ICAEW
REGULATORY BOARD
(IRB)

The ICAEW Regulatory Board's response to the BEIS consultation: 'Restoring trust in audit and corporate governance'

JULY 2021

ICAEW REGULATORY BOARD (IRB)
REPRESENTATION 10/2021

RESTORING TRUST IN AUDIT AND CORPORATE GOVERNANCE

Issued 7 July 2021

We welcome many of the proposals in the Consultation Document. Our main concern is that it does not sufficiently recognise the significant level of independent oversight already exercised by the ICAEW Regulatory Board (IRB) over the member conduct and disciplinary functions of ICAEW.

We believe that, working closely together with ARGA, we can continue to provide an extremely effective audit and accountancy oversight regime. This would enable ARGA to concentrate on the other areas of oversight where enhancement is required, particularly where significant public interest concerns have been identified.

Dear Secretary of State,

I am very pleased to send our response to the BEIS consultation 'Restoring trust in audit and corporate governance'. I hope you will find this informative and helpful when you are formulating the future actions post this consultation. Our response has four sections:

1. **Executive Summary** – our overall strategic position on the consultation and our key points.
2. **History and role of the ICAEW Regulatory Board (IRB)** – the journey of the IRB and why it is an important part of the regulatory accountancy landscape.
3. **Answers to specific questions** which the IRB has a direct and/or public interest view, suggesting alternative solutions, where appropriate.
4. **Appendices** – an organogram of our oversight ecosystem, regulatory insights, legal advice and other supporting evidence referred to in our responses.

Thank you for the opportunity to respond to the consultation. We are happy to answer any questions you may have or to expand on the ideas we have put forward. We look forward to continuing our existing close relationship with the FRC when it is reconstituted as ARGA.

Yours sincerely,

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Chair, ICAEW Regulatory Board (IRB)

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SECTION 1: EXECUTIVE SUMMARY

1. Our responses to the questions in the Consultation Document target, primarily, those areas concerned with public interest entities, the regulator's responsibilities, audit scope, the audit market and the regulatory ecosystem as a whole.

2. We are supportive of many of the proposals, but, where we feel a different course of action would lead to swifter and more sustainable improvements, we have suggested alternative solutions. In some instances, where we feel that proposals will not deliver any benefit or could lead to unintended negative consequences, we have clearly stated so. Before summarising our position on aspects of the Consultation Document, we believe a properly constituted Audit, Reporting and Governance Authority (ARGA), with a clear, focused remit, appropriate statutory powers and adequate staffing/funding, working in close conjunction with the existing Recognised Supervisory Bodies (RSBs), such as ourselves, will be a recipe for success.

3. A particular omission that we have noted in the Consultation Document is the lack of recognition of the work of the independent regulatory boards at RSBs, such as ourselves, who currently play an essential role in enforcing and raising audit standards. We would like to take this opportunity to demonstrate how we believe we can be an integral part of the solution moving forward. Our ultimate intention is to assist those tasked with transforming the Consultation Document proposals and responses into appropriate legislation.

Scope and Timing

4. Prior to summarising our specific perspectives on the Consultation Document, we need to make two general points.

    - All the precursor reviews which have fed into this Consultation Document were triggered by audit, governance and reporting failures in Public Interest Entities (PIEs) which fell under the oversight of the Financial Reporting Council (FRC). Those reviews highlighted that, when ARGA replaces the FRC, it needs to be focused in its operation and scope on where the greatest threats, harms and risks sit. We feel many of the current proposals could dilute ARGA's purpose and, therefore, increase the risk of it failing because it will start off with too wide a remit. Also, in certain sections, it is not clear where the line is drawn between PIE recommendations and those applying to non-PIE. We have highlighted these instances in our detailed response and ask that clarity be considered in the scope of ARGA's operation and PIE/non-PIE recommendations, so the mistakes of the past are not repeated.

    - If scope and recommendations take too long to implement, then there is a possibility, post Brexit and the pandemic, that further audit and governance failures may come to light, especially as the economic landscape is shifting significantly. The public may then lose patience and question why these improvements to audit, corporate governance and reporting are taking so long. Loss of trust in the profession may then create a vicious circle where both regulatory bodies and audit firms cannot recruit the right calibre of personnel, which may, in turn, cause additional harm.

