

November 2013

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# Auditor Regulatory Sanctions Procedure

## Feedback Statement

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## **1. Introduction**

The purpose of this feedback statement is to summarise the responses to our consultation document “Auditor Regulatory Sanctions Procedure”, and provide our feedback on the consultation responses.

## **2. Responses Received**

We received 14 responses to the consultation document in total. Of those 13, 3 responses were from professional accountancy bodies, 8 responses were from accountancy firms, 1 was from a law firm and 1 was from a private investor.

Respondents:

- PwC
- KPMG
- E&Y
- Deloitte
- ACCA
- Mazars
- Grant Thornton
- Baker Tilly
- BDO
- Herbert Smith
- ICAEW
- ICAS
- Gavin Palmer

The finalised individual responses to the consultation document can be found on the FRC website.

### **3. Summary of Responses**

In general, respondents supported the proposed procedure but suggested some clarification and guidance.

The consultation document posed four questions. Set out below are the four questions and a summary of the responses received under each.

#### **1. Do you consider the proposed Procedure to be understandable?**

Two respondents confirmed that the Procedure was understandable. Other respondents suggested clarificatory amendments to the procedure.

#### **2. Do you agree that the Procedure achieves a balance between protecting the public and fairness to those subject to the Procedure?**

Respondents generally felt that the Procedure achieves a balance between protecting the public and fairness to those subject to the Procedure, but again, some amendments were suggested.

#### **3. Do you consider there is anything missing from the proposed procedure that would improve its effectiveness?**

Some respondents expressed no views under this question and simply referred to their answers to the other questions. Others felt there were things missing from the Procedure and numerous suggestions were provided.

#### **4. Do you have any other comments about the proposed procedure?**

Most Respondents suggested various amendments to the proposed procedure and some respondents commented on the potential for delay and additional cost.

The detailed comments included in the responses include a number of key themes namely:

- The need for Sanctions Guidance;
- The interaction between the Procedure and the FRC and RSB disciplinary procedures;
- The absence of an appeal procedure;
- Clarity on the membership of the Monitoring Committee;
- The desirability of an effectiveness review; and
- Clarity on “poor quality audit”.

#### 4. FRC Response

We have responded to a number of the drafting suggestions made and an amended Procedure is attached at Annex A.

In response to the themes set out above:

- Sanctions Guidance – the FRC agrees that it is necessary to develop and issue Sanctions Guidance to the Monitoring Committee and the Independent Sanctions Tribunal. It is anticipated that we shall consult on proposed Guidance in the near future. When finalising the Guidance for consultation we shall refer to the various suggestions of what should be covered set out in the consultation responses.
- Interaction between the Procedure and the FRC and RSB disciplinary procedures – the FRC agrees that the Procedure should not be used as a “quick” alternative to its Accountancy Scheme and that matters should not be dealt with in parallel under both the Procedure and the Accountancy Scheme. Amendments have been made to the Procedure to make it clear that that where consideration is given to a referral to a disciplinary route, proceedings under the Procedure will be stayed.
- The absence of an appeal procedure – responses noted that there was no appeal procedure and in some instances criticised the absence of such a procedure. The Procedure provides for the Registered Auditor to make submissions to the Monitoring Committee before it decides whether it is liable to a Sanction under the Procedure and then to make submissions in response to any proposed Sanction which may lead to no further action being taken, the sanction as proposed or a lesser sanction being determined or referral to an Independent Sanctions Tribunal. In the event that a Tribunal is appointed, a full hearing will be held. Accordingly, there are 3 opportunities for the Registered Auditor to present its evidence and submissions and the FRC does not agree that a further procedure is necessary.
- Membership of the Monitoring Committee – responses suggested that further detail should be included in the Procedure in relation to the appointment and membership of the Monitoring Committee. The FRC has expanded the paragraph in relation to the Monitoring Committee.
- Effectiveness review – as one respondent pointed out, the effectiveness of the Procedure will, to a large extent, depend on its operation and more than one respondent suggested that an effectiveness review should be carried out with the benefit of operational experience. The FRC agrees with the general statement and confirms that an effectiveness review will be undertaken following one calendar year of the Procedure’s operation.
- “poor quality audit” – the consultation document referred to the Procedure covering “poor quality audit work” but as respondents pointed out, the Procedure is stated to cover a wider range of issues concerned with the performance of audit. The FRC confirms that the Procedure is correct in its ambit and accords with the provisions of the Companies Act 2006. The language used in the consultation document was intended to be descriptive rather than inclusive.

