



Financial Reporting Council

FRC consultation on proposed amendments to the Audit Enforcement Procedure

FRC response

December 2021

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1. Introduction

- 1.1. In June 2016, the Financial Reporting Council ('FRC') became the 'competent authority' for audit in the UK under new legislation which gave effect to the EU Audit Regulation (EU) 537/2014 and the EU Audit Directive 2014/56/EU.
- 1.2. As competent authority, the FRC is responsible (amongst other things) for investigations of Statutory Auditors¹, Statutory Audit Firms and statutory audit work and for the imposition and enforcement of sanctions in respect of breaches of Relevant Requirements. The FRC performs these functions under the Audit Enforcement Procedure ('AEP').
- 1.3. The FRC has delegated responsibility for investigations and the imposition and enforcement of sanctions insofar as they relate to the statutory audit of entities who are not: Public Interest Entities; AIM listed companies with an average market capitalisation of over €200 million; or Lloyds Syndicates. Such investigations and enforcement activities have been delegated to the Association of Chartered Certified Accountants, Chartered Accountants Ireland, the Institute of Chartered Accountants in England and Wales and the Institute of Chartered Accountants Scotland under a series of delegation agreements available on the FRC website [here](#). The FRC reclaims responsibility for such investigations and enforcement activities in some circumstances.
- 1.4. The AEP came into force on 17 June 2016. It was developed to implement the FRC's new competent authority investigation and enforcement responsibilities following a consultation on a draft version of the AEP issued on 23 March 2016. In the FRC's consultation feedback statement published on 17 June 2016, the FRC committed to a post-implementation review of the AEP. The FRC concluded that review during 2021 and proposed the amendments to the AEP.

Consultation document issued 22 July 2021

- 1.5. The proposed amendments to the AEP were set out in a consultation document issued by the FRC on 22 July 2021 (the 'AEP Consultation'). Through the AEP Consultation process, the FRC sought in particular: *'the views of statutory auditors and audit firms and other regulatory bodies, including professional associations'*.
- 1.6. The AEP Consultation set out details of the more significant proposed changes, including to the following parts of the AEP: Part 1 Interpretation/Glossary; Part 2 Initial Stages; Part 3 Investigation; Part 4 The Tribunal; Part 5 Interim Orders; Part 6 Settlement; Part 7 Appeal; Part 8 Reconsideration; and Parts 9-11 Sanctions, Costs and General.
- 1.7. The FRC sought feedback and comment on all proposed amendments. The three questions for consultation were:
 - i) *Do you have any comments on the changes to the AEP set out above? Please respond by reference to specific Rule numbers of the amended AEP.*
 - ii) *Do you agree with the proposed amendments to the AEP? Please respond by reference to specific Rule numbers of the amended AEP.*
 - iii) *Do you have any general comments on the amended AEP?*
- 1.8. The proposed amendments reflect, in particular, the experience of the FRC's Enforcement Division as well as earlier informal feedback received from stakeholders. They are intended to ensure a clearer, more effective and more robust enforcement process. Some of the amendments will give effect to significant changes; others are minor, clarificatory or consequential.
- 1.9. The AEP Consultation invited feedback and comment on the proposed AEP amendments on or before 7 October 2021. Save as described in this document and the accompanying revised AEP, the FRC intends to give effect to the proposed amendments and for the amended AEP to come into force on 5 January 2022.

¹ This term has the meaning given to it in the AEP and all AEP defined terms when used in this document shall have the meanings given to those terms in the AEP unless otherwise stated.

continued/1. Introduction

Responses to consultation

- 1.10. The FRC received eleven responses to the AEP Consultation. The following entities (referred to in this document as 'respondents') submitted responses:
- i) two professional accountancy bodies, namely: the Association of Chartered Certified Accountants and the Institute of Chartered Accountants of Scotland;
 - ii) seven audit firms who are subject to the provisions of the AEP; and
 - iii) two law firms with experience in representing firms and individuals subject to enforcement under the AEP, namely: Taylor Wessing LLP and Clyde & Co LLP.

2. Overview of AEP Consultation responses

- 2.1. Respondents were generally supportive of the changes proposed to the AEP, subject to proposed changes to the drafting as well as comments on the AEP more generally. The FRC welcomes this constructive and helpful engagement and has carefully considered respondents' feedback and comments.
- 2.2. We summarise in the following Chapters of this document the key points that have been raised by respondents and our views on the issues raised. We have ordered these comments by reference to the Part of the revised AEP to which they relate.
- 2.3. In respect of respondents' proposals for specific drafting changes, while we have not set out detailed reasoning in respect of our decision to accept or reject each proposed change, where we agree with the proposed change and consider that it would improve the quality of the AEP drafting, we have reflected that change. We have also made minor corrective drafting changes.
- 2.4. Several respondents requested that existing guidance be amended and/or that new guidance be provided to reflect the revised AEP's provisions. The FRC agrees that some of the current guidance will need to be amended and that new guidance will be needed in some areas. It is our current intention to publish new and/or amended guidance on or around the date that the revised AEP takes effect.

3. Part 1 – Interpretation / Glossary

What the consultation proposed

- 3.1. Most of the amendments to Part 1 reflected amendments elsewhere in the AEP or were minor or clarificatory. For example, the definition of “Statutory Auditor” has been amended to clarify that it applies to relevant persons who met the definition at the time of the conduct that is to be investigated.

Issues arising from consultation responses

- 3.2. The responses we received made a number of requests for minor changes to this section.

The FRC’s response

- 3.3. We have carefully considered these drafting suggestions and made amendments where these were considered necessary or appropriate. Amendments that are consequential to revisions made to the AEP are also reflected throughout the AEP.

4. Part 2 – Initial stages

What the consultation proposed

- 4.1. Part 2 describes the powers and duties of the Case Examiner on receipt of information about a Statutory Auditor or Statutory Audit Firm and in determining if that information raises a question of whether there has been a breach of a Relevant Requirement. It also sets out what the Board may or must do when a question of whether a Relevant Requirement has been breached is referred to it.
- 4.2. Amended Rule 3 clarifies the powers available to the Case Examiner to determine if there is a question as to whether the Statutory Auditor or Statutory Audit Firm has breached a Relevant Requirement.

Issues arising from consultation responses

Broad support

- 4.3. A number of respondents welcomed the greater clarity of the amended AEP and the retention of the FRC's ability to take no further action in certain cases.

Exercise of powers

- 4.4. Several respondents commented on the Case Examiner's powers in this Part. Some respondents wished to understand how the power to require the creation of documents would be exercised in practice and suggested that guidance would be appropriate. Guidance was also suggested in respect of: (i) the Board's consideration of whether there is a 'good reason' to open an investigation; (ii) a decision to enter into constructive engagement; and (iii) the practical operation of constructive engagement.

