

21 December 2012

Auditor Regulatory Sanctions Procedure

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1. Background

1.1. Introduction

The Financial Reporting Council (“FRC”) is responsible for the independent monitoring of the performance by members of Recognised Supervisory Bodies (“RSBs”)¹ of statutory audit functions in respect of major audits i.e. listed companies and other major bodies. This function is performed by the FRC’s Audit Quality Review (“AQR”) and through agreed arrangements with the RSBs pursuant to the Companies Act 2006 (“the Act”) which provides that (RSBs) must participate in such arrangements in order to maintain their recognition under the Act.

Amendments to the Act which took effect on 2 July 2012 included an additional requirement that the RSBs should also participate in arrangements for enabling the body performing the independent monitoring function to determine sanctions against members of the RSB where they have not complied with the RSB’s rules relevant to statutory audit. The sanctions determined must be treated, and therefore imposed, by the RSB as if it were a sanction determined by the RSB itself. The relevant paragraphs (13 and 23) of Schedule 10 of the Act are included for information in Annex A.

In order to implement this change the FRC has developed a draft Auditor Regulatory Sanctions Procedure (“the Procedure”), a copy of which is included in Annex B and key aspects of which are outlined in Section Two. Section Three provides a preliminary impact assessment and Section Four gives details of how to respond to this consultation.

Feedback on the Procedure is now sought from interested parties.

1.2. Rationale for the Change

Prior to this change, where AQR identified poor quality audit work as part of its inspections, it was only able to recommend action in accordance with the procedures set out in the regulations or bye laws of the relevant RSB. These recommendations would be considered by a committee of the relevant RSB which is chaired by an audit partner, has no lay majority and includes partners who have significant responsibility at their respective firms for dealing with AQR inspections. While no such requests were rejected, such arrangements were not seen as independent and therefore were considered to be potentially damaging to the integrity of an independent audit quality review regime.

1.3. Scope of the Procedure

The power to determine sanctions as set out in the Procedure relates only to poor quality audit work identified by AQR as part of its independent monitoring function which is considered to warrant regulatory action. Such action may only be taken against Registered Auditors (being member firms including sole practitioners registered as auditors by the relevant RSB).

¹ Recognised Supervisory Bodies are bodies recognised under the Companies Act 2006 or the RI 1990 Act for the purposes of the registration and supervision of Registered Auditors.

Where the AQR identify potential instances of misconduct (as defined by the FRC's Disciplinary Schemes or the schemes operated by the RSBs), those matters are outside the scope of this Procedure and an appropriate referral will be made to the relevant disciplinary procedure. The Procedure should not, therefore, be confused with any disciplinary procedures or Schemes.

The RSBs remain responsible for imposing sanctions on audit firms in respect of poor quality audit work identified from their inspection activities and are not precluded from imposing other sanctions in addition to those determined under the FRC's Procedure.

1.4. Consistency with RSB Procedures

The Procedure has been drafted on the basis that it should be consistent with the RSBs' procedures and in particular, those set out in the Audit Regulations (adopted by the Institute of Chartered Accountants in England and Wales, the Institute of Chartered Accountants of Scotland and Chartered Accountants Ireland) and that it should be compliant with Article 6 (right to fair trial) of the European Convention on Human Rights.

1.5. Timetable

As set out in Section Four, the consultation period in respect of the Procedure closes on 1 March 2013. It is envisaged that the procedure will take effect from 1 May 2013 and that in practice it will apply to all AQR inspection activity commencing within its 2013/14 cycle.

2. Outline of the Proposed Procedure

2.1. Introduction

The proposed Procedure provides for a two-stage process. The first stage involves the Monitoring Committee's ("MC") consideration of AQR inspection reports to ascertain whether there are matters where regulatory action (imposition of sanctions) would be appropriate. Where the MC concludes that this would be appropriate, an offer of a proposed sanction will be made to a Registered Auditor. If the offer of a proposed sanction is not accepted, then the MC will refer the matter to an Independent Sanctions Tribunal ("IST"). The decision of the IST will be final and is not subject to further appeal.

Key aspects of the Procedure are discussed below together with the consultation questions.

2.2. Scope and Application

The Procedure only applies to poor quality audit work identified by AQR. This is defined as when a Registered Auditor fails to comply with the Regulatory Framework for Auditing and

- Their continued registration or continued registration without restrictions or conditions could adversely affect a Major Audit Client or any other person; and/or
- It is necessary to impose a sanction to ensure that their Statutory Audit Functions are undertaken, supervised and managed effectively.

The types of sanctions that can be imposed on Registered Auditors range from the imposition of restrictions and/or conditions, a regulatory penalty (fine) and the suspension or withdrawal of audit registration.

Any sanction determined under the Procedure by either the MC or IST shall be effected by the RSBs as if it were their own.

The Procedure provides the MC and the IST with the option of accepting written undertakings from Registered Auditors as an alternative to imposing sanctions where they consider this is a more appropriate course of action.

2.3. The Monitoring Committee

The MC is a committee appointed by the FRC's Conduct Committee. Its meetings, which will be held in private, may also be attended by other persons in advisory roles which in practice will be AQR staff. Registered Auditors do not attend these meetings.

