

March 2016

---

# Enhancing Confidence in Audit: The Financial Reporting Council's Audit Enforcement Procedure

The FRC is responsible for promoting high quality corporate governance and reporting to foster investment. We set the UK Corporate Governance and Stewardship Codes as well as UK standards for accounting, auditing and actuarial work. We represent UK interests in international standard-setting. We also monitor and take action to promote the quality of corporate reporting and auditing. We operate independent disciplinary arrangements for accountants and actuaries, and oversee the regulatory activities of the accountancy and actuarial professional bodies.

The FRC does not accept any liability to any party for any loss, damage or costs howsoever arising, whether directly or indirectly, whether in contract, tort or otherwise from any action or decision taken (or not taken) as a result of any person relying on or otherwise using this document or arising from any omission from it.

© The Financial Reporting Council Limited 2016

The Financial Reporting Council Limited is a company limited by guarantee.

Registered in England number 2486368. Registered Office:

8th Floor, 125 London Wall, London EC2Y 5AS

<b>Contents</b>	<i>Page</i>
• Section 1: Introduction	1
• Section 2: Outline of the Proposed Procedure	7
• Section 3: Funding	10
• Section 4: Preliminary Impact Assessment	12
• Appendix A: Proposed Audit Enforcement Procedure	14
• Appendix B: Case Examiner Guidance	33
• Appendix C: Conduct Committee Guidance on	36
- Threshold Test	
- Delegation of Investigations	
- Oversight of Investigations	
• Appendix D: Case Management Committee Terms of Reference (including Investigation Committee and Enforcement Committee)	38
• Appendix E: Tribunal and Appeal Tribunal Appointments	42
• Appendix F: Hearing Guidance	45
• Appendix G: Sanctions Policy	51
• Appendix H: Publications Policy	69

## SECTION 1: INTRODUCTION

On 17 June 2016 the EU Audit Regulation (EU) 537/2014 (**Audit Regulation**) and EU Audit Directive 2014/56/EU (**Audit Directive**) come into force. The Department for Business, Innovation and Skills (**BIS**) has consulted on implementing the Audit Directive and the Member State options set out in the Audit Regulation and it is anticipated that the Statutory Auditors and Third Country Auditors Regulations 2016 (**SATCAR 2016**) will come into force on the same date and will implement, update and consolidate the regulation of Statutory Audit generally. The Ministerial Statement of 20 July 2015 and the draft implementing legislation have confirmed that the Financial Reporting Council (**FRC**) will be the UK's designated Competent Authority with responsibility for the regulation of Statutory Audit and will delegate regulatory tasks to the Recognised Supervisory Bodies (**RSBs**).

The FRC will retain those tasks which it must retain under the Audit Regulation and Audit Directive and any other tasks where there is a good reason to do so.

The Audit Regulation sets out a bespoke regime for the regulation of Audits of Public Interest Entities (**PIEs**) and, as the Competent Authority, the FRC will be required by the Audit Regulation and SATCAR 2016 to retain PIE quality assurance and enforcement activity. The Audit Regulation and SATCAR 2016 also confer enlarged investigative powers upon the Competent Authority which may be used in its performance of PIE Audit enforcement investigations. The relevant provisions will be reviewed against the final implementing provisions in SATCAR 2016.

In order to implement its mandatory responsibility for Audit enforcement in relation to PIE and any specific non-PIE matters, the FRC has developed a new Audit Enforcement Procedure (**Procedure**), a copy of which is included in Appendix A and key aspects of which are outlined in Section Two. Supporting Policy and Guidance documents are included in Appendices B to H. Section Three outlines the funding arrangements for the new Procedure. Section Four provides a preliminary impact assessment.

Feedback on the Procedure is now sought from interested parties on or before 4 May 2016.

### How to Respond

Please respond by 4 May 2016 at the latest. Earlier responses are welcomed. Responses should be sent by email to [consultations@frc.org.uk](mailto:consultations@frc.org.uk)

or in writing to:

Catherine Horton  
Financial Reporting Council  
8<sup>th</sup> Floor  
125 London Wall  
London  
EC2Y 5AS

It is the FRC's policy to publish on its website all responses to formal consultations unless the respondent explicitly requests otherwise. A standard confidentiality statement in an e-mail message will not be regarded as a request for non-disclosure. The FRC does not edit personal information (such as telephone numbers or email addresses) from submissions; therefore only information that you wish to be published should be submitted.

## Rationale for the change

The public interest function of Statutory Audit means that a broad community of people and institutions rely on the quality of a Statutory Auditor's or Audit Firm's work, and the Audit Directive as implemented by SATCAR 2016 aims to protect that public interest.

By setting out PIE Audit arrangements in separate legislation, and requiring that certain aspects (including certain PIE Audit investigations and all PIE Audit sanctions) must be carried out directly by the Competent Authority, the Audit Regulation places additional importance on the Statutory Audit of PIEs thereby enhancing and safeguarding public confidence in the annual and consolidated financial statements of those PIEs.

The FRC currently operates two procedures in relation to Audit Enforcement; (1) an administrative, committee-led sanctions procedure for breach of Audit Requirements; and (2) a disciplinary tribunal scheme for the investigation of misconduct in matters which raise important issues affecting the public interest. Both procedures are underpinned by the statutory requirement for the professional bodies, in order to be recognised as Audit supervisory bodies, to enter into such arrangements with an independent body. The provisions of the disciplinary scheme have, by voluntary arrangement with the six participating accountancy professional bodies, been extended to cover their entire membership and so the scheme is not limited to Statutory Audit matters.

The new EU legislation requires *'effective systems of investigations and penalties to be in place, to detect, correct and prevent inadequate execution of the statutory audit'*. The FRC considers it appropriate to establish and operate a procedure which has been specifically designed to the specification of the new Audit regulatory framework for the following reasons:

- The existing sanctions procedure and disciplinary tribunal scheme have been created and developed under voluntary arrangements underpinned by statutory requirements and where specific responsibilities are delegated to the FRC by the professional bodies. Those procedures do not reflect the FRC's status as the Competent Authority;
- The scope of the matters which fall to the FRC to investigate and sanction under the FRC's existing sanctions procedure and disciplinary scheme relates to major audits and public interest cases. Under the new legislation, the FRC will be required to investigate and sanction breaches of the requirements set out in the Audit Regulation and Audit Directive in relation to PIEs and other classes of Statutory Audit which the FRC has decided to retain;
- The disciplinary scheme applies to all members of the participating professional bodies including accountants who are not auditors, whereas the new framework applies to Statutory Audit only; and
- The disciplinary scheme is a traditional, wholly tribunal based scheme. While this is compatible with the current scope and catchment of high public interest, high value cases, this scheme is not designed to deal with the potential range of cases to be dealt with under the new arrangements.

The principles underlying the design of the new Procedure are:

- A European Convention of Human Rights compliant procedure ensuring fairness to Statutory Auditors whilst protecting the public;
- A single, streamlined procedure to deal with the full range of Audit enforcement, ranging from simple 'misdemeanour' breaches to breaches which are so serious that they would previously have fallen into the 'misconduct' category; and
- An administrative procedure which would promote and facilitate the early resolution of appropriate cases at Executive and Committee level.

### **Scope and Threshold of the new Procedure**

The Procedure applies:

- (i) to Statutory Auditors and Statutory Audit Firms;
- (ii) where there may have been a contravention of a Relevant Requirement as defined in SATCAR 2016; and
- (iii) in relation to those matters which concern PIEs which the FRC must retain and any other non-PIE matters which the FRC may retain.

PIEs, as defined in SATCAR 2016, broadly include: 1) issuers admitted to trading on a regulated market; 2) credit institutions; and 3) insurance undertakings; and

As stated above, the FRC intends to delegate the majority of non-PIE Audit Regulation tasks to the professional bodies. Where the FRC retains a certain category of cases or an individual case, the FRC will conduct such enforcement cases under the new Procedure (save that the new power to compel information from any person will not be applied in such cases, as that power is reserved to PIE Audit enforcement cases only).

The FRC is committed to independent, effective, proportionate and consistent regulation across the sector and seeks to deliver this by way of a new procedure which balances an appropriate level of constructive engagement and the opportunity to resolve cases at an early, administrative stage with the availability of a full hearing by an independent tribunal. The Procedure therefore incorporates:

A provision for constructive engagement at an early, pre-referral stage;

- The proposed threshold for investigation under the Procedure is where the FRC Conduct Committee considers that there is '*a good reason*' to investigate an alleged failure to comply with a relevant requirement; and
- Three opportunities for early resolution before a matter goes to the traditional 'tribunal' stage: (1) constructive engagement at the pre-investigation stage; (2) Executive Decision Notice; (3) Committee Decision Notice.

## Sanctions

The Audit Regulation and Audit Directive as implemented by SATCAR 2016 allow at least the following sanctions to be imposed on Statutory Auditors for inadequate execution of Statutory Audit:

- (a) **notice to cease and abstain** from any repetition of the breach;
- (b) **publication of a statement** confirming the person responsible and the nature of the breach;
- (c) **prohibition order** of up to 3 years' duration from carrying out Statutory Audits and/or signing Audit reports and/or from exercising functions in Audit Firms or PIEs;
- (d) **declaration** that an Audit report does not satisfy the Audit reporting requirements; and
- (e) **financial penalty**.

The new Procedure adds to these minimum sanctions the additional sanctions listed below in order to maintain continuity with the sanctions presently available under the FRC's existing procedures and to maintain consistency with the range of sanctions available to the professional bodies under their procedures which will apply to non-PIE Statutory Audit cases:

- (f) **condition** (an order to comply with any direction);
- (g) **exclusion** as a member of one or more RSBs; and
- (h) **restitution** (waiver / repayment of client fees).

The sanctions detailed at (a) to (h) above are based on the provisions set out in the Audit Directive and will be subject to review against the implementing provisions in SATCAR 2016.

## Routes for Early Resolution

While the new Procedure's (pre-tribunal) administrative stages add a layer to the present (tribunal-focused) Audit enforcement arrangements, the ultimate aim is to facilitate and encourage the FRC and any Respondent to explore fully the options for early resolution without forcing recourse to a timely, expensive and procedurally complex tribunal hearing in every case. The move towards early resolution is supported by incentives e.g. by offering percentage reductions to financial penalties where a Decision Notice is accepted earlier in the process and acknowledgment of the respondent's co-operation and early resolution in the publication of the outcome.

The integrity of any decision to impose a sanction and of the particular sanction proposed by either the Executive (Enforcement Division) or the Enforcement Committee will be protected threefold:

1. by all decision makers (Executive, Committee and Tribunal) following published Sanctions Guidance;
2. in the case of the Executive, case specific oversight where directed by the Conduct Committee (where the Investigations Committee will perform a similar function to the present Case Management Committee in testing and overseeing the Enforcement Division's conduct of an investigation and any proposed Decision Notice) and, in all other cases, overall oversight by regular reporting to the Conduct Committee; and

in the case of the Enforcement Committee, the independence of the non-executive membership of the Committee; and

3. the Respondent's ability to reject the proposed Decision Notice and seek a decision by the Enforcement Committee or by a Tribunal.

Although there is provision for the parties to agree to '*fast-track*' a matter to the Tribunal, the intention is that this would be in exceptional cases only and the option can only be triggered by agreement. This protects the Respondent's right to go through the administrative stages rather than being automatically required to participate in a time, document and cost intensive tribunal process and enables the FRC to promote a culture of timely, proportionate and effective resolution where appropriate.

## Similarities and differences between the old and new Audit Enforcement regimes

New characteristics of the Procedure include:

- **A mandatory administrative layer** before cases may proceed to Tribunal, with the aim of enabling and facilitating early resolution in appropriate cases at three pre-tribunal procedural stages;
- **Filter stage:** a Case Examiner will review information received by the FRC and assess whether it amounts to an allegation or whether it has already been or is suitable for being dealt with by constructive engagement;
- **Enforcement Division Decision Notice:** a sanction offered by the Executive;
- **Enforcement Committee Decision Notice:** a sanction offered by a non-executive Committee;

- **Streamlined oversight of Executive investigations:** in order not to delay the resolution of smaller, straightforward cases, the Conduct Committee will decide on a case by case basis if bespoke non-executive oversight is required for a particular investigation (rather than all investigations being overseen by a group of the Case Management Committee as is the present arrangement under the Scheme);
- **Reflection of the enhanced investigation powers provided by the Audit Regulation:** the FRC, as Competent Authority, may compel any person to provide information in relation to a PIE Statutory Audit; and
- **Policy of acknowledgement, where appropriate, of co-operation and early resolution in published Decision Notices.**

Retained / Similar characteristics include:

- **Conduct Committee threshold decision:** the Conduct Committee (or the Investigation Committee on its behalf) will continue to decide whether the threshold for investigation under the Procedure has been passed;
- **Streamlined oversight of Executive investigations** (see above): those cases not individually overseen by a non-executive committee (the Investigation Committee) will still be subject to general oversight by the Conduct Committee by way of regular reports;
- **Interim orders:** the Enforcement Committee or the Tribunal may impose an interim order as the Tribunal may do under the Accountancy and Actuarial Schemes;
- **Respondent's right to a full tribunal hearing;**
- **Respondent's right to appeal;** and
- **Publication of enforcement decisions.**

### **Cross-discipline investigations: operating different procedures**

The FRC and the professional bodies are considering the extent to which the FRC should continue to deal with public interest cases which do not involve Statutory Audit and so, the extent to which the Accountancy Scheme should continue to operate. Part of this consideration will be minimising the number of procedures to be operated by the FRC; to ensuring consistency by aligning procedures where possible; and to ensuring fairness to the individuals and firms subject to the FRC's regulation whether on a statutory basis or by agreement with the professional bodies.

The FRC and the professional bodies are committed to working together to reach an outcome which is consistent with the principles of better regulation and which serves the public. They will continue to work together to resolve the way forward, in principle, by the implementation of the new regime on 17 June 2016.

## SECTION 2: OUTLINE OF THE PROPOSED PROCEDURE

### Introduction

The proposed Procedure provides for a four-stage process;

1. An initial filter and decision to investigate;
2. Investigation and a Decision Notice from the Enforcement Division;
3. Enforcement Committee consideration and a Decision Notice; and
4. Tribunal and Appeal Tribunal.

The scope and application of the new Procedure are discussed in Section 1, above. The key stages of the Procedure are discussed below together with the consultation questions.

### Stage 1: the Case Examiner and the Conduct Committee

The Case Examiner will operate a procedural ‘filter’, by receiving information about PIE and non-PIE Audits within the FRC scope and deciding:

- If the information amounts to an **allegation** i.e. information about a Statutory Auditor or Statutory Audit Firm which raises a question as to whether they have breached a Relevant Requirement;
- If it has already been or can be dealt with through **constructive engagement** (this is the first opportunity for administrative (Executive-led) early resolution of a matter); and
- If it should be referred to the Conduct Committee (or the Investigations Committee on its behalf) for a **decision** on whether to investigate under the Procedure.

If referred to the Conduct Committee, the Conduct Committee will decide:

- If there is “**a good reason to investigate**” an allegation;
- If the investigation should be **delegated** to the RSBs; and
- If the investigation should be **overseen** by the Investigation Committee.

### Stage 2: the Enforcement Division

Where the Conduct Committee decides that the Enforcement Division should investigate an allegation, the Enforcement Division will inform the Respondent of the allegation, investigate and prepare an Investigation Report.

Where the Conduct Committee decides that the investigation may be delegated to a professional body, that body will perform those steps and then provide the Investigation Report to the Enforcement Division for a decision on liability and, where applicable, sanctioning. This is because, while we may delegate the performance of certain PIE Audit investigations (namely, those investigations which do not arise out of the FRC’s PIE Audit monitoring activities or referrals from other authorities), the FRC is prohibited from delegating any sanctioning of PIE Audit breaches under the Audit Regulation.

Following preparation of the Investigation Report (or receipt of the Investigation Report by a professional body) the Enforcement Division will provide the Respondent with the Investigation Report and an opportunity to respond, before deciding if the Respondent is liable for the alleged breach and issuing a Decision Notice, including a sanction if applicable. Where the Decision Notice is accepted by the Respondent, the matter is concluded. In these circumstances an early settlement discount will usually be applied and the Respondent's co-operation in concluding the matter early will usually be acknowledged in the published Decision Notice.

Where the Decision Notice is not accepted by the Respondent, the matter will be referred to the Enforcement Committee (Stage 3).

