

December 2012

Accountancy Scheme – post consultation draft

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The Accountancy Scheme

PHASE 2
Post Consultation Draft

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DATED:

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THE FINANCIAL REPORTING COUNCIL

ACCOUNTANCY SCHEME

Scheme

1(1) This is the Scheme of the FRC for the accountancy profession as further amended by the FRC with effect from [] 2012.¹

1(2) To protect the public, maintain public confidence in the accountancy profession and uphold proper standards of conduct, this Scheme provides a system for:-

- (i) the investigation of Members' and of Member Firms' conduct in the course of their professional, business or financial activities (including as a partner, member, director, consultant, agent or employee in or of any organisation or as an individual), including such conduct before they became Members and Member Firms, and
- (ii) if warranted following such investigation, bringing disciplinary proceedings against Members and Member Firms.

1(3) This Scheme applies to any matter referred to the FRC under paragraph ~~6~~(2), or assumed by the Conduct Committee under paragraph ~~6~~(8) and to all steps and proceedings arising, directly or indirectly, therefrom or in consequence thereof or in relation thereto.

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1(4) Every Member, Member Firm, Former Member, Former Member Firm and Successor Member Firm shall have the obligations in relation to this Scheme set out in paragraphs ~~14~~(1) and ~~14~~(2) and such obligations shall apply regardless of the capacity in which he or it is acting.

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¹ The Scheme was originally adopted by the AADB on 13 May 2004, and amended by the AADB on 13 September 2007, 26 February 2010, 8 December 2011 and ~~18 October~~ 2012. It was amended by the FRC on [] 2012.

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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:-

AADB means The Accountancy and Actuarial Discipline Board Limited (formerly The Accountancy Investigation and Discipline Board Limited), a company limited by guarantee incorporated in England and Wales, number 5081857.

Adverse Finding means a finding by a Disciplinary Tribunal that a Member or Member Firm has committed **Misconduct**, or has failed to comply with any of his or its obligations under paragraphs 14(1) or 14(2).

Appeal Tribunal means a tribunal appointed by the Convener under paragraph 10(7)(ii) to consider an appeal against a decision of a Disciplinary Tribunal.

Appellant means a Member or Member Firm who or which gives or has given notice of appeal under paragraph 10(1).

the Board means the Accountancy and Actuarial Discipline Board established under the articles of association of the AADB.

Case Management Committee means the Case Management Committee of the FRC established by the Conduct Committee of the FRC.

Conduct Committee means the Conduct Committee of the FRC established under the articles of association of the FRC.

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 10(4).

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Alternate Executive Counsel means a legally qualified person, appointed to that role by the Conduct Committee. ¶

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Deputy Executive Counsel means a legally qualified person, appointed to that office by the Nominations Committee of the FRC.

Disciplinary Tribunal means a tribunal appointed by the Convener under paragraph 9(2).

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Effective Date means:-

- (i) for Members and Member Firms of the ICAEW: 13th May 2004
- (ii) for Members and Member Firms of CIMA: 25th May 2004
- (iii) for Members and Member Firms of ACCA: 13th May 2004
- (iv) for Members and Member Firms of CIPFA: 11th June 2004
- (v) for Members and Member Firms of the ICAI: 7th December 2005
- (vi) for Members and Member Firms of ICAS: 1st December 2005

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

Executive Counsel means a legally qualified officer of the FRC, 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 Deputy Executive Counsel where one or more Deputy Executive Counsel has been appointed.

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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 the functions of the FRC.

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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 or Member Firm has committed **Misconduct** or failed to comply with any of his or its obligations under paragraphs **14(1)** or **14(2)**;
- (ii) for the purposes of paragraphs **9, 10 and 11** of this Scheme, the Formal Complaint as amended by a decision made for the purposes of paragraph **9(4)**.

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

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Former Member Firm means a firm which was a Member Firm at the time of the alleged **Misconduct** but has ceased to be a Member Firm.

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Group of the Case Management Committee means a group appointed by the Chairman of the Case Management Committee in accordance with paragraph **7(5)**.

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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 systems of discipline and professional conduct, and regulation, operated thereby, or
- (iii) where paragraph **5(7)** applies, a Former Member.

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Member Firm means:-

- (i) a Firm which 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 systems of discipline and professional conduct, and regulation, operated thereby, or two or more Members working together under a formal agreement, or
- (ii) where paragraph 5(6) applies, a Former Member Firm.

Member of the Same Group means, as regards any Company, a company which is from time to time a Holding Company or a Subsidiary of that company or a Subsidiary of that Holding Company, "Company", "Subsidiary", and "Holding Company" shall have the meanings given in Section 1159 of the Companies Act 2006.

Misconduct means an act or omission or series of acts or omissions, by a Member or Member Firm in the course of his or its professional, business or financial activities (including as a partner, member, director, consultant, agent, or employee in or of any organisation or as an individual), which falls significantly short of the standards reasonably to be expected of a Member or Member Firm or has brought, or is likely to bring, discredit to the Member or the Member Firm or to the accountancy profession.

Nominations Committee means the Nominations Committee of the FRC.

Participant means any accountancy body which is participating in this Scheme.

Proposed Formal Complaint means the draft of the Formal Complaint referred to in paragraph 7(10)(ii)(a)

Regulations mean regulations made by the Conduct Committee from time to time.

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(ii) . as regards any other body corporate or a partnership, an Associate of that body corporate or partnership.¶
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and "Associate" shall have the meaning given in Section 1260 of the Companies Act 2006; and

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Representative means a person who is engaged or requested to represent a Member or a Member Firm under investigation or before a Tribunal.

Proposed Settlement Agreement means a formal document agreed by Executive Counsel and the Member or Member Firm detailing:

- (i) the particulars of fact and act or acts of misconduct admitted by the Member or Member Firm; and
- (ii) the sanction or sanctions and the reasons therefore; and
- (iii) any costs that the Member or Member Firm will pay to the FRC towards the cost of the investigation, and/or settlement negotiations and/or disciplinary proceedings.

Settlement Agreement means a Proposed Settlement Agreement which has been approved by the Settlement Approvers in accordance with the provisions of paragraph 8(3).

Settlement Approver means a member of the Case Management Committee appointed by the Conduct Committee under paragraph 8(3)(i), who must not be a member of the Group of the Case Management Committee appointed to monitor Executive Counsel's investigation in relation to that case.

Successor Member Firm means any Firm that acquires, directly or indirectly, control of a Member Firm or Former Member Firm or the practice of a Member Firm or Former Member Firm.

Tribunal means a Disciplinary Tribunal or an Appeal Tribunal (as the context requires).

Tribunal Panel means the panel appointed pursuant to paragraph 11(1).

UK connected company means:

- (i) any company registered in any part of the United Kingdom, listed in any part of the United Kingdom on a recognised investment exchange

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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;

(ii) any company in the same group (as defined in section 1261 of the Companies Act 2006) as such a company;

(iii) 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:

(i) 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

(ii) 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.

2(4) In this Scheme, any reference to a "document" shall mean anything in which information of any description is recorded, including but not limited to: electronic documents, including email and other electronic communications; word processed documents and databases; documents stored on portable devices such as memory sticks and mobile phones; documents readily accessible from computer systems and other electronic devices and media; documents stored on servers and back-up systems and electronic documents that have been 'deleted'. It also includes Metadata and other embedded data.

