



# **ACCOUNTANCY AND ACTUARIAL DISCIPLINE BOARD**

## **THE ACTUARIAL SCHEME**

**13 OCTOBER 2011**

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**ACCOUNTANCY AND ACTUARIAL DISCIPLINE BOARD**

**SCHEME FOR THE ACTUARIAL PROFESSION**

**Scheme**

- 1(1)** This is the Scheme of the AADB for the Actuarial Profession adopted by the Board on 13<sup>th</sup> September 2007 and effective from that date and first amended with effect from 13th October 2011.
- 1(2)** To safeguard the public interest by maintaining and enhancing the standards of conduct of Members, this Scheme provides a system for:-
- (i) the investigation of Members' conduct in the course of their professional, business or financial activities (including as a partner, member, director or employee in or of any organisation or as an individual), including such conduct before they became Members; and
  - (ii) if warranted following such investigation, bringing disciplinary proceedings against Members.
- 1(3)** This Scheme applies to any matter referred to the AADB under paragraph 5(2), or assumed by the AADB under paragraph 5(8) and to all steps and proceedings arising, directly or indirectly, therefrom or in consequence thereof or in relation thereto.
- 1(4)** Every Member shall have the obligations in relation to this Scheme set out in paragraphs 12(1) and 12(2).
- 1(5)** This Scheme is governed by, and shall be construed in accordance with, the laws of England and Wales.

## **Interpretation**

**2(1)** In this Scheme, unless inconsistent with the subject or context:-

***act of misconduct*** means any Member's conduct in the course of his professional, business or financial activities (including as a partner, member, director or employee in or of any organisation or as an individual), which falls short of the standards reasonably to be expected of a Member.

***AADB*** means The Accountancy and Actuarial Discipline Board Limited, a company limited by guarantee incorporated in England and Wales, number 5081857, and any other body which takes over the functions of the AADB.

***Adverse Finding*** means a finding by a Disciplinary Tribunal that a Member has committed an act of misconduct or has failed to comply with any of his obligations under paragraph 12(1) or 12(2).

***Alternate Executive Counsel*** means a legally qualified person, appointed to that role by the Board .

***Appeal Tribunal*** means a tribunal appointed by the Convener under paragraph 8(7)(ii), to consider an appeal against a decision of a Disciplinary Tribunal.

***Appellant*** means a Member who gives or has given notice of appeal under paragraph 8(1).

***BAS*** means The Board for Actuarial Standards, an operating Board of the FRC.

***the Board*** means the Accountancy and Actuarial Discipline Board established under the articles of association of the AADB or the equivalent Board of any other body which takes over the functions of the AADB.

***conduct*** includes efficiency and competence, and includes a failure to act as well as a positive act.

**Convener** means a person appointed to that office by the Nominations Committee of the FRC, who shall be responsible for the appointment of Tribunals under this Scheme and for the appointment of the person for the purposes of paragraph 8(4).

**Disciplinary Tribunal** means a tribunal appointed by the Convener under paragraph 7(2).

**employ** includes engage the services of, and **employee** shall be construed accordingly.

**Executive Counsel** means a legally qualified officer of the AADB, appointed to that office by the Nominations Committee of the FRC. Any references in this Scheme to the Executive Counsel shall also be interpreted as referring to the Alternate Executive Counsel where one or more Alternate Executive Counsel has been appointed.

**FRC** means the Financial Reporting Council Limited (“FRC”), a company limited by guarantee incorporated in England and Wales, number 2486368 and any other body which takes over functions of the FRC.

**Firm** means a body corporate, a partnership, a limited liability partnership or an unincorporated practice of a sole practitioner.

**Formal Complaint** means:

- (i) the formal document prepared by the Executive Counsel detailing the allegation or allegations that a Member has committed an act of misconduct or failed to comply with any of his obligations under paragraphs 12(1) or 12(2);
- (ii) for the purposes of paragraphs 7, 8 and 9 of this Scheme, the Formal Complaint as amended by a decision made for the purposes of paragraph 7(4).

**Former Member** means a person who was a Member at the time of the alleged misconduct but has ceased to be a Member.

**Member** means:-

- (i) a member of one or more of the Participants,, or
- (ii) any other person who is subject to the provisions of the constitution, including regulations made thereunder, of one or more of the Participants in so far as such provisions relate to the system of discipline and professional conduct, and regulation, operated thereby, or
- (iii) where paragraph 4(7) applies, a Former Member.

**Panel** means the panel appointed pursuant to paragraph 9(1).

**Participant** means:-

- (i) the Institute and Faculty of Actuaries (formerly the Institute of Actuaries);  
or
- (ii) the Faculty of Actuaries in Scotland (prior to its merger on 1<sup>st</sup> August 2010 with the Institute and Faculty of Actuaries); or
- (iii) any other actuarial body admitted by the Board to this Scheme.

**Regulations** means regulations made by the Board from time to time.

**Representative** means a solicitor, advocate or counsel or a Member or any other person who is engaged or requested to represent a Member under investigation or before a Tribunal.

**The Actuarial Profession** means:-

- (i) the Institute and Faculty of Actuaries (formerly the Institute of Actuaries);  
and
- (ii) the Faculty of Actuaries in Scotland (prior to its merger on 1<sup>st</sup> August 2010 with the Institute and Faculty of Actuaries).

***The Financial Reporting Council*** means The Financial Reporting Council Limited, a company limited by guarantee and registered in England No. 2486368, and any other body which takes over the functions of The Financial Reporting Council.

