

NIFA FILE REVIEWS 2021

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MY TERMS OF REFERENCE (1)

This is a review of NIFA case files carried out in accordance with the NIFA Bye-Laws, primarily those set out in byelaws 10 and 11. In carrying out this review I have focused on the following areas:

- a) Procedure: The adherence to NIFA procedures as set out in the NIFA Forensic Accounting Procedures Manual (“the manual”) – (Bye-Law paragraph –11.1.2)
- b) Compliance with the requirements of the Woolf Report and the Civil, Family and Criminal Compliance Rules
- c) Best practice: Review of the supporting working papers file to determine compliance with generally acceptable principles of best practice – (Bye-Law paragraphs 11.1.1 and 11.1.3)
- d) Opinion: Review of the Expert report and where applicable – answers to questions raised by the parties to determine compliance with Civil/Criminal Procedure Rules (Bye Law paragraph 11.1.1)

MY TERMS OF REFERENCE (2)

- In considering points (a) and (c) above I have used an updated review programme which was originally based on two checklists used by Mike Mason:-
 - NIFA Quality Overall Checklist
 - NIFA Quality Review Case File Checklist
- In considering point (c) I have relied upon the various pro-forma reports/paragraphs which can be found in the members technical section on the NIFA website and my own 22 years of experience as an Expert Witness Forensic Accountant.

MY TERMS OF REFERENCE (3)

- I received a case file selected by each NIFA member. The selection process has not been on a random basis on this occasion.
- In carrying out my review I considered the documents and working papers on the file, the general structure of the file, the management of the assignment and I also reviewed the expert report and the supporting evidence and assumptions.

Confidentiality

- All information obtained during the review, together with the final report, will be treated as strictly private and confidential.
- This feedback has been prepared for the internal use of NIFA. It should not be disclosed to any third party apart from regulation compliance officers without my prior written consent.

MY ASSESSMENT GRADES (1)

- I have assigned an assessment Grade to each file/report, based on the scoring system applied in previous assessments by Mike Mason, modified by myself and where considered to be appropriate.

GRADE A – No or only minor weaknesses identified.

GRADE B - Some weaknesses not considered to be minor. Typical weaknesses would include:

- A breach of PD 25B 9.1(b)(c) and (d) or PD35 3.2(5)
- Administrative failings (e.g. failure to sign-off and date report etc.)
- Where the report does not follow the NIFA standard but does follow an alternative acceptable structure
- Other isolated failings of a reasonably minor nature

MY ASSESSMENT GRADES (2)

GRADE C - Typical weaknesses, in addition to the above, would include:

- Report does not follow the NIFA standard or any reasonable structure
- Not all the facts or assumptions have been stated/considered
- Supporting evidence for the conclusions/opinions reached has been omitted
- No summary of conclusions or Executive summary
- No statement of material representations relied upon where applicable

MY ASSESSMENT GRADES (3)

GRADE D - This grade indicates a failure to follow the NIFA standard report/programme to any degree or evidence work carried out. In addition, the report could be adversarial in nature/opinion and not be objective and unbiased.

GRADE E - This grade indicates very serious defects in work. Files contain insufficient evidence to support the report. Typical weaknesses would in addition to the above include:

- Failure to follow the instructions
- No clear conclusions
- Little evidence of empirical research or evidence to support the Assertions in the report
- Failure to use all relevant information provided
- Staff not of appropriate grade

CONTROL OF THE ASSIGNMENT/CASE FILE (1)

GRADE A – No or only minor weaknesses identified.