Advance notification

- 4.5. Several respondents suggested that, where the Case Examiner is proposing to refer a matter to the FRC's Board in accordance with Rule 5(d), advance notice of the proposed referral should be given to the Statutory Auditor and/or Statutory Audit Firm whose conduct is the subject of the referral. The affected Statutory Auditor and/or Statutory Audit Firm should also, it was proposed, have the ability to submit information, and make representations, to the Board.
- 4.6. There was a concern that the Case Examiner may, in the discharge of their powers before a formal investigation has been opened, notify an audit client of the possibility of an investigation prior to that investigation being opened and/or announced.

Constructive engagement

- 4.7. Respondents were supportive of the FRC's use of constructive engagement in appropriate cases and its continued availability as an alternative to formal investigation. It was suggested that constructive engagement would be the appropriate option to adopt when a case raises less serious matters (such as where there is no risk of serious detriment and/or a lack of integrity is not suspected).

Scope of enquiries and investigations

- 4.8. A number of respondents requested that Respondents (in the AEP sense, referred to in this document as AEP Respondent(s)) be notified of the full details of alleged breaches when an investigation is opened, including details of which Relevant Requirements may have been breached in a particular case. One respondent also requested clarity as to whether the focus of an investigation would be on the audit firm, the individual auditor or both.

continued/4. Part 2 – Initial stages

The FRC's response

- 4.9. The FRC notes that the powers listed at Rule 3 of Part 2 of the revised AEP (including the power to require the creation of documents) are already available to the FRC and its officers by virtue of Schedule 2 of SATCAR 2016. The new text that has been added to Rule 3 simply makes explicit within the AEP the Case Examiner's ability to use these powers.
- 4.10. Guidance for the Case Examiner is already set out in the *Audit Enforcement Procedure: Case Examiner Guidance* available [here](#). While we do not think that it is necessary to set out in guidance the factors that the Case Examiner may consider before exercising these particular powers, nor to set out further detail about constructive engagement, we will keep under review the need for any further amendments to guidance as the revised AEP is applied in practice.
- 4.11. There is already guidance dealing with the opening of AEP investigations. (*Guidance on opening investigations: Thresholds/Guidance for referral for investigation* available [here](#)). This, amongst other things, contains an illustrative list of examples of what might constitute a 'good reason' to investigate.
- 4.12. Additional guidance on the Case Examiner's use of statutory information gathering powers is unnecessary and could represent an inappropriate fetter on regulatory decision-making. It is essential that the Case Examiner is able to respond to the specific circumstances of individual matters and to future developments. Furthermore, we do not consider that requests made in exercise of the Case Examiner's information gathering powers, and before any decision to investigate, should lead to a significant or disproportionate impact on the relevant Statutory Auditor and/or Statutory Audit Firm.
- 4.13. In determining whether a matter is suitable for disposal through constructive engagement, the Case Examiner will consider the gravity of the alleged breach, with more serious matters being more likely to be referred for investigation. More detail on the Case Examiner's approach is set out in the *AEP: Case Examiner Guidance*.
- 4.14. We note that the use of information gathering powers may allow the Case Examiner to form a view on the appropriateness of constructive engagement at an earlier stage in proceedings. We also note that the Case Examiner's ability to ask for information from an audited entity is not new; it already exists under Schedule 2 of SATCAR 2016. As respondents' comments illustrate, it is helpful and aids transparency to have this power and related powers expressly referenced in the AEP.
- 4.15. The FRC has considered whether there should be a formal process of representations to the Board regarding the opening of an investigation. It is of the view that it is neither necessary nor appropriate to provide for a formal process of representations to the Board regarding the opening of an investigation.
- 4.16. While we note the desire to identify the precise scope of an investigation as early as possible, this will rarely if ever be possible. Furthermore, we consider that sufficient and appropriate information regarding the scope of an investigation is provided to the AEP Respondents at an early stage. AEP Respondents are notified of the scope of an investigation at the point where they are told of the decision to open the investigation. Executive Counsel also provides additional information concerning the initial areas of enquiry (including the Relevant Requirements which are likely to be engaged) at a meeting scheduled with the AEP Respondents shortly after the opening of the investigation. It is neither necessary nor practicable to provide more specific information before the facts and issues of the investigation have been established. It would therefore be premature to determine at the outset of the investigation where (or with whom) the focus of the investigation will lie.

Outcome of consultation

- 4.17. Having considered respondents' comments on Part 2, the FRC is not proposing to make any changes to the drafting of Part 2.

5. Part 3 – Investigation

What the consultation proposed

- 5.1. New Rules 12 and 13 to provide for the scope of an investigation to be amended where related breaches of Relevant Requirements are suspected, rather than for a new investigation to be opened. This will further facilitate the proper and thorough investigation of suspected breaches of Relevant Requirements.
- 5.2. Revised Rules 16-17 facilitate prompter investigations by removing the previous requirement for Executive Counsel to prepare an Initial Investigation Report at the conclusion of an investigation. Executive Counsel will instead prepare an Investigation Report, and the AEP Respondent will have the opportunity to make written representations on its contents. This will facilitate prompter conclusions of investigations by reducing the steps involved whilst continuing to give AEP Respondents the opportunity to make representations.
- 5.3. New Rules 19-20 to make explicit Executive Counsel's discretion to pursue Enforcement Action against an AEP Respondent when Executive Counsel has found that the AEP Respondent may have breached a Relevant Requirement.
- 5.4. New Rules 23-28 to provide that, following a decision by Executive Counsel to pursue Enforcement Action, an independent person (the 'Independent Reviewer') must approve the issue of a Final Decision Notice after a Proposed Decision Notice has been agreed by the parties. These amendments are designed to provide reassurance that sanctions imposed will reflect the public interest and be proportionate and fair. Where the Independent Reviewer does not approve the issue of a Final Decision Notice, Executive Counsel may either issue a revised Proposed Decision Notice or refer the matter to the Tribunal.
- 5.5. To abolish the Enforcement Committee stage. The Enforcement Committee stage was introduced to the AEP (Part 4) to assist the expeditious conclusion of cases by offering an administrative step of a non-executive committee without or before a Tribunal hearing. The FRC noted that no case has yet reached the Enforcement Committee stage, as in all cases concluded to date the AEP Respondents have agreed with the Decision Notice issued by Executive Counsel. The introduction of the requirement for an Independent Reviewer to approve a Proposed Decision Notice provides a suitable degree of independent oversight following the conclusion of an investigation. In light of that, the FRC considered that there is no longer a need for this additional stage and accordingly intended to abolish the Enforcement Committee stage.
- 5.6. New Rules 30-31 to provide Executive Counsel with a new power to refer a case directly to the Tribunal. This reflected the proposed abolition of the Enforcement Committee stage.

