



PROFESSIONAL OVERSIGHT BOARD FOR ACCOUNTANCY

COMPLAINTS AND DISCIPLINE PROCEDURES REVIEW

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One - Introduction

The Professional Oversight Board for Accountancy (POBA) contributes to the Financial Reporting Council's (FRC) aim of promoting confidence in corporate reporting and governance through the regulation of audit, the oversight of how the professional accountancy bodies regulate their members and the monitoring of audit quality of economically significant entities in the UK. Effective procedures for dealing with complaints about accountants, including auditors, enhance public confidence in the accounting profession.

POBA has undertaken a review of the major UK accountancy bodies' procedures for dealing with complaints about their members and member discipline. This document summarises POBA's recommendations regarding independent complaints handling and compensation mechanisms for accountancy and POBA's conclusions and resulting recommendations from the review of the bodies' progress on the implementation of recommendations made previously to the bodies. The bodies considered comprise the ACCA, CIMA, CIPFA, ICAEW, ICAI and ICAS.

In November 2002, the Review Board of the Accountancy Foundation published its review of the complaints and disciplinary procedures of the major UK accountancy bodies. The review made more than 70 recommendations relating to the bodies' procedures. The Accountancy Foundation was set up by the six chartered accountancy bodies listed above, in consultation with the Government. The Foundation had similar aims to those of POBA in exercising independent oversight of the accountancy profession.

As the oversight body for UK accountancy, POBA is independent of the bodies. It is not directly related to the Review Board but has assumed some of its aims and functions. POBA notes the comprehensive nature of the Review Board's review of the bodies' complaints and discipline procedures and the validity of many of its recommendations.

Since November 2002, there has been a strengthening of the independent regulation of the UK accountancy profession through the establishment of POBA, which oversees the accountancy profession and the statutory function (including complaints and discipline) of the audit supervisory bodies, and the Accountancy Investigations and Discipline Board (AIDB), which will investigate public interest misconduct cases independently of the accountancy bodies.

Two - Executive summary

POBA recommends a significant strengthening of the profession's current provision of Alternative Dispute Resolution (ADR) services in the area of service or contract related complaints or disputes through the provision of independent arbitration services.

POBA notes that the bodies have implemented effectively most of the recommendations made in the Review Board's report, or have given acceptable reasons where not implementing the recommendations.

However, POBA believes that some of the bodies could do more to fully implement some key recommendations and thus reissues the recommendations relating to:

- Mandatory engagement letters (Review Board (RB) report rec. A1.6)
- Mandatory internal complaints handling process (RB report rec. A1.7)
- Procedures on closing complaints (RB report rec. A1.14, A1.15)
- Power of disciplinary tribunals to reduce or waive fees (RB report rec. A1.37)
- Open hearings (RB report rec. A1.19)

POBA makes one further recommendation regarding the power of disciplinary tribunals to reimburse the costs of bringing a complaint of misconduct.

POBA looks forward to receiving the chartered accountancy bodies' proposals for implementing these recommendations.

Three - Independent complaints handling mechanisms and compensation

3.1 Service and misconduct complaints

POBA believes there to be two separable elements of a complaint relating to an accountant. First, there is likely to be a service or contract-related element to the complaint. Second, there is the possibility of misconduct by the accountant complained of. The appropriate method for dealing with these two elements is different; the first is generally resolved between the complainant and the accountant, with the complainant seeking financial redress in most cases. The second is resolved between the accountant and the body of which they are a member; the resolution is some sanction on the accountant, if the misconduct is proven.

3.2 Misconduct leading to discipline

The accountancy bodies' discipline procedures deal with misconduct issues only. Each of the bodies has a specific definition of misconduct; in general, misconduct is indicated where the member has breached the body's rules and regulations. Extreme or repeated instances of poor service may constitute misconduct, but this can only be judged on a case by case basis and is subjective. Where a body decides that a complaint does not indicate possible misconduct or any liability to disciplinary action for a member, the complainant generally has the option of having the decision independently confirmed, usually by an independent reviewer of complaints.

