

UKLA Consultation Response

From: Dean Buckner [REDACTED]
Sent: 23 November 2020 10:19
To: 'proceduresconsultation20@frc.org.uk'
Cc: 'Charles Henderson'; 'David Riches'
Subject: Governance changes at the FRC - Consultation on consequential amendments to FRC September 2020

The General Counsel's Team
The Financial Reporting Council
8th Floor, 125 London Wall
London
EC2Y 5AS

The UK Shareholders' Association supports the work of the FRC, its engagement with investors and its efforts to improve the UK regulation of company reporting and auditing in the interests of investors and other stakeholders, including its proposed governance changes.

In answer to your consultation question, we do not foresee any objection to any of the proposed consequential amendments on the grounds of fairness or due process, or otherwise.

However, we suggest those charged with governance in the proposed new structure maintain a watchfulness for any resulting unintended consequences, especially any that indicate any loss of the strengths of the FRC previously noted in the Kingman and Brydon Reviews.

We are keen to remain engaged with the FRC and welcome any future requests on engagement and your consultation on consequential amendments to the FRC.

Dr Dean Buckner
UK Shareholders' Association

Governance changes at the FRC: Consultation on consequential amendments to FRC Procedures

A consultation issued by the Financial Reporting Council (**FRC**)

Comments from ACCA
30 November 2020
Ref: TECH-CDR-1956

ACCA is the Association of Chartered Certified Accountants. We're a thriving global community of **227,000** members and **544,000** and future members based in **176** countries that upholds the highest professional and ethical values.

We believe that accountancy is a cornerstone profession of society that supports both public and private sectors. That's why we're committed to the development of a strong global accountancy profession and the many benefits that this brings to society and individuals.

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Further information about ACCA's comments on the matters discussed here can be requested from:

Maggie McGhee
Executive Director – Governance

Sundeep Takwani
Director – Regulatory Relations

GENERAL COMMENTS

ACCA is a Recognised Supervisory Body (**RSB**) and a Recognised Qualifying Body (**RQB**) for audit in the UK. ACCA welcomes, therefore, the opportunity to provide views on the consequential amendments to the FRC procedures to the governance changes at FRC in response to the recommendations made by Sir John Kingman following his review (**Kingman Review**) in 2018, designed to, among other things, enhance the effectiveness, speed and responsiveness of the FRC.

ACCA is supportive of recommendations 13 and 14 of the Kingman Review, which seek to simplify the FRC's governance structures and require the FRC Board to take greater ownership and stronger oversight over FRC's investigation and enforcement arrangements. ACCA believes the proposed governance changes will allow FRC to better serve the public interest by holding to account those responsible for delivering high standards of audit and corporate reporting. ACCA also believes the changes to FRC's governance structure will strengthen trust and public confidence in the audit and corporate reporting framework.

ACCA welcomes FRC's intention to review the enforcement procedures in the future. ACCA also welcomes FRC's commitment to enter into a constructive dialogue with the participating bodies on any proposed changes to the Audit Enforcement Procedures and the Accountancy Scheme. ACCA would very much welcome early engagement in this regard.

AREAS FOR SPECIFIC COMMENT

1. Do you have or foresee any objection to any of the proposed consequential amendments on the grounds of fairness or due process, or otherwise. If so, please provide your reasons and any alternative proposals.

ACCA is supportive of the proposed consequential amendments set out in the Annexes. ACCA believes the proposed amendments are appropriate to accommodate the proposed changes to FRC's governance structures. While on the face of it, there may not be any objections to the proposed consequential amendments on the grounds of fairness and due process, the FRC Board should guard against the perception that its involvement in individual cases or particular matters hinders fairness and impartiality and, in turn, could be seen as prejudicial.

ACCA welcomes the proposed amendment at 1(4) of Annex 2, Proposed revision to the Accountancy Scheme. ACCA believes the proposed amendment brings about the necessary clarity for matters where the responsibility for the regulated activity in question lies with another statutory competent authority thus avoiding regulatory overlap.

