

April 2014

Consultation Paper: Revised operating procedures for reviewing corporate reporting

The FRC is responsible for promoting high quality corporate governance and reporting to foster investment. We set the UK Corporate Governance and Stewardship Codes as well as UK standards for accounting, auditing and actuarial work. We represent UK interests in international standard-setting. We also monitor and take action to promote the quality of corporate reporting and auditing. We operate independent disciplinary arrangements for accountants and actuaries; and oversee the regulatory activities of the accountancy and actuarial professional bodies.

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The 2013 Annual Report of the FRC's Corporate Reporting Review, published last October, described a number of developments to the way in which the function works. These were introduced with a view to increasing our effectiveness.

The report highlighted the following :

- Prioritisation of FTSE 350 cyclical reviews;
- Improvements made in our written communications with companies;
- Our aim of completing enquiries within companies' annual reporting cycles;
- The effective use of our powers;
- Use of FRRP Review Groups;
- Liaison with the FRC's Audit Quality Review (AQR); and
- Enhanced transparency.

The report explained that, in order to progress its commitment towards more transparent reporting, the Conduct Committee would consult on changes to its operating procedures.

This consultation paper explains our rationale for enhanced reporting and proposes a small number of consequential amendments to the Committee's procedures.

How to respond

Comments on the questions and issues set out in this consultation document are requested by 16 June 2014.

Responses should be sent by e-mail to crrconsultation@frc.org.uk, or in writing to:

The Corporate Reporting Review Team Secretary
Financial Reporting Council
Fifth Floor
Aldwych House
71-91 Aldwych
London WC2B 4HN

It is the FRC's policy to publish on its website all responses to formal consultations unless the respondent explicitly requests otherwise. A standard confidentiality statement in an e-mail message will not be regarded as a request for non-disclosure. The FRC does not edit personal information (such as telephone numbers or email addresses) from submissions; therefore only information that you wish to be published should be submitted.

PROPOSALS FOR CHANGES TO THE OPERATING PROCEDURES FOR REVIEWING CORPORATE REPORTING

The Conduct Committee is authorised and appointed by the Secretary of State to review the published reports and accounts of companies to monitor and enforce relevant accounting and reporting requirements.

The Committee, through its Corporate Reporting Review activity and with the support of the Financial Reporting Review Panel, enters into correspondence with boards where there is, or may be, a question about their report and accounts. Our exchanges with companies are conducted in accordance with the Committee's operating procedures. These procedures explain the processes the Committee applies and help boards to understand what they may expect when their accounts are subject to review.

The Committee reviews around 250 reports and accounts a year and, typically, writes to anything up to half that number of companies.

The Committee has no statutory power to require or impose any regulatory action in respect of non-compliant reporting. The Committee may, however, apply to the court for a declaration that the annual accounts, strategic or directors' report of a company do not comply with the requirements of the Act and for an order requiring the directors to prepare a revised report or set of financial statements.

The Committee prefers to work constructively with boards to effect regulatory outcomes which are proportionate, cost effective and which also lead to the market having timely access to any corrected or improved information. Neither the Committee, nor its predecessor, the Financial Reporting Review Panel, have had occasion to apply to the court. Both have achieved their objectives through confidential exchanges with boards who, to date, have made the corrections or improvements to their future corporate reporting as agreed.

FRC publicity

Press announcements

The current operating procedures require the Committee to issue a press notice when it applies to the court. They also provide for a press notice to be issued when a company makes a significant change, whether by way of correction or clarification, to its corporate reporting following a Committee intervention. Whether the Committee decides to issue a press notice depends on the facts and circumstances of the case. Generally, however, such announcements either identify matters which we believe investors, boards and their advisors or the press ought to be aware of and/or, the case is such that dissemination cannot wait until the production of the company's next report and accounts.

Committee references

The Committee has also developed a new practice, first adopted by the FRRP in 2007, which it now wants to reflect in its operating procedures; the FRRP Reference or, as now, the Committee Reference. Where a Committee enquiry gives rise to a significant correction or improvement which it considers investors and preparers ought to be aware of but where there is less cause to inform the market at large, it may ask the company to refer to the Committee's intervention in the report and accounts in which the company makes the change.