The review by the Review Board of the bodies' procedures for dealing with potential misconduct was comprehensive and recommended generally minor improvements, most of which are now implemented. POBA will monitor the ongoing effectiveness of these systems as part of its monitoring activity. In public interest cases, the AIDB will investigate alleged misconduct by members of the bodies. POBA believes, based on the previous work of the Review Board, the effective implementation of their recommendations and subsequent enhancements arising from the Companies (Audit, Investigations and Community Enterprise) Act 2004, that procedures for dealing with member discipline are comprehensive and well developed.

3.3 Service-related complaints

In the area of service complaints the bodies' systems are less well developed. Some of the bodies reject responsibility for dealing with any complaints other than where there is an indication of misconduct, stating that the courts are the appropriate place for dealing with contractual disputes. Some of the bodies have expressed concern that the profession should not provide a cheap route to litigation against its members, which itself could provoke a large increase in the number of complaints. Others argue that there is insufficient demand for any formal system dealing with service-type complaints; both cannot be true - the claim of a low level of complaints appears to contradict the claim of a potential for a prolific increase in complaints.

The number of potential complainants cannot be determined accurately, as it cannot be shown how many complainants are put off by the prospect of having to take legal action through the courts. If having effective systems to deal with all complaints encourages a large number of complaints, then the profession's problem is not the complaints handling system but the failures causing the complaints. Unfounded speculative complaints must be rejected but those with just cause must be properly investigated.

POBA recognises that in some cases the courts will be the only appropriate forum for resolving a complaint or dispute. However, POBA believes that the courts are often not the ideal place to resolve service or contract type disputes due to the high costs, lengthy process and the inequalities of a complainant taking on a firm backed by insurance and legal expertise. Thus POBA rejects the argument that the courts are the only or most appropriate place to deal with all service disputes.

POBA believes that the procedures available for dealing with service-related complaints should be improved. The best place for dealing with such complaints is at the firm level; all practitioners should be encouraged to have the best possible procedures in place for dealing with complaints. However, should complaints remain unresolved at that level, options for improvements for the bodies include the provision of Alternative Dispute Resolution (ADR) services either within, or independent of, the bodies, or the possible establishment of an Ombudsman scheme.

3.4 An Ombudsman scheme

The Review Board's report in November 2002 asked the accountancy bodies to submit their views on (i) whether an Ombudsman was needed for the accountancy profession and (ii) the establishment of compensation schemes for each of the bodies. POBA has considered the bodies' submissions and consulted with other relevant authorities including the British and Irish Ombudsman Association, the Financial Ombudsman and the Legal Services Ombudsman.

Based on this consultation and in comparison to the circumstances existing at the time of the establishment of the Legal Services Ombudsman and the Financial Ombudsman Service, together with effective implementation of enhanced independent ADR mechanisms, POBA does not believe that the establishment of an Ombudsman scheme for the whole profession would be a proportionate or cost-effective solution at this time.

It is not clear that the benefits of an Ombudsman scheme similar to the Financial or Legal Services Ombudsmen would justify the considerable costs of setting up and maintaining such a scheme. The resulting increase in subscription fees might encourage some practitioners to operate outside the membership of one of the bodies, which is not in the public interest.

3.5 *Alternative Dispute Resolution*

POBA believes that there is a major role for Alternative Dispute Resolution (ADR) in the bodies' approach to dealing with service-related complaints. The Review Board report recommended that all the bodies establish an ADR scheme but it did not give detail; the report focussed on the bodies' disciplinary schemes. Some of the bodies have long-standing schemes in some areas of service complaints (e.g. specifically fee disputes), whereas others have moved slowly to establish them since the publication of the report.

There are three main types of ADR processes - arbitration, conciliation and mediation. In arbitration the dispute is submitted to a neutral party for a decision, which can be binding or non-binding. Conciliation and mediation are more loosely defined terms and are sometimes used interchangeably; both involve a third party helping the parties to the dispute to find a solution. However, conciliation is generally an early stage process where the third party may take an active role dealing with the parties separately and the results are usually non-binding. Mediation often involves face to face discussions including an appointed mediator which lead to a signed mediation agreement.