GRADE B - Some weaknesses. Typical weaknesses would include:

- Engagement letter needs updating
- Engagement letter does not follow the standard NIFA template and has omitted some important paragraphs relevant to forensic work (e.g. attendance at Court to give evidence)
- Minor administrative failings (e.g. incomplete and use of less comprehensive checklists)
- No signed and dated final version of report on file
- Final report not added to NIFA website

CONTROL OF THE ASSIGNMENT/CASE FILE (2)

GRADE C - Typical weaknesses, in addition to the above, would include:

- No signed engagement letter on file
- No evidence of conflict of interest checks of staff
- No money laundering checks of instructing solicitors or parties
- Minutes of meetings/phone calls missing
- No obvious file structure for documents or working papers
- Client Identity, Ethical and Independence review and completion Checklists not completed

CONTROL OF THE ASSIGNMENT/CASE FILE (3)

GRADE D - This grade indicates a failure to follow the NIFA standard programme or evidence of work carried out. Typical weaknesses would include:

- No evidence of independence
- Lack of supporting working papers
- Insufficient documentation to suggest that the case file should be able to withstand detailed scrutiny

GRADE E – This grade indicates very serious defects in work. Files contain insufficient evidence to support the report. Little evidence of empirical research or evidence to support the assertions in the report.

FEEDBACK TO MEMBERS (1)

Terms of Reference and Grading Structure

1. My Terms of Reference and the assessment grades for this review are set out in the accompanying hand-out.
2. My review has covered the structure of the report, whether all the facts and assumptions made have been stated/considered, the supporting evidence and calculations, and whether the conclusions/opinions reached can be justified and supported by the data and the evidence.
3. The review has also covered the management and control of the assignment, the file structure and compliance with the Procedures Rules. This includes acceptance and confirmation of the independence procedures, engagement letters, the structure of the file and the quality control checks in place for the final report.
4. Each review has been graded separately.

FEEDBACK TO MEMBERS (2)

Grades Awarded

Grades	Reports	Case & File Management
A	4	9
A/B	2	
B+	1	
B	3	3
B/C	2	
	12	12

FEEDBACK TO MEMBERS (3)

Specific areas and recommendations where improvements could be made based upon the results of my review:

Reports

1. When discussing the detailed consideration of market value and valuation methodology, I would encourage members to refer to and use the NIFA standard **paragraphs 4.3 to 4.8.13** covering market value, the three approaches set out in IVS105 and the methods of valuation. I would also suggest dealing with the concepts of control and discounts and Quasi-Partnerships in the valuation methodology section. These measures should enhance the quality of the report and provide a full explanation for the basis of your valuation to the reader.
2. PD25B 9.1 (c) and (d) and PD35 3.2(5) require the Expert's report to give the **details** and the **qualifications** of any person who carried out any test, examination, or interview under the Expert's supervision. I have assumed that this definition covers the work carried out by our assistants, and that this means that we are required to include their qualifications. I seem to recall Michael Cohen mentioning this. Some members do state the qualifications of their assistants and others do not. Some members name their assistants and some do not. At Dains, our practice is to include the CVs of assisting staff as Appendices.

FEEDBACK TO MEMBERS (4)

Specific areas and recommendations where improvements could be made based upon the results of my review:

Reports

3. PD25B 9.1(b) requires the identification of the evidence and documents to explain any opinions or conclusions expressed in the report. I interpret this to include supporting calculations. I reviewed two reports where crucial supporting calculations were not included in the appendices. Michael George stressed the need for experts to justify their findings and calculations.
4. Bearing this in mind, some of the reports reviewed did not justify the particular choice of the method and calculation chosen to calculate future maintainable profits i.e. EBITDA, profits before or after tax - simple average, weighted average, most recent year.
5. In one or two reports there was a presumption that a 50% shareholding would not suffer a discount. Beware of the Chairman's casting vote! Need to review the Articles and establish the rights attributable to the shares being valued. If in doubt include valuations on a discounted and undiscounted basis and let the Court decide. The Articles may also include a prescribed method of valuation.

