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# Recognised Auditor Regulatory Sanctions Guidance

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# Recognised Auditor Regulatory Sanctions Guidance

## Introduction

1. This document provides guidance for members of:
  - the Enforcement Committee of the Financial Reporting Council (“the FRC”) when considering the imposition of Sanctions under paragraph 6.3 and 8.3 of the Crown Dependencies Recognised Auditor Regulatory Sanctions Procedure (“the Procedure”); and
  - the Independent Sanctions Tribunal (the “Tribunal”) when considering the imposition of Sanctions under paragraph 13.5 of the Procedure;  
  
on Recognised Auditors as defined in the Procedure.
2. Terms defined in the Procedure shall have the same meaning in this guidance.
3. This guidance is made by the Conduct Committee of the FRC pursuant to paragraph 3.1(a) of the Procedure which:
  - empowers the Conduct Committee to provide the Audit Quality Review Committee (“AQR Committee”), any Enforcement Committee and any Tribunal with guidance concerning the exercise of their duties under the Procedure; and
  - requires the AQR Committee, each Enforcement Committee and each Tribunal to have regard to any such guidance.
4. This document is intended to provide guidance to Enforcement Committee members and Tribunal members on the approach to be taken when considering whether, and if so, what, Sanctions are appropriate in any given case. It is intended to:
  - promote proportionality, clarity, consistency and transparency in decision-making; and
  - ensure that all parties are aware from the outset of the approach likely to be taken by the Enforcement Committee when agreeing sanctions, or Tribunal when determining what Sanction to impose.
5. It is important to emphasise that this guidance is advisory – and is not binding on Enforcement Committees or Tribunals. It is for each Enforcement Committee to decide what, if any, Sanction to propose or agree based on the information provided to it and for each Tribunal to decide what, if any, Sanction to impose given the findings it makes in the case that it has heard.
6. This guidance is subject to the provisions of the Procedure. In the event of any conflict between the two, the provisions of the Procedure shall prevail.
7. This guidance is a public document. Periodically it will be reviewed and, where appropriate, revised in the light of experience. The guidance cannot deal with every single situation and exceptions will sometimes arise. The guidance should be considered alongside any precedents emerging from relevant cases determined by previous Committees and Tribunals.

## Aims and Objectives of the Procedure

8. A Recognised Auditor shall be liable to Sanctions, as agreed by the Enforcement Committee, or imposed by the Tribunal, under the Procedure where, in accordance with paragraph 4.1 of the Procedure, a Recognised Auditor has failed to comply with the Regulatory Framework for Auditing and:
  - a) their continued registration or their continued registration without restrictions or conditions could adversely affect a Market Traded Company or any other person; and/or
  - b) it is necessary to impose a Sanction to ensure that their Audit Work is undertaken, supervised and managed effectively.
9. There are two basic points for the Enforcement Committee or Tribunal to note at the outset in relation to the Procedure. First, it is only a Recognised Auditor, defined in Part 1 of the Procedure as a Firm entered on a Register as eligible for appointment as a Recognised Auditor under the relevant legislation, that may be subject to Sanctions under the Procedure. It does not therefore apply directly to individual audit engagement partners or staff. Secondly, the Regulatory Framework for Auditing is defined in Part 1 of the Procedure as:
  - a) The Auditing Standards (International Standards on Auditing (UK and Ireland));
  - b) The Ethical Standards for auditors issued and/or adopted by the FRC;
  - c) The Quality Control Standards for auditors issued and/or adopted by the FRC;
  - d) The Regulations;
  - e) Any other legislation, standards, regulations, rules, bye-laws or other documents from time to time in force and relevant to the performance and quality of auditing.
10. Therefore, in order to be liable to a Sanction, a Recognised Auditor must have failed to comply with the Regulatory Framework for Auditing. In addition to this failure, one of the other two conditions set out at paragraph 4.1 of the Procedure must be satisfied (see paragraph 8 above). As this is a two stage test, the Enforcement Committee or Tribunal must ensure that both limbs are satisfied before going on to consider what, if any, Sanction to agree or impose. It is not intended that a Recognised Auditor would be liable to a Sanction for every technical failure to comply with the Regulatory Framework for Auditing, but only where a Sanction is appropriate or necessary with reference to the criteria set out in the Procedure. A Sanction can only be agreed or imposed when the Enforcement Committee or Tribunal is satisfied that the criteria in paragraph 4.1 of the Procedure are satisfied.
11. When considering whether the alleged failings satisfy the criteria set out in paragraph 4.1, the Enforcement Committee or Tribunal should have regard to the difference between the Procedure and the Accountancy Scheme (the "Scheme"). It should consider whether the conduct of the Recognised Auditor may amount to misconduct as defined in the Scheme or the disciplinary procedures of the ICAEW. Where the Enforcement Committee receives a report from AQR and/or further information which indicates that the conduct of a Recognised Auditor should be considered in accordance with the provisions of the Scheme or the disciplinary procedures of the RSB, the Enforcement Committee shall refer the matter to the Conduct Committee under paragraph 6.4(a) of the Procedure.

