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By email to AEPconsultation@frc.org.uk

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Dear Sirs

Consultation on amendments to the Audit Enforcement Procedure

This letter is the response of Grant Thornton UK LLP ("Grant Thornton") to the FRC's consultation on its proposed amendments to the Audit Enforcement Procedure.

We have the following comments on the proposed amendments.

Interpretation / Glossary

- Rule 1 (Definitions): We agree with the proposal to amend the definition of "Allegation" to mean "*the document which is provided to the Tribunal under Rule 34 setting out the particulars of Executive Counsel's case that the Respondent has breached Relevant Requirements*". Confining this term in this way should eliminate confusion between its two current usages in the AEP. We note that this proposed change does not affect the test applied by Executive Counsel when deciding whether to institute a disciplinary investigation.

  Similarly, and for the same reasons, we also agree with the proposal to amend the definition of "Adverse Findings" to clarify that it is only the Tribunal, and not Executive Counsel, that makes Adverse Findings against the Respondent. We agree that, during the investigation stage, the better expression to use is "breach of Relevant Requirements."

Initial Action by Case Examiner

- Rules 3-5: We agree with the proposed clarification of the powers available to the Case Examiner to determine if there is a question as to whether a Relevant Requirement has been breached. We note that the proposed new wording (Rule 5) would explicitly allow the Case Examiner to take no further action where he or she determines that the information received raises a question as to whether a Relevant Requirement might have been breached. This should help avoid an automatic referral to the Board of matters that, in the Case Examiner's view, do not merit further investigation.

Decision to Investigate

- Rules 6-10: The proposed new Rule 6 provides that where a matter is referred to the Board (or the Conduct Committee) by the Case Examiner, the Board shall consider whether to direct the Case Examiner to resolve the matter through Constructive Engagement. We believe that the AEP would benefit from this proposed amendment.

Notice of Investigation

- Rule 11: We note the change in wording, in this Rule, that the scope of the investigation should be "stated" rather than "outlined". It is not clear to us whether this is intended to signal any substantive change to the FRC's current practice in this regard but, subject to this point, this new wording seems clearer.

Investigation Powers

- Rules 14-15: In our view these two Rules, outlining the investigative powers of Executive Counsel, are a helpful addition to the AEP. Rule 15(b) allows Executive Counsel to require certain natural persons to appear before it for interview. To the extent that such interviews would involve individuals who are not employed by the audit firm, is it envisaged that their content be shared with the audit firm under investigation?

  More generally, in our view, it would be helpful if Executive Counsel could clarify the extent to which it envisages sharing with the Respondent any information (whether it be documentation, witness evidence or expert advice) that is relevant to the matters under investigation. An example would be where Executive Counsel possesses transcripts of interviews with the audited entity's directors, or documents from the audited entity, that are relevant to the AEP investigation. We are of the view that such documents should be shared with the Respondent in order to allow a fair resolution of the investigation.

Investigation Report

- Rule 16: We note that it is proposed that, together with the Investigation Report, Executive Counsel should disclose "*the key evidence Executive Counsel considers relevant*". This is a change from the current wording, which requires Executive Counsel to provide "*any relevant accompanying papers*" with the Initial Investigation Report (current Rule 11). It is not clear to what extent the FRC envisages this to be a substantive change. We would comment that both the old and the new phrase are unspecific as to what documents Executive Counsel needs to provide at the conclusion of its investigation. In our view, the interests of fairness would be served by a more specific rule providing detail as to what information Executive Counsel must provide with its Investigation Report. At a minimum, we believe that it should include a list of documents and information in Executive Counsel's possession that Executive Counsel believes to have a bearing on the investigation into the Respondent, together with a provision allowing the Respondent to request to see such items if it wishes, and be provided an opportunity to comment on the contents of the Investigation Report in light of them. The AEP should, in our view, also specify that Executive Counsel must provide the Respondent with full copies of all documents mentioned in the Investigation Report (rather than just extracts from them), as well as documents relating to any suspected dishonesty by the audit client (or its management or board) to which an alleged breach of a Relevant Requirement by the Respondent is related.

Liability for Enforcement Action – Executive Counsel

- Rule 19: We agree with this proposed amendment, which would allow Executive Counsel leeway to dispense with any enforcement action where he or she considers it inappropriate.