A Committee reference is less intrusive than the issue of a press notice. Although it is in the public domain, a Committee reference is generally known only to those who read the specific set of accounts in which it appears. There is no mention of Committee references in the Committee's current operating procedures.

Paragraph 67 of the draft operating procedures introduces the concept of the Committee reference and indicates the tests the Committee applies to ensure that the text is fair and balanced.

Paragraph 68 indicates that the Committee expects to be given the opportunity to comment on any disclosure a company intends providing voluntarily in their report and accounts in which they refer to their engagement with the Committee. We welcome this practice, which is in line with recent changes in the FRC's UK Corporate Governance Code (2012) requiring Audit Committees to report on the significant issues it considered in relation to the company's financial statements.

Question 1

Do you support the description of the Committee reference and the proposals in paragraphs 67 and 68 ?

Our original practice was not to seek any further publicity in respect of Committee references which are not mentioned in the current operating procedures.

However, the steady rash of failures and disappointments emanating from within the business and financial community during the recent economic crisis raised a question concerning the trustworthiness of corporate activity. We now operate in a regulatory environment where increased transparency is both expected and required in order to restore trust. Transparency enhances both integrity and reputation.

We believe that investors and potential investors would benefit if we were clearer about our regulatory outcomes. Greater visibility about the changes we achieve will provide them with assurance that we are actively monitoring and challenging poorer corporate reporting and securing improvements in the quality of reporting in the UK. This supports the FRC's mission of promoting high quality governance and reporting to foster investment.

We propose that, where a company publishes a Committee reference at our request, we identify the name of the company in our next annual report, together with a brief indication of the matter at issue (paragraph 69).

The citing of corrections which the Committee has secured would allow others to appreciate what has been found to be non-compliant and would illustrate what the Committee finds unacceptable in terms of corporate reporting. In this context, we note that all but one of the 11 companies who had published a Committee reference in the year under review, did not object to being named in our 2013 Annual Report. We believe that this response from the companies concerned supports this proposal for enhanced transparency.

Question 2

Do you support our proposal to identify companies who have published a Committee reference in the Committee's next annual report ?

In addition to the proposed changes of substance, noted above, we propose a number of other amendments to the procedures where your comments are welcome. Key changes are as follows:

Paragraph 6

We propose extending the reference to Standards published by the European Securities and Markets Authority to include Guidelines where relevant for the Conduct Committee.

Paragraph 17

The Committee's approaches to corporate boards often include references to aspects of their reporting in addition to compliance with mandatory reporting requirements.

For example, a long-standing project of the FRC is to encourage companies to cut clutter from their reports and accounts. Clutter undermines the usefulness of reports and accounts by obscuring important information and preventing a clear understanding of the business and the issues that it faces. We believe that cutting clutter improves the quality of financial reporting. The Committee's letters to companies may draw boards' attention to apparent opportunities for them to reduce their disclosures.

Paragraph 18

Since the middle of 2013, our opening letters to boards have, where practicable, been copied to the Audit Committee Chair in addition to the Finance Director.

Paragraphs 73 – 77

Although the Conduct Committee proactively selects company reports and accounts for review, we continue to welcome well-informed complaints and referrals about specific company reports and accounts.

Since our last consultation, the FRC has improved its website in explaining how it manages complaints. The proposed addition to the procedures includes a link to the FRC's reference and advice to whistle-blowers. The more specific a complaint and the more information provided to support it, the more likely it is we will be able to progress it satisfactorily. The proposed new text also clarifies that whilst anonymous complaints are treated in the same way as other complaints, they preclude the Committee from clarifying the matter at issue or notifying the complainant of the outcome of any enquiry. For these reasons, anonymous complaints are less likely to be an effective mechanism for improving the quality of corporate reporting.

The procedures also explain the very limited circumstances in which, notwithstanding our general commitment to confidentiality, the identity of the complainant may be revealed.