### **Stage 3: the Enforcement Committee**

The Enforcement Committee will meet in private to consider the allegation against the Respondent and may invite representations from the FRC Executive and the Respondent. The meeting will be conducted on a predominantly paper-led basis and the Enforcement Committee will not hear oral (witness or expert) evidence.

While this adds an additional, new stage to the current tribunal-led process, the FRC has followed the example of other regulators by adding this stage in order to encourage a pragmatic, streamlined and proportionate resolution to disputed Executive Decision Notices.

The Enforcement Committee will issue a Decision Notice including a sanction as appropriate. Where the Decision Notice is accepted by the Respondent, the matter is concluded. In these circumstances, an early resolution discount will usually be applied (albeit on a reducing scale) and the Respondent's co-operation in concluding the matter early will usually be acknowledged in the published Decision Notice.

Where the Respondent fails to respond to the Decision Notice, the Enforcement Committee may refer the matter to the Tribunal or issue a Final Decision Notice which will, if not appealed, conclude the matter.

Where the Decision Notice is not accepted by the Respondent, the matter will be referred to the Tribunal (Stage 4).

### **Stage 4: the Tribunal and Appeal Tribunal**

The tribunal stage will be broadly identical to the present tribunal stage under the FRC's Accountancy and Actuarial Schemes, save that the Procedure associated documentation (for example Hearing Guidance and Draft Standard Directions) updates the tribunal process where appropriate. The Tribunal will comprise three or five members including a Legal Chair and the hearing will be in public.

As with the current arrangements, the Tribunal members will be appointed to a wider panel by an appointments committee which is independent of the Conduct Committee and appointed by the FRC Nominations Committee. Tribunal Panel members will be appointed to the case in question by an external, independent Convener.

The Tribunal will hear the allegation afresh and may hear oral evidence. The Tribunal will issue a Tribunal Decision (including sanction as appropriate). As with the current process, the Respondent has the right to appeal the Tribunal's Decision on limited grounds.

Those grounds are that the Tribunal's decision was:

- ***Wrong in law;***
- Unfair because of a ***serious procedural irregularity;***
- ***Irrational;***
- Made in the ***absence of significant and relevant new evidence*** which could not have been adduced previously; or
- In relation to ***sanction, disproportionate.***

The Appeal Tribunal will be appointed from the same independent Tribunal panel and in the same way as the Tribunal under the new Procedure.

---

***Question 1: Do you consider the proposed Procedure adequately reflects the ARD requirements?***

***Question 2: Do you agree that the Procedure achieves a balance between protecting the public and fairness to those subject to the Procedure?***

***Question 3: Do you consider there is anything missing from the proposed Procedure that would improve its effectiveness?***

***Question 4: Do you have any other comments about the proposed Procedure?***

## SECTION 3: FUNDING

This section considers the principles on which the expenditure and funding arrangements relating to the new Procedure should be based.

For the new Procedure to be effective, the FRC must be adequately resourced for its overall role as Competent Authority including its responsibilities in relation to investigations and sanctions.

The FRC intends to secure the resources necessary to discharge this role from the Audit profession. It has consulted on this underlying principle, and on its proposed expenditure and funding arrangements for the first year of operation of its new responsibilities, in the context of its Draft Plan & Budget 2016/17 published in December 2015.<sup>1</sup>

The new Procedure will require the FRC to meet two broad categories of costs: the FRC's operating costs relating to its enforcement role; and the costs associated with individual cases (**case costs**). The operating costs will include a proportionate share of the costs of the FRC's governance arrangements, legal and support staff, and associated overheads.

The FRC is considering responses to its consultation on the Draft Plan & Budget which includes a proposal to fund its operating costs through an annual levy on the Audit profession. This levy, based on budgeted expenditure which is subject to annual public consultation, will be set by the FRC as an overall Annual Funding Requirement and will be collected from the RSBs. The RSBs will in turn collect funding from the Audit profession on the basis of a formula which takes into account numerous factors including size. All the Audit Firms within the scope of the new Procedure will therefore contribute annually, and broadly in proportion to their size, to the cost of operating the new Procedure.

The FRC considers that the second category, case costs, should be met in the first instance by the RSB of which the Statutory Auditor or Statutory Audit Firm is a member. It would be for the RSB to recover those costs from its Statutory Auditor or Audit Firm members.

This would be broadly in line with the present arrangements whereby the accountancy professional bodies participating in the FRC's independent disciplinary arrangements meet the costs of investigating and prosecuting individual public interest cases involving their members within the terms of individual case cost agreements with the FRC.

Under the Accountancy Scheme, costs awarded against an accountancy body member or member firm are passed to the relevant participating body and fines awarded against a member or member firm are passed to the Consultative Committee of the Accountancy Bodies (CCAB). The FRC meets costs awarded against the FRC by tribunals or the courts and the legal costs of conducting any case which the tribunal finds to be wholly unjustified.

The FRC believes it remains appropriate for those meeting case costs to benefit from the recovery of costs but it would not be appropriate to maintain arrangements under which income from fines is passed back to the profession.

In developing the arrangements for managing case costs, the FRC will build on its experience of operating the current independent disciplinary schemes for accountants and actuaries. In particular it will consider establishing for cases addressed through the new procedure – and, potentially, for non-audit accountancy cases – a 'case costs fund' analogous to that

---

<sup>1</sup> [www.frc.org.uk/Our-Work/Publications/FRC-Board/FRC-Draft-Plan-Budget-and-Levy-Proposals-2016-17.pdf](http://www.frc.org.uk/Our-Work/Publications/FRC-Board/FRC-Draft-Plan-Budget-and-Levy-Proposals-2016-17.pdf)

established to meet the costs of actuarial cases and the use of any received fines to do so. In developing this consideration the FRC will consult appropriately.

**Question 5: *Do you have any comments on the proposed funding arrangements?***

## SECTION 4: PRELIMINARY IMPACT ASSESSMENT

In June 2015, BIS prepared a Consultation Stage Impact Assessment on the UK implementation of the Audit Directive. The Assessment was given the reference RPC15-BIS-2290 and is available on the BIS website.<sup>2</sup> Those costs and benefits associated with implementing the legislation that BIS had developed to address the requirements of the EU Audit Regulation and Directive are included within the BIS impact assessment. This Impact Assessment relates to the specific enforcement implementing decisions made by the FRC. Given that the FRC has decided, drawing on the powers that BIS proposes to make available to the FRC, to change the operation of an existing process then the changes in costs and benefits arising from the new Procedure are expected to be de minimis.

The BIS Impact Assessment concluded that the changes to the regulatory framework involving the FRC's role would not represent a significant cost to business. The changes included those in relation to investigations and sanctions, which underpin the new Procedure. The Assessment noted that the FRC would be given new powers to obtain information from third parties in relation to Audits of PIEs. BIS concluded that the use of these powers would not result in significant additional burdens. This was because in most cases third parties would have supplied the information voluntarily under the FRC's current arrangements, and therefore in this respect the FRC considers that no significant additional costs will be incurred.

BIS submitted the Impact Assessment to the Government's independent Regulatory Policy Committee (**RPC**) in July 2015. The RPC rated the Assessment 'fit for purpose'. BIS published a Consultation Document on the implementation of the Audit Regulation and Audit Directive in October 2015, reporting the RPC's conclusions and observations. The RPC did not identify any particular issues in relation to the FRC's proposed role in relation to investigations and discipline.

In considering the costs associated with the new Procedure, the FRC agrees with the BIS analysis as reviewed by the RPC. Responses to the BIS consultation suggest that the business community broadly supports the FRC's overall role in promoting Audit quality, of which enforcement is an integral part. It is, however, difficult to give a quantitative estimate of the benefits directly associated with the new Procedure because costs materialise on a case-by-case basis. For that reason it is also difficult to quantify any direct costs or savings.

The FRC recognises that any significant change to the way in which a regulator takes enforcement action may have unintended consequences in terms of costs. To minimise this risk, the FRC has developed the new Procedure taking into account its experience of the cases it has pursued under its existing disciplinary schemes, many of which have involved issues relating to Statutory Audit, and its Auditor Regulatory Sanctions Procedure.

In considering the impact of the new Procedure it is important to note that there will not be an overall increase in regulation. The implementation of the Audit Regulation and Audit Directive will result in amended scopes of responsibility for both the FRC and the professional bodies in terms of the regulatory activities undertaken but the combined scopes of each are not significantly different in relation to regulation generally and, specifically, enforcement. Accordingly, it is not likely that there will be a significant impact on the overall costs or savings for business.

The routes for early resolution of cases (Section 1.5) should serve to reduce costs to business. The 2012 reforms to the FRC's powers and structure gave it an enhanced ability to settle cases under the existing Accountancy Scheme without proceeding to a full independent

---

<sup>2</sup> [www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/470195/BIS-15-606-impact-assessment-audit-and-reporting-requirements.pdf](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/470195/BIS-15-606-impact-assessment-audit-and-reporting-requirements.pdf)

tribunal hearing. All things being equal this was expected to reduce the costs to business without compromising the effectiveness of the scheme. Experience to date has been too limited to draw firm conclusions but does not suggest that the new Procedure, which provides for resolution at an early stage, will do anything other than reduce the costs to business.

Ultimately the absolute level of the costs that the new Procedure will impose on business will depend on the number of cases that arise, the complexity of those cases, and decisions on the early resolution of individual cases. The FRC does not expect that any specific features of the Procedure will by their nature impose greater costs than its current independent disciplinary scheme for public interest cases involving members or member firms of the accountancy professional bodies; but the FRC would nonetheless welcome any comments on this assessment. The FRC will take into account the responses to this consultation document in finalising the new Procedure.

**Financial Reporting Council**  
23 March 2016

# APPENDIX A: PROPOSED AUDIT ENFORCEMENT PROCEDURE

## Contents

Part 1: Interpretation/Glossary	16
Part 2: Initial Stages	19
Initial Action by Case Examiner	19
Decision to Investigate	19
Notice of Investigation	19
Part 3: Investigation	20
Delegation	20
Investigation Powers	20
Executive Counsel's Decision Notice	21
Referral to the Enforcement Committee	21
Part 4: Enforcement Committee	22
Enforcement Committee Test	22
Enforcement Committee's Decision Notice	22
No Agreement to the Enforcement Committee's Decision Notice	23
Part 5: The Tribunal	24
Case Management Meetings and Directions	24
Notice of Hearing	24
Evidence	24
Postponements and Adjournments	25
Proceeding in Absence	25
Attendance of the Public	25
Representation	25
The Procedure at a Hearing	26
Part 6: Interim Orders	27
Part 7: Appeal	28
Part 8: Reconsideration	29

Part 9: General	30
Notice of Cancellation	30
Amendment of the Allegation	30
Burden and Standard of Proof	30
Joinder of Allegations	30
Publication	30
Costs	31
Voting	31
Sanctions	31

## Part 1: Interpretation/Glossary

### 1. In these Rules:

2016 Regulations	means the Statutory Auditors and Third Country Auditors Regulations 2016 (SI 2016/XXXX).
Audit Regulation	means Regulation (EU) No 537/2014 of the European Parliament and of the Council dated 16 April 2014 on specific requirements regarding statutory audit of public-interest entities (as amended).
Adverse Finding	means a finding by Executive Counsel, an Enforcement Committee or a Tribunal that a Respondent has breached a Relevant Requirement.
Allegation	means information about a Statutory Auditor or Statutory Audit Firm which raises a question as to whether they have breached a Relevant Requirement.
Appeal	means an appeal against the Final Decision Notice of the Tribunal.
Appellant	means a Statutory Auditor or Statutory Audit Firm seeking to appeal under these Rules.
Appeal Panel	means the panel constituted to hear Appeals in accordance with Annex B.
Appeal Tribunal	means the Appeal Tribunal appointed to consider an appeal in accordance with Rule 63 and the Tribunal Terms of Appointment issued by the Conduct Committee.
Cancellation Notice	means written notification that an investigation or proceedings against a Respondent has been cancelled under Rule 72 or 74.
Case Examiner	means an officer of the FRC to whom exercise of functions under Part 2 of these Rules has been delegated.
Case Management Directions	means Standard Directions and/or directions given by the Chair under Rule 26.
Case Management Meeting	means a meeting held by the Chair to give Case Management Directions.
Chair	means the Chair of the Tribunal appointed in accordance with the Annex B.
Conduct Committee	as established by the FRC Board under the FRC's Articles of Association.
Constructive Engagement	means any of the range of forms of engagement set out in the Case Examiner Guidance issued by the Conduct Committee.
Days	means calendar days.

Decision Maker	means the Executive Counsel, Enforcement Committee, Chair or Tribunal.
Decision Notice	means the notice issued by the Executive Counsel or Enforcement Committee with the findings and recommended sanction.
Directive	means Directive 2006/43/EC of the European Parliament and of the Council of the European Union on statutory audits of annual accounts and consolidated accounts, amended by Directive 2008.30/EC, Directive 2013/34/EU and Directive 2014/56/EU.
Enforcement Action	means any steps taken pursuant to Rules 15, 16, 21, 22, 23, 93 and 94 of these Rules.
Enforcement Committee	as constituted under its terms of reference issued by the Conduct Committee and Rule 92.
Executive Counsel	means a legally qualified officer of the FRC appointed to that office by the FRC's Nominations Committee or the person or persons to whom the FRC Board or Executive Counsel delegates responsibility.
Final Decision Notice	means the notice issued by the Executive Counsel, Enforcement Committee or Tribunal setting out the Decision Maker's conclusive findings and Sanction.
FRC	means the Financial Reporting Council Limited, a company limited by guarantee incorporated in England and Wales and the designated competent authority pursuant to the 2016 Regulations.
Hearing	means an oral hearing before the Tribunal.
Initial Investigation Report	means the report prepared by Executive Counsel which outlines the allegation and those Relevant Requirements which the Respondent appears to have breached and summarises the evidence and documents obtained in the course of the investigation.
Interim Order	means an order which imposes restrictions on the Respondent pending the outcome of the FRC's investigation or proceedings.
Investigation Committee	Means a committee as constituted under its terms of reference and who may undertake functions under Rules 4, 5, or 6 where these have been delegated to it by the Conduct Committee.
Investigation Report	means the report finalised by the FRC following any submissions from the Respondent to the Initial Investigation Report.
Party/Parties	means the Respondent and Executive Counsel and may refer to those representing them.
Publication Policy	means the FRC's publication policy from time to time in force and issued by the Conduct Committee

Public Interest Entity	is as defined in the 2016 Regulations
Recognised Supervisory Body	means a supervisory body granted a recognition order by the Secretary of State in accordance with Part 1, Schedule 10 of Companies Act 2006 (as amended) and for the purposes of Part 3 of these Rules the body to whom an investigation under this procedure has been delegated pursuant to Regulation 3(6) of the 2016 Regulations.
Relevant Requirement	means a requirement under the 2016 Regulations or the Audit Regulations or Part 16 or 42 of the Companies Act 2006 (as amended).
Respondent	means a Statutory Auditor or Statutory Audit Firm against whom an allegation has been made.
Rules	means the rules set out in this Audit Enforcement Procedure.
Sanction	means a sanction under Rule 93.
Sanction Policy	means the policy document on sanctions approved by the Conduct Committee.
Secretariat	means any officer or officers, with no decision making function, appointed by the FRC to exercise administrative functions to support the Enforcement Committee and Tribunal.
Standard Directions	means directions substantively in the form at Annex A applicable to all cases referred for a Hearing save as set out in Rule 28.
Statutory Audit	means an audit of annual financial statements or consolidated financial statements required by the Companies Act 2006 (as amended).
Statutory Audit Firm	means a legal person or any other entity, regardless of its legal form, that is approved by or on behalf of the FRC to carry out Statutory Audits and is potentially liable to Enforcement Action under these Rules.
Statutory Auditor	means a natural person who is approved by or on behalf of the FRC to carry out Statutory Audits, including third-country auditors as defined in the Directive and is liable to Enforcement Action under these Rules.
Tribunal	means a Tribunal appointed in relation to a specific case.
Tribunal Panel	means the Tribunal Panel constituted in accordance with Annex B to conduct Hearings and those matters set out in Parts 5 and 6 of this Procedure

In these Rules words denoting the masculine gender include the feminine, and words denoting the singular may include the plural.

## **Part 2: Initial Stages**

### **Initial Action by Case Examiner**

2. On receipt of information about a statutory auditor or statutory audit firm the Case Examiner may:
  - (a) make enquiries and obtain specialist advice;
  - (b) seek constructive engagement with the Respondent.
3. Where the Case Examiner determines that the information about a statutory auditor or statutory audit firm;
  - (a) amounts to an allegation, and he has not resolved the matter using constructive engagement, he:
    - (i) may refer the allegation for an interim order to be considered by the Enforcement Committee;
    - (ii) shall refer the allegation to the Conduct Committee (or Investigation Committee);
  - (b) does not amount to an allegation, he shall take no further action.

