the Member Firm by a number of personnel and that, taken together with a number of checks and balances in audit practices and procedures, means it is unlikely that an individual partner would be the sole contributor to a sub-standard audit. Even though the audit partner may bear primary responsibility for the conduct of that audit, multiple individuals within the Member Firm will normally have been involved in any particular audit. This further justifies taking action not only against individual Members but also against Member Firms.

3.23 It is important that the disciplinary regime recognises and upholds the collective responsibility of Member Firms for the conduct of individual partners, directors and employees. It would not be in the public interest if Member Firms were able to transfer all responsibility, blame and consequence to the individual Members involved thereby neutralising any deterrent to Member Firms pursuing business practices that could damage public confidence in the accountancy profession and corporate reporting in the UK. A failure to hold Member Firms accountable could arguably reduce incentives on Member Firms to comply with the rules. In view of the size and scale of some Member Firms and the breadth of their businesses this could potentially be damaging to the public interest.

3.24 For the reasons cited above, where there are grounds for disciplinary action, it will normally be appropriate to take action against both the Member Firm and individual Members.

The Board would welcome views on the following question:

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

4 Determining Sanctions

Summary of the Decision Making Process

4.1 The guidance proposes that Tribunals should follow a six step process to determine the right category and level of sanction or sanctions to impose in a particular case. The steps to be taken are as follows:

1. Assess the nature and seriousness of the misconduct to identify the appropriate sanction or sanctions and, where relevant, the starting point;
2. Consider relevant aggravating and mitigating factors, both general and those specific to the misconduct;
3. Consider any adjustment for deterrence; and
4. Consider whether a discount for admissions or early settlement is appropriate;
5. Order the appropriate sanction; and
6. Give reasons.

4.2 Tribunals that have made a misconduct finding, should first consider the seriousness of the misconduct found. Assessment of the seriousness of the misconduct will indicate whether a sanction that will allow the Member or Member Firm to continue to be a member of the profession, to practice or to conduct audits is appropriate (i.e. a Reprimand or Severe Reprimand), either on its own or in conjunction with a fine and/or waiver/repayment of client fees. In the event it is not it will direct the attention of the Tribunal to the consideration of sanctions that will affect the Member or Member Firm's membership of the profession or ability to practice or conduct audits is appropriate, either on its own or in conjunction with a financial penalty. Tribunals should consider all the sanctions available under the Scheme before deciding which sanction or combination of sanctions is most appropriate in respect of the misconduct found.

4.3 Seriousness will also be a key factor in deciding:

i. the recommended length of any exclusion period, withdrawal period or ineligibility period for a licence, registration or practicising certificate; and
ii. the amount of any fine imposed.

4.4 The seriousness of the misconduct found should be determined by reference to a number of factors and circumstances. These include the level of responsibility of the Member or Member Firm in committing the misconduct and the actual harm or risk of harm caused by the misconduct. In summary, the factors and circumstances that are likely to be relevant to the assessment of seriousness will usually fall into the following categories:

- factors relating to the nature of the misconduct;

- factors relating to the impact of the misconduct;
- factors tending to show whether the misconduct was deliberate; and
- factors tending to show whether the misconduct was reckless.

4.5 The Tribunal should decide the relative weight to ascribe to each relevant factor. Where a breach of professional competence or due care or a failure to comply with applicable procedures or standards or to have regard to applicable policies or guidance is involved, the extent and seriousness of the breach or failure will need to be considered.

4.6 Once the tribunal has arrived at a view on the seriousness of the misconduct, it should move to consider any aggravating factors, mitigating factors and personal mitigation to reach a provisional sanction. It should then proceed to consider whether any further upward adjustment is necessary for deterrence. Lastly it should apply any discount due for early settlement/admissions before determining the sanction and giving its reasons.

4.7 There are a number of factors and circumstances which will have the effect of elevating the seriousness of the misconduct. These are set out in detail as aggravating factors in the guidance and include:

- The Member or Member Firm abused a position of trust.
- The misconduct was repeated and/or occurred over an extended period of time.
- The misconduct was planned or deliberate.
- The Member or Member Firm compromised their independence.
- Benefit resulted to the Member or Member Firm from the misconduct.
- Systemic weaknesses in the systems, procedures or internal controls of the Member Firm.
- Failure to bring the misconduct to the attention of relevant regulatory authorities.
- Failure to cooperate with the investigation.
- The Member held a senior position and/or supervisory responsibilities.
- The misconduct undermines the purpose or effectiveness of the disciplinary arrangements, such as a failure to comply with obligations under the Accountancy Scheme.
- A poor disciplinary record.

4.8 Equally, there are factors which may have the effect of lowering the seriousness and these are also be set out in detail as mitigating factors in the guidance. Examples include:

- The misconduct was a one-off.
- The misconduct was not planned or was inadvertent.

- The Member or Member Firm brought the misconduct to the attention of relevant regulatory authorities quickly, effectively and completely.
- The Member or Member Firm cooperated during the investigation.
- Remedial steps were taken once the misconduct was identified.
- The Member or Member Firm was misled or given incomplete information.
- No profit or benefit stood to be derived from the misconduct.
- In the case of Members, personal mitigation factors.

The Board would welcome views on the following questions:

1. **Have we included the sorts of factors in the sanctions guidance that you would expect to see included in deciding which sanction or combination of sanctions to impose?**
2. **Are there any factors you believe Tribunals should take into account when deciding sanction that we have overlooked?**

Determining the appropriate level for a fine

4.9 The Board considers that historic fines are not an appropriate benchmark for decisions about fines going forward. There has been a significant change in the accountancy profession over the past decade. The size and scope of the work of Member Firms have increased markedly. Market concentration has also increased with the result that a smaller number of firms undertakes a larger proportion of the audits of publicly listed companies in the UK. The top four accountancy firms ("the Big Four") perform 99% of the audits of FTSE 100 companies. Misconduct by Member Firms is all the more serious and potentially more damaging to the public interest as a result of the size and scale of these firms.

4.10 Furthermore, the increase in the revenue generated by Member Firms, the fees received by the large firms for audits and non-audit work, and the size and global nature of the businesses on which they report are indicators of a significant shift in the wider context in which fines are now imposed. This shift suggests that fines at historic levels would not be proportionate to the current environment in which Member Firms operate, would not be adequate to incentivise the right kind of behaviour and would therefore fail to fulfil the need for a credible deterrent to future misconduct.

4.11 The Board notes that the Tribunal that heard the complaint against PwC LLP in relation to JP Morgan Securities Limited shared that view[7] and accepted the principle stated in *R v Howe & Co (Engineers) Ltd [1999] Cr App Rep (S) 37* and cited in *R v Balfour Beatty Rail Infrastructure Services Ltd. [2006] EWCA Crim 1586* that

[7] Paragraph 29 of the Tribunal's report

historically fines have been too low. In paragraph 25 of its report dated 6 December 2011 the Tribunal also stated:

"… we do consider that the increases in recent times of the fees payable by firms such as [JP Morgan] to firms such as [PricewaterhouseCoopers] indicate the need for a substantial increase in the level of penalty payable for misconduct of the kind under consideration in this case."