The MC will consider whether the AQR's reports indicate that there has been a material failure to comply with the Regulatory Framework for Auditing, for which the imposition of a sanction is appropriate. Representations from the Registered Auditor will be requested prior to this consideration and the MC may request any additional information from either AQR or the Registered Auditor before reaching its decision.

Where the MC concludes that the imposition of a sanction is appropriate then it will invite the Registered Auditor to agree to a sanction. The Procedure contains a number of requirements in respect of the notice of the proposed sanction to be provided to the Registered Auditor. These are intended to ensure that the basis of the MC's decision is understood and to provide an appropriate opportunity for the Registered Auditor to provide additional information and to make representations. The extent to which any accepted sanction will be communicated to others/published must also be specified in the notice. The Registered Auditor is requested to provide a response to the MC within 21 days.

The MC may refer a matter to the IST where a Registered Auditor has failed to respond or does not accept the proposed sanction or the MC does not accept the undertakings provided by the Registered Auditor. The MC, having considered any additional information provided by the Registered Auditor, may choose to vary its original sanction, accept undertakings or conclude that no further action is warranted.

Where the MC determines, from either an AQR inspection report or any other additional information, that there is a potential instance of misconduct (as defined in the FRC's or the relevant RSB's disciplinary schemes) by the Registered Auditor then it shall send a copy of that report or the additional information to the Conduct Committee. The FRC's Conduct Committee will then determine whether the matter should be referred for investigation in accordance with the appropriate scheme.

2.4. The Independent Sanctions Tribunal

The IST may comprise either three or five persons. The Chairman is required to be a lawyer and whilst the IST must include an accountant, there must be a majority of lay members (including the Chairman). Serving members of the governing body or employees or officers of the RSBs, together with members, directors or officers of the FRC are precluded from the IST.

A minimum of 21 days' notice of a hearing must be provided. The hearings will be in private but the Registered Auditor is permitted to attend and to be represented and witnesses can be called. The Chairman is permitted to provide pre-hearing directions.

The IST may make a finding in respect of some or all of the alleged failures to comply with the Regulatory Framework for Auditing or alternatively, may dismiss the matter. Decisions of the IST are determined by majority voting with no abstentions permitted.

Where the IST makes a finding that the Registered Auditor has failed to comply with the Regulatory Framework for Auditing, then it may order a sanction; accept written undertakings, order costs; or make no order.

The IST is required to report to the MC its decisions together with its reasons for those decisions. The MC must provide this report to the Registered Auditor and the RSB of which the Registered Auditor is a member. The decision and any order of the IST will take effect 14 days after notification in writing to the Registered Auditor. The IST will publish details of the sanction as soon as practicable, unless it considers it is not in the public interest to do so.

Any costs awarded are paid to the FRC while regulatory penalties are paid to the RSBs.

2.5. Consultation Questions

Feedback on the proposed Procedure is requested from interested parties in accordance with the following four questions.

- **Question 1: Do you consider the proposed Procedure to be understandable?**
- **Question 2: Do you agree that the Procedure achieves a balance between protecting the public and fairness to those subject to the Procedure?**
- **Question 3: Do you consider there is anything missing from the proposed Procedure that would improve its effectiveness?**
- **Question 4: Do you have any other comments about the proposed Procedure?**

3. Preliminary Impact Assessment

An Impact Assessment was prepared as part of the FRC reform process which included the proposal that the FRC be provided with powers in respect of regulatory sanctions.

The Impact Assessment concluded that there was not expected to be any additional cost or significant transitional costs associated with these powers.

The main risk was stated to be that the enhanced independence that these powers provided would not secure improvements in audit quality.

There are no changes to the Impact Assessment as a consequence of the Procedure.

A full copy of the original Impact Assessment can be found on the FRC's website:

<http://frc.org.uk/getattachment/ab71a300-1649-4ace-8472-ffeaae1c03db/Proposals-to-Reform-the-FRC-Consultation-Stage-Impact-Assessment.aspx>

4. Consultation Questions and How to Respond

4.1. Consultation Questions

- **Question 1: Do you consider the proposed Procedure to be understandable?**
- **Question 2: Do you agree that the Procedure achieves a balance between protecting the public and fairness to those subject to the Procedure?**
- **Question 3: Do you consider there is anything missing from the proposed Procedure that would improve its effectiveness?**
- **Question 4: Do you have any other comments about the proposed Procedure?**

4.2. How to Respond

Please respond by Friday, 1 March 2013 at the latest. Earlier responses would be appreciated.

Responses should be sent (preferably by email) to:

Sophie Broom, Communications Executive
FRC
5th Floor Aldwych House
71-91 Aldwych
London WC2B 4HN

Email: consultations@frc.org.uk

Comments will be made publicly available on the FRC's website (www.frc.org.uk) unless respondents specifically request otherwise. If you send an email response which includes an automatically generated notice stating that the content is to be treated as confidential you should make clear in the body of your text whether or not you wish your comments to be treated as confidential.

