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Audit Enforcement Procedure

Guidance for the Case Examiner

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Guidance for the Case Examiner

Introduction

1. The Case Examiner is required to undertake a number of initial actions at the beginning of a case under the Audit Enforcement Procedure (“the AEP”)¹. Most importantly they are required under Rules 4 and 5 to determine whether the information raises a question as to whether a Statutory Auditor or Statutory Audit Firm has breached a Relevant Requirement.
2. For the avoidance of doubt, matters within the knowledge of the FRC do not automatically fall to be considered by the Case Examiner. Specifically if the Case Examiner becomes aware of reviews or inspections undertaken by the Audit Quality Review team they will not take any steps under the AEP unless the matter is formally referred to them by the AQR team. However information about a Statutory Auditor or Statutory Audit Firm may be received from many sources and can be passed to the Case Examiner from internal sources within the FRC as well as third party complaints or concerns being raised and the Case Examiner may then consider these under the AEP.
3. [This paragraph has been deleted].
4. This document provides guidance as to the decisions and actions a Case Examiner must take when determining how information should be handled at the outset of a case. The purpose of this guidance is to ensure that consistent and proportionate decisions are taken, although it is recognised that every situation will have its own unique facts and circumstances.
5. This guidance will be referred to by the Case Examiner and may be helpful for anyone interested or involved in the AEP.
6. The Case Examiner's role includes ensuring that anyone wishing to provide information to the FRC is provided with clear information about the role and scope of the FRC's functions and ensuring that there are no barriers to relevant complaints being made or information being provided.

Initial checks

7. On receipt of information the Case Examiner should confirm whether the information relates to a Statutory Auditor and/or Statutory Audit Firm and concerns a matter within the scope of the FRC's retained regulatory activity.

Determining whether a question arises

8. The Case Examiner has powers to make enquiries and obtain specialist advice (i.e. instruct experts) to help them determine whether information raises a question as to whether a Relevant Requirement has been breached. Where necessary the Case Examiner may seek legal advice. The enquiries and advice should be limited to assisting the Case Examiner with the determination of whether the information raises a question as to whether a Relevant Requirement has been breached.
9. The Case Examiner will have regard to the Relevant Requirements (as defined in the AEP) and will assess whether the information received raises a question of a breach of these requirements.

¹ This Guidance adopts the definitions used in the AEP

10. The Case Examiner may communicate with the potential Respondent (or their representatives) about the information received.
11. Where the Case Examiner considers that the information raises a question of a breach they have discretion to seek constructive engagement with the Statutory Auditor or Statutory Audit Firm as a way of resolving the matter.
12. Where the Case Examiner determines that the information does not raise a question as to whether there has been a breach of a Relevant Requirement, they shall take no further action.

Constructive engagement

13. Constructive engagement will be entirely at the discretion of the Case Examiner.
- 13A. It will be suitable for cases where there has been a minor, technical breach of the Relevant Requirements. Such cases will usually be at the lowest end of the spectrum of possible breaches.
14. Constructive engagement may be appropriate where there is no real concern about harm to investor, market or public confidence in the statutory audit process and where there is no evidence of financial detriment to anyone.
15. Constructive engagement is focused on ensuring that less serious breaches have been rectified and the risk of repetition has been adequately addressed. It may take any form, including written advice, warning letters or discussion or correspondence with the individual Statutory Auditor or Statutory Audit Firm aimed at ensuring that the possible breach is not repeated.

Interim Orders

16. Under Rule 5(c) the Case Examiner has the power to refer a matter to Executive Counsel to apply for an Interim Order to be made by a Tribunal. Interim Orders are orders which impose restrictions on the Respondent pending the outcome of the FRC's investigation or proceedings. An Interim Order can only be made by the Tribunal.
17. The procedure for Interim Orders is set out in Part 5 of the AEP. The Case Examiner's role is to conduct an early risk assessment to identify whether a case should be referred to Executive Counsel to apply for an Interim Order.
18. Factors which might indicate that a case should be referred for an Interim Order include:
 - a) suspected serious breaches of the Relevant Requirements;
 - b) ongoing risk of harm to investor, market or public confidence in the truth and fairness of the financial reporting of an entity;
 - c) ongoing risk of significant financial detriment or other harm for those reliant on the Statutory Auditor or Statutory Audit Firm's compliance with the Relevant Requirements.

This list is non-exhaustive and referral is at the discretion of the Case Examiner.

Referral to Board

19. [This paragraph has been deleted].

20. The Case Examiner will prepare the papers which will go to the Board for its decision as to investigation and delegation.
21. To assist the Board with its functions, covering reports to the Board should summarise the information, identify the possible breaches, refer to the test and guidance for investigation and may make recommendations as to investigation.
22. [This paragraph has been deleted].

Reporting Requirements

23. The Case Examiner shall provide data to the Board and report those matters where they have, without referral to the Board:
 - a) determined that the information about a Statutory Auditor or Statutory Audit Firm does not raise a question as to whether a Relevant Requirement has been breached; or,
 - b) resolved the matter using constructive engagement.
24. The Board shall be entitled to request further details on a sampling basis of any such cases by way of oversight.
- 24A. The Board may reconsider a decision by the Case Examiner to take no further action or to resolve a matter using constructive engagement.

Issued by the Conduct Committee with effect from 5 January 2022