4.12 The Board considers that these developments demonstrate a need for an increase in the level of fine payable for misconduct in the sorts of cases heard by AADB Tribunals, i.e. serious cases which have implications for the public interest.

4.13 The sanctions guidance therefore includes guidance to Tribunals on how to calculate fines with a view to empowering Tribunals to impose fines that are proportionate to the context in which the accountancy profession operates today and will act as a credible deterrent to future misconduct.

4.14 The Board is consulting on the following alternative mechanisms to assist Tribunals in calculating the appropriate level for a fine. Each mechanism is based on a percentage of annual group turnover from all services in the case of a Member Firm and annual income in the case of a Member. One mechanism uses a fixed starting point; one uses a range; and the third sets a maximum starting point.

4.15 The mechanisms under consideration are set out in paragraphs 32 and 33 of the sanctions guidance at Appendix A. The Board has not reached a definitive view as to its preferred mechanism. It is inclined to favour one of the two mechanisms that use a starting point because it considers that a greater degree of clarity and predictability as to the eventual outcome will be achieved by indicating a starting point. It is the Board's intention that introducing a mechanism should bring about a quantum change in the level of fines imposed by Tribunals of roughly the same order, regardless of the mechanism chosen. Following consultation the Board will select one mechanism to incorporate into the sanctions guidance and set parameters for its preferred mechanism.

4.16 The Board considers that group turnover is an appropriate proxy for size and market power and is a suitable basis for calculating fines on Member Firms. In recognition of the fact that not all Member Firms will be structured in the same way, the mechanism will specify that the aggregate turnover from all services of the group to which the Member Firm belongs should normally be used. Thus, a Member Firm will not end up with a lower fine by virtue of the fact that its audit business is separated from the rest of the group. The sanctions guidance will also encourage Tribunals to think flexibly where the need arises and if need be to adapt its approach to take account of the corporate structure of the particular Member Firm.

4.17 The five different levels within the range in the second mechanism are indicative of different levels of seriousness on the spectrum of misconduct. Any decision of this kind will inevitably involve a balancing act of the relevant factors; the outcome will depend on the weight the Tribunal decides to attribute to each relevant factor. The following examples are set out for illustrative purposes to give a flavour for what this might translate to in actuality:

Level 1

The misconduct was isolated, unintended, any potential harm was limited in degree and the misconduct was unlikely to do more than minimal damage to public confidence in the standards of conduct of Members or Member Firms and the quality of corporate reporting. The Member/Member Firm took immediate steps to address the misconduct and reported the misconduct to the AADB of its own volition.

Level 2

The misconduct was infrequent, unintended but created the potential for more significant harm and was potentially damaging to public confidence in the standards of conduct of Members or Member Firms and the quality of corporate reporting. In the case of a Member Firm the misconduct revealed weaknesses in the Member Firms procedures or in the management systems or internal controls. The Member/Member Firm took immediate steps to address the misconduct and fully complied with their obligations under the Accountancy Scheme.

Level 3

The misconduct was negligent or incompetent, repeated, created a risk of serious harm and was potentially damaging to public confidence in the standards of conduct of Members or Member Firms in the accountancy profession and the quality of corporate reporting. In the case of a Member Firm the misconduct revealed weaknesses in the Member Firms procedures or in the management systems or internal controls. The Member/Member Firm took immediate steps to address the misconduct and fully complied with their obligations under the Accountancy Scheme.

Level 4

The misconduct was incompetent or reckless, involved a degree of knowledge, repeated and potentially damaging to public confidence in the standards of conduct of Members or Member Firms in the accountancy profession and the quality of corporate reporting. The misconduct caused actual harm or created a risk of serious harm. In the case of a Member Firm the misconduct revealed serious or systemic weaknesses in the Member Firms procedures or in the management systems or internal controls. The Member/Member Firm was aware of the misconduct but took few, if any, steps to address the misconduct.

Level 5

The misconduct was deliberate or dishonest, or involved a breach of integrity, caused actual harm or created a risk of serious harm. The misconduct had the potential to seriously undermine public confidence in the standards of conduct of Members or Member firms and the quality of corporate reporting. The Member/Member Firm concealed the misconduct.

4.18 The Board's purpose in devising a fining mechanism for Tribunals is proportionality and deterrence and the need to maintain public confidence in the profession and its disciplinary regime, as explained in earlier sections. It is not seeking to impose manifestly unreasonable penalties of a scale that will have a devastating and unjustifiable impact on the Member or Member Firm and its business. For this reason, the Tribunal will be encouraged to consider the effect of the fine (and any other sanction it is minded to impose) on the Member or the Member Firm and its business before reaching a decision as to the appropriate level for a fine. The Member or Member Firm will of course be entitled to make submissions to the Tribunal on this point and ultimately if they still consider the fine imposed to be unreasonable the Scheme provides recourse to appeal the sanction imposed.

4.19 There are clearly differences in the respective positions of Members and Member Firms and the different percentages of income/turnover specified in the mechanisms are intended to reflect those differences. As already explained, the Board considers it is appropriate to sanction both Member Firms and individual Members in respect of the same misconduct. The Member Firm has a responsibility for the conduct of individuals doing work on its behalf, for ensuring that effective and appropriate operating and risk management procedures are in place and are adhered to and has overall responsibility and oversight of individual transactions. Where a Member Firm fails in these responsibilities the ramifications can be far wider than for that single transaction and this is taken into account as an aggravating factor. Nevertheless, the transaction which is the subject of the misconduct finding is likely to represent a very small proportion of that Member Firm's overall activity in that year. In contrast, it is likely to represent a much more significant proportion of the individual Member's activity in that year. This difference in scale will be reflected in the respective percentages in the mechanism ultimately adopted.

4.20 The Board has reflected on the impact of taxation on Members and Member Firms. The Board notes that case law indicates that fines would not be allowable deductions for taxation purposes for either Members or Member Firms. The Board will take account of the fact that the fine will have to be paid from net income when deciding on the parameters in the chosen mechanism.

4.21 The Board also notes that under the terms of the Scheme the Tribunal can order the Member or Member Firm to pay the whole or part of the AADB's costs in conducting the investigation and disciplinary proceedings. The Board considers that Tribunals should decide the sanction to be imposed independently of any costs it might consider awarding and that costs should not be a factor in determining the level of fine to impose. The Board considers that the deterrent effect of a fine would be diluted if Tribunals were to reduce the size of fines on the basis that the Member or Member Firm would be ordered to pay significant costs to the AADB. Members and Member Firms should not be able to avoid proportionate sanctions by virtue of reimbursing the costs of the investigation and disciplinary proceedings to which their misconduct gave rise.

4.22 All fines and costs recovered by the AADB are returned in full to the relevant Participant under the terms of the AADB's current agreement with the Participants.

The Board would welcome views on the following questions:

1. **Do you agree that there needs to be an adjustment in the level of fines imposed in AADB cases?**
2. **If so, what adjustment do you consider to be appropriate?**
3. **What is your view of the alternative mechanisms proposed for calculating fines?**
4. **What level of turnover / income do you consider would be appropriate in respect of each mechanism?**
5. **Do you agree that Tribunals should not take account of the costs that it is considering awarding against a Member or Member Firm when determining the appropriate level for a fine?**
6. **Do you have any other comments about the proposed structure or content of the sanctions guidance?**

5 Preliminary Impact Assessment

5.1 The Board considers that the direct and most significant impact of sanctions guidance will be felt by Tribunals, the Executive Counsel and Respondents. A clear framework for determining sanctions in AADB cases should have tangible benefits to the parties and those judging the case. Clarity, predictability, fairness and transparency should be further enhanced by the existence of sanctions guidance.