Annex A – Extracts - Schedule 10, Companies Act 2006

Monitoring of audits

13. (1) The body must—

- a) in the case of members of the body who do not perform any statutory audit functions in respect of major audits, have adequate arrangements for enabling the performance by its members of statutory audit functions, other than statutory audit functions in respect of major audits, to be monitored by means of inspections;
- b) in the case of members of the body who perform any statutory audit functions in respect of major audits—
 - (i) participate in arrangements within paragraph 23(1); and
 - (ii) have rules and practices designed to ensure that a sanction determined under paragraph 23(1)(b) is to be treated as if it were a sanction which the body had determined under arrangements for enforcement within paragraph 12(1A);

ba) in the case of members of the body who perform any third country audit functions, participate in arrangements within paragraph 23A(1); and

- c) have rules designed to ensure that members of the body take such steps as may reasonably be required of them to enable their performance of any statutory audit functions or third country audit functions to be monitored by means of inspections.

(2) Any monitoring of members of the body under the arrangements within paragraph 23(1) or 23A(1) is to be regarded (so far as their performance of statutory audit functions in respect of major audits, or of third country audit functions, is concerned) as monitoring of compliance with the body's rules for the purposes of paragraph 12(1) and (1A).

(3) The arrangements referred to in sub-paragraph (1)(a) must include an inspection which is conducted in relation to each person eligible for appointment as a statutory auditor at least once every six years.

(4) The inspection must be conducted by persons who—

- a) have an appropriate professional education;
- b) have experience of—
 - (i) statutory audit work, or
 - (ii) equivalent work on the audit of accounts under the law of an EEA State, or part of an EEA State, other than the United Kingdom;
- c) have received adequate training in the conduct of inspections;
- d) do not have any interests likely to conflict with the proper conduct of the inspection.

(5) The inspection must review one or more statutory audits in which the person to whom the inspection relates has participated.

(6) The inspection must include an assessment of—

- a) the person's compliance with the body's rules established for the purposes of paragraphs 9 (professional integrity and independence), 10 (technical standards), 10A (technical standards for group audits) and 10C (public interest entity independence requirements);
- b) the resources allocated by the person to statutory audit work;
- c) in the case of an inspection in relation to a firm, its internal quality control system;
- d) the remuneration received by the person in respect of statutory audit work.

(7) An inspection conducted in relation to a firm may be treated as an inspection of all individuals responsible for statutory audit work on behalf of that firm, if the firm has a common quality assurance policy with which each such individual is required to comply.

(8) The main conclusions of the inspection must be recorded in a report which is made available to—

- a) the person to whom the inspection relates, and
- b) the body.

(9) The body must, at least once in every calendar year, deliver to the Secretary of State a summary of the results of inspections conducted under this paragraph.

(10) In this paragraph—

“major audit” means a statutory audit conducted in respect of—

- a) a public interest entity, or
 - b) any other person in whose financial condition there is a major public interest;
- “statutory audit function” means any function performed as a statutory auditor;
- “third country audit function” means any function related to the audit of a UK-traded non-EEA company.

Arrangements for independent monitoring of audits of listed companies and other major bodies

23 (1) The arrangements referred to in paragraph 13(1)(b)(i) are appropriate arrangements—

- a) for enabling the performance by members of the supervisory body of statutory audit functions in respect of major audits to be monitored by means of inspections carried out under the arrangements;

- b) for enabling the body performing the inspections to determine sanctions (including those mentioned in paragraph 12(3)(a)) against members of the supervisory body where, pursuant to an inspection, it concludes that the members have not complied with the supervisory body's rules in so far as they are relevant to the performance of statutory audit functions; and
- c) for ensuring that the carrying out of such inspections and the determination of such sanctions are done independently of the supervisory body.

(1A) Subject to sub-paragraph (1C), the arrangements referred to in sub-paragraph (1) must include provision for an inspection conducted in relation to each person eligible for appointment as a statutory auditor at least once every three years.

(1B) Sub-paragraphs (4) to (9) of paragraph 13 apply in relation to inspections under sub-paragraph (1A) as they apply in relation to inspections under that paragraph.

(1C) The arrangements referred to in sub-paragraph (1) may provide that the body performing the inspections may decide that all or part of the inspection referred to in sub-paragraph (1A) is not required in the case of a member of a supervisory body who performs statutory audit functions in respect of ten or fewer major audits per year.

(1D) If—

- a) the arrangements make the provision referred to in sub-paragraph (1C), and
- b) the body performing the inspections decides that all of an inspection is not required in relation to a member,

the supervisory body must ensure that the arrangements referred to in paragraph 13(1)(a) apply in relation to that member, subject to the modification specified in sub-paragraph (1F).

(1E) If—

- a) the arrangements make the provision referred to in sub-paragraph (1C), and
- b) the body performing the inspections decides that part of an inspection is not required in relation to a member,

the supervisory body must ensure that the arrangements referred to in paragraph 13(1)(a) apply in relation to that part of the inspection of that member, subject to the modification specified in sub-paragraph (1F).

(1F) For the purposes of sub-paragraphs (1D) and (1E), paragraph 13(3) applies with the substitution of “three years” for “six years”.

