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# Auditor Regulatory Sanctions Guidance

## Feedback Statement

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## **1. Introduction**

The purpose of this feedback statement is to summarise the responses to our consultation document “Auditor Regulatory Sanctions Procedure: Sanctions Guidance”, and provide our feedback on the consultation responses.

## **2. Responses Received**

We received 10 responses to the consultation document in total. Of these 10, 4 responses were from professional accountancy bodies and 6 were from accountancy firms.

Respondents:

- ACCA
- CARB
- ICAEW
- ICAS
- Baker Tilly (on behalf of ‘Group A’ firms)
- Deloitte
- Ernst & Young
- Grant Thornton
- KPMG
- PwC

The individual responses to the consultation document can be found on the FRC website.

### 3. Summary of Responses

In general, respondents supported the proposed Sanctions Guidance and in particular the approach taken and the stated objectives of the Guidance. However, a number of key suggestions for clarification and guidance were made.

The detailed comments included in the responses include a number of key themes namely:

- Explicit reference back to the criteria in the Procedure as the purpose of imposing a Sanction;
- The need for a clear distinction between the Accountancy Scheme, and the RSB disciplinary procedures on the one hand, and the Auditor Regulatory Sanctions Procedure on the other;
- Proportionality;
- Combination of Sanctions;
- Issues with the Procedure itself.

The consultation document posed four questions. Set out below are the four questions and a summary of the responses received under each.

**1. Do you consider that the proposed Sanctions Guidance provides a clear framework to guide the decision making of Committees/Tribunals?**

Three respondents confirmed that the Guidance was understandable. Other respondents suggested amendments to the structure and the content to provide further clarification.

**2. Have we included the sorts of factors in the proposed Sanctions Guidance that you would expect Committees/Tribunals should take into account when deciding which Sanction to impose?**

Respondents generally commented that there were too many lists of factors to be considered, which were potentially confusing for a Committee or a Tribunal. One clear suggestion that came from a number of responses was to link the Guidance back to the Procedure and the criteria for imposing Sanctions.

**3. Do you consider there is anything missing from the proposed Sanctions Guidance that would improve its effectiveness?**

Some Respondents commented that it would be useful to have further emphasis on the fact that the purpose of Regulatory Sanctions was not to punish, and raised issues with regard to proportionality, transparency and fairness.

**4. Do you have any other comments about the proposed Sanctions Guidance?**

Most Respondents suggested a number of drafting points, and some raised issues with the Procedure itself.

#### 4. FRC Response

We have accepted many of the drafting suggestions made and the amended Sanctions Guidance is attached at Annex A.

- Explicit reference back to the criteria in the Procedure as the purpose of imposing a Sanction – some Respondents suggested it necessary to link the Guidance back to the Procedure itself, and in particular the criteria in paragraph 4.1 which sets out the basis for imposing a Sanction. The FRC agrees this would be helpful to emphasise that the purpose of a Sanction is not to punish, but to ensure that the Sanction focuses on the cause of the failure and the need to improve audit quality to avoid recurrence. Some Respondents commented that vagueness and repetition should be avoided, and there were a number of potentially confusing lists of factors. Amendments have been made both to the structure and the content of the Sanctions Guidance to reflect these comments.
- The need for a clear distinction between the Accountancy Scheme, and the RSB disciplinary procedures on the one hand, and the Auditor Regulatory Sanctions Procedure on the other – the FRC recognises the need for this distinction and amendments have been made to enhance the background guidance for the Monitoring Committee in considering whether to refer a matter to the Conduct Committee to decide whether it should be considered as potential misconduct. However, the main purpose of the Sanctions Guidance is to assist Committees and Tribunals in deciding which Sanction is appropriate under the Procedure.
- Proportionality – a number of comments were raised by various Respondents in relation to proportionality. One comment which was repeated by a number of Respondents was that Sanctions should be proportionate to the reason for imposing a Sanction, rather than the seriousness of the failure. The FRC agrees that both of these will be relevant to proportionality and has amended the Sanctions Guidance accordingly. A number of other changes have been made in response to comments regarding proportionality, and the need to ensure the public and the public interest is protected.
- Combination of Sanctions – whilst one Respondent welcomed the indication that Sanctions should not be imposed in combination, the vast majority of Respondents who commented on this point, including all the professional accountancy bodies, were of the view that it would be more effective for Committees and Tribunals to be able to impose a combination of Sanctions. The FRC is satisfied that it is consistent with the terms of and aims of the Procedure that Committees and Tribunal should have the option to consider whether it is appropriate or necessary to impose a combination of Sanctions with reference to the criteria at paragraph 4.1 of the Procedure. The Sanctions Guidance has been amended to facilitate this.
- Issues with the Procedure – Respondents raised a number of issues which broadly fell into two categories. First, those related to the Procedure itself which included the lack of interim orders, the lack of appeal from an Independent Sanctions Tribunal, the ability of a Tribunal to award costs even if no Sanction is imposed, and that suspension and withdrawal should only be imposed in cases of Misconduct. The FRC is satisfied that the terms of the Procedure remain appropriate notwithstanding the views expressed; however these issues will be further considered when the effectiveness review is

undertaken. Secondly, some comments were made about the practicalities of the Procedure, which included the importance of allowing the Registered Auditor to make representations and to see the information provided to the Monitoring Committee, and clarity on what the Regulatory Framework for Auditors does and does not encompass. The FRC remains content that the Procedure is sufficiently clear, and cross references to the specific provisions have been included where appropriate in the Sanctions Guidance to assist Committees and Tribunals.

## **5. 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 the powers.

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>

There are no changes to the Impact Assessment as a consequence of the consultation on the Sanctions Guidance, or the resulting changes.



## Annex A – Post-consultation Guidance

### Introduction

1. This document provides guidance for members of:
  - the ~~Financial Reporting Council (“the FRC”)~~ Monitoring Committee (“the Committee”) of the Financial Reporting Council (“the FRC”) when considering ~~agreeing the imposition of~~ Sanctions under paragraph 5.4 and 7.3 of the Auditor Regulatory Sanctions Procedure (“the Procedure”); and
  - the Independent Sanctions Tribunal (“the Tribunal”) when considering the imposition of Sanctions under paragraph 12.5 of the Procedure;

on Registered Auditors as defined in the Procedure.