5.2 With the exception of fines it is difficult to assess whether the sanctions guidance will lead to an appreciable difference in the sanctions imposed. No two AADB cases are exactly alike. It is likely to take some years to build up a critical mass of cases for the purposes of comparison.

5.3 In the case of fines, the Board acknowledges that the inclusion of a fining mechanism is likely to lead to an increase in the level of fines imposed by Tribunals. As already explained the Board thinks this is justified for a number of reasons. The direct impact of this will be felt by those Members and Member Firms who are found to have committed misconduct.

5.4 The impact on the individual partners within a firm will depend on the firm's size, turnover and the profit per partner. Thus a firm with a lower turnover will be fined less than a firm with a higher turnover for the same misconduct. If the profit per partner is similar for each firm, the impact on individual partners in the firm with the higher turnover will be proportionately greater.

5.5 It is possible that the profession as a whole may see an indirect impact of higher fines as the burden of funding the disciplinary arrangements is likely to fall more heavily in future on those who commit misconduct rather than the membership as a whole.

5.6 The Board also considers that there could be a benefit in terms of public confidence in the accountancy profession and its regulator and the public's perception of the effectiveness of the independent disciplinary regime.

5.7 In addition, the Board considers that sanctions guidance will be beneficial for the purposes of reaching settlement agreements with Respondents. Although the ultimate decision on sanction will continue to rest with the Tribunal hearing the case, the increased clarity and greater predictability that sanctions guidance will afford to Respondents over the likely outcome before a Tribunal should enhance Respondents' ability to assess the terms of any proposed settlement, thereby encouraging agreement and reducing the time and costs involved in certain cases.

5.8 Sanctions guidance will also assist the AADB's Executive Counsel to assess with greater confidence what an appropriate sanction might be when negotiating settlement agreements with Respondents. It should support the Executive Counsel

in resisting attempts by Respondents to lower the sanction to be recommended to the Tribunal in exchange for the Respondent's agreement and the shortened proceedings that such agreement will normally lead to. This in turn will protect the public interest in appropriate disciplinary outcomes.

5.9 The Board has reflected on whether there could be unintended consequences from the sanctions guidance, particularly the proposed fining mechanism, for example by discouraging individuals from becoming chartered accountants. The Board considers that this is an unlikely scenario for a number of reasons.

5.10 The Board assumes that persons who elect to become chartered accountants do so with the intention of upholding the standards of conduct reasonably to be expected of them. The vast majority of chartered accountants go on to do just that. An extremely small minority may at some point find themselves accused of misconduct and it seems untenable to think that they would have anticipated this at the outset of their careers. Furthermore, the potential rewards on offer to chartered accountants, particularly partners in large firms, are on a scale where the remote probability of a fine on the individual is unlikely to weigh heavily in the decision to pursue that career. Although, the probability of a fine on a large Member Firm is demonstrably higher, the income of the average partner is on a scale that even a fine at the upper end of the scale is, in the Board's view, unlikely to tip the balance in favour of an alternative career. Most professions are regulated. The financial services industry too is regulated. Sanctions for misconduct or breaches of the rules are a fact of life for regulated industries and professions. The scale of the fines proposed by the Board is not demonstrably harsher than the fines that can be imposed by other regulatory bodies and prosecuting authorities. For example, the OFT can impose fines of up to 10% of annual turnover and the FSA can impose fines of between 0 and 20% of a firm's relevant revenue and 0 and 40% of an individual's relevant income.

5.11 The Board is in any event not persuaded that it would even be possible to attribute any drop off in the numbers entering the profession to the introduction of sanctions guidance issued by the AADB.

5.12 The Board accepts that it is possible that a partner in a small firm who is charged as an individual alongside the firm, could in effect find themselves fined disproportionately heavily as a result of the absence of other partners to dilute the impact. The Guidance therefore encourages Tribunals to consider the possibility and impact on Members of a fine on a Member Firm as part of the same proceedings. A Member in this situation would be able to make representations to the Tribunal on this point and the Tribunal would have the discretion to adjust any fine accordingly if it considered this to be appropriate taking account of the all the circumstances. Consequently, the Board considers that the Tribunal process already provides a means to deal with such a situation.

5.13 The Board is concerned that the introduction of a fining mechanism should not create an incentive for Member Firms to restructure their businesses in a bid to lower liability for fines, for example by separating their audit business from the rest of the group or by setting up a separate company for each audit. For this reason, Tribunals are encouraged to base fines on a percentage of the consolidated turnover of the group to which the Member Firm belongs. Tribunals may also need to adjust their approach when sanctioning a Member Firm to take account of its corporate structure, for example where the audit business has to be structured separately from the wider group for reasons of independence. The sanctions guidance cannot deal with every single situation and Tribunals will need to use their judgement to arrive at an appropriate reference point.

5.14 A further potential consequence of the sanctions guidance, particularly if it results in higher fines, is that Members and Member Firms may be more inclined to appeal decisions by Tribunals. This would increase the costs of those cases and in the event an Appeal was upheld could result in a proportion of those additional costs being borne by the profession as a whole. However, the Board is not persuaded that the potential for additional costs from higher numbers of appeals does not outweigh the potential for cost savings earlier on in the process or the other non-monetary benefits of issuing guidance.

5.13 In summary, the Board considers that the overall benefits of issuing sanctions guidance as proposed outweigh the possible disadvantages and any potential costs from doing so.

6 Invitation to comment

How to respond

Please send your response by **[xxx 2012]** to:

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Secretary to the AADB
Financial Reporting Council
5th Floor, Aldwych House
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London WC2B 4HN

Tel: 020 7492 2451
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Email: a.colban@frc.org.uk

This consultation paper is available online at http://www.frc.org.uk/aadb/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, may be published or may be disclosed to the Participants. 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, Secretary to the Board,** at the above email address.

Appendix A

ACCOUNTANCY AND ACTUARIAL DISCIPLINE BOARD
(the "AADB")

INDICATIVE SANCTIONS GUIDANCE

Introduction

1. This document provides guidance for members of the Accountancy and Actuarial Discipline Board's Disciplinary and Appeal Tribunals (the "Tribunal" or "Tribunals") with respect to the imposition of sanctions under sub-paragraph 7 (7) (i), sub-paragraph 8(11) and Appendix 1 of the Accountancy Scheme of 8th December 2011(the "Scheme") and Accountancy Regulations of 26th February 2010 (the "Regulations") on Members and Member Firms as defined in the Scheme.

2. This guidance is made by the Board under paragraph 3(1)(iii) of the Scheme which:

    - empowers the Board to provide any Tribunal with guidance concerning the exercise of its duties under the Scheme; and
    - requires any Tribunal to have regard to any such guidance.