Issues arising from consultation responses

Amending the scope of an investigation

- 5.7. It was suggested that: there should be a cut-off point for proposed amendments to the scope of an investigation; and that guidance should be provided on the addition of parties to an investigation and to ensure consistency of approach to amending the scope of an investigation.
- 5.8. It was also suggested that any extension to the scope of an investigation should be limited to facts and circumstances relating to breaches of Relevant Requirements already under investigation. Other respondents commented that the power to amend the scope of an investigation under Rules 12 and 13 should only be exercised fairly and proportionately, and without prejudice to natural justice.
- 5.9. It was suggested that any relevant Recognised Supervisory Body should be advised of an amendment to the scope of the investigation into one of its members, and that AEP Respondents should have the opportunity to make submissions to the Board before its decision on amending the scope of the investigation.

continued/5. Part 3 – Investigation

Investigation powers

- 5.10. Respondents requested greater clarity on the limits of Executive Counsel's investigation powers and the use of the power to require the creation of documents. They also requested guidance on the circumstances in which a matter would be referred directly to a Tribunal for a hearing. Respondents also requested clarity on the approach to be taken by Executive Counsel in respect of disclosure. One respondent requested a right for AEP Respondents to apply to the Tribunal for an order to require additional document production to be made by a non-party.

The Investigation Report

- 5.11. Several respondents were supportive of the streamlining of the process for concluding an Investigation Report. As mentioned above, respondents requested clarity on Executive Counsel's disclosure obligations and the material to be served on an AEP Respondent.
- 5.12. Concerns were raised that the proposed changes may lead to a reduction in the material provided, and that removal of the Initial Investigation Report would not lead to any time saving. It was suggested that Initial Investigation Reports should continue to be used in complex cases or where there are significant factual matters in dispute between the parties, and that AEP Respondents should continue to have the ability to make representations on the content of Investigation Reports.
- 5.13. Two respondents suggested that prescribing time limits for delivering an Investigation Report would be appropriate.

Liability for Enforcement Action

- 5.14. Two respondents welcomed Executive Counsel's discretion as to whether to pursue Enforcement Action where a breach of Relevant Requirements had been identified.

Executive Counsel, the Independent Reviewer and referral to the Tribunal

- 5.15. Concerns were raised that there was no explicit requirement on Executive Counsel to act reasonably and in the interests of natural justice when making certain decisions, including under Rules 23, 28 and 29. Concerns were also expressed that too much power was concentrated in Executive Counsel without adequate checks and balances, and that the role of the Independent Reviewer did not sufficiently compensate for the loss of the Enforcement Committee.
- 5.16. It was stated that guidance should be prepared for Independent Reviewers, and that it would be appropriate to have both lawyers and auditors as Independent Reviewers. Two respondents agreed that it was appropriate for the Independent Reviewer to be a lawyer. One respondent suggested that it would be appropriate to include time limits to mitigate the risk of delays in the decision-making process.
- 5.17. One respondent stated that introduction of the Independent Reviewer was an unnecessary step to take, and that the Conduct Committee would be better placed to approve a Proposed Decision Notice. It was suggested that additional oversight of the Independent Reviewer's functions is necessary, and that the Independent Reviewer should have the ability to recommend the closure of an investigation.

The FRC's response

- 5.18. With respect to the proposed limits on the Executive Counsel's ability to propose amendments to the scope of an investigation both as to time and scope, we do not consider such limits to be either necessary or appropriate. It is not possible to anticipate how a complex investigation will progress nor what issues may arise during the course of that investigation that may merit an amendment to the investigation's scope. Opening an investigation cannot depend on a full appreciation of its potential scope. It is accordingly necessary to ensure that Executive Counsel has the flexibility to pursue appropriate avenues of investigation.

continued/5. Part 3 – Investigation

- 5.19. We do accept that it is reasonable and helpful for Recognised Supervisory Bodies to be advised of an amendment in scope and therefore we have amended Rule 13(a) accordingly.
- 5.20. The decision to amend the scope of an investigation is comparable to the decision to open an investigation. As set out above at paragraph 4.15, it is neither appropriate nor necessary to provide for a formal process of representations from AEP Respondents.
- 5.21. We do not consider it necessary or appropriate to limit the Board's ability to amend the scope of an investigation. The scope of an investigation will only be amended where it is in the public interest to do so.
- 5.22. The power to require the creation of documents is already available to the FRC and its officers by virtue of Schedule 2 of SATCAR 2016. The new text that has been added simply clarifies on the face of the AEP Executive Counsel's ability to use these powers.
- 5.23. We do not think it is necessary at this stage to set out in guidance the factors that Executive Counsel will or may consider before exercising their investigation powers. We will however keep under review the need for any further amendments to guidance as the revised AEP is applied in practice.
- 5.24. Upon further reflection, we no longer consider that it is necessary to provide for a power for the parties to agree a referral of a matter directly to the Tribunal. The ability for the Parties to agree to go straight to the Tribunal (and not to follow the Enforcement Committee stage) is no longer relevant and Rule 14(f) and Rule 29(e) have accordingly been deleted.
- 5.25. We have considered the submissions in relation to the provision of evidence and have amended Rule 16(d) to require Executive Counsel to *'append or supply copies of all documentary or digital evidence that is referred to in the Investigation Report'*. This will allay concerns that incomplete material will be provided. Guidance in respect of our approach to disclosure of unused material will be issued separately.
- 5.26. AEP Respondents will have the ability to make representations regarding the content of the Investigation Report pursuant to Rule 17, as now in respect of the Initial Investigation Report. As before, Executive Counsel will take these representations into consideration before determining whether the AEP Respondent should be liable for Enforcement Action.
- 5.27. We do not consider it appropriate to impose an arbitrary time limit on the length of an investigation. Investigations by Executive Counsel are complex and may need to be paused where there are parallel investigations or proceedings. To impose a time-limit risks compromising the quality of the investigation and/or preventing the investigation of matters which it is in the public interest to investigate. Executive Counsel has an established key performance indicator in respect of the length of investigations. This is reported against in the FRC's Annual Enforcement Review and we consider that this is the appropriate mechanism to ensure that Executive Counsel drives timely completion of investigations.
- 5.28. In complex cases with a lengthy and detailed Investigation Report, AEP Respondents will have the ability to agree with Executive Counsel an appropriate extension to the 56-day deadline set out in Rule 17.
- 5.29. In respect of the suggestion that our proposed AEP revisions place too much discretion with Executive Counsel, we consider that the right of access to a Tribunal is an appropriate safeguard for AEP Respondents.
- 5.30. In addition, we note that Executive Counsel performs a public function in determining their approach to Proposed Decision Notices and referrals to the Tribunal. Their decisions will therefore be subject to public law principles and obligations. This means Executive Counsel will be required to act reasonably, in accordance with the law, and in accordance with the principles of natural justice and procedural fairness. It is neither necessary nor appropriate to expressly reflect these principles and obligations in the AEP.