THE CONDUCT COMMITTEE

OPERATING PROCEDURES FOR REVIEWING CORPORATE REPORTING

PART 1 - INTRODUCTION

Preamble

1. The Conduct Committee is part of the Financial Reporting Council, the United Kingdom's independent regulator for corporate reporting, auditing and corporate governance.
2. Under the Companies Act 2006 ("the Act") the Conduct Committee has been authorised and appointed by the Secretary of State for the Department of Business, Innovation and Skills (BIS) to exercise functions with a view to ensuring that accounts and financial and other reports, including annual reports, and directors' reports (Reports) of companies and other entities comply with the law and relevant reporting requirements.
3. The Conduct Committee's policy is to select Reports for review (a) by methods which take into account the Conduct Committee's assessment of the risk of non-compliance and the consequence of non-compliance, and (b) as a result of complaints.

Principles

4. As far as possible, the Conduct Committee seeks to operate by agreement with the entities whose Reports have been reviewed.
5. The Conduct Committee shall exercise the functions set out in the Act and in these Procedures with regard to the principles of good regulation set out in the Legislative and Regulatory Reform Act 2006: transparency, accountability, proportionality, consistency, and targeting.
6. The Conduct Committee seeks to comply with the requirements of relevant Standards and Guidelines ~~the Standards of Enforcement~~ issued under the authority of the European Securities and Markets Authority~~ies~~ (ESMA).

Scope and Application

7. The Conduct Committee's scope includes (a) Reports required to be issued under the Act and (b) Reports that are produced by issuers of listed securities and are required to comply with any accounting requirements imposed by listing rules ~~the Financial Conduct Authority's Rules~~ (which has the meaning given by Section 103(1) of the Financial Services and Markets Act 2000).
8. Cases involving Reports required to be issued under the Act are dealt with under Part 2 of these Operating Procedures. Cases involving Reports produced to comply with accounting requirements imposed by listing rules are dealt with under Part 3. Parts 4 and 5 apply to all cases.
9. The Conduct Committee may, where it deems necessary and appropriate, depart from any provision of these Operating Procedures. Nothing in these Operating

Procedures gives rise, or is intended to give rise, to (a) any legal obligation for the Conduct Committee, the Monitoring Committee or any Review Group or any member of those Committees or Group or any member of staff of the FRC, (b) any entitlement in favour of any other person, or (c) any legal relationship between the Conduct Committee, the Monitoring Committee or any Review Group or any member of those Committees or Group or any member of staff of the FRC and any other person.

Committees and Review Groups

10. The Conduct Committee is a committee of the FRC Board. The Monitoring Committee is a committee of the Conduct Committee. The terms of reference of both Committees are available on the FRC website: <https://www.frc.org.uk/About-the-FRC/FRC-structure/Conduct-Committee/Terms-of-Reference.aspx> and <https://www.frc.org.uk/About-the-FRC/FRC-structure/Monitoring-Committee/Terms-of-Reference.aspx>.
11. The Conduct Committee maintains a Financial Reporting Review Panel (FRRP) comprising individuals who have the appropriate qualifications and experience to sit on a Review Group including the Chairman and Deputy Chairman or Chairmen who are also members of the Conduct Committee and the Monitoring Committee. The term “Chairmen” is used throughout these Operating Procedures to refer to the Chairman, the Deputy Chairman or Deputy Chairmen or any combination of them as they consider appropriate in all the circumstances.
12. Review Groups will be appointed from the FRRP by the Monitoring Committee.

Transitional provisions

13. These Operating Procedures will have immediate effect. Any steps taken under the Financial Reporting Review Procedures shall be deemed to have been taken under these Operating Procedures.

PART 2 – REPORTS ISSUED UNDER THE COMPANIES ACT

Annual Accounts

14. The Conduct Committee is authorised¹ for the purposes of section 456 of the Act to make an application to court for a declaration that the annual accounts of a company do not comply, or a directors' report does not comply, with the requirements of the Act and for an order requiring the directors of the company to prepare revised accounts or a revised report.
15. The Conduct Committee's authority extends to all companies that prepare accounts under the Companies Act. In practice, and as agreed with BIS, the Conduct Committee normally exercises this authority only in connection with the accounts of public and large private companies as follows:
 - public limited companies (PLC);
 - companies within a group headed by a PLC;
 - any private company not qualifying as small or medium sized and not excluded from being treated as such under sections 382 to 384 and 465 to 467 of the Act;
 - any private company within a group which does not qualify as a small or medium-sized group.

