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By email: AEPconsultation@frc.org.uk

7 October 2021

Dear Sir/Madam,

PwC's response to FRC consultation on proposed amendments to the Audit Enforcement Procedure

Thank you for the opportunity to provide our views in response to the FRC's consultation on the amended version of the FRC's Audit Enforcement Procedure (AEP) published on 22 July 2021.

We support the FRC's key areas of focus for 2021/22 including a '*proportionate and risk based response*' in its enforcement activity. A transparent and consistent approach to enforcement by the FRC together with a strategic approach to investigations would promote greater confidence in the quality of audit. This should include greater exercise of discretion by the FRC over the cases which it would be most effective to pursue and how that is done.

From an overall perspective, the amendments to the AEP introduce clarity in a number of areas including: powers for the Case Examiner to gather information²; introduction of Joint Tribunals³; more detail on appeals⁴; and the new section on settlements.⁵ These will all aid the effective management of cases. We support amendments made to facilitate prompt investigations including provisions which enable the scope of investigations to be amended⁶ and the removal of the requirement for Initial Investigation Reports.

We also support the Independent Reviewer role as a means of providing oversight of Proposed Decision Notices and Settlement Decision Notices. However, the responsibilities of the Independent Reviewer should also cover those situations where such notices are not agreed between the parties. There is otherwise no mechanism to enable an independent review in these circumstances as this is currently the responsibility of the Enforcement Committee (which it is proposed should be abolished).

¹https://www.frc.org.uk/getattachment/341f51b8-5f64-4bb5-afbd-1dbb36boef53/FRC-Strategy,-Plan-and-Budget_March2021.pdf at page 8

² Rule 3 Amended AEP

³ Rules 153-160 Amended AEP

⁴ Part 7 Amended AEP

⁵ Part 6 Amended AEP

⁶ Rules 12- 13, Amended AEP

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Greater transparency in the amended AEP would enhance confidence in the effectiveness of the enforcement process and demonstrate the FRC's commitment to delivering transparent regulatory outcomes⁷. Where matters are referred by the Board for investigation, we suggest that a clear statement from the Case Examiner is provided together with notice to Respondents setting out the reasons for the referral. Transparency in the process would also be aided by guidance on factors that may be considered by the FRC when establishing there is '*good reason*' to investigate a case⁸ and by clarification of the process for referral of matters by the FRC's AQR team to the enforcement team. The opportunity for Respondents to make representations to the Board at the point a case is referred for investigation would also help to progress matters swiftly, particularly those which may be resolved through Constructive Engagement.

We have set out our detailed comments and responses to the consultation questions in the **appendix** to this letter.

As a regulator with a focus on promoting improvement⁹, we suggest that:

- The FRC builds on its process of Constructive Engagement, with a focus on encouraging audit firms to learn from mistakes and the regulator working with firms in identifying the root cause of any actual failure in judgment. Where the underlying cause of cases is unintentional (e.g. error of judgment), resolution by means of Constructive Engagement would enable swift outcomes and the FRC should distinguish between these cases and those which involve a lack of integrity (where referral to investigation may be more appropriate); and
- Where cases are referred for investigation, the regulator should exercise discretion in considering whether the appropriate focus of investigation is the audit firm and/or the individual auditor and we suggest this point is clarified in the AEP.

We support swift and effective outcomes to enforcement including through both Constructive Engagement under the AEP and settlement (where appropriate). To improve the timeliness of investigations, we suggest:

- Adoption by the FRC's enforcement team of a 'triage' approach when determining matters for investigation, with a distinction made between those cases which have the potential to cause serious detriment and those which are likely to have a more limited impact. This would enable the FRC to adopt a tailored approach to the progress of investigations with the parties encouraged to seek swift resolution where admissions are made and would enable the allocation of FRC resources to more complex cases. Clear guidance as to what may be considered as '*good reason*' to investigate would aid decision-making at the 'triage' stage;
- Greater access for the FRC's enforcement team to in-house expertise from forensic accountants, lawyers and experienced auditors. This would reduce the team's reliance on external counsel and external experts which in our experience can lead to delays in the enforcement process; and
- Inclusion in the AEP of time frames for every stage of the investigation and enforcement process (including settlement) and overall from start to finish.