(2) In this paragraph “major audit” and “statutory audit function” have the same meaning as in paragraph 13.

Annex B - Proposed Procedure

Arrangement of Procedure

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Part 1 Preliminaries

1. Citation and Commencement

- 1.1 This Procedure shall be known as the Auditor Sanctions Procedure of the FRC adopted by the Conduct Committee on [] 2013 and shall have effect from the date adopted.

2. Interpretation

- 2.1 In this Procedure:-

"**the 2006 Act**" means The Companies Act 2006 of the United Kingdom;

"**the RI 1990 Act**" means The Companies Act 1990 of the Republic of Ireland;

"**AQR**" means the Audit Quality Review team of the FRC;

"**Articles of Association**" means the Articles of Association of the FRC;

"**Body Corporate**" means an entity that has a legal personality including a limited liability partnership and a similar body constituted under the laws of a country or territory outside the United Kingdom or Republic of Ireland;

"**Conduct Committee**" means the Conduct Committee of the FRC established under the FRC's Articles of Association;

"**Conduct Division**" means the FRC Conduct Division executive staff;

"**Convener**" means the Convener appointed by the Nominations Committee who shall be responsible for the appointment of Independent Sanctions Tribunals;

"**Effective Date**" means []

"**Firm**" means:

- (a) an individual who engages in the profession of accountancy as a sole practitioner;
- (b) a partnership which engages in the profession of accountancy;
- (c) a Body Corporate which engages in the profession of accountancy;

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

"**Independent Sanctions Tribunal**" means an Independent Sanctions Tribunal of the FRC appointed by the Convener in accordance with paragraph 14.2 of this Procedure;

"**Major Audit**" means a statutory audit as defined in paragraph 13 of Schedule 10 of the 2006 Act;

"**Major Audit Client**" means a person in respect of whom a Major Audit is conducted;

"Monitoring Committee" means the Monitoring Committee of the FRC appointed by the Conduct Committee in accordance with the FRC's Articles of Association and the Terms of Reference approved by the Board of the FRC;

"Nominations Committee" means the Nominations Committee of the FRC established under the FRC's Articles of Association;

"Panel" means the Panel appointed by the Convener in accordance with paragraph 14.1 of this Procedure;

"Public Interest Entity" means a Public Interest Entity as defined in paragraph 20A of Schedule 10 of the 2006 Act;

"Register" means a register of auditors compiled under section 1239 of the 2006 Act or section 198 of the RI 1990 Act;

"Registered Auditor" means a Firm entered on a Register as eligible for appointment as a Statutory Auditor under section 1239 of the 2006 Act or section 198 of the RI 1990 Act;

"Regulations" means the Audit Regulations of the RSBs;

"Regulatory Framework for Auditing" means:

- (a) The Auditing Standards – (International Standards on Auditing (UK and Ireland));
- (b) The Ethical Standards for auditors issued and / or adopted by the FRC;
- (c) The Quality Control Standards for auditors issued and / or adopted by the FRC;
- (d) The Regulations;
- (e) any other relevant legislation, standards, regulations, rules, bye-laws or other documents from time to time in force;

"Regulatory Penalty" means a fine of an amount determined by the Monitoring Committee or the Independent Sanctions Tribunal;

"RSB" means a Recognised Supervisory Body recognised under the 2006 Act or the RI 1990 Act for the purposes of the registration and supervision of Registered Auditors;

"Sanction" means one of the types of sanction set out in paragraph 4.2 of this Procedure;

"Scheme" means The Accountancy Scheme of the FRC;

"Statutory Auditor" means a Statutory Auditor as defined within Section 1210(1) of the 2006 Act;

"Statutory Audit Function" means any function performed as a Statutory Auditor as defined within paragraph 13 of Schedule 10 of the 2006 Act;

"Terms of Reference" means the Terms of Reference of the Monitoring Committee as determined by the FRC Board;

"Undertakings" means the written undertakings as referred to in paragraph 4.5 of this Procedure.

2.2 Words and expressions have the meanings given in the Act and the Interpretation Act 1978 unless defined in this Procedure. The definitions in this Procedure take precedence.

- 2.3 In this Procedure words importing the singular number include the plural number and vice versa. Words importing the masculine gender include the feminine and neuter. Headings do not affect the interpretation of this Procedure. This Procedure will be governed by, and interpreted according to, the law of England and Wales.
- 2.4 Any reference to a statute includes: that statute as amended from time to time; any statute re-enacting or replacing it; and any statutory instruments, regulations or rules made under that statute or any statute re-enacting or replacing it.
- 2.5 Any reference to regulations, bye-laws, rules, standards or other documents includes reference to any related guidance, and will apply to any re-enactment, re-issue or amendment of those regulations, bye-laws, rules, standards or other documents.

3. Conduct Committee

- 3.1 The Conduct Committee shall have power to:-
- (i) provide the Monitoring Committee, the Convener and any Independent Sanctions Tribunal with guidance concerning the exercise of their duties under this Procedure, who shall have regard to any such guidance issued;
 - (ii) authorise any Independent Sanctions Tribunal to employ any person whose services may reasonably be required to assist the Independent Sanctions Tribunal; and
 - (iii) authorise the remuneration of the members of any Independent Sanctions Tribunal, the Convener and any other persons.