30 November 2020

The General Counsel's Team
Financial Reporting Council
8th Floor
125 London Wall
London
EC2Y 5AS

By email to: proceduresconsultation20@frc.org.uk

Dear Sir or Madam

Governance changes at the FRC – Consultation on consequential amendments to FRC procedures

We welcome the opportunity to respond to the FRC's consultation regarding amendments to the Conduct Committee's operating procedures and various enforcement procedures, which have arisen as a result of changes to the FRC governance structure. We recognise the need for a regulator that is strong, fair and balanced, and support the direction of travel in which the FRC is heading. We welcome simplification of the FRC's structures with clearer accountability and enhanced transparency to support the public interest.

That being said, we do have some concerns about the replacement of the Financial Reporting Review Panel (FRRP). The FRRP has provided a pool of members with deep expertise in accounting (including, crucially, users and preparers of financial statements as well as auditors). In the new structure decisions will be taken by the Conduct Committee acting independently of companies being reviewed and their auditors. Nevertheless, it will be important that the Committee will be able to draw on an appropriate range of deep expertise, including expertise in areas of reporting such as narrative and corporate governance that will increasingly be the subject of the FRC's reviews. We would be happy to have a further discussion with you on this, if you would find it helpful.

We do not have any specific objections to the consequential amendments to existing procedures, and look forward to further clarification of the changes and their implications, such as mechanisms to interact with audit firms, including appeals.

Yours faithfully

Simon Cleveland
Partner, Public Policy
Deloitte LLP

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The Insolvency Service

Inspector General and Chief Executive
The Insolvency Service,
16th Floor, 1 Westfield Avenue,
London, E20 1HZ
<http://www.gov.uk/insolvency-service>

Sir Jon Thompson
Chief Executive Officer
Financial Reporting Council
By email: [REDACTED]

Our ref: ACE/27/2020

e-mail: [REDACTED]

Date: 27 November 2020

Dear Jon,

I trust this letter finds you well. Thank you for the opportunity to comment on your consultation on consequential amendments to FRC procedures published in September.

There are often occasions where our two organisations need to work with each other on case-related and general regulatory matters and so it is important that our views on how this work should be conducted are in alignment. I am following with interest the overall planned changes you are leading at FRC. I would like to just refer to one particular aspect of the current consultation: the proposed revisions to the Accountancy Scheme set out at Annex 2 - specifically the new paragraph 1(4)(i) in relation to insolvency work. I would like to express my support for the planned new paragraph, and I set out my reasoning below.

There are between 1500 and 1600 insolvency practitioners, currently regulated by 4 "Recognised Professional Bodies" (RPBs) recognised by the Secretary of State to perform that role. About 90% of practitioners are authorised by just two bodies: the Institute of Chartered Accountants in England and Wales (ICAEW) and the Insolvency Practitioners' Association (IPA), a non-accountancy body.

The provisions as regards regulating insolvency practitioners are underpinned by a statutory framework, set out in Part 13 of the Insolvency Act 1986, which requires the RPBs to adhere to regulatory principles and take account of "regulatory objectives". The objectives require there to be a system of regulating that ensures fair and consistent outcomes and which takes account of the public interest. The Insolvency Service, acting on behalf of the Secretary of State as oversight regulator, has regard to the extent to which the statutory objectives are applied by the various RPBs.

Where there is alleged misconduct in relation to an insolvency, I believe that ought to be looked at in the context of the individual acting as an insolvency practitioner, within the framework set out in insolvency legislation, and not as an accountant under the accountancy scheme. A significant proportion of insolvency practitioners are not accountants, and to practice in insolvency does not require an accountancy qualification.

The current accountancy scheme does not rule out FRC involvement where the complaint is primarily an insolvency matter and, in my view, that system of dual regulation could undermine the statutory requirement within insolvency law to have an insolvency regime that ensures consistent outcomes. There is scope for overlap in some instances potentially leading to unsatisfactory and possibly conflicting regulatory outcomes. Some practitioners could find themselves the subject of action by multiple regulatory bodies, which have differing requirements, examining their conduct on the same set of facts, whereas others (non-accountants) would not, even where the facts were identical.

