Audit Enforcement Procedure

Accelerated Procedure Policy

Financial Reporting Council

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Contents

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Introduction

1. This document sets out the policy of the FRC for use of the Accelerated Procedure (**AP**) in Part 5 of the Audit Enforcement Procedure (**AEP**).[1] It explains how Executive Counsel will use the AP, and what is expected of a Respondent who is the subject of an AP matter. The purpose is to ensure that consistent and proportionate decisions are taken, although it is recognised that this document cannot cater for every situation, and each matter must be decided on its own unique facts and circumstances. The FRC keeps its policies under review in response to changing circumstances and practical experience.

2. There may be more than one Respondent in an AP matter – typically, the Statutory Audit Firm appointed to conduct the audit in question, and the Statutory Auditor who signed the audit report on the firm's behalf. In this document, references to the Respondent should be read as references to each Respondent in the matter, individually.

3. The AP is intended to facilitate the resolution of matters where there are reasonable grounds to suspect a breach of Relevant Requirements, by using information already held by the FRC as the basis for proposing breaches and Sanctions for agreement by the Respondent. This may allow an enforcement outcome to be achieved without an investigation under Part 4 of the AEP. The resulting saving of time and cost is beneficial both to the FRC and the Respondent, and the Respondent is also eligible to receive an enhanced reduction of any financial Sanction.

4. The information used in an AP matter (referred to in the AEP as the Relevant Information) is most likely to consist of the results of an FRC Audit Quality Review (**AQR**) inspection, a self-report of a breach submitted by the Statutory Audit Firm, or the findings of another regulator or public body.

5. When directed to consider a matter in accordance with the AP, Executive Counsel takes proportionate steps to validate the accuracy and sufficiency of the Relevant Information before using it as the basis for proposing breaches and Sanctions. This can include obtaining further information using the available information-gathering powers, to the extent consistent with the aims of the AP.

6. Where Executive Counsel enters into settlement discussions based on the Relevant Information, it is always open to the Respondent to decline to accept the proposed breaches and Sanctions, on the understanding that this may result in the Conduct Committee[2] referring the matter for investigation under Part 4 of the AEP.

1 This document adopts the definitions used in the AEP

2 The AEP confers a number of functions on the Board, but the Board usually delegates them to the Conduct Committee. This document therefore refers to the Conduct Committee taking the relevant decisions, rather than the Board.

Procedure

7. The AEP sets out the following process for the AP:

   a. The Conduct Committee can direct Executive Counsel to consider a matter in accordance with the AP where:

      (i) the Conduct Committee determines that there are reasonable grounds to suspect that a Statutory Audit Firm and/or a Statutory Auditor has breached a Relevant Requirement, and

      (ii) the Conduct Committee considers that the Relevant Information may provide a sufficent basis for Executive Counsel to determine whether the Statutory Audit Firm/Statutory Auditor has breached a Relevant Requirement and, if so, should be liable for Enforcement Action (Rule 8).

   b. The Conduct Committee has regard to the public interest when deciding whether to direct the use of the AP (Rule 8).

   c. If the Conduct Committee decides to direct Executive Counsel to consider a matter in accordance with the AP, the Conduct Committee sends Executive Counsel and each Respondent a Notice of Accelerated Procedure, which is copied to each Respondent's Recognised Supervisory Body (Rule 10(d)).

   d. Where a Notice of Accelerated Procedure is issued, Executive Counsel determines whether the Relevant Information provides a sufficient basis on which to decide whether the Respondent has breached any Relevant Requirements, and if so, whether the Respondent should be liable for Enforcement Action (Rule 49).

   e. For the purposes of making this determination, Executive Counsel may use the information-gathering powers in Rules 31 and 32(b), but not the power to enter premises in Rule 32(a) (Rule 50).