## **5. Impact Assessment**

An Impact Assessment was prepared as part of the FRC reform process which included the proposal that the FRC be provided with powers in respect of regulatory sanctions. The Impact Assessment concluded that there was not expected to be any significant additional cost or transitional costs associated with these powers. The main risk was stated to be that the enhanced independence that these powers provided would not secure improvements in audit quality. A full copy of the original Impact Assessment which was cleared by the Government's Regulatory Policy Committee can be found on the FRC's website.

Responses to the consultation referred to the Tribunal process involving firms in significant costs which may not be fully covered by insurance. Whilst significant cost may be involved depending on the facts of the matters at issue, there is no change to the cost to firms given that, absent this Procedure, they would be subject to the procedures detailed in the Audit Regulations.

There are no changes to the Impact Assessment as a consequence of the consultation on the Procedure.

## **Annex A – Post-consultation Procedure**

### **ARRANGEMENT OF PROCEDURE**

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- 3 Conduct Committee**

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## Part 1

### Preliminaries

#### 1. Citation and commencement

- 1.1 This Procedure shall be known as the Auditor Sanctions Procedure of the FRC adopted by the ~~Conduct Committee~~FRC Board on ~~[ ]~~23 April 2013 and shall have effect from ~~the date adopted~~ 11 November 2013.

#### 2. Interpretation

- 2.1 In this Procedure:-

"**the 2006 Act**" means The Companies Act 2006 of the United Kingdom;

"**the RI 1990 Act**" means The Companies Act 1990 of the Republic of Ireland;

"**AQR**" means the Audit Quality Review team of the FRC;

"**Articles of Association**" means the Articles of Association of the FRC;

"**Body Corporate**" means an entity that has a legal personality including a limited liability partnership and a similar body constituted under the laws of a country or territory outside the United Kingdom or Republic of Ireland;

"**Conduct Committee**" means the Conduct Committee of the FRC established under the FRC's Articles of Association;

"**Conduct Division**" means the FRC Conduct Division executive staff;

"**Convener**" means the Convener appointed by the Nominations Committee who shall be responsible for the appointment of Independent Sanctions Tribunals;

"**Effective Date**" means ~~[ ]~~ 11 November 2013;

"**Firm**" means:

- (a) an individual who engages in the profession of accountancy as a sole practitioner;
- (b) a partnership which engages in the profession of accountancy;
- (c) a Body Corporate which engages in the profession of accountancy;

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

"**Independent Sanctions Tribunal**" means an Independent Sanctions Tribunal of the FRC appointed by the Convener in accordance with paragraph 14.2 of this Procedure;

"**Major Audit**" means a statutory audit as defined in paragraph 13 of Schedule 10 of the 2006 Act;

"**Major Audit Client**" means a person in respect of whom a Major Audit is conducted;

"**Monitoring Committee**" means a Group of the Monitoring Committee of the FRC appointed by the Conduct Committee in accordance with paragraph 13 of this Procedure~~the FRC's Articles of Association and the Terms of Reference approved by the Board of the FRC;~~

"**Nominations Committee**" means the Nominations Committee of the FRC established under the FRC's Articles of Association;

"**Panel**" means the Panel appointed by the appointment committee Convener in accordance with paragraph 14.1 of this Procedure;

"**Public Interest Entity**" means a Public Interest Entity as defined in paragraph 20A of Schedule 10 of the 2006 Act;

"**Register**" means a register of auditors compiled under section 1239 of the 2006 Act or section 198 of the RI 1990 Act;

"**Registered Auditor**" means a Firm entered on a Register as eligible for appointment as a Statutory Auditor under section 1239 of the 2006 Act or section 198 of the RI 1990 Act;

"**Regulations**" means the Audit Regulations of the RSBs;

"**Regulatory Framework for Auditing**" means:

- (a) The Auditing Standards – (International Standards on Auditing (UK and Ireland));
- (b) The Ethical Standards for auditors issued and / or adopted by the FRC;
- (c) The Quality Control Standards for auditors issued and / or adopted by the FRC;
- (d) The Regulations;
- (e) any other relevant legislation, standards, regulations, rules, bye-laws or other documents from time to time in force and relevant to the performance and quality of auditing;

"**Regulatory Penalty**" means a fine of an amount determined by the Monitoring Committee or the Independent Sanctions Tribunal;

"**RSB**" means a Recognised Supervisory Body recognised under the 2006 Act or the RI 1990 Act for the purposes of the registration and supervision of Registered Auditors;

"**Sanction**" means one or more of the types of sanction set out in paragraph 4.2 of this Procedure;

"**Scheme**" means The Accountancy Scheme of the FRC;

"**Statutory Auditor**" means a Statutory Auditor as defined within Section 1210(1) of the 2006 Act;

"**Statutory Audit Function**" means any function performed as a Statutory Auditor as defined within paragraph 13 of Schedule 10 of the 2006 Act;

**"Terms of Reference"** means the Terms of Reference of the Monitoring Committee as determined by the FRC Board;

**"Undertakings"** means the written undertakings as referred to in paragraph 4.5 of this Procedure.

- 2.2 Words and expressions have the meanings given in the 2006 Act and the Interpretation Act 1978 unless defined in this Procedure. The definitions in this Procedure take precedence.
- 2.3 In this Procedure words importing the singular number include the plural number and vice versa. Words importing the masculine gender include the feminine and neuter. Headings do not affect the interpretation of this Procedure. This Procedure will be governed by, and interpreted according to, the law of England and Wales.
- 2.4 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.
- 2.5 Any reference to regulations, bye-laws, rules, standards or other documents includes reference to any related guidance, and will apply to any re-enactment, re-issue or amendment of those regulations, bye-laws, rules, standards or other documents.

### **3. Conduct Committee**

- 3.1 The Conduct Committee shall have power to:-
- (i) provide the Monitoring Committee, the Convener and any Independent Sanctions Tribunal with guidance concerning the exercise of their duties under this Procedure, who shall have regard to any such guidance issued;
  - (ii) authorise any Tribunal to employ any person whose services may reasonably be required to assist the Tribunal; and
  - (iii) authorise the remuneration of the members of any Tribunal, the Convener and any other persons.

## **Part 2**

### Regulatory Action

### **4. Liability to Sanctions or Undertakings**

- 4.1 A Registered Auditor shall be liable to a Sanction under this Procedure where they have failed to comply with the Regulatory Framework for ~~a~~Auditing and:-
- (a) Their continued registration or their continued registration without restrictions or conditions could adversely affect a Major Audit Client or any other person; and/or
  - (b) it is necessary to impose a Sanction to ensure that their Statutory Audit Functions are undertaken, supervised and managed effectively.

- 4.2 The Sanctions to which a Registered Auditor shall be liable to under paragraph 4.1 are:
- (a) Restrictions and/or Conditions;
  - (b) Regulatory Penalty;
  - (c) Suspension of Registration;
  - (d) Withdrawal of Registration
- 4.3 During a period of suspension a Registered Auditor:
- (a) Need not resign from any appointment as auditor under the Act;
  - (b) May accept re-appointment as auditor;
  - (c) Must not accept any new appointments; and
  - (d) May only sign audit reports with the permission of the Monitoring Committee.
- 4.4 Under this Procedure any Sanction on a Registered Auditor shall be effected by way of a direction from the Monitoring Committee or Independent Sanctions Tribunal (as appropriate) to the relevant RSB to ~~impose~~ implement the Sanction, and the relevant RSB shall implement~~impose~~ that Sanction on the Registered Auditor as if it were a Sanction which the relevant RSB had determined under the Regulations.
- 4.5 As an alternative to the Sanctions listed in paragraph 4.2, the Monitoring Committee or the Independent Sanctions Tribunal (as appropriate) may accept written Undertakings from a Registered Auditor.