12. The purpose of imposing Sanctions for failure to comply with the Regulatory Framework for Auditing is not to punish, but to protect the public and the wider public interest. Therefore the Enforcement Committee or Tribunal's objectives should be to agree or impose the Sanction appropriate or necessary to achieve the objectives set out in paragraph 4.1 of the Procedure (see paragraph 8 above). This guidance has been developed to help Enforcement Committees and Tribunals ensure that they achieve these objectives and agree or impose Sanctions which:
- a) are proportionate to the aim of the Sanction;
  - b) protect the public and the public interest;
  - c) improve the performance of Audit Work by the Recognised Auditor;
  - d) are tailored to the facts of the particular case and take into account the circumstances of the Recognised Auditor concerned;
  - e) are proportionate to the nature of the failure and the harm or potential harm caused;
  - f) maintain and promote confidence in the performance of Recognised Auditors and their compliance with the Regulatory Framework for Auditing;
  - g) deter Recognised Auditors from failing to comply with the Regulatory Framework for Auditing.

## Summary of Approach

13. The initial consideration by the Enforcement Committee or Tribunal will involve deciding:
  - a) whether a Recognised Auditor has failed to comply with the Regulatory Framework for Auditing and, if so;
  - b) whether:
    - their continued registration or their continued registration without restrictions or conditions could adversely affect a Market Traded Company or any other person; and/or
    - it is necessary to impose a Sanction to ensure that their Audit Work is undertaken, supervised and managed effectively.
14. When the Enforcement Committee or Tribunal is satisfied that these tests have been met, and therefore that a Sanction is appropriate or necessary, the normal approach to determining the Sanction to be agreed or imposed in a particular case should be to:
  - a) Assess the nature and seriousness of the failure;
  - b) Identify the Sanction(s) that the Enforcement Committee or Tribunal considers appropriate or necessary;
  - c) Consider any relevant aggravating or mitigating circumstances and how those circumstances affect the level of Sanction under consideration;
  - d) Consider any further adjustment necessary to achieve the appropriate deterrent effect;
  - e) Consider whether a discount for admissions or settlement is appropriate;
  - f) Decide which Sanction to order and the level/duration of the Sanction where appropriate.
15. Enforcement Committees or Tribunals are obliged to give reasons for their decisions.

## **Sanctions**

16. The Sanctions to which a Recognised Auditor shall be liable, as set out in paragraph 4.2 of the Procedure, are:
  - a) Restrictions and/or Conditions;
  - b) Regulatory Penalty – a fine of an amount determined by the Enforcement Committee or Tribunal;
  - c) Suspension of Registration;
  - d) Withdrawal of Registration.
17. These Sanctions are considered individually in more detail from paragraph 36 onwards.