### **Decision to Investigate**

4. Where the Conduct Committee (or Investigation Committee) considers that there is a good reason to investigate an allegation, it shall:
  - (a) refer the allegation for investigation;
  - (b) direct whether the investigation should be delegated to the appropriate Recognised Supervisory Body; and
  - (c) direct if the investigation shall be overseen by the Investigation Committee.

### **Notice of Investigation**

5. Where the Conduct Committee (or Investigation Committee) refers an allegation for investigation, the Respondent shall be sent a notice of referral which shall:
  - (a) outline the scope of the investigation;
  - (b) indicate if the investigation has been delegated to a Recognised Supervisory Body.

## Part 3: Investigation

### Delegation

6. Where the Conduct Committee or Investigation Committee has delegated the investigation to a Recognised Supervisory Body the Recognised Supervisory Body may, on behalf of the FRC, exercise the powers set out in Rule 7.

### Investigation Powers

7. In order to investigate and determine whether to issue a Decision Notice, or monitor compliance with Decision Notices, the Executive Counsel may:
  - (a) give notice to require any Statutory Auditor to provide information it holds which relates to work undertaken in respect of the Statutory Audit of the annual accounts or the consolidated accounts of any audited person;
  - (b) request any specialist advice;
  - (c) request experts to carry out verifications or investigations;
  - (d) require the Respondent to co-operate with investigations, including attending for interview.
8. In the course of his investigation Executive Counsel may:
  - (a) carry out on-site inspections of statutory audit work or audit firms;
  - (b) give notice to any person specified below to provide information relating to the statutory audit of the annual accounts or the consolidated accounts of any Public Interest Entity:
    - (i) any person involved in the activities of Statutory Auditor (including any person to whom a Statutory Auditor has outsourced such activities);
    - (ii) any Public Interest Entity;
    - (iii) any subsidiary or parent of the Public Interest Entity or any other subsidiary of a company of which a Public Interest Entity is a subsidiary;
    - (iv) any person otherwise having a connection to a Statutory Auditor carrying out the Statutory Audit of the annual accounts or consolidated accounts of a Public Interest Entity.
9. When the investigation has been concluded, the Executive Counsel shall provide the Respondent with the initial Investigation Report and any relevant accompanying papers.
10. On receipt of the initial Investigation Report, the Respondent shall have 28 days to respond.
11. The Executive Counsel may take into account a failure to respond when determining any Enforcement Action.
12. The Executive Counsel shall consider any submissions from the Respondent and finalise the Investigation Report.
13. At any stage of the investigation or following completion of the investigation, before or after receipt of any response from the Respondent, Executive Counsel may:

- (a) seek clarification or further information from the Respondent or any other person in respect of the allegation or investigation;
- (b) seek advice from the Investigation Committee;
- (c) agree with the Respondent that the case should be referred directly for a Hearing under Part 5 of these Rules without first passing through the Enforcement Committee stage set out in Part 4 of these Rules.

### **Executive Counsel's Test**

14. The Executive Counsel will decide that either:

- (a) A Respondent is not liable for Enforcement Action and shall issue a Notice of Cancellation pursuant to Rule 72; or
- (b) A Respondent is liable for Enforcement Action, having made adverse findings against the Respondent.

### **Executive Counsel's Decision Notice**

15. Where the Executive Counsel considers that a Respondent is liable for Enforcement Action, he shall issue a Decision Notice which shall:

- (a) outline the adverse findings;
- (b) propose a Sanction;
- (c) invite the Respondent to provide a written agreement to all or part of the Decision Notice within 28 days from the date of the Decision Notice.

16. The Executive Counsel shall issue a Final Decision Notice where the Respondent agrees to the entire Decision Notice.

### **Referral to the Enforcement Committee**

17. The Executive Counsel shall refer a matter to the Enforcement Committee where:

- (a) the Respondent has refused to agree the Executive Counsel's entire Decision Notice;
- (b) the Respondent does not provide written agreement to the Decision Notice within the time specified by the Executive Counsel;
- (c) the Respondent has failed to comply with a Final Decision Notice and the allegation is therefore re-opened;
- (d) the Executive Counsel considers that an Interim Order should be considered.

#### **Part 4: Enforcement Committee**

18. The notice of referral to Enforcement Committee shall:

- (a) specify the date for the meeting of the Enforcement Committee which shall be no less than 28 days after service of the Notice of Referral;
- (b) provide the Respondent with copies of any document that has not previously been provided to the Respondent which may be considered relevant;
- (c) invite the Respondent to provide written representations and further documentation on the allegation and/or Executive Counsel's recommendation for Sanction;
- (d) inform the Respondent that the Enforcement Committee may seek further information for the purposes of carrying out its functions.

19. The Enforcement Committee shall:

- (a) meet in private and not hear oral evidence;
- (b) consider all the documentation and representations placed before it by Executive Counsel and the Respondent.

20. The Enforcement Committee may:

- (a) specify time limits and grant extensions;
- (b) adjourn for further enquiries of the parties to be conducted as considered necessary;
- (c) invite the Executive Counsel and the Respondent to attend to make oral submissions.

#### **Enforcement Committee Test**

21. The Enforcement Committee will decide that either:

- (a) A Respondent is not liable for Enforcement Action and shall issue a Notice of Cancellation pursuant to Rule 73; or
- (b) A Respondent is liable for Enforcement Action having made adverse findings against the Respondent.

#### **Enforcement Committee's Decision Notice**

22. Where the Enforcement Committee considers that Respondent is liable for Enforcement Action, the Committee shall issue the Decision Notice issue which shall:

- (a) outline its findings;
- (b) propose a Sanction;
- (c) invite the Respondent to provide a written agreement to all or part of the Decision Notice by a specified date which shall be no later than 28 days from the date of the Decision Notice;
- (d) warn the Respondent that failure to respond could lead the Enforcement Committee to issue a Final Decision Notice.

23. Where the Respondent agrees to the entire Decision Notice, the Enforcement Committee's Final Decision Notice shall be issued.

**No Agreement to the Enforcement Committee's Decision Notice**

24. Where the Respondent does not provide their written agreement within the specified time to the Decision Notice, the Chair of the Enforcement Committee may refer the matter for a Hearing before a Tribunal.

25. Where the Respondent fails to respond within the specified time to the Decision Notice the Chair of the Enforcement Committee may, if he decides not to refer under Rule 24, issue a Final Decision Notice.

## **Part 5: The Tribunal**

### **Case Management Meetings and Directions**

26. Case Management Directions may be provided at a Case Management Meeting, by correspondence, telephone or other electronic communication as the Chair deems fit.
27. Case Management Directions may be given by the Chair:
  - (a) upon the request of a Party; or
  - (b) at the Chair's own volition.
28. Standard Directions will apply unless otherwise agreed between the Parties or ordered by the Chair at the Chair's own volition or upon application by one of the Parties.
29. The Chair may rule on any question of law or admissibility of evidence and any such decisions are binding on the Tribunal Panel hearing the allegation.
30. The Chair or Tribunal may draw appropriate inferences in respect of a failure by a Party to comply with Case Management Directions.

### **Notice of Hearing**

31. Where the Tribunal is to hold a Hearing, the notice of the Hearing shall:
  - (a) state the date, time and venue;
  - (b) state the finalised Allegation(s);
  - (c) warn that the Tribunal may proceed with the Hearing in the absence of any Party.
32. The Secretariat shall serve a Notice of the Hearing on the parties no less than 7 days before the date fixed for the Hearing.

### **Evidence**

33. The Tribunal may take into account any relevant evidence, whether or not such evidence would be admissible in a court. The Tribunal shall at all times apply the rules of natural justice.
34. The Tribunal has discretion to allow a Party to adduce written evidence or call a witness at a Hearing which has not been disclosed in accordance with these Rules or any relevant Case Management Direction.
35. Production of a certificate from a competent officer of a Court in the United Kingdom or overseas shall be conclusive evidence of an offence committed.
36. Production of a certificate signed by an officer of a regulatory body shall be conclusive evidence of that regulator's determination.
37. The Tribunal may, upon the application of any Party, direct that details which could identify a witness shall, in the interests of the witness, not be revealed in public.
38. Witnesses:
  - (a) shall usually first be examined by the Party calling them;

- (b) may be cross examined;
- (c) may be re-examined by the Party calling them;
- (d) may be questioned by the Tribunal; and
- (e) may be re-examined by the Party calling them on matters arising out of the Tribunal questions.

39. The Tribunal may, upon the application of any Party or of its own volition require a person who is due to be a future witness to be excluded from the Hearing.
40. The Chair or Tribunal, after receiving submissions from the Parties, may adopt such measures as considered necessary to receive evidence from a witness.

### **Postponements and Adjournments**

41. The Chair may, of his own volition or upon the application of a Party, postpone any Case Management Meeting or Hearing.
42. The Tribunal may, of its own volition or upon the application of a Party, adjourn the proceedings at any stage.
43. In considering whether to postpone or adjourn a Case Management Meeting or Hearing, the Chair or Tribunal shall, further to any submissions from the parties, have regard to the fairness to the Parties and the public interest.
44. The validity of proceedings shall not be undermined where Tribunal members present at the former Case Management Meeting or Hearing are not present at subsequent proceedings.

### **Proceeding in Absence**

45. Where the Respondent fails to attend a Case Management Meeting or a Hearing, the Chair or Tribunal may continue in his absence if:
- (a) it is satisfied that notification of the Case Management Meeting or Hearing was properly given;
  - (b) it is fair in all the circumstances.

### **Attendance of the Public**

46. The Hearing shall be held in public subject to Rule 47.
47. Where the Chair or Tribunal decides that publicity could prejudice the interests of justice, all or part of the Hearing shall be held in private.
48. The Tribunal may exclude from the Hearing any person whose conduct has disrupted or is likely to disrupt proceedings.

### **Representation**

49. At a Hearing, the Respondent may represent themselves or be represented by:
- (a) a Solicitor or Counsel; or

- (b) another person at the discretion of the Chair or Tribunal providing that the person is not a witness in the case, a member or employee of the FRC.

### **The Procedure at a Hearing**

50. Unless the Chair or Tribunal determines otherwise, the order of proceedings at a Hearing is:

- (a) the Tribunal shall consider any preliminary legal arguments;
- (b) the Respondent shall confirm their name if present;
- (c) the Respondent shall indicate whether any admissions are made;
- (d) Executive Counsel shall open the case and call evidence in support;
- (e) the Respondent may open his case and call evidence in support;
- (f) subject to Rule 51, the Tribunal shall announce its decision.

### **Tribunal Decision**

51. At the conclusion of the evidence, the Tribunal shall:

- (a) consider the case, announce its findings and give reasons for its decision;
- (b) in the event of an adverse finding the Tribunal may receive evidence and submissions in respect of Sanction;
- (c) the Tribunal shall consider and announce its decision on Sanction and give reasons for its decision;
- (d) The Tribunal shall issue a Final Decision Notice which will set out its findings and Sanction.

## **Part 6: Interim Orders**

52. An Interim Order can be determined by the Enforcement Committee or the Tribunal at any stage before issuing a Final Decision Notice.
53. Both Parties may apply to have the Interim Order varied or revoked to the Decision Maker that imposed the Interim Order;
54. When considering an Interim Order the Enforcement Committee shall:
  - (a) meet in private and shall consider any written submissions provided by the parties;
  - (b) on the application of one of the parties, refer the consideration of the Interim Order to a Hearing.
55. When considering an Interim Order (or an appeal in relation to an Interim Order) the Tribunal shall:
  - (a) consider any submissions from the Parties;
  - (b) not receive oral evidence unless the Tribunal considers the evidence is relevant to enable it to discharge its functions.
56. Reasonable notice shall be provided to the Parties prior to the Enforcement Committee or Tribunal deciding whether to consider an Interim Order.
57. Where there are reasonable grounds to consider that the Respondent may be liable to Enforcement Action and it is in the public interest or the interests of the Respondent, the Enforcement Committee or Tribunal may impose an Interim Order.
58. The Enforcement Committee or Tribunal shall specify that before the end of the period of the Interim Order that the matter shall be considered for a review by the decision maker.
59. An Interim Order shall be revoked by:
  - (a) a Cancellation Notice; or
  - (b) a Final Decision Notice following expiry of the appeal period or the conclusion of any appeal.

## **Part 7: Appeal**

60. A Respondent may appeal:

- (a) an Interim Order imposed by the Enforcement Committee, to the Tribunal for a Hearing;
- (b) a Final Decision Notice made by the Enforcement Committee, without the Respondent's agreement, to the Tribunal for a Hearing in accordance with 0;
- (c) a Final Decision Notice made by the Tribunal, to the Appeal Tribunal.

61. Any Appeal under (c) can only be made on the grounds that the Tribunal decision was:

- (a) wrong in law;
- (b) unfair because of a serious procedural irregularity;
- (c) irrational;
- (d) made in the absence of significant and relevant new evidence which could not have been adduced previously; or
- (e) in relation to Sanction, disproportionate.

62. Upon receipt of an Appeal, the Chair of the Appeal Tribunal shall consider whether to give permission to appeal and will grant permission if he is satisfied that;

- (a) there is an arguable case for appeal on one or more of the grounds set out in Rule 61;
- (b) the appeal was lodged in accordance with Rule 65 unless there are good reasons for giving leave to appeal out of time; and
- (c) Rule 64 does not apply.

63. The Appeal Tribunal may:

- (a) revoke or vary the relevant Final Decision Notice on the case;
- (b) give such direction or take such other steps as the Tribunal could have given or taken;
- (c) make any other decision which the Tribunal could have made;
- (d) remit the case back to the Tribunal.

64. Where a Respondent has agreed to a Decision Notice, there is no right of appeal.

65. The Respondent shall lodge any appeal in writing within 28 days of the issuing of the Final Decision Notice.

## **Part 8: Reconsideration**

66. The FRC may reconsider any decision made under these Rules with the agreement of the Respondent.
67. The FRC may reconsider any decision made in respect of Rule 3, Rule 52 and/or Rule 76 without the agreement of the Respondent where it appears that:
- (a) one of the grounds for appeal set out at 61 is satisfied; or
  - (b) a new allegation about the Respondent has been received within 5 years of the decision under reconsideration; and
  - (c) it is necessary in the public interest or to prevent injustice to reconsider the decision.
68. Where the FRC decides to reconsider a decision, it shall:
- (a) inform the Respondent;
  - (b) provide the Respondent with any new evidence or information;
  - (c) invite the Respondent to submit representations.
69. Where the FRC reconsiders the decision it may:
- (a) decide the original decisions should stand; or
  - (b) remit the matter back to the Decision Maker for a fresh decision.
70. The FRC shall inform the Respondent of its decision in respect of reconsideration.
71. Where the FRC remits the matter back to the Decision Maker, the matter shall follow the same procedure under these Rules applicable to that Decision Maker.

## **Part 9: General**

### **Notice of Cancellation**

72. Until the notice of referral to the Enforcement Committee is issued, the Executive Counsel may decide that the Respondent should no longer be liable for Enforcement Action subject to Rule (c).
73. The Enforcement Committee may decide under Rule (a) that the Respondent is not liable for Enforcement Action.
74. Until the Notice for a Hearing is issued, the Tribunal Chair may decide that the Respondent should no longer be liable for Enforcement Action.
75. Where the Executive Counsel, the Enforcement Committee or the Tribunal Chair makes a decision under Rules 72 -74, they shall:
- (a) notify the Respondent of the decision and that the matter may be reconsidered in accordance with Rule 67;
  - (b) inform any other Party as appropriate and the reasons for the decision.
76. The Chair may, of his own volition or upon the application of a Party, cancel a Hearing.

### **Amendment of the Allegation**

77. The Enforcement Committee, Chair or Tribunal may on their own volition or upon application of a Party, amend the particulars of an allegation.
78. When considering whether to make an amendment the Enforcement Committee, Chair or Tribunal must invite and consider any submissions from the Parties.

### **Burden and Standard of Proof**

79. The standard of proof when deciding disputed facts shall be the civil standard.
80. The burden of proving any disputed facts of the allegation rests on Executive Counsel.

### **Joinder of Allegations**

81. The Enforcement Committee or the Tribunal may consider and determine an allegation against two or more Respondents where:
- (a) the allegation against each Respondent concerned arises out of the same circumstances; or
  - (b) it is appropriate in all the circumstances.
82. Each Respondent has the right to exercise any of the rights accorded to a Respondent in these Rules whether or not any other joined Respondent exercises that right.

