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Guidance on the FRC Board's retention and delegation of AEP, Accountancy Scheme and Actuarial Scheme investigation decisions

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Context

1. In the 2018 [Independent Review of the Financial Reporting Council](#), the Review, having noted that decisions to open investigations under the Audit Enforcement Procedure (**AEP**)¹ and the Accountancy and Actuarial Schemes (**Schemes**) (together, '**procedures**') were decisions of the FRC's Conduct Committee and not of the Board, recommended that the FRC should "*ensure that its internal rules and procedures enable the board to take decisions itself on whether to launch audit investigations in cases it regards as of particular significance or public interest*", albeit recognising that "*The Review does not anticipate the board taking decisions in many such cases, but it should maintain an ability to do so*"².
2. This Guidance therefore follows amendments to the FRC's governance arrangements and the procedures to allow the Board the primary ability to take such decisions and:
 - a) Sets out a presumption that all such decisions will be delegated to the Conduct Committee unless retained by or referred to the Board in accordance with this Guidance (**para 4**);
 - b) Sets out a process by which decisions due to be considered by the Conduct Committee will be notified in advance to the Chair of the Board and Chair of the Conduct Committee to enable such decisions to be retained by or referred to the Board (**para 6-8**);
 - c) Provides guidance on when matters may be considered by the Board or the Conduct Committee to exceed the 'standard' public interest threshold that matters referred under the procedures already meet, such that they amount to '**particular significance**' or '**particular public interest**' meriting a decision to open an investigation being taken by the full Board (**para 9**).
3. The applicable rules in the Procedures are summarised in Annex 1.

Presumption of Delegation to the Conduct Committee

4. Such decisions will be delegated as a matter of course to the Conduct Committee - which is a Committee of the Board - unless the Chair of the Board or the Chair of the Conduct Committee regards a matter to be of such **particular significance** and/or **significant public interest**, under the process and guidance below – that the decision to open an investigation merits consideration by the full Board.

Public interest context to such decisions

5. The public interest is not defined in legislation. However, the Schemes and the statutory framework underpinning the AEP recognise that FRC investigations are all focused on matters which give rise to serious public concern or damage to the public confidence:

¹ This Guidance adopts the definitions used in the AEP

² Recommendation 14 [Independent Review of the Financial Reporting Council](#)

- a) In relation to the AEP, the FRC is the UK's competent authority for statutory audit³. The FRC retains all monitoring, investigation and sanctioning activity in relation to audits of public interest entities. These are defined in legislation but broadly include listed companies, credit institutions and insurance undertakings⁴. The FRC also retains monitoring, investigation and sanctioning activity in relation to other high risk categories of statutory audit; these presently include AIM listed companies with an average market capitalisation in excess of £166m averaged over the past 3 years; and Lloyds Syndicates. Other monitoring, investigation and sanctioning activity is delegated to the Recognised Supervisory Bodies but may be reclaimed.
- b) In relation to the Schemes, the FRC provides independent professional discipline arrangements to participant chartered professional bodies in public interest matters⁵. The threshold for matters to be considered by the FRC (rather than the relevant professional body) is called the Public Interest Threshold. The FRC's published [Guidance](#) on what is considered to meet the 'public interest' threshold for these purposes includes:
 - i. the impact on a significant number of people in the UK;
 - ii. the loss or potential loss of significant sums of money; and
 - iii. whether the conduct undermines confidence in financial reporting or corporate governance in the UK.

Process

6. Any matter proposed for consideration for investigation or reconsideration under Rules 5, 7 or 131 AEP or investigation under paragraph 5 of the Accountancy or Actuarial Schemes (**Decision**) (**Annex 1**) will be included in the notice of meeting and agenda circulated to the Conduct Committee 5 working days in advance of its meeting pursuant to the Conduct Committee Terms of Reference. A copy of the agenda shall simultaneously be circulated to the Chair of the Board.
7. Upon receipt of notification under paragraph 6 above:
 - a) The Chair of the Board may decide that the Board should retain the Decision (**Retention**);
 - b) The Chair of the Conduct Committee may decide to refer a Decision to the Board (**Referral**)

on the basis that it is considered the matter is of particular significance and/or particular public interest under paragraph 4 above.

³ Regulation (EU) No 537/2014; and the Statutory Auditors and Third Country Auditors Regulations 2016 (SI 2016/649).

⁴ SATCAR Reg 2(11) public interest entity" means— (a) an issuer whose transferable securities are admitted to trading on a regulated market; (b) a credit institution within the meaning given by Article 4(1)(1) of Regulation (EU) No. 575/2013 of the European Parliament and of the Council, other than one listed in Article 2 of [Directive 2013/36/EU](#) of the European Parliament and of the Council on access to the activity of credit institutions and investment firms, or (c) an insurance undertaking within the meaning given by Article 2(1) of Council Directive [1991/674/EEC](#) of the European Parliament and of the Council on the annual accounts and consolidated accounts of insurance undertakings;

⁵ Matters which do not pass the public interest threshold in the Schemes are retained for professional discipline action by the participant body in question.

8. In such cases, the retention or referral by the relevant Chair shall be communicated to the Conduct Committee at its meeting (or before) and to the Secretary of the Board who shall convene a Board meeting as appropriate.

Particular significance and/or public interest

9. For the purposes of a Retention or a Referral, matters which may be of **particular significance and/or public interest** and which exceed the underlying public interest threshold and considerations already noted above are likely to involve (but are not limited to):
- a) those which impact on a **very large number** of people in the UK;
 - b) those where losses or potential losses of sums of money may be **widespread and can be expected to have a significant impact on the individuals affected**;
 - c) those which have been, or are expected to be, the **subject of extensive interest and public comment**;
 - d) those where there is a **highlighted need for increased transparency and accountability**;
 - e) those where **public confidence** in the regulation of financial reporting and/or corporate governance **may be highly impacted** by the decision.
10. The Board will keep this Guidance under regular review.

Issued by the Conduct Committee with effect from 5 January 2022

Annex 1

Applicable rules

1. Under the Audit Enforcement Procedure (Rule 2) the Board may delegate any of its functions and decisions as set out in the AEP to the Conduct Committee.
2. Under the Accountancy and Actuarial Schemes the Board has power to delegate to the Conduct Committee its decision under paragraph 5 as to whether a Member or Member Firm (and on occasion former members or successor Member Firms) should be liable to investigation under the appropriate Scheme.



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