

December 2018

Publication Policy regarding decisions under the Accountancy and Actuarial Schemes

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Accountancy and Actuarial Schemes – Publication Policy

Introduction

- 1 This policy applies to any announcement concerning matters which are the subject of decision under the Accountancy Scheme and the Actuarial Scheme ("the Schemes").
- 2 The Financial Reporting Council ("FRC") investigates only those cases which raise important issues affecting the public interest; other disciplinary cases continue to be dealt with by the relevant professional body. In order to become the focus of an FRC investigation, a case must meet the 'public interest' criterion in the Schemes.
- 3 Publicity about the Schemes and actions taken under the Schemes serve a number of purposes:
 - Transparency contributes to public confidence in independent disciplinary arrangements; and
 - Where disciplinary action is taken it informs the public and the professions of unacceptable standards of conduct and seeks to deter others from future acts of misconduct.
- 4 The Schemes include requirements to consider publication of certain decisions. The FRC may also from time to time make other announcements where it considers it is appropriate to achieve the objectives of the relevant Scheme.

The Requirements of the Schemes

- 5 The FRC will publish decisions made pursuant to the Schemes in accordance with the publication requirements in those Schemes.
- 6 The Schemes require the Conduct Committee of the FRC ("the Committee") to consider whether to publish the following matters:
 - (a) Decisions relating to the commencement of investigations;
 - (b) Decisions relating to the outcome of investigations;
 - (c) Decisions relating to approved Settlement Agreements;
 - (d) Decisions and reports of Disciplinary Tribunals;
 - (e) Decisions and reports of Appeal Tribunals; and
 - (f) Decisions and reports of Disciplinary Tribunals in relation to Interim Orders.
- 7 Each decision by the Committee is taken on its own merits and on a case-by-case basis. The test to be applied by the Committee in reaching its decision on publication at each stage of an investigation/disciplinary proceedings is set out in the Schemes and is outlined below.
- 8 In the circumstances contemplated in paragraph 6(a) above, the Committee may take into account matters such as the likelihood that the investigation will lead to a Formal Complaint and the level of interest in the matter.

- 9 In the circumstances contemplated in paragraph 6(b), (c), (d), (e) and (f) above, the Committee may decide not to publish, or may decide to defer or delay publication, only if it considers that, at that point in time, other public interest factors outweigh the presumption that publication is in the public interest.
- 10 Whether the greater public interest lies in publication or in withholding/delaying publication, or whether it is appropriate to publish, is a subjective assessment.
- 11 The following are examples of factors that may indicate that publication would not be in the public interest:
- publication could prejudice criminal or other regulatory investigations or proceedings;
 - publication could prejudice the FRC's investigations or any future disciplinary action it may wish to take;
 - publication could have an impact on the national, regional or local economy disproportionate to the gravity of the issues under consideration and the overall circumstances.
- 12 The examples in the paragraphs above are set out for illustrative purposes only and do not amount to an exhaustive list.
- 13 Depending on the nature of the circumstances, the Committee may decide to withhold or postpone publication for a period of time or until such time as it considers appropriate. The Committee will keep any decision to postpone or withhold publication under review.

Publication Procedure

- 14 Publication will usually take the form of a short press statement setting out the brief factual details relating to the decision and, where relevant, a link to any related report(s). In certain circumstances the Committee may decide to vary the form in which it publishes the decision.

Decisions to investigate

- 15 In accordance with the Schemes, the points at which the Committee must consider publication relating to the commencement of investigations, and the tests which it must apply, are:
- where the Committee receives a request from a Participant for it to commence an investigation, it shall¹ publish such a request unless it would not, in the opinion of the Committee, be appropriate to do so (paragraph 6(2));
 - where the Committee declines a reference from a Participant, it may, if it thinks it appropriate to do so, publish its decision (paragraph 6(7));
 - where the Committee decides to commence an investigation, it may, if it thinks it appropriate to do so, publish the fact of its decision to investigate (paragraph 7(4)(iii));

¹ Para 6(2) of the Actuarial Scheme provides *may* be published by the Conduct Committee

² Publication policy regarding decisions under the Accountancy and Actuarial Schemes (December 2018)

- where the Committee directs that the scope of the investigation should be amended, it may, if it thinks fit, publish its direction unless this would not, in the opinion of the Committee, be in the public interest (paragraph 7(8)(iii) or 7(9)(ii)²).
- 16** The purpose of an investigation is to determine whether there is evidence of misconduct on the part of Members or Member Firms of the professional bodies. Publication will include sufficient information to enable the reader to understand in broad terms the matter which is being investigated. The Committee will not normally publish the decision to direct the Executive Counsel to make preliminary enquiries.
- 17** When publishing its decision to investigate a matter, the Committee will not normally publish the names of any individual Members whose conduct is under investigation except where failure to do so would defeat the purpose of the announcement, for example because it would not be possible to understand the nature of the matters under investigation without doing so; where the identity of the person or firm is already a matter of public knowledge or would be obvious from the description of the matter; or there are other circumstances which, in the opinion of the Committee, make it appropriate to identify individuals or firms under investigation.
- 18** Further announcements may be made by the Committee in the following circumstances:
- To clarify or correct any matters contained in the original announcement;
 - Where there is a change to the nature of an investigation, e.g. the scope of the investigation is varied significantly;
 - Where it considers that a further announcement is desirable in achieving its objectives or would otherwise be in the public interest.

