Ernst & Young LLP Tel: + 44 20 7951 2000
1 More London Place Fax: + 44 20 7951 1345
London ey.com
SE1 2AF

Building a better working world

Catherine Horton
Financial Reporting Council
8th Floor
125 London Wall
London
EC2Y 5AS

By email: consultation@frc.org.uk

4 May 2016

Direct line: :020 7951 2082

Email: emcgrath@uk.ey.com

Dear Ms Horton

Enhancing Confidence in Audit: the Financial Reporting Council's Audit Enforcement Procedure

We welcome the opportunity to review and comment on the Financial Reporting Council's (FRC's) proposals for a new Audit Enforcement Procedure, as set out in the FRC's consultation document (ConDoc): *Enhancing Confidence in Audit: the Financial Reporting Council's Audit Enforcement Procedure.* For the avoidance of doubt, capitalised words and phrase not otherwise defined in this response have the meaning given to them in the ConDoc.

Overarching comments

We fully support the FRC's desire to have an efficient and timely enforcement procedure *"which balances an appropriate degree of constructive engagement and the opportunity to resolve cases at an early, administrative stage with the availability of a full hearing by an independent tribunal."*

Conceptually a streamlined enforcement Procedure that merges the FRC's Auditor Regulatory Sanctions Procedure and The Accountancy Scheme and is able to deal with the full range of cases, from "misdemeanour breaches" to serious misconduct, is a logical approach. Such a streamlined Procedure would reflect the enforcement procedures of other regulators, for example, the Financial Conduct Authority (FCA).

Whilst a streamlined Procedure is a good idea, in practice merging the existing schemes, which have different scopes and objectives, is not straightforward. We recognise the FRC's work in developing the proposals and trying to meet these challenges, but believe that such major structural change and the related consequential amendments (e.g. to the Recognised Supervisory Body's (RSB's) disciplinary schemes) should not be rushed, except if required to implement the Audit Regulation and Audit Directive.

The ConDoc states that the FRC has developed the new Audit Enforcement Procedure *"to implement its mandatory responsibility for Audit enforcement"* in the Audit Directive. However, to the extent the proposed Procedure goes beyond the Audit Directive requirements, it would seem to us that the challenge of finalising and implementing all the reforms to the FRC's enforcement procedures before 17 June could be avoided.

Article 30 of the Audit Directive requires, amongst other things, that Member States: have "*effective systems of investigations and sanctions to detect, correct and prevent inadequate execution of the statutory audit*" (Article 30(1)); and, "*provide for effective, proportionate and dissuasive sanctions in respect of statutory auditors and audit firms, where statutory audits are not carried out in conformity with the provisions adopted in the implementation of this Directive, and, where applicable, Regulation (EU) No 537/2014"* (Article 30(2)). It is, therefore, not clear to us why the FRC's current enforcement procedures could not be amended to comply with the EU requirements, for example, by adding the new sanctioning powers in Article 30(a) of the Audit Directive. We are not aware of any problems with the current procedures - which took time to develop with input from stakeholders and only came into effect within the last three years - that would necessitate a fundamental restructuring before 17 June, therefore, we believe that the FRC should allow itself more time to develop its enforcement proposals.

In our opinion, making the current schemes compliant as an interim measure and taking more time to implement a streamlined enforcement Procedure would result in more effective reforms. It is clearly in all parties' interests for the proposed Procedure and related Guidance to be clear and in a form that is supported by, and gives confidence to, stakeholders.

Specific comments

Our responses to the questions raised by the FRC are set out in Annex I to this response. In Annex II we set out detailed comments on the content of the proposed Audit Enforcement Procedure, the Sanctions Policy and the Preliminary Impact Assessment, which include a number of procedural, drafting and legal points (for example, we believe that the particulars of an allegation should only be amended following proper application, and not by the Enforcement Committee, Chair or Tribunal on their own volition). We make these comments in the spirit of constructive feedback and, if helpful to the FRC, would be happy to discuss in more detail.