## **Combination of Sanctions**

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

## **Determination of Sanction**

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

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

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

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

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

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

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

### **Aggravating and Mitigating Factors**

26. Having assessed the seriousness of the failure and reached a view on the Sanction that would be appropriate, the Enforcement Committee or Tribunal considers whether to adjust that Sanction to reflect any aggravating or mitigating factors that may exist (to the extent those factors have not already been taken into account in the assessment of the seriousness of the failure). It may also be necessary to consider whether the aggravating factors are such that the conduct of the Recognised Auditor should be considered in accordance with the provisions of the Scheme or the disciplinary procedures of the ICAEW, in which case the Enforcement Committee should refer the matter to the Conduct Committee.
27. Examples of events or behaviour that the Enforcement Committee or Tribunal may conclude aggravated the failure, and so should be taken into account when deciding the Sanction to be agreed or imposed, include where:
- a) the Recognised Auditor failed to cooperate with, or hindered, the inspection by the AQR;
  - b) senior management were aware of the failure, or that such a failure was likely to occur, but failed to take steps to stop or prevent the failure;
  - c) senior management or a responsible individual sought to conceal or reduce the risk that the failure would be discovered;
  - d) the Recognised Auditor facilitated wrongdoing by a client;
  - e) similar failings were identified by a previous AQR report;
  - f) no remedial steps have been taken since the failure was identified;
  - g) the failings were repeated and/or occurred over an extended period of time;
  - h) the Recognised Auditor has failed to comply with written Undertakings given to the Enforcement Committee, the Tribunal or the ICAEW;
  - i) the Recognised Auditor has previously been subject to Regulatory Sanction, either in accordance with the Procedure or by the ICAEW. The more serious and/or similar the previous failure, the greater the aggravating factor.
28. Examples of events or behaviour that the Enforcement Committee may conclude mitigate the failure, and so should be taken into account when deciding the Sanction to be agreed or imposed, include where:
- a) the Recognised Auditor cooperated during the AQR inspection and the Enforcement Committee's consideration of the AQR report;
  - b) the Recognised Auditor had taken appropriate steps to stop or prevent the failings;

- c) the Recognised Auditor had proper structures and policies in place;
- d) the Recognised Auditor has shown awareness of the relevant standards;
- e) appropriate remedial steps were taken promptly once the failing was identified;
- f) the Recognised Auditor brought the failure to the attention of AQR or the ICAEW;
- g) the Recognised Auditor was misled by a third party;
- h) the failing was an isolated event that is unlikely to be repeated;
- i) the Recognised Auditor did not stand to gain any profit or benefit from the failure;
- j) the Recognised Auditor has a good compliance history;
- k) the Recognised Auditor has demonstrated contrition.

### **Adjustment for deterrence**

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

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

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

31. Where a Recognised Auditor admits a failure to comply with the Regulatory Framework for Auditing in correspondence before the Enforcement Committee, and indicates a willingness to agree a Sanction, whether following the initial letter from AQR, or following correspondence and suggestion of an amended or lesser Sanction, the Enforcement Committee may consider whether it would be appropriate to adjust the amount of any Regulatory Penalty and/or other Sanction that might otherwise have been imposed to reflect the stage at which agreement was reached.

32. Normally it will be inappropriate to reduce the period during which Restrictions and/or Conditions apply, or a period of Suspension, to reflect an agreement because the primary purpose of such a Sanction is to protect the public. Therefore, any adjustment will generally apply only to a Regulatory Penalty to be imposed.
33. For the purpose of providing guidance on the scale of any settlement adjustment, the FRC recommends that if an admission is made to the Enforcement Committee, a reduction of between 20 and 35% may be appropriate.

