Deloitte.

Deloitte LLP
Hill House
1 Little New Street
London
EC4A 3TR

Phone: +44 (0)20 7936 3000
Fax: +44 (0)20 7583 0112
www.deloitte.co.uk

[redacted]

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

By email to: AEPconsultation@frc.org.uk

Dear Sir/Madam

Response to the consultation on the Audit Enforcement Procedure ("AEP")

Before turning to the substance of our response, we would like to make three overriding comments:

1. firstly, that we very much welcome this consultation and the opportunity to provide our views (which are informed by our experiences of the AEP in operation over the last five years, and the Accountancy Scheme before it, as well as our experiences more generally with other regulatory regimes and regulatory bodies within the UK and abroad);

2. secondly, that we consider that most of the proposed amendments do indeed meet the stated aim of ensuring "*a clearer and more effective and robust enforcement process*"; and

3. thirdly, in the spirit of consultation, we have identified, as set out in detail below: i) elements of challenge we foresee within the proposed amendments; and ii) areas where we consider that perhaps more could be done, to improve the enforcement process yet further.

Turning to the questions themselves, we answer these in short form below, and thereafter (in the pages which follow), we consider in some detail the proposed amendments:

a. Question 1: "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."

   Answer: yes – please see further below and please note that some of our thoughts may be posed as questions to be considered, rather than as settled solutions, all of which we would very much like to discuss with the FRC.

b. Question 2: "Do you agree with the proposed amendments to the AEP? Please respond by reference to specific Rule numbers of the amended AEP."

Answer: for most of the proposed amendments, yes, we do; but also see above and below. Where we foresee a degree of ambiguity / uncertainty / imbalance in the proposed amendments, and consequently where we see the existence of risk that undermines the effectiveness and robustness of the process itself, we have said so, and explained why.

c. Question 3: "Do you have any general comments on the amended AEP?"

Answer: yes – please see above and below.

1. Part 3 – Investigation

a) Dispensing with the Initial Investigation Report ("IIR")

i. In our experience, the IIR stage of the AEP presents a very helpful window in which the parties can engage in constructive dialogue and explore an amicable resolution of the matter before the investigation is deemed to have concluded (and the momentum for such dialogue/resolution is diminished). We are concerned that dispensing with the IIR stage and moving straight to a 'final' Investigation Report ("IR") risks reducing the likelihood of such dialogue taking place or it being effective and, therefore, reducing the chances of an amicable resolution being reached.

ii. The reason given in the consultation for this proposal is to reduce the administrative burden on the Executive Counsel ("EC") but we query the administrative savings this change would produce as the EC will still need to seek and reflect upon representations from Respondents, either following the delivery of an IIR to the Respondents or an IR.

b) New power to compel Respondents to *"create documents which relate to the statutory audit"*

i. The draft amended AEP that the FRC has proposed a new power to "*create documents which relate to the Statutory Audit of, or the performance of Third Country Audit Functions in respect of, the annual accounts or the consolidated accounts of any audited person*". This new power appears in respect of the initial actions by the Case Examiner stage (para 3a) and also within the investigation powers of EC (para 14a).

ii. We would like to understand for what purpose this power is intended to be used and in what circumstances the FRC envisage issuing such a notice. If it is to require the creation of documents to summarise, collate or present relevant contemporaneous information, that seems entirely sensible. However, if the power is intended to go beyond this (and at present it is drafted in a very open-ended way, creating an exceptionally broad power), such that a Respondent could be compelled to create any type of document during the preliminary enquiry or investigation phase (including one that might be prejudicial to its position), we consider that to be a concern and might go against natural justice and constrain Respondents being able to fairly respond to the investigation.

c) Disclosure of evidence held by the EC during the AEP process

i. At present, under the amended rule 16d, the EC must disclose with the IR any evidence which they consider to be "relevant". It is unclear to us why the EC is not required to disclose all material reviewed and considered in the course of the investigation, whether this is ultimately referred to in the IR or not.

