

December 2018

Publications Policy (Audit Enforcement Procedure)

The FRC's mission is to promote transparency and integrity in business. The FRC sets the UK Corporate Governance and Stewardship Codes and UK standards for accounting and actuarial work; monitors and takes action to promote the quality of corporate reporting; and operates independent enforcement arrangements for accountants and actuaries. As the Competent Authority for audit in the UK the FRC sets auditing and ethical standards and monitors and enforces audit quality.

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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 Final Decision Notice by Executive Counsel made pursuant to Rule 18;
 - (b) a Final Decision Notice by the Enforcement Committee made pursuant to Rule 25 or 27;
 - (c) a Final Decision Notice and report by the Tribunal made pursuant to Rule 54;
 - (d) a Final Decision Notice and report by the Appeal Tribunal made pursuant to Rule 67;
 - (e) any decision in relation to an Interim Order made by the Enforcement Committee or the Tribunal or Appeal Tribunal pursuant to Rule 60.
6. The information which the FRC must include in such mandatory announcements includes:
 - (a) the fact that a sanction has been applied and the type of sanction;
 - (b) information concerning the type and nature of the contravention;

- (c) the identity of a person sanctioned or the subject of a prohibition order save where the circumstances in paragraph 9 apply;
 - (d) where a sanction or prohibition order is subject to appeal, information concerning the status and outcome of any appeal.
7. The FRC will also publish, as part of a mandatory announcement, any reprimand or severe reprimand where this has been imposed by Executive Counsel, the Enforcement Committee or the Tribunal
 8. 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.
 9. The FRC is prohibited from publishing the identity of a person¹ 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) publication would jeopardise an ongoing criminal investigation; or
 - (d) publication would cause disproportionate damage to any institution or individual involved.
 10. 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 9 apply.

Timing and availability of Mandatory Announcements

11. The FRC is required to publish mandatory announcements as soon as reasonably practicable immediately after the person sanctioned has been informed of the decision.
12. 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.

¹ It is not just a name or job title that may reveal the identity of a person. Information regarding the type and nature of the contravention alone may allow the individual to be identified (if the facts are unique, for example).

Discretionary Announcements

13. 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.
14. Decisions to exercise the FRC's discretion under paragraph 13 will be taken by the Conduct Committee or the Case Management 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 may take into account the factors set out at paragraph 15.
15. 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.
16. Depending on the nature of the circumstances, the Conduct Committee or the Case Management Committee 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.
17. Where the Conduct Committee has exercised its discretion to publish its decision to commence an investigation under the Enforcement Procedure, and no sanction is imposed following such investigation, the Conduct Committee should usually also publish the outcome of that investigation unless there is a good reason not to.

General provisions on timing and manner of publication

Manner of publication

18. The identity of third parties will usually be anonymised in any announcements and/or related documents published under this Publications Policy, 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.
19. Save as otherwise set out in this Publications Policy 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
 - (b) brief factual details relating to the decision or action in question in relation to discretionary announcements; and
 - (c) where considered appropriate in all the circumstances, a link to any related detailed decision.
20. In addition, press announcements will usually be published and circulated in a manner determined by the FRC Executive. The press notice may contain a link to the website statement and any accompanying report.
21. 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 Policy.
22. The FRC shall have due regard to the potential risk of the release of price sensitive information which may arise out of or in connection with announcements made under this Policy and shall keep a price sensitive communications policy in operation and under review from time to time in the interests of ensuring the simultaneous release to the market under appropriately controlled conditions of such information. The advance notice periods in paragraph 23 and 24 will not apply in these circumstances.

Advance notice of publication

23. Save where the Committee decides that a lesser period is appropriate (e.g. more urgent publication is desirable to safeguard the public interest), any Respondent and, where appropriate, any other party named or identifiable in the announcement will be given a copy of its terms a minimum of 7 days before its intended publication. Where any comments are received in response to such advance notice and to enable the FRC to give due consideration to the comments received, the announcement will not usually be published before the expiry of a further 7 days from the original intended publication date unless otherwise agreed or where the FRC considers earlier publication to be in the public interest.
24. Advance notice of publication of an announcement under this Publications Policy will usually also be offered to any regulatory body or prosecuting authority with a known interest in the matter in question.
25. Amendments to the wording of press announcements will not generally be accepted, except in relation to matters of factual inaccuracy.

Timing of Publication

26. Subject to paragraph 23 and 24:

- a) Mandatory announcements must be published as soon as reasonably practicable.
- b) Discretionary announcements, if made, will normally be published promptly but the Conduct Committee retains 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

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