### Part 3

#### Action by the Monitoring Committee

#### 5. Consideration by the Monitoring Committee

##### 5.1 Where

- (a) the AQR's findings on inspection are such that its proposed report to the Monitoring Committee indicates that the Registered Auditor may have failed to comply with the Regulatory Framework for Auditing and/or includes any recommendation for sanction, or
- (b) the Monitoring Committee receives a report from the AQR which, in the opinion of the Monitoring Committee, indicates that a Registered Auditor has failed to comply with the Regulatory Framework for Auditing and the criteria in paragraph 4.1 may be satisfied,

the ~~AQR-Conduct Division~~ shall write to the Registered Auditor and invite the Registered Auditor to make any representations in writing within 14 days.

- 5.2 The Monitoring Committee shall receive and consider the report from the AQR together with any representations from the Registered Auditor and shall decide whether there has been a failure to

comply with the Regulatory Framework for Auditing and, if so, whether the criteria in paragraph 4.1 are met.

5.3 Where the Monitoring Committee decides that the criteria set out in paragraph 4.1 are not met it shall take no further action against the Registered Auditor and shall:

- (a) notify the Registered Auditor; and
- (b) notify the relevant RSB.

5.4 Where the Monitoring Committee decides that the criteria set out in paragraph 4.1 are met, it shall invite the Registered Auditor to agree a Sanction

5.5 (a) Where the Monitoring Committee receives a report from the AQR and / or further information which indicates that the conduct of a Registered Auditor should be considered in accordance with the provisions of the Scheme or the disciplinary procedures of the relevant RSB, the Monitoring Committee shall send a copy of the AQR report and / or further information to the Conduct Committee;

(b) In the event of a referral to the Conduct Committee under paragraph (a) above and where the substance of the matter referred is the same as the matter under consideration by the Monitoring Committee any further consideration by the Monitoring Committee will be stayed until such time as the Conduct Committee have made a decision. In the event that the Conduct Committee decides to commence an investigation under the Scheme or refers the matter to the disciplinary procedures of the relevant RSB, no further action will be taken under this Procedure.-

5.6 The Monitoring Committee may, to the extent necessary to make a decision under this Procedure, request any additional information, held in whatever form (including electronic) from the AQR and/or the Registered Auditor. Any such information will be provided to the Registered Auditor and, if appropriate, representations will be invited on that information before it is considered by the Monitoring Committee.

## **6. Notice of proposed Sanction**

6.1 Where the Monitoring Committee decides to invite the Registered Auditor to agree a Sanction it shall send a written notice to the Registered Auditor in accordance with paragraph 6.2, and shall enclose a copy of this Procedure with the notice.

6.2 The notice of proposed Sanction must:

- (a) state the reasons why the Monitoring Committee considers the Registered Auditor has failed to comply with the Regulatory Framework for ~~a~~Auditing;
- (b) set out the proposed Sanction and the reasons why the Monitoring Committee considers such a Sanction is appropriate;
- (c) invite the Registered Auditor to make representations and/or accept the proposed Sanction in writing within 21 days;
- (d) inform the Registered Auditor that, subject to the consideration of any representations made, if the proposed Sanction is not accepted the matter shall be referred to the Independent Sanctions Tribunal for adjudication; and
- (e) explain the extent to which any accepted Sanction will be communicated to others/published.

6.3 The Monitoring Committee may in its absolute discretion extend the period in which the Registered Auditor can respond to the notice.

6.4 The Monitoring Committee shall send a copy of the written notice to the ~~r~~Relevant RSB.

## **7. Acceptance of Sanction or Undertakings**

7.1 Having regard to any further information or representations which it has received, the Monitoring Committee may decide:-

- (a) no further action should be taken against the Registered Auditor; or
- (b) an amended or lesser Sanction is appropriate; or
- (c) it is appropriate to accept written Undertakings from the Registered Auditor.

7.2 Where no further action is taken pursuant to paragraph 7.1(a) the Monitoring Committee shall notify in writing the Registered Auditor and the relevant RSB.

7.3 Where:-

- (a) within the period stated in the notice, or as extended under Paragraph 6.3, the Registered Auditor accepts in writing the proposed Sanction; or
- (b) the Monitoring Committee decides an amended or lesser Sanction under paragraph 7.1(b);~~r~~

the Monitoring Committee shall make a direction in writing to the relevant RSB requiring it to take the necessary steps to impose the Sanction, as if it were a Sanction which the relevant RSB had determined under the Regulations. In the case of a Regulatory Penalty the monies shall be paid to and retained by the relevant RSB, and in the event of non-payment by the Registered Auditor, shall be enforced by the relevant RSB.