*Admissions before the Tribunal*

34. Where a Recognised Auditor makes an admission in respect of some or all of any alleged particulars of fact and/or alleged failures to comply with the Regulatory Framework, the Tribunal may consider whether it is appropriate that any Regulatory Penalty and/or other Sanction that might otherwise be determined should be adjusted to reflect the extent, significance and timing of those admissions.
35. The Tribunal, and the Enforcement Committee where agreeing a Sanction, must remain satisfied that any adjusted Sanction is sufficient to protect the public and the wider public interest.

## Possible Sanctions in detail

### Restrictions and /or Conditions

36. The Enforcement Committee or Tribunal may agree or impose an order restricting the Recognised Auditor's practice and/or placing conditions on that practice. The Enforcement Committee or Tribunal may determine any Restrictions and/or Conditions that it considers, in its absolute discretion, appropriate or necessary with reference to the reason for imposing the Sanction (see paragraph 8). Restrictions and/or Conditions may be imposed for such time period as the Enforcement Committee or Tribunal thinks fit. By way of example and without limitation to the Enforcement Committee and Tribunal's general discretion, a restriction may be placed on the nature of work undertaken, and conditions may include requiring a Recognised Auditor to undertake training programmes, implement policy changes or develop or impose certain supervisory structures.
37. Restrictions and/or Conditions might be most appropriate in cases where there is evidence of a shortcoming in a particular area of practice, or there have been repeated relatively minor or inadvertent breaches of the standards that could be remedied through Restrictions and/or Conditions. Any Restrictions and/or Conditions should be appropriate, proportionate, workable and measurable, and should not amount to an inability to practice.
38. The determination of an order imposing Restrictions and/or Conditions will be accompanied by ancillary provisions that address such matters as:
  - a) the period during which any Restriction on a Recognised Auditor's ability to undertake particular engagements shall remain in effect;
  - b) the period during which any Condition shall remain in effect;
  - c) any period within which a particular Condition must be fulfilled;
  - d) the identity of any person or organisation responsible for overseeing compliance with an order;
  - e) the procedure by which a Recognised Auditor may apply to vary or discharge an order.

### Regulatory Penalty

39. A Regulatory Penalty may be agreed or imposed either alone or in combination with another Sanction. A Regulatory Penalty may only be used alone where there are no concerns that a Recognised Auditor's continued registration or continued registration without restrictions or conditions could adversely affect a Market Traded Company or any other person. Therefore, if there are such concerns, a Regulatory Penalty should only be agreed or imposed in combination with another Sanction, where this is appropriate or necessary to achieve the objective of the Sanction. A Regulatory Penalty may only be imposed or agreed alone where the Enforcement Committee or Tribunal is satisfied that it will be sufficient to ensure that a Recognised Auditor's Audit Work is undertaken, supervised and managed effectively.
40. In order to determine whether a Regulatory Penalty is appropriate the factors to be considered will normally include whether:

- a) Restrictions and/or Conditions, or Suspension or Withdrawal of Registration alone would not be sufficient or appropriate to address the concerns of the Enforcement Committee or Tribunal;
  - b) the Recognised Auditor has derived any financial gain or benefit as a result of the failure;
  - c) the failure involved or caused or put at risk the loss of significant sums of money;
  - d) a Regulatory Penalty was agreed or imposed in similar previous cases.
41. There is no upper limit on the Regulatory Penalty that the Enforcement Committee or Tribunal can impose. However it should be borne in mind that the purpose of a regulatory Sanction is not to punish.
42. The amount of the group audit fee, or the audit fee earned by the firm, may be a factor to be taken into account when assessing the amount of penalty which would be necessary or appropriate. Where a failing has been identified as part of a firm wide review, it may be appropriate to take the amount of the revenue generated by the particular department in which the failure was identified, or the revenue from the audits in which the shortcomings came to light, into account when determining the size of the Regulatory Penalty.
43. Having assessed the seriousness of the failing, the Enforcement Committee or Tribunal will consider the financial resources of the Recognised Auditor.
44. When deciding the amount of the Regulatory Penalty, the Tribunal should disregard the possibility that the Recognised Auditor may be liable for the costs of the case before it.
45. Having arrived at a figure for the Regulatory Penalty based on the nature and seriousness of the failings, the Enforcement Committee or Tribunal should consider whether the amount should be adjusted with reference to the other factors referred to in paragraphs 25 to 35 above.