ii. We would welcome guidance and transparency regarding all evidence gathered for the purposes of investigations under the AEP, in order to allow Respondents to get a full and complete picture of the case being presented against them, and subsequently make representations pertaining to the same. It seems to us that there is a risk that the EC may conclude that a particular document is not relevant, whereas the Respondent may consider such a document to be relevant and supportive of the Respondent's position.

iii. We consider the current process to be weighted against Respondents, given that prior to the issue of the IR, the EC will have had access to a full pool of evidence to form a view on allegations and inform the IR. On the other hand, when expected to make representations in response to the IR, Respondents only have access to a limited selection of documentation, which the EC deems relevant. In essence, if the EC has had access to a document when preparing the IR, it seems only fair that the Respondent should have access to that document when responding to the IR.

iv. With a view of promoting a more equal playing field between parties to the AEP, we would encourage the FRC to consider the production of a list of all documentation reviewed in the course of an investigation, perhaps to be appended to the IR, with Respondents then having the ability to request disclosure of documentation which they may consider relevant to make their representations. An alternative option could be for it to be standard practice to create a data room, accessible by all parties, containing copies of all documentation gathered and considered in the course of an investigation. This might at first sight appear unduly burdensome, but in fact it is only an issue as regards documentation obtained by the EC from third parties. The bulk of the documentation that the EC has obtained is likely to be the Respondent's own documents, so this is unlikely to be especially burdensome.

d) Abolishing the Enforcement Committee stage

i. The FRC's consultation document states that the Enforcement Committee stage was originally introduced in the AEP at Part 4 "*to assist the expeditious conclusion of cases by offering an administrative step of a non-executive committee without or before a Tribunal hearing*".

ii. We do not understand the FRC's reasoning in the consultation that because no case has yet reached the Enforcement Committee stage (with all Respondents having agreed with the Decision Notices issued by EC under the AEP) that this stage is unnecessary. Although the new 'Independent Reviewer' stage adds a degree of independent oversight[1], if the Independent Reviewer disagrees with EC's Proposed Decision Notice then ultimately Respondents end up in a

[1] see paragraph e) ii. below where we explain why we think this oversight is too late in the process.

Tribunal situation in any event. In our view, given the cost and time involved in the Tribunal process, it would be advantageous to retain steps which have the chance of resolving cases before a Tribunal stage is reached. The way in which the amended AEP is drafted, there is no independent consideration of EC's views until a Tribunal process.

iii. Another comment we have regarding the abolition of the Enforcement Committee is that if the Independent Reviewer role is intended to provide a degree of independence to the process then we have concerns that instead of a committee made up accountancy professionals and a QC, all decisions will now be down to one person, who will be a QC from the Tribunal Panel and therefore will not have audit experience to draw on. Overall, we believe that the Independent Reviewer role seems to be quite different to that of the Enforcement Committee (even if that role has not been required to perform their duties to date during the life of the AEP). By losing the Enforcement Committee, we believe for contested cases, it appears much more likely that cases will end up in a Tribunal situation, adding cost and time to an already lengthy process.

e) <u>EC's decision – liability to enforcement action</u>

i. We believe a fair and robust AEP includes independent checks of the decisions being made by those investigating matters under the AEP, such as the Case Examiner and EC. This is present in several places in the AEP already, for example:

(1) The decision to investigate a matter (covered by rule 6-10 of the amended draft AEP) is made by the FRC's Board (the "Board"), not the Case Examiner who has conducted the initial assessment of whether there has been a breach of a relevant requirement requiring investigation. Under Rule 5d the Case Examiner is required to refer the matter to the Board for them to decide if there is a good reason to investigate the matter.

