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**By email only to: [AEPconsultation@frc.org.uk](mailto:AEPconsultation@frc.org.uk)**

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

Dear Sirs,

I am pleased to present our response to the Consultation on the proposed amendments to the Audit Enforcement Procedure ("**AEP**") opened on 22 July 2021 (the "**Consultation**").

Yours faithfully,



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## RESPONSES TO PROPOSED AMENDMENTS TO AEP

<b>Question 1</b>	<b>Do you have any comments on the changes to the AEP set out in the Consultation on proposed amendments issued in July 2021?</b>
<b>Part 2</b>	<b>Initial Stages</b>
<b>Rule 3</b>	<p>We note the proposed clarification of the powers available to the Case Examiner (following receipt of information about a Statutory Auditor or Statutory Audit Firm) to determine whether there is a question as to whether the statutory Auditor or Statutory Audit Firm has breached a Relevant Requirement.</p> <p>Rules 3(a) to (d) – we note the broad powers to seek information in various forms from a number of parties and understand that such powers are intended to be exercised for the purpose of the Case Examiner determining whether there has been a breach of a Relevant Requirement, the threshold for any further action under the AEP. We are concerned that the powers, which are extensive, should be used in a proportionate manner and to the extent necessary for the purpose of the Case Examiner’s threshold assessment only. We consider Constructive Engagement is a vital tool in enabling improvements in audit quality to be achieved efficiently and in a proportionate manner. We are concerned that the exercise of the further information gathering powers risks turning Constructive Engagement into a more investigative process, which is already provided for elsewhere within the AEP, and makes it less likely matters are successfully resolved within Constructive Engagement and in an efficient and proportionate manner.</p> <p>Rule 3(a) – the proposed rule states that the Case Examiner may give notice in writing to require any Statutory Auditor or Statutory Audit Firm “to provide information and/or to create documents which relate to the Statutory Audit of ... the annual accounts or the consolidated accounts of any audited person”. It is unclear what documents the Statutory Auditor or Statutory Audit Firm might be required to create. This is a new requirement and further clarification or guidance as to the scope of the documents which it is envisaged might be required at this stage should be provided.</p>
<b>Rule 5</b>	<p>Rule 5 – we note that by Rule 5(d) the Case Examiner may choose to refer “the matter” to the Board as opposed to “the Allegation” (per the current rules). It would be helpful to have clarification as to what matters (if any) in addition to the alleged breach of a Relevant Requirement it is proposed will be referred to the Board for consideration.</p>
<b>Part 3</b>	<b>Investigation</b>
<b>Rules 12 and 13</b>	<p>Rules 12 and 13 – These new rules provide for Executive Counsel to report matters to the Board if Executive Counsel “considers that facts or circumstances which appear to warrant investigation are outside the scope of the investigation set out in the Notice of Investigation, or Executive Counsel considers that a Statutory Audit Firm or Statutory Auditor should be added as a Respondent to the investigation” (Rule 12). By Rule 13 the Board may direct that the scope of and parties to the investigation are to be amended.</p> <p>From our review of the proposed rules, it appears that the matters to be reported by Executive Counsel are not confined to those related to the alleged breach(es) of the Relevant Requirements under investigation. We are concerned that the new rules might therefore result in unrelated matters being brought into a current investigation when they might be more</p>