### **Publication**

83. Publication of Decision Notices under these Rules shall be in accordance with the Publication Policy.

84. All Sanctions imposed under these Rules shall be published in accordance with the FRC's publication policy.

### **Costs**

85. A Party may serve on the other Party and the Secretariat a schedule of costs or expenses relating to or connected with a Hearing no less than 24 hours before the date of that Hearing.

86. After announcing the Tribunal's or Appeal Tribunal's decision the Chair may invite representations as to whether costs or expenses should be assessed against either Party.

87. After hearing representations from the Parties, the Tribunal or Appeal Tribunal may order a Party to pay all or part of the costs or expenses incurred by the other Party by a specified date.

88. The Tribunal or Appeal Tribunal shall have regard to the following when assessing whether a Party should be liable for the costs or expenses of the other Party:

(a) the Parties' ability to pay;

(b) the Tribunal's decision on the facts and, if appropriate, the Sanction or the Appeal Tribunal's decision on the Appeal;

(c) is it fair and equitable in the circumstances.

89. The Tribunal or Appeal Tribunal shall not award costs to the Respondent unless it finds that it was unreasonable to have pursued all or a substantial part of the case.

90. Where the Tribunal orders a Party to pay the costs or expenses of the other Party, the Chair may

(a) summarily assess the costs of award;

(b) request the Parties to agree;

(c) order that the award should be assessed by a person appointed by the Secretariat.

### **Voting**

91. The Enforcement Committee, the Tribunal and the Appeal Tribunal shall decide matters by a majority vote.

92. No member of the Enforcement Committee, the Tribunal and the Appeal Tribunal may abstain from a vote.

### **Sanctions**

93. The Executive Counsel, Enforcement Committee and the Tribunal may impose the following Sanctions:

(a) a notice requiring the Respondent to cease or abstain from repetition of the breach of Relevant Requirements;

(b) publication of a public statement which identifies the Respondent and the nature of the breach, published on the FRC's website;

- (c) temporary prohibition, up to three years duration, banning the Respondent from carrying out Statutory Audits and/or signing audit reports or from exercising functions in audit firms or PIEs;
  - (d) a declaration that the Statutory Audit Report does not satisfy the Relevant Requirements;
  - (e) a financial penalty;
  - (f) conditions;
  - (g) exclusion as a member of a Recognised Supervisory Body;
  - (h) waiver/repayment of client fees.
94. The Executive Counsel or Enforcement Committee may, in addition or as an alternative to imposing a Sanction, accept undertakings from the Respondent.
95. Any Sanction imposed on a Respondent shall have effect at expiry of the appeal period or the conclusion of any appeal/have immediate effect unless the Decision Notice states otherwise and may be entered on the Register at the direction of the Decision Maker.

## **APPENDIX B: GUIDANCE FOR CASE EXAMINER**

### **Introduction**

1. The Case Examiner is required to undertake a number of initial actions at the beginning of a case. Most importantly he is required under Rule 3 to determine whether the information amounts to an allegation.
2. "An allegation" is defined as meaning "information about a Statutory Auditor or Statutory Audit Firm which raises a question as to whether they have breached a Relevant Requirement".
3. This document provides guidance as to the decisions and actions a Case Examiner must take when determining how information should be handled at the outset of a case. The purpose of this guidance is to ensure that consistent and proportionate decisions are taken, although it is recognised that every situation will have its own unique facts and circumstances.
4. This guidance will be referred to by the Case Examiner and may be helpful for anyone interested or involved in the FRC's Audit Enforcement Procedure.
5. The Case Examiner's role includes ensuring that anyone wishing to provide information to the FRC is provided with clear information about the role and scope of the FRC's functions and ensuring that there are no barriers to relevant complaints being made or information being provided.

### **Initial checks**

6. On receipt of information the Case Examiner should confirm that the information relates to a statutory auditor and/or statutory audit firm and concerns a matter within the scope of the FRC's retained regulatory activity.

### **Determining whether information amounts to an allegation**

7. The Case Examiner has powers to make enquiries and obtain specialist advice (i.e. instruct experts) to help him determine whether information amounts to an allegation. Where necessary the Case Examiner may seek legal advice. The enquiries and advice should be limited to assisting the Case Examiner with the determination of whether the information amounts to an allegation.
8. The Case Examiner will have regard to the Relevant Requirements (as defined by the 2016 Regulations) and will assess whether the information received raises a question of a breach of these requirements.
9. The Case Examiner may communicate with the potential Respondent (or their representatives) about the information received.
10. Where the Case Examiner considers that the information raises a question of a breach he has discretion to seek constructive engagement with the statutory auditor or statutory audit firm as a way of resolving the matter.
11. Where the Case Examiner determines that the information does not amount to an allegation he shall take no further action.

## **Constructive engagement**

12. Constructive engagement will be entirely at the discretion of the Case Examiner. It will be suitable for cases where there has been a minor, technical breach of the Relevant Requirements. Such cases will usually be at the very lowest end of the spectrum of allegations.
13. Constructive engagement may be appropriate where there is no real concern about harm to investor, market or public confidence in statutory audit process and where there is no evidence of financial detriment to anyone.
14. Constructive engagement is focussed on ensuring that any minor and possibly inadvertent breaches have been rectified and risk of repetition has been adequately addressed. It may take any form, including written advice, warning letters or discussion or correspondence with the individual statutory auditor or statutory audit firm aimed at ensuring that the possible breach is not repeated.

## **Interim Orders**

15. Under Rule 3(a)(i) the Case Examiner has the power to refer an allegation for consideration of an Interim Order. Interim Orders are orders which impose restrictions on the Respondent pending the outcome of the FRC's investigation or proceedings. An Interim Order can only be made by the Enforcement Committee or Tribunal. A Case Examiner can only refer an allegation to the Enforcement Committee for such orders.
16. The procedure for Interim Orders is set out in part 6 of the Rules. The Case Examiner's role is to conduct an early risk assessment to identify whether a case should be referred for consideration for an interim order by the Enforcement Committee and if so, to commence the notification process under Rule 56.
17. Factors which might indicate that a case should be referred for an interim order to be considered by the Enforcement Committee include:
  - (a) serious breaches of the Relevant Requirements;
  - (b) ongoing risk of harm to investor, market or public confidence in the truth and fairness of the financial statements published by statutory auditors or statutory audit firms;
  - (c) ongoing risk of significant financial detriment or other harm for those reliant on the statutory auditor or statutory audit firm's compliance with the relevant requirements.

This list is non-exhaustive and referral is at the discretion of the Case Examiner.

## **Referral to Conduct Committee (or Investigation Committee)**

18. Where the Case Examiner determines that the information about a Statutory Auditor or Statutory Audit Firm amounts to an allegation, and he has not resolved the matter using constructive engagement, he must refer the allegation to the Conduct Committee (or Investigation Committee).
19. Whether an allegation goes to the Conduct Committee or Investigation Committee will be determined by any delegation the Conduct Committee has put in place enabling the Investigation Committee to consider certain types of case. The Case Examiner may have to apply guidance in any delegation to determine the Committee to which an allegation should be referred.

20. The Case Examiner will prepare the papers which will go to the Conduct Committee (or Investigation Committee) for their decision as to investigation and delegation.
21. To assist the Committees with their functions, covering reports to either Committee would be expected to summarise the information, identify the possible breaches, refer to the test and guidance for investigation and make any recommendations as to investigation.
22. The final formal role for the Case Examiner is to ensure that notice of referral is sent (or notification that an allegation is not being referred for investigation) after the Conduct Committee (or Investigation Committee) decision in accordance with Rule 5.

**Issued by the Conduct Committee**  
**[date]**

## APPENDIX C: CONDUCT COMMITTEE GUIDANCE

### Thresholds/Guidance for referral for investigation

1. Under Rule 4 of the Framework, where the Conduct Committee (or Investigation Committee) considers that there is a good reason to investigate an alleged failure to comply with a relevant requirement, it shall refer the allegation for investigation.
2. This document provides guidance on when the Conduct Committee (or Investigation Committee) might refer allegations for investigation. The purpose of this guidance is to ensure that consistent and proportionate decisions are taken, although it is recognised that every allegation will have its own unique facts and circumstances.
3. This guidance will be referred to by the Conduct Committee and Investigation Committee and may be helpful for anyone interested or involved in the FRC's Statutory Audit Enforcement Framework.

### Considerations

4. When determining whether there is a good reason to investigate an allegation<sup>3</sup> the Conduct Committee (or Investigation Committee) will have regard to the EU Audit Regulation and the expectation that Member States shall ensure that there are effective systems of investigations and sanctions to detect, correct and prevent inadequate execution of the statutory audit.
5. The following characteristics of the alleged breach of the Relevant Requirements are matters which might suggest a good reason to investigate exists:
  - (a) it has the potential to damage public confidence in the audit profession;
  - (b) it has the potential to damage investor confidence in the truth and fairness of the financial statements published by statutory auditors;
  - (c) it may have caused significant financial detriment or other harm to those reliant upon the statutory audit process;
  - (d) it may have caused financial detriment or other harm to a significant number of individuals or institutions;
  - (e) it may have caused financial detriment or other harm to a particularly vulnerable category of individuals or institutions;
  - (f) it may suggest possibly pervasive conduct reflecting the number of institutions involved and/or the length of time the alleged breach(es) persisted;
  - (g) it may suggest a serious breach of the relevant requirements;
  - (h) it may suggest criminal offences have been committed;
  - (i) it may suggest a failure in regulatory compliance processes or approach; and/or
  - (j) it raises or appears to raise important public interest issues.

---

<sup>3</sup> Rule 4 Audit Enforcement Procedure

6. Conversely the Conduct Committee or (Investigation Committee) will have regard to the following matters which might suggest no good reason to investigate an alleged breach of the Relevant Requirements:
- (a) no potential to damage investor confidence in the truth and fairness of the financial statements published by statutory auditors;
  - (b) limited or no financial detriment or other harm to those reliant upon the statutory audit process;
  - (c) an isolated incident; and/or
  - (d) a minor breach of the Relevant Requirements.

### **Delegation of Investigations and Oversight of Investigations**

7. If the Conduct Committee (or Investigation Committee) refers an allegation for investigation they must also direct
- (a) whether the investigation should be delegated to the appropriate Recognised Supervisory Body ("RSB"); and, if the matter is not delegated to an RSB
  - (b) whether the investigation shall be overseen by the Investigation Committee.
8. The Conduct Committee (or Investigation Committee) will at all times retain an absolute discretion as to these two matters but factors which may be relevant to these decisions include:
- (a) the seriousness of the allegation;
  - (b) the number of factors as set out at paragraph 5 above;
  - (c) the complexity of the allegation;
  - (d) the public profile (or anticipated profile) of the allegation;
  - (e) the capacity and capability of the RSB to whom the allegation would be delegated<sup>4</sup>;
  - (f) the capacity within the FRC to conduct the investigation; and/or
  - (g) the likely resources required for the investigation (including costs).

**Issued by the Conduct Committee**  
**[date]**

---

<sup>4</sup> Capability may include matters contained in or as a result of any delegation arrangements with the particular RSB.

## **APPENDIX D: CASE MANAGEMENT COMMITTEE TERMS OF REFERENCE**

### **Membership**

The Board shall appoint the Chair of the Case Management Committee. The Conduct Committee shall appoint up to 20 other members of the Case Management Committee.

The persons appointed to the Case Management Committee shall include, but not be limited to, persons having legal, accounting or actuarial expertise and experience. No member of the Case Management Committee shall be:

- a member of the Conduct Committee;
- an officer of any of the accountancy or actuarial professional bodies
- a current employee, member, director or officer of the FRC, or subsidiary company of the FRC;
- a practising auditor or an individual who has during the previous three years
  - carried out statutory audits;
  - held voting rights in an audit firm;
  - been a member of the administrative management or supervisory body of an audit firm;
  - been a partner, employee, or otherwise contracted by an audit firm;
  - been an employee, member, director or officer of the FRC, or subsidiary company of the FRC.

Members of the Case Management Committee will be appointed for terms of up to 3 years and may be reappointed.

### **Case Management Committee Groups, Investigation and Enforcement Committees**

The Chair of the Case Management Committee, having regard to the matters to be considered by the group/Committee and the availability, experience and expertise of Committee members, may appoint groups of the Case Management Committee:

*Under the Audit Enforcement Procedure:*

- To constitute an Investigation Committee comprising 3 members, who may undertake functions under Rules 4, 5, or 6 of the Audit Enforcement Procedure where these have been delegated to it by the Conduct Committee, in relation to particular information considered by the Case Examiner to amount to an allegation;
- To constitute an Enforcement Committee comprising 3 members of the Committee including a legally qualified Chair to undertake functions under Parts 4 and 6 of the Audit Enforcement Procedure in relation to a particular allegation.

No member appointed to an Investigation Committee can be appointed to an Enforcement Committee considering the same Allegation at any stage.

No member appointed to an Enforcement Committee to consider an interim order under Part 6 of the Audit Enforcement Procedure can be appointed to an Investigation Committee to consider the same Allegation or to a subsequent Enforcement Committee considering the allegation under Part 4.

All matters considered by an Investigation Committee or Enforcement Committee shall remain confidential to that Committee. Under the Accountancy and Actuarial Schemes:

- To constitute a Case Management Committee Group to act in accordance with the FRC Accountancy and/or Actuarial Schemes in relation to a particular matter. A Case Management Committee Group appointed by the Chairman in accordance with paragraph 7(5) of either Scheme shall comprise at least three members of the Committee to perform the functions set out in paragraph 4(3)(i) and (ii) in relation to the investigation.

#### *Under the Auditor General Disciplinary Rules*

- To constitute a Case Management Committee Group as an Investigating Committee to act in accordance with the Auditor General Disciplinary Procedure Rules in relation to a particular matter.

References to a group of the Case Management Committee include each of the groups mentioned above.

#### **Quorum**

The quorum for Case Management Committee meetings shall be 6 Committee members.

The quorum for meetings of any Case Management Committee Group shall be in accordance with the provisions of the relevant Procedure or Scheme or the Auditor General Disciplinary Rules.

The quorum for an Investigation Committee shall be 3 Committee members.

The quorum for an Enforcement Committee shall be 3 Committee members.

#### **Secretary**

The Company Secretary or his/her nominee shall act as Secretary of the Case Management Committee (the Secretary), any Case Management Committee Group, Investigation Committee or Enforcement Committee.

#### **Frequency of Meetings**

The Case Management Committee shall meet at least once a year or as required at the call of the Chair. A Case Management Committee Group or Investigation Committee or Enforcement Committee shall meet as required.

#### **Attendance at Meetings**

Only members of the Case Management Committee shall have the right to attend Case Management Committee meetings and only members of an Investigation Committee or Enforcement Committee shall have the right to attend meetings of that Committee. However other individuals may be invited to attend all or part of any Case Management Committee meeting as and when appropriate.

#### **Notice of Meetings**

Unless otherwise agreed, notice of each meeting, confirming the venue, time and date, together with an agenda of items to be discussed and supporting papers, shall be forwarded to each member of the Case Management Committee or each member of the Case

Management Committee Group as applicable, and any other person required to attend, no later than 5 working days before the date of the meeting.

### **Minutes of Meetings**

The Secretary shall minute the proceedings and resolutions of all meetings of the Case Management Committee, including recording the names of those present and in attendance. Minutes of Case Management Committee meetings shall be circulated to all members of the Case Management Committee and Conduct Committee.

Decisions of Case Management Committee Groups will be recorded in accordance with the provisions of the Scheme under which the Group was appointed.

The decisions of an Investigation Committee or Enforcement Committee and the reasons for those decisions will be recorded in accordance with the provisions of the Audit Enforcement Procedure.

### **Voting**

Matters considered by the Case Management Committee, Investigation Committee or Enforcement Committee will be decided by majority vote and no member may abstain from a vote. The Chair of the Committee does not have the casting vote.

### **Responsibilities**

The Case Management Committee shall perform any function as shall be determined by the Conduct Committee from time to time.