Arbitration has proved effective in dealing with fee disputes involving members of the ICAEW and ICAS; both bodies have formal fee arbitration schemes. These schemes are a good model for the whole profession, though POBA believes there could be improvements in the schemes in terms of scope and independence.

3.6 *Process*

The bodies vary considerably in the existence and scope of current arrangements. The ICAEW and ICAS have long-established fee-dispute arbitration schemes. Both schemes, once entered into, result in binding arbitration (for the ICAEW scheme this is backed by the Arbitration Act 1996). The ICAI has a mediation service where an ICAI Chartered Accountant is appointed to mediate on a dispute relating to fees. ACCA, CIPFA and CIMA do not currently have ADR schemes, though ACCA is developing a conciliation mechanism.

POBA believes an attempt at conciliation to be a necessary first step in service dispute resolution. Complaints handling staff trained in conciliation techniques should be available to resolve complaints where there is the possibility of such a resolution. However, if complaints handling staff believe the complaint to be without grounds they should reject it, clearly giving their reasons.

If conciliation does not resolve the complaint, POBA believes the next appropriate step to be the availability of an effective arbitration scheme. Arbitration can be preferable to mediation as it

encourages a resolution based on quality and best-practice as viewed by the expert arbitrator, rather than the engineered, bargained resolution often aimed for in mediation. Arbitration should be available as an independent option; mediation could also be offered in appropriate cases.

POBA believes that the courts should be recommended by the body to the complainant or member only if neither conciliation nor arbitration can be agreed with both parties.

3.7 Scope

The ICAEW, ICAS and ICAI arbitration schemes are limited to fee disputes. This can include fees already paid but subsequently disputed. The schemes are deemed inappropriate for fixed-fee work, where counter-claims have been made or where advice or some other service is alleged to have been substandard.

POBA does not believe that it is the appropriate role or the responsibility of accountancy bodies to intervene where there are complex disputes as to consequential financial loss, claims or counter-claims not directly relating to fees. However, the scope of arbitration should not be unnecessarily limited by the bodies and it should always be available where both parties agree to it. POBA believes that arbitration should be available for disputes of any kind, including simple cases of alleged consequential loss, where both parties are willing to submit to the process.

POBA also believes that an arbitrator, appointed with the agreement of both sides, should have as wide a range of solutions available as is possible. This should include a limited ability to recommend compensation up to a pre-defined limit, as is the case with the Law Society's Consumer Complaints Service which has a limit of £5,000.

3.8 Independence

The ICAS and ICAEW Fee Arbitration Schemes and the ICAEW's and ICAI's mediation services all appoint another member of the same body to adjudicate on, or mediate, the complainant's case. The schemes are also run by the body complained to, and are administered by employees of that body. This may be unsatisfactory for the complainant and can be perceived as lacking the necessary independence for an effective arbitration process.

Alternatives to this include a scheme that appoints an accountant from another CCAB body to adjudicate; a scheme that appoints a non-accountant (although it may be difficult to find an individual with the necessary expertise); or a scheme which is independent of the body or bodies, to which complaints can be referred.

POBA's preferred solution with regard to the independence of an arbitrator, and public perception of that independence, is a single independent ADR scheme. Such a scheme may be similar to the existing ICAS or ICAEW schemes, but would exist separately from the bodies. It could employ members of more than one body with the necessary expertise to adjudicate on complaints, and would, where possible, appoint an arbitrator from outside the referring body on a case.

The funding of the scheme, where not covered by contributions from complainants and the accountant involved, might reflect the level of usage by each body. This would allow CIMA and CIPFA to participate economically, despite having few members in public practice and thus less likelihood of using the service. A single scheme could cost less for participating bodies than six separate schemes and would be a more coherent and independent solution with which the public could identify.

POBA believes that it is for the bodies to determine the detail of their ADR schemes with regard to their member profiles and circumstances. POBA believes that the accountancy bodies' joint group on complaints and discipline, as recommended in the Review Board report, is the best forum for the bodies to discuss the appropriateness of a single ADR scheme.