2. Terms defined in the Procedure shall have the same meaning in this guidance.
3. This guidance is made by the Conduct Committee of the FRC pursuant to paragraph 3.1(i) of the Procedure which:
  - empowers the Conduct Committee to provide the Committee and the Tribunal with guidance concerning the exercise of their duties under the Procedure; and
  - requires the Committee and the Tribunal to have regard to any such guidance.
4. This document is intended to provide guidance to Committee members and Tribunal members on the approach to be taken when considering whether, and if so, what, ~~sanctions~~ Sanctions are appropriate in any given case. It is intended to:
  - promote proportionality, clarity, consistency and transparency in decision-making; and
  - ensure that all parties are aware from the outset of the approach likely to be taken by a Committee when agreeing sanctions, or a Tribunal when determining what ~~sanction~~ Sanction to impose.
5. It is important to emphasise that this guidance is advisory – and is not binding on Committees or Tribunals. It is for each Committee to decide what, if any, ~~sanction~~ Sanction to propose or agree based on the information provided to it and for each Tribunal to decide what, if any, ~~sanction~~ Sanction to impose given the findings it makes in the case that it has heard. ~~Where a Committee or Tribunal decides to depart from the guidance, it should explain its reason for the departure.~~
- 5.6. This guidance is subject to the provisions of the Procedure. In the event of any conflict between the two, the provisions of the Procedure shall prevail.

6.7. This guidance is a public 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 relevant cases determined by previous Committees and Tribunals.

## Aims and Objectives of the FRC's Auditor Regulatory Sanctions Procedure

~~7.8.~~ A Registered Auditor shall be liable to Sanctions, ~~are as~~ agreed by the Committee, or imposed by the Tribunal, under the Procedure where, in accordance with paragraph 4.1 of the Procedure, a Registered Auditor has 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.

9. There are two basic points for a Committee or a Tribunal to note at the outset in relation to the Procedure. First, it is only a Registered Auditor, defined in Part 1 of the Procedure as a Firm entered on a Register as eligible for appointment as a Statutory Auditor under the relevant legislation, that may be subject to Sanctions under the Procedure. It does not therefore apply directly to individual audit engagement partners or staff. Secondly, the Regulatory Framework for Auditing is defined in Part 1 of the Procedure as:

- 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 legislation, standards, regulations, rules, bye-laws or other documents from time to time in force and relevant to the performance and quality of auditing.

~~8.10.~~ Therefore, in ~~every case where a Registered Auditor is~~ order to be liable to a Sanction, ~~they a Registered Auditor~~ must have failed to comply with the Regulatory Framework for Auditing, ~~which is defined in Part 1 of the Procedure~~. In addition to this failure, one of the other two conditions set out at paragraph 4.1 of the Procedure must be satisfied (see paragraph 8 above). ~~That is, the continued registration or continued registration without restrictions or conditions of the Registered Auditor must have the potential to 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. TAs~~ this is a two stage test, ~~and~~ the Committee ~~and or the~~ Tribunal must ensure that both limbs are satisfied before going on to consider what, if any, sanction to agree or impose. It is not intended that a Registered Auditor would be liable to a Sanction for every technical failure to comply with the Regulatory Framework, but only where a Sanction is appropriate or necessary with reference to the criteria set out in the Procedure. A Sanction can only be agreed or imposed when the Committee or Tribunal is satisfied that the criteria in paragraph 4.1 of the Procedure are satisfied.

~~9.11.~~ In-When considering whether the alleged failings satisfy the criteria set out in paragraph 4.1, the Committee or Tribunal should have regard to the difference

between the Procedure and the disciplinary Accountancy Scheme. It should consider whether the conduct of the Registered Auditor may amount to misconduct as defined in the Scheme or the disciplinary procedures of the relevant RSB. Where the Committee receives a report from 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 RSB, the Committee shall refer the matter to the Conduct Committee under paragraph 5.5(a) of the Procedure. ~~Some failures which may satisfy the criteria under the Procedure will be entirely incompatible with the purposes of the Procedure, for example failures which involve dishonesty or a criminal conviction.~~

~~10. In determining the appropriate Sanction, the Committee or Tribunal should have regard to the reasons for imposing Sanctions, by reference to the conditions in paragraph 4.1 of the Procedure, along with the general regulatory objectives of AQR work, namely:~~

- ~~• to prevent an adverse effect on a Major Audit Client or any other person;~~
- ~~• to ensure that the Registered Auditor's Statutory Audit Functions are undertaken, supervised and managed effectively;~~
- ~~• to improve the quality of the performance of Statutory Audit Functions;~~
- ~~• to deter Registered Auditors from failing to comply with the Regulatory Framework for Auditing;~~
- ~~• to protect the public from Registered Auditors who have failed to comply with the Regulatory Framework for Auditing;~~
- ~~• to maintain and promote market confidence in the performance of Registered Auditors and their compliance with the Regulatory Framework;~~
- ~~• to declare and uphold proper standards amongst Registered Auditors.~~

12. The purpose of imposing Sanctions for failure to comply with the Regulatory Framework for Auditing is not to punish, but to protect the public and the wider public interest. Therefore the Committee or Tribunal's objectives should be to agree or impose the Sanction appropriate or necessary to achieve the objectives ~~of the Procedures~~ set out in paragraph 4.1 of the Procedure (see paragraph 8 above). -This guidance has been developed to help Committees and Tribunals ensure that they achieve these objectives ~~by agreeing and imposing~~ and agree or impose Sanctions which:

- a) are proportionate to the aim of the Sanction;
- ~~a)b)~~  protect the public and the public interest;
- ~~a)c)~~  improve the performance of Statutory Audit Functions by the Registered Auditor;
- ~~b)d)~~  are tailored to the facts of the particular case and take into account ~~the nature of the failure and~~ the circumstances of the Registered Auditor concerned;
- ~~e)e)~~  are proportionate to the nature of the failure and the harm or potential harm caused;
- ~~d)f)~~  eliminate any financial gain or benefit derived as a result of the failure maintain and promote confidence in the performance of Registered Auditors and their compliance with the Regulatory Framework;

b)g) ~~to deter the Registered Auditors or others~~ from failing to comply with the ~~regulatory~~ Regulatory Framework for Auditing.