Case Management Committee Groups shall exercise those functions delegated to a Case Management Committee Group appointed in accordance with paragraph 6(5) of the Accountancy Scheme including:

- monitoring the progress of the investigation and/or any disciplinary proceedings;
- providing input and challenge to the Executive Counsel's consideration of the adequacy of the evidence of a case; and
- where Executive Counsel determines that there is evidence to proceed, providing input on whether it is in the public interest to proceed to a tribunal hearing;

and those functions delegated to an Investigating Committee appointed in accordance with paragraph 5 of the Auditor General Disciplinary Procedure Rules including deciding whether there is a case to answer and if appropriate, referring the case to a Disciplinary Committee

The Investigation Committee shall exercise those functions under the Audit Enforcement Procedure delegated to an Investigations Committee by the Conduct Committee including:

- considering all documentation and representations placed before it by the Case Examiner;
- referring the allegation for investigation where it considers there is good reason to investigate an alleged failure to comply with the relevant requirement;
- directing whether an investigation shall be delegated to a Recognised Supervisory Body;
- indicating whether an investigation must be overseen by an Investigation Committee; and

- overseeing any case where the Conduct Committee or Investigation Committee determines that it should do so.

The Enforcement Committee shall exercise its functions in accordance with Part 4 and 6 of the Audit Enforcement Procedure including:

- considering all the documentation and representations placed before it by Executive Counsel and the Respondent;
- specifying time limits and grant extension to the parties;
- adjourning for further enquiries of the parties to be conducted as considered necessary;
- inviting Executive Counsel and the Respondent to attend to make oral submissions;
- deciding whether a Respondent is liable for Enforcement Action and, where he is not, issuing a notice of cancellation pursuant to Rule 73 or, where he is, issuing a Decision Notice;
- in cases where the Respondent does not provide their written agreement to the Enforcement Committee's Proposed Decision Notice determining whether to refer the matter to the Tribunal or to issue a Decision Notice;
- in interim orders cases, considering submissions from the Parties and, where there are reasonable grounds to consider that the Respondent may be liable to Enforcement Action and it is in the public interest or the interests of the Respondent, the Enforcement Committee or Tribunal, deciding whether to impose an Interim Order

In undertaking its responsibilities, any Case Management Committee Group, any Investigation Committee and any Enforcement Committee will have regard to the guidance issued by the Conduct Committee.

### **Reporting Responsibilities**

The Case Management Committee Chair shall report to the Conduct Committee on the activities and proceedings of Case Management Committee at Conduct Committee meetings no less than 4 times a year.

The Case Management Committee Chair shall provide an annual report to the Conduct Committee which will include trends, patterns and learning points observed from the cases considered by the Investigation Committee and Enforcement Committee and shall make whatever recommendations to the Conduct Committee it deems appropriate on any area within its remit.

### **Other**

The Case Management Committee shall have access to sufficient resources and is authorised to seek information from the FRC executive in order to carry out its responsibilities.

On the coming into force of the Statutory Auditors and Third Country Auditors Regulations 2016 (SATCAR 2016), implementing EU Audit Regulation (EU) 537/2014 (Audit Regulation) and the EU Audit Directive 2014/56/EU (Audit Directive), the existing members of the Case Management Committee shall all be eligible to be appointed to Investigation Committees or Enforcement Committees.

### **Approved by the FRC Board with effect from x**

## **APPENDIX E: TRIBUNAL AND APPEAL PANEL TERMS OF APPOINTMENT**

### **Appointments to the Panel**

1. The Nominations Committee shall from time to time appoint not less than 4 individuals (all of whom shall be independent of the Conduct Committee) to form an appointment committee to appoint individuals (having the appropriate qualifications and experience to sit on a Tribunal) to be members of the combined Tribunal and Appeal Tribunal Panel ("the Panel").
2. The persons who may be appointed to the Panel shall include, but not be limited to, persons having legal and auditing expertise and experience.
3. No member of the Panel shall be:
  - (a) a member of the Conduct Committee, the Case Management Committee, the Investigation Committee or the Enforcement Committee;
  - (b) a serving officer of any of the Recognised Supervisory Bodies;
  - (c) a current employee, member, director or officer of the FRC, or subsidiary company of the FRC; or
  - (d) a practising auditor or an individual who has during the previous 3 years
    - (i) carried out statutory audits;
    - (ii) held voting rights in an auditing firm;
    - (iii) been a member of an administrative management or supervisory body of an audit firm;
    - (iv) been a partner, employee, or otherwise contracted by an audit firm; or
    - (v) been an employee, member, director or officer of the FRC, any subsidiary company of the FRC or any Recognised Supervisory Bodies.
4. Members appointed to the Panel will be appointed for terms of up to 3 years and may be reappointed.
5. No member is entitled to hold office for more than three terms.

### **Appointment of Tribunals and Appeal Tribunals from the Panel**

6. A Tribunal or Appeal Tribunal shall be appointed from the Panel by the Convener who shall be appointed by the Conduct Committee.
7. A Tribunal or Appeal Tribunal shall comprise three or five persons.
8. The Chair of the Tribunal or Appeal Tribunal must be a lawyer (a current or former member of the judiciary, a barrister, an advocate or a solicitor).
9. A three-person Tribunal or Appeal Tribunal must comprise, in addition to the Chair:

- (a) a person who is neither a lawyer nor an individual with audit experience;
  - (b) an individual with audit experience.
10. A five-person Tribunal or Appeal Tribunal must include, in addition to a Chair:
- (a) at least one person who is neither a lawyer nor an individual with audit experience;
  - (b) two (but no more than two) individuals with audit experience.
11. The Convener must, having regard to:
- (a) the matters to be considered by the Tribunal or Appeal Tribunal;
  - (b) the availability, experience and expertise of the Panel members;
- to determine the size and composition of the Tribunal or Appeal Tribunal required for each Hearing.
12. No member may be appointed to an Appeal Tribunal if he has had prior involvement with a particular case as a Tribunal member.

### **Attendance at Hearings**

13. The validity of proceedings shall not be undermined where a Tribunal or Appeal Tribunal member present at the former Tribunal or Appeal Tribunal hearing, since postponed or adjourned, is not present at subsequent proceedings.

### **Responsibilities of the Tribunal**

14. The Tribunal shall exercise those functions under the Audit Enforcement Procedure delegated to a Tribunal in Parts 5 and 9 including:
- (a) considering all admissible evidence, including the evidence of witnesses placed before it by the Parties;
  - (b) announcing its findings and giving reasons for its decision;
  - (c) in the event of an adverse finding, receiving evidence and submissions in respect of Sanction;
  - (d) considering and announcing its decision on Sanction and giving reasons for its decision;
  - (e) considering and deciding the issue of costs<sup>5</sup>;
  - (f) issuing a Final Decision Notice which will set out its findings and Sanction;
  - (g) in appropriate cases and with proper notice, considering and deciding whether to impose an Interim Order.
15. The Chair of the Tribunal shall exercise those functions under the Audit Enforcement Procedure delegated to a Tribunal Chair including:

---

<sup>5</sup> Audit Enforcement Procedure Rules 85 - 90

- (a) the giving of Case Management Directions at a Case Management Meeting<sup>6</sup>;
- (b) ruling on any question of law or admissibility of evidence<sup>7</sup>;
- (c) postponing or cancelling Case Management Meetings or Hearings<sup>8</sup>.

16. In undertaking its responsibilities, the Tribunal will have regard to the Sanctions and Publications Policies that accompany the Audit Enforcement Procedure.

### **Responsibilities of the Appeal Tribunal**

17. The Appeal Tribunal shall exercise those functions under the Audit Enforcement Procedure delegated to an Appeal Tribunal in Parts 7 and 9 including:

- (a) considering the grounds of appeal and submissions made by the Parties on appeal;
- (b) deciding whether one or more of the grounds of appeal at Rule 61 is made out;
- (c) where an appeal is successful;
  - (i) revoking or varying the relevant Final Decision Notice on the case;
  - (ii) giving such direction or taking such other steps as the Tribunal could have given or taken;
  - (iii) making any other decision which the Tribunal could have made; or
  - (iv) remitting the case back to the Tribunal.
- (d) announcing its findings and giving reasons for its decision;
- (e) considering and deciding the issue of costs<sup>9</sup>.

18. The Chair of the Appeal Tribunal shall exercise those functions under Rule 62.

19. In undertaking its responsibilities, the Appeal Tribunal will have regard to the Sanctions and Publications Policies that accompany the Audit Enforcement Procedure.

### **Transitional provision**

20. On the coming into force of the Statutory Auditors and Third Country Auditors Regulations 2016 (SATCAR 2016), implementing EU Audit Regulation (EU) 537/2014 (Audit Regulation) and the EU Audit Directive 2014/56/EU (Audit Directive), the existing members of the Tribunal Panel under the Accountancy Scheme, Actuarial Scheme and Auditor Regulatory Sanctions Procedure shall be appointed to Tribunal and Appeal Tribunal Panel provided that they satisfy the requirements at paragraph 3.

**Issued by the Conduct Committee**  
**[date]**

---

<sup>6</sup> Audit Enforcement Procedure Rules 26 and 27

<sup>7</sup> Audit Enforcement Procedure Rule 29

<sup>8</sup> Audit Enforcement Procedure Rule 41 and Rules 74 - 76

<sup>9</sup> Audit Enforcement Procedure Rules 85 - 90

## **APPENDIX F: HEARINGS GUIDANCE**

### **Procedure at first instance hearings before Tribunal**

1. The Audit Enforcement Procedure sets out the procedure for hearings before the Tribunal ("Hearings") in Parts 5, 6 and 9.
2. The order of proceedings, unless the Chair or the Tribunal determines otherwise, shall be as follows:
  - (a) The Chair shall introduce the Tribunal members, the secretary, the parties and the note taker;
  - (b) The Tribunal shall consider any preliminary legal arguments;
  - (c) The Chair shall, where the Respondent is present, require the Respondent to confirm their name or otherwise the secretary shall confirm the Respondent's name;
  - (d) The person acting as the secretary shall read out the allegation and the alleged facts upon which it is based:
  - (e) The Chair must enquire whether the Respondent wishes to make any admissions and where facts are admitted, the Chair must announce that the facts have been found proved:
  - (f) Where facts remain in dispute, Executive Counsel (or his or her representative) shall open the case for the FRC and adduce evidence and, subject to issues of relevance or admissibility, call witnesses in support of it;
  - (g) The Respondent may make submissions regarding whether sufficient evidence has been adduced to find the facts proved and the Tribunal must consider and announce its decision as to whether any such submissions should be upheld;
  - (h) The Respondent may open their case and adduce evidence and, subject to issues of relevance and or admissibility, call witnesses in support of it:
  - (i) The Tribunal may indicate that it would find closing submissions from the Parties helpful;
  - (j) The Tribunal must consider and announce its findings and give reasons for its decision (see guidance in respect of Decision Making and Giving Reasons);
  - (k) In the event of an adverse finding the Tribunal may receive further evidence and submissions from the parties as to the appropriate sanction, if any, to be imposed;
  - (l) The Tribunal is directed to the Sanctions Policy which accompanies the Audit Enforcement Policy.
3. Notwithstanding the procedure set out above, the Tribunal may allow the parties to make additional submissions at any time.

## **Adjournments**

4. The Tribunal may, of its own volition or upon the application of a party, adjourn the proceedings<sup>10</sup>. At any stage before making a decision as to sanction, the Tribunal may adjourn for further information or reports to be obtained in order to assist it in exercising its functions in order for the parties to prepare submissions in relation to sanction.
5. In considering whether to adjourn the hearing, the Tribunal shall receive submissions from the parties and have regard to the fairness to both parties and the public interest<sup>11</sup>.

## **Deliberations**

6. At any stage when the Tribunal needs to deliberate, this must be undertaken in the absence of the parties. A secretary may attend the Tribunal during their private deliberations.

## **Secretary**

7. A member of the Secretariat shall act as secretary to any Tribunal or Appeal Tribunal.
8. The secretary will keep a record, or ensure a record is kept, of all decisions made by the Tribunal and the Appeal Tribunal and the reasons for them.

## **Record of Hearing**

9. The Tribunal, assisted by the Secretariat, must ensure all hearings are recorded in writing or electronic form. Any party to the proceedings must, on application to the Tribunal, be furnished with a transcript of the record of any part of the hearing at which he was entitled to be present.
10. The only exception to the above provision is that the private deliberations of the Tribunal must not be recorded.

## **Witness Evidence**

11. A party may not call a person to be a witness unless that party has provided to the other party a written statement of evidence provided by the witness (which includes an attestation and signature by the person making it) in accordance with the Standard Directions or any Case Management Direction unless the Tribunal determines otherwise.<sup>12</sup>
12. The Chair or the Tribunal may refuse to allow witness to give evidence or to give evidence on a particular matter if the Chair or the Tribunal is not satisfied that the witness is in a position to produce relevant testimony or is satisfied that all parts of the evidence that a witness is to provide, or to provide on a particular matter, should have been disclosed to the other party at an earlier stage of the proceedings.
13. The Tribunal may, upon the application of the party calling a witness, direct any details which may identify that the witness shall not be revealed in public.<sup>13</sup>
14. Witnesses are required to take an oath, or to affirm, before they give their oral evidence.

---

<sup>10</sup> Rule 42 of Audit Enforcement Procedure.

<sup>11</sup> Rule 43 of Audit Enforcement Procedure

<sup>12</sup> Rule 34 of Audit Enforcement Procedure

<sup>13</sup> Rule 37 of Audit Enforcement Procedure

15. In accordance with the Standard Directions, a witness's statement shall stand as their evidence in chief.
16. Witnesses, other than the Respondent:
- (a) will usually be examined by the party calling them;
  - (b) may be cross examined;
  - (c) may then be re-examined by the party calling them;
  - (d) may then be questioned by the Tribunal. Questions from the Tribunal should be concise, relevant and focused. It is not appropriate for Tribunal members to conduct "fishing expeditions" or to rehearse evidence without good reason;
  - (e) the parties may then question the witness on matters arising out of the Tribunal's questions, with the party calling the witness given the last opportunity to do so;
  - (f) any further questioning of a witness is to be at the discretion of the Tribunal.
17. The Tribunal may wish to give warnings to witnesses that they should not discuss the case with anyone during any breaks in their evidence and to remind witnesses that they are still under oath when the hearing resumes. This could also include an additional warning to witnesses, once their evidence has concluded, not to discuss their testimony with any witnesses who are still to be called.

### **Special Measures<sup>14</sup>**

18. Where the Chair and/or Tribunal consider that the quality of a witness's evidence is likely to be adversely affected, the Tribunal may adopt such measures as it considers necessary to receive evidence from the witness. This could include: a witness whose first language is not English; a witness with a physical disability who requires assistance to give evidence; a witness who complains of intimidation; a witness who is significantly impaired in relation to intelligence or social functioning; and any witness under the age of 18.
19. Measures adopted by the Tribunal may include, but are not limited to: the use of video links, the use of pre-recorded evidence as the evidence in chief of a witness, provided that the witness is present at the hearing for cross-examination and questioning; and use of interpreters (including signers and translators).

### **Disruptive Behaviour**

20. Rule 48 provides that the Tribunal may exclude any person whose conduct has disrupted or is likely to disrupt proceedings. The Tribunal may permit the person to return, if at all, subject to certain conditions.

### **Non Attendance of a Witness**

21. Where a witness refuses to attend or does not attend without having provided any prior warning of their non-attendance, the reasons for a witness's refusal or non-attendance may need to be investigated and the Tribunal may consider adjourning for a short time while enquiries are made.

---

<sup>14</sup> Rule 40 of Audit Enforcement Procedure

## Respondent as a Witness

22. The Tribunal may not compel the Respondent to be a witness; the Respondent is entitled to rely on his privilege against self-incrimination. This does not undermine the FRC's power to require the Respondent to provide information in accordance with Schedule 2 of the Statutory Auditors and Third Country Auditors Regulations 2016.
23. Where the Respondent is a witness, they:
- (a) will usually be examined by the person representing them or, if there is no such person, must be questioned by the Tribunal through the Chair;
  - (b) may then be cross examined;
  - (c) may then be re-examined by the person representing them (if any);
  - (d) may then be questioned, with leave of the Chair, by the Tribunal whether or not they are represented.