3. This guidance establishes a framework for the imposition of sanctions in public interest cases taking account of the wider context of the world in which accountants and accountancy firms operate today. All cases considered by AADB Tribunals are by their nature serious and brought in the public interest. Sanctions imposed in the past are not necessarily an appropriate benchmark for sanctions in future public interest cases. There have been significant changes in the structure of the accountancy profession, in the scope of the work it undertakes, in the remuneration paid to it and in the responsibilities and risks attached to the activities on which it reports. The wider context in which accountants and accountancy firms now operate therefore make comparisons to earlier periods of limited relevance.

4. The guidance is intended to give Tribunal members a basis for considering what sanctions are appropriate in any given case and is intended to promote proportionality, clarity, consistency and transparency in decision-making. It also ensures that all parties are aware from the outset of the approach to be taken by the Tribunal in determining sanction. The guidance is advisory not binding on Tribunals. The Tribunal remains the decision maker on sanction. Where a Tribunal decides to depart from the guidance it should explain its reasons for the departure.

5. The guidance is subject to the rules of the Scheme. In the event of any conflict between the two, the rules of the Scheme (and any Regulations thereunder) shall prevail. The procedure governing the Tribunal's consideration of the appropriate sanction is set out in Regulation 28. Nothing in the guidance is intended to be inconsistent with that provision and the guidance must be applied in accordance with the overriding requirements of fairness and natural justice.

6. The guidance is both a public and an evolving document. Periodically, it will be reviewed and (where appropriate) revised in the light of experience. The guidance cannot deal with every single situation and exceptions will sometimes arise. The guidance should be considered alongside any precedents emerging from cases decided by AADB Disciplinary Tribunals and Appeal Tribunals.

Aims and Objectives of the AADB's Disciplinary Scheme

7. Sanctions are imposed under the Scheme where there is a finding by a Tribunal that a Member or Member Firm has committed an act of misconduct, or has failed to comply with any of his or its obligations under paragraphs 12(1) or 12(2) of the Scheme. An act of misconduct is defined in the Scheme as *"conduct in the course of his or its 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 or Member Firm"* ("misconduct").

8. In determining the appropriate sanction, a Tribunal should have regard to the purpose of imposing sanctions for misconduct in the context of professional discipline. Sanctions are imposed for a number of purposes, namely:

    - to protect the public from Members and Member Firms whose conduct has fallen short of the standards reasonably to be expected of that Member or Member Firm;
    - to maintain and promote public and market confidence in the accountancy profession and the quality of corporate reporting;
    - to declare and uphold proper standards of conduct amongst Members and Member Firms; and
    - to encourage high standards of conduct amongst Members and Member Firms.

9. The primary purpose of imposing sanctions for acts of misconduct is therefore not to punish but to protect the public and the wider public interest, although sanctions may have a punitive effect.

10. This guidance has been developed to promote outcomes consistent with these purposes. This will be achieved by imposing sanctions which:

    - aim to change the behaviour of the Member or Member Firm concerned;
    - aim to eliminate any financial gain or benefit derived as a result of the misconduct found;
    - are tailored to the facts of the particular case and take into account what is appropriate for the Member or Member Firm concerned and the misconduct found;
    - are proportionate to the nature of the misconduct and the harm or potential harm caused;
    - aim to remedy the harm caused by the misconduct, where appropriate; and
    - aim to deter misconduct by others.

Determination of Sanction

11. The Tribunal should consider the full circumstances of each case when determining which sanction or combination of sanctions it considers appropriate. This Guidance lists factors that may be relevant in the Tribunal's consideration for this purpose. The factors are not listed in any kind of hierarchy and it is for the Tribunal to decide on the weight to be allocated to each factor. The factors listed are not exhaustive: not all of the factors may be applicable in a particular case, and there may be other factors, not listed, that are relevant.

12. In deciding which sanction or combination of sanctions to impose, the Tribunal should have regard to the principle of proportionality. As a combination of sanctions can be imposed, all sanctions should be explicitly considered by the Tribunal.

13. In assessing proportionality, the Tribunal should consider whether a particular sanction is commensurate with the seriousness of the misconduct found, the circumstances of the Member or Member Firm concerned and all the circumstances of the particular case.

14. Tribunals that have found misconduct proved should therefore start by assessing the seriousness of the misconduct when deciding which sanction or sanctions to impose on the Member or Member Firm.

15. The seriousness of the misconduct found should be determined by reference to a number of factors. These include the nature of the misconduct, the level of responsibility of the Member or Member Firm in committing the misconduct and the actual or potential loss or harm caused by the misconduct. The degree of responsibility is important when deciding sanction. The extent to which intent, recklessness, knowledge of the risks or likely consequences, negligence or incompetence are involved will vary.

16. The sanctions available to the Tribunal are set out at Appendix 1 of the Scheme. The Tribunal may order such sanctions against the Member or Member Firm as it considers appropriate. These are reproduced below for ease of reference, in the same order as set out in the Scheme:

"Members

- Reprimand
- Severe Reprimand
- Exclusion as a Member of one or more Participants and that the exclusion be for a recommended period of time
- Fine – amount specified by the Tribunal (and in the event of a 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 an 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 a 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 a 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 an 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."

Combination of Sanctions

17. A Reprimand or Severe Reprimand can be ordered in conjunction with any other sanction. If the seriousness of the misconduct is such as to merit a Severe Reprimand, then it will normally be appropriate that it be ordered in conjunction with another sanction.

18. A Fine can be ordered in conjunction with any another sanction(s).

19. With regard to the sanction of the waiver/repayment of client fees, it is unlikely to be appropriate, given the purposes of imposing sanctions, as set out at paragraphs (9) to (11) above, for this to be the only sanction imposed by the Tribunal. It will normally be appropriate for the Tribunal to impose this sanction in combination with one or more other sanctions dependent on the nature and seriousness of the misconduct and the circumstances of the Member or Member Firm concerned.

20. Dependent upon the circumstances of the particular Member or Member Firm it may be appropriate to order a prescribed period of ineligibility for registration or authorisation or a licence or, alternatively, to order that a Member or Member Firm's registration or authorisation or licence be withdrawn in conjunction with any other sanction(s) with the exception of exclusion.

21. Exclusion is only available as a sanction in relation to a Member. It can be imposed in a number of different combinations alongside a fine, a waiver/repayment of fees and/or a severe reprimand.

Summary of Approach to Determining Sanction

22. The normal approach to determining sanction should be (in outline):

    i. Assess the nature and seriousness of the misconduct (paragraphs (24) to (47)).

    ii. Consider relevant aggravating or mitigating circumstances (paragraph (48)).

    iii. Consider any further adjustment for deterrence (see paragraph (49)).

    iv. Consider whether a discount for admissions is appropriate (paragraphs (50) to (56));

    v. Decide which sanction(s) to order and the level/duration of the sanction(s) where appropriate; and

    vi. Give an explanation at each of the five stages above, sufficient to enable the parties and the public to understand the Tribunal's conclusions.

Reprimands and Severe Reprimands

Introduction

23. A Reprimand or Severe Reprimand signals the Tribunal's disapproval of the Member or Member Firm's conduct to that Member or Member Firm as well as to the wider public and profession. It has no direct or immediate impact on the right to practice. It will normally be appropriate for the Tribunal to censure misconduct by way of a Reprimand or Severe Reprimand even where it is minded to also impose one or more other sanctions.

