

Ms Catherine Horton
Financial Reporting Council
8th Floor
125 London Wall
London
EC2Y 5AS
By post and email

Chartered Accountants House
47-49 Pearse Street
Dublin 2
Tel: +353 (0)1 6377336
Fax: +353 (0)1 6377369
Email: carb@carb.ie
Web: www.carb.ie

9 May 2016

Enhancing Confidence in Audit: The Financial Reporting Council's Audit Enforcement Procedure

Dear Ms Horton

Chartered Accountants Ireland and the Chartered Accountants Regulatory Board are pleased to respond to the above consultation.

Chartered Accountants Ireland is a recognised supervisory body ("RSB") under the Companies Act 2006; the Chartered Accountants Regulatory Board is responsible for regulating members of Chartered Accountants Ireland independently, openly and in the public interest. Together we are committed to contributing to the discourse and processes that shape statutory audit and we support initiatives aimed at enhancing audit quality and confidence in statutory audit as well as measures which promote the harmonisation of regulatory regimes.

Our responses to the questions posed in the consultation document are set out in the Appendix to this letter. As you will note from these responses, subject to a few areas of concern, we are supportive of the proposed Enforcement Procedure and welcome a number of its initiatives. As regards the proposed funding arrangements, there are a number of key issues yet to be clarified and we look forward to engaging with you further on these issues.

A related matter of significance, as noted in the consultation document, is the future operation of the existing Accountancy Scheme. We consider early resolution of this issue essential and we look forward to engaging with you further on this matter also.

Please do not hesitate to contact us if you would like to discuss any of the issues raised or views expressed in this response.

Yours sincerely



Aidan Lambe
Director
Chartered Accountants Regulatory Board

Appendix

Question 1: Do you consider the proposed Procedure adequately reflects the ARD requirements?

Question 2: Do you agree that the Procedure achieves a balance between protecting the public and fairness to those subject to the Procedure?

Question 3: Do you consider there is anything missing from the proposed procedure that would improve its effectiveness?

Question 4: Do you have any other comments about the proposed Procedure?

Questions 1-4 are addressed together in the response below.

For the most part, we agree that the proposed Enforcement Procedure (the “Procedure”) suitably addresses the requirements of the ARD and we welcome a number of its features, particularly the initial filter mechanism and early case resolution through constructive engagement and agreed decisions. We would also agree that an appropriate balance has largely been struck between public protection and fairness to those subject to the Procedure.

However, we do have a number of concerns and believe certain aspects of the scheme ought to be reconsidered, as explained below. Please note, our comments are limited to these key areas of concern and, should you wish, we would be happy to engage with you separately on more minor matters or drafting points.

i. The Committees

While we welcome the departure from a wholly tribunal based scheme and the increased focus on early resolution, we do not believe it is necessary, proportionate or indeed helpful to establish three separate committees for the effective operation of stages 1-3 of the Procedure. The overall structure is confusing and the rationale for the duplication of functions is unclear. In addition to increasing the operating costs of the Procedure and individual case costs, the profusion of committees increases the risk of delays in case handling.

Without compromising on rigour or fairness, we believe the initial stages could be simplified and rationalised by the Conduct Committee appointing one or more of its own number to perform the advisory and/or oversight role that has been ascribed to the Investigation Committee, where this has been deemed necessary.

ii. Decision-making by the Executive and referrals to the Enforcement Committee

We support the empowerment of the Executive to make decisions and recognise the associated benefits; however, we believe this ought to be coupled with greater oversight than is currently provided for. While we note that the Conduct Committee might direct that a particular case be overseen by the Investigation Committee, it would appear that a number of critical decisions leading to the closure of cases could be taken by the Executive Counsel directly without any oversight or input from an independent person or committee. We note also that the Executive Counsel must issue either a Notice of Cancellation or a Decision Notice following each investigation and there appears to be no option for the Executive Counsel to refer cases directly to the Enforcement Committee. In our view, the significant decision-making power vested the Executive Counsel is somewhat at odds with the multiplicity of committees given their limited role in that context.