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The Conduct Committee

3(1) The Conduct Committee 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 Conduct Committee with the Participants prior to any amendments, and provided further that, in the event of any inconsistency between Regulations and this Scheme, the terms of the Scheme shall prevail;
- (ii) provide the Executive Counsel, the Case Management Committee, 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, the Convener and any other persons;
- (v) delegate to the Chairman of the Conduct Committee its powers under paragraphs 3(iii) and 3(iv) above; and
- (vi) do all such other things as the Conduct Committee considers incidental or conducive to the operation of this Scheme.

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(v) . delegate to the Chairman of the Conduct Committee its powers under paragraphs 6(8)(i), 6(8)(ii), 6(9)(i) and 6(9)(ii).¶

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Case Management Committee

4(1) The Case Management Committee shall be appointed by the Conduct Committee and shall comprise not more than twelve and not less than six individuals. The persons appointed to the Case Management Committee shall

include, but not be limited to, persons having legal, accounting or actuarial expertise and experience.

4(2) The Chairman of the Case Management Committee shall be appointed by the board of the FRC.

4(3) The Case Management Committee or a Group of the Case Management Committee shall:

(i) monitor the conduct of any investigation and/or disciplinary proceeding and the merits of the approach taken by Executive Counsel;

(ii) to the extent thought necessary, consider the basis of the Executive Counsel's decision to proceed with a Formal Complaint, including whether it would be in the public interest to proceed with the Formal Complaint;

(iii) be entitled to call for and receive any information that it considers necessary to discharge its responsibilities under this Scheme;

(iv) consider the appropriateness of a Proposed Settlement Agreement (as required by paragraph 8(3)); and

(v) on request, provide advice to the Conduct Committee or to the Executive Counsel on any matter relating to their respective responsibilities under this Scheme.

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Liability to Investigation and Disciplinary Proceedings

5(1) A Member or Member Firm shall be liable to investigation under this Scheme only where, in the opinion of the Conduct Committee:-

(i) (a) the matter raises or appears to raise important issues affecting the public interest in the United Kingdom (“the first criterion”); and

(b) ~~there are reasonable grounds to suspect that~~ there may have been ~~Misconduct~~ (“the second criterion”); or

(ii) it appears that the Member or Member Firm has failed to comply with any of his or its obligations under paragraphs ~~14(1)~~ or ~~14(2)~~ below.

5(2) In deciding whether a matter satisfies the first criterion, the Conduct Committee shall, amongst other things, consider whether it appears to give rise to serious public concern or to damage public confidence in the accountancy profession in the United Kingdom. The Conduct Committee shall also be entitled to consider all the circumstances of the matter including, but not limited to, its nature, extent, scale and gravity.

5(3) ~~In considering whether there are reasonable grounds to suspect that there may have been Misconduct, 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 which applies to him or it.~~

5(4) A Member or Member Firm shall be liable to disciplinary proceedings under this Scheme if, following an investigation, the Executive Counsel considers:

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

5(5) A Member shall only be liable to investigation and/or disciplinary proceedings under this Scheme if he is, when a Formal Complaint is delivered to the Conduct Committee under paragraph 7(11), or was, at the time of any alleged 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.

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4(4) In considering the question of whether the conduct of a Member or Member Firm may have fallen short of the standards reasonably to be expected of him or it, 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 which applies to him or it.

5(6) A Member or Member Firm will be liable to investigation and disciplinary proceedings under this Scheme:

- (i) regardless of whether the alleged Misconduct took place before or after the Effective Date; and
- (ii) regardless of whether he or it was a Member or Member Firm at the time of the alleged Misconduct, provided that, where the alleged Misconduct took place before the Effective Date, the Participant's rules at the Effective Date provide for investigation and discipline of alleged Misconduct that took place prior to the Member or Member Firm becoming a Member or Member Firm of the Participant.

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~~5(7)~~ A Former Member or Former Member Firm will be liable to investigation and disciplinary proceedings under this Scheme as if he or it were a Member or Member Firm in respect of either any alleged ~~Misconduct~~ which took place while he or it was a Member or Member Firm or any alleged failure to comply with any of his or its obligations under paragraphs ~~14(1)~~ or ~~14(2)~~:

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(i) if he or it ceased to be a Member or Member Firm after the Effective Date, even if the rules of the Participant to which the Former Member or Former Member Firm belonged provide otherwise; and

(ii) if he or it ceased to be a Member or Member Firm before the Effective Date, only so far as the Participant's rules at the Effective Date provide for liability to investigation and disciplinary proceedings in respect of alleged ~~Misconduct~~ by a Former Member or Former Member Firm.

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~~5(8)~~ A Successor Member Firm will be liable to investigation and disciplinary proceedings under this Scheme as if it were a Member Firm in respect of either any alleged ~~Misconduct~~ or any alleged failure to comply with any of its obligations under paragraph ~~14(1)~~ or ~~14(2)~~ by the Member Firm or Former Member Firm of which it has acquired control.

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~~5(9)~~ A Member Firm shall not avoid liability to investigation and disciplinary proceedings under this Scheme by reason of having established and operated appropriate working practices and procedures, if its conduct (by reason of the conduct of any partner, member, director, consultant, agent or employee acting with actual or ostensible authority) may constitute an act of ~~Misconduct~~.

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~~5(10)~~ If a Participant ceases to be a Participant at a time when any investigation or proceedings under this Scheme are proceeding against one of their Members or Member Firms, then for the purpose of the application of the provisions of this Scheme to that investigation or proceedings (to its conclusion, up to and including any appeal and the enforcement of any order of a Tribunal), the former Participant shall be regarded and treated for the purposes of this Scheme as if it remained a Participant.

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5(1) For the avoidance of doubt:

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- (i) anything said, done or omitted by an employee of a Member Firm within the scope of his employment, either actual or ostensible, or as an agent of the Member Firm within the scope of his authority, either actual or ostensible, shall be taken as having been said, done or omitted by that Member Firm;
- (ii) nothing in this paragraph will remove the liability to investigation or disciplinary proceedings for a Member who is an employee or agent of a Member Firm.

Decision to Investigate

6(1) An investigation under this Scheme may be instituted in either of the circumstances described in paragraphs **6(2)** and **6(8)**.

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6(2) Where a Participant:-

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- (i) considers that a matter raises or appears to raise important issues affecting the public interest in the United Kingdom; and
- (ii) considers that the matter needs to be investigated to determine whether one or more of its Members or Member Firms may have committed **Misconduct**,

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the Participant shall refer that matter to the FRC and request the Conduct Committee to institute an investigation. Such a request from a Participant may be published by the Conduct Committee if it thinks fit, unless this would not, in the opinion of the Conduct Committee, be in the public interest. In the event that a Participant is in doubt as to whether a particular matter should be referred to the FRC, **the Participant shall consult with the Conduct Committee** for guidance.

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6(3) Upon receipt of a reference pursuant to paragraph 6(2), the Conduct Committee 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.

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6(4) The decision of the Conduct Committee to accept or decline the reference shall depend on whether, in its opinion, the criteria at paragraph 5(1), taking account of the considerations in paragraph 5(2), are met in relation to the matter referred.

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

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6(6) If, in the opinion of the Conduct Committee, 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 Conduct Committee may decide either to include or exclude any such matters from the investigation as appropriate.

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6(7) Where the Conduct Committee decides to decline a reference made pursuant to paragraph 6(2) it :-

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(i) shall give notice in writing of its decision and the reasons for it to the relevant Participant within fourteen days; and

(ii) may, if it thinks fit, publish its decision unless this would not, in the opinion of the Conduct Committee, be in the public interest.

