

# **Conduct Committee Operating Procedure**

1 January 2021

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# Conduct Committee operating procedures for reviewing corporate reporting (“Operating Procedures”)

## Part 1: Introduction

1. The Financial Reporting Council (“FRC”) is a company limited by guarantee and the UK’s independent regulator responsible for corporate reporting, auditing and corporate governance.
2. The Conduct Committee is a committee of the FRC Board established under the Articles of Association. Its current membership and terms of reference can be found in the published [Governance Handbook](#).
3. The Conduct Committee is authorised<sup>1</sup> by the Secretary of State for the purposes of section 456 of the Companies Act 2006 (the “2006 Act”), meaning that it may make an application to the court for a declaration (in Scotland, a declarator) that the annual accounts of a company do not comply, or a strategic report or a directors’ report does not comply, with the requirements of the 2006 Act (or, where applicable, of Article 4 of the IAS Regulation) and for an order requiring the directors of the company to prepare revised accounts or a revised report.
4. The Conduct Committee is also appointed<sup>2</sup> to exercise the functions set out at section 14(2) of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (the “2004 Act”) to keep under review periodic accounts and reports that are produced by issuers of transferable securities and are required to comply with any accounting requirements imposed by Financial Conduct Authority (“FCA”) rules<sup>3</sup>. Where it thinks fit, the Conduct Committee informs the FCA of any conclusions it reaches in relation to any such accounts or reports. If requested by the FCA, the Conduct Committee will also exercise these functions in relation to any particular issuer of transferable securities in relation to whom those functions would not otherwise be exercisable.
5. Through the review of, or investigations into, complaints about company accounts and reports referred to in paragraph 3 and 4 above, (referred to throughout the Operating Procedures generically as “a Report” or “Reports”), the Conduct Committee exercises its functions with a view to ensuring that Reports, and the companies preparing them, comply with relevant accounting and reporting requirements and rules (“relevant accounting and reporting requirements”). It may also identify opportunities for, and encourage improvements to, the quality of companies’ future reporting.
6. Much of the work in support of the Conduct Committee’s performance of its statutory functions is carried out by FRC staff including its contractors and secondees, (“FRC Staff”). The Conduct Committee may also seek advice from the Supervision Committee during the course of its performance of its statutory functions<sup>1</sup> as well as Senior Advisors and the Advisory Panel.

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<sup>1</sup> The Supervision Committee is a committee of the FRC Board which oversees the FRC’s supervision activities

7. As far as possible, the Conduct Committee and any person involved in the review process seek to operate by agreement with the companies whose Reports are subject of a review, and in accordance with the principles of good regulation as set out in the Regulators Code.<sup>2</sup>

### **Purpose of the Operating Procedures**

8. The Operating Procedures are intended to:
  - a. demonstrate that the Conduct Committee has satisfactory procedures in place for the purpose of carrying out its statutory functions<sup>3</sup>; and
  - b. provide transparency about the review process to those companies whose Reports may be reviewed in accordance with the Operating Procedures, and to complainants, investors, and the public generally.
9. The Operating Procedures should be read alongside the FAQs found at <https://www.frc.org.uk/Our-Work/FAQs.aspx> on the FRC's website and other documents and web pages signposted throughout these procedures.

### **Advance clearance**

10. The Conduct Committee does not operate a system of advance clearance; neither it nor FRC Staff will give advice to a company or its auditors as to whether, in their opinion, a particular accounting treatment would or would not meet any relevant reporting requirement.

### **How Reports are selected for review**

11. Although the Conduct Committee's authority extends to all companies that prepare Reports under the 2006 Act, in practice, and as agreed with the Department for Business, Energy and Industrial Strategy ('BEIS')<sup>4</sup> Reports of companies are normally only selected for review in respect of public and large private companies as follows:
  - a. public limited companies ("PLC");
  - b. companies within a group headed by a PLC;
  - c. any private company not qualifying, or excluded from being treated, as a small or medium sized company under the 2006 Act;
  - d. any private company within a group which does not qualify as a small or medium sized group, or is within an ineligible group under the 2006 Act.
12. The Reports of FTSE 350 companies are selected on a rotational basis. Further factors influencing the selection of the Reports of companies, including FTSE 350 companies, include as follows:

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<sup>2</sup> <https://www.gov.uk/government/publications/regulators-code> The Regulators' Code came into statutory effect on

6 April 2014 under the Legislative and Regulatory Reform Act 2006, replacing the Regulators' Compliance Code. It provides a clear, flexible and principles-based framework for how regulators should engage with those they regulate.