7.4 The Monitoring Committee shall publish details of the Sanction as soon as practicable and in such manner as it thinks fit unless this would not, in the opinion of the Monitoring Committee, be in the public interest.

7.5 Where the Monitoring Committee accepts written Undertakings from the Registered Auditor, the Conduct Division of the FRC will monitor compliance with those Undertakings and report to the Monitoring Committee and the relevant RSB as appropriate.

## **8. Variation or revocation of Sanction**

8.1 The Monitoring Committee may at any time, with the agreement of the Registered Auditor, make a direction to the relevant RSB to vary or revoke:-

- (a) a restriction and/or condition; or
- (b) a period of Suspension

determined in accordance with paragraph 7.3.

## Part 4

### Action by the Independent Sanctions Tribunal

#### 9. Referral to the Independent Sanctions Tribunal

9.1 Where:

- (a) the Registered Auditor fails to respond to the Monitoring Committee within the period stated in the notice, or as extended under paragraph 6.3; or
- (b) the Registered Auditor does not agree a Sanction with the Monitoring Committee; or
- (c) the Monitoring Committee does not accept written Undertakings offered by the Registered Auditor;

the Monitoring Committee shall send notice to the Registered Auditor that the matter is being referred to the Independent Sanctions Tribunal to consider in accordance with paragraph 12.

9.2 The Monitoring Committee shall send a copy of the notice of referral to the ~~Convener Conduct Committee~~ and to the relevant RSB. The Conduct Committee shall send a copy of the notice to the Convener.

#### 10. Appointment of the Independent Sanctions Tribunal

10.1 Upon receipt of a copy of the notice of referral, the Convener shall, as soon as practicable, appoint an Independent Sanctions Tribunal in accordance with paragraph ~~47-14~~ to consider the matter, and inform the Registered Auditor and the FRC of details of the Tribunal appointed.

#### 11. Notice of Hearing

11.1 As soon as reasonably practicable after a matter has been referred to an Independent Sanctions Tribunal the Secretary to the Tribunal shall serve a notice of hearing on the Registered Auditor and the FRC.

11.2 The notice of hearing shall:

- (a) set out the alleged failure(s) to comply with the Regulatory Framework for Auditing;
- (b) specify the date, time and venue of the hearing;
- (c) inform the Registered Auditor of his right to attend the hearing and to be represented at the hearing;
- (d) inform the Registered Auditor of the power of the Independent Sanctions Tribunal to proceed in his absence;
- (e) inform the Registered Auditor of his right to adduce evidence and to call and cross examine witnesses; and
- (f) inform the Registered Auditor of the Sanctions which the Independent Sanctions Tribunal can direct to be imposed on the Registered Auditor.