6(8) Where a Participant is conducting an investigation into the conduct of a Member or Member Firm of which the Conduct Committee is aware, or the Conduct Committee otherwise becomes aware of matters relating to the conduct of a Member or Member Firm, and in either case the Conduct

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Committee is of the opinion that the grounds for an investigation under paragraph 5(1), taking account of the considerations in paragraph 5(2), have been met, the Conduct Committee may decide that the matter shall be dealt with by the FRC in accordance with this Scheme.

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6(9) Where the Conduct Committee decides, pursuant to paragraph 6(8), that a matter should be dealt with by the FRC 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. Where the Conduct Committee decides, pursuant to paragraph 6(8), that it is not appropriate for the matter to be dealt with by the FRC in accordance with this Scheme, it shall advise the relevant Participant of that decision, giving its reasons, so that that Participant can decide whether it should investigate, or continue to investigate, that matter.

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6(10) Where the Conduct Committee considers that it has insufficient information about a matter to determine whether a Member or Member Firm is liable to investigation under paragraph 5(1):-

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- (i) it may direct the Executive Council to make preliminary enquiries for the purpose provided for in this Scheme before deciding whether or not the matter should be investigated; and
- (ii) it shall inform the relevant Participant where any direction is made to the Executive Council at (i) above; and
- (iii) where a matter has also been referred to the FRC pursuant to paragraph 6(2), the time in which the Conduct Committee shall be required to decide whether or not to investigate the matter for the purposes of paragraph 6(3) shall be extended by such period as shall be reasonable for the required preliminary enquiries to be carried out.

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Investigation

7(1) (i) For the purposes of exercising its powers under paragraph **6**, the Conduct Committee 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 Conduct Committee or the Executive Counsel, as the case may be, shall reasonably think fit and as the Participant can lawfully provide.

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(ii) The power in paragraph **7(1)(i)** shall include the power to require the Participant to:-

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(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.

7(2) Where a reference is accepted by the Conduct Committee under paragraph **6(3)**:-

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(i) the scope of the investigation shall be set out within the notice given by the Conduct Committee referred to **in** paragraph **6(5)**;

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(ii) in accordance with paragraph **6(6)**, the scope shall not be restricted to the matters referred by the Participant under paragraph **6(2)** and shall include or exclude any issues relating to the matter as the Conduct Committee shall see fit;

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(iii) the relevant Participant shall supply to the Conduct Committee any documents or other information which are in the 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.

7(3) Where the Conduct Committee decides under paragraph ~~6~~(8) that a matter shall be assumed by the FRC to be dealt with in accordance with this Scheme:-

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(i) the scope of the investigation shall be set out within the notice given by the Conduct Committee ~~pursuant to~~ paragraph ~~6~~(9); and

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(ii) the relevant Participant shall supply to the Conduct Committee 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 and which the Participant can lawfully provide.

7(4) In either case identified at paragraphs ~~7~~(2) and ~~7~~(3), the Conduct Committee shall:-

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(i) provide a copy of the notice to the Case Management Committee and a copy, together with any material obtained pursuant to paragraphs ~~7~~(2)(iii) or ~~7~~(3)(ii), to the Executive Counsel to be dealt with in accordance with this Scheme;

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(ii) inform the Member or Member Firm concerned of its decision to refer their conduct for investigation by Executive Counsel and provide the Member or Member Firm 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 Conduct Committee, be in the public interest.

7(5) Upon receipt of the notice sent in accordance with paragraph ~~7(4)(i)~~, the Chairman of the Case Management Committee shall appoint at least three of its members to form a Group of the Case Management Committee to perform the functions set out in paragraph ~~4(3)(i) and (ii)~~ in relation to the investigation and/or disciplinary proceeding.

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7(6) Upon receipt of the documents provided pursuant to paragraph ~~7(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 of the investigation set out by the Conduct Committee. In conducting that investigation, the Executive Counsel shall have regard to, but not be bound by, the views expressed and the advice given by the Case Management Committee or the Group of the Case Management Committee.

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the Group of the Case Management Committee appointed under paragraph 6(5) shall monitor Executive Counsel's investigation, including, where applicable, any settlement discussions and up to delivery of a Formal Complaint.

7(7) The Executive Counsel shall have power on behalf of the FRC to employ any person whose services may reasonably be required to assist the Executive Counsel for the purposes of conducting the preliminary enquiries, investigation or subsequent disciplinary or appeal proceedings.

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7(8) (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 Conduct Committee then:-

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- (a) the Executive Counsel shall report those facts and circumstances to the Conduct Committee; and
- (b) the Conduct Committee may direct that the scope of the Executive Counsel's investigation shall include such facts or circumstances and shall inform the relevant Participant(s) and the Members and/or Member Firms 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 Conduct Committee under paragraph 7(2) or 7(3) of the Scheme (and whether or not already amended in accordance with paragraph 7(8)(i) above) should be narrowed, then:-

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

(b) the Conduct Committee may direct that the scope of the Executive Counsel's investigation shall be narrowed and shall inform the relevant Participant(s) and the Members and/or Member Firms concerned accordingly.

(iii) Where the Conduct Committee directs either under paragraph 7(8)(i)(b) or 7(8)(ii)(b) that the scope of the Executive Counsel's investigation shall be amended, the Conduct Committee may if it thinks fit publish its direction, unless this would not, in the opinion of the Conduct Committee, be in the public interest.

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7(9) (i) If, in the course of an investigation, it appears to the Executive Counsel that the scope of the investigation needs to be amended to include the conduct of a further Member and/or Member Firm, then:-

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(a) the Executive Counsel shall report the facts and matters relied upon to the Conduct Committee; and

(b) the Conduct Committee may direct that the scope of the Executive Counsel's investigation shall include the conduct of such further Member and/or Member Firm and shall inform the relevant Participant and the further Member and/or Member Firm concerned accordingly.;

(ii) Where the Conduct Committee directs under paragraph 7(9)(i)(b) that the scope of the Executive Counsel's investigation shall be amended to include the conduct of such further Member and/or Member Firm the Conduct Committee may, if it thinks fit, publish its decision unless this would not, in the opinion of the Conduct Committee, be in the public interest.

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7(10) (i) If, following his investigation, the Executive Counsel considers that:-

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

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(b) a hearing is desirable in the public interest,

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the Executive Counsel shall notify the Members or Member Firms concerned of his intention to deliver a Formal Complaint to the Conduct Committee.

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(ii) The notice sent in accordance with paragraph 7(10)(i) shall:

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(a) be accompanied by a draft of the Formal Complaint that he proposes to deliver to the Conduct Committee; and

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(b) invite the Member or Member Firm to make written representations to him within the period of eight weeks from the date on which the notice is sent to the Member or Member Firm.

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(iii) The Executive Counsel may, in his absolute discretion, extend the time limit for the Member or Member Firm to make written representations.

7(11) If, the Executive Counsel,:

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(i) having reviewed any representations received for the purposes of paragraph 7(10), still considers that:-

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

(b) a hearing is desirable in the public interest; or

(ii) has not received any representations from the Member or Member Firm within the period specified in the notice sent under paragraph 7(10)(ii), or as extended under paragraph 7(10)(iii),

he shall deliver a Formal Complaint against the Member or Member Firm to the Conduct Committee.