Where there is a complaint about the conduct of an insolvency practitioner in relation to an insolvency appointment, I am firmly of the view that the correct way to deal with that and achieve the policy intentions of the regulatory principles in insolvency legislation is through the insolvency practitioner's RPB. This is something that I believe the proposed change you have set out in your consultation would achieve and therefore which I support.

[REDACTED]

[REDACTED]

Yours sincerely,

[REDACTED]

Dean Beale
Chief Executive



[REDACTED]

The General Counsel's Team
The Financial Reporting Council
8th Floor, 125 London Wall
London
E2Y 5AS

27th November 2020

By [REDACTED]

Dear Sir/ Madam

Governance changes at the FRC - consultation on consequential amendments to FRC procedures

Thank you for the opportunity to give our views on the consequential amendments to FRC procedures which arise from governance changes implemented by the FRC. Our detailed comments on the amendments to each set of FRC procedures are in the attached annex.

We support a number of the drivers behind the changes to the FRC's governance structure, including enhanced effectiveness, speed and responsiveness, and enhanced transparency of the investigation and enforcement process. We also support transparency in the appointment process for the Advisory Panel and Senior Advisors, and a balanced composition of members, and recommend that the terms of reference for these positions are published.

We welcome the progress that the FRC has made in implementing some of the recommendations from Sir John Kingman's "Independent review of the FRC", and we look forward to engaging in future consultations and to assisting the FRC throughout the implementation process.

If you have any questions, or would like to discuss the points in this letter further, please do get in touch with me.

Yours faithfully,

[REDACTED]
Alison Statham
General Counsel and Chief Risk Officer

*PricewaterhouseCoopers LLP, 1 Embankment Place, London, WC2N 6RH
Tel: +44 (0) 20 7583 5000, Fax: +44 (0) 20 7212 4652*

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ANNEX - COMMENTS ON CONSEQUENTIAL AMENDMENTS TO FRC PROCEDURES CONSULTATION QUESTION

Do you have or foresee any objection to any of the proposed consequential amendments on the grounds of fairness or due process, or otherwise. If so, please provide your reasons and any alternative proposals.

The Consultation paper refers to guidance that will be provided covering the circumstances in which decisions and functions relating to investigations will be retained by the Board, and not delegated to the Conduct Committee as permitted by the Audit Enforcement Procedure and both the Accountancy and Actuarial Schemes. In our view, this guidance will play an important role in ensuring that the investigation process is clear and transparent. In addition to covering the circumstances in which the Board will retain decisions relating to an investigation, we recommend that the guidance also includes a clear definition of “ *public interest* ”, as well as cases of “ *particular significance* ”.

We also recommend that, in the interests of transparency, the guidance covers how the Board will exercise “ *appropriate executive responsibility* ”, and also what will determine what constitutes audit quality as well as how it is measured.

Subject to clarification of what will constitute “ *public interest* ”, we do not have, or foresee, any objection to any of the amendments on the ground of fairness or due process.

APPENDIX 1 - AUDIT ENFORCEMENT PROCEDURE

Definitions/ Paragraph 15 - both the definitions section and Paragraph 15 refer to advisors appointed to the Advisory Panel or as Senior Advisors. We understand that these will be external appointees, but note that there is no reference as to how potential conflicts of interest will be avoided, or managed, to ensure impartiality **and independence**. We recommend that this is covered in the relevant terms of reference which are made publicly available. An enhanced explanation of the appointment process to, and composition of, the Advisory Panel and the Senior Advisors (by way of definition and published guidance or terms of reference) will ensure transparency and balance in composition of the Advisory Panel to ensure a wide range of perspectives, including accountants, auditors, and preparers and users of accounts.

Definitions - the definition of the Board does not include the Conduct Committee in circumstances where functions and decisions are delegated (from the Board to the Conduct Committee). Whilst this is covered in Paragraph 6, which provides that “ *Where the Board has delegated any of its functions to the Conduct Committee, any references to the Board shall mean the Conduct Committee* ”, we note that a different approach is taken in Appendices 2 and 3, where this text is included in the definition of the Board.



