



The Actuarial Profession

making financial sense of the future

Consultation response **AADB Accountancy Scheme Consultation**

The referral of Formal Complaints to Disciplinary Tribunals

October 2010

About the Actuarial Profession

The Institute and Faculty of Actuaries is the chartered professional body for actuaries in the United Kingdom. A rigorous examination system is supported by a programme of continuous professional development and a professional code of conduct supports high standards, reflecting the significant role of the Profession in society.

Actuaries' training is founded on mathematical and statistical techniques used in insurance, pension fund management and investment and then builds the management skills associated with the application of these techniques. The training includes the derivation and application of 'mortality tables' used to assess probabilities of death or survival. It also includes the financial mathematics of interest and risk associated with different investment vehicles – from simple deposits through to complex stock market derivatives.

Actuaries provide commercial, financial and prudential advice on the management of a business' assets and liabilities, especially where long term management and planning are critical to the success of any business venture. A majority of actuaries work for insurance companies or pension funds – either as their direct employees or in firms which undertake work on a consultancy basis – but they also advise individuals and offer comment on social and public interest issues. Members of the profession have a statutory role in the supervision of pension funds and life insurance companies as well as a statutory role to provide actuarial opinions for managing agents at Lloyd's.

21 October 2010

Ms Anna Colban
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Dear Ms Colban

**AADB Accountancy Scheme Consultation
The Referral of Formal Complaints to Disciplinary Tribunals**

Many thanks for providing us with the opportunity to respond to this consultation.

In general, we recognise the difficulties which can be faced in applying the required tests and consider that the guidance will be helpful to those using it. That said, we also recognise that the guidance does not directly affect our members. We therefore offer the comments with the aim of assisting the AADB to achieve clarity for the benefit of those who are affected whilst being aware that it is possible that guidance of a similar nature may affect our own members at some point in the future.

With reference to your numbering:-

Paragraph 3.5:

You refer to “public interest” or desirability”. We would question whether these two expressions have the same meaning as is implied by your wording. Our concern is that we are aware that you will wish to ensure that justice is not only done but is seen to be done and the use of the word “desirability” perhaps detracts from that aspiration.

Annex A

Paragraph 4:

We think it would be helpful to add to this paragraph “In that case, the complaint will be referred to the member’s Professional Body for consideration under its Disciplinary Scheme.”

Paragraph 5:

In the last sentence we would suggest that the words, "There must be no" be replaced with the words, "It must not be influenced by any" as it may not be possible to prevent the pressure but it is more important that it should not be a factor in the decision making process.

Paragraph 6:

We believe that there is some confusion between the use of the terms "more likely than not", "better than evens" and "balance of probabilities". The wording seems to suggest that the first two are "substantially different" from the Tribunal's "balance of probabilities" test. Whilst we infer that the difference you are referring to is that the Executive Counsel's decision is taken on the information then before him rather than evidence as it emerges in Tribunal, we consider that this should be made clearer in the guidance.

Paragraph 7:

We would suggest that this paragraph in particular would benefit from being shortened as we suggest the level of detail is not consistent with a document of this nature.

Paragraph 8:

We believe that this could be expanded to clarify that the role of Executive Counsel is not to resolve any conflicts of evidence (substantial or otherwise). We would suggest that you might want to consider adding a requirement to ensure that any conflicts should be presented to the Panel to resolve.

Paragraph 9:

We would suggest that this paragraph is unnecessary as the point has already been stated at Paragraph 4.

Paragraph 10:

In line with our comments on Paragraph 4, we consider that it should be made clear that where the Executive Counsel makes a decision not to refer a case under this Scheme, the case should be passed to the member's Professional Body for consideration under its Scheme.

Paragraph 11:

We would urge caution in taking the previous disciplinary record into account given the overriding requirement for each case to be decided on its own facts and circumstances. However, we do recognise that frequent small errors may often tip the balance towards a public confidence issue.

We would also comment that it seems somewhat unbalanced to provide examples under the first bullet, yet none under the second, which it could be argued is the more important in determining public interest.

In answer to your specific questions:

1. Have we included the sorts of factors you would expect to see included in deciding whether a hearing is desirable in the public interest?
 - More generally, we would suggest that the test might be more appropriately referred to as that of "**significant** public interest". Our reason for this comment is that we recognise the difficulty of defining a threshold for the level of public interest which is necessary to trigger a referral. We would consider that there is a risk that, if the guidance is issued as currently drafted, this will result in far more cases being referred than was intended (or is necessary). Therefore, we suggest that this definition should be more tightly defined to focus on cases

which create a risk of serious damage to public confidence in the accounting profession, financial reporting or corporate governance and on cases which have caused such substantial or widespread financial damage that there is a need to deter similar future misconduct and send a signal to the general public, as well as to the profession, that the public will be protected.

- We would suggest that the list of factors could be set out more clearly- e.g. “gravity” is listed but it is not specified as a prerequisite. We suggest that this should have been the case.
- There is no mention of a cost / benefit analysis. Whilst we would not suggest that cost should always be a factor, we consider it may be helpful to state whether or not it is a consideration in this guidance.
- We consider that it might be beneficial to introduce an element of timeliness-i.e. has there been a significant delay between the action giving rise to the referral and the decision date and, if so, how should this be reflected in the decision making process?

2. Are there any other factors you believe the Executive Counsel should consider when deciding whether to refer a Formal Complaint?

No

3. Do you have any other comments about the structure or content of the proposed Guidance?

On structure: we would only add that we feel the document is somewhat longer than needs be and the wording could be focused to give it more impact. We appreciate this response may also be too long! However, the purpose of the guidance is to give easily understood direction to thinking and length may not help that. We understand that the Executive Counsel will have a fair degree of discretion and therefore question whether the length and detail is of real practical assistance either to him or to others who seek to understand how the Scheme will safeguard their interests. We would therefore suggest that shorter, higher level, principle-focused guidance may better serve both purposes.

We hope these comments are helpful and would be happy to discuss further if required.

Kind regards

A handwritten signature in black ink, appearing to be 'Jane Irvine', written in a cursive style.

Jane Irvine

Chair of the Institute and Faculty of Actuaries Disciplinary Board