<sup>3</sup> As required by the 2006 Act and the 2004 Act.

<sup>4</sup> When it was the Department for Business, Enterprise and Skills

- a. specific industry sectors, for example those regarded as under particular stress; and
- b. specific topical accounting issues that may give rise to greater risk of misstatement in Reports.

## Complaints

13. Review work is also carried out in respect of Reports in response to complaints. The Reports of any company within the Conduct Committee's remit may be the subject of review on receipt of a complaint. Complaints can emanate from a number of sources including investors, and the press. Referrals may also be received from other regulators.
14. In addition, the FRC and the Conduct Committee are included as 'prescribed persons' for the purposes of whistleblowing legislation<sup>5</sup>. This means that a worker may disclose information to the FRC and/or the Conduct Committee about suspected or known wrongdoing in relation to concerns about their employer's compliance with relevant legislation, and will potentially qualify for the same employment rights and protections as if they had made a disclosure to their employer.<sup>6</sup>
15. More information about making a complaint to the FRC or raising a whistleblowing concern can be found at <https://www.frc.org.uk/About-the-FRC/Making-a-complaint-to-the-FRC/Whistleblowing.aspx>. More information regarding information sharing with complainants in respect of a review can be found in Part 3 below.

## Part 2: The Executive Review

16. A review is based solely on a Report/Reports and does not benefit from detailed knowledge of a company's business or an understanding of the underlying transactions entered into by that company. It is, however, conducted by those who have an understanding of the relevant accounting and reporting requirements.
17. At any time during the Executive Review process, advice may be sought from individuals appointed to the FRC Advisory Panel or from Senior Advisors (**Advisors**) or from other independent sources.

### *Stage 1 - Review*

18. Reports will be reviewed by FRC Staff to ascertain whether it appears that there is, or may be, a question whether there is a breach of the relevant accounting and reporting requirements.
19. Where it appears that there is, or may be, such a question, the CRR Director may write to the Chairman of the company and send a copy of the letter to the Finance Director and Audit Committee Chairman where practicable. The letter will;

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<sup>5</sup> In the Public Interest Disclosure (Prescribed Persons) Order 2014 (S.I. 2014/2418)

<sup>6</sup> Although the FRC is not responsible for deciding whether the individual who has made the disclosure qualifies for protection. Ultimately this will be decided by the employment tribunal in contested cases.

- a. identify the matters of concern / relevant aspect(s) of the Report giving rise to an issue and indicate the respects in which there is, or may be, a question as to whether they comply with relevant accounting and reporting requirements;
- b. invite the Chairman or their nominated representative to comment on those matters; and
- c. specify a date by which a response is expected.

20. In carrying out their functions under this Part, the CRR Director:

- a. may be assisted in their analysis of relevant information and representations by the company and/or by FRC Staff;
- b. may communicate with the company at any time or ask the FRC Staff to do so on their behalf;
- c. may meet with the company at any time (and, if it does so, will encourage the company to invite their auditors); and
- d. may seek representations from a complainant or other third parties where it appears that they may have useful and relevant information to contribute to the Review, subject to any considerations of confidentiality;
- e. may, in their discretion or at the direction of the Executive Director of Supervision, appoint a nominee within the FRC Executive to carry out their functions, in which case references in Parts 2 and 3 to the CRR Director shall mean their nominee.

21. If, during the course of a Stage 1 review, the CRR Director identifies a new issue in respect of which they consider that there is, or may be, a question whether there has been a breach of relevant accounting and reporting requirements, they may extend or vary the ambit of the Stage 1 review.

22. As a result of the CRR Director's consideration of the matter and/or as a result of explanations or proposals provided by the company, such as revision of a relevant aspect of a Report, the review may be closed at this stage and the CRR Director will report such closure to the Conduct Committee, as appropriate.

### *Stage 2 – Notice of potential referral to Conduct Committee*

23. Where it appears to the CRR Director that, following the Stage 1 review in respect of any of the company's Reports under the 2006 Act:-

- a. the company has not; (i) provided a satisfactory explanation of one or more matters raised or proposed appropriate action to rectify the issues; or (ii) revised the relevant Report(s) so as to comply with the relevant accounting and reporting requirements; and
- b. the matter represents a potential breach of the relevant accounting and reporting requirements which the Conduct Committee should pursue;

the CRR Director shall refer the matter for consideration by the Executive Director of Supervision. The Executive Director of Supervision will consider all information received during the Stage 1 Review process and may take any of the steps as set out in paragraph 20.