***Tribunal*** means a Disciplinary Tribunal or an Appeal Tribunal (as the context requires) appointed on behalf of the AADB by the Convener.

***UK-connected company*** means:-

- (a) any company registered in any part of the United Kingdom, listed in any part of the United Kingdom on a recognised investment exchange for the purposes of the Financial Services and Markets Act 2000 or with an established place of business in any part of the United Kingdom;
- (b) any company in the same group (as defined in section 1261 of the Companies Act 2006) as such a company; and
- (c) any associate (as defined in section 1260 of the Companies Act 2006) of such a company or such a group company.

***UK-connected business*** means:

- (a) any sole-trader, firm, partnership or other organisation constituted under the law of any part of the United Kingdom or with an established place of business in any part of the United Kingdom; and
- (b) any associate (as defined in section 1260 of the Companies Act 2006) of such a sole-trader, firm or partnership.

**2(2)** Any reference to a statute includes: that statute as amended from time to time; any statute re-enacting or replacing it; and any statutory instruments, regulations or rules made under that statute or any statute re-enacting or replacing it.

**2(3)** Words importing the singular number include the plural and vice versa, and words importing the masculine gender only include the feminine.

## **The Board**

**3(1)** Without prejudice to the generality of the powers of the Board under the AADB Memorandum and Articles of Association, the Board shall have power to:-

- (i) make such Regulations for the operation and administration of this Scheme, and thereafter to amend such Regulations from time to time, provided that there shall have been consultation by the Board with the Participants prior to any amendments, and provided further that, in the event of any inconsistency between the Regulations and this Scheme, the terms of the Scheme shall prevail;
- (ii) provide the Executive Counsel, the Convener and any Tribunal with guidance concerning the exercise of their duties under this Scheme, who shall have regard to any such guidance issued;
- (iii) authorise any Tribunal to employ any person whose services may reasonably be required to assist the Tribunal;
- (iv) authorise the remuneration of the members of any Tribunal and any other persons;
- (v) delegate to the Chairman of the Board its powers under subparagraphs 3(iii) and 3(iv) above; and
- (vi) do all such other things as the Board considers incidental or conducive to the operation of this Scheme.

## **Liability to Investigation and Disciplinary Proceedings**

**4(1)** A Member shall be liable to investigation under this Scheme only where, in the opinion of the Board:-

- (i) (a) the matter raises or appears to raise important issues affecting the public interest in the United Kingdom (“the first criterion”);  
and
- (b) the matter needs to be investigated to determine whether there may have been an act of misconduct (“the second criterion”); or
- (ii) it appears that the Member has failed to comply with any of his obligations under paragraph 12(1) and 12(2) below.

**4(2)** In deciding whether a matter satisfies the first criterion, the Board shall, amongst other things, consider whether it appears to give rise to serious public concern or to damage public confidence in the Actuarial Profession in the United Kingdom. The Board shall also be entitled to consider all the circumstances of the matter including, but not limited to, its nature, extent, scale and gravity.

**4(3)** A Member shall be liable to disciplinary proceedings under this Scheme if, following an investigation, the Executive Counsel considers :-

- (i) that there is a realistic prospect that a Tribunal will make an Adverse Finding against a Member; and
- (ii) that a hearing is desirable in the public interest.

**4(4)** In considering the question of whether the conduct of a Member may have fallen short of the standards reasonably to be expected of him, regard shall be had in particular to any law, whether statutory or otherwise, or regulation of any sort, and to any charter, bye-law, rule, regulation or guidance of any of the Participants or any guidance or standard of BAS, which applies to him.

- 4(5)** A Member shall be liable to disciplinary proceedings under this Scheme only if he is, when a Formal Complaint is delivered to the Board under paragraph 6(9), or was, at the time of any alleged act of misconduct:-
- (i) a citizen or subject of the United Kingdom; or
  - (ii) working in the United Kingdom; or
  - (iii) working in or involved in providing services to a UK-connected company or UK-connected business.
- 4(6)** A Member shall be liable to investigation and disciplinary proceedings under this Scheme:-
- (i) regardless of whether the alleged act of misconduct took place before or after 13<sup>th</sup> September 2007; and
  - (ii) regardless of whether he was a Member at the time of the alleged act of misconduct.
- 4(7)** A Former Member shall be liable to investigation and disciplinary proceedings under this Scheme as if he were a Member.

### **Decision to Investigate**

- 5(1)** An investigation under this Scheme may be instituted in either of the circumstances described in paragraphs 5(2) and 5(8).
- 5(2)** Where a Participant
- (i) receives a complaint regarding one or more of its Members alleging misconduct and/or becomes aware of a matter in which it appears that there may have been misconduct by one or more of its Members; and
  - (ii) considers that the matter raises or appears to raise important issues affecting the public interest in the United Kingdom; and

(iii) is satisfied that no disciplinary proceedings (going beyond an investigation) have been instituted by a Participant in relation to the conduct in question;

then the Participant shall refer that matter to the AADB and request that the Board give consideration to that matter. In the event that the Participant is in doubt as to whether a particular matter should be referred to the AADB then the Participant shall consult with the Board for guidance.

**5(3)** Upon receipt of a reference pursuant to paragraph 5(2), the Board shall, as soon as is reasonably practicable and ordinarily within two months of the date of the reference, decide whether to accept or decline the reference.

**5(4)** The decision of the Board to accept or decline the reference shall depend on whether, in its opinion, the criteria at paragraph 4(1), taking account of the considerations in paragraph 4(2), are met in relation to the matter referred.