11.3 The notice of hearing shall give not less than 21 days' notice of the date and venue of the hearing.

## 12. Consideration by the Independent Sanctions Tribunal

- 12.1 Subject to this Procedure, the procedure adopted by an Independent Sanctions Tribunal to deal with the matter shall have regard to any guidance issued by the Conduct Committee.
- 12.2 A Registered Auditor may, either voluntarily or at the invitation of the Independent Sanctions Tribunal at any stage during a hearing before it, make an admission in respect of any alleged particulars of fact and/or any alleged failures to comply with the Regulatory Framework for Auditing and such admissions shall constitute proof before an Independent Sanctions Tribunal against the Registered Auditor making the admission.
- 12.3 In coming to a decision the Independent Sanctions Tribunal may take into account any evidence it considers relevant, whether or not such evidence would be admissible in a court.
- 12.4 After considering a matter, the Independent Sanctions Tribunal shall, in relation to the Registered Auditor, either:-
- (a) Make a finding in respect of some or all of the alleged failures to comply with the Regulatory Framework for Auditing forming the subject matter of the case, or
  - (b) Dismiss the case.
- 12.5 Where the Independent Sanctions Tribunal makes a finding in relation to a Registered Auditor that he has failed to comply with the Regulatory Framework for Auditing then:-
- (a) It may ~~order-determine~~ such Sanction against the Registered Auditor as is contained within paragraph 4.2 as it considers appropriate; or
  - (b) It may accept any written Undertakings offered by the Registered Auditor;
  - (c) In addition to any Sanction ~~determined ordered~~ or Undertaking accepted, it may include an order that the Registered Auditor be required to pay the whole or part of the costs of the hearing. The amount to be paid by the Registered Auditor and the time for payment shall be determined by the Independent Sanctions Tribunal.
  - (d) It may make no ~~order-determination~~ against the Registered Auditor or no ~~order determination~~ except for the payment of costs, if it considers that to be appropriate in all the circumstances.
- 12.6 The Independent Sanctions Tribunal shall make a report, which shall be signed by its Chairman, setting out its decision and reasons and any related ~~ordersdeterminations~~ made and send it to the Monitoring Committee.
- 12.7 The Monitoring Committee shall send a copy of the Independent Sanctions Tribunal's report to:
- (a) the Registered Auditor concerned; and
  - (b) the relevant RSB.
- 12.8 The decision of the Independent Sanctions Tribunal in relation to a Registered Auditor and any ~~order-determination~~ against a Registered Auditor shall take effect 14 days after the date on which the finding / ~~order-determination~~ is notified in writing to the Registered Auditor.

- 12.9 The Monitoring Committee shall:
- (a) make a direction in writing to the relevant RSB requiring it to take the necessary steps to ~~impose~~ implement any Sanction determined by the Independent Sanctions Tribunal, as if it were a Sanction which the relevant RSB had determined under the Regulations.
  - (b) inform the Conduct Committee of the outcome of the Independent Sanctions Tribunal; and
  - (c) where a Sanction has been determined by the Independent Sanctions Tribunal, publish the determination of such Sanction as soon as practicable and in such manner as it thinks fit unless this would not, in the opinion of the Monitoring Committee, be in the public interest.
- 12.10 Where the Independent Sanctions Tribunal accepts a written Undertaking from the Registered Auditor the Conduct Division of the FRC will monitor compliance with any such Undertaking and report to the Monitoring Committee and the relevant RSB as appropriate.
- 12.11 In the case of an order for payment of costs, the monies shall be paid to the FRC within the time for payment stipulated by the Independent Sanctions Tribunal.

## Part 5

### Monitoring Committee Meetings

#### 13. Monitoring Committee

13.1 The FRC Board shall appoint a member of the Conduct Committee to be the Chair of the Monitoring Committee and the Conduct Committee shall appoint up to 9 other members to the Monitoring Committee, including but not limited to other members of the Conduct Committee.

13.2 The persons appointed to the Monitoring Committee shall include, but not be limited to, persons having legal or accounting (including auditing) expertise and experience.

13.3 No serving member of the governing body, any committee or tribunal of, or any officer or employee of, any of the RSBs shall be appointed to the Monitoring Committee. However, former members of the governing bodies, committees or tribunals and former officers or employees of the RSBs shall not be precluded from such appointment provided that at least two years have elapsed since the termination of the appointment or employment.

13.4 The FRC Company Secretary or his/her nominee shall act as secretary to the Monitoring Committee and any group of the Monitoring Committee.

13.5 The Conduct Committee shall appoint a Group of three or more members of the Monitoring Committee for the purposes of dealing with any matter delegated to the Monitoring Committee under this Procedure. A Group appointed under this paragraph shall include at least one member with audit experience.

~~13.4~~13.6 Meetings of the Monitoring Committee will be in private.

~~13.2~~13.7 Only the following may attend a meeting of the Monitoring Committee:

- (a) members of the Monitoring Committee

- (b) the secretary to the Monitoring Committee
- (c) any person whose role is to advise or inform the Monitoring Committee on its duties, powers or procedures and the law; and
- (d) any other person permitted by the Monitoring Committee.