(2) Later in the enforcement process, before a Final Decision Notice can be issued we note that an 'Independent Reviewer' is required under the amended draft AEP to consider the Proposed Decision Notice following the agreement of the Respondent to the Notice (rules 23-28 of the amended draft AEP). This provides an independent check of the terms of Final Decision Notice. However, it is worth noting that this independent check is only used if the Respondents agree to the Proposed Decision Notice, if they don't then the matter is referred to a Tribunal under rule 29.

ii. A key stage where we believe this independent check is missing is when making the decision as to whether a Respondent is liable for enforcement action. This decision is made by EC alone without the need for an independent check (see rules 19 and 20 of the amended draft AEP and rule 16 of the current AEP). In our view, this is one of the most important decisions in the AEP process and we would suggest that a similar check of this decision by an independent body/person not involved in the investigation, would be both fair and logical. Therefore, in our view, the decision around potential liability ought to involve the Board together with the EC. The FRC states in the consultation paper that an Independent Reviewer will ensure "*a suitable degree of independent oversight following the conclusion of the investigation*" however, in our view that

oversight is too late and should be brought forward to the decision as to whether a respondent is liable for enforcement action.

iii. Under the amended draft AEP, it is possible for the Independent Reviewer to decline to approve a Final Decision Notice (this could be for a number of reasons but one might be if they disagreed with the Respondent's liability to the breaches of relevant requirements). However, at this point, if the Independent Reviewer choses to decline to approve the finalisation of the Proposed Decision Notice then EC is able to amend the notice or refer the matter for determination by a Tribunal (see amended rule 28b). In this scenario, the Respondent could be in a Tribunal environment, incurring significant costs in a situation where the Independent Reviewer could disagree with EC's decision regarding liability to enforcement action. We think it would be sensible to have an independent check on EC's decision as to whether Respondents should be liable for enforcement action to be consistent with the rest of the AEP and also the procedures of other regulators such as the FCA. Section 1.2.1 of the FCA's Decision Procedure and Penalties Manual (DEPP) states that:

"Section 395 of the Act (The FCA's and PRA's procedures) requires the FCA to publish a statement of its procedure for the giving of statutory notices. The procedure must be designed to secure, among other things, that the decision which gives rise to the obligation to give a statutory notice is taken by a person not directly involved in establishing the evidence on which that decision is based or by two or more persons who include a person not directly involved in establishing that evidence."

2. Part 4 – Tribunal

a) Introductory remarks

i. As currently drafted (within the March 2021 AEP), the section entitled "Part 5 – Tribunal" is split across rules 28 to 54, and sets out (over nine sub-headings[2)] the procedure associated with convening and managing a Tribunal, the procedures associated with evidence, representation of the parties, attendance of the public, as well as (amongst other things) the process around Tribunal decisions.

ii. The proposed amended section entitled "Part 4 – Tribunal", which has materially the same aims as Part 5, is split across (in the edited version) rules 32 to 78, with largely the same sub-headings[3].

iii. By way of general comment on this section, we agree that by and large the proposed amendments do bring about what can reasonably be said to be "minor, clarificatory or

[2] i. Case Management Meetings and Directions; ii. Notice of Hearing; iii. Evidence; iv. Postponements and Adjustments; v. Proceeding in Absence; vi. Attendance of the Public; vii. Representation; viii. Procedure at the Hearing; and ix. Tribunal Decision.

[3] The differences include: a pre-amble in the edited version (without title); an amendment of the sub-heading "Case Management Meetings and Directions", by removal of the word "Meetings" and insertion of the word "Hearings"; inclusion of the section on Burden and Standard of Proof; and inclusion of the word "Liability", as within the sub-heading "Procedure at the Liability Hearing" – the sub-headings remain otherwise unamended.

consequential changes" – for example moving rules 81 and 82 on Burden and Standard of Proof, from what was the section entitled General, as within the March 2021 AEP, to its more logical home within the new Part 4).

iv. Beyond that, we focus our comments fundamentally on the subjects of i) rules of evidence and ii) previous findings of record, as follows:

b) Rules of Evidence

i. At present, and as clarified within the amended Part 4, the burden and standard of proof when deciding facts at any FRC Hearing "shall be the civil standard"[4].

ii. On that basis, we wonder if there is an opportunity to add clarity around the rules of evidence in those Hearings, and in particular we consider there is merit in adopting the rules of evidence which apply within civil proceedings (as set out more fully within the Civil Evidence Act 1968 and the Civil Evidence Act 1995).