FEEDBACK TO MEMBERS (5)

Specific areas and recommendations where improvements could be made based upon the results of my review:

Reports

6. When second partner reviews are carried out these should be evidenced on the file. I have seen one file where a second partner review appears to have been carried out but not evidenced.
7. Please note that any schedules we have prepared in support of our reports are “Appendices” and anything else attached with the report are “Documents”. “Exhibits” are documents labelled by the Court as such. It is helpful to include references to Appendices in bold in the report.
8. A few members are not including the NIFA template paragraphs in Section 1 of their reports re conflicts of interest searches, opinions of law etc and WORD and EXCEL. Some have adopted the new standard paragraphs 1.47,1.48,1.49 re market value, tax and the 40 pages restriction, but not all. I would recommend that members consider the use of all the paragraphs in Section 1 of the report template as they offer full protection to members. However, do be careful that the reference to 40 pages is compatible with that used in the engagement letter.

FEEDBACK TO MEMBERS (6)

Specific areas and recommendations where improvements could be made based upon the results of my review:

Reports

9. When referring to the information and documents relied upon, I would recommend including the word “representations” which then covers any information communicated orally.
10. Where reliance is placed on another expert’s report, this should be made clear. For example, where we are provided with an auditors’ valuation of the shares we have been asked to value, I would suggest that we carry out and comment on a detailed review of their valuation before expressing any opinion.
11. Some reports would have benefited from a glossary due to their technical nature.
12. From what I have seen, I cannot be sure that the NIFA logos are being used on some reports.

FEEDBACK TO MEMBERS (7)

Specific areas and recommendations where improvements could be made based upon the results of my review:

Control of the assignment/case file management

1. Most members are now using the Ethical and Client Identity checklists, the Independence Review Form and the NIFA completion checklist (or their own comprehensive checklists covering “take-on” procedures). However, a couple of files reviewed lacked any evidence of confirming the identities of the instructing solicitors. A Law Society search to confirm the identities of the solicitors is a simple solution.
2. Most members now use electronic ID searches.
3. There is still a lack of consistency between firms regarding “conflict of interest” searches. Some circulate e-mails to all partners and staff whereas others circulate e-mails only to partners and managers and the forensic team. A few firms also carry out checks on the client base. This is something we all need to agree upon. Personally, I believe that all staff should be asked about a conflict of interest and the client base reviewed before a case is taken on. I am now seeing specific questions being asked by instructing solicitors to this effect. I am not sure that we can simply rely any longer on the wording of paragraph 8.2 of the standard engagement letter to protect us.

FEEDBACK TO MEMBERS (8)

Specific areas and recommendations where improvements could be made based upon the results of my review:

Control of the assignment/case file management

4. Many of the engagement letters I have seen refer to the respective responsibilities of Experts and Solicitors as being set out in FPD25. In my view, FPD25 is concerned mainly with the responsibilities of the Experts rather than the Solicitors. Some members still use the original version of the NIFA standard engagement letter which sets out more specifically the respective responsibilities of ourselves and the solicitors. My own view is that a paragraph in the EL merely referring to FPD 25 does not go far enough and that the original version offers us more protection.
5. Some of the engagement letters still had outdated references to the Money Laundering Regulations. The correct reference is now the “Money Laundering Terrorist Financing and Transfer of Funds (Information of the Payer) regulations **2017**.”
6. One EL did not include the paragraph setting out the agreed basis for charging and the hourly rates were not disclosed.

FEEDBACK TO MEMBERS (9)

Specific areas and recommendations where improvements could be made based upon the results of my review:

Control of the assignment/case file management

7. Ensure you receive a signed copy of the EL. These were missing in a couple of cases. Ideally, no work should commence until these are received.
8. A few members are not using the NIFA Forensic Accounting Completion Checklist which I consider to be more comprehensive than the alternative checklists I have reviewed. **Its use should also ensure reports are listed on the website.**

POINTS TO CONSIDER GOING FORWARD

- Executive summaries – FPD27 (para 5,2A.1).
- Proposed changes for no gain no loss treatment to assets that separating spouses or civil partners transfer between themselves as part of a formal divorce.
- Website review – inclusion of all technical information in one place and communication of changes.
- Should the detailed review of the P/L accounts for share valuations be included in the background section as some members are doing? Currently we have a Section 3 covering a review of the balance sheets but no separate section reviewing the profit and loss accounts.

ANY QUESTIONS?