   f. If Executive Counsel determines that the Relevant Information (with the addition of any information obtained using the information-gathering powers) does not provide a sufficient basis for a decision, Executive Counsel can return the matter to the Conduct Committee for reconsideration of the appropriate response (Rule 14(a)).

   g. If Executive Counsel determines that the Relevant Information and any additional information does provide a sufficient basis for a decision, Executive Counsel enters into settlement discussions, and the usual settlement process in Part 8 of the AEP applies (Rules 51 and 52).

   h. If Executive Counsel is minded to agree terms of settlement following the settlement discussions, Executive Counsel issues a Proposed Settlement Decision Notice (**PSDN**) and may ultimately issue a Final Settlement Decision Notice (**FSDN**) in the usual way (Rules 128 to 133).

i. If Executive Counsel is not minded to agree terms of settlement (for example, because the Respondent has not accepted the proposed breaches and Sanctions to Executive Counsel's satisfaction), Executive Counsel decides whether the Respondent has breached any Relevant Requirements and, if so, whether the Respondent should be liable for Enforcement Action (Rules 53 and 54).

j. If Executive Counsel decides that the Respondent should not be liable for Enforcement Action, Executive Counsel issues a Notice of Closure under Rule 167 and the matter is concluded (Rule 55).

k. At any time before a Notice of Referral to the Tribunal is issued, Executive Counsel can return the matter to the Conduct Committee for reconsideration of the appropriate response, if Executive Counsel considers that it would be more suitable for it to be dealt with by means other than the AP (Rule 14(b)).

l. Alternatively, at any time before issuing a Notice of Referral to the Tribunal, Executive Counsel can decide that the Respondent should no longer be liable for Enforcement Action, and issue a Notice of Closure (Rules 167 and 169).

Initial steps

8. On receiving the Notice of Accelerated Procedure, Executive Counsel sends the Respondent an opening letter which:

   a. Draws the Respondent's attention to this document.

   b. Identifies the Relevant Information.

   c. Invites the Respondent to indicate (usually within 28 days) whether or not they are willing, in principle, to explore resolution of the matter under the AP.

9. Usually the Respondent will be familiar with the Relevant Information (and, in the case of a self-reported breach, it will originate from the Statutory Audit Firm). Where, exceptionally, the Respondent does not already have access to the Relevant Information, Executive Counsel usually provides a copy at this stage.

10. Giving an indication of willingness to explore resolution of the matter under the AP is entirely voluntary, but if the Respondent knows at the outset that they will not accept any breaches or Sanctions based on the Relevant Information, giving early notice of this will allow Executive Counsel to refer the matter back to the Conduct Committee for reconsideration without unnecessary delay.

11. Where there is more than one Respondent and at least one of the Respondents indicates that they are not willing to explore resolution of the matter under the AP, Executive Counsel considers whether it is appropriate to continue with the AP in respect of the remaining Respondent(s). Executive Counsel has regard to the need to treat each Respondent fairly, and to the fact that there is unlikely to be any significant saving of time and cost if the AP is not applied to all Respondents.

12. Where all the Respondents indicate a willingness to explore resolution of the matter under the AP but it appears that their interests conflict, such that it would not be possible to determine breaches and Sanctions against all of them on the same factual basis, Executive Counsel considers whether it is appropriate to continue with the AP against any of them. The AP is unlikely to be a suitable process for resolving significant issues of fact as between different Respondents.

13. Any expression of willingness to explore resolution of the matter under the AP is expected to be given on a Without Prejudice basis, and would not be relied upon by Executive Counsel in any Tribunal proceedings, should it not prove possible to resolve the matter.

Assessing the Relevant Information

14. Without waiting for the Respondent to reply to the opening letter, Executive Counsel carries out an initial assessment of the Relevant Information to identify the apparent breaches of Relevant Requirements. Executive Counsel will need to consider which provisions of auditing standards or other Relevant Requirements have been breached by reason of any deficiencies in the audit work disclosed in the Relevant Information.