### **Determination of Sanction**

- ~~11. A Committee or Tribunal should consider the full circumstances of each case and the seriousness of the failures involved before determining which Sanction should be agreed or imposed. This guidance considers those factors that may be relevant to a Committee or Tribunal's consideration. The factors are not listed in any kind of hierarchy and it is for a Committee or 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 to agree or impose, a Committee or Tribunal should have regard to the principle of proportionality. In assessing proportionality, a Committee or Tribunal should consider whether a particular Sanction is commensurate with the circumstances of the case, including the seriousness of the failure and the circumstances of the Registered Auditor.~~
- ~~13. The seriousness of the failure should be determined by reference to a number of factors. These include the nature of the failure, the importance of the standard or regulation breached, the level of responsibility of the Registered Auditor and the actual or potential loss or harm caused by the failure. The extent to which intent, recklessness, knowledge of the risks or likely consequences, negligence or incompetence are involved will vary.~~

### **Sanctions**

- ~~14. The Sanctions to which a Registered Auditor shall be liable as set out at paragraph 4.2 of the Procedure are:~~
- ~~• Restrictions and/or Conditions;~~
  - ~~• Regulatory Penalty — a fine of an amount determined by the Committee or Tribunal;~~
  - ~~• Suspension of Registration;~~
  - ~~• Withdrawal of Registration.~~

### **Combination of Sanctions**

- ~~15. Sanctions may not be agreed or imposed in combination, the most appropriate and proportionate Sanction must be determined in isolation, with a Committee or Tribunal considering each of the Sanctions in turn.~~

## Summary of Approach ~~to Determining Sanction~~

13. The initial consideration by a Committee or Tribunal will involve deciding:

- a) whether a Registered Auditor has failed to comply with the Regulatory Framework for Auditing and, if so;
- b) whether:
  - their continued registration or their 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.

~~It follows, therefore, that~~

~~17.14. When a Committee or Tribunal is satisfied that these tests have been met, and therefore that a Sanction is appropriate or necessary,~~ the normal approach to determining the Sanction to be agreed or imposed in a particular case should be to:

- a) Assess the nature and ~~the~~ seriousness of the failure;
- b) Identify the Sanction(s) ~~(including the range within which any regulatory penalty might fall)~~ that the Tribunal considers potentially appropriate or necessary ~~having regard to failure identified in i. above;~~
- c) Consider any relevant aggravating or mitigating circumstances and how those circumstances affect the level of Sanction under consideration;
- d) Consider any further adjustment necessary to achieve the appropriate deterrent effect;
- e) Consider whether a discount for admissions or settlement is appropriate;
- f) Decide which Sanction to order and the level/duration of the Sanction where appropriate; ~~;~~
- ~~g) Give an explanation at each of the six stages above, sufficient to enable the parties and the public to understand the Committee or Tribunal's conclusions.~~

15. Committees or Tribunals are obliged to give reasons for their decisions, in accordance with paragraphs 6.2(a) and (b) and 12.6 of the Procedure respectively.

## **Sanctions**

16. The Sanctions to which a Registered Auditor shall be liable, as set out in paragraph 4.2 of the Procedure, are:
- a) Restrictions and/or Conditions;
  - b) Regulatory Penalty – a fine of an amount determined by the Committee or Tribunal;
  - c) Suspension of Registration;
  - d) Withdrawal of Registration.
17. These Sanctions are considered individually in more detail from paragraph 40 onwards.

## **Combination of Sanctions**

18. Sanctions may be agreed or imposed in combination. If a Committee or Tribunal decides to impose a combination of Sanctions, it should assess, in light of all the circumstances of the matter, the appropriateness of the proposed Sanctions both individually and in combination. References to a singular Sanction throughout this Guidance should be taken to include a combination of Sanctions.

## **Determination of Sanction**

19. A Committee or Tribunal should consider the full circumstances of each case before determining which Sanction should be agreed or imposed. This guidance considers those factors which may be relevant to a Committee or Tribunal's consideration. The factors are not listed in any kind of hierarchy and it is for a Committee or 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.
- 19.20. In deciding which Sanction to agree or impose, a Committee or Tribunal should have regard to the principle of proportionality. The appropriate Sanction will be one that is proportionate to the reason for agreeing or imposing it. In assessing proportionality, a Committee or Tribunal should also consider whether a particular Sanction is commensurate with the circumstances of the case, including the seriousness of the failure and the circumstances of the Registered Auditor. If there is a choice of Sanction, the Committee or Tribunal should consider the least intrusive Sanction which is appropriate or necessary to achieve the objectives of the Sanction as set out in paragraph 4.1 of the Procedure.

## **Nature and seriousness of the failure**

21. The seriousness of the failure should be determined by reference to a number of factors. These include the nature of the failure, the importance of the standard or regulation breached, the level of responsibility of the Registered Auditor and the actual or potential loss or harm caused by the failure. The extent to which intent, recklessness, knowledge of the risks or likely consequences, negligence or incompetence are involved will vary. Where a Committee is assessing the seriousness of the failure, it should have regard to whether the failure constitutes misconduct and therefore whether it would be appropriate to refer the matter to the Conduct Committee for consideration under the Scheme.
22. In assessing the nature and seriousness of the failure and in determining which Sanction might be appropriate, a Committee or Tribunal will normally consider the factors summarised in the next paragraph. A Committee or Tribunal should also consider carefully whether there may be other factors, not listed, that are relevant. Having identified the factors that it regards as relevant, a Committee or Tribunal should decide the relative weight to ascribe to each relevant factor.
23. Factors which may be considered include:
- a) whether the failure was intentional or deliberate;
  - b) whether the failure occurred as a result of recklessness;
  - c) the nature, extent and importance of the standards or regulations breached;
  - d) how far short of the standards or regulations the Registered Auditor fell;
  - e) whether the failure adversely affect, or potentially adversely affected, a significant number of people in the United Kingdom (including a Major Audit Client, the public, investors or other market users, consumers, employees, pensioners or creditors);



- f) whether the failure could undermine confidence in the standards in general of Registered Auditors;
- g) whether the failure involved ethical issues;
- h) whether the failure was isolated, or repeated or ongoing;
- i) if repeated or ongoing, the length of time over which the failures occurred;
- j) whether similar failures have been identified in previous AQR reports;
- k) whether steps had been taken to address any similar failures previously identified;
- l) whether the Registered Auditor has failed to comply with any previous written Undertakings relevant to this failure;
- m) whether senior management foresaw that a failure may be repeated, or allowed it to be repeated;
- n) whether senior management took or allowed action knowing that they or others were acting outside their field of competence;
- o) the effectiveness of relevant internal procedures, systems or guidance;
- p) whether it is likely that the same type of failing will recur;
- q) the arrangements for the supervision and management of the performance of Statutory Audit Functions;
- r) the financial benefit derived, or loss avoided, whether for or by the Registered Auditor or another, as a result of the failure;
- s) whether the failure caused actual or potential loss of significant sums of money.