7

<https://www.frc.org.uk/getattachment/f656ea47-872b-4715-98b4-223a6ad07f24/FRC-Annual-Enforcement-Review-2021.pdf> at page 61

⁸ Rules 8, 9 Amended AEP

9

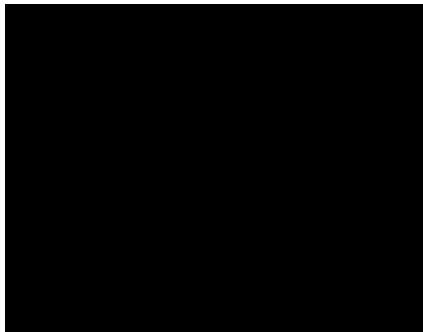
https://www.frc.org.uk/getattachment/341f51b8-5f64-4bb5-afbd-1dbb36boef53/FRC-Strategy,-Plan-and-Budget_March2021.pdf at p.8



The Government's recent consultation 'Restoring trust in audit and corporate governance'¹⁰ includes proposals for ARGA to have regulatory oversight of all directors on the boards of public interest entities and to introduce legislation giving ARGA statutory powers to take enforcement action in relation to accountants. As the outcome of the Government's consultation is not yet known, it will be important to ensure alignment of the amended AEP with the Government's final proposals in this area.

We look forward to supporting the FRC in its transformation to ARGA and if there are any questions or it would be helpful to discuss any of the points in this letter, do get in touch.

Yours sincerely,



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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/970676/restoring-trust-in-audit-and-corporate-governance-command-paper.pdf

Appendix

Q1. 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

We have set out below our comments on the changes to the AEP, by reference to specific rule numbers.

Part 1- Interpretation/Glossary

The proposed amendments are helpful and assist with updating the AEP, for example by removing references to EU legislation that are no longer relevant. We also welcome the clarification (to the relevant definitions) that the FRC has jurisdiction over Statutory Auditors and Statutory Audit Firms who are or were eligible for appointment as a statutory auditor at the time of the relevant conduct.

We suggest that the definition of ‘days’ is reinstated to clarify whether working or calendar days are to be used for calculating time periods.

Part 2 - Initial Stages

Initial Action by Case Examiner (rules 3-5)

We welcome the clarity that the proposed amendments provide to the initial stages of the AEP process. The Case Examiner’s powers to gather information are clearly set out and we welcome the option for the Case Examiner to take no further action in circumstances where there may have been a breach of a Relevant Requirement under **rule 5(a)**. The reference to Constructive Engagement at this stage has also been retained (**rule 5b**) which is helpful.

There are some rules which would benefit from greater clarity, for example, guidance as to what is intended to be covered by the Case Examiner’s ability to give notice to require an individual auditor or an audit firm to ‘*create documents*’ (**rule 3(a)**) and guidance on the factors that the Case Examiner might take into consideration when applying **rules 5(a)-(d)**. For example, under **rule 5(a)** in what circumstances would no further action be taken by the Case Examiner where there may have been a breach of a Relevant Requirement? And would **rule 5(c)**¹¹ and **(d)**¹² only be applicable if Constructive Engagement under **rule 5(b)** was not deemed appropriate?

Where a matter is referred to the Board under **rule 5(d) or rule 7**, a clear statement from the Case Examiner together with notice to the Respondent setting out the rationale and reasons for the referral - including why the information provided ‘*raises a question*’ - would significantly aid transparency in the enforcement process. It would also be helpful for the Respondent to have the opportunity to make representations to the Board at this point, particularly in cases which may be resolved through Constructive Engagement with an individual Respondent and/or audit firm.

Decision to Investigate (rules 6-10)

¹¹ Referral of a matter by the Case Examiner to Executive Counsel to apply for an Interim Order to be made by a Tribunal

¹² Referral of a matter by the Case Examiner to the Board

We are supportive of the process set out in **rule 6** which encourages consideration of Constructive Engagement by the Board, and would encourage the use of Constructive Engagement wherever possible. Guidance would be helpful on the relevant factors to which the Board and the Case Examiner would have regard when making decisions under this rule and would assist in making the process transparent.

