



Financial Reporting Council

# **Convening Tribunals and Appeal Tribunals, timetabling, and the fixture of hearings under the Accountancy Scheme, Actuarial Scheme, Audit Enforcement Procedure, and Public Interest Entity (PIE) Auditor Registration Regulations**

September  
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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's ("the FRC") Conduct Committee under the Accountancy Scheme and the Actuarial Scheme (referred to collectively as "the Schemes"), the Audit Enforcement Procedure ("AEP"), and the Public Interest Entity ("PIE") Auditor Registration Regulations ("the PIE Auditor Regulations").<sup>1</sup>
2. This document is intended to provide guidance to the Convener in respect of appointing members of the FRC's Tribunal Panel to Tribunals, Appeal Tribunals and PIE Registration Tribunal Panels (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 and the AEP provide the framework for all stages of the disciplinary process, including the convening of Tribunals, hearings 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. The PIE Auditor Regulations contain (at Annex 2) Appeal Rules which set out the procedure for appealing an internal review decision.
4. Bearing in mind the objectives of the Schemes, the AEP, and the PIE Auditor Regulations, an important way in which public confidence is secured and maintained in respect of the disciplinary and appeal 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 appeals and make reports setting out their decisions pursuant to the Schemes, the AEP, and the PIE Auditor Regulations as expeditiously as possible.

## Appointment of Tribunal members by the Convener

- 5A. 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.
- 5B. Under Rule 32 of the AEP, the Convener shall appoint a Tribunal within 14 days of a matter being referred to the Tribunal for determination. Under Rule 84(a) of the AEP, the Convener shall as soon as possible appoint a Tribunal to determine an application for an Interim Order.

<sup>1</sup> 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. Rule 167 of the AEP empowers the Board to issue guidance and policies in respect of functions or powers exercised pursuant to the AEP. Rule 2 permits the Board to delegate any of its functions and decisions under the AEP to the Conduct Committee. Regulation 1.7 of the PIE Auditor Registration Regulations provides that the FRC may from time to time issue guidance and policies in respect of the exercise of any of the functions or powers exercised pursuant to the Regulations.

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Where leave to appeal is granted, the Convener shall appoint an Appeal Tribunal as soon as practicable pursuant to Rule 119.

- 5C. Under Rule 3.8 of the PIE Auditor Regulations Appeal Rules, where leave to appeal is granted, the Convener shall appoint a Tribunal to determine the Appeal, and shall notify the Parties of the appointment of that Tribunal, as soon as practicable.
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**

- 8A. 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 Chair 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.
- 8B. Under Rule 39 of the AEP, the Chair must call a hearing to provide case management directions if the parties have failed to agree such directions within the relevant period. Under Rule 42, the Chair can give case management directions at any time.
- 8C. Under Part 4 of the PIE Auditor Regulations Appeal Rules, an appeal may be determined on the papers, or it may be listed for a hearing, which may be conducted in person and/or via telephone or electronic communication. Rule 4.1 of the PIE Auditor Regulations Appeal Rules provides that the Chair will confirm whether the appeal will be listed for a hearing within 5 working days of the appointment of the Tribunal.
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. Rule 4.2 of the PIE Auditor Regulations Appeal Rules provides that the Tribunal shall serve a Notice of Hearing on the affected Parties no less than 15 working days before the date arranged for any hearing. This Notice of Hearing will, amongst other things, set out the start date, time and venue.
10. It is very important to ensure that the hearing of a Formal Complaint, of an alleged breach of a Relevant Requirement or of an appeal takes place as soon as practicable. The Chair of the relevant Tribunal should take a proactive and robust approach to timetabling from the time the Tribunal is convened. Where necessary, it is the responsibility of the Chair, in

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consultation with the Convener 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 the hearing 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 Chair 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 hearing 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, of an alleged breach of a Relevant Requirement or of an 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 and PIE Auditor Registration appeals. 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, of an alleged breach of a Relevant Requirement or of an appeal or PIE Auditor Registration 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. a Formal Complaint, alleged breach of a Relevant Requirement 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 or Decision Notice, signed by its Chair, setting out the Tribunal's decisions and reasons and any related orders. The Tribunal may issue separate reports in respect of liability and sanction and costs under the Schemes. The Tribunal must issue separate Decision Notices in respect of liability and sanction and costs under the AEP.
  - b. a PIE Auditor Registration Appeal has been heard, the Tribunal shall issue a written decision, which shall be signed by its Chair, setting out its decision and reasons and send it to the affected Parties and the FRC. Where there is more than one appeal arising from the same internal review decision under the PIE Auditor Regulations and

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those appeals are heard together, the Tribunal's decision shall be issued in one report.

16. Such decisions and reports shall be made as expeditiously as possible and Tribunal members, particularly the Chair, should be satisfied on accepting an appointment to a Tribunal, and when fixing the hearing that they will have sufficient time to prepare the decision or 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.

**Issued by the Conduct Committee with effect from 21 September 2022**

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