**5(5)** If, in the opinion of the Board, it is appropriate that the matters that form the subject of the investigation should extend beyond those contained within the reference from the Participant, or that any matters contained within the reference from the Participant should be excluded from the investigation, the Board may decide either to include or exclude any such matters from the investigation as appropriate.

**5(6)** Where the Board has decided to accept a reference made pursuant to paragraph 5(2), it shall, within fourteen days thereafter, give notice in writing of its decision to the Participants.

**5(7)** Where the Board has decided to decline a reference made pursuant to paragraph 5(2) it shall:-

- (i) give notice in writing of its decision and the reasons for it to the relevant Participant within fourteen days; and
- (ii) if it thinks fit, publish its decision.

**5(8)** Where a Participant has received a complaint and/or is conducting an investigation into the conduct of one or more of its Members of which the Board is aware, or the Board otherwise becomes aware of matters relating to the conduct of a Member, and, in either case, the Board, on consideration:-

- (i) is of the opinion that the criteria at paragraph 4(1), taking account of the considerations in paragraph 4(2), have been met; and
- (ii) is satisfied that no disciplinary proceedings (going beyond an investigation) have been instituted by a Participant in relation to the conduct in question,

the Board may, after consultation with any Participant whose Member(s) may be concerned with an investigation, decide that the matter shall be dealt with by the AADB in accordance with this Scheme.

**5(9)** Where the Board has decided pursuant to paragraph 5(8), that a matter should be dealt with by the AADB it shall give notice in writing of its decision and the reasons for it to the Participants. Upon receipt of such notice, the relevant Participant shall forthwith suspend any investigation relating to the matter on its part.

**5(10)** Where the Board considers that it has insufficient information about a matter to determine whether a Member is liable to investigation under paragraph 4(1), it may direct the Executive Counsel to make preliminary enquiries before deciding whether or not the matter should be investigated. In that event the relevant Participant shall be informed accordingly by the Board and the time in which the Board shall be required to decide whether or not to investigate the matter shall be extended by such period as shall be reasonable for the required preliminary enquiries to be carried out.

### **Investigation**

**6(1)(i)** For the purposes of exercising its powers under paragraph 5, the Board, and the Executive Counsel on its behalf, has power to require

any Participant to provide to the Executive Counsel such documents or other information in its possession, or under its control, as the Board or the Executive Counsel, as the case may be, shall reasonably think fit and as the Participant can lawfully provide.

- (ii) The power in sub-paragraph 6(1)(i) shall include the power to require the Participant to :-
  - (a) permit the inspection and taking of copies of the documents or other information, and
  - (b) supply copies of such documents or other information at its own expense to the extent that it is reasonable in all the circumstances .

For the avoidance of doubt, documents or other information includes, without limitation, any books, documents, records, telephone recordings or computer held information of whatsoever kind.

**6(2)** Where a reference is accepted by the Board under paragraph 5(3):-

- (i) the scope of the investigation shall be set out within the notice given by the Board referred to at paragraph 5(6);
- (ii) in accordance with paragraph 5(5), the scope shall not be restricted to the matters referred by the Participant under paragraph 5(2) and shall include or exclude any issues relating to the matter as the Board shall see fit;
- (iii) the relevant Participant shall supply to the Board any documents or other information which are in its possession, or under the control, of that Participant which may reasonably be required for the purposes of the investigation and which the Participant can lawfully provide.

**6 (3)** Where the Board decides under paragraph 5(8) that a matter shall be assumed by the AADB to be dealt with in accordance with this Scheme:-

- (i) the scope of the investigation shall be set out within the notice in writing given by the Board as referred to at paragraph 5(9); and
- (ii) the relevant Participant shall supply to the Board any documents or other information which is in the possession, or under the control, of that Participant which may reasonably be required for the purposes of the investigation.

**6(4)** In either case identified at paragraphs 6(2) or 6(3), the Board shall:-

- (i) provide a copy of the notice in writing, together with any material obtained pursuant to sub-paragraphs 6(2)(iii) or 6(3)(ii), to the Executive Counsel to be dealt with in accordance with this Scheme;
- (ii) inform the Member concerned of its decision to refer their conduct for investigation by the Executive Counsel and provide the Member concerned with relevant details of the scope of the investigation; and
- (iii) publish the fact of its decision to investigate unless this would not, in the opinion of the Board, be in the public interest.

**6(5)** Upon receipt of the documents provided pursuant to sub-paragraph 6(4)(i) the Executive Counsel shall conduct an investigation into the matter, and shall enquire into such facts and circumstances as the Executive Counsel considers necessary to fulfil the scope the investigation set out by the Board.

**6(6)** The Executive Counsel shall have power on behalf of the AADB to engage any person whose services may reasonably be required to assist the Executive Counsel for the purposes of conducting the investigation or subsequent disciplinary or appeal proceedings.

**6(7)** (i) If, in the course of an investigation, the Executive Counsel discovers facts or circumstances which appear to warrant investigation but to be outside the scope of the investigation set out by the Board then:-

(a) the Executive Counsel shall report those facts and circumstances to the Board; and

(b) the Board, after consultation with the relevant Participant (but within the Board's sole discretion), may direct that the scope of the Executive Counsel's investigation shall include such facts or circumstances and shall inform the Participants and the Member(s) concerned accordingly.