Initial Consideration

16. Reports are reviewed by FRC Conduct Division staff for indications of potential breach of relevant accounting or reporting requirements. A preliminary analysis with a recommendation as to a course of action is provided to the Chairmen. That analysis and recommendation is considered by the Chairmen to determine whether there is, or may be, a question whether a Report complies with relevant accounting or reporting requirements. Unless the Chairmen conclude that there is or may be such a question, there will be no further review.
17. Where the Chairmen are of the view that there is, or may be, a question whether a Report complies with relevant accounting or reporting requirements and additional information is required to decide whether an enquiry should be opened into an alleged breach, the Chairman (or a member of FRC Conduct Division staff acting on his behalf) may write to the Chairman of the entity under review asking for such information. The letter may also include comments on other aspects of the entity's Report to encourage improvements to the quality of its future reporting.
18. Any such letter will be addressed to the chairman of the entity under review and will be copied to the Finance Director and Audit Committee Chairman where practicable. Subsequent correspondence may be directly with those with responsibility for the preparation of the accounts, such as the Finance Director. The first letter to an entity will enclose a copy of these Operating Procedures and invite the entity to speak to identified members of FRC Conduct Division staff if it has any questions in connection with the functions or powers of the Conduct

¹ Companies (Defective Accounts and Directors' Reports) (Authorised Person) and Supervision of Accounts and Reports (Prescribed Body) Order 2012 (S.I. 2012 No. 1439)

Committee or these Operating Procedures or any other aspect of its conduct or role. Neither the Conduct Committee nor any other Committee or individual acting in accordance with these Operating Procedures will normally disclose how the matter at issue came to its attention. ~~or reveal the identity of any complainant.~~

19. The Chairman (or a member of FRC Conduct Division staff acting on his behalf) may write to the entity under review at any time during the initial consideration following the initial letter sent in accordance with paragraphs 17 and 18.
20. A letter from the Chairman (or a member of FRC Conduct Division acting on his behalf) asking for information does not constitute a Review Group enquiry nor does it prevent the Chairman from enquiring into matters other than those raised in that letter. Such a letter does not prevent the Monitoring Committee from later opening an enquiry.
21. Documents, information and explanations provided by entities under review are analysed by FRC Conduct Division staff and reports produced for the Chairmen.
22. Where, following any of the steps above, the Chairmen:
 - a) are satisfied by the entity response that there was no breach of applicable accounting and reporting requirements or that the breach is such that it does not warrant further action by the entity; or
 - b) conclude that proposals made by the directors of the entity to rectify one or more Reports by way of revision or to take alternative corrective or clarificatory action, should be accepted;there will be no further review.
23. Where the matter has not been concluded in accordance with paragraph 22 and the Chairmen conclude that there may have been a breach of relevant reporting requirements or that it is necessary to enquire further into whether there has been such a breach, they shall refer the matter to the Monitoring Committee to open an enquiry.
24. At any time during the initial consideration of a case, the Chairmen may consult with FRC Conduct Division staff, consultants or members of the FRRP. Where the Chairmen consider it necessary, they may seek an opinion from independent lawyers or accountants.

Opening an enquiry and appointment of a Review Group

25. On receiving a referral from the Chairmen following the initial consideration, the Monitoring Committee shall determine whether to open an enquiry and appoint a Review Group to consider the matters at issue.
26. Review Groups consist of five or more FRRP members and usually include the Chairman and one of the Deputy Chairmen. Where the Chairman is unable to chair a particular Review Group, one of the Deputy Chairmen shall do so and the other will normally be a member of the Review Group. The Chairman and Deputy Chairman shall constitute a minority of the Review Group. Where none of the Chairmen is able to chair a Review Group, any other Review Group member may do so. Normally, every Review Group includes a lawyer in addition to representatives of the accounting profession. Where practical the Review Group

will include members with relevant specialist or sector expertise. If, at any time, additional members are appointed to a Review Group, the entity under review is informed. When asked to join a Review Group, each FRRP member shall declare any interest he or she may have in, or relating to, the entity. A member with such an interest shall not serve on the Review Group unless the interest is remote and is declared to, and accepted by, the entity.