Whilst the references to ‘good reason’ (referred to in **rules 8-10**) are not a new addition to the AEP, guidance would be helpful to understand the factors that may be taken into consideration when establishing if there is a ‘good reason’ to investigate. For example, whether this is intended to be linked to other factors such as ‘protection of the public’ and ‘in the public interest’. Clearly defining and linking the ‘good reason’ to the scope of the investigation would enable the Respondent to better understand the areas of concern and promote expediency (see also our comments below on **rule 11**).

We are supportive of the proposed amendment to **rule 10** which directs the Board to take no further action in situations where it has concluded that there is no good reason to investigate the matter. This removes the ambiguity under current **rule 5** which states that the Board may refer the matter back to the Case Examiner to resolve using Constructive Engagement, but does not conclusively state that the Board can make a decision to take no further action.

Notice of Investigation (rule 11)

We support the requirement under **rule 11(a)** for the Board to ‘state the scope of the investigation’ (amended from ‘outline the scope’ in current **rule 7**). It is important for all Parties that the scope of investigation is clearly defined and articulated at an early stage, with clear connection between the basis of investigation (being the ‘good reason’ referenced in our comments to **rules 8-10**) and the scope. This ensures that resources, of both Parties, can be focused on the areas of interest identified by the Board, thereby aiding expedient management of cases and constructive communication between the Parties. From a practical perspective, where matters are referred by the Board for investigation, our observation is that greater connectivity between the FRC’s enforcement team and the Case Examiner’s team would avoid duplication of effort.

Part 3 - Investigation

Amending the scope of an investigation (rules 12-13)

We support the proposed amendments under **rule 12** and **rule 13** which enable Executive Counsel to report to the Board, where Executive Counsel considers that an amendment to the scope of the investigation and/or the addition of a Respondent is needed. The ability to amend an existing investigation - rather than open a parallel investigation - will assist with the expeditious management of cases. However, we would suggest that the Board considers representations from the Respondent where the scope of investigation is to be amended.

Under **rule 13(b)(ii)**, where a Respondent has been added to an investigation, the Board is to provide written notification to any other Respondents unless to do so would ‘not be in the public interest’, and guidance on what the Board would consider as not being in the public interest would be helpful.

Investigation Powers (rules 14-15)

The amended AEP includes additional details on Executive Counsel’s powers to investigate and determine whether to issue a Proposed Decision Notice. These details clarify what information may be requested and from whom - including ‘request or receive from any other person any information which may be material to an investigation’ under **rule 14(e)**. Guidance would be welcome as to the circumstances in which a case ‘should be referred directly to the Tribunal for a Liability Hearing’ under **rule 14(f)**.

Investigation Report (rules 16-18)

New **rules 16-17** cover production of the Investigation Report. The Initial Investigation Report is removed as a step in the investigation process which in our view should facilitate overall progress with investigations. To drive

timely completion of investigations, we suggest inclusion of a time frame in the amended AEP for Executive Counsel to prepare and provide an Investigation Report to the Respondent. A time frame of one year from the start of an investigation would be appropriate in our view. We also believe an overall time frame for investigations should be set.

We are supportive of the provision in **rule 16(d)** which requires Executive Counsel to disclose the ‘*key evidence that Executive Counsel considers relevant*’ to the Respondent in the Investigation Report. Guidance on what evidence is intended to be included within ‘*key evidence*’ would be beneficial. In particular, the provision of FRC expert reports at this stage would significantly aid the Respondent’s timely consideration of the matters raised in the Investigation Report. To promote transparency, and allow the Respondent to address the case against them in full, we would suggest that key evidence is set out alongside a list of all evidence on which Executive Counsel intends to rely.

We recommend flexibility in the time frame for the Respondent to make written representations in response to the Investigation Report. For example in a complex investigation where a lengthy and detailed Investigation Report is prepared by the FRC - without the Initial Investigation Report stage under the amended AEP - the Respondent should be permitted a period of longer than 56 days (**rule 17**) to provide written representations.