(ii) If, in the course of an investigation, the Executive Counsel considers that the scope of that investigation, as set out by the Board under paragraphs 6(2) or 6(3) (and whether or not already amended in accordance with sub-paragraph 6(7)(i) above), should be narrowed then:-

(a) the Executive Counsel shall report to the Board with his reason(s) for considering that the scope should be so narrowed; and

(b) the Board may direct that the scope of the Executive Counsel's investigation shall be narrowed and shall inform the Participants and the Member(s) concerned accordingly.

**6(8)** If, following his investigation, the Executive Counsel considers:-

(i) that there is a realistic prospect that a Tribunal will make an Adverse Finding against a Member; and

(ii) that a hearing is desirable in the public interest,

then the Executive Counsel shall notify the Member concerned of the Formal Complaint he proposes to deliver to the Board and give the Member an opportunity to make written representations to him within such reasonable time as the Executive Counsel shall specify.

**6(9)** If having reviewed any representations received for the purposes of paragraph 6(8) above, the Executive Counsel still considers:-

- (i) that there is a realistic prospect that a Tribunal will make an Adverse Finding against a Member; and
- (ii) that a hearing is desirable in the public interest

he shall deliver a Formal Complaint against the Member to the Board.

**6(10)** If the Executive Counsel either following his investigation, or having reviewed any written representations supplied by the Member in accordance with paragraph 6(8) above considers:

- (i) that there is no realistic prospect that a Tribunal will make an Adverse Finding against a Member; or
- (ii) a hearing is not desirable in the public interest,

he shall not deliver to the Board a Formal Complaint and shall provide his reasons for his decision to the Board in a report which shall be signed and dated by him. The Board shall supply a copy of any such report to any Member concerned and the relevant Participant.

**6(11)** A Member may, either voluntarily or at the invitation of the Executive Counsel at any stage of the investigation (including, for the avoidance of doubt, during a hearing before a Disciplinary Tribunal or an Appeal Tribunal), make an admission in respect of any alleged particulars of fact, any alleged acts of misconduct or any alleged failures to comply with his obligations under paragraphs 12(1) or 12(2) and such admissions, if accepted by the Executive Counsel, shall constitute proof before a Tribunal against the Member making the admission.

- 6(12)** The Executive Counsel shall, if such an admission is made prior to a Formal Complaint being submitted to the Board, prepare and deliver to the Board with the Formal Complaint a statement of agreed facts. Such statement of agreed facts must be signed by the Executive Counsel and the Member concerned and give particulars sufficient to enable the admissions to be properly understood.
- 6(13)** The Board shall publish the outcome of the Executive Counsel's investigation as soon as practicable and in such manner as it thinks fit, unless this would not, in the opinion of the Board, be in the public interest.

### **Disciplinary Proceedings**

- 7(1)** Where the Executive Counsel delivers to the Board a Formal Complaint in accordance with paragraph 6(9), the Board shall serve the Formal Complaint on the Member concerned and shall, as soon as practicable, send the Formal Complaint to the Convener.
- 7(2)** The Convener shall, as soon as practicable following receipt of the Formal Complaint, appoint a Disciplinary Tribunal to hear the Formal Complaint in accordance with the provisions of this Scheme and provide the Board with details of the Tribunal appointed and notify Executive Counsel and each Member concerned.
- 7(3)** Subject to this Scheme, the procedure adopted by a Disciplinary Tribunal to deal with any Formal Complaint shall be in accordance with the Regulations.
- 7(4)** The Disciplinary Tribunal may amend the Formal Complaint either before or during the hearing subject to the requirements of a fair hearing and in the interests of justice.
- 7(5)** In coming to a decision the Disciplinary Tribunal may take into account any relevant evidence, whether or not such evidence would be admissible in a court. The Disciplinary Tribunal will at all times apply the rules of natural justice.

**7(6)** After hearing the Formal Complaint, the Disciplinary Tribunal shall in relation to the Member who is the subject of the Formal Complaint, either:-

(i) make an Adverse Finding in respect of some or all of the alleged acts of misconduct or failures to comply with the Member's obligations under paragraphs 12(1) or 12(2) forming the subject matter of the Formal Complaint, or

(ii) dismiss the Formal Complaint.

**7(7)** Where the Disciplinary Tribunal makes an Adverse Finding in relation to a Member, then:-

(i) it may order such sanctions against the Member as are contained within the schedule of sanctions at Appendix 1 to this Scheme as it considers appropriate;

(ii) in addition to the sanctions at Appendix 1 to this Scheme, any order made pursuant to sub-paragraph (i) above, may include an order that the Member be required to pay, in the manner set out in paragraph 11, the whole or part of the costs of, and incidental to, the investigation and the hearing of the Formal Complaint before the Disciplinary Tribunal. The amount to be paid by the Member is to be determined by the Disciplinary Tribunal provided that, where the Member has made an admission under paragraph 6(11), no such order for costs may be made in relation to any costs incurred after the date of the admission which relate to the subject matter of the admission; and

(iii) the Tribunal may make no order against the Member, or no order except for the payment of costs, if it considers that to be appropriate in all the circumstances.

**7(8)** Where the Disciplinary Tribunal dismisses a Formal Complaint it may, on the application of a Member concerned, order that the Board pay a specified sum

in respect of legal costs that were reasonably incurred by the Member subsequent to the Formal Complaint being served on the Member for the purposes of paragraph 7(1).