iii. Doing that would, we believe, not only provide greater clarity, certainty and effectiveness to the AEP, but it would also bring the FRC's procedure in line with the Solicitors (Disciplinary Proceedings) Rules 2007[5].

c) Previous findings of record

i. Putting that to one side, we question the proposed amendments at rule 52, as currently drafted. Conceptually, rule 52 would permit the Tribunal to treat any finding or court-approved statement of fact made by other bodies or officers, as evidence of that fact in the Tribunal's proceedings.

ii. The powers of the SRA are not dissimilar to this, in that Paragraphs 8.7 and 8.8 of the SRA rules provide that if another body or court in the UK or abroad, reaches a decision, the SRA can then rely on it as evidence of that offence or disciplinary finding. We consider that to be a sensible and efficient position.

iii. However, proposed rule 52 in the amended AEP appears to go beyond that, in that it appears that the Tribunal would be able to treat as prima facie evidence a finding of fact in any court/body in any jurisdiction, (so regardless of the rules of evidence which may have applied and regardless of whether here has been any substantive regulatory, criminal or civil finding by the relevant body) to which the Respondent will not have been a party and will not have had an opportunity themselves to challenge that evidence. The burden then shifts to the Respondent to disprove that fact, which would in practice be all but impossible as the Respondent has no powers of compulsion even in the UK. This seems to be fundamentally unfair and contrary to the obligation on EC to prove their case (as provided for in amended rule 59).

[4] See amended rules 58
[5] See paragraph 13 of the SI Template (solicitorstribunal.org.uk)

iv. It is also unclear what would constitute a "finding", "report" or a "court approved statement of fact" in these circumstances, leading to these provisions being extremely loose (and, therefore, fertile ground for disputes which would be unfortunate for all parties and not in the public interest).

v. We believe that clear findings of fact/convictions in proceedings to which the Respondent was a party (either as found by the court/tribunal or because the Respondent agreed them) can stand as prima facie evidence of the fact and, as such, we would support such an addition to the AEP. However, we consider that going beyond this would potentially render Tribunal trials fundamentally unfair. For example, a report (other than a finding following a tribunal process to which the Respondent was a party) by officers of another regulatory body.

vi. One way to address some of the above challenge may lie in the approach adopted again within the Solicitors (Disciplinary Proceedings) Rules 2007, which provides (at rule 15) the following in connection with previous findings of record:

(2) A conviction for a criminal offence may be proved by the production of a certified copy of the certificate of conviction relating to the offence and proof of a conviction shall constitute evidence that the person in question was guilty of the offence. The findings of fact upon which that conviction was based shall be admissible as conclusive proof of those facts save in exceptional circumstances.

(3) The finding of and penalty imposed by any tribunal in or outside England and Wales exercising a professional disciplinary jurisdiction may be proved by producing a certified copy of the order, finding or note of penalty in question and the findings of fact upon which the finding in question was based shall be admissible as proof but not conclusive proof of the facts in question.

(4) The judgment of any civil court in any jurisdiction may be proved by producing a certified copy of the judgment and the findings of fact upon which that judgment was based shall be admissible as proof but not conclusive proof of those facts.

3. Part 6 – Settlement

a) Amendments to the AEP will enable settlement discussions to take place between parties, after the issuance of Notice of Investigation and prior to a Final Decision Notice being handed down by a Tribunal.

b) The proposed amendment will provide an express power for the EC to reach a settlement agreement with Respondents and issue a Proposed Settlement Decision Notice, setting out details of agreed sanctions, costs and adverse findings. Such a Notice would then be analysed and approved by an Independent Reviewer. Should the Independent Reviewer decline to approve the settlement, it would be for the EC to decide whether to resume discussions or proceed with enforcement.

c) Whilst we consider the introduction of express provisions for settlement under the AEP to be a step in the right direction, we would encourage the FRC to fully embrace the use of settlement tools, to bring about the early resolution of matters.