20-24. When determining the Sanction to be agreed or imposed, a Committee or Tribunal disregards the fact that sanctions have been, or may be, imposed by another regulator or other authority in respect of the failure or the events related to that failure. A Committee or Tribunal takes account of sanctions that have been, or may be, imposed only when considering a Registered Auditor's financial position.

## Other factors to be taken into account when determining Sanction

24-25. In the course of determining the appropriate or necessary Sanction, the Committee or Tribunal should consider the additional factors discussed below.

### Aggravating and Mitigating Factors

26. Having assessed the seriousness of the failure and reached a view on the Sanction that would be appropriate, a Committee or Tribunal considers whether to adjust that Sanction to reflect any aggravating or mitigating factors that may exist (to the extent those factors have not already been taken into account in the assessment of the seriousness of the failure). It may also be necessary to consider whether the aggravating factors are such that the conduct of the Registered Auditor should be considered in accordance with the provisions of the Scheme or the disciplinary procedures of the relevant RSB, in which case the Committee should refer the matter to the Conduct Committee.

27. Examples of events or behaviour that a Committee or Tribunal may conclude aggravated the failure, and so should be taken into account when deciding the Sanction to be agreed or imposed, include where:

- a) the Registered Auditor failed to cooperate with, or hindered, the inspection by the AQR;
- b) senior management were aware of the failure, or that such a failure was likely to occur, but failed to take steps to stop or prevent the failure;
- c) senior management or a responsible individual sought to conceal or reduce the risk that the failure would be discovered;
- d) the Registered Auditor facilitated wrongdoing by a client;
- e) similar failings were identified by a previous AQR report;
- f) no remedial steps have been taken since the failure was identified;
- g) the failings were repeated and/or occurred over an extended period of time;
- h) the Registered Auditor has failed to comply with written Undertakings given to the Committee, the Tribunal or the relevant RSB;
- i) the Registered Auditor has previously been subject to Regulatory Sanction, either in accordance with the Procedure or by the relevant RSB. The more serious and/or similar the previous failure, the greater the aggravating factor.

28. Examples of events or behaviour that a Committee may conclude mitigate the failure, and so should be taken into account when deciding the Sanction to be agreed or imposed, include where:

- a) the Registered Auditor cooperated during the AQR inspection and the Monitoring Committee consideration of the AQR report;
- b) the Registered Auditor had taken appropriate steps to stop or prevent the failings;
- c) the Registered Auditor had proper structures and policies in place;
- d) the Registered Auditor has shown awareness of the relevant standards;

- e) appropriate remedial steps were taken promptly once the failing was identified;
- f) the Registered Auditor brought the failure to the attention of AQR or the relevant RSB;
- g) the Registered Auditor was misled by a third party;
- h) the failing was an isolated event that is unlikely to be repeated;
- i) the Registered Auditor did not stand to gain any profit or benefit from the failure;
- j) the Registered Auditor has a good compliance history;
- k) the Registered Auditor has demonstrated contrition.

### **Adjustment for deterrence**

29. If the Committee or Tribunal considers that the Sanction arrived at, after making any adjustment to reflect any aggravating and mitigating factors, is insufficient to deter the Registered Auditor from making further or similar failings, the Committee or Tribunal may adjust the Sanction to ensure that the intended deterrent effect will be achieved.
30. Examples of the circumstances where a Committee or Tribunal may consider it appropriate to make such an adjustment include where a Committee or Tribunal considers that:
- a) the Registered Auditor already has a regulatory record for failings of a similar nature;
  - b) sanctions imposed previously in respect of similar failings have failed to achieve an improvement in compliance with the Regulatory Framework for Auditing by the Registered Auditor;
  - c) there is a risk of similar failings in the future in the absence of a sufficient deterrent;
  - d) the Sanction is too small to meet the objective of credible deterrence.

### **Discount for Admissions and/or Settlement**

#### *Settlement – agreeing a sanction with a Committee*

31. Where a Registered Auditor admits a failure to comply with the Regulatory Framework for Auditors in correspondence before a Committee, and indicates a willingness to agree a Sanction, whether following the initial letter from AQR, or following correspondence and suggestion of an amended or lesser Sanction, a Committee may consider whether it would be appropriate to adjust the amount of any Regulatory Penalty and/or other Sanction that might otherwise have been imposed to reflect the stage at which agreement was reached.
32. Normally it will be inappropriate to reduce the period during which Restrictions and/or Conditions apply, or a period of Suspension, to reflect an agreement because the primary purpose of such a Sanction is to protect the public. Therefore, any adjustment will generally apply only to a Regulatory Penalty to be imposed.

24.33. For the purpose of providing guidance on the scale of any settlement adjustment, the FRC recommends that if an admission is made to a Committee, a reduction of between 20 and 35% may be appropriate.

#### Admissions before a Tribunal

34. Where a Registered Auditor makes an admission in respect of some or all of any alleged particulars of fact and/or alleged failures to comply with the Regulatory Framework, a Tribunal may consider whether it is appropriate that any Regulatory Penalty and/or other Sanction that might otherwise be determined should be adjusted to reflect the extent, significance and timing of those admissions.

35. A Tribunal, and a Committee where agreeing a Sanction, must remain satisfied that any adjusted Sanction is sufficient to protect the public and the wider public interest.