- 7(9)** The Tribunal's discretion to award costs to a Member concerned shall be restricted to circumstances where the Tribunal finds that no reasonable person would have referred or pursued a Formal Complaint under the terms of this Scheme.
- 7(10)** The Disciplinary Tribunal shall make a report setting out its written decision and reasons and any related orders made pursuant to paragraphs 7(6), 7(7) and 7(8) and send it to the Member concerned, the Executive Counsel, and the Board which shall then send a copy to the relevant Participant.
- 7(11)**
- (i) Unless the Disciplinary Tribunal shall otherwise decide, an Adverse Finding in relation to a Member and any order under paragraph 7(7) against a Member shall take effect 29 days after the date on which the finding or order is notified to the Member.
  - (ii) The Disciplinary Tribunal shall decide the extent to which the order shall apply even if the Member appeals against the order provided that the Tribunal considers that immediate action is necessary in the public interest. To the extent to which the order does not apply, it shall be suspended in the event of a notice of appeal being lodged under paragraph 8(1).
  - (iii) If the person appointed under paragraph 8(4) refuses leave to appeal, the order shall take effect from the date notification of that refusal is sent to the proposed Appellant.
- 7(12)** The Board shall publish the report or reports prepared by the Disciplinary Tribunal for the purposes of paragraph 7(10) as soon as practicable and in such manner as it thinks fit unless this would not, in the opinion of the Board, be in the public interest.

## **Appeals**

**8(1)** If the Disciplinary Tribunal makes an Adverse Finding in relation to any Member, with or without any order under paragraph 7(7), then subject to paragraph 8(2) the Member may, within 28 days after the date on which the finding and/or order is notified to him (provided always that a longer period may be allowed as set in paragraph 8(5) below), give to the Board notice of appeal against the finding and/or order.

**8(2)** An appeal under paragraph 8(1) against a decision of the Disciplinary Tribunal can be made only on the following grounds:-

- (i) that the decision of the Disciplinary Tribunal was perverse, or wrong in law; and/or
- (ii) that there was injustice because of a serious procedural or other irregularity in the proceedings before the Disciplinary Tribunal; and/or
- (iii) that significant and relevant new evidence has come to light which was not previously available to the Appellant and could not have become available to him on the making of reasonable enquiry; and/or
- (iv) that the sanction imposed pursuant to paragraph 7(7) was manifestly unreasonable.

**8(3)** Any notice of appeal shall:-

- (i) be in writing;
- (ii) identify the finding and/or order appealed against; and
- (iii) state the grounds of appeal.

Neither the scope of the appeal nor the grounds so stated shall be amended or changed except with the leave of the Appeal Tribunal appointed to hear the appeal.

- 8(4)** Upon receipt of a notice of appeal, the Board shall send the notice of appeal to the Convener who shall as soon as practicable appoint a person to consider whether to give leave to appeal. That person shall be a former member of the judiciary or a Queen's Counsel, and shall not sit on any subsequent Appeal Tribunal in connection with the case.
- 8(5)** If the notice of appeal was not given to the Board within the 28 day period set out in paragraph 8(1), the person appointed under paragraph 8(4) shall refuse leave to appeal unless there are good reasons for giving leave to appeal out of time.
- 8(6)** Unless the person appointed under paragraph 8(4) has refused leave to appeal under paragraph 8(5), he shall give leave to appeal if he is satisfied that there is an arguable case for appeal on one or more of the grounds set out in paragraph 8(2).
- 8(7)**
- (i) Following his decision to give leave to appeal under paragraph 8(6), or not to give leave to appeal, the person appointed under paragraph 8(4) shall notify the Board and provide reasons in writing for his decision and the Board shall notify each Member concerned, the Participant and the Convener; and
  - (ii) if the person appointed under paragraph 8(4) gives leave to appeal, the Convener shall, as soon as practicable, appoint an Appeal Tribunal to hear the appeal in accordance with the provisions of this Scheme and provide the Board details of the Tribunal appointed and notify the Executive Counsel and each Member concerned.
  - (iii) The order of the relevant Disciplinary Tribunal shall apply if leave to appeal is not given.

- 8(8)** Subject to this Scheme, the procedure adopted by an Appeal Tribunal to deal with any Formal Complaint or appeal shall be in accordance with the Regulations.
- 8(9)** In coming to its decision the Appeal Tribunal may take into account any relevant evidence, whether or not such evidence would be admissible in a court. The Appeal Tribunal will at all times apply the rules of natural justice.
- 8(10)** An appeal shall be by way of a review only and not by way of a rehearing, providing always that the Appeal Tribunal shall hear evidence adduced pursuant to sub-paragraph 8(2)(iii). Subject to the above, the Appeal Tribunal shall have in relation to an appeal all the powers of the Disciplinary Tribunal as set out in paragraph 7(7).
- 8(11)** On an appeal the Appeal Tribunal shall have power to:-
- (i) affirm, vary, substitute or rescind any Adverse Findings or orders of the Disciplinary Tribunal in relation to or against any Appellant, save that the Appeal Tribunal may not exercise its powers to impose a greater penalty than that imposed by the Disciplinary Tribunal so that, taking the case as a whole, the Appellant is not more severely dealt with on appeal than he was dealt with by the Disciplinary Tribunal;
  - (ii) if it is of the view that it is necessary in the interests of justice to do so in the light of the new evidence adduced pursuant to sub-paragraph 8(2)(iii), order that the matter be reheard by the Disciplinary Tribunal which made the relevant Adverse Findings or orders or failing that by a fresh Disciplinary Tribunal;
  - (iii) order that any Appellant be required to pay, in the manner set out in paragraph 11 below, the whole or part of the costs of, and incidental, to the appeal, the amount to be so paid to be as determined by the Appeal Tribunal.