We wish to highlight the following points (the majority of which are included in Annex I or Annex II to this response):

- ***Clarity of scope: non-PIE statutory audit matters:*** the basis on which the FRC will exercise its discretion in respect of "*non-PIE matters which the FRC may retain*" is not specified in the ConDoc. It is entirely logical that the FRC would want its Audit Enforcement Procedure to have the same scope as its audit inspection regime, but it would be helpful if this could be clearly stated.

- ***Clarity of scope: the FRC's wider public interest:*** we note from page 6 of the ConDoc that the *"FRC and the professional bodies are considering the extent to which the FRC should continue to deal with public interest cases which do not involve Statutory Audit and, if so, the extent to which the Accountancy Scheme should continue to operate*." In our opinion, it is important that auditors alone are not seen as the only culpable persons. Whilst the EU definition of public interest is relatively narrow and the scope of the proposed Enforcement Procedure is defined by reference to entities and breaches of requirements in the Audit Directive and Audit Regulation, we believe it would be a retrograde step not to include the FRC's wider public interest role in relation to the accountancy profession as a whole – including the protection and maintenance of public trust – in the streamlined Procedure. In our opinion, the reputation of corporate reporting and corporate governance is equally important to the public interest as the reputation of audit – and often more so. Therefore, we believe that the FRC should explore merging the Accountancy

Scheme into its streamlined enforcement Procedure, perhaps as a separate non-Audit Directive stream with appropriately differentiated, but not wholly different, procedures.

- ***Clarity of scope - PRA/FCA enforcement***: where a breach of an auditor's duty to either the Prudential Regulation Authority (PRA) or the FCA is accompanied by a breach of an EU requirement or misconduct, there is a potential overlap between the disciplinary powers of the FRC and the PRA/FCA. We believe that the FRC's Audit Enforcement Procedure should explain how cases falling within the jurisdiction of the FRC and the PRA/FCA will be handled and how the FRC will cooperate with the PRA/FCA to reduce the burden of dual regulation and parallel enforcement action, to ensure the appropriate sequencing of action and mitigate concerns over double jeopardy.

  We also note the current PRA/FCA consultation paper on the proposed implementation of the recommendations in the HM Treasury Enforcement Review and the Green Report. To the extent that these recommendations, particularly those on settlement, can be read across to the FRC's proposals, we suggest that the FRC considers whether the recommendations could usefully be implemented within its own Enforcement Procedure, particularly given the interrelationships between the PRA, FCA and the FRC in relation to financial services audit disciplinary action.

- ***The investigations threshold test:*** we recognise that the two part evidential and public interest test in the Accountancy Scheme for "liability to investigation" would need to be amended to deal with alleged breaches of EU requirements, rather than possible misconduct. However, the proposed "good reasons" test is confusing and ambiguous and could give the impression that the FRC is lowering the threshold for investigation. It is not clear why the current test, which was developed relatively recently and after considerable input from the FRC and the firms, needs to be replaced in its entirety. Whilst we understand that the FRC has to incorporate "simple misdemeanour breaches", we believe that the test should still include consideration of the reliability, credibility or sufficiency of the evidence i.e. whether or not there is a prima facie case to answer. We would also suggest that the FRC be more specific about how the various gates (for example, for constructive engagement) will work in practice.

- ***Early resolution:*** we welcome the FRC's proposed routes for early resolution and the financial penalty incentives for admissions and early disposal. As discussed in our response to the FRC's 2012 consultation on changes to the accountancy and actuarial disciplinary schemes, we believe that any investigation or proceedings should be capable of settlement at any point without the uncertainty of a referral to the Tribunal. It is, however, important to ensure that settlements are clearly differentiated from cases that have been decided by the Enforcement Committee or Tribunal (e.g. we believe that the references should be to "*settlement agreements*" rather than "Decision Notices").

Finally, we think it would be helpful for the FRC to carry out a post implementation review of the new Procedure – with a particular focus on timing, settlement and decisions by Executive Counsel. Such a review should include obtaining feedback from users and their legal representatives.