15. Having identified the apparent breaches, Executive Counsel considers if any further information is needed in order to be satisfied that:

    a. The breaches are established with sufficient certainty that there would be no unfairness to the Respondent if they were used as the basis for Sanctions.

    b. The breaches properly reflect the nature and substance of the Respondent's failings, such that Sanctions based on the breaches would satisfy the public interest.

16. Executive Counsel consults the Designated Officer, where appropriate, when identifying the apparent breaches and considering if further information is needed.

17. If Executive Counsel considers that further information is needed, they will then consider how that information could be obtained, and whether it would be proportionate to make the necessary enquiries having regard to the purposes of the AP.

18. It will not usually be proportionate for Executive Counsel to pursue enquiries that involve obtaining and reviewing large amounts of material. It may be proportionate to interview the Statutory Auditor or other individuals, but only where this is the most efficient and effective means of clarifying specific matters.

19. Usually Executive Counsel relies on the resources of the FRC (including input from members of the Advisory Panel, where appropriate) to form a view on the reasonableness of the Respondent's decisions and actions in the performance of the Statutory Audit, rather than the opinion of an independent expert. Where Executive Counsel does engage an independent expert in an AP matter, it will usually be to advise on narrow issues in respect of which the expert can quickly form a clear opinion.

20. Executive Counsel considers whether there are indications of further significantly different or significantly more serious breaches not apparent from the Relevant Information. For example, Executive Counsel considers the possibility of pervasive breaches affecting other areas of the audit not addressed in the Relevant Information, or of breaches affecting other audits. Where such indications exist, Executive Counsel makes proportionate enquiries in order to establish whether there is a significant risk of further breaches which would make resolution of the matter under the AP inappropriate.

21. When making enquiries, Executive Counsel remains alert to the risk of the scope of the matter expanding incrementally beyond what was originally envisaged. If, for example, information received in response to an enquiry made of the Respondent about a specific

issue raises further significant questions which could only be answered by further enquiries, Executive Counsel considers whether the matter remains suitable for resolution under the AP.

Identifying breaches and determining Sanctions

22. If, having reviewed the Relevant Information and taken proportionate steps to obtain any further information where necessary, Executive Counsel decides that the matter is suitable for resolution under the AP, Executive Counsel identifies the breaches to be proposed to the Respondent for agreement. As in matters investigated under Part 4 of the AEP, Executive Counsel takes a proportionate approach and only pursues breaches that appear to be serious or significant enough to justify the imposition of Sanctions in the public interest.

23. Executive Counsel determines the appropriate Sanctions, applying the *Sanctions Policy (AEP)*. Sanctions are determined on the same basis and by the same process as in a matter investigated under Part 4 of the AEP.

24. The *Sanctions Policy (AEP)* provides for financial Sanctions to be discounted for mitigating factors, including exceptional cooperation, and further discounted for early disposal. The *Sanctions Policy (AEP)* does not specify the level of discount available for exceptional cooperation, but in practice in matters investigated under Part 4 of the AEP Executive Counsel applies a maximum discount of 15% unless the Early Admissions Process (**EAP**) is used. The *Sanctions Policy (AEP)* specifies a maximum discount of 35% for early disposal, where the matter is settled at the earliest stage. A Respondent who accepts breaches and Sanctions proposed under the AP at the earliest opportunity is eligible for an enhanced discount of 25% for exceptional cooperation and the maximum 35% discount for early disposal, meaning that the total discount available in an AP matter is 60%, as under the EAP.

25. Executive Counsel expects the Respondent to pay Executive Counsel's Costs in full, noting that these should be significantly lower than the Costs that would have been incurred if the matter had been investigated under Part 4 of the AEP.

Engaging in settlement discussions

26. Having determined the appropriate breaches and Sanctions, Executive Counsel enters into settlement discussions by proposing the breaches and Sanctions to the Respondent by letter. All communications in the course of the settlement discussions are on a Without Prejudice basis by virtue of Rule 136 of the AEP.