5. The conclusion we draw from these two high-level considerations is that legislative and systemic change should focus on the highest impact proposals and, at the same time, utilise or enhance the existing arrangements which are in place, without trying to reinvent the wheel. Our purpose in pointing this out is that we see benefits in many of the proposals and want to remove any superfluous or distracting elements out of the way so we can achieve our joint objective of positively reshaping trust in audit and corporate governance.

Public Interest Entities (PIE)

6. In principle, we are supportive of the need to recast the PIE definition.

7. The proposals in the paper predominately focus on 'size' (e.g., turnover, balance sheet or employee numbers) to be a key determinant of PIE status. This potentially misses out entities that may be small yet, at the same time, be of strategic, national importance. Equally, as an example, many existing PIEs carry very little risk, and should require less stringent oversight. We believe that the definition of PIE should be focused around the area of systemic risk which was the fundamental issue addressed in the FRC Review. The 'one size fits all' approach proposed in the Consultation Document could well lead to missed opportunities.

8. A PIE definition is therefore required which is based on quantitative and qualitative information including turnover/size, harm of entity failure, strategic risk, impact of audit failure, sector/industry vulnerability and public/consumer engagement. This would enable a classification of PIEs into, for example, high, medium and low or some other tiered model. 'High' would then sit with ARGA, giving it the focus it requires, with the monitoring of audits of 'Medium' and 'Low' entities being delegated to the RSBs. This may then assist with a phased implementation and equally allow earlier appropriate oversight of entities (regardless of whether they are private, public or some other corporate structure) which do not fall under the current PIE definition and which carry significant risk.

9. We suggest, therefore, that the PIE approach is re-examined and 'reimagined' within the context of a post-Brexit economy to address actual risk as opposed to simply focussing on only 'size'. This will also ensure ARGA's success by not giving it too wide an initial remit that cannot be fulfilled easily, and instead focussing it on its key priorities.

Regulator's Responsibilities

10. We are concerned that the proposals in Chapter 11 are based on misperceptions which are out of date i.e., the continued existence of 'self-regulatory regime', and misunderstandings about the effectiveness of the current regulatory framework for chartered accountants. As will be seen in the section on the history of the IRB, we have introduced significant changes to the ICAEW disciplinary scheme over the past six years. We initiate and develop strategic priorities relating to the activities of ICAEW's Professional Standards Department (PSD). We ensure that the processes that underpin the department's licensing and disciplinary functions work effectively and efficiently, that its operational targets support the strategy, and that progress of the operational plan and targets that are set is reviewed.

11. A major part of our role is general oversight of the performance of all of ICAEW's regulatory and disciplinary committees including audit registration, insolvency licensing, investment business, legal services, investigations, fitness, disciplinary, appeals, practice assurance and professional indemnity insurance. Given ICAEW's role as a RSB for statutory audit work, we already make an active contribution to restoring trust in audit and governance. Most importantly, we operate independently of, and unfettered by, the representative functions of ICAEW, as has been recognised in the reports from our oversight regulators on our governance arrangements.

12. In addition to the lack of recognition of our role in the Consultation Document, we also consider that there is little evidence to support many of the recommendations in Chapter 11. We have proposed alternative options in our detailed response which we feel will best build on where we currently are.

13. We believe that the creation of an enhanced accountancy oversight role for ARGA is not only unnecessary but that it will create significant overlap with the existing arrangements. This will

inevitably lead to confusion among members, firms, regulators and the public. The Government should build on the current robust regulatory infrastructure, recognising that the independent regulatory boards of the other accountancy professional bodies can be relied on to identify public interest concerns arising out of the work carried out by chartered accountants and the additional assurance provided by the oversight regulators.

14. We also do not believe that there is any need for ARGA to have a power to compel a chartered body to take an action in the public interest when the accountancy bodies' independent regulatory boards are already required to act in the public interest. If ARGA is to be provided with this power, it must be the subject of robust safeguards including the requirement for its use to be authorised by the ARGA board and for there to be an independent and robust appeal process to ensure its requirements are proportionate and targeted as well as being in the public interest.