continued/5. Part 3 – Investigation

- 5.31. With respect to the abolition of the Enforcement Committee, this stage has not yet been reached in any proceedings under the AEP. We have come to the view that the retention of the Enforcement Committee stage would not provide any advantage and may in fact lead to delay in the resolution of matters. In cases where the parties cannot agree, it is necessary to ensure access to a forum that will allow them to present their arguments in full, and which can hear live evidence. It is clear to us that the appropriate forum is the Tribunal. It would therefore be inefficient and unnecessary to maintain the Enforcement Committee stage, or to otherwise involve the Independent Reviewer in contested cases. The AEP permits dynamic case management by the Tribunal, including where facts are largely agreed between the parties and the remaining issues in dispute have been significantly narrowed.
- 5.32. We agree that it is appropriate to impose a timeframe to ensure prompt decision-making. We have amended Rule 25 to require the Independent Reviewer to decide whether a Proposed Decision Notice should be approved within 14 days, or other such longer period as the parties may agree.
- 5.33. The Independent Reviewer will be a trained and experienced lawyer, and we remain of the view that such a person is best placed to determine whether a Proposed Decision Notice should be approved. Introducing this change to the AEP is consistent with the process under the Accountancy Scheme (and the Actuarial Scheme), where a lawyer is appointed from the Tribunal Panel to consider a Proposed Settlement Agreement. That process provides independence from the FRC.
- 5.34. The Independent Reviewer will be engaged when the parties have sufficiently agreed a Proposed Decision Notice or Proposed Settlement Decision Notice. In these circumstances the issue that the Independent Reviewer is most likely to be concerned with is whether the sanctions proposed are appropriate. We remain of the view that an independent and appropriately experienced lawyer is better qualified to deliver this assessment than an auditor.
- 5.35. Current guidance will need to be updated (including in relation to the role of the Independent Reviewer) to reflect the AEP's revised provisions. As mentioned at paragraph 2.4 above, this will be published in due course and we will keep under review the need for any further amendments to guidance as the revised AEP is applied in practice.

6. Part 4 – The Tribunal

What the consultation proposed

- 6.1. A new Rule 34 to clarify the requirement for Executive Counsel to serve a document at the beginning of the Tribunal stage of proceedings which sets out the particulars of the case against the AEP Respondent, along with any supporting factual evidence.
- 6.2. A new Rule 52 to permit the Tribunal to treat a finding or court-approved statement of fact made by other bodies or officers as prima facie evidence of that fact in the Tribunal's proceedings, allowing for the efficient disposal of issues.
- 6.3. A revised Rule 73 to make express provision for closing submissions at the end of a Tribunal hearing.
- 6.4. New Rules 75-78 to provide that a Tribunal shall issue separate Final Decision Notices in respect of (i) liability and (ii) sanction and costs, removing an impediment to the transparency of earlier publication of liability findings.

Issues arising from consultation responses

Provision of evidence and disclosure

- 6.5. As mentioned at paragraphs 5.10 and 5.11 above, respondents raised several issues regarding disclosure, including requests for: AEP Respondents to have the ability to apply to the Tribunal in respect of document production from both parties to the proceedings and from non-parties; evidence to be provided as early as possible in proceedings; a wider disclosure burden to be imposed on Executive Counsel; and guidance as to what amounts to 'factual evidence'.

Costs

- 6.6. Rule 36 provides that Proposed Decision Notices are to be treated as without prejudice save as to costs and may not be referred to before the Tribunal until the Tribunal has concluded on questions of liability. One respondent suggested an amendment to the AEP (akin to Part 36 of the Civil Procedure Rules) to enable AEP Respondents to make a proposal on sanction following which, if the Tribunal imposed a less severe sanction, AEP Respondents would not be required to pay Executive Counsel's costs. Another respondent suggested that Executive Counsel should set out their position on an open basis before the matter proceeds to Tribunal.
- 6.7. One respondent also stated that AEP Respondents should not bear any costs relating to a successful application by Executive Counsel to amend an Allegation.

Evidence

- 6.8. Several respondents raised concerns regarding the appropriate evidential weight to be given to certificates of criminal convictions and findings or court-approved statements of fact. Respondents argued that to treat such certificates, findings and/or statements as conclusive or prima facie evidence would be inappropriate.
- 6.9. Respondents also suggested that the AEP codify expectations regarding factual and expert evidence, and that consideration be given to adopting the rules of evidence for civil procedure matters.

Procedure

- 6.10. Rule 45 permits Executive Counsel to request an Interim Order Hearing as a matter of urgency. One respondent requested guidance on the factors that would make an urgent hearing necessary. It was also suggested that Rule 46 be amended to permit representations to be made by an AEP Respondent in a timely manner in respect of urgent hearings.
- 6.11. Concerns were raised that the provisions in Rules 65 and 66 (which provide for the procedure in the event of a Tribunal member's inability to continue to participate in a Hearing) could lead to the inefficient conduct of proceedings.

continued/6. Part 4 – The Tribunal

- 6.12. One respondent suggested that time limits be imposed in respect of the Tribunal's delivery of a Final Decision Notice and the date by which a Sanction and Costs Hearing should be listed.
- 6.13. Another respondent commented that it was not immediately clear why the Tribunal process does not commence with the service of the Allegation by the Executive Counsel, following which the Tribunal would be appointed. They suggested that the process set out in amended Rules 32 and 34 could lead to Tribunal members declaring conflicts of interest at a later stage.

Separate liability and sanctions Final Decision Notices

- 6.14. Two respondents recommended that publication of a Decision Notice should be delayed until both liability and sanction and costs have been determined, and that consideration be given to the cost and time implications of having separate liability and sanction and costs Decisions Notices.

