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19 March 2008

Anna Colban  
Secretary to the AADB  
Financial Reporting Council  
5<sup>th</sup> Floor  
Aldwych House  
71-91 Aldwych  
London WC2B 4HN

Dear Ms Colban,

**The Accountancy Scheme Review**

Please find enclosed my response to the Consultation paper.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "D. S. Blunt", followed by a large checkmark.

David Blunt QC

/Encl.



## About you

Please use this section to tell us about yourself

Full Name:	DAVID BLUNT QC
Job title or capacity in which you are responding to this consultation exercise (e.g. member of public etc.):	PANEL CHAIRMAN
Date:	19/3/08
Organisation / Company Name (if applicable):	
Address:	4 PUMP COURT TEMPLE LONDON
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Email Address:	dblunt@4pumpcourt.com
Please indicate if you would like us to acknowledge receipt of your response (acknowledgments will be by email unless requested otherwise):	<del>Yes</del> / No

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations you represent.

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## THE ACCOUNTANCY SCHEME REVIEW

### NOTE

#### 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 agreed with the proposed definition of “Relevant Conduct”?

#### Answer 1

- a) No. “Relevant Conduct” lacks the condemnatory implication of “Misconduct”. I don’t think members of the public would be satisfied, in the case of proven reprehensible conduct, with a finding of “Relevant Conduct”. Whilst the word “Misconduct” may, by itself, be vague, this is not a problem, where, as here, it is to be more precisely defined.

- b) Not entirely.

Item i is much too wide and would include conduct which, though in accordance with all current standards, nevertheless gave rise to a loss of public confidence in the accountancy profession e.g. because the Member had failed to respond adequately to some novel situation, in respect of which there were no established guidelines/standards etc. That would, I think, be unfair. I am not sure how it should be worded. Perhaps something along the lines of:-

*“so far departs from accepted principles applicable to the activity concerned as to be likely to damage public confidence in the accountancy profession.”*

Again I consider that item ii is too widely drawn - as presently worded it would include a Member’s discreditable activities of a personal nature which, though carried out at work or in the course of his work, were nothing whatsoever to do with the standard of his professional conduct.

Perhaps one should rephrase ii along the following lines:-

*“is likely to bring discredit on the professional standing of himself or of itself or (in the case of an individual) of his employer or on the accountancy profession.”*



The wording of the remainder of the definition is a little vague, but acceptable.

**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?

**Answer 2**

- a) Yes.

**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?

**Answer 3**

- a) Yes.
- b) I support the proposals

**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?

**Answer 4**

- a) Yes.

**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?
- c) What are your views on the factors to be included in the Desirability Criteria?



**Answer 5**

- a) Yes.
- b) Yes.
- c) The Desirability Criteria should include such matters as whether or not the Member has been, is, or is likely to be subject to other proceedings in respect of the same matter within the UK. One should also consider whether one should adopt any of the criteria applied by the Attorney-General and/or the CPS when deciding whether to pursue a prosecution.

**Question 6**

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

**Answer 6**

- a) Yes.

**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?

**Answer 7**

- a) Yes.
- b) No. The limitation of costs orders in favour of a successful respondent to cases of "misfeasance" (as defined ) is too restricted. It should include bad faith, in the sense of acting (or failing to act) for an improper or ulterior motive even if the motive is not to cause harm, and pursuing a case when objectively there is no reasonable prospect of success. Foresight of harm should be irrelevant. To be unjustifiably made a respondent is always harmful - so harm can always be presumed. Provision also needs to be made for the successful respondent who defends himself and suffers loss as a result of the



time devoted to his defence – costs orders are made in such cases in civil proceedings.

**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.

**Answer 8**

- a) Yes.
- b) Yes.

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