Decisions about the outcome of investigations

- 19** The Committee shall publish the outcome of the investigation as soon as practicable and in such manner as it thinks fit, unless this would not, in the opinion of the Committee, be in the public interest (paragraph 7(15)).
- 20** Publication will include:
- brief details to enable the reader to understand in broad terms the matter under investigation;
 - the outcome of the investigation;
 - whether or not Executive Counsel has delivered a Formal Complaint;
 - if a Formal Complaint has been delivered, the nature of the complaint; and
 - against whom the complaint is being brought.

Decisions relating to approved Settlement Agreements

- 21** Any Settlement Agreement, approved by the person appointed or the Tribunal in accordance with paragraph 8 of the Schemes, shall be published as soon as practicable and in such manner as the Committee thinks fit, unless this would not, in

² See para 7(9)(iv) of the Actuarial Scheme

the opinion of the Committee, be in the public interest (paragraph 8(6)).

Reports of Disciplinary and Appeal Tribunals (including relating to Interim Orders)

- 22** Formal Complaints delivered following an investigation, and any subsequent appeals, are heard by an independent Tribunal which normally sits in public. Applications for Interim Orders, and any subsequent appeals, are heard before a Disciplinary or Appeal Tribunal as appropriate. In accordance with the Accountancy and Actuarial Regulations, it is a decision for the Tribunal whether to publicise the date and place of the hearing.
- 23** At the conclusion of a hearing, the Disciplinary or Appeal Tribunal sends its report to the Committee. The Committee shall publish such a report, as soon as possible and in such manner as it thinks fit, unless this would not, in the opinion of the Committee, be in the public interest (paragraph 9(13), paragraph 10(16) or paragraph 15(13)).
- 24** The Committee will usually make the full report of the Tribunal available on the FRC website. The accompanying press statement will summarise the Tribunal's findings and any sanctions and costs orders imposed.

Other announcements

- 25** Decisions to exercise the FRC's discretion under paragraph 4 will be taken by the Conduct Committee. When exercising this discretion, each decision 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 26.
- 26** 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 the accountancy and/or actuarial professions;
 - (c) whether it is right in all the circumstances to make an announcement;
 - (d) fairness to all concerned in relation to the enforcement action in question and the publication or otherwise of the announcement;
 - (e) what legitimate purpose is served by making such an announcement;
 - (f) requirements under the applicable data protection laws, the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 to publish such information or to release such information into the public domain upon request.

Timing and Manner of Publication

- 27** The identity of third parties will usually be anonymised in any announcements and/or related documents published under this Publication 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.

- 28** Decisions will normally be published promptly but the Committee retains discretion to delay publishing them, or parts of them, if it considers there are public interest reasons for doing so.
- 29** Save where the Committee decides that a lesser period is appropriate (e.g. more urgent publication is desirable to safeguard the public interest), any Member or Member Firm and, where appropriate, any other party named or identifiable in an 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.
- 30.** Advance notification of publication of an announcement under this Publications Policy will usually also be given to the relevant Scheme Participants and any regulatory body or prosecuting authority with a known interest in the matter in question.
- 31** Amendments to the wording of press announcements will not generally be accepted, except in relation to matters of factual inaccuracy.
- 32** 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 the Scheme 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 period in paragraphs 29 and 30 will not apply in these circumstances.
- 33** Save as otherwise set out in this Publication policy or required by law, publication will usually take the form of:
- a short statement on the FRC's website setting out the brief factual details of the decision or action in question; and
 - where considered appropriate in all the circumstances, a link to any related detailed decision(s).
- 34** In addition, press announcements will usually be published and circulated in a manner determined by the FRC Executive. The press announcement may contain a link to the website statement and any accompanying report or document.
- 35** In certain circumstances and where not contravening any publication requirements under the Schemes, the FRC may decide to vary the form or procedure in which it publishes an announcement made under this policy.
- 36** Decisions about investigations and reports of Disciplinary Tribunals and Appeal Tribunals will remain on the FRC website until such time as the Committee decides they should be removed and in any case for a minimum of 5 years from the date of publication.



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