15. We realise, however, that the Government and ARGA may want to have guarantees about the continued independence of the accountancy bodies' regulatory boards and their requirement to act in the public interest, and we have suggested that the Government should focus ARGA's role instead on checking the robustness of the accountancy bodies' governance arrangements. This could follow the model used in legal services regulation where the Legal Services Board has the statutory responsibility under the Legal Services Act[1] for issuing (and revising from time to time) internal governance rules (IGRs), which set down minimum governance requirements for legal service regulators like ICAEW. This model could be adopted for accountancy oversight where ARGA would issue IGRs, keep them under review and carry out a periodic check to ensure compliance. We consider that this alternative proposal would also allow ARGA to focus on its primary areas of focus in audit and corporate governance.

16. Another aspect that we feel is not adequately recognised in the Consultation Document is that of unregulated accountants, who operate outside of any professional body, provide advice to the public without any qualifications or insurance, and who are not subject to any code of ethics or disciplinary framework. We consider that the decision to exempt unregulated accountants from the new statutory enforcement powers is inconsistent with the extension of those powers to cover areas outside of PIEs. The documents referenced in Chapter 11 (particularly paragraph 11.1.7) show that risks in relation to tax avoidance and poor tax advice lie predominantly in the conduct of unregulated accountants, rather than chartered accountants. SMEs and members of the public find it difficult to discern the difference between engaging a chartered accountant or an unregulated accountant. As a board charged with acting in the public interest, it is of concern to us that the proposals in this part of Chapter 11 are likely to create an even wider divergence between the degree of regulation to which chartered accountants will be subjected and the complete lack of regulation of others who operate as accountants and who are not members of professional bodies. We recommend that the Government should seize this opportunity to ensure that all those offering accountancy and tax services to the public are properly regulated, or are subject, at least, to the same statutory enforcement powers as chartered accountants.

Ambit of New Statutory Enforcement Powers, Code of Ethics and Misconduct Test

17. While we welcome the proposal in the Consultation Document to create statutory enforcement powers for ARGA to replace the current voluntary Accountancy Scheme, we do not believe that there is any need for those powers to extend beyond chartered accountants who work in, or provide services to, PIEs which is the ambit proposed by the FRC Review. We consider the proposed extension to cover 'wrongdoing giving rise to public interest concerns' to be inconsistent with the proposal to limit the powers to members of chartered bodies, and that this wider ambit will create uncertainty and is unnecessary given the proven ability of the

[1] Legal Services Act 2007 section 30

accountancy bodies under the oversight of their independent regulatory boards to deal with such complaints outside of financial reporting/financial accounting.

18. We disagree with the proposal that the new statutory enforcement powers should be based on a lower liability threshold for chartered accountants than the misconduct test which is currently the liability test in the Accountancy Scheme and in the disciplinary schemes of all the accountancy bodies. We have been advised by Leading Counsel that the setting of a lower liability threshold will provide chartered accountants with a lower threshold for liability to disciplinary action than most, if not all, UK professionals.

19. We can also see no need, or justification, for creating a new Code of Ethics. The Codes of Ethics put in place by all UK accountancy bodies are taken from the IESBA Code for Accountants and that Code, which has recently been extensively revised, applies internationally to the work of accountants. Creating a new UK Code will cause practical issues for accountants working across borders and will mean that bodies with international membership would be holding members to account on different Codes depending on where members are based.

20. Also, the combination of the wider, indefinite, 'public interest concerns' test and differences between the liability thresholds used by the regulators, will create inconsistency and unfairness. We are concerned that this may lead to accountants and complainants seeking to challenge in the Courts decisions taken by ARGA to prosecute complaints.

Governance and Internal Controls

21. We support many of the proposals in relation to stronger internal controls, new corporate reporting and company directors. Audit alone should never be the first line of defence and strengthened internal controls provide directors with early warnings and an assessment of going concern. Stronger regulation of internal controls will add significant value to national, sector and industry transparency plus enhance audits and governance. In particular, we are pleased to see that all directors, not just chartered accountant directors, will be subject to the same enforcement powers in respect of issues relating to a company's financial statements, something we have campaigned for over many years, and we ask that new standards of behaviour apply to all directors, whether PIE or non-PIE, for consistency.

Audit Purpose and Scope

22. The public has a strong interest that any changes ensure that past problems in the audit/governance arena are eliminated and a more holistic consideration of corporate information is undertaken by auditors. This should be reflected in strengthened and more thoroughly enforced standards. We support both the new purpose of audit suggested by Brydon and that it should be adopted by ARGA.

