



The Actuarial Profession

making financial sense of the future

Consultation Response **Financial Reporting Council**

FRC Disciplinary Scheme Proposed Changes – A Consultation
Paper

18 September 2012

About the Institute and Faculty of Actuaries

The Institute and Faculty of Actuaries is the chartered professional body for actuaries in the United Kingdom. A rigorous examination system is supported by a programme of continuous professional development and a professional code of conduct supports high standards, reflecting the significant role of the Profession in society.

Actuaries' training is founded on mathematical and statistical techniques used in insurance, pension fund management and investment and then builds the management skills associated with the application of these techniques. The training includes the derivation and application of 'mortality tables' used to assess probabilities of death or survival. It also includes the financial mathematics of interest and risk associated with different investment vehicles – from simple deposits through to complex stock market derivatives.

Actuaries provide commercial, financial and prudential advice on the management of a business' assets and liabilities, especially where long term management and planning are critical to the success of any business venture. A majority of actuaries work for insurance companies or pension funds – either as their direct employees or in firms which undertake work on a consultancy basis – but they also advise individuals and offer comment on social and public interest issues. Members of the profession have a statutory role in the supervision of pension funds and life insurance companies as well as a statutory role to provide actuarial opinions for managing agents at Lloyd's.

Anna Colban
Financial Reporting Council
5th Floor, Aldwych House
71-91 Aldwych
London WC2B 4HN

18 September 2012

Dear Ms. Colban,

DISCIPLINARY SCHEMES PROPOSED CHANGES – A CONSULTATION PAPER

I am writing on behalf of the Institute and Faculty of Actuaries (Institute and Faculty) in response to the FRC's consultation on the proposed changes to the Disciplinary Schemes. We have not considered the Accountancy Scheme in detail, but have instead focused our comments on the proposed amendments to the Actuarial Scheme of the FRC. We have sought to represent both our own members and at the same time to ensure that the public interest is protected by focussing our attention on ensuring that the new Scheme can demonstrate the fairness which it seeks to achieve.

We are very grateful to Richard Fleck and Gareth Rees for taking the time to meet with the Disciplinary Board and provide helpful background to inform this response. We fully support their stated drive to ensure that the Disciplinary Scheme is efficient, timely and proportionate in serving the public interest.

Our specific comments on the consultation paper are detailed below.

1. Should the Schemes be amended as set out in paragraphs 3.3 to 3.11 above so as to enhance the independence of the disciplinary arrangements?

We note the intention to remove the requirement to consult and seek approval from the Institute and Faculty in relation to certain matters. We are not aware of any difficulties or delays caused by the existing arrangements and we feel that it is important to ensure that, in practice, there is a sufficient level of liaison between the FRC and the Institute and Faculty. As happens currently, we would like to continue to receive intimation of the FRC's intention to launch an investigation and details of any amendments to the scope of the investigation. We feel strongly that appropriate communication with the professional body can add value to the process and, in certain circumstances, may lead to a more informed decision being made.

In addition, it is important that complaints which might merit investigation by the Institute and Faculty are not missed in circumstances where the FRC has determined that there is not sufficient public interest for it to proceed.

Therefore, the desire to promote efficiency and independence should be balanced against the benefits of involving the professional body in the process.

We note the proposal to provide for some form of 'dispute resolution mechanism' where it has not been possible to reach agreement as to proposed amendments to the FRC's Disciplinary Scheme. While welcoming the spirit in

which this is no doubt intended, the mechanism proposed feels a little cumbersome and we are unclear how it would operate in practice. We would welcome the opportunity to discuss this further with you. We say this, recognising again that the current arrangements have not to our knowledge given rise to any practical difficulty.

2. Are the proposals to conclude cases without the need for a tribunal hearing appropriate (paragraphs 3.12 to 3.13 above)?

We understand that this process will assist with cases where an early admission is made. We are keen to learn more about how this might work in practice to allow us to inform our members and to consider consistency with our own processes. Our concern, of course, is to ensure that there is sufficient transparency in the process to protect the public interest.

3. Do you agree with the role envisaged for the Case Management Committee (paragraph 3.15)?

We understand that the aim of the Case Management Committee is to increase the efficiency and we support that principle. However, we do have some reservations as to how this will work in practice. Whilst we would not wish to act in any way which would threaten the independence of the process, we would be happy to offer such assistance to the Case Management Committee as may be helpful in an individual case. Otherwise, we feel that it is too early to comment more widely and we will watch developments with interest.

4. Are the proposals to facilitate the timely completion of investigations and disciplinary proceedings appropriate (paragraphs 3.16 to 3.18 above)?

We consider that these proposals are appropriate; however it is important that the time limits imposed on members to respond are reasonable in the circumstances.

5. Should the Executive Counsel be able to seek an interim order against a member or member firm? If so, are the proposed provisions (paragraph 3.19) appropriate?

Under the Institute and Faculty's Disciplinary Scheme, there is the power to impose an interim order against a member. We feel that this is an important power, and are therefore supportive of this proposal, provided of course that any such power is used sparingly and only where necessary to protect the public interest.

6. Do you have any comments on the proposals to amend the investigation test (paragraphs 3.24 – 3.29)?

We are keen to learn more about what a preliminary enquiry would entail and who would conduct such an investigation. We consider that appropriate consultation with the professional body at the outset of the investigation may assist in the preliminary enquiry stage. In addition, where a preliminary enquiry shows that the case is not of sufficient public interest to be investigated by the FRC, we wonder whether the papers from the enquiry could be provided to the Institute and Faculty to allow a decision to be taken as to whether an investigation would be appropriate under our Disciplinary Scheme?

7. Do you have any other comments on the proposed Schemes or the points raised in this paper?

We have the following more general comments in relation to the consultation paper:

- We consider that it is important to ensure that there is effective consultation about any proposed changes to either our or your Scheme, not least to ensure that the two are consistent and are seen collectively to operate fairly, in the public interest
- We think it would be helpful for there to be greater clarity regarding the relationships between the Conduct Committee, Executive Counsel and the Case Management Committee, especially in relation to the allocation of decision making authority

- We were surprised to note that fairness has not been included as a primary objective under paragraph 1.3 of the consultation papers.
- We do not consider that in light of the amendments to paragraph 5(7) of the Actuarial Scheme, the inclusion of “if it thinks fit” is necessary
- We consider that the proposed amendment contained in paragraph 7(10) may interfere with the discretion of the Disciplinary Tribunal to award costs. It seems to be somewhat unfair that costs may not be awarded to a member where the complaint has been dismissed
- The obligation to cooperate appears to be differentiated from misconduct, implying that non cooperation is not misconduct. Rule 1.22 of the Institute and Faculty Scheme provides that non cooperation with an investigation can of itself amount to misconduct
- The requirements in respect of disclosure of information in paragraphs 16 (2) and (3) seem to be too onerous on members. For example, there may be circumstances where compliance will lead to a breach of employment contract or partnership agreement
- There are a number of references to “Member Firms” which are not required in the Actuarial Scheme on the basis that the Institute and Faculty does not regulate actuarial firms. As such, it would not seem necessary to include “UK Connected Company” as a defined term. We also note and welcome the FRC’s intention to amend “Actuarial Profession” references to “The Institute and Faculty of Actuaries”.

Thank you for the opportunity to comment on the amendments. We look forward to working with you as you seek to implement the new proposals.

Yours faithfully,



Jane Curtis,
Immediate Past-President
The Institute and Faculty of Actuaries