d) In the interest of endorsing a more dynamic and flexible process, we consider this to be an opportunity for the FRC to go further in how the process around settlement operates, and to consider the adoption of Alternative Dispute Resolution ("ADR") tools, such as mediation or expert determination, within the AEP. The involvement of an independent third party, jointly appointed by the parties, can help parties to reach an agreement where settlement might not otherwise be achieved or may not be achieved so efficiently and effectively. The availability of ADR resources can be vital in matters ranging from small disputes to large regulatory investigations.

e) The role of a mediator should not be seen as a decision maker in settlement discussions, but as an indispensable resource to help guide and facilitate dialogue between parties in order to better understand issues in focus, narrow those issues, and allow for the early resolution of investigatory proceedings.

f) Whilst we recognise that regulatory investigations are not litigation disputes, we have seen the Courts in England and Wales (and generally around the world) overwhelmingly support the inclusion of ADR in their processes, as proven means of drastically improving the prospect of early resolution, in a cost effective and proportionate way. In fact, the Courts in England and Wales are so in favour of ADR, that parties to proceedings who fail to consider ADR and settlement discussions, risk being penalised by the court by way of adverse costs orders.

g) We have also seen other regulators increasingly embracing the use of ADR, such as the FCA, which considers that in general "*the earlier settlement discussions can take place the better this is likely to be from a public perspective*"[6]. The FCA states in EG 5.6 of its Handbook, that it is committed to mediating appropriate cases and recognises the benefit that the involvement of a neutral mediator can bring. We note that complex industrial disputes (for example between unions/employees and employers) are frequently referred to and resolved through ADR processes, such as ACAS. That is not to say that ADR processes should be mandated to be used in every case, but as with elsewhere, they should be encouraged and we can see no downside in having the tools available to the parties. If, for example, mediation is a tool successfully deployed to bring about early, and therefore cost effective, resolution of matters (as is the case not only in litigation but elsewhere), it is not obvious why a mediation process would generally not be helpful in the context of disputes under the AEP. Aligned to this, we would welcome the AEP being flexible enough to incorporate other processes for the early resolution of preliminary issues (for example, a Tribunal hearing to determine a preliminary issue, a process which we have seen leads to very significant savings of costs and early resolution of matters in litigation).

[6] https://www.handbook.fca.org.uk/handbook/EG/5/?view=chapter

4. Part 7 – Appeals

a) Introductory remarks

i. Consistent with our comments on other aspects of the proposed AEP, when it comes to the AEP's appeals process, we believe it is important that each proposed amendment be considered both in its own right, but also in the context of the overall scheme.

ii. As such, our comments about appeals fall into two main topics, but should be read together as a comment on the overall appeals process under the AEP scheme.

b) FRC's proposed right of appeal

i. A proposed amendment to Rule 112 would mean that both the Respondent and the FRC would have exactly the same rights of appeal to the FRC's Appeal Tribunal in respect of Interim Orders and Final Decision Notices. The current position is that the right of appeal lies with the Respondent only.

ii. For the reasons explained below, we question whether the proposed amendment in its current form is appropriate and believe that this needs to be reconsidered. However, we do agree that it is appropriate for the FRC to have a right of appeal under certain circumstances and so are supportive of some form of amendment.

iii. It is a basic premise of the English legal system that a defendant or respondent to a process is innocent until proven guilty. In that context, the prosecuting authority is required to prove its case to the requisite standard before there is a finding. We consider that this basic proposition also applies to regulatory enforcement proceedings.

iv. It is a corollary of that basic premise that a respondent in respect of whom there has been an enforcement process which has resulted in a finding should be entitled to the certainty and confidence, subject to certain safeguards, that the matter is at an end. In our view, allowing an authority a broad right of appeal risks exposing the subject of a regulatory process to inappropriate uncertainty, potential double jeopardy and would not, in our view, therefore serve the public interest.

v. In our view, if the regulatory authority is to have a right to appeal it should rightly be limited. However, we consider that the situations set out in proposed Rule 117 are too wide. We would suggest that the regulator's right to appeal should be limited to situations where the Tribunal's decision is manifestly unreasonable or wrong in law such that the error effectively terminates the proceedings (for example, a decision that certain evidence is inadmissible meaning that the enforcement proceedings cannot continue).