Part 2 Regulatory Action

4. Liability to Sanctions or Undertakings

- 4.1 A Registered Auditor shall be liable to a Sanction under this Procedure where they have failed to comply with the Regulatory Framework for auditing and:-
- (a) Their continued registration or their continued registration without restrictions or conditions could adversely affect a Major Audit Client or any other person; and/or
 - (b) it is necessary to impose a Sanction to ensure that their Statutory Audit Functions are undertaken, supervised and managed effectively.
- 4.2 The Sanctions to which a Registered Auditor shall be liable to under paragraph 4.1 are:
- (a) Restrictions and/or Conditions;
 - (b) Regulatory Penalty;
 - (c) Suspension of Registration;
 - (d) Withdrawal of Registration.
- 4.3 During a period of suspension a Registered Auditor:

- (a) Need not resign from any appointment as auditor under the Act;
- (b) May accept re-appointment as auditor;
- (c) Must not accept any new appointments; and
- (d) May only sign audit reports with the permission of the Monitoring Committee.

4.4 Under this Procedure any Sanction on a Registered Auditor shall be effected by way of a direction from the Monitoring Committee or Independent Sanctions Tribunal (as appropriate) to the relevant RSB to impose the Sanction, and the relevant RSB shall impose that Sanction on the Registered Auditor as if it were a Sanction which the relevant RSB had determined under the Regulations.

4.5 As an alternative to the Sanctions listed in paragraph 4.2, the Monitoring Committee or the Independent Sanctions Tribunal (as appropriate) may accept written Undertakings from a Registered Auditor.

Part 3

Action by the Monitoring Committee

5. Consideration by the Monitoring Committee

5.1 Where

- (a) the AQR's findings on inspection are such that its proposed report to the Monitoring Committee indicates that the Registered Auditor may have failed to comply with the Regulatory Framework for Auditing and/or includes any recommendation for sanction, or
- (b) the Monitoring Committee receives a report from the AQR which, in the opinion of the Monitoring Committee, indicates that a Registered Auditor has failed to comply with the Regulatory Framework for Auditing and the criteria in paragraph 4.1 may be satisfied,

the AQR shall write to the Registered Auditor and invite the Registered Auditor to make any representations in writing within 14 days.

5.2 The Monitoring Committee shall receive and consider the report from the AQR together with any representations from the Registered Auditor and shall decide whether there has been a failure to comply with the Regulatory Framework for Auditing and, if so, whether the criteria in paragraph 4.1 are met.

5.3 Where the Monitoring Committee decides that the criteria set out in paragraph 4.1 are not met it shall take no further action against the Registered Auditor and shall:

- (a) notify the Registered Auditor; and
- (b) notify the relevant RSB.

5.4 Where the Monitoring Committee decides that the criteria set out in paragraph 4.1 are met, invite the Registered Auditor to agree a Sanction.

5.5 Where the Monitoring Committee receives a report from the AQR and / or further information which indicates that the conduct of a Registered Auditor should be considered in accordance with the provisions of the Scheme or the disciplinary procedures of the relevant RSB, the Monitoring Committee shall send a copy of the AQR report and / or further information to the Conduct Committee.

5.6 The Monitoring Committee may, to the extent necessary to make a decision under this Procedure, request any additional information, held in whatever form (including electronic) from the AQR and/or Registered Auditor.

6. Notice of proposed Sanction

6.1 Where the Monitoring Committee decides to invite the Registered Auditor to agree a Sanction it shall send a written notice to the Registered Auditor in accordance with paragraph 6.2, and shall enclose a copy of this Procedure with the notice.

6.2 The notice of proposed Sanction must:

- (a) state the reasons why the Monitoring Committee considers the Registered Auditor has failed to comply with the Regulatory Framework for auditing;

- (b) set out the proposed Sanction and the reasons why the Monitoring Committee considers such a Sanction is appropriate;
- (c) invite the Registered Auditor to make representations and/or accept the proposed Sanction in writing within 21 days;
- (d) inform the Registered Auditor that, subject to the consideration of any representations made, if the proposed Sanction is not accepted the matter shall be referred to the Independent Sanctions Tribunal for adjudication; and
- (e) explain the extent to which any accepted Sanction will be communicated to others/published.

6.3 The Monitoring Committee may in its absolute discretion extend the period in which the Registered Auditor can respond to the notice.

6.4 The Monitoring Committee shall send a copy of the written notice to the Relevant RSB.

7. Acceptance of Sanction or Undertakings

7.1 Having regard to any further information or representations which it has received, the Monitoring Committee may decide:-

- (a) no further action should be taken against the Registered Auditor; or
- (b) an amended or lesser Sanction is appropriate; or
- (c) it is appropriate to accept written Undertakings from the Registered Auditor.

7.2 Where no further action is taken pursuant to paragraph 7.1(a) the Monitoring Committee shall notify in writing the Registered Auditor and the relevant RSB.