To reduce the burden on the Executive Counsel and to enhance independence in decision-making, we believe consideration should be given to combining elements of the Executive Counsel and Enforcement Committee stages by:

- requiring Enforcement Committee endorsement of the Executive Counsel's decisions; and
- permitting the Executive Counsel to refer Investigation Reports to the Enforcement Committee directly for decision where he or she considers this appropriate.

Where the Enforcement Committee, or members of that committee with delegated authority, have endorsed the Executive Counsel's decision, clearly, there would be no necessity for further consideration by the Enforcement Committee at a later stage.

A similar approach is taken in Chartered Accountants Ireland's disciplinary process.

iii. Decision notices

In contrast with provisions relating to Tribunals, neither Rule 15 nor Rule 22 refers to the inclusion of costs in Decision Notices. We are firmly of the view that express provision should be made for the recovery of reasonable investigation costs from the Respondent where there has been an adverse finding, even where a case has been resolved prior to a full hearing.

iv. Grounds for hearings to be held in private

We note that, per Rule 47, hearings will be held in public unless the Chair of the Tribunal decides that "*publicity could prejudice the interests of justice*" and suggest that this might helpfully be expanded to permit a private hearing in any other circumstances where it would be inappropriate to hold a hearing in public having regard to any unfairness to any person that might result from a hearing in public.

It could be argued that the current wording might not be sufficiently broad to justify the hearing in private of commercially sensitive information or information which might intrude on the privacy of a witness or other third party if it were heard in public.

v. Reconsideration of cases by FRC

We would welcome confirmation that the FRC is satisfied from a legal perspective that the reconsideration of decisions in accordance with Part 8 is permissible.

In addition, we believe Rules 66 - 71 must be expanded to specify which person(s) or committee(s) within the FRC will be responsible for deciding whether a decision should be reconsidered. As it stands it is unclear whether such decisions will be made by the Executive or an independent committee; in this regard we are of the view that the decision should in all cases be made by an independent committee.

vi. Exclusion of members

We note the supplemental sanctions proposed in addition to the minimum sanctions set out in the Statutory Auditors and Third Country Auditors Regulations 2016 and support the inclusion of provisions relating to restitution and the imposition of conditions. However, we do question whether it necessary or appropriate to include exclusion from membership of a professional body.

Rightly, as the competent authority, in accordance with the proposed regulatory framework, the FRC ultimately controls who may act as a statutory auditor from time to time. Membership of a professional body, however, is a matter between that body and its members and we believe it ought to remain so. EU legislation requires "*effective systems of investigations and penalties to be in place, to detect, correct and prevent inadequate execution of the statutory audit*" and permitting the competent authority to exclude members from their professional bodies cannot be considered essential for this purpose.

Of course situations will arise where it is entirely appropriate for a member to be excluded for a matter which gave rise to a finding under the Enforcement Procedure. There are a number of ways in which the Procedure and the bodies' respective disciplinary rules could be joined-up in this regard; for example, the FRC could issue a recommendation to the relevant body or certain FRC findings could give rise to a presumption of misconduct under the body's rules where the

recommended sanction is exclusion. This would achieve the desired deterrent effect without encroaching unduly on the relationship between the professional body and its members.

It is noted that exclusion is provided for under the existing Accountancy Scheme and we believe the issue ought to be revisited in this context also.

Question 5: Do you have any comments on the proposed funding arrangements?

Details of expenditure and funding arrangements have been outlined in very broad terms in Section 3 of the consultation paper and the anticipated impact has been outlined in similarly broad terms in Section 4. At this stage, and until the detail of the proposed arrangements has been made available, we can, in turn, only comment very generally on the proposed arrangements.

We note that the FRC intends to put in place arrangements broadly in line with the present approach under the Accountancy Scheme whereby an RSB will meet the costs of the FRC's investigation and prosecution of individual cases in accordance with the terms of a case costs agreement. Participation in the Accountancy Scheme brings with it a significant financial burden for Chartered Accountants Ireland and its members. Bearing in mind that the scope of matters which will fall to the FRC to investigate and prosecute will increase significantly from June 2016, in entering into any new agreement in respect of case costs under the Enforcement Procedure, there are a number of safeguards which we consider essential including measures aimed at ensuring transparency, proportionality and accountability in respect of case management and the associated costs. In particular we believe an independent review mechanism in respect of such costs must be provided for.

We look forward to engaging with you further on this matter.