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My public response to the

Consultation on Disciplinary Schemes – Proposed Changes

Question 1. Should the Schemes be amended as set out in paragraphs 3.3 to 3.11 above so as to enhance the independence of the disciplinary arrangements?

Paras 3.3 – 3.5 TOTALLY AGREE. Furthermore the FRC/AADB should also ensure that they now follow the law set out in the Employment Tribunals (Constitution and Rules of Procedure) (Amendment) Regulations 2010 when whistleblowing cases are referred to the FRC. I have recently established from an FOI to the Ministry of Justice that in the year 2009/2010 there were no cases referred to the FRC in accordance with that legislation – over one hundred cases were referred to the other UK regulatory body technically responsible for the alleged "protected disclosures". The information for 2010/2011 is awaited from the Ministry of Justice and I understand is due to be published shortly and provided to us. In all of these ET cases it should not be a matter for referral by the FRC to an accounting body or to have to seek the

professional accounting body's agreement before beginning an investigation.

Paras 3.6 – 3.9 Preliminary Enquiries and scope / amendments - seems to be commonsense and long overdue in the processes for the accounting "profession". I must also add that the adherence by individuals and individual members to the Profession's Code of Ethics is an essential foundation to the question and decision as to how "misconduct" should be interpreted – see later. The mandate for the FRC includes to foster good corporate governance - that equally applies to the accounting profession in the audit and non-audit work it undertakes on an everyday basis in the public / investor interest.

Question 2. Are the proposals to conclude cases without the need for a tribunal hearing appropriate (paragraphs 3.12 to 3.13 above)?

I understand why this is proposed but is it essential that the impact of the Sanctions Guidance (after July 2012 FRC Consultation outcomes etc) is properly considered and enacted in any settlement by the FRC AND also mandatory that "*Any settlement agreements executed by the FRC will be published so as to provide for continued transparency in the disciplinary process" is* followed on every occasion.

Question 3. Do you agree with the role envisaged for the Case Management Committee (paragraphs 3.16 to 3.18 above)?

The principles of a CMC seem appropriate. Can I however add that I have (and continue to) witness in a constituents case that where the investigatory people involved have no experiential knowledge of the actual industry and its dynamics they make fundamental errors in

process , facts analysis and therefore decisions. The membership of the CMC is clearly crucial and must include an industry member or industry regulator – not just more accountants and lawyers.

Question 4. Are the proposals to facilitate the timely completion of investigations and disciplinary proceedings appropriate (paragraphs 3.16 to 3.18 above)?

Para 3.16 This appears to have been a stupid requirement and should have been changed a long time ago. From personal experience in a constituent's case I have also witnessed that the actual people in the member firm which are the subject of the complaint – as well as the firm – are not even interviewed by the professional accounting body. Instead lawyers and "risk" staff are deployed to provide "facts" – over which they clearly have insufficient knowledge or experience.

I cannot imagine that the General Medical Council (GMC) would not in any investigation of a medical complaint also have their investigators discuss the complaint directly with the medical individuals so that ALL the perspectives / facts can be considered. That I understand is the case in most other professions too - police, etc. If accounting is a "profession" then the individual members should also be given the opportunity to know both of the complaint and provide their input to any investigation by the FRC. In that regard I continue to watch and record with interest the evidence of how my constituent's case has being "processed" by the ICAEW since March 2011 and its referral to them by the AADB.

Therefore these FRC proposals should be implemented immediately and extended to ensure that the actual individuals can also be interviewed etc . as part of the investigation of the complaint as a mandatory process.

Finally this should include the Point at paragraph 3.23 in regard to former members – they should still participate in any investigation as a mandatory part of their professional careers, even when changed/over.

Question 5 Should the Executive Counsel be able to seek an interim order against a member or member firm? If so, are the proposed provisions (paragraph 3.19) appropriate?

At this point I am wondering how the rules were originally set up and which Directors thought that those FRC/AADB powers within their Board were in any way adequate to allow the FRC to perform it's role for the last 5 years. Those powers certainly are not sufficient now for the proper regulation of any industry / profession and this recommendation should be enacted forthwith. Though not a specific question by the FRC about para 3.20 I agree with this proposal. No FRC question was asked regarding Tribunal Appointments and the proposals therein. I want to reiterate the point made earlier about industry / experiential knowledge and to strongly recommend that every Tribunal should at least have one Member who has actual experiential knowledge at a senior level or have be involved in the regulation of that industry sector now or in the past. This seems to me to be a key point as well in the perception of independence.

Question 6 Do you have any comments on the proposals to amend the investigation test (paragraphs 3.24 -3.29)?

This is a crucial question and decision now and in the future.

One of the difficulties in any Preliminary Inquiry is whether sufficient evidence and facts will have been gathered to determine whether there are "reasonable grounds for suspecting" before coming to a decision at the CMC. Furthermore it now seems from more of the cases coming in to the public domain that there is a very high bar to be met before the evidence of "misconduct" is regarded as sufficient to proceed with any disciplinary action by any regulator. In my view the FRC would be better advised and its newly formed Conduct Committee should consider better defining what they regard as misconduct……. is wilful blindness now the standard or even higher fraudulent negligence. Or perhaps instead the breach of the profession's Code of Ethics, which at least as a representative of the public, would include the reasonable skill and diligence in carrying out the task. Every week we now see more examples reported in the media of regulatory failure, professional failure and few if any held to account in the public interest.

Naturally I form these views based on what I see, read and hear myself and suggest that the FRC Conduct Committee needs to reflect much further on its role and proposed conduct. As just one example when will the "Professional Scepticism" examples set out in the recent FRC paper become part of a standard of competence expected from members and member firms and how far away from that policy/ standards does one need to be before the Executive Counsel and the CMC considers that to be "misconduct" -- that should be the focus of the FRC question here.

Question 7 Do you have any other comments on the proposed Schemes or the points raised in this paper?

I have responded to the questions put.

However, as above at Q6 it seems to me that the FRC Conduct Board now needs to set out quite clearly what standards it expects and when "competence" is called in to question - and the relevant sanctions in that situation – or what and when "reasonable grounds for suspecting misconduct" is sufficient by reference if necessary to actual case studies which by their nature "reveal" the actual practice of the standards/ethics by which people and their regulators operate.

The FRC paper at page 11 refers to a footnote 5 in which "*The reasonable grounds for suspecting" test has the benefit of existing in both legislation and regulation and, as a result, it is well understood*" but is not included in the Appendix to the Consultation. I would be grateful if you could please pass me all the documentation / law which you consider sets out this "reasonable grounds for suspecting" misconduct as I know a number of my parliamentary colleagues would be interested in this "regulatory" view too.

I can then use this to continue to record what I witness in my everyday experience with constituents and in Parliament.

Yours sincerely

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