24. A Reprimand or Severe Reprimand will show on that Member or Member Firm's disciplinary record [and allows members of the public to identify easily whether a particular Member or Member Firm has faced censure for misconduct in the past (check this)]. The imposition of Reprimands or Severe Reprimands also allows the AADB and the Participant to identify any repetition of the particular misconduct at a future date and for the AADB Board, AADB Tribunal and/or Participant to take this into account when deciding upon appropriate action or sanction in respect of any further misconduct.

Ordering a Reprimand or a Severe Reprimand

25. A Reprimand or Severe Reprimand can be given in conjunction with another sanction. Circumstances in which a Reprimand or Severe Reprimand either alone or in conjunction with a fine may be appropriate include where the misconduct was inadvertent or where the misconduct does not cast doubt on the general competence of the Member or Member Firm and where the misconduct is not so damaging to public and market confidence in the standards of conduct of Members or Member Firms and in the accountancy profession and the quality of corporate reporting in the United Kingdom that, in order to protect the public and the wider public interest, ineligibility for a licence, withdrawal of a licence or exclusion would be the more appropriate sanction. Where the wider circumstances suggest a Reprimand or Severe Reprimand is the appropriate sanction, the Tribunal should consider the seriousness of the misconduct to determine whether a Severe Reprimand is the more appropriate censure for the particular misconduct.

Fines

Introduction

26. A fine may be ordered either alone or in combination with one or more other sanctions. Before ordering a fine as the only sanction the Tribunal should consider whether this is in the public interest given that it will normally be appropriate to censure the misconduct by ordering some other sanction as well.

Ordering a Fine

27. In order to determine whether a Fine is appropriate the factors to be considered will normally include:

    - if deterrence cannot be effectively achieved by issuing a Reprimand or a Severe Reprimand alone;
    - if the Member or Member Firm has derived any financial gain or benefit (including avoidance of loss) as a result of the misconduct;
    - if the misconduct involved or caused or put at risk the loss of significant sums of money; and
    - if a Fine was ordered in similar previous cases.

Determining the amount of a Fine

28. In cases where the Tribunal considers that a Fine is appropriate (either as a stand-alone sanction or in conjunction with another sanction), it should proceed to determine the amount of the fine. The Tribunal should seek to impose a fine that is proportionate to the misconduct and all the circumstances of the case and will act as an effective deterrent to future misconduct.

29. In considering proportionality and deterrence, in addition to the nature and seriousness of the misconduct, the Tribunal should take into account the financial means of the individual or firm concerned and in the case of a firm, its size. In order to have and to be seen to have a meaningful deterrent effect, the Fine imposed will normally be high enough for the impact of the fine to be felt by the Member or Member Firm concerned. The Member or Member Firm's financial resources should be taken into account so as to assess the impact of a fine. The size of the Fine imposed should therefore be tailored not only to the misconduct and the circumstances of the particular case but to the Member or Member Firm's individual circumstances and the need to deter others.

30. In calculating the appropriate level for a Fine the Tribunal will normally take into consideration:

i. the seriousness of the misconduct;
ii. in the case of a Member Firm, its financial resources/size and other circumstances and the effect of a fine on its business;
iii. in the case of a Member, his financial resources and the effect of a fine on that Member;

There is no upper limit on the fine that the Tribunal can impose.

31. In assessing the nature and seriousness of the misconduct to determine the appropriate level for a Fine the Tribunal will normally consider the following factors and circumstances. This list is not exhaustive. Not all of these factors may be applicable in a particular case and there may be other factors, not listed, that are relevant. The Tribunal should decide the relative weight to ascribe to each relevant factor. The factors which should normally be considered include:

- the financial benefit derived or intended to be derived from the misconduct which may include the loss avoided or intended to be avoided where it is practicable to quantify this (for example, this could be quantified in appropriate cases by the fees received by the Member or Member Firm, by performance related pay, bonuses, or share options received by the Member). The Tribunal may also allocate an amount in respect of interest on the benefit;
- if the misconduct involved or caused or put at risk the loss of significant sums of money where it is practicable to quantify this (for example, this could be quantified in appropriate cases by reference to the reduction in market value or loss to creditors);
- the nature and importance of the standards breached;
- if the misconduct was dishonest in involved a failure to act or conduct business with integrity;
- if the misconduct was deliberate or reckless (see paragraphs xx and xx);
- if the misconduct involved an abuse of a position of trust;
- the duration and frequency of the misconduct;
- if the Member or Member Firm has been convicted of a criminal offence in the United Kingdom;
- if the Member or Member Firm has been convicted outside the United Kingdom of an offence which would have constituted a criminal offence in the United Kingdom
- the scope for any potential financial crime (such as fraud) to be facilitated, occasioned or otherwise occur as a result of the misconduct;
- if the misconduct adversely affected, or potentially adversely affected, a significant number of people in the United Kingdom (such as the public, investors or other market users, consumers, clients, , employees, pensioners or creditors);
- if the misconduct undermines the purpose or effectiveness of the disciplinary arrangements, such as a failure to comply with obligations under the Accountancy Scheme.
- if the misconduct could undermine confidence in the standards of conduct in general of Members and Member Firms, and/or in financial reporting and/or corporate governance in the United Kingdom;
- in the case of a Member Firm, if the misconduct revealed serious or systemic weaknesses in the Member Firm's procedures or in the management systems or internal controls;
- in the case of a Member Firm, when the Member Firm's senior management became aware of the misconduct and what action was taken at that point;
- whether the Member caused or encouraged other individuals to commit misconduct; and

- whether the Member held a senior position with the firm.

32.The Tribunal may increase or decrease the amount of the Fine arrived at to take into account factors which aggravate or mitigate the misconduct (see paragraph 49). Any such adjustments should be made by way of a percentage adjustment to the figure determined following assessment of the seriousness of the misconduct.

33. **Member Firms**

In the vast majority of cases, the amount of revenue generated by a Member Firm will be indicative of its size and financial means. In such cases it will be appropriate to determine a figure which is based on a percentage of the Member Firm's annual group turnover from all services. The amount of revenue generated by a Member Firm is relevant in terms of the size of the fine necessary to act as a credible deterrent.

However, there may be exceptional cases where revenue is not an appropriate indicator of size or financial means, and in those cases the Tribunal should seek to use an appropriate alternative.

Possible alternative indicators of the size and financial means of a Member Firm to which the Tribunal may wish to refer include the level of profitability per partner, the size of the firm's UK fee income from all services, the number of audit and non-audit clients and the respective size of those clients, the number of principals[8], partners and registered individuals.

In those cases where the Tribunal considers that revenue is an appropriate indicator of the Member Firm's size and financial means, the Tribunal should determine a figure which is based on a percentage of the Member Firm's annual group turnover as reported in its most recently published set of consolidated financial statements.

In considering the appropriate measure of turnover to use as a reference point, Tribunals should consider the corporate structures adopted by Member Firms and should aim to identify all entities effectively subject to control by the same management team and with the same beneficial ownership rather than merely limiting their consideration to the legal entity being sanctioned.