Liability for enforcement action - Executive Counsel (rules 19-20)

The wording in **rule 19** provides clarity that Executive Counsel is able to exercise discretion as to whether the Respondent should (or should not) be liable for Enforcement Action, including in circumstances where Executive Counsel has concluded that the Respondent has breached a Relevant Requirement. We support the exercise of discretion by Executive Counsel in these circumstances.

Final Decision Notice – the Independent Reviewer (rules 23-28)

The Independent Reviewer role enables a review of proposed Final Decision Notices and Final Settlement Decision Notices where they are agreed between Executive Counsel and the Respondent, which will assist in promoting a fair and transparent process. We support the introduction of the role and agree that anyone appointed to the role should be a legal member of the Tribunal Panel. We suggest that the Independent Reviewer also has power to recommend that an investigation is closed. This would strengthen the oversight process and align with the powers currently provided to the Enforcement Committee in its independent oversight role - current **rule 23(a)**. See also our response below (*Referral to the Tribunal by Executive Counsel (rules 29-31)*).

In order to ensure that timeliness remains a key component of the AEP process, we would suggest that time frames are introduced for the procedures set out at **rule 25** (which sets out the process for the Independent Reviewer to either approve or decline the Final Decision Notice from Executive Counsel) and **rule 28** (which sets out the options available to Executive Counsel in the event that the Independent Reviewer declines to approve the Final Decision Notice). In our view, a period of 21 working days for each would be appropriate.

Referral to the Tribunal by Executive Counsel (rules 29-31)

In the current AEP, the Enforcement Committee process allows the Respondent to make representations (current **rule 20(c)**) and review documents not already seen (current **rule 20(b)**) and the Enforcement Committee has the power to issue a Notice of Cancellation where it does not believe there is a case to answer (current **rule 23**). It is in contested matters where this process would be most beneficial, particularly for a Respondent who is an individual. Under the proposed amendments, the only alternative course (where matters are not agreed) would be for referral to the Tribunal under **rule 29(b)**¹³ or **rule 29(e)**¹⁴ which is a costly and time consuming process and leads to significant stress and pressure for individual Respondents.

¹³ Where the Respondent has responded but has not provided written agreement to the Proposed Decision Notice issued pursuant to Rule 21 to Executive Counsel’s satisfaction

¹⁴ The Respondent has agreed to the referral.

In our view, there remains a benefit to retaining an overview mechanism for contested matters to ensure independent oversight before a matter proceeds to the Tribunal. We would suggest that the Independent Reviewer role is extended to cover a review of a contested matter before referral to the Tribunal, as set out above. The Independent Reviewer should also have the ability to issue a Notice of Cancellation which is currently available to the Enforcement Committee under current **rule 23(a)**. Alternatively, the review could be delegated by the Board to the Conduct Committee.

Part 4 - The Tribunal

We note that **rule 34** refers to disclosing '*factual evidence*' on which Executive Counsel relies for the purposes of making a case for a breach of a Relevant Requirement, compared to the requirement to disclose '*key evidence*' in support of an Investigation Report under **rule 16(d)**. Guidance as to what evidence is to be included within each definition, in particular the point at which the FRC's expert report would be provided to the Respondent, or whether there is intended to be a difference between the evidence which is disclosed at these stages would be useful.

As set out in our comments relating to **rule 16(d)**, we are supportive of the provision of evidence to the Respondent at an early stage (in particular the expert report) to aid cooperation between Parties and promote the expedient management of cases.

Notice of Hearing (rules 45-48)

We note that **rule 45(b)(ii)** allows for Executive Counsel to request an Interim Order Hearing to be heard '*as a matter of urgency*' with seven days' notice to the Respondent of the proposed hearing. Guidance on what factors would make a matter '*urgent*' would be useful.

We would suggest that **rule 46(c)**, which applies to Interim Order applications on notice with the Respondent to provide written representations at least 14 days in advance, is amended to allow the Respondent to make representations in a timely manner in situations where an urgent hearing is made with 7 days notice.

Evidence (rules 49-57)

We are supportive of **rule 50** which gives the Tribunal discretion to allow Parties to adduce new written evidence and suggest that the Party receiving such evidence should be allowed sufficient time to review. However, care is needed to ensure that this does not lead to delays in the Tribunal process.