## Part 6

### Independent Sanctions Tribunal ~~hearings~~Hearings

#### 14. Independent Sanctions Tribunal

- 14.1 The Nominations Committee shall from time to time appoint a committee of not less than four persons to appoint a Panel of persons to serve as members of an Independent Sanctions Tribunal. The committee shall include at least one lawyer and ~~at least one~~ accountant (who shall not be in practice) but will not include any member of the Conduct Committee.
- 14.2 An Independent Sanctions Tribunal shall be appointed from the Panel by the Convener and shall be composed as follows:-
- (a) Each Independent Sanctions Tribunal shall consist of three or five persons as the Conduct Committee in their absolute discretion thinks fit.
  - (b) The Chairman of the Independent Sanctions Tribunal must be a lawyer (former member of the judiciary, a barrister, an advocate or a solicitor).
  - (c) A three person Independent Sanctions Tribunal must comprise in addition to the Chairman:-
    - (i) A lay person ~~(who is not an accountant)~~; and
    - (ii) An accountant.
  - (d) A five person Independent Sanctions Tribunal must comprise in addition to the Chairman:-
    - (i) At least two lay persons ~~(who are not accountants)~~; and
    - (ii) Up to two accountants.
  - (e) For the purposes of (c) and (d) above an accountant means a Member of a professional accountancy body whether or not that body is an RSB and a lay person means a person who is not a Member of a professional accountancy body;
  - (f) No serving member of the governing body, any committee or tribunal of, or any officer or employee of, any of the RSBs shall be appointed to an Independent Sanctions Tribunal. However, former members of the governing bodies, committees or tribunals and former officers or employees of the RSBs shall not be precluded from such appointment provided that at least one-two years ~~has~~ have elapsed since the termination of the appointment or employment.

- (g) No person who is a member, director or officer of the FRC, or of any subsidiary company of the FRC, or a member appointed to any committee of the FRC or any subsidiary company of the FRC, shall be appointed to an Independent Sanctions Tribunal. A former member, committee member, director or officer as aforesaid shall not be precluded from such appointment provided that at least ~~one-two~~ years ~~has~~ have elapsed since the termination of the appointment or employment.
- (h) No person who has been concerned with the investigation or with any earlier proceedings relevant to the matter shall be appointed to an Independent Sanctions Tribunal.

14.3 The Conduct Committee will appoint a secretary to an Independent Sanctions Tribunal to administer the Tribunal.

~~14.3~~14.4 Subject to paragraph 12.1, if more than one Independent Sanctions Tribunal is appointed to hear cases arising out of the same matter, any of the members appointed to one of the Independent Sanctions Tribunals may be appointed to the other or others.

~~14.4~~14.5 Hearings before the Independent Sanctions Tribunal will be in private

~~14.5~~14.6 Only the following may attend a hearing of the Independent Sanctions Tribunal:

- (a) members of the Independent Sanctions Tribunal;
- (b) the secretary to the Independent Sanctions Tribunal;
- (c) the Registered Auditor and any representative appointed for the purposes of the Independent Sanctions Tribunal;
- (d) a representative of the FRC appointed by the FRC's Conduct Division staff for the purposes of the Independent Sanctions Tribunal;
- (e) any witnesses called by either party;
- (f) any person whose role is to advise or inform the Tribunal on its responsibilities, duties, powers or procedures, or the law;
- (g) anyone else the Independent Sanctions Tribunal permits.

~~14.6~~14.7(a) The FRC shall act as complainant before an Independent Sanctions Tribunal and shall bring evidence against the Registered Auditor in respect of the subject matter of the case before the Independent Sanctions Tribunal.

- (b) Every Independent Sanctions Tribunal shall give any Registered Auditor the subject of a hearing before it an opportunity to hear the evidence against him or it, to cross-examine witnesses called by the FRC, to call witnesses and lead evidence in his or its defence and to make representations orally or in writing to the Independent Sanctions Tribunal.
- (c) Any such Registered Auditor shall be entitled to be represented at all hearings of the Independent Sanctions Tribunal.
- (d) Any witnesses called by the Registered Auditor, including the Registered Auditor in the case of sole practitioners, may be cross-examined by the FRC.

~~14.7~~14.8 The Independent Sanctions Tribunal may decide any issue of fact or law and draw any inference of fact which it considers is supported by the evidence.

~~14.8~~14.9 The Independent Sanctions Tribunal may exclude from a hearing any evidence which, in its opinion, it is necessary to exclude in order to:-

- (a) Ensure fairness between the parties; and
- (b) Preserve the interests of justice.