- 8(12)** If the appeal is allowed the Appeal Tribunal may, on the application of the Member, order that the Board pay a specified sum in respect of legal costs that were reasonably incurred by the Member subsequent to the Formal Complaint being served on the Member for the purposes of paragraph 7(1).
- 8(13)** The Appeal Tribunal's discretion to award costs to the Member concerned shall be restricted to the circumstances set out in paragraph 7(9) above.
- 8(14)** The Appeal Tribunal shall make a report setting out its written decision and reasons and any related orders made pursuant to paragraphs 8(11) or 8(12) and send it to the Member concerned, the Executive Counsel, and the Board which shall then send a copy to the relevant Participant.
- 8(15)** A decision of the Appeal Tribunal shall take effect from the next working day after the date notification is sent to the Member concerned.
- 8(16)** At any time before the Appeal Tribunal gives its decision in respect of the appeal of an Appellant in accordance with paragraph 8(14), such Appellant may withdraw his appeal by notice in writing to the Appeal Tribunal. Thereupon, the Appeal Tribunal shall affirm the Adverse Findings and/or orders of the Disciplinary Tribunal in relation to or against the Appellant, which are the subject of the appeal and may make an order under subparagraph 8(11)(iii) in relation to the whole or part of the costs of and incidental to the appeal.
- 8(17)** The Board shall publish the report sent to it by the Appeal Tribunal pursuant to paragraph 8(14) as soon as practicable and in such manner as it thinks fit unless this would not, in the opinion of the Board, be in the public interest.

### **Disciplinary and Appeal Tribunals**

- 9(1)** (i) The Convener shall ensure that a Panel is maintained comprising individuals who have the appropriate qualifications and experience to sit on a Tribunal.

(ii) Appointment to the Panel shall be made by the Convener and shall be for an initial period of at least three years and the terms of appointment shall be as set out in the Regulations.

**9(2)** A Tribunal shall be appointed from the Panel by the Convener and shall be composed as follows:-

(i) Each Tribunal shall consist of either three or five persons as the Board in its absolute discretion thinks fit.

(ii) The Chairman of a Disciplinary Tribunal shall be a lawyer ( a former member of the judiciary, a barrister, an advocate or a solicitor). The Chairman of an Appeal Tribunal must be a former member of the judiciary or a Queen's Counsel.

(iii) A three-person Tribunal must comprise in addition to the Chairman:-

(a) a lay person (who is neither a lawyer nor an actuary); and

(b) an actuary.

(iv) A five-person Tribunal must include in addition to the Chairman:-

(a) at least one lay person (who is neither a lawyer nor an actuary);  
and

(b) two (but no more than two) actuaries.

(v) Each actuary appointed to a Tribunal shall be a Member of one or more of the Participants.

(vi) No serving member of the governing body of, or any officer or employee of, any Participant shall be appointed to a Tribunal or as a Convener. However, former members of the governing bodies and

former officers or employees of any Participant shall not be precluded from such appointment provided that at least one year has elapsed since the termination of the said appointment or employment.

(vii) No person who is a member, director, employee or officer of the FRC or of any subsidiary company of the FRC, or a member appointed to any Operating Board of the FRC or of any subsidiary company of the FRC shall be appointed to a Tribunal or as a Convener. A former member, board member, director, employee or officer as aforesaid shall not be precluded provided that at least one year has elapsed since the termination of the said appointment or employment.

(viii) No person who has been concerned with the investigation or disciplinary proceedings leading to the Adverse Finding and/or order which is the subject of the appeal, or with any earlier proceedings relevant thereto, shall be appointed as a Convener or to a Tribunal.

**9(3)** Subject to sub-paragraphs 9(2)(i) to 9(2)(viii) (inclusive), if more than one Disciplinary Tribunal is appointed to hear Formal Complaints arising out of the same matter, any of the members appointed to one of the Tribunals may be appointed to the other or others.

**9(4)** Where there are two or more notices of appeal against findings or orders made by the same Disciplinary Tribunal, the Convener may appoint the same Appeal Tribunal to hear some or all of the appeals. Subject to sub-paragraphs 9(2)(i) to 9(2)(viii) inclusive, if more than one Appeal Tribunal is appointed to hear appeals against Adverse Findings and/or orders which are in any way connected or associated, any of the members appointed to one Appeal Tribunal may be appointed to the other or others.

**9(5)** Subject to the provisions of this 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.

**9(6)** A session of a hearing shall be postponed if (whether by reason of incapacity or otherwise):-

- (i) the Chairman is unable to be present; or
- (ii) there shall not be present at least three members of the Tribunal; or
- (iii) there shall not be amongst members of the Tribunal present at least one lawyer, one actuary and one lay person who is neither a lawyer nor an actuary.

**9(7)(i)** If a session of a hearing can and does proceed in the absence of a Tribunal member, that member shall not participate in any further sessions or consideration of the matter and shall cease to be a member of the Tribunal.

(iii) If a session is postponed pursuant to paragraph 9(6), or if for any other reasons any of the Tribunal members may not be able to attend any session, and it appears to the members of the Tribunal that the facts resulting in the postponement will not change or may result in an unreasonable delay in the conduct of a hearing, this shall be reported to the Board who shall consider whether in all the circumstances it would be appropriate and consistent with ensuring a fair hearing of the matter to appoint a new Chairman, a new Tribunal member or a new Tribunal (as appropriate).

(iii) In any such case where the Board decides that it would be appropriate and consistent with ensuring a fair hearing of the matter, it shall instruct the Convener to appoint a new Chairman, Tribunal member or Tribunal (as appropriate). In the case of the appointment of a new Tribunal any of the members of the original Tribunal may be appointed to the new Tribunal.