3.9 Compensation

Compensation is awarded to make good a demonstrable loss suffered by one party as a result of another's actions. It is usually in the form of financial consideration and should be distinguished from disputes as to the appropriateness of fees. Fees should reflect the value of the service rendered; the reduction or waiver of fees through arbitration or following proven misconduct is discussed in other sections of this report.

Other comparable complaints handling schemes, such as the Law Society's Consumer Complaints Service (CCS) and the Financial Ombudsman Service (FOS) have the power to order compensation payments up to a defined limit i.e. £5,000 for the CCS and £100,000 for the FOS. This can be for any financial loss suffered by the complainant found by the adjudicator to have resulted from the professional's actions.

However, a key difference from the accountancy profession is that these schemes are backed by statute, both in the statutory definition and protection of the legal and financial advisory professions and in the statutory requirement for members of those professions to participate in an Ombudsman or compensation scheme. Only certain parts of the work of members of the accountancy bodies, such as audit and insolvency, are statutorily regulated; the extra cost of a non-statutory, but compulsory participation, compensation scheme may encourage some accountants to operate outside of membership of the bodies, which is not in the public interest.

If both parties to a dispute are willing to submit themselves to arbitration, as an alternative to the courts, then it is appropriate for the arbitrator to have the widest range of solutions available, including the power to award limited compensation. This should be capped to an appropriate amount. POBA does not believe that this would lead to a large number of speculative complaints due to the inherently low level of complaints per accountant and the non-compulsory participation nature of the arbitration scheme.

3.10 POBA follow-up of this report

POBA expects the bodies to act on the recommendations of this report on a timely basis and looks forward to receiving proposals from the bodies detailing how they will comply with the recommendations, including proposals for an arbitration scheme, within six months of the publishing of this report. POBA expects the recommendations to be fully implemented within two years of the publishing of this report.

POBA will review the operation of the ADR schemes recommended above and reserves the right to reconsider the need for an Ombudsman scheme should the procedures recommended not be implemented in full or fail to meet the public interest. POBA will monitor the level of complaints received by the bodies and will review satisfaction surveys of users of the complaints procedures.

Independent complaints handling mechanisms and compensation: Recommendations

POBA recommends a significant strengthening of the profession's current provision of ADR services in the area of service or contract related complaints or disputes.

POBA recommends:

- 1. In all complaint cases the body should attempt in the first instance to conciliate a resolution between the member and the complainant informally. Separately, any indication of possible misconduct should be referred to the body's disciplinary process and, if there is a public interest misconduct matter, further to the AIDB. ADR should not be used to resolve any misconduct issues.**
- 2. All the bodies should establish and offer an arbitration scheme for the resolution of complaints where conciliation by the body is not possible. This scheme should be available in all cases where both parties are willing to appoint an independent third party to adjudicate on the complaint and should not be limited solely to fee disputes.**
- 3. The arbitrator should have the power to vary any fees paid or payable and should also be able to award compensation up to a defined limit.**
- 4. The arbitrator appointed under the scheme should be, and be seen to be, independent of the subject of the complaint. A single scheme serving all the major bodies but independent of them would be the most demonstrably independent solution. Where possible an arbitrator should be appointed who is not a member of the same body as the accountant who is the subject of the complaint.**
- 5. The bodies should strongly encourage their members to participate in the arbitration scheme in relation to complaints where the body believes there are grounds for the complaint. The arbitration should be binding.**
- 6. The existence, availability and operation of the arbitration scheme should be made clear to all complainants; direct references should be made to it in complaints literature and other access points such as websites and simple guidance offered on how to request access to it.**

- 7. POBA does not believe that an accountancy body has a responsibility to resolve complex disputes regarding compensation for consequential financial loss resulting from alleged substandard service by an accountant, except to a limited degree where both parties are willing to submit to arbitration. The authority and expertise to deal with complex matters lie with the courts.**

POBA looks forward to receiving detailed proposals from the bodies on complying with the above recommendations within six months of the publishing of this report, and expects the above recommendations to be fully implemented within 2 years of the publishing of this report.

Four - Review Board (RB) recommendations not fully implemented

The Review Board of the Accountancy Foundation published its review of the Complaints and Discipline procedures of the major UK accountancy bodies in November 2002.