27. The FRC Conduct Division staff, at the direction of the Monitoring Committee, will write to the entity informing it that the Monitoring Committee has opened an enquiry into the Report under review and has formed a Review Group to conduct the enquiry. The members of the Review Group are identified and the entity is given the opportunity of raising any perceived conflict of interest.
28. The letter to the entity identifies the relevant Report and indicates the respects in which there is, or may be, a question as to whether the Report complies with applicable accounting and reporting requirements. The letter invites the entity to comment on the matters raised as soon as practicable, and may specify a date by which a response is required.

Review Group enquiry

29. The Review Group may, in the course of its enquiries, extend or vary the ambit of its enquiries. It will only do so where it identifies a new issue in respect of which it considers there may have been a breach of a relevant reporting requirement or it is necessary to enquire further to determine whether there has been such a breach. If it decides to extend the nature of its enquiries by raising a new issue, the Review Group notifies the Monitoring Committee and informs the entity as soon as possible after the decision and requests the entity's comments on that matter.
30. The quorum for a meeting of the Group is at least half of its members. Decisions by the Group require a two-thirds majority comprising at least four members.
31. The Chairman of the Group (or a member of FRC Conduct Division staff acting on his behalf) may communicate with an entity under review at any time. The Group may, where appropriate, consult with other members of the FRRP or seek independent advice.
32. Documents, information and explanations provided by entities under review are analysed by FRC Conduct Division staff and reports produced for the Review Group.
33. The Review Group may be satisfied by the entity response that there was no breach of applicable accounting and reporting requirements or that the breach is such that it does not warrant remedial action beyond any proposed by the entity. If so, the Review Group agrees the course of action proposed by the entity and reports to the Monitoring Committee, following which there will be no further review.
34. In a case where agreement has not been reached, the Review Group may, having heard the entity's explanation, conclude that the matter represents a breach of accounting and reporting requirements which the Conduct Committee should pursue. The Review Group will explain to the entity in writing that it is minded to report to the Conduct Committee recommending that the Conduct Committee makes an application to the court and will provide the directors of the

entity under review with an opportunity, at a meeting if they wish, either to persuade the Review Group that the relevant Report does comply with the law or, alternatively, to propose corrective or clarificatory action for the Review Group to consider.

35. The Review Group considers any response to the letter and any further submissions made by the entity under review in correspondence or at a meeting. If the Review Group is still not satisfied by the entity's response or proposals for corrective or clarificatory action, it writes a final letter to the Chairman of the entity. This letter will:
- set out the grounds on which the Review Group believes the accounts are in breach of accounting and reporting requirements; and
 - indicate that it is the Review Group's intention to refer the matter to the Conduct Committee to decide whether or not to apply to the court at any time after 14 days from the date of the letter.
36. The Review Group will consider any response to this final letter. If the Review Group is not satisfied by the response, or no response is received, the Review Group will refer the matter to the Conduct Committee.

Application to court

37. The Conduct Committee considers a report of the Review Group which sets out the issues, the entity's response and the recommendations of the Review Group.
38. If the Conduct Committee considers the report by the Review Group and concludes that:
- a) the matter represents a breach of accounting and reporting requirements;
 - b) any corrective or clarificatory action proposed by the entity under review is not appropriate; and
 - c) taking into account all the circumstances of the case, an application to court is appropriate,
- it shall resolve to apply to court.
39. A decision to apply to court by the Conduct Committee requires a majority of the votes of all the members of the Conduct Committee for the time being (whether present at the meeting or not).
40. On any application to court the Conduct Committee informs other authorities as appropriate, for example, [the Financial Conduct Authority \(FCA\)](#), [the Prudential Regulatory Authority \(PRA\)](#)~~FSA~~, BIS and the Stock Exchange, and will ordinarily make a public announcement.

Meetings

41. Meetings may be held with the entity under review at the initial consideration or Review Group Enquiry stage. The FRC Conduct Division staff identify the purpose of each meeting, notify the entity of any points the Chairmen or Review Group wish to cover and inform the entity of those attending the meeting. Where practicable the FRC Conduct Division staff also indicate possible next steps for which the entity may want to prepare.
42. Review Group and FRC Conduct Division staff attendance depends on the circumstances and the purpose for which a meeting is being held. Normally, where a Review Group has been established, all members of the Group attend. Where individual Review Group members are not present at a meeting they receive a copy of the note of the meeting. Where a Review Group has been appointed the entity is encouraged to ensure that its auditors attend meetings. It is, however, for the entity to decide whether other advisers should also be present. This may depend upon the purpose of the meeting.
43. At any stage during the consideration of a case, the Chairmen or the Review Group may invite the entity to a technical meeting. Technical meetings provide an opportunity for a smaller working group (which will usually be composed of members of the Review Group where one is appointed and will also include members of FRC Conduct Division staff) to progress a case and can take many forms. The entity is informed of the purpose of a technical meeting and of those attending the meeting.
44. After each meeting between the entity under review and the Chairmen or a Review Group a note is prepared of the discussions confirming the matters discussed and the main points agreed. The entity is invited to comment on the substance of the note.