vi. Further, we question the proposed amendment to the extent it now means that the authority and the respondent have exactly the same rights of appeal. We are concerned that

this does not strike a fair balance as between the relevant authority and the subject of the proceedings. As such, we consider that a respondent's right to appeal a Tribunal decision should be as set out in proposed rule 117, but with the authority's right limited as per the previous paragraph.

vii. In this context, we consider it instructive to consider the position of other regulatory bodies.

viii. By way of contrast with the proposed AEP amendment, in contested FCA disciplinary proceedings, it is the person who has received a decision notice / outcome from the Financial Conduct Authority's (the "FCA") Regulatory Decision Committee who has a right to refer the matter to the Upper Tribunal if they wish to challenge the FCA's decision (paragraph 2(2), Schedule 3 to the Upper Tribunal Rules). Our understanding is that the FCA itself cannot make such a reference and so does not have a 'right of appeal' in the way being suggested by the proposed amendment to the AEP.

ix. In contrast with the FCA, we understand that the Solicitors Regulatory Authority (the "SRA") (and the solicitor respondent) does have a right of appeal to the High Court from decisions of the Solicitors Disciplinary Tribunal (the "SDT"). However, in contrast to the FRC's Disciplinary Tribunal, the SDT is an independent statutory tribunal which is subject to its own rules (i.e. separate from the SRA's rules on investigation and enforcement) and the tribunal members are not appointed by the SRA. Further, the decision maker (the SDT) is not a party to the appeal. As such, the SDT and FRC Disciplinary Tribunal operate under very different structures and environments and, therefore, we can more readily see why the SRA has a right of appeal in those circumstances. This leads on to our second comment in respect of the AEP appeals process.

c) <u>Final stage of the appeal process</u>

i. Question 3 in the consultation asks: "*Do you have any general comments on the amended AEP?*" As such, we have taken the opportunity to comment on an aspect of the AEP Appeals process in respect of which there is no proposed change.

ii. The relevant topic is the final stage of the appeals process under the current and proposed AEP.

iii. Appeals from an FRC's Disciplinary Tribunal are currently made to the FRC's Appeal Tribunal, which is another body 'within' the FRC's enforcement regime, where, amongst other things, the rules governing the appeal proceedings are created by the FRC and members of the tribunal are appointed by the FRC.

iv. We are of the view that it would be beneficial if the final stage of the appeal process was 'outside' of the regulatory regime, i.e. to a Court. We consider that for reasons (whether real or as a matter of perception) of independence, impartiality, transparency, fairness and the public interest, it would be preferable for the final right of appeal to be outside of the FRC,

to the Court. We consider this would be consistent with the FRC's stated commitment to "…delivering robust, fair and transparent regulatory outcomes…".[7]

v. Again, looking to equivalent regulatory bodies and their enforcement regimes, our understanding is that this would be consistent with the position under the FCA and SRA enforcement schemes, where in both cases the ultimate right of appeal is to the High Court (the Upper Tribunal for the FCA and the Administrative Court for the SDT). Indeed, the SDT (the equivalent of the FRC Disciplinary Tribunal stage) is an independent statutory tribunal separate from the SRA (the regulatory body), where members of the Tribunal are appointed by the Master of the Rolls, not the SRA, and so the first Tribunal stage is 'outside' of the SRA's enforcement regime.

vi. We would ask that the FRC considers this issue as part of its review of the AEP.[8]

5. Part 10 - Costs and Joint Tribunals

a) Costs

i. We welcome the fact that Costs is now to stand alone, within what is being called Part 10 within the proposed amended AEP, which we believe gives appropriate prominence to the subject.

ii. We also welcome the fact that, conceptually, costs are entirely within the Tribunal's discretion[9] - as they are for the Courts within civil litigation[10].

iii. We also recognise that any ability in the hands of the Tribunal to award costs against the FRC must be balanced, such that the FRC is not (assuming it is acting reasonably) restrained in investigating and taking enforcement action against Respondents due to fear of being liable for costs, which would be contrary to the public interest.

iv. That said:

A. We are encouraged by the simplicity on the subject of Costs, as set out within The Solicitors (Disciplinary Proceedings) Rules 2007 and wonder whether there is material there which might fit sensibly within the AEP.