7(12) Notwithstanding any settlement discussions that the Executive Council may initiate under paragraph 8, a Member or Member Firm may, either voluntarily or at the invitation of the Executive Council at any stage of the investigation, make an admission in respect of any alleged particulars of fact, any alleged acts of misconduct or any alleged failures to comply with his or its obligations under paragraphs 14(1) or 14(2) and such admissions, if accepted by the Executive Council, shall constitute proof before a Disciplinary Tribunal against the Member or Member Firm making the admission.

7(13) The Executive Council shall, if such an admission is made prior to a Formal Complaint being delivered to the Conduct Committee, prepare and deliver to the Conduct Committee with the Formal Complaint a statement of agreed facts. Such statement of agreed facts must be signed by the Executive Council and the Member or Member Firm concerned and give sufficient particulars to enable the admissions to be properly understood.

7(14) If at any stage during or following an investigation, the Executive Council considers:-

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6(12) . Following service of the notice under paragraph 6(10) and prior to delivery of a Formal Complaint under paragraph 6(11):-¶

¶
<#>the Executive Council, at his sole discretion, and having regard to the public interest, may decide that the matter is appropriate for settlement discussions under the terms of this Scheme; and¶

¶
<#>where Executive Council so decides, he shall:¶

¶
<#>notify the Member or Member Firm concerned that he is prepared to enter into settlement discussions; and¶

<#>¶
provide a copy of such notice to the Group of the Case Management Committee appointed to monitor the case. ¶

¶
6(13) . Where, following settlement discussions:-¶

¶
<#>terms of a settlement are agreed between the Executive Council and the Member or Member Firm, the Executive Council shall deliver a Proposed Settlement Agreement to the Conduct Committee.¶

¶
(ii) terms of a settlement are not agreed between the Executive Council and the Member or Member Firm, the Executive Council shall proceed to deliver a Formal Complaint in accordance with paragraph 6(11).¶

¶
6(14) Upon receipt of a Proposed Settlement Agreement the Conduct Committee shall appoint at least two Settlement Approvers, of whom:¶

¶
<#>at least one must be legally qualified; and¶

¶
<#>one, but not more than one, may be a Member.¶

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6(15) . The Settlement Approvers shall consider the appropriateness of the ... [1]

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

he shall inform the Conduct Committee of his decision, together with the reasons for that decision, and the Conduct Committee shall notify the Member or Member Firm and the Participants of the decision.

~~7(15)~~ The Conduct Committee 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 Conduct Committee, be in the public interest.

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Settlement

~~8(1)~~ At any time after the commencement of an investigation or after the delivery of a Formal Complaint and prior to the final determination of a Formal Complaint:-

- ~~(i)~~ the Executive Counsel, at his sole discretion, and having regard to the public interest, may enter into settlement discussions (whether initiated by the Executive Counsel or by the Member or Member Firm involved) in accordance with the terms of this Scheme; and
- ~~(ii)~~ the Executive Counsel shall advise the Chairman of the Case Management Committee of the commencement of such settlement discussions.

~~8(2)~~ Where, following settlement discussions, terms of a settlement are agreed between the Executive Counsel and the Member or Member Firm:-

(i) prior to the delivery of a Formal Complaint, the Executive Counsel shall deliver a Proposed Settlement Agreement to the Conduct Committee;

(ii) after delivery of a Formal Complaint, the Executive Counsel shall deliver a Proposed Settlement Agreement to the Tribunal to which the determination of that Formal Complaint has been allocated.

Where terms of a settlement are not agreed between the Executive Counsel and the Member or Member Firm, the Executive Counsel shall proceed to deliver a Formal Complaint in accordance with paragraph 7(11).

8(3) Upon receipt of a Proposed Settlement Agreement prior to the delivery of a Formal Complaint

(i) the Conduct Committee shall appoint at least three Settlement Approvers, of whom:

(a) at least one must be legally qualified; and

(b) one, but not more than one, may be a Member.

(ii) The Settlement Approvers shall consider the appropriateness of the Proposed Settlement Agreement having regard to the purpose for which the Scheme has been established as set out in paragraph 1(2) and to any guidance issued by the Conduct Committee under paragraph 3(1)(ii).

(iii) A Proposed Settlement Agreement must be approved by a majority of the Settlement Approvers appointed pursuant to paragraph 8(3)(i) before it can become effective. In any other case, a Proposed Settlement Agreement shall be treated as having been rejected by the Settlement Approvers.

(iv) As soon as reasonably practicable, the Settlement Approvers shall inform the Conduct Committee of their decision, together with the reasons for that decision, and the Conduct Committee shall notify the Executive Counsel, the Member or Member Firm and the relevant Participant(s) of the decision and the reasons therefore.

(v) Where approved, the Settlement Agreement shall take effect from the next working day after the date on which the notice under paragraph 8(3)(iv) is sent to the Member or Member Firm.

8(4) Upon receipt of a Proposed Settlement Agreement after delivery of a Formal Complaint, the Tribunal to which the determination of that Formal Complaint has been allocated shall take such steps as it considers necessary to determine whether it would be appropriate for the Proposed Settlement Agreement to be entered into having regard to the purpose for which the Scheme has been established as set out in paragraph 1(2) and to any guidance issued by the Conduct Committee under paragraph 3(1)(ii). As soon as reasonably practicable, the Tribunal shall advise the Conduct Committee, the Executive Counsel, the Member or the Member Firm and the relevant Participant(s) of its decision. The Proposed Settlement Agreement shall take effect from the next working day after the date on which notice of the decision is given to the Member or Member Firm in accordance with this paragraph.

Disciplinary Proceedings

2(1) Where the Executive Counsel delivers to the Conduct Committee a Formal Complaint in accordance with paragraph 7(11) or paragraph 14(3), the Conduct Committee shall serve the Formal Complaint on the Member or Member Firm concerned and shall, as soon as practicable, send a copy of the Formal Complaint to the Convener.

2(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 Conduct

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Committee with details of the Disciplinary Tribunal appointed and notify Executive Counsel and each Member or Member Firm concerned.

2(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.

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2(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.

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2(5) A Member or Member Firm may, either voluntarily or at the invitation of the Disciplinary Tribunal or the Executive Counsel at any stage during a hearing before a Disciplinary 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 or its obligations under paragraphs 14(1) or 14(2) and such admissions shall constitute proof before a Disciplinary Tribunal against the Member or Member Firm making the admission.

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2(6) 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.

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2(7) After hearing the Formal Complaint, the Disciplinary Tribunal shall, in relation to the Member or Member Firm which is the subject of the Formal Complaint, either:-

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(i) make an Adverse Finding in respect of some or all of the alleged Misconduct or failures to comply with the Member's or Member Firm's obligations under paragraphs 14(1) or 14(2) forming the subject matter of the Formal Complaint, or

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(ii) dismiss the Formal Complaint.

9(8) Where the Disciplinary Tribunal makes an Adverse Finding in relation to a Member or Member Firm then:-

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(i) it may order such sanctions against the Member or Member Firm as are contained within the schedule of sanctions at Appendix 1 to this Scheme as it considers appropriate; but, if the **Misconduct** occurred before the Effective Date, only in exceptional circumstances may the Disciplinary Tribunal impose a sanction more severe than could have been imposed under the relevant Participant's rules at the Effective Date;

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(ii) in addition to the sanctions at Appendix 1 to this Scheme, any order made pursuant to paragraph (i) above, may include an order that the Member or Member Firm be required to pay, in the manner set out in paragraph **13**, 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 or Member Firm shall be determined by the Disciplinary Tribunal. In considering any such application the Disciplinary Tribunal shall have no regard to any settlement discussions or proposals or offers; and

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

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9(9) Where the Disciplinary Tribunal dismisses the Formal Complaint it may, on the application of a Member or Member Firm concerned, order that the FRC pay a specified sum in respect of legal costs that were reasonably incurred by the Member or Member Firm subsequent to the Formal Complaint being served on the Member or Member Firm.