Voluntary revision

45. Where the Chairmen or the Review Group (where an enquiry has been opened) and the entity under review agree that one or more Reports are to be rectified by way of revision, the directors decide whether this should be effected through a full revision and reissue of the relevant Report or by way of supplementary note. The entity's revision of the defective information is monitored by the FRC Conduct Division staff on behalf of the Monitoring Committee. If the entity fails to carry out the revision in the manner agreed as acceptable to the Monitoring Committee, it may open or re-open the enquiry as applicable.
46. In some cases, the Chairmen or the Review Group may accept alternative corrective or clarificatory action by the directors – for example, a corrective statement published by the entity either separately or, if the timing is appropriate, in the next interim or annual report, together with an ~~corrective statement in the following annual accounts and~~ adjustment of the relevant comparative figures and notes, as appropriate and as required by legislation. What form of corrective or clarificatory action is acceptable to the Chairmen or the Review Group depends on the circumstances of each individual case. The following, among other factors, will be taken into account:
 - nature and effect of the defect;

- the need to protect users of accounts;
- the need to correct/prevent a false market operating; and
- timing of the entity's reporting cycle.

47. Whether or not a Review Group has been appointed, a copy of the letter closing a case may be sent to the senior partner or chairman of the entity's auditors

Third parties

48. In some circumstances, and subject to considerations of confidentiality, representations may be sought from third parties where it appears that they may have useful and relevant information to contribute to the Chairmen's initial consideration, the Review Group enquiry and/or the Conduct Committee's consideration of a case.

Advance clearance

49. The Conduct Committee does not operate a system of advance clearance and is unable to give advice to an entity or its auditors as to whether, in its opinion, a particular accounting treatment would or would not meet the requirements of the law or listing rules.

PART 3 – REPORTS ISSUED UNDER FCSA RULES

Appointment for the monitoring of requirements of the FCSA Rules

50. The Conduct Committee is appointed² for the purposes of section 14(2) of the Companies (Audit, Investigations and Community Enterprise) Act 2004 to keep under review Reports produced by certain issuers of transferable securities admitted to trading on a regulated market which are required to comply with any accounting requirements imposed by FCSA rules and, if it thinks fit, to inform the FCSA of any conclusions it reaches in relation to any such Reports.
51. The FRC has overarching Memoranda of Understanding with the FCA and the PRA which set out the arrangements for co-operation and co-ordination. The Conduct Committee may will agree, and may from time to time revise, arrangements with the FCA and/or PRA a Memorandum of Understanding with the FSA in relation to the exercise of these functions. Any such Memorandum of Understanding arrangement shall be published
52. If requested by the FCSA, the Conduct Committee will also review the accounts of any other issuer of listed securities in relation to which the Conduct Committee would not otherwise be able to exercise its functions.

Procedures

53. The Reports produced by issuers of transferable securities which are required to comply with any accounting requirements imposed by FCSA rules will be reviewed in accordance with Part 2 of these Operating Procedures, so far as applicable.
54. The procedures set out in the any arrangement of the Conduct Committee's Memorandum of Understanding with the FCSA and/or PRA are also followed. In the case of any conflict with these Operating Procedures the arrangement Memorandum of Understanding shall prevail.
55. FRC Conduct Division staff may, with the consent of the Chairmen, report to the FCSA at any time on the progress of any case, whether or not a Conduct Committee enquiry has begun.