The FRC's response

- 6.15. We will issue separate guidance in respect of our approach to disclosure under the AEP. The guidance should provide clarity, including in respect of the approach to obtaining material from third parties.
- 6.16. Part 10 of the AEP makes provision in respect of costs. These provisions will allow the parties, or the Tribunal, to determine the appropriate apportionment of costs following the conclusion of proceedings. Our expectations in respect of costs are set out in Chapter 12 of this feedback statement (which concerns Part 10 of the AEP). We note the suggestion that the AEP should be amended to be consistent with Part 36 of the Civil Procedure Rules. However, as a regulator acting in the public interest, the FRC is in a wholly different position to that of a party to ordinary civil litigation. Accordingly, it would not be appropriate to adopt that suggestion. Rule 36 of the AEP (which requires the Tribunal to regard Proposed Decision Notices issued under Rule 21 as without prejudice save as to costs, prior to determining any breach of a Relevant Requirement) should be viewed within the context of the FRC's expectations on costs (see further Chapter 12, paragraphs 12.3 and 12.4).
- 6.17. Once a matter has been referred to Tribunal for determination (upon the satisfaction of one of the conditions in Rule 29), Executive Counsel is required, by Rule 34, to serve an Allegation. The Allegation will set out the particulars of Executive Counsel's case that the AEP Respondent has breached Relevant Requirements.
- 6.18. With regard to the comments referenced at 6.13 above, it is important to note that conflict checks will be conducted prior to service of the Allegation.
- 6.19. We recognise that a finding or court approved statement of fact might be extracted from a range of proceedings or jurisdictions. It is appropriate that such outcomes are either accepted as proof of that matter or at least as prima facie evidence of facts (and as such would be capable of rebuttal). This is consistent with similar procedures (for example, the ICAEW's disciplinary rules). We do not consider that Rules 51 and 52 require amendment.
- 6.20. We do not consider that it is necessary or appropriate to codify expectations regarding factual and expert evidence as these are matters that will be addressed in case management directions in the circumstances of each case.
- 6.21. Our experience to date with contested Enforcement proceedings under the Accountancy Scheme has not given rise to any significant issues regarding rules of evidence which would suggest a codified set of rules (similar to those applicable in civil litigation cases) is required. Accordingly, we do not consider that it is necessary at this point to make provision in the AEP for rules of evidence.
- 6.22. The decision to grant an Interim Order Hearing, and whether to do so on an urgent or without notice basis, is for the Tribunal. It is appropriate for the Tribunal to take this decision based on the particular circumstances of the case and applying the factors set out in Rule 85(b), following an assessment of Executive Counsel's rationale for applying for a without notice hearing. In light of the above we do not consider that it is necessary to issue further guidance.

continued/6. Part 4 – The Tribunal

- 6.23. In respect of urgent Interim Order Hearings, we have clarified (in Rule 46(ii)) the time periods that apply for representations and note that Rule 47 provides for time periods in Rules 45 and 46 to be varied with the agreement of the parties.
- 6.24. Rules 65(b)(i) and 66(b)(i) provide for the parties to agree the appointment of a replacement Tribunal Chair or member and we are content that this is an appropriate safeguard to ensure the continuation of proceedings.
- 6.25. We do not consider that it is appropriate to impose time limits in respect of the delivery of a Tribunal's Final Decision Notice or the listing of a Sanction and Costs Hearing. Each case is different, and it would not be appropriate to set a uniform time limit to apply to each set of Tribunal proceedings.
- 6.26. We also note that Rule 76 provides that a Sanction and Costs Hearing will be arranged at the earliest opportunity. Our experience has been that equivalent Tribunal hearings under the Accountancy Scheme have been listed for the convenience of all parties, and we consider that Rule 76 allows for this approach.
- 6.27. We consider that it is appropriate and in the interests of transparency to provide the FRC's Board with the opportunity to publish Final Decision Notices following a Liability Hearing. Such publications will be made in accordance with the relevant publication policy, which will set out the matters for the Board to consider in making a decision to publish and provide the parties with the opportunity to make representations on the decision to publish.
- 6.28. We do not consider that separate Final Decision Notices in respect of liability and sanction and costs will lead to any delay in the delivery of the Tribunal's Final Decision Notice on sanction and costs, nor will it lead to any significant additional costs being incurred. We note that Part 10 of the AEP makes provision in respect of costs and that the Tribunal is not obliged to require a party to pay all of the costs incurred by the other party.
- 6.29. Where guidance has been requested or suggested above, we will continue to review the position and will keep under review the need for any further guidance in light of experience of the revised AEP in practice.

7. Part 5 – Interim Orders

What the consultation proposed

- 7.1. These amendments clarify and detail the procedure to be adopted for Interim Order proceedings. This Part sets out the grounds for making an Interim Order, the timing of any hearings (with or without notice) and the basis of any challenge by an AEP Respondent to an Order.

Issues arising from consultation responses

Without notice hearing

- 7.2. Concerns were raised about the ability of Executive Counsel to make an application for an Interim Order without notice to the AEP Respondent. It was suggested that there should be an appropriate framework or guidance to set out the circumstances in which it would be appropriate to make such an application, and the basis on which a Tribunal should permit such an application.
- 7.3. It was further suggested that the list of factors in Rule 85(b) (which lists the non-exhaustive factors that a Tribunal should consider before determining whether an Interim Order Hearing should be held) should include reference to the risk of unfair prejudice and injustice to the AEP Respondent.
- 7.4. Respondents questioned the potential breadth of Interim Orders, whether it was necessary to make provision for an Interim Order application to be heard in public, and whether a 3-day review timescale was excessively short in the context of the imposition of an Interim Order following a without notice hearing.

Notifying Recognised Supervisory Bodies

- 7.5. One respondent submitted that Recognised Supervisory Bodies should be notified of matters related to Interim Orders, in light of the potential need for such bodies to take their own actions.

The FRC's response

- 7.6. The decision to grant a without notice Interim Order Hearing is for the Tribunal. It is appropriate for the Tribunal to take this decision based on the particular circumstances of the case and applying relevant factors (including those set out in Rule 85(b)), following assessment of Executive Counsel's rationale for applying for a without notice hearing. Whilst we anticipate that Executive Counsel would only be likely to apply for such a hearing in exceptional circumstances, we nevertheless consider that the AEP should permit such a hearing where the Tribunal considers that appropriate.
- 7.7. We note that Rule 85(b) requires the Tribunal to consider the public interest, which would necessarily involve consideration of the risk of unfair prejudice and injustice to the AEP Respondent. We are nonetheless content to clarify this further and have amended Rule 85(b) to include that risk as an additional factor.
- 7.8. In light of the above we do not consider that it is necessary to issue further guidance at this time. By their nature such applications are expected to be exceptional. However, we will continue to monitor the position and will keep under review the need for any further guidance as the revised AEP is applied.
- 7.9. We do not consider that there will be circumstances in which it will be appropriate to hold an Interim Order hearing in public.
- 7.10. We consider that an Interim Order granted on a without notice basis should be reviewed within a short timeframe. This will give AEP Respondents the opportunity to make appropriate representations regarding the continuation of the Interim Order at the earliest reasonable opportunity. We expect that AEP Respondents would be at liberty to seek an adjournment if they wished.
- 7.11. We agree that the Recognised Supervisory Body of which the AEP Respondent is a member should be notified of the terms of any Interim Order imposed (and in confidence). We have amended Rule 89 accordingly.