We hope that you find our comments helpful. We should be happy to expand upon and discuss any points in more detail, so please do not hesitate to contact me if you would like any further information.

Yours sincerely,

[redacted]

Eamonn McGrath

Partner, Audit & UK Head of Regulatory & Public Policy

Attachments

APPENDIX I – Responses to consultation questions

Question 1: Do you consider the proposed Procedure adequately reflects the ARD requirements?

Article 30 of the Audit Directive requires a Member State to ensure it has "*effective systems of investigations and sanctions to detect, correct and prevent inadequate execution of the statutory audit.*" The FRC current enforcement schemes, which took some time to develop, have only been effective since December 2014 (Accountancy Scheme and Regulations), July 2013 (Publication Policy) and February 2013 (Sanctions Guidance). We recognise that the scope of the Audit Directive investigations and sanctions provisions differ from the scope and powers available under these schemes but, as a starting point, it is not clear to us why the current systems, even though wider in scope, would not meet the EU requirements with minor amendments such as the addition of the new sanctioning powers in Article 30a of the Audit Directive.

Notwithstanding the above, conceptually a streamlined enforcement procedure that merges the FRC's existing enforcement schemes and is able to deal with the full range of cases, from "misdemeanour breaches" to serious misconduct, is a logical approach. The proposed Procedure has clearly been designed to reflect the Audit Directive requirements e.g. its scope is focussed on public interest entities (PIEs) and breaches of requirements in the Audit Directive and Audit Regulation. The proposed Procedure borrows heavily from the existing Publication Policy and Sanctions Guidance, but departs significantly from the Scheme and Regulations. Although the ConDoc states that the FRC has developed the Procedure *"to implement its mandatory responsibility for Audit enforcement"* in the Audit Directive most of the changes go beyond the EU requirements. We are not aware of any problems with the current schemes, which, as noted above, only came into effect within the last three years, that would necessitate a fundamental restructuring before 17 June, therefore, we believe that the FRC should allow itself more time to develop its enforcement proposals.

Question 2: Do you agree that the Procedure achieves a balance between protecting the public and fairness to those subject to the Procedure?

We recognise that the two part evidential and public interest test in the Accountancy Scheme for "liability to investigation" would need to be amended to deal with alleged breaches of EU requirements rather than possible misconduct and "simple misdemeanour breaches". However, in our opinion, the proposed "good reason to investigate an allegation" test is confusing and ambiguous and gives the impression that the FRC is lowering the threshold for investigation.

The existing test in the Accountancy Scheme is that: "*the Executive Counsel considers that : (a) there is a realistic prospect that a Disciplinary Tribunal will make an Adverse Finding against a Member or Member Firm; and (b) a hearing is desirable in the public interest*" (paragraph 7(11)). This two – evidential and public interest – stage test is similar to the Code for Crown Prosecutors and was developed relatively recently with input from stakeholders. It is not clear why this test needs to be replaced in its entirety.

It is clearly important to balance public protection with fairness to those subject to the Procedure. Persons subject to the Procedure are entitled to certainty as to the basis on which decisions are taken and clarity as to the tests that have been applied. In our opinion "*a good reason to investigate*" fails to

meet those requirements. The Conduct Committee Guidance at Appendix C provides limited comfort on the basis that it is guidance only, is broadly drafted (in particular paragraph 5(i)) and does not include consideration of the reliability, credibility or sufficiency of the evidence i.e. whether or not there is a prima facie case to answer.

Question 3: Do you consider there is anything missing from the proposed Procedure that would improve its effectiveness?

We believe that the investigation stage test (see our comments in response to Q2 above) should also be applied at the case examiner's stage when determining whether information "amounts to an allegation". This would help to identify vexatious complaints and claims without merit at an early stage of the proceedings. We would also suggest that the FRC be more explicit about how the various gates will work in practice. For example, the Procedure could include a presumption that issues identified by the Audit Quality Inspection teams for audits rated 2B or better would settled by the Case Examiner using constructive engagement.