## Non Attendance of the Respondent<sup>15</sup>

24. Where the Respondent has failed to attend a Case Management Meeting or Hearing, the Chair or Tribunal may continue in the Respondent's absence if:
- (a) satisfied that notification of the meeting or hearing date was properly given; and
  - (b) it is fair to proceed in all the circumstances.
25. The Tribunal should demonstrate that it appreciates that the discretion to proceed in the Respondent's absence is to be exercised with a high degree of care and caution.<sup>16</sup>
26. Lord Bingham of Cornhill in the case of *R v Jones (Anthony Williams)*<sup>17</sup> stated that "*the discretion to commence a trial in the absence of a defendant should be exercised with the utmost care and caution*". The same judgment provided a helpful list of factors that should be considered before proceeding in the absence of the person concerned registered person. These factors are conveniently identified at paragraph 3-222 of Archbold 2016:

*"Whilst the list was not exhaustive, it provided an invaluable guide. The Court of Appeal had said that in exercising the discretion, fairness to the Defendant was of prime importance, but fairness to the prosecution should also be taken into account. The judge should have regard to all the circumstance, including:*

- (a) The nature and circumstances of the Defendant's behaviour in absenting himself from the trial or disrupting it, and in particular whether the behaviour was voluntary and so plainly waived the right to be present;*
- (b) whether the adjournment would resolve the matter;*
- (c) the likely length of such an adjournment;*

---

<sup>15</sup> Rule 45 of Audit Enforcement Procedure

<sup>16</sup> *Raheem v Nursing and Midwifery Council* [2010] EWHC 2549; *Adeogba v GMC* [2014] EWHC 3872 (Admin)

<sup>17</sup> [2002] UKHL 5

*(d) whether the Defendant, though absent, wished to be represented or had waived his right to representation;*

*(e) whether the Defendant's representatives were able to receive instructions from him and the extent to which they could present his defence [...];*

*(f) the extent of the disadvantage to the Defendant in not being able to present his account of events;*

*(g) the risk of the jury [i.e. the Committee] reaching an improper conclusion about the absence of the Defendant;*

*(h) the general public interest that a trial should take place within a reasonable time;*

*(i) the effect of the delay on the memories of witnesses;*

*(j) where there was more than one defendant, and not all had absconded, the undesirability of having separate trials."*

27. The Respondent (who is an individual) may claim ill health as a reason for their non-attendance. The Respondent has the right to be present when the case is put against him and it is wrong for a Tribunal, in the face of unchallenged medical evidence submitted by the Respondent that he/she is not fit to attend a hearing, to proceed in their absence.<sup>18</sup> However, the mere fact that a registered person claims illness does not, of itself, require an adjournment of proceedings.<sup>19</sup>

### **Representation<sup>20</sup>**

28. The Respondent may represent themselves or be represented by:

(a) a Solicitor or Counsel;

(b) another person at the Chair's or Tribunal's discretion providing that the person is not a witness in the case, a member or employee of the FRC.

### **Unrepresented Respondents**

29. It should have been identified at an early stage of the proceedings, through the Standard Directions and/or Case Management Meeting, that a Respondent is or is likely to be unrepresented. It is possible that a case involving an unrepresented Respondent may have more case management directions than usual to ensure effective case management.

30. The Tribunal should not make assumptions about the merits of the case on the basis that the Respondent has not obtained representation.

31. It may be necessary to provide further explanation on the procedure of a hearing than in other cases. However, the Tribunal should be mindful of its responsibility to act fairly and judicially to both parties and the possible inadvertent appearance of bias in its communications to the parties.

32. The Tribunal should communicate clearly and avoid legal jargon or abbreviations.

---

<sup>18</sup> *Brabazon-Denning v UKCC* [2001] 1HRLR 6

<sup>19</sup> *Yusuf v RPSGB* [2009] 867

<sup>20</sup> Rule 49 of Audit Enforcement Procedure

## **Joinder of Allegations**

33. The Tribunal can consider and determine allegations against two or more Respondents at a single hearing where the allegation against each Respondent concerned arises out of the same circumstances and it is appropriate in all the circumstances.
34. Where there is a joint hearing each Respondent has the right to exercise any of the rights accorded to a Respondent in these Rules whether or not any other joined Respondent exercises that right.
35. The order of proceedings will be altered to reflect the involvement of two Respondents.

## **Procedure on Appeal before Appeal Tribunal**

36. The Audit Enforcement Procedure sets out the procedure for hearings before the Appeal Tribunal in Parts 7 and 9.
37. Cases will only be heard by the Appeal Tribunal where the Chair of the Tribunal has given permission under Rule 62 which requires there to be arguable grounds and, other than in exceptional circumstances, the appeal to have been lodged within the 28 day time limit.
38. The Chair of the Appeal Tribunal may issue directions or arrange a Case Management Meeting to set out a timetable for the preparation for the hearing of an Appeal.
39. Any request to the Appeal Tribunal to hear any witness (which shall be only in respect of new evidence) shall be in writing and shall be accompanied by a statement in writing of the evidence proposed to be given by such witness. If the Appeal Tribunal accedes to the request, the party to the proceedings so requesting shall be responsible for arranging for the attendance of the witness before the Appeal Tribunal, at such time and place as the Appeal Tribunal may appoint.
40. The order of the proceedings on an appeal shall, unless the Appeal Tribunal otherwise directs, be as follows:
  - (a) submissions by the Appellant;
  - (b) if permitted by the Appeal Tribunal, the re-hearing of any witness called before the Tribunal and/or the receipt of fresh evidence followed by cross-examination and re-examination of such witnesses by or on behalf of the Executive Counsel or the Appellant, as the case may be;
  - (c) submissions by or on behalf of the Executive Counsel, including the submission of evidence and the calling of any witnesses;
  - (d) if requested by the Appellant, closing submissions by the Appellant.
41. The Appeal Tribunal may:
  - (a) revoke or vary the relevant Final Decision Notice on the case;
  - (b) give such direction or take such other steps as the Tribunal could have given or taken;
  - (c) make any other decision which the Tribunal could have made;
  - (d) remit the case back to the Tribunal.
42. Rules 85 to 90 of the Audit Enforcement Procedure shall apply in relation to the costs of any appeal.

## APPENDIX G: SANCTIONS POLICY

### Introduction

1. This document provides guidance for Executive Counsel, the Enforcement Committee, Tribunal Panel and Appeal Panel (**Decision Makers**) when considering the imposition of sanctions on Respondents, under the Audit Enforcement Procedure.
2. Although expressed as guidance for Decision Makers, this guidance will also be relevant to others discharging their respective responsibilities under the Audit Enforcement Procedure.
3. Terms defined in the Audit Enforcement Procedure shall have the same meaning in this guidance.
4. This policy has been approved by the Conduct Committee of the FRC.
5. This document is intended to:
  - promote proportionality, clarity, consistency and transparency in decision-making;
  - ensure that all parties are aware from the outset of the approach likely to be taken by Decision Makers when determining what sanction to impose.

It is important to emphasise that this guidance is advisory — and is not binding on Decision Makers. It is for each Decision Maker to decide what, if any, sanction to impose given the findings it makes in the case that it has considered. Where a Decision Maker decides to depart from the guidance, it should explain its reasons for the departure.

6. Nothing in the guidance is intended to be inconsistent with the Audit Enforcement Procedure and Decision Makers must proceed in accordance with the overriding requirements of fairness and natural justice.
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 cases decided by previous Decision Makers under the Audit Enforcement Procedure.

### Aims and Objectives of the FRC's Audit Enforcement Procedure

8. The Audit Enforcement Procedure has been developed to comply with the Statutory Auditor and Third Country Auditor Regulations 2016 (**SATCAR 2016**) implementing Regulation (EU) No 537/2014 (**EU Audit Regulation**) and Directive 2014/56/EU, which require that there are effective systems of investigations and sanctions to "detect, correct and prevent inadequate execution of the statutory audit".
9. Sanctions are intended to be effective, proportionate and dissuasive in respect of Statutory Auditors and Statutory Audit Firms, where there has been a breach of the relevant requirements of SATCAR 2016, the EU Audit Regulation or the Companies Act 2006.
10. In determining the appropriate sanction, a Decision Maker should have regard to the reasons for imposing sanctions for a breach of the relevant requirements in the context of

the Audit Enforcement Procedure. Sanctions are imposed to achieve a number of purposes, namely:

- to deter Statutory Auditors and Statutory Audit Firms from breaching the Relevant Requirements relating to statutory audit;
- to protect the public from Statutory Auditors and Statutory Audit Firms whose conduct has fallen short of the Relevant Requirements;
- to maintain and promote public and market confidence in Statutory Auditors and Statutory Audit Firms and the quality of their audits;
- to declare and uphold proper standards of conduct amongst Statutory Auditors and Statutory Audit Firms.

The primary purpose of imposing sanctions for breaches of the Relevant Requirements is not to punish, but to protect the public and the wider public interest. Therefore a Decision Maker's objective should be to impose the sanction or combination of sanctions necessary to achieve the objectives set out above.

11. This guidance has been developed to help Decision Makers achieve these objectives by imposing sanctions which:
  - improve the behaviour or performance of the Statutory Auditor or Statutory Audit Firm concerned;
  - are tailored to the facts of the particular case and take into account the nature of the breach of the Relevant Requirements and the circumstances of the Statutory Auditor or Statutory Audit Firm concerned;
  - are proportionate to the nature of the breach of the Relevant Requirements and the harm or potential harm caused;
  - eliminate any financial gain or benefit derived as a result of the breach of the Relevant Requirements;
  - deter breaches of the Relevant Requirements by the Statutory Auditor, Statutory Audit Firm or others.

### **Determination of Sanction**

12. A Decision Maker should consider the full circumstances of each case and the seriousness of the breaches involved before determining which sanction or combination of sanctions to impose on the Statutory Auditor or Statutory Audit Firm. This guidance considers those factors that may be relevant to a Decision Maker's consideration. The factors are not listed in any kind of hierarchy and it is for a Decision Maker 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.
13. In deciding which sanction or combination of sanctions to impose, a Decision Maker should have regard to the principle of proportionality. In assessing proportionality, a Decision Maker should consider whether a particular sanction is commensurate with the circumstances of the case, including the seriousness of the breach of the relevant

requirements found and the circumstances of the Statutory Auditor or Statutory Audit Firm concerned.

14. The seriousness of the breaches found should be determined by reference to a number of factors. These include the nature of the breach, the level of responsibility of the Statutory Auditor or Statutory Audit Firm in the breach of the Relevant Requirements and the actual or potential loss, financial detriment or harm caused by the breach, including harm to investor, market and public confidence in the truth and fairness of the financial statements published by Statutory Auditors and Statutory Audit Firms. The extent to which intent, recklessness, knowledge of the risks or likely consequences, negligence or incompetence are involved will vary.
15. The sanctions available to Decision Makers are set out in Rule 93 of the Audit Enforcement Procedure and are reproduced below for convenience:
  - a notice requiring the Respondent to cease or abstain from repetition of the breach of Relevant Requirements;
  - publication of a public statement which identifies the Respondent and the nature of the breach, published on the FRC's website;
  - temporary prohibition, of up to three years' duration, banning the Respondent from carrying out Statutory Audits and/or signing audit reports and/or from exercising functions in audit firms or PIEs;
  - a declaration that the Statutory Audit Report does not satisfy the Relevant Requirements;
  - a financial penalty;
  - conditions;
  - exclusion as a member of a Recognised Supervisory Body ;
  - waiver/repayment of client fees.
16. Executive Counsel or the Enforcement Committee may, as an alternative or in addition to imposing a sanction, accept undertakings from the Respondent.

### **Combination of Sanctions**

17. Sanctions may be imposed singly in combination. When imposing a combination, Decision Makers should assess, in the light of all the circumstances of the matter, the appropriateness of the proposed sanctions both individually and in combination. Set out below are some of the considerations that a Decision Maker should have regard to when imposing sanctions in combination:
  - publication of a public statement will be ordered in all cases and may be issued in conjunction with any other sanction(s);
  - a financial penalty can be ordered in conjunction with any another sanction(s);
  - a sanction requiring the waiver or repayment of client fees is unlikely to be appropriate if it is the only sanction imposed by a Decision Maker because such a sanction (on its own) is unlikely to be sufficient to reflect the nature and seriousness of the breach of

the relevant requirements and achieve the purpose of imposing sanctions (see paragraph 10 above);

- dependent upon the circumstances of the particular Statutory Auditor or Statutory Audit Firm, it may be appropriate to order prohibition from carrying out Statutory Audits, signing audit reports and/or exercising functions in a Statutory Audit Firm or Public Interest Entity.
- exclusion as a member is only available as a sanction in relation to individual Statutory Auditors. It can be imposed in a number of different combinations, together with a financial penalty, a waiver or repayment of client fees and/or prohibition as outlined above.

### **Summary of Approach to Determining Sanction**

18. It follows, therefore, that the normal approach to determining the sanction to be imposed in a particular case should be to:

- assess the nature and seriousness, gravity and duration of the breach found by Executive Counsel, the Enforcement Committee, Tribunal or Appeal Tribunal and the degree of responsibility of the Respondent for the breach (paragraphs 19 to 22);
- identify the sanction (including the range within which any financial penalty might fall) or combination of sanctions that the Executive Counsel, Enforcement Committee, Tribunal or Appeal Tribunal considers potentially appropriate having regard to the breach identified in (i) above (paragraphs 23 to 56);
- consider any relevant aggravating or mitigating circumstances and how those circumstances affect the level, nature or combination of sanctions under consideration (paragraph 57 to 59);
- consider any further adjustment necessary to achieve the appropriate deterrent effect (see paragraphs 60 and 61);
- consider whether a discount for admissions or early disposal is appropriate (paragraphs 68 to 72);
- decide which sanction(s) to order and the level/duration of the sanction(s) where appropriate; and
- give an explanation at each of the six stages above, sufficient to enable the parties and the public to understand the Decision Maker's conclusions.

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

19. In assessing the nature and seriousness of the breach of the Relevant Requirements and in determining which sanction(s) might be appropriate, a Decision Maker will normally consider the factors summarised in the next paragraph. This list is not exhaustive and not all factors will be applicable in a particular case. A Decision Maker 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 Decision Maker should decide the relative weight to ascribe to each relevant factor.

20. Factors which may be considered include:

- the nature, extent and importance of the Relevant Requirements;
- the gravity and the duration of the breach;
- the financial benefit derived or intended to be derived from the breach (the amounts of the profits gained or losses avoided by the Respondent, in so far as they can be determined). This may include any loss avoided or intended to be avoided where it is practicable to quantify this (for example, this could be quantified in appropriate cases by the fees received by the Statutory Auditor or Statutory Audit Firm, or by performance related pay, bonuses, or share options received by the Statutory Auditor). A Decision Maker may also allocate an amount in respect of interest on the benefit obtained;
- whether the breach 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 or loss to creditors);
- the financial strength of the Statutory Auditor or Statutory Audit Firm, for example as indicated by the total turnover of the responsible undertaking or the annual income of the responsible person, if that person is a natural person;
- the level of cooperation of the Statutory Auditor or Statutory Audit Firm with the Competent Authority;
- whether the breach of the Relevant Requirements was intentional or unintentional;
- whether the breach was dishonest, deliberate or reckless (see paragraphs 54 to 56);
- whether the breach of the Relevant Requirements adversely affected, or potentially adversely affected, a significant number of people in the United Kingdom (such as the public, investors or other market users, consumers, clients, employees, pensioners or creditors);
- whether the breach of the Relevant Requirements was isolated, or repeated or ongoing;
- if repeated or ongoing, the length of time over which the breaches occurred;
- whether similar breaches of Relevant Requirements have been identified in previous Audit Quality Review reports;
- whether steps had been taken to address any similar breaches previously identified;
- previous breaches by the Statutory Auditor or Statutory Audit Firm;
- whether the Statutory Auditor or Statutory Audit Firm has failed to comply with any previous written undertakings, notice to cease or abstain, or direction or Decision Notice relevant to this breach;
- whether it is likely that the same type of breach will recur;
- whether the breach of the Relevant Requirements undermines the purpose or effectiveness of the Audit Enforcement Procedure;

- whether the breach could harm investor, market and public confidence in the truth and fairness of the financial statements published by Statutory Auditors or Statutory Audit Firms;
  - whether the breach could undermine confidence in the standards of conduct in general of Statutory Auditors and Statutory Audit Firms, and/or in statutory audit in European Union Member States;
  - in the case of a Statutory Audit Firm, the effectiveness of its relevant procedures, systems or internal controls and/or its implementation of the International Standard on Quality Control 1 ("ISQC 1") (or its equivalent);
  - in the case of a Statutory Audit Firm, when the Statutory Audit Firm's senior management became aware of the breach of the Relevant Requirements and what action was taken at that point;
  - whether the Statutory Auditor caused or encouraged other individuals to breach the relevant requirements;
  - the degree of responsibility of the Statutory Auditor, and whether the Statutory Auditor held a senior position and/or supervisory responsibilities;
  - whether the Statutory Auditor was solely responsible for the breach.
21. When considering a sanction to be imposed for a failure by a Statutory Auditor or a Statutory Audit Firm to comply with any of his or its obligations to co-operate with, and comply with directions of the Decision Makers appointed under the Audit Enforcement Procedure, a Decision Maker should consider the reason(s) for and the significance of the failure to comply. Where the non-compliance is continuing, a Decision Maker should consider whether to impose a financial penalty that would promote compliance, such as a financial penalty calculated on a daily or other periodic basis.
22. When determining the sanction to be imposed, a Decision Maker should disregard the fact that sanctions have been, or may be, imposed by another regulator or other authority in respect of the breach of the relevant requirements or the events related to that breach. A Decision Maker should take account of sanctions that have been, or may be, imposed only when considering a Statutory Auditor or Statutory Audit Firm's financial position (see paragraphs 36-46).
23. The following sections provide guidance on the factors that a Decision Maker may take into account when considering whether to impose a particular sanction, whether individually or in combination.