### **Suspension of Registration**

46. The Enforcement Committee or Tribunal may agree or impose the Suspension of a Recognised Auditor's registration, only where Restrictions and/or Conditions, or a Regulatory Penalty, or both, would not be sufficient to address the Enforcement Committee or Tribunal's concerns.
47. Suspension of Registration is a far reaching Sanction which should be reserved for cases where there are such serious concerns about the Recognised Auditor's competence and/or ability to comply with the Regulatory Framework for Auditing that they should not be permitted to undertake Audit Work for a particular period. It may also be appropriate where the failure was so serious that it would significantly undermine public and market confidence in the standards of Recognised Auditors and Suspension is necessary to protect the public and the public interest. However, the Enforcement Committee or Tribunal must be satisfied that the failures are capable of being rectified by the Recognised Auditor within a reasonable period of time, failing which it should consider Withdrawal of Registration (see below).
48. The Enforcement Committee or Tribunal must carefully consider the period of Suspension which is necessary and proportionate, taking into consideration the nature and seriousness of the failure, and the other considerations laid out at paragraphs 25 to 35 above. The Enforcement Committee or Tribunal should also take into account how long it considers it would take the Recognised Auditor to rectify the failings

identified, in order to determine when the period of Suspension should come to an end.

49. The Enforcement Committee or Tribunal may, when giving its reasons, set out certain suggested conditions which it would expect to be fulfilled during the period of Suspension.

### **Withdrawal of Registration**

50. Withdrawal of a Recognised Auditor's registration is the most serious Sanction with the most far reaching consequences. Therefore, it should be reserved for the most fundamental breaches of the Regulatory Framework for Auditing, where continued practice would be so damaging to the public, the public interest and market confidence in the standards of Recognised Auditors that Withdrawal of Registration is the only appropriate and proportionate Sanction. In practice, it seems likely that Withdrawal of Registration would only be imposed following a Tribunal hearing.
51. It may be appropriate to withdraw a Recognised Auditor's registration where the Tribunal considers, for example, that there is a lack of willingness to comply with the Regulatory Framework for Auditing, such that the Recognised Auditor is unlikely to improve and significant and serious failings are likely to continue to occur. The Tribunal should also consider whether there have been aggravating factors which should be taken into account. Examples may include:
  - a) where previous Sanctions in relation to similar failings have not resulted in any improvement;
  - b) where the failings took place over a long period of time with the knowledge or complicity of senior management;
  - c) where the conduct was fundamentally incompatible with continued Registration; or
  - d) where the Recognised Auditor is no longer a proper person to be eligible for appointment as a Recognised Auditor, and there is no prospect of this being remedied in the foreseeable future.
52. Where the Enforcement Committee is of the opinion that failings are so serious that Withdrawal of Registration may be warranted, it should carefully consider whether it would be appropriate to deal with the matter under the Scheme or the disciplinary procedure of the ICAEW, and give reasons as to why this is not appropriate.
53. Prior to imposing an order withdrawing registration, all other available Sanctions should be considered to ensure that it is the only appropriate Sanction and is proportionate taking into account all the circumstances of the case. In particular, the Tribunal should consider whether the failures are capable of remedy, and if so, whether a period of Suspension would be appropriate. The Tribunal must satisfy itself that no other Sanction would fulfil the purposes of the Procedure, so that Withdrawal of Registration is the only appropriate and proportionate Sanction available to it.