#### **Undertaking the initial assessment of the potential sanctions to determine**

~~18. In assessing the nature and seriousness of the failure and in determining which sanctions might be appropriate, a Committee or Tribunal will normally consider the factors summarised in the next paragraph. This list is not exhaustive and not all the factors will be applicable in a particular case. A Committee or Tribunal should also consider carefully whether there may be other factors, not listed, that are relevant. Having identified the factors that it regards as relevant, a Committee or Tribunal should decide the relative weight to ascribe to each relevant factor.~~

~~19. Factors which may be considered include:~~

- ~~• the financial benefit derived, or loss avoided, whether for or by the Registered Auditor or another, as a result of the failure (for example, this could be quantified in appropriate cases by the fees received by the Registered Auditor);~~
- ~~• whether the failure caused or risked the loss of significant sums of money (for example, this could be quantified in appropriate cases by reference to the reduction in market value);~~
- ~~• whether the failure was intentional or deliberate;~~
- ~~• the nature, extent and importance of the standards or regulations breached;~~
- ~~• whether the failure adversely affect, or potentially adversely affected, a significant number of people in the United Kingdom (including a Major Audit Client, the public, investors or other market users, consumers, employees, pensioners or creditors);~~
- ~~• whether the failure could undermine confidence in the standards in general of Registered Auditors;~~
- ~~• whether the failure involved ethical issues;~~
- ~~• whether similar failures have been identified in previous AQR reports;~~
- ~~• whether the Registered Auditor has failed to comply with any previous written Undertakings;~~
- ~~• the effectiveness of relevant internal procedures, systems or guidance;~~

- ~~• the arrangements for the supervision and management of the performance of Statutory Audit Functions;~~
- ~~• the level of co-operation of the Registered Auditor with the AQR and the Committee.~~

~~18. When determining the Sanction to be agreed or imposed, a Committee or Tribunal disregards the fact that sanctions have been, or may be, imposed by another regulator or other authority in respect of the failure or the events related to that failure. A Committee or Tribunal takes account of sanctions that have been, or may be, imposed only when considering a Registered Auditor's financial position.~~

~~19. The following sections provide guidance on the factors that a Committee or Tribunal may take into account when consider whether to agree or impose a particular sanction.~~

## Possible Sanctions in detail

### Restrictions and /or Conditions

#### *Introduction*

~~20-36.~~ A Committee or Tribunal may agree or impose an order restricting the Registered Auditor's practice and/or placing conditions on that practice. A Committee or Tribunal may determine any Restrictions and/or Conditions that it considers, in its absolute discretion, appropriate or necessary with reference to the reason for imposing the Sanction (see paragraph 8). Restrictions and/or Conditions may be imposed for such time period as the Committee or Tribunal thinks fit. By way of example and without limitation to the Committee and Tribunal's general discretion, a restriction may be placed on the nature of work undertaken, and conditions may include requiring a Registered Auditor to undertake training programmes, implement policy changes or develop or impose certain supervisory structures.

~~21-37.~~ Restrictions and/or Conditions might be most appropriate in cases where there is evidence of a shortcoming in a particular area of practice, or there ~~have~~ es been ~~a~~ repeated relatively minor or inadvertent breaches of the standards that could be remedied through ~~restrictions~~ Restrictions and/or ~~conditions~~ Conditions. Any Restrictions and/or Conditions should be appropriate, proportionate, workable and measurable, and should not amount to an inability to practise.

#### *Determining Restrictions and/or Conditions*

~~22. This Sanction is intended to be used by Committees and Tribunals where the circumstances suggest that the public interest would be best served by restricting the Registered Auditor's practice or imposing conditions on that practice with a view to:~~

- ~~• improving the professional competence and performance of the Registered Auditor;~~
- ~~• ensuring that all partners or personnel receive training in a particular area of practice;~~
- ~~• ensuring that a Registered Auditor implements organisational or administrative arrangements that would avoid a repetition of the failure;~~
- ~~• preventing a Registered Auditor from undertaking audits of entities of a particular character that, based on the failures identified, that Registered Auditor is not competent to undertake.~~

~~23-38.~~ The determination of an order imposing ~~restrictions~~ Restrictions and/or ~~conditions~~ Conditions will ~~normally~~ be accompanied by ancillary provisions that address such matters as:

- a) the period during which any ~~restriction~~ Restriction on a Registered Auditor's ability to undertake particular engagements shall remain in effect;
- b) the period during which any ~~condition~~ Condition shall remain in effect;
- c) any period within which a particular ~~condition~~ Condition must be fulfilled;
- d) the identity of any person or organisation responsible for overseeing compliance with an order;

- e) the procedure by which a Registered Auditor may apply to vary or discharge an order.

## Regulatory Penalty

### **Introduction**

24.39. A Regulatory Penalty may be agreed or imposed either alone or in combination with another Sanction. A Regulatory Penalty may only be used alone where there are no concerns that a Registered Auditor's continued registration or continued registration without restrictions or conditions could adversely affect a Major Audit Client or any other person. Therefore, if there are such concerns, a Regulatory Penalty should only be agreed or imposed in combination with another Sanction, where this is appropriate or necessary to achieve the objective of the Sanction. A Regulatory Penalty may only be imposed or agreed alone where a Committee or Tribunal is satisfied that it will be sufficient to ensure that a Registered Auditor's Statutory Audit Functions are undertaken, supervised and managed effectively. ~~It may be used to mark a Committee or Tribunal's disapproval of the Registered Auditor's failings.~~

### **Determining a Regulatory Penalty**

24.40. In order to determine whether a Regulatory Penalty is appropriate the factors to be considered will normally include whether:

- ~~→a) restrictions—Restrictions and/or conditionsConditions, or suspensionSuspension or withdrawalWithdrawal of registrationRegistration is alone would not be sufficient or appropriate to address the concerns of the Committee or Tribunalmore appropriate than a regulatory penalty;~~
- b) the Registered Auditor has derived any financial gain or benefit as a result of the failure;
- c) the failure involved or caused or put at risk the loss of significant sums of money; **and**
- d) a Regulatory Penalty was agreed or imposed in similar previous cases.

~~24. In cases where a Committee or Tribunal considers that a Regulatory Penalty is appropriate, it should aim to determine an amount that:~~

- ~~→ is proportionate to the failure and all the circumstances of the case;~~
- ~~→ will act as an effective deterrent to future failings;~~
- ~~→ will promote public confidence in the regulation of Registered Auditors and the way in which failings are addressed;~~

~~24. In undertaking this assessment, a Committee or Tribunal will normally take into consideration:~~

- ~~• the seriousness of the failure;~~
- ~~• the size/financial resources of the Registered Auditor and the effect of a Regulatory Penalty;~~
- ~~• the factors set out at paragraph 19.~~

41. There is no upper limit on the regulatory—Regulatory penalty—Penalty that a Committee or Tribunal can impose, ~~—, however~~ However it should be borne in mind that the purpose of a regulatory Sanction is not to punish.