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9(10) The Disciplinary Tribunal's discretion to award costs to a Member or Member Firm concerned **pursuant to paragraph 9(9)** shall be restricted to circumstances where the Tribunal finds that no reasonable person would have delivered or

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pursued a Formal Complaint under the terms of this Scheme. In considering any such application the Disciplinary Tribunal shall have no regard to any settlement discussions or proposals or offers.

9(11) (i) The Disciplinary Tribunal shall make a report, which shall be signed by its Chairman, setting out its decision and reasons and any related orders made pursuant to paragraphs **9(7)**, **9(8)** and **9(9)** and send it to the Conduct Committee.

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(ii) The Conduct Committee shall send a copy of the Disciplinary Tribunal's report to any Member or Member Firm concerned, the Executive Counsel, and the relevant Participant.

9(12) (i) Unless the Disciplinary Tribunal shall otherwise decide, an Adverse Finding in relation to a Member or Member Firm and any order under paragraph **9(8)** against a Member or Member Firm shall take effect 29 days after the date on which the finding or order is notified to the Member or Member Firm.

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(ii) The Disciplinary Tribunal shall decide the extent to which the order shall apply even if the Member or Member Firm appeals against the order provided that the Disciplinary 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 **10(1)**.

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(iii) If the person appointed under paragraph **10(4)** refuses leave to appeal, the order shall take effect from the date notification of that refusal is sent to the proposed Appellant.

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9(13) The Conduct Committee shall publish the report or reports prepared by the Disciplinary Tribunal for the purposes of paragraph **9(11)** as soon as practicable and in such manner as it thinks fit unless this would not, in the opinion of the Conduct Committee, be in the public interest.

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Appeals

10(1) If the Disciplinary Tribunal makes an Adverse Finding in relation to any Member or Member Firm, with or without any order under paragraph 9(8), then subject to paragraph 10(2) the Member or Member Firm may, within 28 days after the date on which the Adverse Finding and any order are notified to him or it, give to the Conduct Committee notice of appeal against the finding and/or order.

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10(2) An appeal under paragraph 10(1) against a decision of the Disciplinary Tribunal can be made only on the following grounds:-

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- (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 or it on the making of reasonable enquiry; and/or
- (iv) that the sanction imposed pursuant to paragraph 9(8) was manifestly unreasonable.

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10(3) Any notice of appeal shall:-

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- (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.

10(4) Upon receipt of a notice of appeal, the Conduct Committee shall send the notice of appeal to the Convener who shall as soon as practicable appoint a person from the **Tribunal** Panel 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.

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10(5) If the notice of appeal was not given to the Conduct Committee within the 28 day period set out in paragraph **10(1)**, the person appointed under paragraph **10(4)** shall refuse leave to appeal unless there are good reasons for giving leave to appeal out of time.

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10(6) Unless the person appointed under paragraph **10(4)** has refused leave to appeal under paragraph **10(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 **10(2)**.

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10(7) (i) Following his decision to give leave to appeal under paragraph **10(6)**, or to refuse leave to appeal, the person appointed under paragraph **10(4)** shall notify the Conduct Committee and provide reasons in writing for his decision and the Conduct Committee shall notify each Member or Member Firm concerned, the Executive Counsel, the relevant Participant and the Convener; and

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(ii) if the person appointed under paragraph **10(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 Conduct Committee with details of the Appeal

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Tribunal appointed and notify the Executive Counsel and each Member or Member Firm concerned.

10(8) Subject to this Scheme, the procedure adopted by an Appeal Tribunal to deal with any appeal shall be in accordance with the Regulations.

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10(9) A Member or Member Firm may, either voluntarily or at the invitation of the Appeal Tribunal or the Executive Counsel at any stage of the appeal make an admission in respect of any alleged particulars of fact, any alleged acts of misconduct or any alleged failures to comply with his or its obligations under paragraphs 14(1) or 14(2) and such admissions shall constitute proof before an Appeal Tribunal against the Member or Member Firm making the admission.

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10(10) 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.

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10(11) 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 paragraph 10(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 9(8).

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10(12) On an appeal the Appeal Tribunal shall have power to:-

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- (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, save as to costs, the Appellant is not more severely dealt with on appeal than he or it 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 paragraph 10(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;

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(iii) order that any Appellant be required to pay, in the manner set out in paragraph 13 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.

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10(13) The Appeal Tribunal shall make a report, which shall be signed by its Chairman, setting out its decision and reasons and any related orders made pursuant to paragraph 10(12) and send it to the Conduct Committee which shall then send a copy to the Member or Member Firm concerned, the Executive Counsel, and the relevant Participant(s).

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10(14) A decision of the Appeal Tribunal shall take effect from the next working day after the date on which the Appeal Tribunal's report is sent to the Member or Member Firm.

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10(15) At any time before the Appeal Tribunal gives its decision in respect of the appeal of an Appellant in accordance with paragraph 10(14), such Appellant may withdraw his or its 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.

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10(16) The Conduct Committee shall publish the report sent to it by the Appeal Tribunal pursuant to paragraph 10(13) as soon as practicable and in such manner as it thinks fit unless this would not, in the opinion of the Conduct Committee, be in the public interest.

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Disciplinary and Appeal Tribunals

11(1) (i) The Nominations Committee of the FRC shall from time to time appoint not less than four (4) individuals (all of whom shall be independent of the Conduct Committee) to form an appointment committee to appoint individuals (having the appropriate qualifications and experience to sit on a Tribunal) to be members of the Tribunal Panel. The appointment committee shall include at least one lawyer (whether judge, barrister or solicitor), an accountant and an actuary (neither of whom shall be in practice).

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

11(2) A Tribunal shall be appointed from the Tribunal Panel by the Convener and shall be composed as follows:-

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- (i) Each Tribunal shall consist of either three or five persons as the Conduct Committee in its absolute discretion thinks fit.
- (ii) The Chairman of a Disciplinary Tribunal must 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 accountant); and
 - (b) an accountant.
- (iv) A five-person Tribunal must include in addition to the Chairman:-

(a) at least one lay person (who is neither a lawyer or an accountant); and

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

(v) Each accountant appointed to a Tribunal shall be a Member.

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(vi) No serving member of the governing body of, or any officer or employee of, any of the Participants shall be appointed as a Convener or to a Tribunal. However, former members of the governing bodies and former officers or employees of Participants shall not be precluded from such appointment provided that at least two years has elapsed since the termination of the appointment or employment.

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(vii) 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 as a Convener or to a Tribunal. A former member, board or committee member, director or officer as aforesaid shall not be precluded from such appointment provided that at least two years has elapsed since the termination of the appointment or employment.

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(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 an appeal, or with any earlier proceedings relevant thereto, shall be appointed or to a Tribunal.

11(3) Subject to paragraph **11(2)**, 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 Disciplinary Tribunals may be appointed to the other or others.

