

June 2020

Publication Policy (Audit Enforcement Procedure)

The FRC's mission is to serve the public interest by setting high standards of corporate governance, reporting and audit and by holding to account those responsible for delivering them. The FRC sets the UK Corporate Governance and Stewardship Codes and UK standards for accounting and actuarial work; monitors and takes action to promote the quality of corporate reporting; and operates independent enforcement arrangements for accountants and actuaries. As the Competent Authority for audit in the UK the FRC sets auditing and ethical standards and monitors and enforces audit quality.

The FRC (which includes the FRC's officers, employees and agents) does not accept any liability to any party for any loss, damage or costs howsoever arising, whether directly or indirectly, whether in contract, tort or otherwise from any action or decision taken (or not taken) as a result of any person relying on or otherwise using this document or arising from any omission from it.

© The Financial Reporting Council Limited 2020
The Financial Reporting Council Limited is a company limited by guarantee.
Registered in England number 2486368. Registered Office:
8th Floor, 125 London Wall, London EC2Y 5AS

PUBLICATION POLICY

Introduction

1. This policy applies to matters which are the subject of a decision under the Financial Reporting Council (“FRC”)’s Audit Enforcement Procedure (“Enforcement Procedure”).
2. As the Competent Authority for Audit Regulation in the UK, pursuant to the EU Audit Regulation (EU) 537/2014 and the EU Audit Directive 2014/56/EU as implemented by the Statutory Auditors and Third Country Auditors Regulations 2016 (“SATCAR 2016”), the FRC is ultimately responsible for the enforcement and oversight of the adequate execution of statutory audit, and is required to retain and perform directly the task of sanctioning the inadequate execution of Public Interest Entity audits.
3. Publicity about actions taken by the FRC under the Enforcement Procedure contributes to transparency and public confidence in the FRC’s enforcement arrangements as well as informing the public and statutory auditors of, and deterring against, unacceptable and inadequate execution of statutory audit.
4. The FRC is required by SATCAR 2016 to publish details of any Sanctions that it imposes under the Enforcement Procedure (“Mandatory Announcements”). In certain cases, the FRC may be prohibited from publishing certain details regarding the Sanctions imposed¹. The FRC may also publish other matters which are the subject of a decision under the Enforcement Procedure (“Discretionary Announcements”).
5. In respect of Discretionary Announcements, it is a matter for either the FRC’s Conduct Committee (“Conduct Committee”) or Case Management Committee to decide whether to publish such a matter. Each such decision is taken on its own merits and on a case-by-case basis.

Mandatory Announcements

6. The FRC is required by SATCAR 2016 to publish the details of Sanctions it imposes under the Enforcement Procedure. Sanctions can be imposed by the FRC in:
 - a. a Final Decision Notice by Executive Counsel²;
 - b. a Final Decision Notice by the Enforcement Committee³;
 - c. a Final Decision Notice and report by the Tribunal⁴;

¹ See paragraph 18 below.

² Rule 18 AEP.

³ Rule 25 and Rule 27 AEP.

⁴ Rule 54 AEP.

- d. a Final Decision Notice and report by the Appeal Tribunal⁵; and
- e. any decision in relation to an Interim Order made by the Enforcement Committee or the Tribunal or Appeal Tribunal⁶.

Discretionary Announcements

- 7.** The FRC may, but is not required to, publish matters relating to:
- a. the commencement of investigations under the Enforcement Procedure;
 - b. the outcome of such investigations, where a Sanction has not been imposed;
 - c. decisions to accept undertakings from a person in place of a Sanction under the Enforcement Procedure; and
 - d. the acceptance, or declining, of a referral for investigation under the Enforcement Procedure from another regulatory body to the FRC.
- 8.** Decisions to exercise the FRC's discretion under paragraph 7 will be taken by either the Conduct Committee or the Case Management Committee, who will consider whether it is appropriate in all the circumstances to make such an announcement. The relevant Committee will take into account the factors set out at paragraphs 10 to 14 below as relevant before coming to its conclusion.
- 9.** Other announcements may be made by the FRC where the FRC considers that such an announcement is desirable to achieve its objectives or would otherwise be in the public interest.