² Companies (Defective Accounts and Directors' Reports) (Authorised Person) and Supervision of Accounts and Reports (Prescribed Body) Order 2012 (S.I. 2012 No 1439)

PART 4 – INFORMATION, CONFIDENTIALITY AND REPORTING

Powers to obtain information

56. These Operating Procedures govern the terms on which the Conduct Committee, the Monitoring Committee, the Chairmen and the FRC Conduct Division staff receive information and, except as provided by law, no stipulation which conflicts with them will have effect unless accepted by the Conduct Committee in writing.
57. The Conduct Committee has power under section 459 of the Act to require entities, officers, employees and auditors to produce any document or to provide any information or explanations that it may reasonably require for the purposes set out in section 459(2). The Conduct Committee is restricted from disclosing information so supplied except to the persons and for the purposes set out in Section 461. The exceptions provide for disclosure to specified bodies and others performing specified functions.
58. The Conduct Committee hopes to rely on the voluntary co-operation of entities when discharging its responsibilities. Information will therefore usually be sought on a voluntary basis. If information is sought under section 459 of the Act and so on a statutory basis, this will be made clear.

Confidentiality

59. Save as specifically set out in these Operating Procedures the Conduct Committee, the Monitoring Committee, the Chairmen and the FRC Conduct Division staff treat all information obtained under these Operating Procedures and in the exercise of its functions as if it were subject to the restrictions on information received as a result of the exercise of its statutory powers, whether or not it is subject to those restrictions as a matter of law.
60. Information obtained in the course of enquiries or considerations governed by these procedures may be shared with other parts of the FRC's Conduct Division [which includes Professional Discipline and Audit Quality Review](#).
61. FRRP members other than the Chairmen normally become aware of enquiries only when they are asked to join a Review Group or otherwise advise on an individual case. Papers relating to each case are filed electronically or otherwise securely in the offices of the FRC and are retained in accordance with the FRC's retention policy. Care is taken to ensure that there is no unauthorised access to such papers within the general FRC offices.

Public reporting of individual cases

62. The Conduct Committee reserves the right for an announcement to be made where, pursuant to intervention under these Operating Procedures, a company makes a significant change, whether corrective or clarificatory, to its financial or corporate reporting. The entity is invited to comment on the draft press notice.
63. The press notice summarises the accounting or legal issues in question, presents, as far as appropriate, the reasoning and approach to the reporting issue by the Conduct Committee, Review Group or Chairmen, and outlines the remedial action taken by the entity. Where possible the press notice is issued at

the same time as the entity effects the corrective or clarificatory action agreed or earlier.

64. In other cases, if the fact of the enquiry has become public, the Conduct Committee may consider releasing its own announcement.

65. The Conduct Committee makes an announcement on application to court and at the end of any court proceedings.

66. Where the FRC considers that the public interest requires it, the FRC may request the Chair of the Conduct Committee to state whether a particular Report is under review. The Chair, may, in his discretion, accede to such a request. He may also make such a statement on his own initiative, following discussion with the Chairman of the FRC, if he believes the public interest requires it. If, following a statement that a Report is under review, the Conduct Committee concludes that no regulatory action is necessary then, in discussion with the entity, it will offer to issue a press notice to that effect. Subject to that, the Conduct Committee's policy is neither to confirm nor deny that it is enquiring into, or has ever enquired into, a particular Report.

67. The Conduct Committee may ask an entity to refer to its exchanges with the Committee when the entity makes a change to its reporting in its next Report in response to intervention by the Committee ('Committee Reference'). The entity should invite the Committee to comment on the reference prior to publication of the Report. The Committee Reference should be clear as to the nature of the change and how the underlying issue has been resolved and whether or not the Committee's enquiries are fully concluded. Where other matters have yet to be resolved, the Committee may ask the entity to disclose their nature and potential impact.

68. The Conduct Committee welcomes the practice of companies referring to their exchanges of correspondence with the Committee in their Audit Committee Reports or elsewhere in their Report. The Committee expects to be invited to comment on such disclosures in advance of publication.

Other public reporting

69. The Conduct Committee will, from time to time, publicly report the results of its enforcement activity. The Conduct Committee may ~~from time to time~~ summarise the detail of cases which have led to corrective or clarificatory action and in respect of which it has issued a press notice or requested a Committee Reference. Entities which publish a Committee Reference will be identified in such reports by the Conduct Committee.