#### **A notice to cease or abstain from repetition of conduct**

24. A Decision Maker may issue a notice requiring a Respondent to cease or abstain from repetition of conduct where it considers, in its absolute discretion, such a notice would be appropriate.
25. This sanction is intended to be used by Decision Makers where the circumstances suggest that a breach is ongoing or there is a real risk of repetition of conduct and the public interest would be best served by issuing a notice requiring the Respondent to implement organisational or administrative arrangements that would bring to an immediate end, or avoid a repetition of, the breach of the Relevant Requirements.

26. The issuing of a notice to cease or abstain from repetition will usually make clear:
- (a) the date by which cessation must happen (this may be immediately);
  - (b) that the requirement to abstain is permanent.
27. The notice may be issued in conjunction with the imposition of wider conditions.

### **Publication of a public statement**

28. All sanctions should include a direction for publication of a statement which identifies the nature of the breach and the Respondent save in exceptional circumstances. Such directions should be in accordance with the Publication Policy of the FRC.
29. Such public statements will be published on the FRC website.
30. Publication can, and will usually, be given in conjunction with another sanction. The circumstances in which publication alone or in conjunction with a financial penalty may be appropriate include:
- (a) where the breach of the Relevant Requirements was unintended or where the breach does not cast doubt on the general competence of the Statutory Auditor or Statutory Audit Firm;
  - (b) where the breach of the Relevant Requirements is not so damaging to investor, market and public confidence in the truth and fairness of the financial statements published by statutory auditors that, in order to protect the public and the wider public interest, prohibition for a period would be the more appropriate sanction.

### **A declaration that the audit report does not satisfy the audit reporting requirements**

31. Where the Decision Maker has made findings that an audit report (or reports) does/do not satisfy the audit reporting requirements and in order to protect the public and the wider public interest, they may make a public declaration to this effect.

### **Conditions**

#### *Introduction*

32. A Decision Maker may order a Statutory Auditor or Statutory Audit Firm to comply with any direction that it considers, in its absolute discretion, appropriate. By way of example and without limitation to the Decision Maker's general discretion, such direction may require a Statutory Auditor or Statutory Audit Firm to undertake or implement education or training programmes, or to comply with particular requirements when practising (including restrictions on the nature of any work undertaken).

#### *Imposing Conditions*

33. This sanction is intended to be used by Decision Makers where the circumstances suggest that the public interest would be best served by requiring the Statutory Auditor or Statutory Audit Firm to take particular actions with a view to:
- improving the professional competence of a particular Statutory Auditor;

- ensuring that all partners or personnel in a Statutory Audit Firm receive training in a particular area of practice;
  - ensuring that a Statutory Audit Firm implements organisational or administrative arrangements that would avoid a repetition of the breach of the relevant requirements;
  - preventing a Statutory Auditor or Statutory Audit Firm from undertaking engagements that, based on the breach of the relevant requirements established, that Statutory Auditor or Statutory Audit Firm is not competent to undertake (for example by directing the Statutory Auditor or Statutory Audit Firm not to undertake audits of entities of a particular character — for example, of a charity or a publicly listed company).
34. The imposition of Conditions will normally be accompanied by ancillary provisions that address such matters as:
- the date by which any Conditions must be complied with;
  - the period during which any limitation on a Statutory Auditor or Statutory Audit Firm's ability to undertake particular engagements shall remain in effect;
  - the identity of any person or organisation responsible for overseeing compliance with the conditions.

## **Financial penalties**

### *Introduction*

35. A financial penalty may be ordered either alone or in combination with one or more other sanctions. Given that it will normally be in the public interest for any breach of the Relevant Requirements warranting the imposition of a financial penalty to be accompanied by some degree of censure, a Decision Maker should not impose a financial penalty in isolation (i.e. without any other sanction) without satisfying itself that that is the appropriate course and providing reasons for that decision.

### *Ordering a financial penalty*

36. In order to determine whether a financial penalty is appropriate the factors to be considered will normally include whether:
- deterrence can be achieved by publication of a public statement alone (or with a notice to cease or abstain);
  - the Statutory Auditor or Statutory Audit Firm has derived any financial gain or benefit (including avoidance of loss) as a result of the breach;
  - the breach of the relevant requirements involved, caused or risked the loss of significant sums of money;
  - a financial penalty was ordered in similar previous cases.

### *Determining the amount of a financial penalty*

37. In cases where a Decision Maker considers that a financial penalty is appropriate, it should aim to impose a financial penalty that:

- is proportionate to the breach of the Relevant Requirements and all the circumstances of the case;
- will act as an effective deterrent to future breaches of the Relevant Requirements;
- will promote public confidence in the regulation of statutory audit and in the way in which breaches of the Relevant Requirements are addressed.

38. In undertaking this assessment, a Decision Maker will normally take into consideration:

- the nature, extent and importance of the Relevant Requirement;
- the seriousness of the breach of the Relevant Requirements;
- in the case of a Statutory Audit Firm, its size/financial resources and financial strength, for example as indicated by the total turnover of the Statutory Audit Firm and the effect of a financial penalty on its business;
- in the case of a Statutory Auditor, his financial resources and annual income and the effect of a financial penalty on that Statutory Auditor and his future employment;
- the factors set out in paragraph 20.

There is no upper limit on the financial penalty that the Decision Maker can impose.

#### *Firms*

39. In the majority of cases involving the imposition of a financial penalty on a Statutory Audit Firm, the amount of revenue generated by the firm or the business unit(s) involved in the breach of the Relevant Requirements will be a factor to be taken into account when assessing the size of financial penalty which would be necessary, in the circumstances of the particular case, to act as a credible deterrent.
40. Where revenue is not an appropriate indicator of financial means, a Decision Maker should seek an appropriate alternative measure. Other indicators of financial means include the level of profitability per partner, market share, the number of audit and non-audit clients and the respective size of those clients, and the number of principals<sup>21</sup>, partners and registered individuals.

#### *Individuals*

41. Having assessed the seriousness of the breach of the Relevant Requirements involved when considering the amount of any financial penalty, a Decision Maker will have regard to the Statutory Auditor's financial resources (including his income and assets) and employment prospects.
42. A Statutory Auditor's remuneration is likely to be an appropriate starting point when considering the level of financial penalty that would: (i) be appropriate to reflect the breach of the Relevant Requirements involved; and (ii) be necessary to act as a credible deterrent and which will serve to correct and prevent inadequate execution of statutory audit.
43. The calculation of a Statutory Auditor's financial resources should take account of his annual gross income together with any benefits he derives from his current employment,

---

<sup>21</sup> A principal is a partner in an LLP

including any bonus, pension contribution, share options and share schemes, and/or distributions of profit. Employment includes both employment and self-employment as an adviser, employee, director, partner or contractor or in any other capacity.

44. Where the Statutory Auditor concerned is no longer in employment, for example because he has left the Statutory Audit Firm, a Decision Maker will need to obtain information about the Statutory Auditors existing financial resources and future employment prospects.

### **Other considerations**

45. When deciding the level of financial penalty to impose, a Decision Maker should:
  - when considering a Statutory Auditor or Statutory Audit Firm's financial resources, establish whether there are any arrangements that would result in part or all of any financial penalty being paid or indemnified by insurers, or by a Statutory Auditor's firm, partnership, company or employer. The existence of any such arrangements should not be a ground for increasing any financial penalty beyond the level that would otherwise be considered appropriate by the Decision Maker; and
  - disregard the possibility that the Statutory Auditor or Statutory Audit Firm may be liable for the costs of the case. (The approach to any award of costs is considered in paragraph 73).
46. Having arrived at a figure for the financial penalty based on the nature and seriousness of the breach of the Relevant Requirements, a Decision Maker should consider whether the amount of the financial penalty should be adjusted:
  - to take account of any aggravating and mitigating factors (paragraphs 58-59);
  - to ensure the financial penalty has the necessary deterrent effect (paragraphs 60-61); and/or
  - to reflect any discount for admissions and/or early disposal (paragraphs 68-72).

### **Waiver/repayment of client fees**

#### *Introduction*

47. If the Statutory Auditor or Statutory Audit Firm has gained financially from the breach of the relevant requirements, in particular as a result of receipt of client fees, a Decision Maker considers ordering a waiver or repayment of the relevant client fees. Any such order will normally be in addition to another sanction or sanctions.
48. The circumstances in which a waiver or repayment of client fees may be appropriate include where the Statutory Auditor or Statutory Audit Firm has acted dishonestly, recklessly, or incompetently and there is no evidence to suggest that the client was complicit in the breach of the relevant requirements or otherwise culpable for the breach at the time it was committed.

### *Ordering waiver/repayment of client fees*

49. In order to determine whether waiver/repayment of client fees is appropriate, the factors to be considered include:
- whether the breach of the Relevant Requirements has caused the client to suffer loss, or has risked the loss of money by the client, through no fault of its own;
  - whether the client has obtained value for the services contracted and/or paid for from the Statutory Auditor or Statutory Audit Firm;
  - whether the Statutory Auditor or Statutory Audit Firm has voluntarily repaid fees to the client concerned.

### **Prohibition/exclusion from carrying out statutory audits and/or signing audit reports and/or exercising functions in audit firms or PIEs/Exclusion as a member of a Recognised Supervisory Body**

#### *Introduction*

50. The ability to prohibit a Statutory Auditor or Statutory Audit Firm, for up to three years' duration, from carrying out Statutory Audits and/or signing audit reports, or to prohibit members of a Statutory Audit Firm from exercising functions in audit firms or public interest entities, or to exclude a Statutory Auditor from membership with one or more Participants exists because certain breaches of the Relevant Requirements are so damaging to the wider public and market confidence in the standards of conduct of Statutory Auditors and the quality of statutory audit in European Union Member States, that removal of the Statutory Auditor's statutory audit role and/or professional status is the appropriate outcome in order to protect the public or otherwise safeguard the public interest.
51. Prior to imposing an order excluding a Statutory Auditor from membership of a Recognised Supervisory Body, all other available sanctions should be considered to ensure that the prohibition or exclusion is the most appropriate sanction (either on its own or in conjunction with another sanction or sanctions) and is proportionate taking into account all the circumstances of the case.

#### *Ordering Prohibition / Exclusion*

52. Where the breach of the relevant requirements is fundamentally incompatible with continued membership of a Participant, exclusion is likely to be the appropriate sanction. The factors set out in paragraphs 53 - 59 will normally be relevant considerations when a Decision Maker is considering whether to order prohibition/exclusion.

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

53. In the course of this guidance reference has been made to various factors that Decision Makers should consider when determining the level of sanction to impose. The characteristics of those factors are discussed below.

#### *Intent*

54. Whether a Decision Maker concludes that the breach of the Relevant Requirements was intentional will be a material factor when determining any sanction to be imposed.

55. Factors tending to show that the breach of the Relevant Requirements was intentional include where:

- the Statutory Auditor involved or the Statutory Audit Firm'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 breach of the Relevant Requirements;
- the Statutory Auditor involved or the Statutory Audit Firm's senior management or a Responsible Individual permitted the breach of the Relevant Requirements to continue notwithstanding that they knew that their actions breached the relevant rules, standards or procedures or the Statutory Audit Firm's management or internal control systems;
- the Statutory Auditor involved or the Statutory Audit Firm's senior management or a Responsible Individual was influenced to commit the breach of the Relevant Requirements by the belief that it would be difficult to detect;
- the Statutory Auditor deliberately took decisions relating to the breach knowing that he was acting outside his field of competence;
- the Statutory Auditor or Statutory Audit Firm intended to benefit financially from the breach of the Relevant Requirements, either directly or indirectly;
- the Statutory Auditor repeated the breach notwithstanding being aware that to do so would involve breaching the relevant rules, standards, or procedures.

#### *Recklessness*

56. A Decision Maker may conclude that a Statutory Auditor or Statutory Audit Firm acted recklessly if the Statutory Auditor or the Statutory Audit Firm's senior management: (i) knew or ought to have known that a proposed course of action or inaction might involve a breach of the relevant requirements; and (ii) proceeded nevertheless.

#### *Aggravating and Mitigating Factors*

57. Having assessed the seriousness of the breach of the Relevant Requirements and reached a view on the sanction that would be appropriate, a Decision Maker should 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 Decision Maker's assessment of the seriousness of the breach).

58. Examples of events or behaviour that a Decision Maker may conclude aggravated the breach of the Relevant Requirements, and so should be taken into account when deciding the sanction or combination of sanctions to be imposed, include where:

- the Statutory Auditor or Statutory Audit Firm failed to bring the breach of the Relevant Requirements to the attention of the FRC (or to the attention of another appropriate regulatory, disciplinary or enforcement authority) quickly, effectively or completely;
- the Statutory Auditor or Statutory Audit Firm failed to cooperate with, or hindered, the investigation of the breach of the Relevant Requirements by the FRC, or by another regulatory, disciplinary or enforcement authority (especially if the investigation was prejudiced or delayed thereby);

- in the case of a Statutory Audit Firm, that Statutory Audit Firm's senior management were aware of the breach, or that such a breach was likely to occur, but failed to take steps to stop or otherwise prevent the Misconduct;
- the Statutory Auditor involved or the Statutory Audit Firm's senior management, or a responsible individual, sought to conceal the breach or reduce the risk that the breach of the Relevant Requirements would be discovered;
- no remedial steps have been taken since the breach of the Relevant Requirements was identified, either on the Statutory Auditor's or Statutory Audit Firm's own initiative or as directed by the FRC or another regulatory authority;
- the breach of the Relevant Requirements involved an abuse of a position of trust, such as where a Statutory Auditor owed a fiduciary duty or was responsible for public funds;
- the breach of the Relevant Requirements was repeated and/or occurred over an extended period of time;
- the breach of the Relevant Requirements was committed with a view to profit (or avoidance of loss);
- the Statutory Auditor or Statutory Audit Firm facilitated wrongdoing by a third party or collusion with a client;
- the Statutory Auditor or Statutory Audit Firm was acting without the necessary authorisations, licences or registrations;
- the Statutory Auditor or Statutory Audit Firm has a poor disciplinary record (for example, where an adverse finding has previously been handed down against the Statutory Auditor or Statutory Audit Firm by the FRC or another disciplinary or regulatory body). The more serious and/or similar the previous breaches, the greater the aggravating factor;
- the FRC (or another disciplinary or regulatory body) has previously brought to the Statutory Auditor or Statutory Audit Firm's attention, including by way of a private advice or warning, issues similar or related to the conduct that gave rise to the finding of breach of the relevant requirements in respect of which the sanction is to be imposed;
- similar breaches of relevant requirements have been identified in previous Audit Quality Review reports;
- the Statutory Auditor or Statutory Audit Firm has failed to comply with any previous written undertakings, notice to cease or abstain, or direction or Decision Notice relevant to this breach;
- In the case of a Statutory Auditor, if that Statutory Auditor held a senior position and/or supervisory responsibilities.