~~14.9~~14.10 All Independent Sanctions Tribunals shall be conducted in accordance with the laws of England and Wales.

## **15. Standard of Proof**

15.1 The standard of proof to be applied by an Independent Sanctions Tribunal is the civil standard of proof.

## **16. Pre-hearing ~~directions~~Directions**

16.1 Subject to the provisions of this Procedure, at any time before a hearing the Chairman of the relevant Independent Sanctions Tribunal may give such pre-hearing directions as are necessary or desirable for securing the just, expeditious and economical disposal of the case.

## **17. Postponement ~~and adjournment~~**

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

- (a) The Chairman is unable to be present; or
- (b) There shall not be present at least three members of the Independent Sanctions Tribunal including one lay member (who is not an accountant) and one accountant.

17.2 If a session of a hearing can and does proceed in the absence of an Independent Sanctions Tribunal member, that member shall not participate in any further session or consideration of the matter and shall cease to be a member of the Independent Sanctions Tribunal for that case.

17.3 If a session of a hearing is postponed pursuant to paragraph 17.1, or if for any other reason any of the Independent Sanctions Tribunal members may not be able to attend any session, and it appears to the members of the Independent Sanctions 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 Convener 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 Independent Sanctions Tribunal member or a new Independent Sanctions Tribunal (as appropriate).

17.4 In the case of an appointment of a new Independent Sanction Tribunal, any of the members of the original Independent Sanctions Tribunal may be appointed to the new Independent Sanctions Tribunal.

17.5 The ~~FRC's Conduct Division~~Convener shall notify the Registered Auditor ~~and the FRC~~ of any new Chairman, Independent Sanctions Tribunal member or Independent Sanctions Tribunal (as appropriate).

**18. Voting**

- 18.1 Any matter to be decided by an Independent Sanctions Tribunal shall be decided by a majority of votes.
- 18.2 No member of an Independent Sanctions Tribunal may abstain from voting on any issue before the Independent Sanctions Tribunal.

**Part 7**

General

**19. ~~Deemed s~~Service**

- 19.1 Any notice, decision, order or other document which needs to be served on a Registered Auditor or other person under this Procedure will be delivered by hand, or sent by first class post or by email and
- (a) if delivered by hand to the latest address given by the addressee, service will take effect immediately;
  - (b) if sent by first class post, ~~it will be sent~~ to the latest address given by the addressee, ~~and~~ service will take effect two business days after posting;
  - (c) if sent by email, ~~it will be sent~~ to the latest email address notified by the addressee, ~~and~~ service will take effect immediately.

**20. Assessment of ~~compliance~~Compliance**

- 20.1 When the Monitoring Committee or Independent Sanctions Tribunal has to decide if a Registered Auditor has complied with a regulation, auditing standard or a quality control standard it must take into account any relevant guidance.

**21. Disclosure of ~~information~~Information**

- 21.1 All information and evidence obtained under this Procedure by the Monitoring Committee and the Independent Sanctions Tribunal, whether originally oral or in writing, will be confidential but may be disclosed 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, to enable that person, body or authority to undertake those responsibilities or as otherwise required or allowed by law.
- 21.2 A Registered Auditor shall treat all information which is not in the public domain which comes to its knowledge in the course of proceedings under this Procedure as confidential.
- 21.3 A Registered Auditor shall only disclose information to persons other than their legal representative with the express consent of the Monitoring Committee.

~~21.4 A breach of confidentiality which has the potential to adversely affect the conduct of proceedings under this Procedure shall be evidence of a failure to cooperate with the Executive Counsel for the purposes of paragraph 12(1) of the Accountancy Scheme.~~

**22. Procedures**

- 22.1 When considering a matter before it, the Monitoring Committee and Independent Sanctions Tribunal shall, for the purposes of this Procedure, accept any previous disciplinary finding, conviction, decision, sentence or judgment (including criminal and civil court decisions) as conclusive evidence of that prior matter.
- 22.2 Subject to the Act, and this Procedure, the Monitoring Committee and the Independent Sanctions Tribunal may, in carrying out their duties under this Procedure, decide on their own procedures.

**23. Amendment and Termination of this Procedure**

- 23.1 This Procedure may be amended or terminated by the Conduct Committee by giving notice of not less than three months.



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