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11(4) Where there are two or more notices of appeal against Adverse Findings and/or orders made by the same Disciplinary Tribunal, the Convener may

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appoint the same Appeal Tribunal to hear some or all of the appeals. Subject to paragraph ~~11(2)~~, 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.

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~~11(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.

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~~11(6)~~ A session of a hearing shall be postponed if (whether by reason of incapacity or otherwise):-

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- (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 accountant and one lay person who is neither a lawyer nor an accountant.

~~11(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.

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(ii) If a session is postponed pursuant to paragraph ~~11(6)~~, or if for any other reason 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 Conduct Committee which shall consider whether in all the circumstances it would be appropriate and consistent with ensuring a

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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 Conduct Committee decides that it would be appropriate and consistent with ensuring a fair hearing of the matter, the Convener shall 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 Conduct Committee with details of any new Chairman, Tribunal Member, or Tribunal (as appropriate) and notify Executive Counsel and each Member or Member Firm concerned.

~~11(8)~~ (i) Save as provided for in paragraph ~~11~~(5), any matter to be decided by a Tribunal shall be decided by a majority of votes.

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(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 ~~9~~(9), then no award of costs shall be made.

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(iv) Where the Tribunal has cast an even number of votes in respect of any other issue, the Chairman shall have a second vote.

11(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.

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11(10) (i) The Executive Counsel shall act as complainant (before a Disciplinary Tribunal) and respondent (before an Appeal Tribunal) and shall bring evidence against the Member or Member Firm in respect of the subject matter of the Formal Complaint or appeal before the Tribunal.

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(ii) Every Tribunal shall give any Member or Member Firm the subject of a Formal Complaint before it a reasonable opportunity to hear the evidence against him or it, to cross-examine witnesses called by the Executive Counsel, to call witnesses and lead evidence in his or its defence and to make representations orally or in writing to the Tribunal.

(iii) Any such Member or Member Firm shall be entitled to be represented by a Representative at all hearings of the Tribunal.

(iv) Any witness called by the Member or Member Firm, including the Member, may be cross-examined by the Executive Counsel.

11(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.

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11(12) The Tribunal may exclude from a hearing any evidence

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(i) obtained in the course of settlement negotiations between the Executive Counsel and the parties to the matter unless the subject of a specific admission; and

(ii) which, in its opinion, it is necessary to exclude in order to:-

a) ensure fairness between the parties; and

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b) preserve the interests of justice.

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11(13) All Tribunal hearings shall be conducted in accordance with the laws of England and Wales.

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Standard of Proof

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

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Payments

13(1) Where a Tribunal makes an order for the payment of a fine and/or costs against a Member or Member Firm, then:-

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- (i) in the case of a Member, 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) in the case of a Member Firm, such monies:-
 - (a) shall be due from the Member Firm concerned; and/or
 - (b) shall be jointly and severally due from, and shall be paid by, those Members who were partners in, members of, directors of or the proprietor of such Member Firm during any part of the time relevant to the Adverse Finding or thereafter, whether or not they were Members or it was a Member Firm during any part of that time; and/or
 - (c) shall be jointly and severally due from, and shall be paid by, any Successor Member Firm and/or any Member of the Same Group as the Member Firm, and/or those Members who were

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partners in, members of, directors of or the proprietor of such entity during any part of the time relevant to the Adverse Finding or thereafter, whether or not they were Members or it was a Successor Member Firm or Member of the Same Group as the Member Firm, during any part of that time;

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(d) shall be so due from, and shall be paid by, the Member Firm and the individuals referred to in paragraph 13(1)(ii)(b) even if it ceased to be a Member Firm or they ceased to be Members on or after the date of the report of the Disciplinary Tribunal;

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(iii) in either case, such monies shall be paid to the FRC, and applied in the manner agreed between the FRC and the Participants;

(iv) 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 10(5), such fine and/or costs shall be paid when the order takes effect under paragraph 9(12)(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;

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(v) 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 10(13) is notified to the Member or Member Firm 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;

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(vi) the FRC 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;

(vii) in the event of non-payment in full, including any interest, of a fine and/or cost order within the time specified for payment, the Member concerned shall be excluded as a Member of one or more Participants and in the case of a Member Firm the removal of registration by one or more Participants shall be recommended.

~~13(2)~~ Where a Disciplinary Tribunal makes an order for the payment of costs against the FRC, 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.

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Obligations of Members and Member Firms

~~14(1)~~ (i) Every Member, Former Member, Member Firm, Former Member Firm and Successor Member Firm shall at all times co-operate fully with the Executive Counsel and with any Tribunal appointed pursuant to this Scheme.

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(ii) Every Member Firm, Former Member Firm and Successor Member Firm shall use its best endeavours to ensure that every employee of that Member Firm, Former Member Firm, or Successor Member Firm shall at all times co-operate fully with the Executive Counsel and with any Tribunal appointed pursuant to this Scheme,

(iii) Without prejudice to the generality of paragraphs ~~14(1)(i)~~ and ~~14(1)(ii)~~, such full co-operation shall include complying with any notice served pursuant to paragraph ~~14(2)~~.

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14(2) The Executive Counsel shall have power by notice served on any Member, Former Member, Member Firm, Former Member Firm or Successor Member Firm to call on him or it (to the extent that he or it can lawfully do so):-

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(i) to provide:

(a) to the Executive Counsel or to any person appointed or employed by him or by the Conduct Committee on behalf of the FRC, such information and explanation relevant to any matter under investigation or preliminary enquiry pursuant to paragraph 6(10) or following the service of a Formal Complaint orally and/or in writing as the Executive Counsel shall require; and

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(b) evidence to a Tribunal orally and/or in writing as the Executive Counsel or the Tribunal shall require;

(ii) to permit the inspection and taking of copies of documents and other information relevant to the matter under investigation which are in the possession or under the control of such Member, Former Member, Member Firm, Former Member Firm or Successor Member Firm; and

(iii) to the extent reasonable, to supply copies of documents and other information (in whatever form it may be held, including) at his or its own expense;

and it shall be the duty of any Member, Former Member, Member Firm, Former Member Firm or Successor Member Firm on whom such a notice is served under this paragraph to comply with it within 14 days of the date of the notice or such longer period as the Executive Counsel may allow.

14(3) If, at any time, the Executive Counsel considers that:-

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(i) there are grounds upon which a Disciplinary Tribunal could make an Adverse Finding that a Member, Former Member, Member Firm,

Former Member Firm or Successor Member Firm, whether or not he or it is within the scope of any investigation, has failed to carry out any obligation under paragraph 14(1) and 14(2); and

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- (ii) it is appropriate for those grounds, or some of them, to be presented to a Disciplinary Tribunal,

he shall take the steps at paragraphs 7(10) and 7(11).

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14(4) Where a Formal Complaint under paragraph 7(11) specifies grounds which the Executive Counsel alleges justify an Adverse Finding by reference to paragraph 5(1)(ii), the Conduct Committee may direct that the Formal Complaint be heard by the Disciplinary Tribunal which is hearing or is to hear another Formal Complaint.

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14(5) Where paragraph 14(3)(i) applies the references in paragraphs 7(10) and 7(11) to a Member or Member Firm shall be treated as referring respectively to a Former Member or Former Member Firm or to a Successor Member Firm.