23. In relation to insurance, we have had concerns for some time about the brittle nature of the current PII market for professionals, with a significant recent decrease in the number of insurers writing policies. We believe that the Government needs to bear this in mind when suggesting any increase in the potential scope for auditors to be held responsible for their actions. This will also affect proposals in relation to shared audits and potentially move smaller firms away from audit into other accountancy services.

24. Future capacity and staffing within the accountancy firms (to cope with their added responsibilities) and at ARGA remain a concern and any solutions need to consider how best the new workloads can be met. ARGA's role should be focussed on setting, supervising and enforcing standards within a clear framework, dealing with the highest risks, with demand then spread between it and RSBs, who should continue to play an important continuing role in regulating wider audit services.

Professional Body for Auditors

25. We disagree that a new, distinct, professional body for corporate auditors would drive better audit. Set in the context of the better regulation principles, in our view, more efficient and inexpensive outcomes can be achieved through leveraging the existing infrastructure and honing it to the required standards.

26. We agree, however, that there needs to be a new enhanced qualification for those specialising in audit. Attempting to develop this outside the existing accountancy bodies would involve considerable upheaval, complication and overlap for little benefit, thus impacting implementation timescales. We believe that those outside accountancy should be able to gain entry providing they have the right level of skills relevant to their area of expertise and an understanding of the core elements of audit. A top-up is the preferred approach and diplomas should be available through the relevant bodies for non-financial/non-accountancy corporate auditors, on whom we will place an increasing requirement.

Audit Market: Competition Choice and Resilience

27. We welcome the concept of encouraging smaller firms to get involved in aspects of large company audits to help improve their skillsets and to improve capacity in the long term. However, we believe the Government has underestimated the obstacles which stand in the way of achieving this.

28. An area which will need to be addressed is the question of liability and the consequential issue of insurance. Clarity is required on where liability will ultimately sit for regulatory penalties/costs and for civil damages. We know from our own work that the insurance market for professional advisors has tightened considerably in the last 12 months. These factors (i.e., the willingness of the larger firms to take on sole liability for challenger firms to become involved) and the availability and affordability of insurance will impact the success of this measure if not directly addressed.

Impact on Talent Pipelines

29. While we welcome the steps taken for operational separation of audit work from the rest of the larger firms' businesses, we are concerned that full structural separation could have the unintended effect of undermining audit quality in the medium to long term. Joining a firm which specialises only in auditing may seem a far less attractive option for the best accountancy students. We are concerned that many of the brightest students may be put off applying to train at audit-only firms, not only by having to specialise very early in their careers but also because audit-only firms may be less profitable.

30. We believe that it is vitally important that the Government thinks carefully through the long-term consequences of the decisions it takes now to make sure that they will actually improve audit quality in the medium to long term.

Audit Quality Supervision

31. We agree that ARGA needs to have a close involvement in the licensing of individuals within firms that audit PIEs, and we are pleased to note that the Government has pursued the option of a dual or top-up licensing system for audit registration, which we suggested in the response to the FRC Review.

32. While we understand that the Ministerial Direction must lapse when the new legislation is introduced, we are concerned at the uncertainty the absence of the direction to delegate will create for us and for the other RSBs in continuing with our key roles in the audit regulatory framework. It is crucially important that the RSBs are given a defined role, with defined tasks,

so that we can continue to recruit the highest quality staff and to make further investments to ensure the greatest efficiency in our operations.

33. On the question of a regulator's access to privileged advice, we believe that a regulator reviewing the quality of audit work can only do that effectively and completely if the regulator is able to gain access to any document which was relied on by the auditor in reaching a conclusion on whether the financial statements showed a true and fair view. However, we do understand the importance of legal advice privilege to audited entities. We believe that the Government is in a position to balance these two competing interests in the new legislation by designating the disclosure of a privileged legal opinion as being a limited waiver of privilege only, and restricting the regulator's access to allow it to do only what is required to be done to discharge the regulator's oversight tasks.

34. We feel that the Government needs to be careful to strike the right balance in the proposals to publish poor AQR reports as, while this will increase transparency, the publication of such reports could affect not only share-trading in the audited entities but might also cause significant personal reputational damage on the individual auditor. We are concerned that the prospect of this happening might discourage auditors from wanting to sign PIE audits. We also believe that there must be a process which allows firms/auditors to make full representations to an independent committee before any publication takes place in the interests of fairness.