24. If, as a result of the Executive Director of Supervision's consideration of the matter, they decide that the matter does not represent a potential breach of the relevant accounting and reporting requirements which the Conduct Committee should pursue, they may close the review at this stage and the Conduct Committee shall be notified, as appropriate.
25. If the Executive Director of Supervision believes that the matter represents a potential breach of the relevant accounting and reporting requirements which the Conduct Committee should pursue, they will write to the company's Chairman and the Chairman's previously nominated representative. The letter will inform the company that the Executive Director of Supervision has considered the matter and is minded to refer the matter to the Conduct Committee for it to decide whether to make an application to court.
26. The notice of potential referral will;
- a. set out the reasons for the Executive Director of Supervision's views;
  - b. indicate that it is the Executive Director of Supervision's intention to refer the matter to the Conduct Committee;
  - c. invite the company to respond within 14 days of the date of the letter to allow it a final opportunity to meet with the Executive Director of Supervision or put forward representations, to explain why it believes that there has not been a breach of the relevant accounting and reporting requirements or propose action to rectify the issue(s).
27. If, in response to the notice of potential referral, the company provides adequate explanation, or revision of a relevant aspect of a Report, so that the Executive Director of Supervision no longer considers that the matter represents a potential breach of the relevant accounting and reporting requirements, the Executive Director of Supervision may close the matter at this stage and report such closure to the Conduct Committee, as appropriate.

### **Part 3: Referral to Conduct Committee**

28. If there is no response, or the company does not provide adequate explanation, or revision of a relevant aspect of a Report and the Executive Director of Supervision remains of the view that there is a potential breach of the relevant accounting and reporting requirements, the Executive Director of Supervision will report the matter to the Conduct Committee and will write to the Chairman and the Chairman's previously nominated representative to inform the company of its decision.
29. In making a decision under paragraph 24 or 25 as to whether to close the case or refer it to the Conduct Committee, the Executive Director of Supervision may seek the views of the Supervision Committee and provide these to the Conduct Committee where a referral is made. Where views are to be sought from the Supervision Committee, the company will be notified of this in advance and provided with a reasonable opportunity to make representations on those views before a Referral is made.

#### *Referral*

30. In making a referral under paragraph 25, the Executive Director of Supervision will

provide a report to the Conduct Committee setting out:

- a. the reasons for the CRR Director's view that there is a potential breach of the relevant accounting and reporting requirements;
- b. the company's explanation and/or proposals at Stages 1 and 2
- c. the recommendations of the CRR Director and the Executive Director of Supervision at Stages 1 and 2;
- d. the views (if any) of the Supervision Committee; and
- e. the company's representations (if any) on the views of the Supervision Committee.

### *Consideration*

31. Where, following consideration of a report from the Executive Director of Supervision under paragraph 25, it appears to the Conduct Committee that:

- a. the company has not provided a satisfactory explanation of one or more matters raised or, so as to comply with the relevant accounting and reporting requirements, revision of one or more of the company's Reports is required; and
- b. taking into account all the circumstances of the review an application to court is appropriate;

the Conduct Committee shall decide whether to apply to court.

32. Where the Conduct Committee makes a decision in accordance with paragraph 27 or 31, it shall inform the company of its decision. Where the Conduct Committee decides to apply to court under the 2006 Act, it shall inform those other authorities it deems appropriate, such as the FCA, the Prudential Regulatory Authority ("PRA"), BEIS and the London Stock Exchange and will make a public announcement (see Part 4 below).

33. In considering matters referred to it under this Part 3, the Conduct Committee may consult with Advisors, the Supervision Committee or seek other independent advice. It may also request further enquiries and/or representations to be made.

### **Voluntary revision and other proposals for rectification**

34. Where, at any stage, agreement is reached with the company under review that one or more of its Reports are to be rectified by way of revision, the company's directors decide whether this should be effected through full revision and reissue of the relevant Report or by way of supplementary note. The company's revision of the defective

information is monitored by FRC Staff. If the company fails to carry out the revision in the manner agreed as acceptable, the review will be re-opened at the stage at which it was previously closed.

35. In some cases, alternative corrective or clarification action proposed by the directors may be accepted instead of revision of one or more of the company's Reports. For example, a corrective statement published by the company either separately or, if the timing is appropriate, in the next interim or annual report, together with an adjustment of the relevant comparative figures and notes, as appropriate and as required by legislation. What form of corrective or clarificatory action is acceptable

depends on the circumstances of each individual case. The following, non-exhaustive list of factors will be taken into account:

- a. nature and effect of the defect;
- b. the need to protect users of accounts;
- c. the need to correct/prevent a false market operating;
- d. timing of the company's reporting cycle.