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Interim Orders

15(1) Where, at any stage in the period between:

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- (i) the making of a decision to investigate under paragraph 6(3) or 6(8);
and

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- (ii) the making of a decision by the Disciplinary Tribunal under paragraph 9(7);

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the Executive Counsel is of the opinion that a Disciplinary Tribunal should consider making an Interim Order in relation to a Member or Member Firm, he shall present an application to the Conduct Committee.

15(2) Where the Executive Counsel presents an application in accordance with paragraph 15(1), the Conduct Committee shall serve notice of the application on the Member or Member Firm concerned and shall, as soon as reasonably practicable, send a copy of the application to the Convener.

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15(3) The Convener shall, as soon as reasonably practicable following receipt of an application for an Interim Order, appoint a Disciplinary Tribunal to hear the application in accordance with the provisions of this Scheme and provide the Conduct Committee with details of the Disciplinary Tribunal appointed and notify the Executive Counsel and each Member or Member Firm concerned.

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15(4) Subject to this Scheme, the procedure adopted by a Disciplinary Tribunal to deal with an application for an Interim Order shall be in accordance with the Regulations.

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15(5) After hearing the application for an Interim Order, the Disciplinary Tribunal may, where it thinks fit, having regard to:

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- (i) the purposes for which the Scheme has been established as set out in paragraph 1(2); and
- (ii) the public interest (including, in particular, the protection of members of the public); and
- (iii) any guidance issued by the Conduct Committee under paragraph 3(1)(ii),

make such Interim Order against the Member or Member Firm as is contained within the schedule of Interim Orders at Part 1 of Appendix 2 to this Scheme, for such period or until the occurrence of such event as it defines.

15(6) (i) The Disciplinary Tribunal shall make a report, which shall be signed by its Chairman, setting out its decision and reasons and send it to the Conduct Committee.

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(ii) The Conduct Committee shall send a copy of the Disciplinary Tribunal's report to the Member or Member Firm concerned, the Executive Counsel and the relevant Participant.

~~15(7)~~ Unless the Disciplinary Tribunal shall otherwise decide, an Interim Order in relation to a Member or Member Firm shall take effect from the date on which the Interim Order is notified to the Member or Member Firm.

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~~15(8)~~ The Disciplinary Tribunal appointed to consider the particular matter shall review any Interim Order within 6 months from the date it took effect and thereafter at 6 monthly intervals until such time as it has expired or been discharged. Such review shall be dealt with in accordance with the Regulations.

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~~15(9)~~ The Executive Counsel or the Member or Member Firm may apply at any time for an Interim Order to be reviewed on the grounds of a change in circumstances since the Interim Order was made. Such application shall be dealt with in accordance with the Regulations.

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~~15(10)~~ On a review of an Interim Order the Disciplinary Tribunal may make such decision as is contained within Part 2 of Appendix 2 to this Scheme and shall report to the Conduct Committee in accordance with paragraph ~~15(6)~~.

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~~15(11)~~ Unless the Disciplinary Tribunal shall otherwise decide, a decision on a review of an Interim Order in relation to a Member or Member Firm shall take effect from the date on which the decision is notified to the Member or Member Firm.

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~~15(12)~~ A Member or Member Firm may appeal against an Interim Order made under paragraph ~~15(5)~~ or following a review under paragraph ~~15(10)~~ in the same manner as against any Adverse Finding of the Disciplinary Tribunal.

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Proof of Certain Matters

~~16(1)~~ The fact that a Member or Member Firm:-

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- (i) has, before a Court of competent jurisdiction in the United Kingdom, been convicted of a criminal offence, or
- (ii) has, before a Court outside the United Kingdom, been convicted of an offence which would have constituted a criminal offence had the matter been prosecuted in the United Kingdom,

shall for the purposes of this Scheme be conclusive evidence of **Misconduct** by the Member or Member Firm, whether or not he or it was a Member or Member Firm at the time of the conduct resulting in the conviction.

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16(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.

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16(3) The fact that a Member or Member Firm:-

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- (i) has had an adverse finding made against him or it in respect of his or its conduct in proceedings before a regulatory body performing its functions under the Financial Services and Markets Act 2000, the Insolvency Act 1986, the Companies Act 1989 or the Companies Act 2006, or any similar or analogous legislation in any other jurisdiction; or
- (ii) has had a disqualification order made against him under the Company Directors Disqualification Act 1986 or has been restricted or prohibited from being a director of a company by reason of an order made against him under the Companies Act 1990 of the Republic of Ireland or the Directors Disqualification (Northern Ireland) Order 2002, or any similar or analogous legislation in any other jurisdiction,

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

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16(4) Without prejudice to paragraphs 16(1) and 16(3), a finding of fact:-

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- (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 16(5);
- (iv) in any proceedings as a result of which an accountant was notified by or on behalf of the Council of the Law Society that he was not qualified to give an accountant's report within the meaning of section 34 (accountant's report) of the Solicitors Act 1974 or equivalent provision in Scotland, Northern Ireland or Ireland;
- (v) in any proceedings before, or report by, any regulatory, professional or disciplinary body outside the United Kingdom; or
- (vi) in any report or proceedings which, in the opinion of the relevant Tribunal, corresponds or correspond to any report or proceedings referred to in paragraphs 16(4)(i) to (v) (inclusive) above,

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

16(5) The bodies referred to at paragraph 16(4)(iii) are:-

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(i) The Financial Services Authority;

(ii) The Financial Services and Markets Tribunal;

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(iii) The Conduct Committee of the FRC;

(iii) any recognised professional body within the meaning of the Insolvency Act 1986;

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(iv) any recognised supervisory body within the meaning of the Companies Act 2006

(v) any designated professional body within the meaning of the Financial Services and Markets Act 2000;

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(vi) any body replacing, additional to or pre-dating a body identified in paragraphs 16(5)(i) to (v) and performing the same or broadly similar functions, and whose regulatory arrangements are of a similar standing.

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16(6) Paragraphs 16(1) to 16(5) (inclusive) are without prejudice to the generality of paragraphs 9(6) and 10(10) and nothing in paragraph 16(4) shall affect the evidential status of any report or other document not referred to in paragraph 16(4).

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Legal Representation of Members

17 If, on the application of a Member, a Tribunal concludes that:-

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(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 require the FRC to meet the reasonable costs of that Member's legal representation at the hearing before the Tribunal.

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Member Firms

- 18** If a Member Firm ceases to be a Member Firm, discontinues its business or ceases to exist, the rights and the obligations which would otherwise have fallen on such Member Firm may be exercised and shall be discharged respectively by the Members who were partners in, directors or members of such Member Firm at any time from the beginning of the time relevant to the matter under investigation until it ceased to be a Member Firm, discontinued its business or ceased to exist.

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Disclosure of Information

- 19(1)** The Regulations may make provision enabling the FRC or the Executive Counsel to disclose information and explanation and supply evidence, whether originally oral or in writing, obtained under this Scheme to the FRC for any purposed connected with its remit, 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 FRC considers appropriate.

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- 19(2)** A Member or Member Firm shall treat as confidential all information which is not in the public domain and which is provided by the FRC (whether through the Executive Counsel or otherwise), in the course of a preliminary enquiry, an investigation or disciplinary proceedings under this Scheme.

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- 19(3)** A Member or Member Firm shall only disclose information to persons other than their legal representatives (and those assisting such legal representatives) with the express consent of Executive Counsel. A breach of confidentiality

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which has the potential to adversely affect the conduct of the investigation or disciplinary proceedings shall be evidence of a failure to cooperate with the Executive Counsel for the purposes of paragraph 14(1) save where such disclosure is required by law, court order or another regulatory body having jurisdiction over the Member or Member Firm.