41.42. The amount of the group audit fee, ~~or the audit fee earned by the UK firm,~~ may be a factor to be taken into account when assessing the amount of penalty which would be necessary ~~or appropriate, in the circumstances of the particular case, to act as a credible deterrent.~~ Where a failing has been identified as part of a firm wide review, it may be ~~appropriate to take that~~ the amount of the revenue generated by the particular department in which the failure was identified, or the ~~revenue from the~~ audits in which the shortcomings came to light, ~~should be taken~~ into account when determining the size of the Regulatory Penalty.

41.43. Having assessed the seriousness of the failing, the ~~Committee or Tribunal~~ amount of any penalty will ~~have regard to consider the financial resources of~~ the Registered Auditor's ~~financial resources.~~

41.44. When deciding the ~~level of penalty to determine~~ amount of the Regulatory Penalty, a ~~Committee or~~ Tribunal should disregard the possibility that the Registered Auditor may be liable for the costs of the case before ~~a Tribunal~~ it.

41.45. Having arrived at a figure for the Penalty based on the nature and seriousness of the failings, a Committee or Tribunal should consider whether the amount should be adjusted with reference to the other factors referred to in paragraphs 25 to 35 above.:

- ~~to take account of any aggravating and mitigating factors;~~
- ~~to ensure the penalty has the necessary deterrent effect; and/or~~
- ~~to reflect any discount for admissions and/or settlement.~~
- ~~—~~
- ~~—~~
- ~~—~~

## Suspension of Registration

### **Introduction**

41.46. A Committee or Tribunal may agree or impose the ~~suspension~~ Suspension of a Registered Auditor's registration, only where Restrictions and/or Conditions, or a Regulatory Penalty, or both, would not be sufficient to address the Committee or Tribunal's concerns.

41.47. Suspension of Registration is a far reaching Sanction which should be reserved for cases may be an appropriate Sanction where there are such serious concerns about the Registered Auditor's competence and/or ability to comply with the Regulatory Framework for Auditing that they should not be permitted to undertake Statutory Audit Functions for a particular period. It may also be appropriate where the failure was so serious that it would significantly undermine public and market confidence in the standards of Registered Auditors and ~~suspension~~ Suspension is necessary to protect the public and the public interest. However, a Committee or Tribunal must be satisfied that the failures are capable of being rectified by the Registered Auditor within a reasonable period of time, failing which it should consider Withdrawal of Registration (see below).



~~41.48.~~ A Committee or Tribunal must carefully consider the period of Suspension which is necessary and proportionate, taking into consideration the nature and seriousness of the failure, and the other considerations laid out at paragraphs ~~25 to 35 above~~<sup>47</sup>. A Committee or Tribunal should also take into account how long it considers it would take the Registered Auditor to rectify the failings identified, in order ~~for it to be appropriate to determine when~~ for the period of ~~suspension~~ Suspension should to come to an end.

~~41.49.~~ A Committee or Tribunal may, when giving its reasons, set out certain suggested conditions which it would expect to be fulfilled during the period of ~~suspension~~ Suspension.

~~41. A Committee or Tribunal should take into account that suspension will normally have an effect upon persons employed by the Registered Auditor.~~

### ***Determining Suspension of Registration***

~~41. In order to determine whether a period of suspension is appropriate, the factors to be considered include:~~

- ~~• the extent to which the failure calls into question the competence of the Registered Auditor;~~
- ~~• whether the failure was deliberate;~~
- ~~• whether the failure was reckless;~~
- ~~• the significance of the failure, including the nature and importance of the standards and/or regulations breached;~~
- ~~• the duration and frequency of the failings;~~
- ~~• the amount of financial benefit (including avoidance of loss) to the Registered Auditor;~~
- ~~• whether the failure adversely affected a significant number of people in the United Kingdom (such as Major Audit Clients, investors, employees, pensioners or creditors);~~
- ~~• whether the failure involved or caused or put at risk the loss of significant sums of money;~~
- ~~• whether the failure could undermine confidence in the standards in general of Registered Auditors;~~
- ~~• whether the failure reveals serious or systemic weaknesses in the management systems or internal controls of the Registered Auditor;~~
- ~~• whether it is likely that the same type of failings will recur;~~
- ~~• whether it appears possible to rectify the issues identified within a reasonable time period;~~
- ~~• whether similar failings have been identified in previous AQR reports which the Registered Auditor has failed to address;~~
- ~~• whether the Registered Auditor has failed to comply with previous written Undertakings;~~

- ~~• whether the Registered Auditor has already been subject to regulatory Sanction, whether determined by the FRC under the Procedure, or by the relevant RSB.~~

## Withdrawal of Registration

### **Introduction**

41.50. Withdrawal of a Registered Auditor's registration is the most serious Sanction with the most far reaching consequences. Therefore, it should be reserved for the most fundamental breaches of the Regulatory Framework for Auditing, where continued practice would be so damaging to the public, the public interest and market confidence in the standards of Registered Auditors that Withdrawal of Registration is the only appropriate and proportionate Sanction. In practice, it seems likely that Withdrawal of Registration would only be imposed following a ~~tribunal~~ Tribunal hearing.

51. It may be appropriate to withdraw a Registered Auditor's ~~Registration~~ registration where a Tribunal considers, for example, that there is a lack of willingness to comply with the Regulatory Framework for Auditing, such that ~~it~~ the Registered Auditor is unlikely to improve and significant and serious failings are likely to continue to ~~be made occur~~. A Tribunal should also consider whether there have been aggravating factors which should be taken into account. Examples may include:

- where previous Sanctions in relation to similar failings have not resulted in any improvement;
- where the failings took place over a long period of time with the knowledge or complicity of senior management;
- where the conduct was fundamentally incompatible with continued Registration; or
- where the Registered Auditor is no longer a proper person to be eligible for appointment as a Statutory Auditor, and there is no prospect of this being remedied in the foreseeable future.

41.52. Where a Committee is of the opinion that failings are so serious that Withdrawal of Registration may be warranted, it should carefully consider whether it would be appropriate to deal with the matter under the Scheme or the disciplinary procedure of the RSB, and give reasons as to why this is not appropriate.