(iv) The Convener shall provide the Board with details of any new Chairman, Tribunal member or Tribunal and notify the Executive Counsel and each Member concerned.

- 9(8)** (i) Save as provided for in paragraph 9(5), any matter to be decided by a Tribunal shall be decided by a majority of votes.
- (ii) No member of a Tribunal may abstain from voting on any issue before the Tribunal.
- (iii) Where the Tribunal has cast an even number of votes in respect of their determination of:
- (a) whether to make an Adverse Finding, then no Adverse Finding shall be made;
- (b) whether to make an award of costs under paragraph 7(8) or 8(12), then no award of costs shall be made.
- (iv) Where the Tribunal has cast an even number of votes in respect of any other issue, the Chairman shall have a second vote.
- 9(9)** The Tribunal shall sit in public but shall have an absolute discretion to exclude the public (including the press) from all or part of the hearing to the extent it considers necessary where, in the opinion of the Tribunal, the circumstances are such that publicity would prejudice the interests of justice.
- 9(10)** The Executive Counsel shall act as complainant (before a Disciplinary Tribunal) or respondent (before an Appeal Tribunal) and shall bring evidence against the Member who is the subject of the Formal Complaint or appeal before the Tribunal. Every Tribunal shall give any Member the subject of a Formal Complaint before it a reasonable opportunity to hear the evidence against him, to cross-examine witnesses called by the Executive Counsel, to call witnesses and lead evidence in his defence and to make representations orally or in writing to the Tribunal. Any such Member shall be entitled to be represented by a Representative at all hearings of the Tribunal.

**9(11)** The Tribunal may decide any issue of fact or law and draw any inference of fact which it considers is supported by the evidence.

**9(12)** The Tribunal may exclude from a hearing any evidence which, in its opinion, it is necessary to exclude in order to:-

(i) ensure fairness between the parties; and

(ii) preserve the interests of justice.

**9(13)** All Tribunals shall be conducted in accordance with the laws of England and Wales.

### **Standard of Proof**

**10** The standard of proof to be applied by a Tribunal is the civil standard of proof.

### **Payments**

**11(1)** Where a Tribunal makes an order for the payment of a fine and/or costs against a Member, then:-

(i) such monies shall be due from and paid by him even if he ceased to be a Member on or after the date of the report of the Disciplinary Tribunal;

(ii) such monies shall be paid to the AADB on behalf of the FRC, and applied in the manner agreed between the FRC and the Participants;

(iii) in the case of an order of a Disciplinary Tribunal against which no appeal has been made, or which has not been suspended pending an appeal or against which an appeal has been rejected under paragraph 8(5), such fine and/or costs shall be paid not later than 28 days after the date when the order takes effect under sub-paragraph 7(11)(i) and in the event that such fine and/or costs, or part thereof, shall not have

been paid on the due date, interest shall be paid thereon at the rate applicable to judgment debts in England and Wales from the due date until the actual date of payment;

- (iv) in the case of an order of a Disciplinary Tribunal against which there is an appeal and an order of an Appeal Tribunal, such fine and/or costs (except to the extent that the order of the Disciplinary Tribunal may be varied, substituted or rescinded by the Appeal Tribunal) shall be paid not later than 28 days after the date on which the relevant Appeal Tribunal decision under paragraph 8(14) is notified to the Member and in the event that such fine or costs, or part thereof, shall not have been paid on the due date, interest shall be paid thereon at the rate applicable to judgment debts in England and Wales from the due date until the actual date of payment;
- (v) the AADB will endeavour to collect and (if necessary) enforce the payment of fines and/or costs unless it shall at its discretion decide (but only after prior consultation with the relevant Participant) not to seek or continue to seek enforcement of such payment;
- (vi) in the event of non-payment in full or in part, including any interest, of a fine and/or costs order within the time specified for payment, the Executive Counsel shall provide a report to the relevant Participant.

**11(2)** Where a Tribunal makes an order for the payment of costs against the AADB, those costs shall be paid not later than 28 days after the date when the order takes effect and in the event that such costs, or part thereof, shall not have been paid on the due date, interest shall be paid thereon at the rate applicable to judgment debts in England and Wales from the due date until the actual date of payment.

## **Obligations of Members**

**12(1)** Every Member shall at all times co-operate fully with the Executive Counsel and with any Disciplinary Tribunal or Appeal Tribunal established pursuant to this Scheme. Without prejudice to the generality thereof, such full co-operation shall include complying with any notice served pursuant to paragraph 12(2).

**12(2)** The Executive Counsel shall have power by notice served on any Member to call on him to provide (to the extent that such Member can lawfully do so):-

- (i) to the Executive Counsel or to any person appointed or employed by him or by the Board on behalf of the AADB, information and explanation relevant to any matter under investigation or preliminary enquiry pursuant to paragraph 5(10) orally and/or in writing as the Executive Counsel shall require, and
- (ii) evidence to a Tribunal orally and/or in writing as the Executive Counsel or the Tribunal shall require.

The foregoing power of the Executive Counsel by notice to call on any Member to provide information and/or explanation and/or evidence shall include the power to call on him:-

- (a) to permit the inspection and taking of copies of the books, documents, records, telephone recordings or computer held information of whatsoever kind relevant to the matter under investigation which are in the possession or under the control of such Member; and
- (b) to the extent reasonable, to supply copies of such books, documents, records, telephone recordings or computer held information of whatsoever kind at his own expense.