B. More specially, as set out within one paragraph and four sub-paragraphs, the Solicitors rules provide two points of clarity which we favour, namely:

[7] FRC Enforcement Review 2021, page 61

[8] We recognise that this might require legislative change but believe that it is something that should be considered as part of the BEIS consultation.

[9] see amended rules 141: "*After hearing representations from the Parties, the Tribunal or Appeal Tribunal may order a Party to pay all or part of the Costs incurred by the other Party by a specified date…*"

[10] See rule 44.2 as within PART 44 - GENERAL RULES ABOUT COSTS (justice.gov.uk)

- clarity around when a Tribunal might make an order as to costs in favour of the Respondent, in that the Solicitors rules set out two scenarios, which we believe ought reasonable to apply to the parties within an FRC Tribunal, namely: (a) where any application or allegation is withdrawn or amended; (b) where no allegation of misconduct…is proved against a respondent[11].

- And provision for the involvement of a Costs Judge, where necessary[12], which has the advantage (it seems to us) of providing a degree of certainty and independence in connection with the final award, which, we consider, is merited given the potential sums involved.

b) Joint Tribunals

i. The new rules 153 to 160 provide for the use of Joint Tribunals with an aim of enabling one Tribunal to hear cases arising from the same factual circumstances, which may engage the AEP, Accountancy Scheme or Actuarial Scheme.

ii. We welcome a provision enabling the EC to recommend the use of Joint Tribunals, as a means of streamlining the AEP process and bringing about the prompt and effective resolution of matters. However, we would consider it beneficial to also allow Respondents the same opportunity to request/apply for the use of a Joint Tribunal, for example in instances where under the same factual circumstances a firm is subject to the AEP, and one of its practitioners subject to the Accountancy Scheme proceedings.

6. Case Examination and Enquiries

a) We consider it critical to observe that audit quality is a fundamental pillar of our audit strategy, and that a number of factors are engaged to drive that quality, including factors which we control and which are influenced by others (including by the FRC and our other regulators, by corporates themselves and their stakeholders and the wider market in which we operate). Ultimately, through both our work and the work of our regulators, it is clear to us that we and our regulators have a shared goal of promoting the reliability of financial reporting.

b) We are of the view that the engagement we have had with the FRC (and in particular those within the Case Examination and Enquiries ("CEE") team) has been extremely constructive, resulting in positive and meaningful change, and in real time, which fundamentally drives audit quality.

c) That positive engagement, we believe, arises in part from the fact that the CEE process is flexible, proportionate and cost effective for all, whilst at the same time providing robust and healthy challenge, all of which combines to serve both the audit profession and the wider public

[11] See rule 18(4) within SI Template (solicitorstribunal.org.uk)
[12] See rule 18(3) within SI Template (solicitorstribunal.org.uk)

interest - we consider that there is real merit in seeking to replicate that, where possible, within the AEP.

d) We would further welcome more transparency from the FRC, in respect of instances where a case is to be considered by the Board prior to being referred to the Enforcement team. More specifically, transparency over the reasoning behind a referral, timings, and the ability for Respondents to make representations at that stage.

As mentioned at the outset of our letter, we welcome the opportunity to provide our views on the proposed amendments to the AEP. From our experience with the AEP to date, we consider that the procedure provides a good framework for dealing with relevant issues, in particular the Case Examination stage, and we are generally in favour of many of the amendments put forward. With that in mind, we hope you find our comments useful and constructive. As set out above, there are certain areas where we would welcome clarification and guidance from the FRC around the proposed changes. We also believe that there are areas in which there is an opportunity for the amendments to go beyond the current proposals, with an aim to improve and streamline the process even further. We encourage the FRC to take the above commentary into consideration and would welcome the opportunity to discuss our response with you further.

For the avoidance of doubt, this letter is confidential and ought not to be distributed to any third party without our prior written consent.

Yours faithfully