41.53. Prior to imposing an order withdrawing registration, all other available Sanctions should be considered to ensure that it is the only appropriate Sanction and is proportionate taking into account all the circumstances of the case.

### **Determining Withdrawal of Registration**

~~41. Where the failure is fundamentally incompatible with continued Registration, withdrawal is likely to be the appropriate sanction. The tribunal must be satisfied that the Registered Auditor is no longer a proper person to be eligible for appointment as a Statutory Auditor, and there is no prospect of this being remedied in the~~

~~foreseeable future. The factors set out at paragraph 37 will normally be relevant when a Tribunal is considering whether to withdraw registration.~~

In particular, the Tribunal ~~must carefully~~should consider whether the failures are capable of remedy, and if so, whether a period of ~~suspension~~Suspension would be appropriate. The Tribunal must satisfy itself that no other Sanction would fulfil the purposes of the Procedure, so that Withdrawal of Registration is the only appropriate and proportionate Sanction available to it.

~~41. Withdrawal of Registration may only be appropriate and proportionate where the Tribunal the failings are extremely serious and relate to the most fundamental standards and/or regulations, and there are a number of aggravating factors, for example previous Sanctions in relation to similar failings have not resulted in any improvement or the failings took place over a long period of time with the knowledge or complicity of senior management.~~

## **Other matters to be considered in accordance with the Procedure**

### **Agreeing an amended or lesser Sanction**

41-54. A Committee may decide an amended or lesser Sanction is appropriate, having regard to any further information or representations which it has received, either from the Registered Auditor or from the AQR, in accordance with paragraph 7.1 of the Procedure. A Committee should only accept an amended or lesser Sanction where it is satisfied that this is still proportionate to the failings and the reasons for imposing the Sanction, and sufficient to protect the public and the public interest.

41-55. Factors which may be relevant to a Committee's decision to agree a lesser penalty include:

- a) further mitigation offered by the Registered Auditor;
- b) more detailed explanation as to how the failings came about;
- c) further other information received by the Committee after having initially proposed a Sanction which lessens the seriousness of the failing.

41-56. A Committee may consider that, in light of the further information or representations, the original proposed Sanction is not sufficient to address the failings or the reasons for imposing a Sanction. In such a situation, it the Committee may amend the Sanction accordingly to ensure it achieves its objectives and invite the Registered Auditor to agree it.

### **Accepting Undertakings**

41-57. A Committee or Tribunal may accept written Undertakings from a Registered Auditor. Written Undertakings should only be accepted where this is sufficient to address the concerns of the Committee or Tribunal, to prevent an adverse effect on a Major Audit Client or any other person and to ensure that the Registered Auditor's Statutory Audit Functions are undertaken, supervised and managed effectively. A Committee or

Tribunal should be confident that the Registered Auditor will cooperate and fully comply with the proposed Undertakings.

41-58. By way of example, written Undertakings may include:

- a) a commitment to impose mandatory training on audit staff;
- b) an agreement not to undertake certain types of audit work;
- c) a proposal to introduce new policies and procedures designed to prevent further or similar failings.

41-59. Where written Undertakings are accepted by a Committee or Tribunal, the Conduct Division of the FRC will monitor compliance with those Undertakings and report to the Monitoring Committee and the relevant RSB as appropriate.

41-60. Where a Registered Auditor fails to comply with written Undertakings provided to the Committee or Tribunal, the Committee may reopen the matter and the AQR report on compliance with the Undertakings shall be considered, along with the original report to the Committee, in accordance with the terms of the Procedure. Where there has been a deliberate failure to comply with written Undertakings on the part of the Registered Auditor, the Committee should give careful consideration whether to refer the matter to the Conduct Committee so that it can decide whether the conduct in question constitutes misconduct under the Scheme or the disciplinary procedures of the relevant RSB.

### **Variation or revocation of Sanction**

41-61. A Committee may at any time, with the agreement of the Registered Auditor, ~~make a direction to direct~~ the relevant RSB to vary or revoke a Restriction, a Condition or a period of Suspension. When considering whether to make a Committee should only make such a direction, after considering a Committee considers whether:

- a) the Registered Auditor has taken steps to ensure that the failing will ~~be~~ not be repeated;
- b) the Registered Auditor has complied with any Restrictions and/or Conditions, or suggestions given by the Committee when imposing a period of Suspension;
- c) the Sanction in the case of variation, or any Sanction in the case of revocation, is no longer required;
- d) the varied Sanction, if applicable, is sufficient to protect the public and the public interest.

### **Other factors to be taken into account when determining the Sanction to be imposed**

~~41. In the course of this guidance reference has been made to various factors that Tribunals should consider when determining the level of Sanction to impose. The characteristic of those factors are discussed below.~~

#### ***Intent***

~~41. Whether a Committee or Tribunal considers that the failure was intentional will be a material factor when determining any Sanction to be imposed. Where a Committee is~~

~~of the opinion that a failure was intentional, careful consideration should be given as to whether it would be appropriate to refer the matter to the Conduct Committee.~~

~~41. Factors tending to show that the failure was intentional include where:~~

- ~~a) the Registered Auditor's senior management or a responsible individual intended or foresaw that the likely or actual consequences of their actions or inaction would amount to a failure to comply with the standards or regulations;~~
- ~~b) the senior management or a responsible individual permitted the failings to continue notwithstanding that they knew that their actions breached the standards or regulations or the management or internal control systems;~~
- ~~c) the senior management or a responsible individual was influenced by a belief that the failings would be difficult to detect;~~
- ~~d) the senior management or a responsible individual deliberately took decisions or allowed action or inaction knowing that they or others were acting outside their field of competence;~~
- ~~e) the Registered Auditor intended to benefit financially from the failure;~~
- ~~f) the senior management or a responsible individual repeated the failure, or allowed it to be repeated, notwithstanding being aware that to do so would involve breaching the standards or regulations.~~

### ***Reckless***

~~41. A Committee or Tribunal may consider that a Registered Auditor acted recklessly if the senior management (i) knew that a proposed course of action or inaction might involve a breach of the Regulatory Framework, and (ii) proceeded nevertheless.~~