It shall be the duty of any Member on whom a notice is served under this paragraph 12(2) to comply with it within the period of 14 days beginning with the date of service or such longer period as the Executive Counsel may allow.

**Proof of Certain Matters**

**13(1)** The fact that a Member:-

(i) has, before a Court of competent jurisdiction in the United Kingdom been convicted of an indictable offence, or

(ii) has, before a Court outside the United Kingdom, been convicted of an offence which would have constituted an indictable offence had the matter been prosecuted in the United Kingdom,

shall for the purposes of this Scheme be conclusive evidence of an act of misconduct by the Member, whether or not he was a Member at the time of the conduct resulting in the conviction.

**13(2)** Production of a certificate to the Tribunal purporting to be under the hand of a competent officer of court in the UK or overseas that a person or other legal entity has been convicted of a criminal offence shall be conclusive evidence of the offence committed.

**13(3)** The fact that a Member:-

(i) has had an adverse finding made against him in respect of his conduct, being a finding in proceedings before a regulatory body performing its functions under the Financial Services Act 1986, the Financial Services and Markets Act 2000, the Insolvency Act 1986, the Companies Act 1989, the Companies Act 2006, the Pensions Act 1995 or the Pensions Act 2004; or

- (ii) has had a disqualification order made against him under the Company Directors Disqualification Act 1986 or under the Pension Schemes Act 1993,

shall, for the purposes of this Scheme, be conclusive evidence of an act of misconduct by the Member, whether or not he was a Member at the time of the conduct resulting in, or at the time of the disciplinary proceedings or or disqualification order .

**13(4)** Without prejudice to paragraphs 13(1) and 13(3) a finding of fact:-

- (i) in any report of an inspector appointed under the Companies Act 1985;
- (ii) in any civil or criminal proceedings before a Court of competent jurisdiction in or outside the United Kingdom;
- (iii) in any proceedings before, or report by, any of the bodies mentioned in paragraph 13(5);
- (iv) in any proceedings before, or report by, any regulatory, professional or disciplinary body outside the United Kingdom; or
- (v) in any report or proceedings which, in the opinion of the relevant Tribunal, corresponds or correspond to any report or proceedings referred to in sub-paragraph (i) to (iv) (inclusive) above,

shall, for the purposes of this Scheme, be prima facie evidence of the facts found.

**13(5)** The bodies referred to at sub-paragraph 13(4)(iii) are:-

- (i) The Financial Services Authority;
- (ii) The Financial Services and Markets Tribunal;

- (iii) The Pensions Regulator;
- (iv) The Financial Reporting Review Panel;
- (v) any recognised professional body within the meaning of the Insolvency Act 1986;
- (vi) any recognised supervisory body within the meaning of the Companies Act 2006;
- (vii) any designated professional body within the meaning of the Financial Services and Markets Act 2000;
- (viii) any body replacing, additional to or pre-dating a body identified in sub-paragraphs 13(4)(i) to (vii) and performing the same or broadly similar functions, and whose regulatory arrangements are of a similar standing.

**13(6)** Paragraphs 13(1) to 13(5) (inclusive) are without prejudice to the generality of paragraphs 7(5) and 8(9) and nothing in paragraph 13(4) shall affect the evidential status of any report or other document not referred to in paragraph 13(4).

### **Legal Representation of Members**

**14** If a Tribunal concludes that:-

- (i) it is not reasonable to expect a Member to conduct his defence or pursue his appeal without legal representation because for example of the complexities of the issues involved; and
- (ii) the Member has established that he cannot afford (and does not have adequate insurance cover for) legal representation,

the Tribunal may after application require the AADB to meet the reasonable costs of that Member's legal representation at the hearing before the Tribunal but only if, in all the circumstances, the absence of legal representation would be contrary to the rules of natural justice.

### **Disclosure of Information**

- 15 The Regulations may make provision enabling the Board or the Executive Counsel to disclose information and explanation and supply evidence, whether originally oral or in writing, obtained under this Scheme to any regulatory body or prosecuting authority, or any person, body or authority carrying out any role similar to that of regulation or prosecution, in any part of the world. Any such provision shall contain such safeguards as the Board considers appropriate.

### **Transitional Arrangements**

- 16 The provisions of this amended Scheme effective from [13<sup>th</sup> October 2011] will have immediate effect. Any steps taken under any previous version of the Scheme shall be deemed to have been taken under this amended Scheme.

### **Amendment and termination of this Scheme**

- 17 This Scheme may be amended by the Board, with the agreement in writing of The Financial Reporting Council and the governing bodies of each of the Participants, or terminated by the Board by giving notice of not less than six months expiring on 31st December in any year.

**AADB Scheme Schedule of Sanctions**

The following sanctions may be made by a Tribunal as referred to in paragraph 7(7)(i).

Reprimand.

Suspension from membership of one or more of the Participants. The Tribunal shall specify the period of suspension which shall not exceed five years.

Expulsion from membership of one or more of the Participants. The Tribunal shall specify the period which must elapse before an application for readmission as a Member may be submitted to the relevant Participant: such period shall not exceed five years.

Exclusion of a Former Member from membership of one or more of the Participants. The Tribunal shall specify the period which must elapse before an application for readmission as a Member may be submitted to the relevant Participant: such period shall not exceed five years.

Fine – amount specified by the Tribunal.

Suspension or withdrawal of any certificate issued pursuant to the Rules and Bye-Laws of the relevant Participant to the Member. The Tribunal may recommend that such certificate not be reinstated for a specified period of time and shall recommend that the suspension of such certificate be for a specified period of time.



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