The accountancy bodies responded to the Review Board in May 2003 confirming the areas where they comply, or will comply, with the recommendations and giving reasons where they did not intend to comply or would partially comply.

The bodies have updated POBA on further progress on the implementation of outstanding recommendations. POBA has reviewed all the areas where the bodies have not implemented completely the recommendations of the Review Board report and have highlighted below the key outstanding issues and reiterated the recommendations where appropriate. POBA has made one further related recommendation relating to the reimbursement of the costs of bringing a complaint.

A review of each of the bodies' complaints and discipline procedures will form part of the annual monitoring visit work which confirms the ongoing recognition of each body as a Recognised Supervisory Body (RSB) for audit in the UK. In the first few years, work in this area will include confirming the adequacy of the bodies' implementation of the recommendations of the Review Board's report where they have stated that they now comply. POBA will follow up any inadequacies found as part of that annual reporting process.

RB Rec No.	RB report recommendation	POBA comment	POBA recommendation
A1.6	<p><i>It should be mandatory for all members in practice to use letters of engagement for all types of business.</i></p>	<p>Many complaints stem from a breakdown in communication between accountant and client. A letter of engagement should set out clearly for the client which services are to be provided, the terms of employment and an explanation of the fees involved. The use of such a letter as a matter of course in all appointments would help to avoid any misunderstandings.</p> <p>POBA believes that all work performed in public practice by an accountant on behalf of a client is appropriate to be covered by some form of engagement letter, and that the engagement letter should also make reference to the process to be followed in the event of any complaint relating to the work.</p> <p>In general, the bodies have mandatory requirements for engagement letters in some areas such as audit and they are recommended best practice in other areas. POBA believes a mandatory requirement in all areas of practice would be most effective in ensuring that good practice is adopted.</p>	<p>8. It should be mandatory for all regulated accountants in public practice to use written terms of engagement for all types of business.</p>

RB Rec No.	RB report recommendation	POBA comment	POBA recommendation
A1.7	<p><i>The accountancy bodies' regulations should stipulate that internal complaints handling procedures are mandatory for accountancy firms including sole practitioners.</i></p>	<p>In many cases, a complaint that could have been resolved by the firm or practitioner is unnecessarily referred to the accountancy body. If adequate internal complaints procedures are set up within accountancy firms, the level of client care is likely to improve and issues of poor service may be resolved without the need for investigation by the body.</p> <p>POBA believes that all regulated practising accountants should have an internal complaints handling procedure which should be clearly communicated to a client in the event of a complaint being made. The procedure should be appropriate to the accountant and may range from a detailed formal process in large firms to a commitment to informing the complainant of their rights to raise a matter with the relevant accountancy body for a sole practitioner. POBA would expect that the procedure would include automatic referral of any complaint involving potential misconduct to the relevant accountancy body.</p> <p>The bodies generally recommend that practising members have an internal complaints handling procedure but that it is not a regulatory requirement. POBA recommends that it be a mandatory requirement that would be monitored as part of the existing arrangements for inspections of firms in respect of audit or practice assurance.</p>	<p>9. It should be mandatory for all regulated accountancy firms to have an internal complaints handling procedure.</p>

RB Rec No.	RB report recommendation	POBA comment	POBA recommendation
A1.14	<p><i>The bodies should follow clear criteria when closing complaints cases without reference to an independent decision-making body (i.e. Investigation Committee or independent assessor). A complainant is entitled to know why his or her specific complaint is not to proceed and should be informed of this entitlement.</i></p>	<p>POBA believes the bodies must seek to provide a complainant with clear and adequate reasons for closing a complaint, particularly where no in-depth investigation has been undertaken. POBA believe such an explanation is appropriate in all circumstances in which a complaint is concluded. This explanation should be in a manner understandable by the complainant; the use of Latin such as prima facie and other legal terminology is not acceptable. As a result of Lord Woolf's 'Access to justice' report in 1996, plain English is now used where possible by solicitors and Latin terms are discouraged. The bodies should follow this best practice.</p> <p>POBA believe that the provision of appropriate reasons and explanation to complainants on concluding their complaints is key to public confidence in the fairness of the complaints handling procedures.</p> <p>All the bodies claim to comply with this recommendation. However, POBA has received a number of complaints from individuals who feel that their complaints have been dismissed by the bodies without adequate explanation. POBA's own reviews would suggest that the professional bodies could improve further in this area and POBA will monitor compliance with this recommendation.</p>	<p>10. The accountancy bodies must provide clear and adequate reasons and explanation when bringing a complaint to a conclusion.</p>