### **Reporting to the Conduct Committee**

36. The CRR Director will periodically update the Conduct Committee in respect of reviews it is not otherwise aware of.

### **Referral of information to the FCA**

37. If at any stage it appears to the CRR Director, the Executive Director of Supervision or the Conduct Committee that in respect of any Reports that are required to comply with any accounting requirements imposed by the FCA rules, there are matters that should be brought to the attention of the FCA under the 2004 Act, those matters shall be referred to the FCA.

## **Part 4: Information gathering and handling**

38. The Operating Procedures govern the terms on which the Conduct Committee and FRC Staff receive information and how that information will be handled. Except as provided for by law, no stipulation which conflicts with them will have effect unless accepted by the Conduct Committee in writing.

### **Obtaining information**

39. Where it appears to the Conduct Committee that there is, or may be, a question whether one or more of a company's Reports complies with the requirements of the 2006 Act (or where applicable, of Article 4 of the IAS Regulation), the Conduct Committee has the power under section 459 of the 2006 Act to require;

- a. the company;
- b. their officers, employees and auditors;
- c. any persons who fell within (b) at the time to which the document or information required relates

to produce any document or to provide any information or explanations that it may reasonably require for the purposes of discovering whether there are grounds for an application to the court for a declaration, or deciding whether to make such an application.

40. The Conduct Committee has a similar power under section 15B of the 2004 Act where it appears to the Conduct Committee that there is, or may be, a question whether a relevant Report complies with the accounting requirements imposed by the FCA rules.

41. If a person refuses to comply with these requirements the Conduct Committee may

apply to the court.

42. The Conduct Committee and FRC Staff hope to rely on the voluntary cooperation of companies during the review process. Information will therefore usually be sought on a voluntary basis. However, if necessary, the Conduct Committee will exercise its powers under the relevant legislation. If the Conduct Committee requires information to be provided further to its statutory powers, this will be made clear in correspondence.
43. Additional information may be sought from a complainant at any point during the review process where it is thought that they may have information already in their possession that is relevant to the review. No complainant will be asked to proactively seek out information from a company.
44. Following a request or otherwise, information may be provided to the FRC by other persons for the purposes of the review process. This provision will be in accordance with the arrangements set out in legislation and any applicable memorandum of understanding (“MoU”). Current MoUs entered into by the FRC can be found on the FRC’s website at <https://www.frc.org.uk/About-the-FRC/Procedures/Memorandum-of-Understanding.aspx>.

## **Disclosure of information**

45. Any information obtained further to a Conduct Committee request under section 459 of the 2006 Act, or section 15B of the 2004 Act, is restricted from being disclosed except to the persons and/or for the purposes set out in section 461 of the 2006 or section 15D of the 2004 Act.
46. Save as specifically set out in these procedures, the Conduct Committee and FRC Staff treat all information obtained on a voluntary basis during the review process as if it were subject to the restrictions on information received as a result of the exercise by the Conduct Committee of its statutory powers, whether or not it is subject to those restrictions as a matter of law.
47. Information obtained voluntarily during the review process may be disclosed without prior notice within the FRC for the exercise of any of the FRC’s functions.
48. Information obtained voluntarily during the review process may be disclosed by FRC Staff without prior notice to other persons;
  - a. where it is required by law;
  - b. where it is necessary for the purposes of their regulatory, statutory, law enforcement or prosecutorial functions, and
  - c. in accordance with the arrangements set out in any applicable MoU.
49. Information may be disclosed without prior notice to any person engaged to audit or report on the FRC or Conduct Committee’s activities.
50. The identity of complainants will not normally be revealed to the relevant company. Exceptions may include occasions where:
  - a. the complainant gives permission to do so;

- b. the complainant and their complaint is otherwise made public;
- c. the identity of the complaint is discoverable during the Conduct Committee's pursuit of a matter to court.

51. Complainants will not normally be provided with updates during a review but will be informed of the outcome of a review to the extent consistent with any confidentiality restrictions.

52. In respect of reviews of Reports for the purposes of the 2004 Act, the FCA may be kept updated throughout a review on its progress.

53. No disclosure of information will be made if such disclosure would contravene the Data Protection Act 2018.

### **Storage of information**

54. Papers relating to each review are filed electronically or otherwise stored securely and are retained in accordance with the FRC's Records Management Policy. Care is taken to ensure that there is no unauthorised access to such papers within the FRC office.