59. Examples of events or behaviour that a Decision Maker may conclude mitigate the breach of the Relevant Requirements, and so should be taken into account when deciding the sanction or combination of sanctions to be imposed, include where:

- the Statutory Auditor or Statutory Audit Firm brought the breach to the attention of the FRC (or to the attention of another appropriate regulatory, disciplinary or enforcement authorities) quickly, effectively and completely;<sup>22</sup>
- the Statutory Auditor or Statutory Audit Firm cooperated during the investigation of the breach by the FRC, or another appropriate regulatory, disciplinary or enforcement authority;
- in the case of a Statutory Audit Firm, that Statutory Audit Firm's senior management were aware of the breach of the relevant requirements or that such breach was likely to occur, and took appropriate steps to try to stop or prevent the breach;
- appropriate remedial steps were taken once the breach was identified, irrespective of whether such steps were taken on the Statutory Auditor's or Statutory Audit Firm's own initiative or that of the FRC or another regulatory authority; <sup>23</sup>
- the Statutory Auditor or Statutory Audit Firm was deliberately misled by a third party;
- the breach of the relevant requirements was an isolated event that is most unlikely to be repeated;
- neither the Statutory Auditor nor Statutory Audit Firm stood to gain any profit or benefit from the breach of the relevant requirements;
- the Statutory Auditor or Statutory Audit Firm was subject to duress;
- the Statutory Auditor or Statutory Audit Firm has a good compliance history and disciplinary record;
- in the case of a Statutory Auditor, that Statutory Auditor held a junior position;
- in the case of a Statutory Auditor, personal mitigating circumstances;
- the Statutory Auditor or Statutory Audit Firm has demonstrated contrition and/or apologised for the breach of the Relevant Requirements.

### **Adjustment for deterrence**

60. If the Decision Maker considers that the sanction or combination of sanctions arrived at, after making any adjustment to reflect any aggravating and mitigating factors, is insufficient to deter the Statutory Auditor or Statutory Audit Firm who committed the breach of the relevant requirements, or other Statutory Auditors or Statutory Audit Firms, from committing further or similar breaches, the Decision Maker may adjust the sanction(s) to ensure that the intended deterrent effect will be achieved. Decision makers

---

<sup>22</sup> Self-reporting breaches to the relevant regulatory, disciplinary or enforcement authorities will attract greater credit than co-operation with an investigation which has been prompted by someone or something else.

<sup>23</sup> Examples include establishing whether the Statutory Auditor or Statutory Audit Firm's client or others have suffered loss and voluntarily compensating them; correcting any misleading statement or impression; taking disciplinary action against staff involved, if appropriate; and taking steps to prevent similar breaches of the Relevant Requirements from arising in the future.

should have regard to the need to impose effective, proportionate and dissuasive sanctions in respect of statutory auditors and audit firms,

61. Examples of the circumstances where a Decision Maker may consider it appropriate to make such an adjustment include where a Decision Maker considers that:
- the Statutory Auditor or Statutory Audit Firm already has a disciplinary record for breaches of the Relevant Requirements of a similar nature;
  - sanctions imposed or agreed previously in respect of similar breaches of the Relevant Requirements have failed to achieve an improvement in the relevant standards of Statutory Auditors or Statutory Audit Firms;
  - there is a risk of similar breach of the relevant requirements in the future, whether by the Statutory Auditor or Statutory Audit Firm, or by other Statutory Auditors or Statutory Audit Firms, in the absence of a sufficient deterrent;
  - the sanction is too small to meet the objective of credible deterrence.

### **Accepting undertakings**

62. Executive Counsel or the Enforcement Committee may, as an alternative or in addition to imposing a sanction, accept undertakings from the Respondent.
63. Written undertakings should only be accepted where this is considered sufficient by Executive Counsel or the Enforcement Committee to reduce the risk of a future adverse effect on a Statutory Audit client or any other person and to ensure that the Statutory Audit functions are undertaken, supervised and managed effectively in the future.
64. Executive Counsel or the Enforcement Committee should be confident that the Statutory Auditor or Statutory Audit Firm will cooperate and comply fully and in a timely manner with the proposed Undertakings.
65. 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 breaches.
66. Where written undertakings are accepted by Executive Counsel or the Enforcement Committee, the FRC Executive will monitor compliance with those Undertakings and report to the Conduct Committee as appropriate.
67. Where a Statutory Auditor or Statutory Audit firm fails to comply with written undertakings provided to Executive Counsel or the Enforcement Committee, the FRC may reopen the matter and a report on compliance with the undertakings shall be considered by the Conduct Committee, along with the original allegation.

## **Discount for Admissions and Early Disposal**

### *Admissions*

68. Where Statutory Auditors or Statutory Audit Firms admit some or all of the facts of a case, it is appropriate that any financial penalty and/or other sanction that might otherwise be imposed should be adjusted to reflect the extent, significance and timing of those admissions.

### *Acceptance of Decision Notices or pre-decision notice resolution*

69. Unless the parties have agreed that a matter should proceed straight to the Tribunal stage, Executive Counsel and the Enforcement Committee may issue a Decision Notice respectively, proposing a sanction. In recognition of the benefits of early disposal of matters under the Audit Enforcement Procedure, where the Respondent accepts a Decision Notice proposed by Executive Counsel or the Enforcement Committee, it is appropriate to adjust the amount of any financial penalty and/or other sanction that might otherwise have been imposed.
70. Normally, it will be inappropriate to reduce the period during which a Statutory Auditor or Statutory Audit Firm is to be prohibited to reflect early disposal or resolution because the primary purpose of such a sanction is to protect the public. Therefore, any adjustment will generally apply only to any financial penalty to be imposed.
71. For the purpose of providing guidance on the scale of any adjustment for early disposal, the FRC recommends that a case should be divided into four stages and a range of reductions applied to each stage:
- Stage (1) – resolution up to the issuance of OR acceptance of Executive Counsel's proposed Decision Notice in accordance with Rule 15 — a reduction of between 25 and 35%;
  - Stage (2) – (following non-acceptance of Executive Counsel's proposed Decision Notice) resolution up to the issuance of OR acceptance of the Enforcement Committee's proposed Decision Notice — a reduction of between 15-25%;
  - Stage (3) – (Following non-acceptance of the Enforcement Committee's proposed Decision Notice) settlement up to the commencement of any Hearing – a reduction of between 5-15%.
  - Stage (4) - the period following the commencement of the Hearing until the final conclusion of the case, including any appeals — no reduction.
72. An adjustment to reflect early disposal at the higher end of any range will only be appropriate if the Statutory Auditor or Statutory Audit Firm admits substantially all the findings or does so at an early stage of the case. If the Statutory Auditor or Statutory Audit Firm is prepared to admit some but not all of the findings, the discount applicable will depend on the extent and significance of the admissions as well as the stage at which those admissions were made.

### **Costs**

73. Having determined the sanction to be imposed, a Tribunal or an Appeal Tribunal considers whether to make any award in respect of the costs incurred by the FRC. When doing so, a Decision Maker may take account of:

- a Statutory Auditor or Statutory Audit Firm's financial position and the impact of any financial penalty that forms part of the proposed sanction;
- any arrangements that would result in part or all of any award of costs being paid or indemnified by insurers, or by a Statutory Auditor's firm, partnership, company or employer.

## **Interim Orders**

74. Interim Orders are not sanctions. The power to impose an Interim Order can be exercised by the Enforcement Committee or the Tribunal. An Interim Order is an order which imposes restrictions on the Respondent pending the outcome of the FRC's investigation or proceedings.
75. In either case the test for imposing an Interim Order is as set out at Rule 57 of the Audit Enforcement Procedure: "where there are reasonable grounds to consider that the Respondent may be liable to Enforcement Action and it is in the public interest or the interests of the Respondent, the Enforcement Committee or Tribunal may impose an Interim Order."
76. The procedure for imposing an Interim Order is as set out in Part 6 of the Audit Enforcement Procedure.
77. Factors which might indicate that a Respondent should be subject to an Interim Order include:
  - serious breaches of the Relevant Requirements;
  - ongoing risk of harm to investor, market or public confidence in the truth and fairness of the financial statements published by Statutory Auditors or Statutory Audit Firms;
  - ongoing risk of significant financial detriment or other harm for those reliant on the Statutory Auditor or Statutory Audit Firm's compliance with the Relevant Requirements.
78. This list is non-exhaustive and referral is at the discretion of the Enforcement Committee or Tribunal.
79. There must be public interest (or the Respondent must have an interest) in an Interim Order being imposed and reasons for an Interim Order must be given.
80. Interim Orders may involve
  - (a) an interim condition that the Respondent cease the alleged breach of Relevant Requirements;
  - (b) interim suspension of the Respondent from carrying out Statutory Audits and/or signing audit reports and/or from exercising functions in audit firms or PIEs;
  - (c) other interim conditions in relation to the exercise of Statutory Audit work.
81. Interim Orders will be for a defined period not exceeding 6 months.
82. The Enforcement Committee or Tribunal shall specify that before the end of the period of the Interim Order that the matter shall be considered for a review by the decision maker.

83. Interim Orders can be re-imposed, varied or revoked on review for further periods of 6 months.
84. An Interim Order shall be revoked by:
- (a) a Cancellation Notice; or
  - (b) a Final Decision Notice following expiry of the appeal period or the conclusion of any appeal.

**Issued by the Conduct Committee**  
**[date]**

## APPENDIX H: PUBLICATIONS POLICY

### Introduction

1. This policy applies to matters which are the subject of a decision under the Financial Reporting Council (**FRC**)'s Audit Enforcement Procedure (**Enforcement Procedure**).
2. As the Competent Authority for Audit Regulation in the UK, pursuant to the EU Audit Regulation (EU) 537/2014 (**Audit Regulation**) and the EU Audit Directive 2014/56/EU (**Audit Directive**) as implemented by the Statutory Auditors and Third Country Auditors Regulations 2016 (**SATCAR 2016**), the FRC is ultimately responsible for the enforcement and oversight of the adequate execution of statutory audit; and required to retain and perform directly the task of sanctioning the inadequate execution of Public Interest Entity (**PIE**) audits.
3. Publicity about actions taken by the FRC under the Enforcement Procedure contributes to transparency, public confidence in the Competent Authority's enforcement arrangements, informs the public and statutory auditors of, and aims to deter against, unacceptable, inadequate execution of statutory audit. The FRC is required by SATCAR 2016 to publish details of any sanctions it imposes under the Enforcement Procedure [see *Mandatory Announcements*].
4. Where the FRC has the discretion to decide whether or not to publish actions other than sanctions imposed under the Enforcement Procedure (for example the decision to investigate a Respondent individual or firm), the FRC will also take into consideration the purpose intended to be served by such discretionary publication and the fairness upon a Respondent of the FRC making such an announcement [see *Discretionary Announcements*], as well as any other legal obligations that the FRC has with regard to the publication of information, such as under any applicable data protection laws, the Freedom of Information Act 2000 ("FOIA") or the Environmental Information Regulations 2004 ("EIRs").

### Mandatory Announcements

5. The FRC is required by SATCAR 2016 to publish the details set out in paragraph 6 below in relation to Sanctions it imposes; in other words, in relation to the following decisions made by the FRC under the Enforcement Procedure:
  - (a) a Decision Notice by Executive Counsel made pursuant to Rule 16;
  - (b) a Final Decision Notice by the Enforcement Committee made pursuant to Rule 23 or 25;
  - (c) a Final Decision Notice by the Tribunal made pursuant to Rule 51;
  - (d) a Final Decision Notice and by the Appeal Tribunal made pursuant to Rule 61;
  - (e) any decision in relation to an Interim Order made by the Enforcement Committee or the Tribunal or Appeal Tribunal pursuant to Rule 57.
6. The information which the FRC must include in such mandatory announcements includes:
  - (a) information concerning the type and nature of the contravention;

- (b) the identity of a person sanctioned or the subject of a prohibition order save where the circumstances in paragraph 8 apply;
  - (c) where a sanction or prohibition order is subject to appeal, information concerning the status and outcome of any appeal.
7. Where the Respondent has agreed to early resolution of the matter and accepted a Decision Notice issued by the FRC before the Tribunal Stage, the FRC will usually include in the mandatory announcement:
- (a) an acknowledgement of the Respondent's co-operation and;
  - (b) the amount or proportion of any discount to sanction applied for early settlement.
8. The FRC is prohibited from publishing the identity of a person sanctioned or the subject of a prohibition order in the mandatory announcement where:
- (a) such person is an individual and the competent authority considers the publication of personal data would be disproportionate;
  - (b) publication would jeopardise the stability of financial markets;
  - (c) where publication would jeopardise an ongoing criminal investigation; or
  - (d) publication would cause disproportionate damage to any institution or individual involved.
9. Decisions on the content of the mandatory announcement will be taken by the FRC Executive. The FRC Executive may, but is not required to, seek the guidance of the FRC Conduct Committee (**Conduct Committee**) when deciding if the circumstances set out in paragraph 7 apply.

#### *Timing and availability of Mandatory Announcements*

10. The FRC is required to publish mandatory announcements as soon as reasonably practicable immediately after the person sanctioned has been informed of the decision.
11. Mandatory announcements must be published on and remain available from the FRC website for the following periods:
- (a) where a sanction or prohibition order issued by the FRC is not appealed, five years from the date that the appeal should have been lodged pursuant to Rule 65;
  - (b) where a sanction or prohibition order issued by the FRC is appealed, five years from the date of determination of the appeal.

#### **Discretionary Announcements**

12. The FRC may, but is not required to, publish:
- (a) actions relating to the commencement of investigations under the Enforcement Procedure;
  - (b) actions relating to the outcome of such investigations, where a Sanction has not been imposed;

- (c) decisions to accept undertakings from a person in place of Sanction under the Enforcement Procedure;
  - (d) acceptance of or declining a referral for investigation under the Enforcement Procedure from another regulatory body to the FRC;
  - (e) other decisions, actions or information which are/is not required by SATCAR 2016 to be published but which the FRC considers appropriate in all the circumstances to publish.
13. Decisions to exercise the FRC's discretion under paragraph 12 will be taken by the Conduct Committee or the Investigation Committee. When exercising this discretion, each decision by the respective Committee will be taken on its own merits and on a case-by-case basis and will take into account the factors set out at paragraph 14.
14. Factors which may be taken into consideration when deciding whether to exercise the FRC's discretion to publish include:
- (a) the level of public interest in publishing or not publishing an announcement in relation to the matter under consideration;
  - (b) public confidence in audit regulation;
  - (c) whether it is right in all the circumstances to publish a discretionary announcement;
  - (d) fairness to all concerned in relation to the enforcement action in question and the publication or otherwise of a discretionary announcement;
  - (e) what legitimate purpose is served by making such a discretionary announcement;
  - (f) requirements under the FOIA and/or EIRs to publish such information or to release such information into the public domain upon request (see the FRC's FOIA Publication Policy).
15. Depending on the nature of the circumstances, the Conduct Committee or the Investigation may decide to withhold or postpone publication of a discretionary announcement for a period of time or until such time as it considers appropriate. The Committee may keep any such decision to postpone or withhold publication under review.

### **General provisions on timing and manner of publication**

#### *Manner of publication*

16. The identity of third parties will usually be anonymised in any announcements and/or related documents published under this Publication Procedure, unless or to the extent that publication of that individual's identity is considered fair and necessary in all the circumstances and is in compliance with any applicable data protection laws.
17. Save as otherwise set out in this Publication Procedure or required by law, publication will usually take the form of:
- (a) a short statement on the FRC's website setting out the information set out in paragraph 6 in relation to mandatory announcements; and/or brief factual details relating to the decision or action in question in relation to discretionary announcements; and

(b) where considered appropriate in all the circumstances, a link to any related detailed decision.

18. In addition, where considered appropriate a press notice will be issued and circulated to journalists and other parties who have signed up to receive FRC press notices. The press notice may contain a link to the website statement and any accompanying report.

19. In certain circumstances and where not contravening the FRC's statutory publication requirements, the FRC may decide to vary the form or procedure in which it publishes an announcement made under this Procedure.

#### *Advance notice of publication*

20. Save where urgent publication is desirable to safeguard the public interest, a minimum of 3 days' advance notice of publication of an announcement under this Publication Policy will usually be offered to:

(a) the Respondent;

(b) any regulatory body or prosecuting authority with a known interest in the matter in question.

21. Amendments to the wording of press announcements will not generally be accepted, except in relation to matters of factual inaccuracy.

22. Where any information which is to be published is market sensitive, the FRC will normally make a simultaneous announcement to the market and will consider carefully the precise timing of the announcement. The FRC will liaise with the UK Listings Authority or the relevant Stock Exchange prior to making the announcement. The 24 hour advance notice period will not apply in these circumstances.

#### *Timing of Publication*

23. Mandatory announcements must be published as soon as reasonably practicable.

24. Discretionary announcements, if made, will normally be published promptly but the Conduct Committee and the Investigation Committee retain discretion to delay publishing them, or parts of them, if it considers there are public interest reasons and/or other reasons under any other applicable laws, such as data protection laws, the FOIA or the EIRs, for doing so.

**Issued by the Conduct Committee  
[date]**



**Financial Reporting Council**

8th Floor  
125 London Wall  
London  
EC2Y 5AS

+44 (0)20 7492 2300

[www.frc.org.uk](http://www.frc.org.uk)