Decisions to commence an investigation (paragraph 7(a))

- 10.** The relevant Committee will not normally decide to publish the fact of its decision to investigate unless it considers:
- a. that such publication is necessary in all the circumstances; and
 - b. any potential prejudice to the subject of an investigation is outweighed by the factors in favour of publication.
- 11.** In order to determine that an announcement is necessary in all the circumstances, the relevant Committee must consider that an announcement will:
- a. help to maintain public confidence in Statutory Auditors;
 - b. help to maintain public confidence in the regulation of Statutory Auditors;
 - c. protect users of financial statements;
 - d. protect investors;

⁵ Rule 67.

⁶ Rule 60.

- e. help to prevent malpractice that is potentially widespread;
- f. contribute to the effectiveness of the investigation itself, for example by bringing forward witnesses;
- g. help to allay concern; or
- h. help to contain speculation or rumour.

12. Where the relevant Committee has exercised its discretion to publish its decision to commence an investigation under the Enforcement Procedure, and it has been decided that no further action is to be taken following that investigation, the relevant Committee should also publish the outcome of that investigation unless there is a good reason not to.

All other matters (Paragraph 7(b) to (d))

13. In relation to matters covered by paragraphs 7(b) to (d) above, it will not normally be appropriate for the relevant Committee to decide to publish those matters other than when the fact of its investigation has already been published.

14. The factors which are to be taken into consideration when deciding whether it is appropriate to publish an announcement in relation to such a matter include the:

- a. level of public interest in relation to the matter under consideration;
- b. likely impact of such an announcement on public confidence in the regulation of Statutory Audit;
- c. likely impact of such an announcement on fairness to all concerned in relation to the matter in question;
- d. legitimate purpose served by such an announcement; and
- e. requirements imposed by legislation, including applicable data protection laws, the Freedom of Information Act 2000 ("FOIA") and/or the Environmental Information Regulations 2004 ("the EIRs") to either publish such information or to release such information into the public domain upon request.

Content of Announcements

Mandatory Announcements

15. Mandatory announcements will include the fact that a Sanction has been applied, and the type of Sanction.

16. The FRC must include in mandatory announcements:

- a. information concerning the type and nature of the contravention;
- b. the identity of a person sanctioned save where the circumstances in paragraph 18 apply; and

- c. where a Sanction is subject to appeal, information concerning the status and outcome of any appeal.
- 17.** Where a Respondent has agreed to early resolution of the matter and accepted a Decision Notice issued before the matter is referred for a Hearing before a Tribunal, the FRC will usually include in the mandatory announcement:
- a. an acknowledgement of the Respondents' co-operation; and
 - b. the amount or proportion of any discount to Sanction applied for early settlement.
- 18.** The FRC is prohibited from publishing the identity of a person⁷ sanctioned in the mandatory announcement where:
- a. such person is an individual and the competent authority considers the publication of personal data would be disproportionate;
 - b. publication would jeopardise the stability of financial markets;
 - c. publication would jeopardise an ongoing criminal investigation; or
 - d. publication would cause disproportionate damage to any institution or individual involved.
- 19.** Subject to the above, decisions on the content of the mandatory announcement will be taken by the FRC Executive. The FRC Executive may, but is not required to, seek the guidance of the Conduct Committee when deciding if the circumstances set out in paragraph 18 apply.

Discretionary Announcements

- 20.** Where the relevant Committee decides to publish a matter relating to a decision to commence an investigation, the announcement will include sufficient information to enable the reader to understand in broad terms the matter which is being investigated.
- 21.** The Committee will not normally publish the names of a Statutory Auditor Respondent whose conduct is under investigation except:
- a. where failure to do so would defeat the purpose of the announcement, for example because it would not be possible to understand the nature of the matters under investigation without doing so;
 - b. where the identity of the person is already a matter of public knowledge;
 - c. where the identity of the person is obvious from the description of the matter; or
 - d. there are other circumstances which, in the opinion of the Committee, make it appropriate to identify individuals under investigation.

⁷ It is not just a name or job title that may reveal the identity of a person. Information regarding the type and nature of the contravention alone may allow the individual to be identified (if the facts are unique, for example).