For the impact of a fine to be felt by the Member Firm and therefore to act as a meaningful deterrent the starting point will not usually be lower than [xx percentage point] of the Member Firm's annual group turnover, before adjustments to take into account the seriousness and nature of the misconduct and any aggravating and mitigating factors. Thus, in the case of a Member Firm with an annual turnover of £100m, the starting point for a fine will usually be [£x]. In the case of a Member Firm with an annual turnover of £800m, the starting point for a fine will usually be [£y].

OR ALTERNATIVELY THE TEXT IN GREEN BELOW

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[8] A principal is a partner in an LLP

In those cases where the Tribunal considers that revenue is an appropriate indicator of the Member Firm's size and financial means, the Tribunal should determine a figure which is based on a percentage of the Member Firm's annual turnover as reported in its most recently published set of consolidated financial statements. To arrive at that figure the Tribunal will first decide on the percentage of turnover which will form the basis of the fine.

In making this determination the Tribunal will consider the seriousness of the misconduct and choose a percentage between [x%] and [y%]. This range is divided into five indicative levels which represent, on a sliding scale, the seriousness of the misconduct. The more serious the misconduct, the higher the level that will be appropriate. The top of the range is not a ceiling and the Tribunal may impose a fine outside of the range indicated if it considers that the circumstances warrant it. For fines imposed on Member Firms there are the following five levels:

(a) level 1 – a-b%;

(b) level 2 – b-c%;

(c) level 3 – c-d%;

(d) level 4 – d--e%; and

(e) level 5 – e-f%.

OR ALTERNATIVELY THE TEXT IN RED BELOW

In those cases where the Tribunal considers that revenue is an appropriate indicator of the Member Firm's size and financial means, the Tribunal should determine a figure which is based on a percentage of the Member Firm's annual turnover as reported in its most recently published set of consolidated financial statements. To arrive at that figure the Tribunal will first decide on the percentage of turnover which will represent the starting point for a fine. The starting point for a fine will not usually exceed a maximum of x% of turnover.

In making this determination the Tribunal will consider the seriousness of the misconduct. Unless the Tribunal considers that the misconduct is so serious that the indicative maximum starting point should not apply, it should choose a percentage between 0 and the indicative maximum of x% which it considers is commensurate with the seriousness of the misconduct found. The more serious the misconduct, the higher would be the starting point for a fine.

The Tribunal will then adjust the size of the Fine upwards or downwards depending on the nature and seriousness of the misconduct and taking account of any aggravating and mitigating factors to arrive at the appropriate level of fine for the case in question.

34. **Members**

In the case of Members, the Tribunal will need to determine a figure which will be based on a percentage of the annual gross income and benefits the Member derives from his current employment, including salary, bonus, pension contribution, share options and share schemes, distributions of profit. Employment includes both employment and self-

employment as an adviser, employee, director, partner or contractor or in any other capacity.

This approach reflects the fact that a Member is likely to receive remuneration commensurate with his responsibilities, and so it is reasonable to base the amount of the fine for failure to meet the standards of conduct reasonably to be expected of a Member on his remuneration. Furthermore the extent of the financial benefit earned by an individual is relevant in terms of the size of the fine necessary to act as a credible deterrent.

Where the Member concerned is no longer in employment, for example because he has retired, the Tribunal will need to use alternative reference points to assess the Member's ability to pay.

The Tribunal will need to seek information regarding the Member's income and/or assets so as to assess the Member's financial means and ability to pay and arrive at a starting point for that Member. The Tribunal should weigh the balance of a Member's income and assets to reach a view as to the Member's ability to pay a fine. Members will be given the opportunity to make submissions to the Tribunal on this point.

In those cases where the Tribunal considers that income is an appropriate indicator of the Member's responsibilities and financial means, the Tribunal should determine a figure which is based on a percentage of the Member income in the tax year immediately preceding the finding of misconduct.

For the impact of a fine to be felt by the Member and therefore to act as a meaningful deterrent the starting point will not usually be lower than [x%] of the Member's total annual remuneration, before adjustments to take into account the seriousness and nature of the misconduct and any aggravating and mitigating factors. So, for example, in the case of a Member with total remuneration of £100,000, the starting point for a fine will usually be [£x]. In the case of a Member with total remuneration of £500,000, the starting point for a fine will usually be [£y].

The Tribunal will assess the nature and seriousness of the misconduct committed taking account of any aggravating and mitigating factors and any personal mitigation and adjust upwards or downwards, to arrive at a figure for the fine that reflects the nature and seriousness of the misconduct.

OR ALTERNATIVELY THE TEXT IN GREEN BELOW

Having established the size of the Member's income the Tribunal will then proceed to decide on the percentage of that income which will form the basis of the fine. In making this determination the Tribunal will consider the seriousness of the misconduct and choose a percentage between [x%] and [y%]. This range is divided into five indicative levels which reflect, on a sliding scale, the seriousness of the misconduct. The more serious the misconduct, the higher the level of fine that will be appropriate. The top of the range is not a ceiling and the Tribunal may impose a fine outside of the range indicated if it considers that the circumstances warrant it. For fines imposed on Members there are the following five indicative levels:

(a) level 1 – a-b%

(b) level 2 – b-c%;

(c) level 3 – c-d%;

(d) level 4 – d-e%; and

(e) level 5 – e-f%.

OR ALTERNATIVELY THE TEXT IN RED BELOW

Having established the size of the Member's income the Tribunal will then proceed to decide on the percentage of that income which will form the basis of the fine. In making the Tribunal should determine a figure which is based on a percentage of the Member's annual income. To arrive at that figure the Tribunal will first decide on the percentage of income which will represent the starting point for a fine. The starting point for a fine will not usually exceed a maximum of x% of income.

In making this determination the Tribunal will consider the seriousness of the misconduct. Unless the Tribunal considers that the misconduct is so serious that the indicative maximum starting point should not apply, it should choose a percentage between 0 and the indicative maximum of x% which it considers is commensurate with the seriousness of the misconduct found. The more serious the misconduct, the higher the starting point for a fine.

35. Once the Tribunal has arrived at an appropriate Fine, in the case of a Member Firm it will consider the impact of the fine on the Member Firm's business, taking account of any other sanctions it is also minded to impose. In the case of a Member it will consider the impact of the fine on the Member taking account of any other sanctions it is also minded to impose. In determining the level of Fine for a Member, consideration should be given to the impact on the Member of any Fine imposed on a Member Firm as part of the same proceedings. The Tribunal should also consider whether the Member's employer or partnership is considering paying part of all of any Fine awarded against the Member.

36. The Tribunal will then consider whether any additional upward adjustment is required for deterrence. If the Tribunal considers the figure arrived at is insufficient to deter the Member or Member Firm who committed the misconduct, or others, from committing further or similar misconduct then the Tribunal may increase the penalty. Circumstances where the Tribunal may do this include where it considers the absolute value of the penalty too small in relation to the misconduct to meet the objective of credible deterrence, where a fine based on a Member's income may not act as a deterrent, for example if a Member has a small or zero income but owns assets of high value, or where the Member / Member Firm already has a disciplinary record for misconduct of a similar nature. Before ordering a fine the Tribunal should consider the Member or Member Firm's ability to pay and the effect of the fine on the Member or Member Firm and its business. Lastly the Tribunal will consider whether any discount is due for early admissions/settlement.