### ***Aggravating and Mitigating Factors***

~~41. Having assessed the seriousness of the failure and reached a view on the Sanction that would be appropriate, a Committee or Tribunal may consider whether to adjust that Sanction to reflect any aggravating or mitigating factors that may exist (to the extent those factors have not already been taken into account in the assessment of the seriousness of the failure). A Committee must remember that if the aggravating factors are such that it would be appropriate that the conduct of the Registered Auditor be considered in accordance with the provisions of the Scheme or the disciplinary procedures of the relevant RSB, the Committee should refer the matter to the Conduct Committee.~~

~~41. Examples of events or behaviour that a Committee or Tribunal may conclude aggravated the failure, and so should be taken into account when deciding the Sanction to be agreed or imposed, include where:~~

- ~~• the Registered Auditor failed to cooperate with, or hindered, the inspection by the AQR;~~
- ~~• senior management were aware of the failure, or that such a failure was likely to occur, but failed to take steps to stop or prevent the failure;~~
- ~~• senior management or a responsible individual sought to conceal or reduce the risk that the failure would be discovered;~~
- ~~• the Registered Auditor facilitated wrongdoing by a client;~~

- ~~similar failings were identified by a previous AQR report;~~
- ~~no remedial steps have been taken since the failure was identified;~~
- ~~the failings were repeated and/or occurred over an extended period of time;~~
- ~~the Registered Auditor has failed to comply with written Undertakings given to the Committee, the Tribunal or the relevant RSB;~~
- ~~the Registered Auditor has previously been subject to Regulatory Sanction, either in accordance with the Procedure or by the relevant RSB. The more serious and/or similar the previous failure, the greater the aggravating factor.~~

~~41. Examples of events or behaviour that a Committee may conclude mitigate the failure, and so should be taken into account when deciding the Sanction to be agreed or imposed, include where:~~

- ~~g) the Registered Auditor cooperated during the AQR inspection and the Monitoring Committee consideration of the AQR report;~~
- ~~h) the Registered Auditor had taken appropriate steps to stop or prevent the failings;~~
- ~~i) the Registered Auditor had structures and policies in place~~
- ~~j) the Registered Auditor has shown awareness of the relevant standards and~~
- ~~k) appropriate remedial steps were taken once the failing was identified;~~
- ~~l) the Registered Auditor was deliberately misled by a third party;~~
- ~~m) the failing was an isolated event that is most unlikely to be repeated;~~
- ~~n) the Registered Auditor did not stand to gain any profit or benefit from the failure;~~
- ~~o) the Registered Auditor has a good compliance history;~~
- ~~p) the Registered Auditor has demonstrated contrition.~~

### ***Adjustment for deterrence***

~~41. If the Committee or Tribunal considers that the Sanction arrived at, after making any adjustment to reflect any aggravating and mitigating factors, is insufficient to deter the Registered Auditor, or other Registered Auditors, from making further or similar failings, the Committee or Tribunal may adjust the Sanction to ensure that the intended deterrent effect will be achieved.~~

~~41. Examples of the circumstances where a Committee or Tribunal may consider it appropriate to make such an adjustment include where a Committee or Tribunal considers that:~~

- ~~the Registered Auditor already has a Regulatory record for failings of a similar nature;~~
- ~~Sanctions imposed previously in respect of similar failings have failed to achieve an improvement in compliance with the Regulatory Framework for Auditing by the Registered Auditor;~~

- ~~there is a risk of similar failings in the future, whether by the Registered Auditor, or by other Registered Auditors, in the absence of a sufficient deterrent;~~
- ~~the Sanction is too small to meet the objective of credible deterrence.~~

### ***Discount for Admissions and/or Settlement***

#### *Settlement—agreeing a sanction with a Committee*

~~41. Where a Registered Auditor agrees a Sanction with a Committee, whether as a result of the Committee's original notice, or following correspondence and suggestion of an amended or lesser Sanction, it is appropriate to adjust the amount of any Regulatory Penalty and/or other Sanction that might otherwise have been imposed to reflect the stage at which agreement was reached.~~

~~41. Normally it will be inappropriate to reduce the period during which Restrictions and/or Conditions apply, or a period of Suspension, to reflect an agreement because the primary purpose of such a Sanction is to protect the public. Therefore, any adjustment will generally apply only to a Regulatory Penalty to be imposed.~~

~~41. For the purpose of providing guidance on the scale of any settlement adjustment, the FRC recommends that if a Sanction is agreed with a Committee, a reduction of between 20 and 35% may be appropriate.~~

#### *Admissions before a Tribunal*

~~41. Where a Registered Auditor makes an admission in respect of some or all of any alleged particulars of fact and/or alleged failures to comply with the Regulatory Framework, it is appropriate that any Regulatory Penalty and/or other Sanction that might otherwise be determined should be adjusted to reflect the extent significance and timing of those admission.~~

~~41. Where an admission is made voluntarily and prior to the commencement of the hearing, it will be appropriate to consider a more significant adjustment.~~

~~41. A Tribunal, and a Committee where agreeing a Sanction, must remain satisfied that any adjusted Sanction is sufficient to protect the public and the wider public interest.~~

### **Costs**

~~41.62.~~ Costs may only be ordered by a Tribunal, following a finding that a Registered Auditor has failed to comply with the Regulatory Framework for Auditing. Costs cannot be ordered by a Committee where a ~~sanction~~ Sanction has been agreed with a Committee.

~~41.63.~~ A Tribunal may order that the Registered Auditor be required to pay the whole or part of the costs of the hearing. In accordance with paragraphs 12.5(c) and (d) of the Procedure, This-this may be in addition to any Sanction determined or Undertaking accepted, or a Tribunal may make no determination against the Registered Auditor except for the payment of costs, if it considers that to be appropriate in all the

circumstances. The amount to be paid by the Registered Auditor and the time for payment shall be determined by the Tribunal.

| ~~41.64.~~ When determining whether to order costs, and the amount of costs to be paid, a Tribunal may take account of:

|     ~~a)~~ a Registered Auditor's financial position and the impact of any Regulatory Penalty that forms part of the proposed Sanction; and

|     ~~b)~~ any arrangements that would result in part or all of any award of costs being paid or indemnified by insurers.

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## Effective Date

This guidance was issued by the Conduct Committee on 4 September 2013 and applies ~~with immediate effect~~from the effective date for the Procedure.



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