	<p>appropriately and proportionately addressed by other means, for example by Constructive Engagement.</p> <p>We therefore request that the rules are clarified to ensure that the Board's power to extend the scope of the investigation is limited to facts and circumstances related to the alleged breaches of the Relevant Requirements already under investigation.</p>
<b>Rule 14</b>	<p>Rule 14 (a) – as noted in relation to Rule 3 (a) above, in relation to the proposed extension of the information powers at Rule 14 (a) to include a power to require that documents are created by a Statutory Auditor/Statutory Audit Firm, we request that further clarification or guidance as to the scope of the documents which it is envisaged might be required at this stage should be provided.</p>
<b>Rule 16</b>	<p>Rule 16 (b) and (d) – Under the current AEP rules, following the conclusion of an investigation, the Initial Investigation report (which outlines the Allegation, the relevant requirements which appear to have been breached and which summarises the evidence and documents obtained in the course of the investigation) is to be provided to the Respondents “with any relevant accompanying papers”. Under the new rules:</p> <ul style="list-style-type: none"> <li>• By rule 16 (b) it is proposed that the Investigation Report will “summarise <b>the nature of</b> the evidence and documents obtained in the course of the investigation” (new words in emphasis).</li> <li>• By rule 16 (d) it is proposed that the Investigation Report shall “disclose the key evidence that Executive Counsel considers relevant”.</li> </ul> <p>We are concerned that the proposed amendments will limit the documentation provided to Respondents at the investigation stage and so will impair Respondents’ ability properly to consider and respond to the Investigation Report.</p> <p>We would welcome more clarity around Executive Counsel's disclosure obligations in general.</p>
<b>Rules 23-29</b>	<p>Rules 23-29 – Under the proposed new rules the role of the Enforcement Committee in determining (where the Executive Counsel's Decision notice has not been agreed by the parties) whether a Respondent is liable for enforcement action has been removed. Instead, where Executive Counsel has decided that a Respondent should be liable for enforcement action but the Proposed Decision has not been agreed (or has been agreed but not approved by an Independent Reviewer), Executive Counsel can refer the matter direct to a Tribunal for determination without any further review (Rules 28 to 30).</p> <p>We consider the Enforcement Committee review stage is an important part of the current AEP process enabling an independent review before any matter is referred to Tribunal. The proposed changes will deprive Respondents of the right to have the matter considered by a panel including non-lawyers before Tribunal proceedings are commenced. In certain cases, it may be the Respondents are content to agree that a matter should be referred direct to the Tribunal without consideration by the Enforcement Committee. However, in the absence of such an agreement, the right of Respondents to have the matter considered by the Enforcement Committee as an independent panel is necessary to ensure fairness of process and should be retained.</p>

	<p>We understand from the Consultation document that the Enforcement Committee stage has not been utilised to date because the Respondents have so far agreed with the Decision notices issued by Executive Counsel. The AEP must however provide for future scenarios where a Decision Notice is not agreed, or a Decision Notice is agreed but not approved by an Independent Reviewer, and provide for Enforcement Committee review in such circumstances. Otherwise we are concerned matters which could otherwise have been resolved at the Enforcement Committee stage (with the additional scrutiny that process provides) will proceed to Tribunal, with all the additional time, cost and expense that process entails.</p>
<b>Part 4</b>	<b>The Tribunal</b>
<b>Rule 52</b>	<p>Rule 52 – We understand this new provision is intended to permit the Tribunal to treat a finding or court-approved statement of fact made by bodies or officers as “prima facie” evidence of that fact in the Tribunal proceedings. We do not consider it is appropriate to seek to create a presumption of proof of facts in the AEP process in reliance on factual findings or statements of fact arising in different processes/proceedings, potentially involving different issues, evidence, parties and/or jurisdictions. Instead, we suggest the Tribunal consider the admissibility and weight to be given to evidence derived from other processes in the context of each particular case, and with a correlative right to those subject to proceedings to challenge any finding or statement of fact relied on by Executive Counsel.</p>
<b>Part 6</b>	<b>Settlement</b>
<b>Rule 111</b>	<p>We note new Part 6 in relation to settlement and the provision for Independent Review of proposed settlement terms. In relation to Rule 111 which provides that the content of any settlement discussions shall not be admissible as evidence in any proceedings against Respondents under the AEP, we suggest 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.</p>
<b>Part 11</b>	<b>General</b>
<b>Rules 153 to 160</b>	<p>In relation to Rule 153, we note that it is proposed that Executive Counsel has the power to require that a Joint Tribunal is convened where an Allegation has been served under the AEP and a Formal Complaint has been delivered under the Accountancy Scheme. We request that the Respondents similarly have the right to require that a Joint Tribunal is appointed in the same circumstances.</p>
<b>Question 2</b>	<b>Do you agree with the proposed amendments to the AEP?</b>
	<p>Where we have substantive comments on the proposed amendments, we have set them out in response to Q1 above.</p>
<b>Question 3</b>	<b>Do you have any general comments on the amended AEP?</b>
	<p>We have included our general comments within the comments in relation to specific Rule changes provided in response to Question 1 above.</p>