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

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

54. The Enforcement Committee may decide an amended or lesser Sanction is appropriate, having regard to any further information or representations which it has received, either from the Recognised Auditor or from the AQR, in accordance with paragraph 8.1 of the Procedure. The Enforcement Committee should only accept an amended or lesser Sanction where it is satisfied that this is still proportionate to the failings and the reasons for imposing the Sanction, and sufficient to protect the public and the public interest.
55. Factors which may be relevant to the Enforcement Committee's decision to agree a lesser penalty include:
  - a) further mitigation offered by the Recognised Auditor;
  - b) more detailed explanation as to how the failings came about;
  - c) other information received by the Enforcement Committee after having initially proposed a Sanction which lessens the seriousness of the failing.
56. The Enforcement Committee may consider that, in light of the further information or representations, the original proposed Sanction is not sufficient to address the failings or the reasons for imposing a Sanction. In such a situation, the Enforcement Committee may amend the Sanction to ensure it achieves its objectives and invite the Recognised Auditor to agree it.

### **Accepting Undertakings**

57. The Enforcement Committee or Tribunal may accept written Undertakings from a Recognised Auditor. Written Undertakings should only be accepted where this is sufficient to address the concerns of the Committee or Tribunal, to prevent an adverse effect on a Market Traded Company or any other person and to ensure that the Recognised Auditor's Audit Work is undertaken, supervised and managed effectively. The Enforcement Committee or Tribunal should be confident that the Recognised Auditor will cooperate and fully comply with the proposed Undertakings.
58. By way of example, written Undertakings may include:
  - a) a commitment to impose mandatory training on audit staff;
  - b) an agreement not to undertake certain types of audit work;
  - c) a proposal to introduce new policies and procedures designed to prevent further or similar failings.
59. Where written Undertakings are accepted by the Enforcement Committee or Tribunal, the AQR will monitor compliance with those Undertakings and report to the AQR Committee and the ICAEW as appropriate.
60. Where a Recognised Auditor fails to comply with written Undertakings provided to the Enforcement Committee or Tribunal, the matter is reopened and considered by the Enforcement Committee or Tribunal in accordance with the terms of the Procedure. Where there has been a deliberate failure to comply with written Undertakings on the part of the Recognised Auditor, the Enforcement Committee, as applicable, should consider whether to refer the matter to the Conduct Committee so that it can decide

whether the conduct in question constitutes misconduct under the Scheme or the disciplinary procedures of the ICAEW.

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

61. The Enforcement Committee may at any time, with the agreement of the Recognised Auditor, direct the ICAEW to vary or revoke a Restriction, a Condition or a period of Suspension. When considering whether to make such a direction, the Enforcement Committee considers whether:
- a) the Recognised Auditor has taken steps to ensure that the failing will not be repeated;
  - b) the Recognised Auditor has complied with any Restrictions and/or Conditions, or suggestions given by the Enforcement Committee when imposing a period of Suspension;
  - c) the Sanction in the case of variation, or any Sanction in the case of revocation, is no longer required;
  - d) the varied Sanction, if applicable, is sufficient to protect the public and the public interest.

### **Costs**

62. Costs may only be ordered by the Tribunal following a finding that a Recognised Auditor has failed to comply with the Regulatory Framework for Auditing. Costs cannot be ordered by Enforcement Committee where a Sanction has been agreed with the Enforcement Committee.
63. The Tribunal may order that the Recognised Auditor be required to pay the whole or part of the costs of the hearing. In accordance with paragraphs 13.5(c) and (d) of the Procedure, this may be in addition to any Sanction determined or Undertaking accepted, or the Tribunal may make no determination against the Recognised Auditor except for the payment of costs, if it considers that to be appropriate in all the circumstances. The amount to be paid by the Recognised Auditor and the time for payment shall be determined by the Tribunal.
64. When determining whether to order costs, and the amount of costs to be paid, a Tribunal may take account of:
- a) a Recognised Auditor's financial position and the impact of any Regulatory Penalty that forms part of the proposed Sanction; and
  - b) any arrangements that would result in part or all of any award of costs being paid or indemnified by insurers.

### **Effective Date**

This guidance takes effect on 17 June 2016.



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