8. Part 6 – Settlement

What the consultation proposed

- 8.1. This new Part provides an express power for Executive Counsel to agree a settlement agreement (i.e. conclude enforcement proceedings by agreeing breaches, sanctions and costs) with an AEP Respondent.
- 8.2. Any such agreement will be subject to oversight by an independent person, the Independent Reviewer, before it is approved. This new power will ensure that appropriate and proportionate case management decisions can be taken that reflect the dynamic nature of enforcement proceedings and the public interest.
- 8.3. Executive Counsel will retain the ability to continue to pursue Enforcement Action where settlement discussions do not prove fruitful.

Issues arising from consultation responses

- 8.4. Several responses were supportive of the inclusion of express provisions within the AEP dealing with settlement. Issues raised by respondents in respect of elements of the settlement provisions are set out below.

Role of the Independent Reviewer

- 8.5. While one respondent was content that the Independent Reviewer provided an independent check that a Proposed Settlement Decision Notice was appropriate, concerns were raised by others that the Independent Reviewer's role is an insufficient safeguard to ensure fairness in that process.
- 8.6. Other concerns raised were: that a lawyer appointed as an Independent Reviewer on their own would lack the expertise to assess the contents of the Proposed Settlement Decision Notice; that the Conduct Committee was better placed to determine whether a Proposed Settlement Decision Notice should be approved; that the Independent Reviewer should provide detailed reasons in the event that a Proposed Settlement Agreement was not approved; and that guidance or further rules should be provided in respect of the Independent Reviewer's functions (including in relation to disclosure issues). Clarity was also sought in respect of the test to be applied by the Independent Reviewer, and a suggestion was made that the AEP or associated guidance should expressly permit discussion between relevant experts.

Timing

- 8.7. Concerns were raised that the Independent Reviewer stage would lead to unnecessary delays in proceedings. It was also suggested that time frames should be set for the completion of the settlement process and the Independent Reviewer's determination.

Alternative dispute resolution

- 8.8. Several respondents suggested that the AEP should make provision for the parties to engage in alternative dispute resolution ('ADR'). It was suggested that the use of ADR could lead to early and cost-effective case resolution. Several respondents noted that the use of ADR would reflect the Financial Conduct Authority's enforcement process, which provides for mediation to be used as a means to facilitate settlement in appropriate cases.

Disposal of preliminary issues

- 8.9. One respondent suggested that the AEP should be sufficiently flexible to accommodate the early resolution of preliminary issues, which could lead to significant savings of costs and early resolution of matters in litigation.

Costs

- 8.10. Another respondent suggested that provision be made for settlement discussions to be admissible on the question of costs where communicated on a 'without prejudice save as to costs' basis.

continued/8. Part 6 – Settlement

The FRC's response

- 8.11. We note that the role of the Independent Reviewer reflects the process under the Accountancy and Actuarial Schemes. In these schemes, a member of the Tribunal Panel is appointed to determine whether it would be appropriate for the Proposed Settlement Agreement to be entered into. Our experience to date has been that this process works well and we consider that it is a good model to apply to the AEP.
- 8.12. We remain of the view that the Independent Reviewer will provide an additional safeguard. Their role in determining whether Proposed Settlement Decision Notices are appropriate will ensure independent rigour in settlements and help safeguard fairness and the public interest.
- 8.13. The Independent Reviewer will be engaged when the parties have agreed a Proposed Settlement Decision Notice. In these circumstances the issue that the Independent Reviewer is most likely to be concerned with is whether the sanctions proposed are appropriate, on the basis of agreed facts. We remain of the view that a senior, independent and appropriately experienced lawyer is best qualified to make this assessment. A factual inquiry should not be necessary. For the same reason, we do not think that more than one Independent Reviewer, or indeed a wider committee, would enhance the required assessment.
- 8.14. Rule 107(b) requires the Independent Reviewer to provide the parties with written reasons of why it is not appropriate to approve the issue of a Final Settlement Decision Notice. Before reaching any such decision, the Independent Reviewer is required to notify the parties of why the Independent Reviewer is not minded to approve the issue of a Final Settlement Decision Notice pursuant to Rule 109(a).
- 8.15. Current guidance will need to be updated to reflect the AEP's revised provisions, and this will be published in due course. The Independent Reviewer will have the benefit of guidance in respect of their function in the settlement process. We will keep under review the need for any further amendments to guidance in light of experience of the revised AEP in practice.
- 8.16. We do not anticipate that use of the Independent Reviewer will lead to excessive delays in resolving matters. We would also expect to be able to engage a single Reviewer without delay and consider that allowing a short period for the Independent Reviewer's review is warranted, in light of the additional benefits that review will bring.
- 8.17. While we do not consider the imposition of a timeframe for the completion of settlement discussions is feasible or sensible, we agree that it is appropriate to impose a timeframe to ensure prompt decision-making. We have amended Rule 107 to require the Independent Reviewer to decide whether a Proposed Settlement Decision Notice should be approved within 14 days or such longer period as the parties may agree.
- 8.18. We do not consider that ADR is likely to be appropriate in FRC cases. We have proposed and will implement a comprehensive settlement procedure that will enable the parties to discuss early resolution, consistent with our regulatory objectives and obligations.
- 8.19. We do not consider that it is necessary to provide expressly for preliminary hearings. The approach set out in the AEP, where Executive Counsel and an AEP Respondent may agree a Proposed Decision Notice or a Proposed Settlement Decision Notice when coupled with the Tribunal's broad power to set case management directions, provides an appropriate mechanism to identify and resolve issues (whether substantive or procedural) between the parties.

9. Part 7 – Appeal

What the consultation proposed

- 9.1. A new Rule 112 to provide Executive Counsel with the same rights of appeal as an AEP Respondent.
- 9.2. An amended Rule 113 to provide that the time period for appealing a Tribunal's decision on liability is extended to 28 days after the issuing of a Final Decision Notice in respect of sanctions imposed.
- 9.3. An amended Rule 117 to rationalise the available grounds of appeal for appeals to the Appeal Tribunal. Other minor, clarificatory and/ consequential amendments.

Issues arising from consultation responses

Appeals to the High Court/Upper Tribunal

- 9.4. Several responses suggested that the key issue with the appeals process is that there should be a right of appeal to a body outside of the FRC's Tribunal process. It was said that this would bring alignment with the position for certain other professions where appeals lie to either the Upper Tribunal or the High Court.

Right of appeal

- 9.5. There were mixed views on whether Executive Counsel should have a broad right of appeal equivalent to that of an AEP Respondent. It was suggested that, if maintained, this right should be limited to cases where there is a clear public interest in appealing. Respondents considered that a broad right of appeal risks uncertainty and double jeopardy, and should be subject to oversight.