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Transitional Arrangements

20(1) The provisions of this further amended Scheme will have immediate effect.

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20(2) Any steps taken by the AADB or the Board under any previous version of the Scheme shall be deemed to have been taken by the FRC or the Conduct Committee, as appropriate, under this Scheme as amended by the FRC with effect from [] 2012.

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Amendment and Termination of this Scheme

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21(1) This Scheme may be amended by a resolution of the board of the FRC. Such amendments shall be subject to public consultation (unless the nature of the proposed amendment is such that the Participants agree that public consultation would be unnecessary).

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21(2) Amendments to the Scheme which are the subject of a dispute between the FRC and one or more of the Participants shall be resolved by an independent adjudicator (such as a recently retired High Court Judge), who shall determine whether the proposed amendment is appropriate to achieve the purpose for which the Scheme has been established (as set out in paragraph 1(2)).

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21(3) The identity of the independent adjudicator shall be agreed by the parties to the adjudication. The independent adjudicator shall adopt a procedure that includes the making of written (but not oral) submissions by the parties to the adjudication.

21(4) The decision of ~~the~~ independent adjudicator shall be binding on the FRC and the Participant(s) concerned.

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21(5) ~~The Scheme may be terminated by the FRC by giving notice of not less than six months expiring on 31st December in any year.~~

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Appendix 1

FRC Scheme Schedule of Sanctions

The following sanctions may be made by a Tribunal as referred to in paragraph 9(8)(i):

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Members

Reprimand

Severe Reprimand

Condition – The Tribunal may order a Member to comply with any direction that it considers, in its absolute discretion, appropriate. By way of example and without limitation to the Tribunal's discretion, such direction may require a Member to undertake education or training, to comply with particular requirements when practising (including restrictions on the nature of any work undertaken or clients represented). Exclusion as a Member of one or more Participants and that the exclusion be for a recommended specified period of time

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Fine – amount specified by the Tribunal (and in the event of non-payment in full, including any interest, of a fine and/or cost order within the time specified for payment exclusion as a Member of one or more Participants)

Waiver/repayment of client fees

Order that a Member be ineligible for a prescribed period for a practising certificate or registration or authorisation or a licence (for the practice of any activity requiring such a certificate, registration, authorisation or licence)

Order that a Member's practising certificate or registration or authorisation or licence be withdrawn (for the practice of any activity requiring such a certificate, registration, authorisation or licence). The Tribunal may recommend that such certificate, registration, authorisation or licence not be reinstated for a specified period of time.

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Member Firms

Reprimand

Severe Reprimand

Condition – The Tribunal may order a Member Firm to comply with any direction that it considers, in its absolute discretion, appropriate. By way of example and without limitation to the Tribunal's discretion, such direction may require a Member Firm to implement education or training programmes, or to implement organisational or administrative requirements (including restrictions on the nature of any work undertaken or clients represented).

Fine – amount specified by the Tribunal (and in the event of non-payment in full, including any interest, of a fine and/or cost order within the time specified for payment the failure shall have the same consequences for each Member who was a sole practitioner in, a partner in, a member (of a limited liability partnership) of, or a director of the firm at the relevant time as it would if the fine or costs had been imposed on him individually)

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Waiver/repayment of client fees

Order that a Member Firm be ineligible for a prescribed period for registration or authorisation or a licence (for the practice of any activity requiring such registration, authorisation or licence)

Order that a Member Firm's registration or authorisation or licence be withdrawn (for the practice of any activity requiring such registration, authorisation or licence). The Tribunal may recommend that such registration, authorisation or licence not be reinstated for a specified period of time.

FRC Scheme Schedule of Interim Orders

PART 1:

The following Interim Orders may be made by a Disciplinary Tribunal as referred to in paragraph 15(6):

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Members

Order that conditions be attached to a Member's practising certificate or registration or authorisation or licence (for the practice of any activity requiring such a certificate, registration, authorisation or licence).

Order that a Member's practising certificate or registration or authorisation or licence be suspended (for the practice of any activity requiring such a certificate, registration, authorisation or licence).

Order that a Member be suspended from membership.

Member Firms

Order that conditions be attached to a Member Firm's registration or authorisation or licence (for the practice of any activity requiring such registration, authorisation or licence).

Order that a Member Firm's registration or authorisation or licence be suspended (for the practice of any activity requiring such registration, authorisation or licence).

PART 2:

The following orders may be made on a review of an Interim Order by a Disciplinary Tribunal as referred to in paragraph 15(10):

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Members

Order to revoke an Interim Order

Order to revoke or vary any conditions attached to a Member's practising certificate or registration or authorisation or licence (for the practice of any activity requiring such a certificate, registration, authorisation or licence).

Where it thinks fit, having regard to the matters set out in paragraph 15(5)(i)-(iii), replace an order for conditions with an order for suspension or replace an order for suspension with an order for conditions.

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Order that the period of the Interim Order be extended.

Member Firms

Order to revoke an Interim Order.

Order to revoke or vary any conditions attached to a Member Firm's registration or authorisation or licence (for the practice of any activity requiring such registration, authorisation or licence).

Where it thinks fit, having regard to the matters set out in paragraph 15(5)(i)-(iii), replace an order for conditions with an order for suspension or replace an order for suspension with an order for conditions.

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Order that the period of the Interim Order be extended.

6(12) Following service of the notice under paragraph 6(10) and prior to delivery of a Formal Complaint under paragraph 6(11):-

the Executive Counsel, at his sole discretion, and having regard to the public interest, may decide that the matter is appropriate for settlement discussions under the terms of this Scheme; and

where Executive Counsel so decides, he shall:

notify the Member or Member Firm concerned that he is prepared to enter into settlement discussions; and

provide a copy of such notice to the Group of the Case Management Committee appointed to monitor the case.

6(13) Where, following settlement discussions:-

terms of a settlement are agreed between the Executive Counsel and the Member or Member Firm, the Executive Counsel shall deliver a Proposed Settlement Agreement to the Conduct Committee.

- (ii) terms of a settlement are not agreed between the Executive Counsel and the Member or Member Firm, the Executive Counsel shall proceed to deliver a Formal Complaint in accordance with paragraph 6(11).

6(14) Upon receipt of a Proposed Settlement Agreement the Conduct Committee shall appoint at least two Settlement Approvers, of whom:

at least one must be legally qualified; and

one, but not more than one, may be a Member.

- 6(15)** The Settlement Approvers shall consider the appropriateness of the Proposed Settlement Agreement having regard to the purpose for which the Scheme has been established as set out in paragraph 1(2) and to any guidance issued by the Conduct Committee under paragraph 3(1)(ii).
- 6(16)** A Proposed Settlement Agreement must be approved by all Settlement Approvers appointed pursuant to paragraph 6(14) for it to become effective. In any other case, a Proposed Settlement Agreement shall be treated as having been rejected by the Settlement Approvers.
- 6(17)** As soon as reasonably practicable, the Settlement Approvers shall inform the Conduct Committee of their decision, together with the reasons for that decision, and the Conduct Committee shall notify the Executive Counsel, the Member or Member Firm and the relevant Participant(s) accordingly.
- 6(18)** Where approved, the Settlement Agreement shall take effect from the next working day after the date on which the notice under paragraph 6(17) is sent to the Member or Member Firm.



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