Attendance of the Public (rules 69-71)

We support the amendment to **rule 70** which permits applications to the Tribunal for a Hearing to be held in private where the Tribunal considers that publicity could prejudice the interests of justice or that a private hearing may otherwise be in the public interest - currently only the Chair or the Tribunal is able to raise this issue (current **rule 50**).

Part 5 - Interim Orders

We agree with the expansion of provisions in relation to Interim Orders including how and when they can be made in advance of a Liability Hearing, content to be included in Interim Order applications made by Executive Counsel and factors to be taken into account.

Part 6 - Settlement

We are supportive of including a formalised settlement procedure as part of the AEP and welcome the clarity that this will bring to the settlement process. The ability for Executive Counsel to enter into settlement negotiations at any time after the issue of a Notice of Investigation (**rule 102**) and prior to a Final Decision Notice is constructive and beneficial to both Parties. We agree with the role of the Independent Reviewer in providing an independent

check to determine whether it is appropriate to issue the Proposed Settlement Decision Notice (as agreed between the parties under **rule 105**) under **rule 107**. An option for mediation between the Parties might also be included as a means of expediting settlement, similar to the FCA enforcement process where Parties may agree to mediation as a means of facilitating settlement in appropriate cases¹⁵.

A time frame for completion of the settlement process could be introduced to ensure that the process does not become protracted. In particular, there is no specified time frame for the Independent Reviewer to confirm whether the Final Settlement Decision Notice is approved or declined (**rule 107**). As there are various steps that need to be followed if the notice is declined (**rule 109**), an overall time frame for the Independent Reviewer's determination of the Proposed Settlement Decision Notice under **rule 107** would assist in keeping this process moving. Our suggestion would be to adopt the same time frame as set out in **rule 104**; '*28 days or such other time period as the Independent Reviewer considers to be reasonable in the circumstances*'.

Investigations have a significant impact on individuals under investigation, and one way in which this impact may be reduced would be to include a mechanism to enable Respondents (in addition to the Executive Counsel under Part 6) to progress settlement discussions on a timely basis. The FRC might also consider a different approach to the timing of announcements of investigations under the AEP - which are generally announced at the outset¹⁶ - in contrast to the FCA which does not typically publish details of ongoing investigations¹⁷ or focus on individuals in the same way.

Part 7 - Appeal

We welcome the extension of the appeal period (**rule 113**) to 28 days from the issuing of the Final Decision Notice on Liability or Sanction, whichever is later. We also support the addition of **rule 117(e)** which introduces '*a material misstatement of fact*' as a ground for appeal of a Tribunal decision. We suggest the inclusion of a time frame in **rule 119** for the appointment of an Appeal Tribunal by the Convenor - we would suggest a period of 28 days. We also suggest that *any* legal member of the Tribunal Panel should be able to consider whether to give leave to appeal instead of restricting this role to members of the Tribunal Panel who are current or former members of the judiciary or a Queen's Counsel (**rule 116**).

We support the right to appeal a Tribunal decision to the High Court. This is already an established procedure for the solicitors' profession and we believe would be equally beneficial to auditors¹⁸. The right of appeal to an independent court outside the FRC regulatory regime would ensure that there are appropriate checks and balances on the decision making process of the Tribunal¹⁹.

Part 8 - Reconsideration

We are supportive of the proposed amendments to this section. In particular, we welcome the reduction to the period of time within which significant and relevant new information can be received in relation to a decision - reduced from five to three years (**rule 131**) - and a decision reconsidered by the FRC Board. We also welcome the requirement that where the Board decides to reconsider a decision, it must not only invite the Respondent to submit representations (**rule 132**), but must also take these representations into account (**rule 133**) when reconsidering a decision.