Proposed abolition of the Enforcement Committee

- Rule 29: We note that it is proposed that the Enforcement Committee stage be abolished. It is also proposed that the document to be issued by Executive Counsel after completion of the investigation stage be called a Proposed Decision Notice (rather than, as under the current procedure, a Decision Notice). As under the current procedure, the Respondent would be given 28 days to provide written agreement to all or part of the Proposed Decision Notice. However, where the current procedure provides for cases where the Respondent fails to respond, or fails to agree to the Decision Notice to Executive Counsel's satisfaction, to be submitted to the Enforcement Committee, the proposed

amendments would abolish the Enforcement Committee stage altogether. Instead, where the Respondent and Executive Counsel fail to reach agreement on the Proposed Decision Notice, the amendments to the AEP would cause the matter to be submitted directly to a Tribunal.

It does not seem to us that this change is desirable, or that it would make for the most efficient or cost-effective way of resolving an investigation. In some cases, for example where the areas of disagreement between Executive Counsel and the Respondent relate to audit, accounting or ethical matters rather than the assessment of documentary and witness evidence, the matter may benefit from consideration by the Enforcement Committee, which may be better placed to decide on the issues, thereby saving time and expense, rather than proceeding directly to a full-scale Tribunal hearing. The Enforcement Committee stage ensures that, in all cases where Executive Counsel and the Respondent fail to reach agreement, there is a separate assessment of the position by a body of people who are experienced in and knowledgeable about such matters before they are submitted to the Tribunal, which may help resolve cases without the need for a Tribunal process. For these reasons, we do not agree with the proposal that the Enforcement Committee stage be abolished.

The Independent Reviewer

- Rules 23-28 and 107: It is proposed that the role of an Independent Reviewer be created in the AEP for the first time and that such a person be appointed to review the Proposed Decision Notice in cases where Executive Counsel and the Respondent agree on its contents. We believe this step to be unnecessary and undesirable. We believe that the current arrangement works well. If a Decision Notice is agreed by both the FRC and the Respondent, each with the benefit of legal and expert assistance as is usually the case, we see no need for review by a third party who is not familiar with the detailed facts and matters under consideration.

  We think it likely that an Independent Reviewer, drawn from the Tribunal Panel and therefore likely to be a lawyer, will lack the requisite expertise and the detailed understanding of the issues needed to assess the appropriateness of the contents of the Proposed Decision Notice for this purpose, especially where, as is often the case, the proposed findings involve highly technical audit issues. This point also applies to the introduction of a requirement for an Independent Reviewer to approve a Proposed Settlement Notice (Rule 107 of the amended AEP).

  We also note that an Independent Reviewer may also be unfamiliar with wider policy reasons that may underlie the Executive Counsel's approach, which may include, for example, a concern about wider trends or themes in areas of corporate failure etc.

  The proposed amendment would also introduce an additional stage into the process at a point where the FRC and the Respondent have already reached agreement, which would cause delay, and could prevent a matter from settling without recourse to a disputed hearing. For these reasons, we are not in favour of the introduction of the role of an Independent Reviewer in this process.

Settlement

- Rules 102-111: We agree with this proposed change, which relates to the introduction of a section dealing with settlement discussions. As for the proposed role of an Independent Reviewer in this regard, however, we do not believe that such a role is necessary or desirable, for the reasons set out above.

Joint Tribunal

- Rules 153-160: We see the merit of allowing that there be Joint Tribunals to deal with related investigations against auditors under the AEP and accountants under the Accountancy Scheme or Actuaries under the Actuarial Scheme. We agree that in most cases it would make for a more efficient process and avoid contradictory findings by different tribunals. We suggest that the AEP should give the Respondent the right to request that Executive Counsel set up a Joint Tribunal. We appreciate that under the current regime, in many cases the Respondent will not have sufficient information to decide whether or not there is a sufficient nexus between the AEP investigation and the Accountancy or Actuarial Scheme investigation to warrant a Joint Tribunal, but we see no reason why, in a suitable case, the Respondent should not have the right to request one.

We believe that it will be worth keeping under review whether the option to institute Joint Tribunals should also cover investigations of breaches of corporate reporting and audit-related responsibilities by PIE directors (as proposed in the Government's 18 March 2021 White Paper on audit reform), should such a regime be implemented.

Confidentiality

- Rule 166: We do not quite follow this proposed Rule, and wonder whether it may contain an error. Should it read as follows?

  "*Information which is not in the public domain, ~~and~~ which is disclosed to any person ~~may only be disclosed~~ by any representative of the FRC pursuant to this AEP may only be disclosed by that person:*

  (a) to his or her professional advisers;

  (b) for the purposes of a Hearing;

  (c) with the prior written consent of Executive Counsel; or

  (d) to the extent required by law."

  We would welcome the FRC's clarification.

We hope that you will find our comments helpful. Do let us know if you would like us to provide any further clarification.

Yours sincerely,