Question 4: Do you have any other comments about the proposed Procedure?

As regards the scope of the proposed Procedure, we have a number of comments:

- The proposed Procedure, states that it applies to: "*(i) Statutory Auditors and Statutory Audit Firms; (ii) where there may have been a contravention of a Relevant Requirement as defined in SATCAR 2016; and (iii) in relation to those matters which concern PIEs which the FRC must retain and any other non-PIE matters which the FRC may retain*" (emphasis added). Although the stated purpose is to address the requirements of the EU legislation, this scope goes wider, however, the basis on which the FRC will exercise its discretion in respect of "*non-PIE matters which the FRC may retain*" is not specified. It is entirely logical that the FRC would want its audit enforcement scheme to have the same scope as its inspection regime but, if so, this needs to be clearly explained as it is important to have clarity between the jurisdiction of the FRC and those of the professional bodies.

  Whilst the Audit Directive focusses on effective systems of investigations and sanctions to detect, correct and prevent inadequate execution of the statutory audit, the FRC has a broader remit, including oversight of the actuarial profession. The FRC also has an important public interest role that goes far beyond the definition of "public interest entity" in the EU legislation. It is important that the proposed Procedure does not dilute the public perception of the FRC's wider role and, more specifically, that disciplinary action against accountants is not seen as an adjunct, given that accountants may be involved in public interest cases.

- We note from page 6 of the ConDoc that the *"FRC and the professional bodies are considering the extent to which the FRC should continue to deal with public interest cases which do not involve Statutory Audit and, if so, the extent to which the Accountancy Scheme should continue to operate*." In our opinion it is important that auditors alone are not seen as the only culpable persons. Whilst the EU definition of public interest is relatively narrow and the scope of the proposed enforcement Procedure is defined by reference to entities and breaches of requirements in the Audit Directive and Audit Regulation we believe we believe it would be a retrograde step not to include the FRC's wider public interest role in relation to the accountancy

profession – including the protection and maintenance of public trust - in the streamlined Procedure. In our opinion, the reputation of corporate reporting and corporate governance is equally important to the public interest as the reputation of audit – and arguably more so. Therefore, we believe that the FRC should explore merging the the Accountancy Scheme into its streamlined Enforcement Procedure, perhaps as a separate stream with appropriately differentiated but not wholly different, procedures.

- The proposed procedure does not address cases falling within the jurisdiction of both the FRC and the PRA/FCA (e.g. where a breach of an auditor's duty to either the PRA /FCA is accompanied by a breach of an EU requirement or misconduct).

  The PRA has stated that; "Where such overlap may occur, paragraph 4(i) of the statement of policy on penalties makes it clear that the PRA will consider the ongoing or proposed actions of other regulators when deciding whether to take action for the imposition of a financial penalty on an auditor or actuary. In this regard, the PRA has in place a Memorandum of Understanding (MoU) with the FRC which lays out the basis for co-operation and co-ordination of enforcement action between the regulators, where the circumstances require. The PRA has agreed with the FRC and HM Treasury that once the Bank of England and Financial Services Bill has become an Act of Parliament and taking account of any changes to the FRC's powers and remit as part of the transposition of the EU Audit Directive, the current MoU will be supplemented as appropriate to reflect the PRA's disciplinary powers over auditors and actuaries."[1]

  We believe that the FRC's Audit Enforcement Procedure should cover how cases falling within the jurisdiction of the FRC and the PRA/FCA will be handled and how the FRC will cooperate with the PRA/FCA to reduce the burden of dual regulation and parallel enforcement action, to ensure the appropriate sequencing of action, mitigate concerns over double jeopardy and clarify how paragraph 22 of the draft Sanctions Policy would operate alongside other provisions of the draft Sanctions Policy. For example, how would paragraph 22 impact a Decision Maker's decision to impose a financial penalty, noting that the Decision Maker is required under paragraph 37 of the draft Sanctions Policy to only impose a financial penalty that is proportionate to the breach of the Relevant Requirements and all the circumstances of the case?