7.3 Where:-

- (a) within the period stated in the notice, or as extended under Paragraph 6.3, the Registered Auditor accepts in writing the proposed Sanction; or
- (b) the Monitoring Committee decides an amended or lesser Sanction under paragraph 7.1(b),

the Monitoring Committee shall make a direction in writing to the relevant RSB requiring it to take the necessary steps to impose the Sanction, as if it were a Sanction which the relevant RSB had determined under the Regulations. In the case of a Regulatory Penalty the monies shall be paid to and retained by the relevant RSB, and in the event of non-payment by the Registered Auditor, shall be enforced by the relevant RSB.

7.4 The Monitoring Committee shall publish details of the Sanction as soon as practicable and in such manner as it thinks fit unless this would not, in the opinion of the Monitoring Committee, be in the public interest.

7.5 Where the Monitoring Committee accepts written Undertakings from the Registered Auditor, the Conduct Division of the FRC will monitor compliance with those Undertakings and report to the Monitoring Committee and the relevant RSB as appropriate.

8. Variation or Revocation of Sanction

8.1 The Monitoring Committee may at any time, with the agreement of the Registered Auditor, make a direction to the relevant RSB to vary or revoke:-

- (a) a restriction and/or condition; or
- (b) a period of Suspension

determined in accordance with paragraph 7.3.

Part 4 Action by the Independent Sanctions Tribunal

9. Referral to the Independent Sanctions Tribunal

9.1 Where:

- (a) the Registered Auditor fails to respond to the Monitoring Committee within the period stated in the notice, or as extended under paragraph 6.3; or
- (b) the Registered Auditor does not agree a Sanction with the Monitoring Committee; or
- (c) the Monitoring Committee does not accept written Undertakings offered by the Registered Auditor;

the Monitoring Committee shall send notice to the Registered Auditor that the matter is being referred to the Independent Sanctions Tribunal to consider in accordance with paragraph 12.

9.2 The Monitoring Committee shall send a copy of the notice of referral to the Convener and to the relevant RSB.

10. Appointment of the Independent Sanctions Tribunal

10.1 Upon receipt of a copy of the notice of referral, the Convener shall, as soon as practicable, appoint an Independent Sanctions Tribunal in accordance with paragraph 17 to consider the matter.

11. Notice of Hearing

11.1 As soon as reasonably practicable after a matter has been referred to an Independent Sanctions Tribunal the Secretary to the Tribunal shall serve a notice of hearing on the Registered Auditor.

11.2 The notice of hearing shall:

- (a) set out the alleged failure(s) to comply with the Regulatory Framework for Auditing;
- (b) specify the date, time and venue of the hearing;
- (c) inform the Registered Auditor of his right to attend the hearing and to be represented at the hearing;
- (d) inform the Registered Auditor of the power of the Independent Sanctions Tribunal to proceed in his absence;

- (e) inform the Registered Auditor of his right to adduce evidence and to call and cross examine witnesses; and
- (f) inform the Registered Auditor of the Sanctions which the Independent Sanctions Tribunal can direct to be imposed on the Registered Auditor.

11.3 The notice of hearing shall give not less than 21 days' notice of the date and venue of the hearing.

12. Consideration by the Independent Sanctions Tribunal

12.1 Subject to this Procedure, the procedure adopted by an Independent Sanctions Tribunal to deal with the matter shall have regard to any guidance issued by the Conduct Committee.

12.2 A Registered Auditor may, either voluntarily or at the invitation of the Independent Sanctions Tribunal at any stage during a hearing before it, make an admission in respect of any alleged particulars of fact and/or any alleged failures to comply with the Regulatory Framework for Auditing and such admissions shall constitute proof before an Independent Sanctions Tribunal against the Registered Auditor making the admission.

12.3 In coming to a decision the Independent Sanctions Tribunal may take into account any evidence it considers relevant, whether or not such evidence would be admissible in a court.

12.4 After considering a matter, the Independent Sanctions Tribunal shall, in relation to the Registered Auditor, either:-

- (a) Make a finding in respect of some or all of the alleged failures to comply with the Regulatory Framework for Auditing forming the subject matter of the case, or
- (b) Dismiss the case.

12.5 Where the Independent Sanctions Tribunal makes a finding in relation to a Registered Auditor that he has failed to comply with the Regulatory Framework for Auditing then:-

- (a) It may order such Sanction against the Registered Auditor as is contained within paragraph 4.2 as it considers appropriate; or
- (b) It may accept any written Undertakings offered by the Registered Auditor;
- (c) In addition to any Sanction ordered or Undertaking accepted, it may include an order that the Registered Auditor be required to pay the whole or part of the costs of the hearing. The amount to be paid by the Registered Auditor and the time for payment shall be determined by the Independent Sanctions Tribunal.
- (d) It may make no order against the Registered Auditor or no order except for the payment of costs, if it considers that to be appropriate in all the circumstances.

12.6 The Independent Sanctions Tribunal shall make a report, which shall be signed by its Chairman, setting out its decision and reasons and any related orders made and send it to the Monitoring Committee.