Time limits

- 9.6. Two respondents suggested that there should be a time limit of 28 days during which the Appeal Tribunal should be appointed by the Convener.

Remitting a matter to the Tribunal

- 9.7. One respondent stated that the Appeal Tribunal should continue to have the power to remit a matter back to the Tribunal.

The FRC's response

- 9.8. We understand that legislation is necessary in order to bring the FRC's enforcement regime within the jurisdiction of either the Upper Tribunal or the High Court. It is accordingly not within the FRC's power to include such a right of appeal in the AEP.
- 9.9. In any event, we note that the FRC's Tribunals and Appeals Tribunals are comprised of independent and experienced senior lawyers and former members of the judiciary. Appeal Tribunal members must either be current or former members of the judiciary or Queen's Counsel, all of whom we expect to reflect the highest standards of independence and impartiality.
- 9.10. We do not consider that the FRC's approach to constituting Tribunals and Appeals Tribunals gives rise to any unfairness to AEP Respondents and note that no examples of suggested Tribunal failings have been identified in the responses. We also note that the Government has accepted the independence and impartiality of the FRC's Tribunal in its recent consultation *'Restoring trust in audit and corporate governance: proposals on reform'*.²

² <https://www.gov.uk/government/publications/restoring-trust-in-audit-and-corporate-governance>

continued/9. Part 7 – Appeal

- 9.11. We do not consider it to be either necessary or appropriate to limit Executive Counsel's rights of appeal, or subject them to further oversight. No decision to appeal is taken lightly and, in taking that decision, Executive Counsel is performing a public function. Executive Counsel is therefore required to act consistently with the public law obligations that are imposed on such decision-makers, namely to act lawfully, rationally and fairly. Furthermore, Executive Counsel will appeal only where it meets the test that it is in the public interest to do so. We do not consider it necessary to set this out explicitly in the AEP.
- 9.12. Executive Counsel is best placed to determine whether to appeal the decision of a Tribunal and it would not be appropriate to transfer that decision-making power to another person. The role of Executive Counsel is charged with discharging that responsibility. We are not persuaded that providing for the Executive Counsel to have equivalent rights of appeal risks any unfairness, uncertainty or double jeopardy. We remain of the view that, following contested proceedings before an independent Tribunal, equivalent rights of appeal are important to ensure that Executive Counsel can appeal appropriate cases. We are content that this strikes the appropriate balance between the public interest and the interests of the AEP Respondent.
- 9.13. Leave to appeal will need to be obtained by Executive Counsel before pursuing an appeal. These applications will be heard by an independent member of the Tribunal Panel. This provides a safeguard to ensure that applications for leave to appeal made by Executive Counsel are only granted in appropriate cases. The ability to appeal is time-limited and so therefore is the scope for any uncertainty for an AEP Respondent following the conclusion of Tribunal proceedings.
- 9.14. We do not consider that a deadline to appoint an Appeal Tribunal is necessary given that Rule 119 includes the wording 'as soon as practicable'. The FRC has engaged the Convener for this purpose. It is our expectation that Appeal Tribunals are likely to be appointed within 28 days of the granting of leave to appeal.
- 9.15. We do not consider it is necessary or efficient for an Appeal Tribunal to be able to remit a matter back to a Tribunal in light of the limited grounds on which an appeal can be brought (Rule 117) and the powers that can be exercised by an Appeal Tribunal once convened (Rule 123).

10. Part 8 – Reconsideration

What the consultation proposed

- 10.1. Minor clarificatory or consequential amendments.

Issues arising from consultation responses

- 10.2. Two respondents were supportive of the proposed amendments to Part 8.

Scope and threshold of power

- 10.3. One respondent expressed concern that the scope and threshold for the Board to reconsider decisions had been narrowed in Rule 131 and considered that the new standard was open to interpretation.

The FRC's response

- 10.4. The previous reconsideration provisions were too broad. To have retained them as they were would have risked their being used inappropriately as a mechanism to subvert decisions of either the Independent Reviewer or the independent Tribunal. It is in the interests of all parties for the AEP to be clear on which decisions should be subject to this reconsideration power and as to the necessary thresholds for that power to be available. The amended power will be available where there is a real risk that a decision could lead to an injustice or could prejudice the public interest and there is no other available mechanism to address the concern.
- 10.5. The nature of the decisions to which the power will apply are matters of judgement rather than legal decisions. It is therefore inappropriate to apply a high threshold similar to that used for judicial review. We are content that the additional requirement for it to be necessary in the public interest or to prevent injustice leads to a sufficiently high threshold which is only likely to be rarely met. We also note that the affected AEP Respondent will have the opportunity to make representations to the Board on these matters before the Board determines how to proceed.

11. Part 9 – Sanctions

What the consultation proposed

- 11.1. Revised Rule 136(d) removes the upper limit of a temporary prohibition on an AEP Respondent from carrying out Statutory Audits or signing an audit report, which was previously set at three years. The powers to impose conditions under Rule 96(k) and to accept undertakings under Rule 97 of the current version of the AEP have been removed.

Issues arising from consultation responses

Sanctions

- 11.2. Two respondents queried the removal of provisions relating to the imposition of conditions and undertakings as a sanction. Respondents also requested guidance to ensure that sanctions were imposed to protect the public interest in a proportionate manner and to distinguish cases that involve a lack of integrity.

The FRC's response

- 11.3. We consider that the AEP should replicate the particular sanctions explicitly made available to the FRC by virtue of Regulation 5 of the SATCAR 2016 which will permit the imposition of appropriate non-financial sanctions. Sanctions imposed under the AEP will be determined in accordance with the factors in the detailed sanctions policy issued by the FRC, which include the nature and seriousness of the breaches of relevant requirements reflected in the Final Decision Notice.

12. Part 10 – Costs

What the consultation proposed

- 12.1. New Rule 142 clarifies that a Tribunal may award costs in respect of the Tribunal's administrative expenses. This will ensure that the Tribunal can recoup the costs of its expenses in holding hearings.

Issues arising from consultation responses

- 12.2. Respondents stated that the AEP should make provision for the independent assessment of costs. Respondents also requested clarity on the FRC's expectations regarding recovery of its costs, when the Tribunal may make a costs order in favour of a Respondent and on the approach to Tribunal Costs.