Part 9 - Sanctions

We recognise the deterrent effect of the FRC's sanctions regime but it is important in our view that the FRC's Tribunals make use of non-financial sanctions to enable actions to be taken to remedy issues where mistakes have

¹⁵ <https://www.handbook.fca.org.uk/handbook/DEPP> at para 5.1.9; and <https://www.handbook.fca.org.uk/handbook/EG> at para 5.6.1

¹⁶ FRC Publication Policy - Discretionary Announcements - Paragraph 7

¹⁷ FCA Handbook - Enforcement Guide - Section 6

¹⁸ See <https://www.solicitortribunal.org.uk/constitutions-and-procedures/appeals>

¹⁹ As is the case in the FCA's enforcement process where members of the Upper Tribunal are appointed by the Lord Chancellor's Department. See also Forsyth -v- FCA(1) and PRA(2) [2021] UKUT 0162 (TCC).

been made and that non-financial sanctions are proportionate and reflect any procedural or control changes which a firm may have already put in place. We also suggest that the FRC seeks further to distinguish between those cases where the underlying cause of an audit failure is unintentional (such as an error of judgment) and those cases which involve a lack of integrity.

Under **rule 135** (where the relevant statutory instrument for imposition of sanctions and costs is set out), we suggest that reference to SATCAR should read SATCAR 2016 (which would reflect the definitions section).

It would be helpful to understand how the revised AEP will align to the existing FRC Sanctions Policy²⁰ - which includes more in depth information on sanctions - and whether that policy will also be revised in line with the proposed amendments.

Part 10 - Costs

We support the inclusion of a separate section in the AEP relating to costs. We would welcome guidance under **rule 142** in relation to what may constitute Tribunal Costs (described as the Tribunal's administrative expenses in the consultation summary), and how the Tribunal would evidence any costs which it incurs in the course of a Hearing.

Part 11 - General

Notice of closure (rules 146-150)

We are supportive of communication between the FRC and a Respondent's Recognised Supervisory Body (RSB) and agree that a copy of a Notice of Closure should be provided to the Respondent and their RSB under **rules 148-149**, this aligns with **rule 11** which requires a Notice of Investigation to be provided at the outset.

We note that the Tribunal's power to decide that the Respondent is no longer liable for Enforcement Action (before a Notice of Hearing is issued) has been limited to circumstances where Executive Counsel makes such an application (**rule 147**), which is in contrast to the position under the current AEP (current **rule 76**) where the Tribunal Chair can make such a decision independently. In our view, it would be in the interests of timeliness, transparency and efficiency of resources to allow the Tribunal to retain such decision making powers.

Joinder of allegations (rules 151-152)

We are supportive of joining together Allegations in situations where the Allegation arises out of the same or related circumstances and where it is appropriate in the circumstances to do so. We would support the provision of practical and clear guidance on how this would operate, and would suggest that Respondents are invited to make representations before a final decision is made - similar to the process set out for a Joint Tribunal in **rule 155**.

Joint Tribunal (rules 153-160)

We are supportive of the proposals to include Joint Tribunals for connected Allegations and Formal Complaints under the AEP, the Accountancy Scheme and/or the Actuarial Scheme (**rule 153**). This is a positive move towards a cohesive approach which promotes transparency and cost efficiency. We would suggest that a mechanism is included to enable the AEP Tribunal and Respondent(s) to apply for a Joint Tribunal to hear matters - as currently drafted a Joint Tribunal may only be introduced at the discretion of Executive Counsel (new **rule 153(c)**).

Clear and detailed guidance on the operation of Joint Tribunals will be essential to the effectiveness of the Joint

20

[https://www.frc.org.uk/getattachment/32b190e5-fbed-4530-8433-5b22cc6b631e/Sanctions-Policy-Audit-Enforcement-Procedure-\(April-2018\).pdf](https://www.frc.org.uk/getattachment/32b190e5-fbed-4530-8433-5b22cc6b631e/Sanctions-Policy-Audit-Enforcement-Procedure-(April-2018).pdf)

Tribunal process (**rule 158**) and should in our view cover areas such as: application of different enforcement thresholds across the schemes (breach of Relevant Requirement for the AEP and misconduct for the Accountancy Scheme and the Actuarial Scheme); and the approach to be taken where the FRC may not have the relevant specialists available. Publication of the planned guidance for Joint Tribunals would be helpful.

Corresponding amendments would also need to be made to the Accountancy Scheme and the Actuarial Scheme to introduce the concept of a Joint Tribunal and to align other changes to processes and procedures, such as applications by Respondents for hearings to be held in private.