~~66-70.~~ The Conduct Committee may also, without identifying the entities concerned, issue a press notice (sometimes called a 'generic' press notice) referring to one or more matters that have come to its attention that did not lead to corrective or clarificatory action or in respect of which no press notice was issued.

Other disclosure

~~67-71.~~ Where information is forwarded by the Conduct Committee to other bodies, where permitted by the Act, the Conduct Committee may inform the entity, but reserves the right not to do so.

~~68-72.~~ Save as referred to in these Operating Procedures or in the course of legal proceedings or as required by law the Conduct Committee does not publish or disclose additional information about a case beyond that which is included in any press notice. The Conduct Committee may disclose information to any firm or entity which is engaged to audit or report on the Conduct Committee's activities, but subject to the other provisions of these Operating Procedures no such information will be further disclosed without the consent of the entity concerned.

Communication with complainants

~~73.~~ The Conduct Committee welcomes well-informed complaints and referrals about the corporate reporting of entities which are within its remit. Any review as a result of a complaint or referral will be carried out in accordance with these Operating Procedures. The Committee responds to anonymous complaints but notes that they may not be an effective mechanism as the Committee is precluded both from clarifying the matter at issue with the complainant and reporting on the outcome of any subsequent enquiry.

~~74.~~ Under the Public Interest Disclosure Act 1998, an employee can report to the FRC concerns in relation to matters which are within the scope of the FRC's regulatory duties. These disclosures will be protected if certain criteria are fulfilled. Further details may be found at <https://www.frc.org.uk/About-the-FRC/Making-a-complaint-to-the-Financial-Reporting-Coun/Whistleblowing.aspx>.

~~75.~~ The identity of any complainant will not normally be revealed to the relevant company. Exceptions may include occasions where:

- The complainant gives permission to do so;
- The complaint and identity of the complainant are otherwise made public;
- The identity of the complainant becomes discoverable during the Conduct Committee's pursuit of a matter to court.

~~69-76.~~ A complainant is informed of the outcome of the case drawn to the Conduct Committee's attention by them and, where applicable, of the opening of an enquiry to the extent consistent with the need for confidentiality. Where a press notice is issued in respect of a complaint, the complainant is sent a copy of the press notice. Neither the Conduct Committee, the Chairmen nor the Conduct Division staff enter into further correspondence on the matter.

~~70-77.~~ The Chairmen or a Review Group may seek further information from the complainant if it believes the complainant may have material pertinent to the case that needs to be taken into account.

HM Revenue and Customs (HMRC)

~~71-78.~~ The Conduct Committee will agree, and may from time to time revise, a Memorandum of Understanding with HMRC relating to the disclosure of information by HMRC to the Conduct Committee pursuant to Section 458 of the Act. The Conduct Committee will publish any such Memorandum of Understanding and will follow the procedures set out in it. In the case of any conflict with these Operating Procedures the Memorandum of Understanding shall prevail.

PART 5 – INTERNATIONAL CO-OPERATION

72-79. In its Accounting Regulation (EC) no 1606/2002, the European Commission requested ESMA's predecessor body to develop a harmonised approach to the enforcement of financial information in the EU. Pursuant to this mandate, the sub-committee on enforcement developed standards and application guidance with which all qualifying national enforcers are expected to comply and which provide for the co-ordination of enforcement activities.

73-80. The Conduct Committee may, from time to time, propose issues arising from individual cases for discussion at extended sessions of ~~the sub-committee (EECS, the forum established under the above standards)~~. The Conduct Committee only identifies the company concerned if it has concluded the case and issued a press notice or the case has otherwise become public.

74-81. The Conduct Committee is obliged to report certain cases of substance for inclusion in the database established by ESMA to assist in the harmonisation of the application of EU accounting requirements. The Conduct Committee is under a similar obligation to provide input to the Global IFRS Coordination Database under the terms of its Participation Arrangement with IOSCO. The Conduct Committee may consent to the publication of the information so included. The Conduct Committee will not normally consent to the naming of the entity concerned unless it has previously been publicly identified and will only give such consent after discussing the matter with the entity.

75-82. The Conduct Committee may disclose information pursuant to the protocol between the ~~Financial Services Authority~~FCA, the ~~Financial Reporting Council~~FRC and the US Securities and Exchange Commission to facilitate implementation of the ESMA-SEC work plan.



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