Waiver/repayment of client fees

Introduction

37. If the Member or Member Firm has gained financially from the misconduct, in particular as a result of receipt of client fees, the Tribunal should consider ordering a waiver or repayment of the relevant client fees. Such compensation to the client should normally be in addition to another sanction or sanctions. Circumstances in which a waiver or repayment of client fees may be appropriate include where the Member or Member Firm has acted dishonestly, recklessly, or incompetently and there is no evidence to suggest that the client was complicit in the misconduct or otherwise aware of the misconduct at the time it was committed. The actions of the client upon learning of the misconduct may also be relevant.

Ordering waiver/repayment of client fees

38. In order to determine whether waiver/repayment of client fees is appropriate the factors to be considered should include:

- if deterrence cannot be effectively achieved by issuing another sanction;
- if the misconduct has caused the client to suffer loss, or has put at risk the loss of money by the client, through no fault of its own;
- if the client has not obtained value for the services contracted and/or paid for from the Member or Member Firm.

Preclusion

Order that a Member or Member Firm be ineligible for a prescribed period for a practising certificate or registration or authorisation or a licence/Order that a Member or Member Firm's practising certificate or registration or authorisation or licence be withdrawn and a recommendation that it not be reinstated for a specified period of time

Introduction

39. These two sanctions are considered as a whole, although the first is likely to be relevant where the Member or Member Firm does not currently hold a practising certificate or any registration or authorisation or licence for the practice of any activity requiring such a certificate, registration, authorisation or licence. The second will be relevant where a Member or Member Firm does hold such a certificate, registration or authorisation or licence.

40. The Tribunal's ability, in effect, to preclude a Member or Member Firm from practising in general or from practising a particular activity for a prescribed period should be considered as an appropriate sanction where the Member or Member Firm's misconduct has been so damaging, that preclusion should be imposed in order to safeguard the public interest and maintain public and market confidence in the standards of conduct of Members or Member Firms and in the accountancy profession and the quality of corporate reporting in the United Kingdom. However, a period of preclusion will be appropriate for misconduct that falls short of being fundamentally incompatible with continued membership of a Participant and for which exclusion is likely to be the appropriate sanction.

41. In the case of a Member Firm, the Tribunal should take into account that preclusion will normally have an effect upon other persons in that Member Firm.

Ordering Preclusion

42. In order to determine whether preclusion is appropriate the factors to be considered should include:

- if the misconduct was dishonest.
- if the misconduct was deliberate.
- if the misconduct was reckless.
- the nature and importance of the standards breached;
- the duration and frequency of the misconduct;
- the amount of the financial benefit (including avoidance of loss) to the Member or Member Firm as a result of the misconduct;
- if the misconduct adversely affected a significant number of people in the United Kingdom (such as investors, customers, employees, pensioners or creditors);
- if the misconduct involved or caused or put at risk the loss of significant sums of money.

- if the misconduct could undermine confidence in the standards of conduct in general of Members and Member Firms, and/or in the financial reporting and/or corporate governance in the United Kingdom;
- in the case of a Member Firm, if the misconduct reveals serious or systemic weaknesses of the management systems or internal controls of the Member Firm;
- if it is likely that the same type of misconduct (whether on the part of the Member or Member Firm) will recur if preclusion is not imposed;
- if the Member or Member Firm concerned has failed to comply with any requirements or rulings of another regulatory or disciplinary authority relating to his/its conduct, for example those of a Participant (as defined in the Scheme);
- if the AADB (or any other disciplinary body) has taken any previous disciplinary action resulting in adverse findings against the Member or Member Firm;
- if any other action or sanction (including sanctions for criminal offences) has been taken or imposed, either in or outside the United Kingdom, by any other regulatory, disciplinary or enforcement authority in relation to the same or similar matters.

Exclusion

In the case of a Member only, exclusion as a Member of one or more Participants and that the exclusion be for a recommended period of time

Introduction

43. The ability to exclude a Member from membership with one or more Participants exists because certain misconduct is so damaging to the wider public and market confidence in the standards of conduct of Members and in the accountancy profession and the quality of corporate reporting in the United Kingdom that removal of the Member's professional status is the appropriate outcome in order to safeguard the public interest.

44. Prior to exclusion from membership being ordered, all other available sanctions should be considered to ensure that the exclusion is the most appropriate sanction (either on its own or in conjunction with another sanction or sanctions) and is proportionate taking into account all the circumstances of the case.

Ordering Exclusion

45. Where the misconduct is fundamentally incompatible with continued membership of a Participant, exclusion is likely to be the appropriate sanction. The factors set out above for determining whether an order of preclusion would be appropriate will normally also be relevant considerations for the Tribunal considering whether to order exclusion. In addition to those matters, in order to determine whether to order exclusion the Tribunal should consider whether any of the circumstances set out below are also present. If such circumstances are not present, the Tribunal can still order exclusion if the seriousness of the misconduct merits it. If such circumstances are present, a decision by the Tribunal not to exclude would require detailed justification:

- if the misconduct was dishonest, especially where persistent and/or covered up (dishonesty can amount to criminal dishonesty, even though no criminal charges may have been brought or personal or professional dishonesty that does not amount to a crime);
- if the Member has been convicted of a criminal offence in the United Kingdom;
- if the Member has been convicted outside the United Kingdom of an offence which would have constituted a criminal offence in the United Kingdom.

Intent

46. Factors tending to show whether the misconduct was deliberate include:

- the Member involve or the Member Firm's senior management or a responsible individual, intended or foresaw that the likely or actual consequences of their actions or inaction would result in a breach of professional standards of conduct;
- the Member involved or the Member Firm's senior management or a responsible individual, knew that their actions were not in accordance with relevant rules, standards or procedures or the Member Firm's management or internal control systems.
- the Member / Member Firm's senior management, or a responsible individual, sought to conceal their misconduct;
- the Member / Member Firm's senior management, or a responsible individual, took steps to conceal the misconduct or reduce the risk that the misconduct would be discovered;
- the Member / Member Firm's senior management, or a responsible individual, was influenced to commit the misconduct by the belief that it would be difficult to detect;
- the Member knowingly took decisions relating to the misconduct beyond his field of competence;
- the Member or Member Firm intended to benefit financially from the misconduct, either directly or indirectly; and
- the Member's actions were repeated.

Recklessnesses

47. Factors tending to show the misconduct was reckless include:

- the Member involved or the Member Firm's senior management, or a responsible individual, appreciated there was a risk that their actions or inaction could lead to a falling short of professional standards of conduct and failed adequately to mitigate that risk or check if they were acting in accordance with management procedures or internal control systems and/or observing relevant standards and/or codes of conduct.

Aggravating and Mitigating Factors.

48. In addition to the above considerations, certain factors are likely, if present, to aggravate the misconduct or afford mitigation. Examples of such factors include:

Aggravating Factors

- The Member or Member Firm failed to bring quickly, effectively and completely the misconduct to the attention of the Financial Reporting Council (including any of its operating bodies) or to the attention of other regulatory, disciplinary or enforcement authorities, where relevant.
- The Member or Member Firm failed to cooperate with, or hindered, the investigation of the misconduct by the AADB, or any other regulatory,

disciplinary or enforcement authority allowed to share information with the AADB (especially if the AADB's investigation was prejudiced or delayed thereby).