  We also note the current PRA/FCA consultation paper on the proposed implementation of the recommendations in the HM Treasury Enforcement Review and the Green Report. To the extent that these recommendations, particularly those on settlement, can be read across to the FRC's proposals, we suggest that the FRC considers whether the recommendations could usefully be implemented within its Enforcement procedure, particularly given that interrelationships between the PRA, FCA and the FRC regarding financial services-related auditor disciplinary action.

Question 5: Do you have any comments on the proposed funding arrangements?

We commented on the FRC's proposed annual levy on the audit profession in our response to the FRC's consultation, *Draft Plan & Budget and Levy Proposals 2016/17.*

As regards the operating costs of the proposed Procedure, section 3 of the consultation paper states that: "*All the Audit Firms within the scope of the new Procedure will therefore contribute annually, and*

[1] Paragraph 3.11, Policy Statement PS1/16, Engagement between external auditors and supervisors and commencing the PRA's disciplinary powers over external auditors and actuaries

broadly in proportion to their size, to the cost of operating the new Procedure". We assume that the audit firms "within the scope of the new Procedure" will be the same population of firms which pay the annual levy – and the operating costs will be included in and collected as set out in the Levy Proposals - but, particularly given the uncertainties with scope discussed previously, it would be helpful if the FRC could be clearer on this point. Without knowing how the FRC is minded to operate the Procedure, and therefore which Audit Firms fall within the new Procedure, or what the operating costs might be, it is not possible to assess the approach or the additional costs.

As regards fines, we understand, as a point of principle, why income from fines should no longer be passed back to the profession without reservation. However, in the same way that the Government has, since 2013, been using fines from LIBOR-related cases to fund military charities, we believe that fines from the FRC's Enforcement Procedure should be used to facilitate access to the accountancy profession or for the greater good. For example, fines could be used to help open access to the profession, increase the social mobility of disadvantaged young people or provide training on lessons learnt from enforcement cases. We believe that this would be achievable by passing the fines back to the RSBs with appropriate conditions on usage.

Annex II - detailed comments on the proposed Audit Enforcement Procedure, the Sanctions Policy and the Preliminary Impact Assessment

Draft Audit Enforcement Procedure (Appendix A of the ConDoc)

Part 1: Interpretation/Glossary

- In our view, the definitions of "*Adverse Finding*", "*Decision Notice*" and "*Final Decision Notice*", when applied in the context of settlements, are confusing and could potentially be misleading in the mind of the public. Furthermore, including Executive Counsel in the definition of a "finding" and "decision" risks confusing the role of the Executive Counsel and undermining the need for separation of the prosecution from the disciplinary panel (a requirement of Article 6 of the European Convention on Human Rights). Insofar as a settlement is agreed with the Executive Counsel, it should be recognised as a Settlement Agreement and we recommended that the definition and relevant sections of the current Accountancy Scheme be included in the proposed Procedure.

Part 3: Investigation and Part 4: Enforcement Committee

- **Paragraphs 14 and 21:** The references to the "*Executive Counsel's Test"* and "*Enforcement Committee Test*" are erroneous as the paragraphs simply describe the binary options available to Executive Counsel and the Enforcement Committee. It is, however, fundamental that the Respondent is able to understand the basis of the decision and we recommend that the factors Executive Counsel and the Enforcement Committee may take into account in coming to a decision be added (c.f. paragraph 12.3of the Auditor Regulatory Sanctions Procedure and paragraph 9(6) of the Accountancy Scheme).

