

2 - APR 2008

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Ms. Anna Colban,
Secretary to the Board,
Accountancy and Actuarial Discipline Board,
Aldwych House,
71-91 Aldwych,
London, WC2B 4HN.

1st April, 2008

Dear Ms. Colban,

AADB Accountancy Scheme Review

Thank you for sending me the Consultation Paper for the Accountancy Scheme Review. I set out my responses in the enclosure.

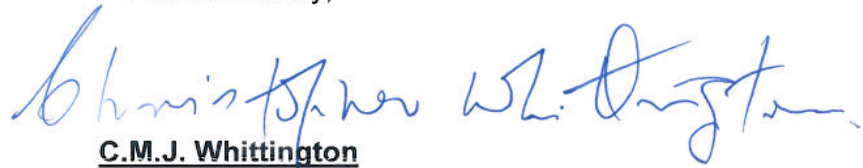
There is one topic, however, that is not covered by the Review and indeed it is a somewhat difficult area which you may feel the AADB has no ability to influence. During the last two tribunals on which I have sat (one for the ICAEW and one for the AIDB) dealing with major audits by members of the Big Four it was quite clear that the expert witnesses used by the ICAEW and the AIDB were not in any meaningful sense experts; that is, they had never themselves done the job of the person they were criticising. In each case the expert witness used by the ICAEW and the AIDB were forensic accountants from relatively small firms and the individuals in particular had no experience in carrying out major audits of large institutions. This has not always been the case and I have sat on tribunals where the expert witness who also carried out the investigation was a member of the Big Four.

I think that it is extremely important that the AADB in the future when investigating an audit carried out by a member of the Big Four uses as the investigating accountant, who in the interests of economy may also have to be their expert witness, someone who is a member of the Big Four. Otherwise there is a complete lack of credibility when a member of a very small firm criticises procedures of a major institution of which he has no personal experience. What I have said only applies where complaints are brought against a major audit firm in respect of the conduct of their audit. Where complaints are brought against individuals, either accountants or actuaries in the performance of their duties as finance director or

appointed actuary this of course does not apply. In that instance a forensic accountant from a small firm can be used for the investigation and an expert witness who has himself been a financial director of a company similar in size to the group being complained against or an appointed actuary of similar standing can be used as the expert witness. In the past members of the Big Four have been reluctant to be seen on opposite sides (although this was not the case in the civil litigation regarding Equitable Life) and all too often conflicts of interest are pleaded for not appearing. If the credibility of the AADB is to be maintained it may be necessary for the Chairman of the FRC or the Chairman of the Institute of Chartered Accountants to instruct the senior partner of one of the Big Four to provide an expert witness when this is appropriate.

Apart from these comments I have nothing further to add other than the answers to your questionnaire.

Yours sincerely,



C.M.J. Whittington

Enclosure

Question 1

- (a) **Do you agree in principle with the proposal to require a tribunal to find that any allegations proved amount to “Relevant Conduct” before making an adverse finding?**
- (b) **Do you agree with the proposed definition of “Relevant Conduct”?**

1 (a) and (b)

No. I think it is unwise to attempt to provide an exclusive definition of “Relevant Conduct”. There might arise forms of misconduct which would fall outside (i)-(v). The definition should be inclusive, but ultimately a member of the profession should not be allowed to remain in practice if unfit to do so.

I think that there should be some threshold of significance on materiality. The acts or omissions should not be limited to being in the course of professional business. A person committing other unrelated criminal acts (theft, fraud, manslaughter) should not be permitted to remain in practice.

Question 2

- (a) **Do you agree with the proposal to provide for the Board, where it considers it relevant, to direct Executive Counsel to make preliminary enquiries before it reaches a decision on whether to investigate a matter?**

Yes but relevant is not wide enough. It would be better to say “where the Board considers it necessary or desirable ...”

Question 3

- (a) **Do you agree with the proposal that an independent committee will review the formal complaint and the evidence in support of that complaint before the formal complaint is served and a disciplinary tribunal is appointed?**
- (b) **What are your views on the proposed composition and the three main functions of the DDC?**

I fully agree with the intentions behind this proposal but it seems a rather expensive and cumbersome way of going about it.

I think it would be better to require Executive Counsel to obtain a QC's written advice on the evidence and merits of Executive Counsel's proposed course of action which would then be considered by the Board. Their decision would carry greater public confidence than that of a sub-committee consisting of a majority of lay people. Incidentally Clause 6.18 only gives scope for narrowing the complaint. In my experience on at least two occasions Executive Counsel failed to bring the right (and far more serious) complaints.

Question 4

- (a) **Do you agree with the proposal to provide for the Board to reduce the scope of an investigation on request by Executive Counsel?**

Yes, but I think that there should be a requirement to consult with the Participants.

Question 5

- (a) **Do you agree with the proposed test to be applied by Executive Counsel in deciding whether to deliver a formal complaint?**

- (b) **Do you agree with the proposed two-fold test to be applied by the DDC?**

(a) Yes.

- (b) What about where a highly publicised case is unfairly besmirching the reputation of a Participant or the profession who might wish to have an opportunity to answer it. This proposal, which under the JDS could proceed, might preclude it.

- (c) I think desirability criteria are unwise. The Board should not fetter itself with specific criteria.

Question 6

- (a) **Do you agree with the proposal that an independent *Convener* will appoint tribunals?**

No. Professional standards should be owned by the profession. The Board has never been accused of deficiency in favour of the profession to the disadvantage of the public. The Board should continue to appoint tribunals and appeal tribunals. Perhaps the list of potential appointees needs strengthening (or perhaps disbanding and just choosing as tribunal members people with experience appropriate for the particular case).

The matter of appeals relating to the striking off of a member should always be allowed. A lawyer alone should not decide whether an accountant should be struck off. This has to be a matter for the profession.

Question 7

- (a) **Do you agree that a balance must be maintained between fairness to a successful respondent and ensuring that the regulator is not constrained from bringing proceedings because of the possibility that costs may be awarded against it?**

- (b) **Do you agree that the proposal in respect of costs assists in maintaining that balance?**

(a) Yes.

- (b) Para. 6.38 weights the matter too heavily in favour of the Board by limiting the circumstances to misfeasance. Something slightly less should be the test. The Board already has a lot of protection since it is only bringing complaints on the advice of a QC.

Question 8

(a) **Do you agree with the proposal to remove the tribunal chairman's casting vote?**

(b) **Do you agree with the proposal that, where there is an equality of votes in respect of any motion, that the motion should not be carried?**

(a) Yes (except see below).

(b) Yes but there must be a way of deciding matters of process for which a Chairman's second casting vote is helpful, e.g. where a Participant seeks dismissal of a complaint which Executive Counsel is pursuing. He can't just be left in limbo.

Question 9

(a) **Do you have any comments on the costs and benefits (including any quantification) of the proposals to amend the Accountancy Scheme, as set out in the Board's preliminary Regulatory Impact Assessment?**

The DCC is an unnecessary expense and can be avoided if the advice of a QC is taken before Executive Counsel proceeds on an extensive investigation.

An independent convener is an unnecessary and undesirable expense.

The tests for pursuable complaints should reduce costs.

Having a senior lawyer decide whether appeals are to be permitted will encourage judicial reviews and increase costs.