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Convening Tribunals and Appeal Tribunals, timetabling, and the fixture of hearings under the Accountancy Scheme and Actuarial Scheme

Guidance Notes

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Tribunal and Appeal Tribunal timetabling and fixture of hearings guidance notes

Introduction

- 1 This guidance is issued by the Financial Reporting Council (“the FRC”) Conduct Committee under the Accountancy Scheme and the Actuarial Scheme (referred to collectively as “the Schemes”). Paragraph 3(ii) of both Schemes empowers the Conduct Committee to provide the Convener and any Tribunal with guidance concerning the exercise of their duties under the Schemes, who shall have regard to such guidance.
- 2 This document is intended to provide guidance to the Convener in respect of appointing members of the FRC’s Tribunal Panel to Disciplinary and Appeal Tribunals (the “Tribunal” or “Tribunals”) and to Tribunals in connection with Tribunal timetabling, the fixture of hearings dates and the prompt resolution of cases.
- 3 The Schemes provide the framework for all stages of the disciplinary process, including the convening of Tribunals and the hearing of Formal Complaints and appeals. The Accountancy Regulations and the Actuarial Regulations work in conjunction with the Schemes and contain detailed regulations to assist the effective operation of the Schemes.
- 4 Bearing in mind the objectives of the Schemes, an important way in which public confidence is secured and maintained in respect of the disciplinary arrangements provided for within them is through the operation of an efficient Tribunal system. This is achieved in large part by effective case management. Key aspects of this are strict timetabling and the listing of hearings with the minimum of delay. It is also important that Tribunals determine cases and make reports setting out their decisions pursuant to the Schemes as expeditiously as possible.

Appointment of Tribunal members by the Convener

- 5 Under paragraph 9(2) of the Schemes, the Convener shall, *as soon as practicable* following receipt of the Formal Complaint, appoint a Tribunal to hear the Formal Complaint. Under paragraph 10(7) of the Schemes, where leave to appeal is granted, the Convener shall, *as soon as practicable*, appoint a Tribunal to hear the appeal.
- 6 When selecting members for appointment to any Tribunal, the Convener shall enquire as to any and all known dates when the prospective Tribunal members will be unavailable and shall have regard to their availability when deciding whether they are suitable for appointment.
- 7 Once appointed, Tribunal members themselves should inform the Convener, or Secretary appointed to the Tribunal, of any availability issues at the earliest opportunity.

Giving pre-hearing directions and fixing hearing dates

- 8 Under paragraph 11(10) of the Schemes, subject to the provisions of the relevant Scheme, at any time before the hearing of a Formal Complaint or an appeal, the Chairman of the relevant Tribunal shall give such pre-hearing directions as are necessary or desirable for securing the just, expeditious and economical disposal of the Formal Complaint or appeal. Regulation 22(a) of the Accountancy Regulations and

regulation 21(a) of the Actuarial Regulations, provide a list of matters which may be included in pre-hearing directions such as the fixture of hearing dates and the dates by which any directed action shall be taken.

- 9 Under regulation 19 of the Accountancy Regulations and regulation 18 of the Actuarial Regulations, *as soon as practicable* after its appointment, the Tribunal shall give not less than six weeks' notice, (or other lesser period as agreed) of the time and place appointed for hearing of the Formal Complaint or appeal.
- 10 It is very important to ensure that the hearing of a Formal Complaint or appeal takes place as soon as practicable. The Chairman of the relevant Tribunal should take a proactive and robust approach to timetabling from the time the Tribunal is convened. It is the responsibility of the Chairman, in consultation with the Secretary and the parties, to give suitable directions at the earliest stage in respect of disclosure, experts' reports, witness statements, and preparation of bundles. Although such directions can be agreed between the parties, absent agreement, a hearing should be held and suitable directions given.
- 11 Identifying a window for hearing the Formal Complaint or appeal as soon as possible will help to avoid unnecessary delay, and this can best be done once the time estimate is available. At the earliest suitable stage, the Chairman should raise this issue with the parties so that steps can be taken to identify potential hearing dates and fix the date of the hearing. In addition, a pre-trial review should be held some weeks prior to the hearing to resolve any outstanding matters, and to address reading lists, timetable for the hearing, skeleton arguments and any other issues that require attention.
- 12 Absent exceptional circumstances, once fixed, the hearing of a Formal Complaint or appeal should not be adjusted.

The impact of the availability of witnesses and Counsel on fixing hearing dates

- 13 There may well be circumstances in which the availability of witnesses will have an influence on the fixture of hearing dates in respect of Formal Complaints. However, there will be a limit in each case to the extent that this will be reasonable and the status and significance of the witness or witnesses to the matters in issue will be a factor in this regard, as will the reason why any witness is not able to attend.
- 14 While reasonable efforts should be made to ensure Counsel instructed from an early stage can attend the hearing of a Formal Complaint or appeal, this will not always be possible. This is a matter for each Tribunal's judgement, but the longer Counsel has been instructed, the less reasonable it will be to fix a hearing when they are not available.

Tribunal decisions and reports

- 15 Once a Formal Complaint or an appeal has been heard, the Tribunal must make decisions, for example, whether to make an Adverse Finding and if so, what sanctions to order, and make a report, signed by its Chairman, setting out the Tribunal's decisions and reasons and any related orders.
- 16 Such decisions and reports shall be made as expeditiously as possible and Tribunal members, particularly the Chairman, should be satisfied on accepting an appointment to a Tribunal, and when fixing the hearing of the Formal Complaint that they will have sufficient time to prepare the report. To assist making decisions and reports, Tribunals

may find it helpful to meet in person on one or more occasions to discuss their decisions and how these will be set out in the report.

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