27. Executive Counsel would expect to write to the Respondent within 4 months of the Notice of Accelerated Procedure being issued, although the duration of any particular matter will depend on the individual circumstances.

28. Executive Counsel's letter provides sufficient detail for the Respondent to understand the basis on which the breaches are alleged and the Sanctions have been determined. The letter also explains the level of discount available if the breaches and Sanctions are agreed at the earliest opportunity. Usually, the Respondent is invited to indicate whether they accept the proposed breaches and Sanctions within 28 days.

29. If the Respondent accepts the breaches and Sanctions (either as originally proposed or as revised in response to any new information provided by the Respondents in reply to Executive Counsel's letter), Executive Counsel drafts the PSDN. The draft PSDN will meet the requirements of Rule 129 of the AEP, in terms of including the breaches and Sanctions, with reasons, and an amount payable in respect of Executive Counsel's Costs. However, the draft PSDN will usually be briefer than those issued in matters investigated under Part 4 of the AEP, because of the nature of the process.

30. Executive Counsel sends the draft PSDN to the Respondent for agreement. A response is usually required within 28 days.

31. Any requests from the Respondent for changes to the draft PSDN are only accepted to the extent necessary to ensure factual accuracy and fairness. Otherwise, Executive Counsel does not engage in negotiation as to the wording. If Executive Counsel makes changes to the draft PSDN, Executive Counsel expects the revised draft to be accepted without further rounds of correspondence.

32. If the Respondent accepts the draft PSDN (either as originally drafted or with any necessary changes), Executive Counsel issues the PSDN under Rule 128 of the AEP in the agreed terms. Once written agreement is provided, the matter progresses to the issuing of an FSDN in the usual way. Executive Counsel would ordinarily expect the FSDN to be issued within 9 months of the Notice of Accelerated Procedure being issued.

Publication

33. Sanctions imposed in an AP matter are subject to the mandatory publication requirements in regulation 6 of the Statutory Auditors and Third Country Auditors Regulations 2016. The Publication Policy (AEP) applies to the outcome of an AP matter in the same way that it applies to the outcome of a matter that has been the subject of investigation under Part 4.

Terminating the procedure

34. Rule 14(a) of the AEP makes specific provision for Executive Counsel to return an AP matter to the Conduct Committee for reconsideration if the Relevant Information (together with any further information obtained by Executive Counsel) does not provide a sufficient basis for a decision as to whether the Respondent has breached Relevant Requirements and should be liable for Enforcement Action. Executive Counsel returns a matter to the Conduct Committee under Rule 14(a) where it is not possible to say with sufficient certainty, on the basis of the available information, whether the Respondent has breached Relevant Requirements, or which Relevant Requirements have been breached.

35. Rule 14(b) of the AEP makes more general provision for Executive Counsel to return a matter to the Conduct Committee where it appears more suitable for the matter to be dealt with by other means. Executive Counsel keeps the suitability of the matter for resolution under the AP under review at all times, but particularly where:

    a. The Respondent indicates an unwillingness to explore resolution of the matter under the AP in response to the opening letter.

    b. It appears that disproportionate enquiries would be necessary in order to establish the sufficiency of the Relevant Information.

    c. Executive Counsel receives new information which suggests an alternative means of resolution should be used.

    d. There is unreasonable delay on the part of the Respondent in accepting the proposed breaches and Sanctions or agreeing the wording of the draft PSDN.

36. Where a matter is returned to the Conduct Committee under Rule 14 of the AEP, all the other options under Rule 8 are available to the Conduct Committee, namely investigation, Constructive Engagement, Published Constructive Engagement or no further action under the AEP.

37. Executive Counsel also considers, at all key stages in the process, whether it continues to be in the public interest for the Respondent to be liable for Enforcement Action or whether the matter should be closed with no further action under the AEP.

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