Part 5: The Tribunal

- **Paragraph 29:** Under the heading *"Case Management Meetings and Directions",* it is stated at that *"The Chair may rule on any question of law or admissibility of evidence and any such decisions are binding on the Tribunal Panel hearing the allegation."* (emphasis added) However, a determination on *"any question of law"* potentially extends far beyond matters of case management and directions and, in our view, the power is unreasonably broad.
- **Paragraph 30:** The reference to *"appropriate inferences"* that can be drawn from a party's failure to comply with Case Management Directions is unparticularised. In our opinion clarification is required.
- **Paragraph 32**: A notice period of no less than 7 days for a Hearing is unreasonably short and risks parties being unrepresented. We would suggest that the notice period be no less than the current requirement of six weeks' notice for Hearings and not less than 10 working days' notice for the hearing of an application for an Interim Order, to enable the parties properly to prepare and to secure representation by an appropriate solicitor or counsel.
- **Paragraph 34**: In our view, clarification is require that the circumstances in which the Tribunal permits written/witness evidence to be adduced which have not been disclosed in accordance with the Rules or any relevant Case Management Direction, must be considered in light of the prejudice that would be caused to the other side.

- **Paragraph 44:** *"The validity of proceedings shall not be undermined where Tribunal members present at the former Case Management Meeting or Hearing are not present at subsequent proceedings"*. This provision does not, however, address absences more generally and we suggest that material from the existing Accountancy Scheme Rules (11(11) and 11(12)) be included.

  Paragraph 50: The "*Procedure at a Hearing*" is overly prescriptive and more akin to a criminal prosecution. In our view the current procedure is fit for purpose.

Part 6: Interim Orders

- **Paragraph 57:** We believe that the test to be applied when making an interim order is unfair. As drafted, the test states that "*Where there are reasonable grounds to consider that the Respondent may be liable to Enforcement Action and it is in the public interest or the interests of the Respondent, the Enforcement Committee or Tribunal may impose an Interim Order*." In our opinion, the circumstances in which an interim order is made – without the Respondent afforded the right to a fair hearing – must be narrowly prescribed. The interim order must be proportionate and necessary in the interests of the protection of the public.

Part 7: Appeal

- **Paragraph 60(a)**: This permits appeals from an Interim Order imposed by the Enforcement Committee, but does not permit appeals from an Interim Order imposed by the Tribunal under paragraph 52. The principles of natural justice require that a proper procedure for appealing an Interim Order imposed by the Tribunal be included. It is insufficient to permit a person to apply to that same Tribunal to vary or revoke the Interim Order, under paragraph 53 (whether or not additional oral evidence is led under paragraph 55(b)), and we are not aware of any justification for abandoning the existing procedure, which gives Members and Member Firms the right to appeal against an Interim Order made by the Tribunal in the same manner and on the same grounds as they are permitted to appeal any Adverse Finding of the Tribunal, as set out in paragraph 15(12) of The Accountancy Scheme.
- **Paragraph 60(b):** There is a typographical error: *"… in accordance with 0*" (emphasis added).
- **Paragraph 61(e):** The final limb of the basis to appeal a decision - i.e. that the Sanction was "*disproportionate*" - is ambiguous and confusing. The Accountancy Scheme, which refers to a sanction being "*manifestly unreasonable*", provides greater clarity and certainty and we recommend the relevant extracts be included.

Part 8: Reconsideration

- **Paragraph 67(a), (b), (c):** We do not see the need for a procedure to enable the FRC to reconsider a decision made by the Enforcement Committee or the Tribunal, in circumstances where an appeal from the decision is available. The proposed power of the FRC under paragraph 67(b) to review a decision on grounds that there is a "*new allegation about the Respondent*" would seem to us to undermine the ability of either party to appeal under paragraph 61(d) on grounds that the Tribunal's decision "*was made in the absence of significant and relevant new evidence which could not have been adduced previously*". Similarly, the proper procedure for reviewing a decision made by the Enforcement Committee should be to appeal the decision to the Tribunal. In our opinion, natural justice requires that the Tribunal should be the arbiter of fact rather than the FRC; and appeals from the Tribunal should lie only to the Appeal Tribunal and not to the FRC.