Confidentiality (rules 165-166)

We note that **rule 166(c)** enables confidential information to be disclosed ‘*with the prior written consent of Executive Counsel*’, this is in addition to the disclosure of information in other circumstances e.g. where disclosure is required by law under **rule 166(d)** or for the purposes of a Hearing under **rule 166(b)**. This provides Executive Counsel with the ability to disclose confidential information, but it is not clear in what circumstances this would be required. If Executive Counsel was to consent to disclosure, we suggest that clear reasons are given and that consent should be limited to exceptional circumstances.

Transitional Provisions (rules 168-170)

We are supportive of the transitional provisions provided under **rules 168-170** and the clarity that this provides.

Q2. Do you agree with the proposed amendments to the AEP? Please respond by reference to specific Rule numbers of the amended AEP

Where we do not agree with a proposed amendment to the AEP, we have included our comments in relation to the specific rule in our response to Question 1 above.

Q3. Do you have any general comments on the amended AEP?

Our general comments on the amended AEP are listed below and in our covering letter to the consultation.

- The amended AEP introduces clarifications which should increase efficiency and aid the effective management of cases. For example, the information gathering powers of the Case Examiner are set out in detail (**rule 3**), new rules enable amendment of the scope and parties to an investigation at the direction of the Board (**rule 13**), Joint Tribunals may be appointed in some circumstances with details set out (**rules 153-160**) and there is a new section on settlements (**Part 6**). Other amendments help to clarify that a Notice of Closure may be issued where Executive Counsel decides that a Respondent should not be liable for Enforcement Action (**rule 20**), that Parties may apply for a hearing to be heard in private in some circumstances (**rule 70**), that the grounds for appeal are extended to include ‘*material misstatement of fact*’ (**rule 117(e)**) and that limit the time period - to three years from the original decision (previously five years) - for new evidence to be adduced (**rule 131**).
- However, we suggest that further amendments are made in a number of areas, in particular the role of the Independent Reviewer (**rules 23-28**) which in our view should be extended to include the review of contested matters before they are referred to the Tribunal. With the abolition of the Enforcement Committee (as proposed under the amended AEP) the only course for Respondents (where matters are not agreed) is referral to the Tribunal which is an expensive and time-consuming process and leads to significant stress and emotional pressure for individual Respondents.
- Greater transparency in the amended AEP would enhance confidence in the effectiveness of the enforcement process. For example, where matters are referred to the Board under **rule 5(d)** or **rule 7**, a clear statement from the Case Examiner together with notice to the Respondent setting out the reasons

for the referral would be helpful as would the opportunity for the Respondent to make representations to the Board at this point, particularly in cases which may be resolved through Constructive Engagement with an individual Respondent and/or audit firm. Guidance on the factors that may be taken into consideration by the FRC when establishing if there is a '*good reason*' to investigate (**rules 8 and 9**) would aid transparency, together with clarification of the process for referral of matters by the FRC's AQR team to the enforcement team. Another example is at the Investigation Report stage (**rules 16-18**) when it would be helpful for FRC expert reports to be disclosed to the Respondent together with the key evidence which Executive Counsel considers to be relevant and a list of all evidence on which Executive Counsel intends to rely.

- To assist with timeliness in the conclusion of FRC investigations and to reflect the FRC's KPI in this area²¹, we suggest that time frames are included for every stage of the investigation and enforcement process (including settlement) and overall from start to finish. For example, time frames for the issue of an Investigation Report (**rule 16**), for the review of Final Decision Notices by the Independent Reviewer (**rule 25**), for the issue of a revised Proposed Decision Notice by Executive Counsel (**rule 28(a)**) or referral by Executive Counsel for determination by the Tribunal (**rule 28(b)**). An overall time frame for the Independent Reviewer's determination of a Proposed Settlement Decision Notice under **rule 107** would also help to assist in keeping the settlement process moving.
- Looking ahead to future FRC consultations, a marked-up version of the changes proposed (against the existing procedure) would also be helpful and would aid the consultation process for Respondents.

²¹ A period of two years between commencement of an investigation and service of either the Proposed Formal Complaint (PFC) or IIR (or closure or settlement if sooner).