- 22.** Where the Committee decides to publish an announcement regarding the outcome of an investigation, publication will include:
- a. sufficient information to enable the reader to understand in broad terms the matter under investigation;
 - b. the outcome of the investigation;
 - c. whether or not the Executive Counsel has issued a Final Decision Notice⁸;
 - d. whether or not the Executive Counsel has issued a Notice of Cancellation⁹
 - e. whether or not the Executive Counsel has agreed with the Respondent that the case be referred directly for a Hearing¹⁰; and
 - f. subject to paragraph 18 above, the identity of the Respondent investigated when:
 - i. the Respondent has been previously identified;
 - ii. the Executive Counsel has issued a Final Decision Notice; or
 - iii. the Executive Counsel has agreed with the Respondent that the case be referred directly for a Hearing.

23. Subject to the above, the content of a discretionary announcement will be determined by the FRC Executive.

Timing of Publication

Mandatory Announcements

- 24.** The FRC is required to publish mandatory announcements as soon as reasonably practicable immediately after the person sanctioned has been informed of the decision.
- 25.** Mandatory announcements will be published on the FRC's website and will remain available for the following periods:
- a. where a Sanction issued by the FRC is not appealed, for at least seven years from the date that the appeal should have been lodged pursuant to Rule 65;
 - b. where a Sanction issued by the FRC is appealed, for at least seven years from the date of determination of the appeal.

Discretionary Announcements

- 26.** Discretionary announcements, if made, will normally be published promptly but the relevant Committee retains discretion to delay publishing them, or parts of them, if it considers there are public interest reasons and/or other reasons under any other

⁸ Rule 18 AEP.

⁹ Rule 16 AEP.

¹⁰ Rule 15 AEP.

applicable laws, such as applicable data protection laws, FOIA or the EIRs, for doing so.

27. Discretionary announcements will be published on the FRC's website and will remain available for a period of at least seven years from the date of the relevant decision.

GENERAL PROVISIONS

Third Parties & Advance Notification

28. Save as otherwise set out in this policy, the identity of third parties will usually be anonymised in any announcements and/or related documents published under this Publication Policy, unless or to the extent that publication of that party's identity is considered fair and necessary in all the circumstances and is in compliance with any applicable data protection laws.
29. The identity of the audited entity will usually be published in any announcements and/or related documents published in relation to the outcome of an investigation under the Enforcement Procedure, unless or to the extent that identification of the audited entity is considered to be unfair and unnecessary in the circumstances.
30. Save where the FRC Executive (for mandatory announcements) or the relevant Committee (for discretionary announcements) decides that a lesser period is appropriate (e.g. more urgent publication is desirable to safeguard the public interest), any Respondent and, where appropriate, any other party named or identifiable in an announcement will be given a copy of its proposed terms a minimum of seven days before its intended publication. Where any comments are received in response to such advance notice and to enable the FRC to give due consideration to the comments received, the announcement will not usually be published before the expiry of a further seven days from the original intended publication date unless otherwise agreed or where the FRC Executive or relevant Committee considers earlier publication to be in the public interest.
31. Advance notification of publication of an announcement under this Publication Policy will usually be given to any regulatory body or prosecuting authority with a known interest in the matter in question.
32. Amendments to the wording of press announcements will not generally be accepted, except in relation to matters of factual inaccuracy.

Price Sensitive Information

33. The FRC shall have due regard to the potential risk of the release of price sensitive information which may arise out of or in connection with announcements made under the Enforcement Procedure and shall keep a price sensitive communications policy in operation and under review from time to time in the interests of ensuring the simultaneous release to the market under appropriately controlled conditions of such information. The advance notice period in paragraphs 30 and 31 will not apply in these circumstances.

Manner of Publication

34. Save as otherwise set out in this Publication Policy or required by law, publication will usually take the form of:
- a. a short statement on the FRC's website that includes the information set out in paragraph 6 in relation to mandatory announcements; and/or
 - b. brief factual details relating to the decision or action in question in relation to discretionary announcements; and
 - c. where considered appropriate in all the circumstances, a link to any related detailed decisions or documents.
35. In addition, press announcements will usually be published and circulated in a manner determined by the FRC Executive. The press notice may contain a link to the website statement and any accompanying report.
36. In certain circumstances, and where not contravening the FRC's statutory publication requirements, the FRC may decide to vary the form or procedure in which it publishes an announcement made under this Policy.

**Issued by the Conduct Committee of the FRC
June 2020**



Financial Reporting Council

8th Floor
125 London Wall
London
EC2Y 5AS

+44 (0)20 7492 2300

www.frc.org.uk