Paragraph 6 - clarification of the circumstances when the Board will delegate its powers to the Conduct Committee would be helpful, and we support its inclusion in the guidance that the FRC is to issue.

Paragraph 15 - we note that “or” is missing after point (b).

APPENDIX 2 - ACCOUNTANCY SCHEME

Paragraph 1(4) - in our view the clarification of the scope of the Accountancy Scheme is helpful in the interests of certainty.

Paragraph 3(v) - clarification of the circumstances when the Board will delegate its powers to the Conduct Committee would be helpful, and we support its inclusion in the guidance to be issued by the FRC.

Paragraph 5 - we note that there is no reference to the Advisory Panel replacing the Case Management Committee and it is not clear why this is.

APPENDIX 3 - ACTUARIAL SCHEME

Paragraph 1(1) - the commencement date is missing, which we assume should be 1 January 2021.

Paragraph 3(v) - clarification of the circumstances when the Board will delegate its powers to the Conduct Committee would be helpful, and we support its inclusion in the guidance to be issued by the FRC.

Paragraph 5 - we note that there is no reference to the Advisory Panel replacing the Case Management Committee and it is not clear why this is.

APPENDIX 4 - CONDUCT COMMITTEE OPERATING PROCEDURES

Paragraph 2 - the link to the terms of reference and current membership of the Conduct Committee will require updating. It refers to the Audit Quality Review Committee, the Corporate Reporting Review Committee and the Case Management Committee, all of which will be removed and replaced by the Advisory Panel, as outlined in paragraph 8.2 of the consultation paper.

Paragraph 6 - whilst this new text refers to the ability of the Conduct Committee to seek advice from the Supervision Committee in the performance of its statutory functions, we note that there is no reference to the Conduct Committee also having the ability to seek advice from the Advisory Panel or Senior Advisors, which is referenced in paragraphs 17 and 33.

Paragraph 56 - this new provision allows the FRC to publish its summary findings following the closure of a review, with the company's agreement. Whilst we support this, it would be helpful to know

what criteria the FRC will apply when making the decision to publish.

APPENDIX 5 - AUDITOR REGULATORY SANCTIONS PROCEDURE

Paragraph 2 - we note that the definition of "Enforcement Committee" is different from that in Appendix 1. Appendix 5 defines the Enforcement Committee as being "*... appointed by the Chair of the Enforcement Committee Panel in accordance with the Enforcement Committee Panel Terms of Reference*". Appendix 1 defines the Enforcement Committee as "*... a committee as constituted under its terms of reference issued by the Board and shall exercise its functions in accordance with Part 4 and Part 6*". It is unclear to us whether or not these definitions are intended to be different, and whether there are any practical implications arising from the different definitions.

APPENDIX 6 - CROWN DEPENDENCY RECOGNISED AUDITOR SANCTIONS PROCEDURE

Paragraph 2.1 - the definition of the Board does not include the Conduct Committee in circumstances where functions and decisions are delegated (from the Board to the Conduct Committee). Whilst this is covered in Paragraph 3(d) which provides that "*Where the Board has so delegated ... any references to the Board shall mean the Conduct Committee*", we note that a different approach is taken Appendices 2 and 3, where this text is included in the definition of the Board.

Paragraph 2.1 - we note that the definition of "Enforcement Committee" is different from that in Appendix 1. Appendix 6 defines the Enforcement Committee as being "*... appointed by the Chair of the Enforcement Committee Panel in accordance with the Enforcement Committee Panel Terms of Reference*" (as does Appendix 5 above). Appendix 1 defines the Enforcement Committee as "*... a committee as constituted under its terms of reference issued by the Board and shall exercise its functions in accordance with Part 4 and Part 6*". It is unclear to us whether or not these definitions are intended to be different, and whether there are practical implications arising from the different definitions.

APPENDIX 7 - AUDITOR GENERAL DISCIPLINARY PROCEDURE RULES

We have no comments other than to note that in Paragraph 2(1) the definition of "Enforcement Committee" is similar to that in Appendix 1.