- 12.7 The Monitoring Committee shall send a copy of the Independent Sanctions Tribunal's report to:
- (a) the Registered Auditor concerned; and
 - (b) the relevant RSB.
- 12.8 The decision of the Independent Sanctions Tribunal in relation to a Registered Auditor and any order against a Registered Auditor shall take effect 14 days after the date on which the finding / order is notified in writing to the Registered Auditor.
- 12.9 The Monitoring Committee shall:
- (a) make a direction in writing to the relevant RSB requiring it to take the necessary steps to impose any Sanction determined by the Independent Sanctions Tribunal, as if it were a Sanction which the relevant RSB had determined under the Regulations.
 - (b) inform the Conduct Committee of the outcome of the Independent Sanctions Tribunal; and
 - (c) where a Sanction has been determined by the Independent Sanctions Tribunal, publish the determination of such Sanction as soon as practicable and in such manner as it thinks fit unless this would not, in the opinion of the Monitoring Committee, be in the public interest.
- 12.10 Where the Independent Sanctions Tribunal accepts a written Undertaking from the Registered Auditor the Conduct Division of the FRC will monitor compliance with any such Undertaking and report to the Monitoring Committee and the relevant RSB as appropriate.
- 12.11 In the case of an order for payment of costs, the monies shall be paid to the FRC within the time for payment stipulated by the Independent Sanctions Tribunal.

Part 5

Monitoring Committee Meetings

13. Monitoring Committee

- 13.1 Meetings of the Monitoring Committee will be in private.
- 13.2 Only the following may attend a meeting of the Monitoring Committee:
- (a) members of the Monitoring Committee
 - (b) the secretary to the Monitoring Committee
 - (c) any person whose role is to advise or inform the Monitoring Committee on its duties, powers or procedures and the law; and
 - (d) any other person permitted by the Monitoring Committee.

Part 6

Independent Sanctions Tribunal Hearings

14. Independent Sanctions Tribunal

- 14.1 The Nominations Committee shall from time to time appoint a committee of not less than four persons to appoint a Panel of persons to serve as members of an Independent Sanctions Tribunal. The committee shall include at least one lawyer and an accountant (who shall not be in practice) but will not include any member of the Conduct Committee.
- 14.2 An Independent Sanctions Tribunal shall be appointed from the Panel by the Convener and shall be composed as follows:-
- (a) Each Independent Sanctions Tribunal shall consist of three or five persons as the Conduct Committee in their absolute discretion thinks fit.
 - (b) The Chairman of the Independent Sanctions Tribunal must be a lawyer (former member of the judiciary, a barrister, an advocate or a solicitor).
 - (c) A three person Independent Sanctions Tribunal must comprise in addition to the Chairman:-
 - (i) A lay person (who is not an accountant); and
 - (ii) An accountant.
 - (d) A five person Independent Sanctions Tribunal must comprise in addition to the Chairman:-
 - (i) At least two lay persons (who are not accountants); and
 - (ii) Up to two accountants.
 - (e) For the purposes of (c) and (d) above an accountant means a Member of a professional accountancy body whether or not that body is an RSB;
 - (f) No serving member of the governing body of, or any officer or employee of, any of the RSBs shall be appointed to an Independent Sanctions Tribunal. However, former members of the governing bodies and former officers or employees of the RSBs shall not be precluded from such appointment provided that at least one year has elapsed since the termination of the appointment or employment.
 - (g) No person who is a member, director or officer of the FRC, or of any subsidiary company of the FRC, or a member appointed to any committee of the FRC or any subsidiary company of the FRC, shall be appointed to an Independent Sanctions Tribunal. A former member, committee member, director or officer as aforesaid shall not be precluded from such appointment provided that at least one year has elapsed since the termination of the appointment or employment.
 - (h) No person who has been concerned with the investigation or with any earlier proceedings relevant to the matter shall be appointed to an Independent Sanctions Tribunal.

- 14.3 Subject to paragraph 12.1, if more than one Independent Sanctions Tribunal is appointed to hear cases arising out of the same matter, any of the members appointed to one of the Independent Sanctions Tribunals may be appointed to the other or others.
- 14.4 Hearings before the Independent Sanctions Tribunal will be in private
- 14.5 Only the following may attend a hearing of the Independent Sanctions Tribunal:
- (a) members of the Independent Sanctions Tribunal
 - (b) the secretary to the Independent Sanctions Tribunal
 - (c) the Registered Auditor and any representative appointed for the purposes of the Independent Sanctions Tribunal;
 - (d) a representative of the FRC appointed by the FRC's Conduct Division staff for the purposes of the Independent Sanctions Tribunal;
 - (e) any witnesses called by either party;
 - (f) any person whose role is to advise or inform the Tribunal on its responsibilities, duties, powers or procedures, or the law;
 - (g) anyone else the Independent Sanctions Tribunal permits.
- 14.6 (a) The FRC shall act as complainant before an Independent Sanctions Tribunal and shall bring evidence against the Registered Auditor in respect of the subject matter of the case before the Independent Sanctions Tribunal.
- (b) Every Independent Sanctions Tribunal shall give any Registered Auditor the subject of a hearing before it an opportunity to hear the evidence against him or it, to cross-examine witnesses called by the FRC, to call witnesses and lead evidence in his or its defence and to make representations orally or in writing to the Independent Sanctions Tribunal.
 - (c) Any such Registered Auditor shall be entitled to be represented at all hearings of the Independent Sanctions Tribunal.
 - (d) Any witnesses called by the Registered Auditor, including the Registered Auditor in the case of sole practitioners, may be cross-examined by the FRC.
- 14.7 The Independent Sanctions Tribunal may decide any issue of fact or law and draw any inference of fact which it considers is supported by the evidence.
- 14.8 The Independent Sanctions Tribunal may exclude from a hearing any evidence which, in its opinion, it is necessary to exclude in order to:-
- (a) Ensure fairness between the parties; and
 - (b) Preserve the interests of justice.
- 14.9 All Independent Sanctions Tribunals shall be conducted in accordance with the laws of England and Wales.