RB Rec No.	RB report recommendation	POBA comment	POBA recommendation
A1.15	<i>The reasons for cases being closed by the secretariat should be recorded in every instance and a summary should be provided to the Review Board annually. These cases should be monitored and reviewed by the Investigation Committee.</i>	In superseding the role of the Review Board, POBA looks forward to receiving such summaries annually, together with confirmation of the Investigation Committee's (or similar body's) consideration of the cases closed by the Secretariat.	
A1.37	<i>The disciplinary tribunals of all the accountancy bodies should be given the power to order the member to reduce or waive fees.</i>	<p>POBA believes that an accountant found by his professional body to have breached the body's rules or found guilty of misconduct should not benefit as a direct result of that breach or misconduct. POBA believes that the court is the correct place to determine consequential loss, but believes that the bodies should have the power to order the reduction or waiver of fees directly relating to proven misconduct. The power to order the member to reduce or waive fees relating to proven misconduct is not compensation for a complainant's consequential financial loss.</p> <p>A concern has been expressed that giving a body such powers would lead to a large number of speculative complaints. POBA does not see any evidence of speculative complaints in the two bodies where the disciplinary committees have this power. Such powers would only be used following the completion of the body's disciplinary process.</p>	11. The disciplinary tribunals of all the accountancy bodies should be given the power to order the member to reduce or waive fees which relate directly to the proven misconduct.

RB Rec No.	RB report recommendation	POBA comment	POBA recommendation
A1.19	<p><i>All disciplinary hearings where appropriate should be held in public with a provision to hold all or part of a hearing in private where, in the opinion of the tribunal, the circumstances are such that publicity would prejudice the interests of justice. In cases where all or part of a hearing is held in private the reasons for doing so should be publicly stated.</i></p>	<p>POBA supports the Review Board's view that the advantages of open hearings outweigh the disadvantages. The principle of transparency is a fundamental element of protecting the public interest. The requirement for open hearings is therefore not based only on Human Rights legislation but on the general concept of openness and that justice must be seen to be done.</p> <p>Two of the bodies do not comply with this recommendation, one stating that open hearings would lead to insurmountable difficulties in obtaining evidence. POBA believes that, in such circumstances, the relevant part of the hearing might be held in private with the reasons given publicly. This falls within the recommendation. POBA maintains that in most circumstances hearings should be heard in public and thus reiterates the recommendation.</p>	<p>12. All disciplinary hearings where appropriate should be held in public with a provision to hold all or part of a hearing in private where, in the opinion of the tribunal, the circumstances are such that publicity would prejudice the interests of justice. In cases where all or part of a hearing is held in private the reasons for doing so should be publicly stated.</p>

Further recommendation:

Reimbursement of the costs of bringing a complaint

One of the bodies' disciplinary committees has the power to make an award, currently limited to £1,000, to a complainant in a disciplinary case where misconduct is proven. This award is not compensation for any loss resulting from the member's misconduct, but rather reimbursement of the costs and inconvenience of bringing the complaint. The Disciplinary Committee has had this power for a number of years, and has made infrequent awards, the largest of which was approximately £600.

POBA believes that a complainant should not have to pay to bring an issue of misconduct to the attention of the relevant professional body. Reimbursement of the reasonable costs of bringing a complaint of misconduct which is subsequently proven should be a course available to the disciplinary committees, or equivalent, of all of the accountancy bodies.

Recommendation 13:

The disciplinary tribunals of all the accountancy bodies should be given the power to direct the member to reimburse the reasonable costs to a complainant of bringing an issue of misconduct to the attention of the body, if misconduct is proven.