## **Part 5: Public reporting**

### **Identification of Reports reviewed**

55. The FRC will periodically publish lists of companies whose Reports have been the subject of a review, identifying whether there has been an exchange of substantive correspondence or otherwise in respect of the Reports subject of the review, and where the case has been closed.

56. Where a review has been closed, the FRC may publish its summary findings in respect of that case, with the company's agreement.

### **Publication of individual reviews**

57. Neither FRC Staff nor the Conduct Committee will respond to a request to confirm or deny whether a specific review is being undertaken. However, where the Conduct Committee decides that it is in the public interest to do so, it may make an announcement that a review into a company's Report(s) is being carried out. If, following completion of the review, no further action is to be taken, a further press announcement to that effect will also be made if it is appropriate in the circumstances to do so.

58. An announcement may be made via a press notice in respect of the outcome of a particular review undertaken in accordance with these procedures where the company makes a significant change, whether corrective or clarificatory, to a Report. This is regardless of the stage at which the review is completed.

59. The press announcement summarises the accounting or legal issues in question, presents, as far as appropriate, the reasoning and approach to the reporting issue taken during the review and outlines the action taken by the company. Where

possible, the press notice is issued at the same time as the company effects the corrective or clarificatory action agreed or earlier. The Conduct Committee will make an announcement on application to court for a declaration under the 2006 Act and at the conclusion of any subsequent court proceedings. The Conduct Committee may also make an announcement when it informs the FCA of any conclusions it reaches in relation to reports pursuant to the 2004 Act.

60. In other cases, if the fact of the review has become public, the Conduct Committee may consider releasing its own announcement.
61. In respect of all announcements in respect of individual reviews, the company will be given a copy of the press announcement with a minimum of 24 hours' notice in advance of making the announcement. Amendments to the wording of press announcements will not generally be accepted, except in relation to matters of factual accuracy. Publication will be effected by the issuing of a press announcement on the FRC's website and circulated to journalists and other parties who have signed up to receive FRC press announcements. The FRC will also circulate the press notice via social media. As applicable, the complainant will be provided with a copy of the press notice.
62. The Conduct Committee may also, without identifying the companies concerned, issue a press notice (sometimes called a 'generic' press notice) referring to one or more matters that have come to its attention and which it believes merits sharing with the financial community.

### **Public reporting by companies – reference to a review**

63. The company may be asked to refer to its exchanges with FRC Staff, or the Conduct Committee, as applicable, when the company makes a change to a significant aspect of its reporting in its next Report in response to the review. The company should invite their comment on the reference prior to publication of the Report.
64. The Report should be clear as to the nature of the change, how the underlying issue has been resolved, and whether or not the review has been fully concluded. Where there are matters that are yet to be resolved, the company may be asked to disclose their nature and potential impact.

### **Public reporting by companies – Audit Committee reporting**

65. Where a premium listed company's Report has been the subject of review, in accordance with the Guidance on Audit Committees, the company's Audit Committee is expected to report on a number of matters including:
- the nature and extent of interaction (if any) with the FRC's CRR team;...*
66. Disclosure of any reviews should be factually accurate, fair and balanced in order for the market to understand and avoid the need for further public clarification. A focus of ongoing monitoring will be how audit committees report the outcomes of reviews. The FRC will seek to promote clarity of reporting of findings and outcomes. The Audit Committee does not need to consult with the FRC and/or the Conduct Committee in respect of such disclosures.

## **Part 6: General**

67. The Conduct Committee and those supporting it, where there is good reason to do so, may depart from any provision of the Operating Procedures.

### **Liability**

68. Nothing in the Operating Procedures gives rise, or is intended to give rise, to;

- a. any legal obligation for the Conduct Committee, or any member of the Conduct Committee, or any officer of or appointee to the FRC or any member of FRC Staff;
- b. any entitlement in favour of any other person; or
- c. any relationship between the Conduct Committee or any member of the Committee or officer of or appointee to the FRC, any member of FRC Staff, or any other person.

69. The exemption from liability set out in section 18 of the 2004 Act, and provided for in regulations made under section 18A of the 2004 Act, applies.

### **Transitional arrangements**

70. The amended Operating Procedures will have effect on 1 January 2021.

71. Any steps taken under a previous version of the Operating Procedures shall be deemed to have been taken under these procedures as approved by the Conduct Committee with effect from 1 January 2021.

**Approved by the Conduct Committee on 23 December 2020.**

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