15. Standard of Proof

15.1 The standard of proof to be applied by an Independent Sanctions Tribunal is the civil standard of proof.

16. Pre-hearing Directions

16.1 Subject to the provisions of this Procedure, at any time before a hearing the Chairman of the relevant Independent Sanctions Tribunal may give such pre-hearing directions as are necessary or desirable for securing the just, expeditious and economical disposal of the case.

17. Postponement and Adjournment

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

- (a) The Chairman is unable to be present; or
- (b) There shall not be present at least three members of the Independent Sanctions Tribunal including one lay member (who is not an accountant) and one accountant.

17.2 If a session of a hearing can and does proceed in the absence of an Independent Sanctions Tribunal member, that member shall not participate in any further session or consideration of the matter and shall cease to be a member of the Independent Sanctions Tribunal for that case.

17.3 If a session of a hearing is postponed pursuant to paragraph 17.1, or if for any other reason any of the Independent Sanctions Tribunal members may not be able to attend any session, and it appears to the members of the Independent Sanctions Tribunal that the facts resulting in the postponement will not change or may result in an unreasonable delay in the conduct of a hearing, this shall be reported to the Convener who, shall consider whether in all the circumstances it would be appropriate and consistent with ensuring a fair hearing of the matter to appoint a new Chairman, a new Independent Sanctions Tribunal member or a new Independent Sanctions Tribunal (as appropriate).

17.4 In the case of an appointment of a new Independent Sanction Tribunal, any of the members of the original Independent Sanctions Tribunal may be appointed to the new Independent Sanctions Tribunal.

17.5 The FRC's Conduct Division shall notify the Registered Auditor of any new Chairman, Independent Sanctions Tribunal member or Independent Sanctions Tribunal (as appropriate).

18. Voting

18.1 Any matter to be decided by an Independent Sanctions Tribunal shall be decided by a majority of votes.

18.2 No member of an Independent Sanctions Tribunal may abstain from voting on any issue before the Independent Sanctions Tribunal.

Part 7 General

19. Deemed Service

- 19.1 Any notice, decision, order or other document which needs to be served on a Registered Auditor or other person under this Procedure will be delivered by hand, or sent by first class post or by email and
- (a) if delivered by hand to the addressee, service will take effect immediately;
 - (b) if sent by first class post, it will be sent to the latest address given by the addressee and service will take effect two business days after posting;
 - (c) if sent by email, it will be sent to the latest email address notified by the addressee and service will take effect immediately.

20. Assessment of Compliance

- 20.1 When the Monitoring Committee or Independent Sanctions Tribunal has to decide if a Registered Auditor has complied with a regulation, auditing standard or a quality control standard it must take into account any relevant guidance.

21. Disclosure of Information

- 21.1 All information and evidence obtained under this Procedure by the Monitoring Committee and the Independent Sanctions Tribunal, whether originally oral or in writing, will be confidential but may be disclosed to any regulatory body or prosecuting authority, or any person, body or authority carrying out any role similar to that of regulation or prosecution, in any part of the world, to enable that person, body or authority to undertake those responsibilities or as otherwise required or allowed by law.
- 21.2 A Registered Auditor shall treat all information which is not in the public domain which comes to its knowledge in the course of proceedings under this Procedure as confidential.
- 21.3 A Registered Auditor shall only disclose information to persons other than their legal representative with the express consent of the Monitoring Committee.
- 21.4 A breach of confidentiality which has the potential to adversely affect the conduct of proceedings under this Procedure shall be evidence of a failure to cooperate with the Executive Counsel for the purposes of paragraph 12(1) of the Accountancy Scheme.

22. Procedures

- 22.1 When considering a matter before it, the Monitoring Committee and Independent Sanctions Tribunal shall, for the purposes of this Procedure, accept any previous disciplinary finding, conviction, decision, sentence or judgment (including criminal and civil court decisions) as conclusive evidence of that prior matter.
- 22.2 Subject to the Act, and this Procedure, the Monitoring Committee and the Independent Sanctions Tribunal may, in carrying out their duties under this Procedure, decide on their own procedures.

23. Amendment and Termination of this Procedure

- 23.1 This Procedure may be amended or terminated by the Conduct Committee by giving notice of not less than three months.



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