- **Paragraph 67(b):** If, notwithstanding the above, the FRC determines that it needs a power to reopen Enforcement Committee and Tribunal decisions of its own accord, then we think it should only be on grounds akin to paragraph 61(d). In other words, the test should not be that there is "*a new allegation about the Respondent*", but rather that the original decision "*was made in the absence of significant and relevant new evidence which could not have been adduced previously*". The new evidence should primarily be *relevant* to an original decision for that decision to be reopened. We believe that the drafting should be more specific and provide examples e.g. where new contemporaneous evidence tends to undermine the factual findings of the original decision, suggesting that the original decision may be flawed and/or based on inaccurate information.

Part 9: General

- **Paragraphs 72 and 73:** There are typographical errors at paragraphs 72 ("Rule (c)") and 73 ("Rule (a)").
- **Paragraphs 77:** It is contrary to the principles of natural justice that the Enforcement Committee, Chair or Tribunal *"may on their own volition […] amend the particulars of an allegation"*. It is not the job of the Tribunal to make the case against the Respondent but to (independently) assess the case brought by the prosecution. The particulars should only be amended following a proper application to amend the particulars, made by a Party on notice, and in consideration of submissions from the Parties on whether the particulars ought to be amended. To suggest otherwise risks eroding the separation of prosecution and tribunal (necessary to meet the requirements of Article 6 of the European Convention on Human Rights) and creating an appearance of apparent bias (i.e. that the Tribunal is making the case on behalf of the prosecution).
- **Paragraph 93:** The reference to the Executive Counsel "*imposing*" sanctions is erroneous and risks confusing the role of the Executive Counsel with the (independent) role of the Enforcement Committee and Tribunal. Insofar as a matter is settled with the Executive Counsel, the penalty is by agreement and references should be amended accordingly.

Draft Sanctions Policy (Appendix G of the ConDoc)

- **Paragraph 20, second bullet point:** in relation to factors which may be considered, we have the following comments:
    - *"gravity and duration of the breach"*: while we recognise that this wording is from Article 30b, point (a), of the Audit Directive, the FRC's policy should include guidance on how the FRC is to make an assessment as to *"gravity"*. The 11th bullet point - *"if repeated or ongoing, the length of time over which the breaches occurred"* - one of a number of additional factors added by the FRC - duplicates unnecessarily the *"duration of the breach"*;
    - "*whether it is likely that the same type of breach will recur*": this is speculation as to future conduct, which cannot fairly be considered a factor used to determine a sanction. Paragraph 61, however, considers the risk of future breaches when determining the adjustment for deterrence.
- **Paragraph 51:** There appears to be a substantive change in the circumstances in which the FRC can impose a prohibition/exclusion on an auditor i.e. from "*no other sanction […] is sufficient*" in

paragraph 42 of the current Sanctions Guidance to "*all other available sanctions should be considered*". In our opinion, the current Sanctions Guidance remains fit for purpose.

Preliminary Impact Assessment (Section 4 of the ConDoc)

The Preliminary Impact Assessment references to the Department for Business Innovation and Skills Consultation Stage Impact Assessment on the implementation of the Audit Directive (RPC15-BIS-2290). However, as the BIS impact assessment consultation did not consider the Procedure, which goes further than the EU requirements, we do not believe that the BIS Impact Assessment is relevant for the purposes of assessing the impact of the proposed Procedure.

As discussed previously, we are unsighted on why the FRC's current enforcement procedures do not meet the EU requirement for "*effective systems if investigations and sanctions*" and why other significant changes are being made within the expedited timetable for implementation of the EU legislation. We note that the FRC has concluded that: "*Given that the FRC has decided, drawing on the powers that BIS proposes to make available to the FRC, to change the operation of an existing process then the changes in costs and benefits arising from the new Procedure are expected to be de minimis*." We are, however, unsighted on how this conclusion was reached and would welcome further detail on budgeted actual operating costs. It is also unclear to us how, insofar as the Procedure operates in addition to the existing regulatory framework, the FRC concludes that "*In considering the impact of the new Procedure it is important to note that there will not be an overall increase in regulation*" and, again, we would welcome further detail on, and a comparison of, costs. Although a logical approach in principle, the case for the proposed Procedure does not appear to us to have been made on cost-benefits grounds.