The FRC's response

- 12.3. Since its introduction, no matters have proceeded to the Tribunal stage of proceedings under the AEP. The FRC does however have experience of conducting Tribunals under the Accountancy Scheme. It has been our experience to date that Tribunal Chairs are capable of assessing costs following Tribunal proceedings. We have therefore concluded that it is unnecessary to make provision for costs to be independently, or otherwise than by the Tribunal, assessed.
- 12.4. The FRC's expectation on costs under the revised AEP is that: where Allegations are proven, it will be in the public interest, fair and equitable for the AEP Respondent who is responsible for that breach to bear the whole cost of the investigation and subsequent proceedings; and where not all Allegations are proven, subject to the restriction at Rule 144, the Tribunal should make such costs orders as it considers appropriate, having regard to the factors at Rule 143. As the FRC is discharging its responsibilities as a regulator of the audit profession in the public interest, in conducting investigations and bringing proceedings under the AEP its position is not comparable to that of a party to ordinary civil litigation.

13. Part 11 – General

What the consultation proposed

- 13.1. Where a Notice of Closure is issued to an AEP Respondent, revised Rules 148 and 149 remove the requirement to notify, and provide reasons to, any co-Respondents and introduce a new requirement to provide the Notice of Closure to the affected Respondent's supervisory body. In respect of Notices of Closure issued pursuant to Rule 146, it is inappropriate to notify AEP Respondents of matters relating to co-Respondents. In respect of Notices of Closure issued pursuant to Rules 147, AEP Respondents will be aware of the status of proceedings in respect of their co-Respondents and formal notification requirements are unnecessary.
- 13.2. New Rules 153 to 160 to make provision for Joint Tribunals. Joint Tribunals will be capable of dealing with cases that arise under the AEP as underpinned by the statutory framework for statutory audit regulation and other non-statutory disciplinary schemes operated by the FRC by arrangement with the accountancy and actuarial professional membership bodies (the Accountancy Scheme and the Actuarial Scheme).
- 13.3. This change is designed to enable one Tribunal to hear cases arising from the same factual circumstances that engage those different FRC procedures. There is a different standard under the Schemes (Misconduct) for an AEP Respondent to be liable to sanction than under the AEP (breach of a Relevant Requirement), and Joint Tribunals shall apply these different standards as appropriate.
- 13.4. New Rules 165-166 to make express provision in respect of the confidentiality safeguarded by s1224A Companies Act of non-public information gathered by the FRC under the AEP.
- 13.5. New Rules 169-170 to set out the provisions necessary to set out when the amended AEP will come into force, and how it will apply to ongoing and new matters. The amended provisions seek to ensure that 'live' matters can proceed under the new AEP, without prejudice to AEP Respondents.

Issues arising from consultation responses

Notice of Closure

- 13.6. Respondents stated that all AEP Respondents in a matter should be notified when a case against a co-Respondent was closed. A respondent requested that the Tribunal should have the ability to unilaterally decide that an AEP Respondent should no longer be liable for Enforcement Action.
- 13.7. Several respondents requested that existing guidance be amended to give further detail regarding the exercise of the powers set out in this Part.

Joinder of Allegations and Joint Tribunals

- 13.8. Respondents suggested that AEP Respondents should have the opportunity to make representations before a final decision is made on joining matters, and that a duty of disclosure of relevant information should be imposed on Executive Counsel to facilitate an application for a Joint Tribunal by an AEP Respondent.
- 13.9. Several respondents requested guidance on how Joint Tribunals would operate in practice and suggested that AEP Respondents and/or the Tribunal should have the ability to apply for, or appoint, a Joint Tribunal. The need for consequential amendments to the Accountancy and Actuarial Schemes was also identified.

Confidentiality

- 13.10. Several respondents requested clarification on the provisions in respect of confidentiality in Rules 165 and 166.

Transitional provisions

- 13.11. One respondent was supportive of these provisions. Another respondent requested clarification on Rule 169 in respect of the point of application of the AEP.

continued/13. Part 11 – General

The FRC's response

- 13.12. We have amended the AEP to provide that all AEP Respondents in a matter will be notified when a Notice of Closure is sent in respect of one AEP Respondent in circumstances where those AEP Respondents have previously been notified of the others' involvement in the investigation.
- 13.13. Rule 147 provides that the Tribunal may decide that an AEP Respondent should no longer be liable for Enforcement Action upon an application from Executive Counsel. This applies up to the point where a Notice of Hearing is issued in respect of a Liability Hearing. This Rule reflects our view that it would be inappropriate for the Tribunal to be able to unilaterally decide that an AEP Respondent should not be liable for Enforcement Action, prior to a Liability Hearing. Such a decision should only be taken upon the application of Executive Counsel, and in that respect this Rule is consistent with the power of Executive Counsel to decide that the AEP Respondent should no longer be liable for Enforcement Action pursuant to Rule 146.
- 13.14. The FRC welcomes respondents' support for the Joint Tribunal proposals as reflected in the revised AEP. We agree that current guidance will need to be updated to reflect the Joint Tribunal arrangements and that new guidance on the operation of Joint Tribunals will also be needed. Refreshed and new guidance will be published in due course. To enable the FRC to put in place the necessary supporting arrangements for the Joint Tribunal process, we are not proposing to give effect to the new Joint Tribunal provisions immediately (in January 2022). We are instead proposing to give effect to those provisions at a later date, once the details of the supporting arrangements and interdependencies are settled. It is our current expectation that this will be later in the first Quarter of 2022. The FRC will undertake any necessary or appropriate further consultation on the detail of those arrangements before they come into effect.
- 13.15. In terms of respondents' comments on the Joint Tribunal proposal, we note that, under the current proposals, AEP Respondents will have the opportunity to make representations to the Chair of the appointed Joint Tribunal. However, as it is Executive Counsel who will have the benefit of all relevant information (which neither the Tribunal nor AEP Respondents will necessarily have) it is considered appropriate that only Executive Counsel is able to make Joint Tribunal applications. We do not at this stage consider it appropriate to impose a duty of disclosure on Executive Counsel to facilitate an AEP Respondent's application for a Joint Tribunal.
- 13.16. Consequential amendments to the Accountancy and Actuarial Schemes will be undertaken as part of the exercise referenced at paragraph 13.14 above.
- 13.17. In respect of confidentiality, we have amended Rules 165 and 166 to provide additional clarity on the confidentiality obligations that attach to information disclosed pursuant to the AEP.
- 13.18. We are pleased there were no objections in principle to the approach to the transitional provisions. We have considered the responses in relation to Rules 169 and 170 and amended the wording of Rule 170 to clarify the application of this Rule.

Annex A – List of respondents

The FRC received eleven responses to the consultation:

- i) the Association of Chartered Certified Accountants
- ii) the Institute of Chartered Accountants of Scotland
- iii) PricewaterhouseCoopers LLP
- iv) Ernst & Young LLP
- v) KPMG LLP
- vi) Deloitte LLP
- vii) BDO LLP
- viii) Grant Thornton UK LLP
- ix) RSM UK Audit LLP
- x) Taylor Wessing LLP
- xi) Clyde & Co LLP

Annex B – Revised AEP



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