- In the case of a Member Firm, where that Member Firm's senior management were aware of the misconduct or of the potential for misconduct, they failed to take steps or to promptly take steps to stop the misconduct.
- No remedial steps have been taken since the misconduct was identified, either on the Member's or Member Firm's own initiative or as directed by the Financial Reporting Council or another regulatory authority.
- The misconduct involved an abuse of a position of trust;
- The misconduct was committed with a view to profit (or avoidance of loss);
- The Member or Member Firm colluded with its client;
- The Member or Member Firm was acting without the necessary authorisations, licences or registrations;
- The misconduct involved a significant public element, for example there is a risk of damage to public confidence in the profession, or significant numbers of people were affected;
- If the Member or Member Firm has a poor disciplinary record, for example, if an adverse finding has previously been handed down against the Member or Member by the AADB or any other disciplinary or regulatory body. The more serious and similar the previous misconduct or breach the more it will normally be regarded as an aggravating feature.
- Where the FRC or any of its operating bodies has previously brought to the Member or Member Firm's attention, including by way of a private advice or warning, issues similar or related to the conduct that constitutes the act of misconduct in respect of which the sanction is imposed.
- In the case of a Member, if that Member held a senior position and/or supervisory responsibilities.

Mitigating Factors

- The conduct of the Member or Member Firm in bringing quickly, effectively and completely the misconduct to the attention of the Financial Reporting Council (including any of its operating bodies) or the attention of other regulatory, disciplinary or enforcement authorities, where relevant. Self-reporting misconduct or breaches (which itself gives rise to an investigation) to the relevant regulatory, disciplinary or enforcement authorities will warrant a higher discount than co-operation with an investigation which has been prompted by someone or something else.
- The Member or Member Firm cooperated during the investigation of the misconduct by the AADB, or any other regulatory, disciplinary or enforcement authority allowed to share information with the AADB. Earlier cooperation will attract greater credit.
- In the case of a Member Firm, where that Member Firm's senior management were aware of the misconduct or of the potential for misconduct, they promptly took steps to stop the misconduct.
- Remedial steps taken since the misconduct was identified, including whether these were taken on the Member's or Member Firm's own initiative or that of the Financial Reporting Council or another regulatory authority (for example, identifying whether the Member or Member Firm's

client or others have suffered loss and compensating them where they have; correcting any misleading statement or impression; taking disciplinary action against staff involved if appropriate; and taking steps to prevent similar misconduct from arising in the future).

- If the Member or Member Firm has a good compliance history and disciplinary record.
- In the case of a Member, if that Member held a junior position.
- In the case of a Member, personal mitigating circumstances; and
- The Member or Member Firm has demonstrated insight and/or apologised for the misconduct.

Adjustment for deterrence

49. If the Tribunal considers that the sanction arrived at, after determining the aggravating and mitigating factors as set out above, is insufficient to deter the Member or Member Firm who committed the misconduct, or other Members or Member Firms, from committing further or similar misconduct, the Tribunal may take this into account in determining sanction. Circumstances where the Tribunal may do this include:

- Where the Tribunal considers that previous AADB action in respect of similar misconduct has failed to improve standards of conduct of Members or Member Firms.
- Where the Tribunal considers there is a risk of similar misconduct by the Member or Member Firm or by other Members or Member Firms in the future in the absence of a sufficient deterrent.

Discount for Admissions

50. Members or Member Firms subject to the AADB's disciplinary proceedings may be prepared to make admissions in respect of the facts of the case. The AADB recognises the benefits of such admissions and therefore the Fine and/or other sanction that might otherwise be imposed in respect of any misconduct proved may be adjusted to reflect the extent, significance and timing of any admissions.

51. The AADB and the Member or Member Firm on whom a sanction is to be imposed may seek to agree an appropriate sanction including the amount of any fine and other terms, to be recommended to the Tribunal. In recognition of the benefits of such agreements, the Tribunal may agree to reduce the amount of the fine which might otherwise have been imposed to reflect the stage at which the AADB and the Member or Member Firm concerned reached an agreement.

52. In appropriate cases, the amount of the Fine determined by the Tribunal in accordance with the factors set out in this guidance will normally be reduced in line with the percentages set out below according to the stage in the disciplinary process at which agreement was reached between the Member or Member Firm and the AADB. The resulting figure will represent the amount actually payable by the Member or Member Firm in respect of the misconduct.

53. The discount scheme set out below in relation to the amount of a Fine, also applies to the length of the period that a Member or Member Firm is ineligible for a prescribed period for a practising certificate or registration or authorisation or a licence or an order in accordance with the Accountancy Scheme that a Member's or Member Firm's practising certificate or registration or authorisation or licence be withdrawn for a specified period of time.

54. The Board has identified four stages of a case for these purposes:

- Stage (1) is the period from receipt by the Member or Member Firm of the Board's notice to commence an investigation in accordance with the Accountancy Scheme until (i) the expiry of the period given by the Executive Counsel to the Member/Member Firm for making written representations in accordance with the Accountancy Scheme upon receipt by the Member or Member Firm of the draft Complaint; or (ii) the date on which the written representations are received by the AADB having allowed a reasonable opportunity thereafter for the AADB to consider those representations.

- Stage (2) is the period from the next working day following the end of Stage (1) until receipt by the Member and/or the Member Firm of the Board's service of the Formal Complaint.

- Stage (3) is the period from the next working day following the end of Stage (2) until the last working day prior to the date of the Tribunal hearing to hear the Formal Complaint.

- Stage (4) is the hearing of the Formal Complaint before the Tribunal and any subsequent appeals.

55. The reductions in the amount of the Fine or period of exclusion, withdrawal or ineligibility in relation to the stage at which agreement is reached may be as follows:

- Stage (1) – 30 - 35% reduction.
- Stage (2) – 20% reduction.
- Stage (3) - 10% reduction.
- Stage (4) – 0% reduction.

56. The discount scheme set out above will only apply automatically if the Member or Member Firm admits all the heads of complaint of the Formal Complaint. If the Member or Member Firm is prepared to admit some but not all the heads of the Formal Complaint, the discount applicable will depend on the extent and significance of the admissions as well as the stage at which those admissions were made. Executive Counsel and the Member or Member Firm will attempt to reach agreement as to an appropriate discount to present to the Tribunal. If this is not possible the Tribunal shall determine the discount applicable after hearing the representations of the parties.

Reminder of Approach to Determining Sanction

57. The normal approach to determining sanction should therefore be (in outline):

    i. Assess the nature and seriousness of the misconduct (questions at paragraphs (24) to (47)).

    ii. Consider relevant aggravating or mitigating circumstances (paragraph (48)).

    iii. Consider any further adjustment for deterrence (paragraph (49)).

    iv. Consider whether a discount for admissions is appropriate (paragraphs (50) to (56)).

    v. Decide which sanction(s) to order and the level/duration of the sanction(s) where appropriate; and

    vi. Give an explanation at each of the five listed stages, sufficient to enable the parties and the public to understand the Tribunal's conclusions.

This guidance applies with immediate effect to all Tribunal determinations.

Issued by the Board

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