35. We ask that the Government considers extending the statutory power to compel third parties to provide relevant information in an investigation to ICAEW and the other professional bodies, not just ARGA.

A Strengthened Regulator

36. ARGA should be set up, purely and simply, as an 'improvement regulator', one which works constructively and positively with those it regulates to bring about improvements in standards, and which encourages new entrants to boost competition and one which uses enforcement powers only in exceptional cases. The proposed principles appear to us to focus more on process and outcomes than the effectiveness of the approach to be taken.

Our Detailed Responses

37. Before we provide our detailed responses and alternative solutions to the Consultation Document questions (Section 3), we will summarise the history and role of the IRB in the next section (Section 2).

SECTION 2: HISTORY AND ROLE OF THE ICAEW REGULATORY BOARD (IRB)

1. Following an independent review in 2014 into the governance arrangements around ICAEW's regulatory and disciplinary work (ahead of its first application to be authorised as a regulator of legal services and the more stringent requirements of the Legal Services Act 2007), ICAEW Council approved a series of reforms in 2015 which:

    - created an independent regulatory board, the IRB, to oversee all of ICAEW's regulatory and disciplinary work with a constitution of six lay members (i.e., individuals who are not/never have been a member, affiliate or employee of ICAEW or any other accountancy body) and six chartered accountants where the lay chair has a casting vote;

    - devolved all responsibilities for the setting of regulatory policy and strategy to the IRB, together with the oversight responsibility for ICAEW's regulatory and disciplinary work, including the work of ICAEW's Professional Standards Department (PSD) and all of ICAEW's regulatory and disciplinary committees;

    - required lay parity of those serving on all regulatory and disciplinary committees, and a lay majority in disciplinary tribunals and appeal panels; and

    - prohibited ICAEW officeholders and members of council from membership of the IRB or any disciplinary or regulatory committees.

2. In 2020, further changes were approved by ICAEW Council which included:

    - the IRB becoming the 'regulatory board' for legal services regulation required under the internal governance rules (IGRs) issued by Legal Services Board in 2019;

    - the appointment of an IRB alternate chair (who is not legally qualified) to chair debates at the IRB in relation to legal services regulation policy and strategy issues;

    - the creation of the Regulatory & Conduct Appointments Committee (the RACAC), an independent appointments committee with a lay majority with the responsibility to appoint, evaluate and re-appoint future IRB chairs and appoint, re-appoint and evaluate IRB members; and

    - transferring responsibility to the RACAC for the appointment, re-appointment and evaluation of all members of all regulatory and disciplinary committees.

The role and performance of the IRB in regulating the conduct of chartered accountants

3. The breadth of the IRB's responsibility is set out clearly in the IRB's Terms of Reference. Paragraph 3 of the Terms of Reference enshrines the principle requiring the IRB to *'have regard to the objectives of the profession, as set out in ICAEW's Royal Charter,* ***subject to a primary consideration of the public interest****.'*

    Our principal tasks are:
    - to set ICAEW's regulatory strategy and regulatory policies;
    - to set budgets for the discharge of ICAEW's disciplinary and regulatory work;

- to set fees in order to ensure all work is fully funded; and
- to oversee the work of the PSD and all of the regulatory and disciplinary committees.

4. We publish annual reports detailing our activities and our intended objectives for the next 12 months. These are published on icaew.com/irb

5. As well as reacting to regulatory and disciplinary issues as they arise, we have been proactive in identifying public interest issues arising out of the work of the chartered accountants and taking actions to respond to those issues. Examples of this include:

   - **Strengthening the Practice Assurance scheme (accountancy regulation)**: we have introduced new powers to the Practice Assurance Committee to agree orders imposing sanctions on members and member firms. The speed in which orders can be made has provided a far greater incentive to firms to ensure that that they comply with all of the regulations (including, for example, Clients' Money Regulations) and run their practices in the public interest.

   - **Professional Conduct Relating to Taxation (PCRT)**: we have approved changes to the PCRT to ensure that it would be easier for PSD to bring misconduct complaints against members who engage in highly artificial or highly contrived tax avoidance schemes. We have also encouraged PSD executives to lead the project to agree those changes with all other professional bodies with tax adviser members so that the PCRT would apply to all tax advisors who were members of professional bodies.

   - **HMRC/Charities Commission**: we have encouraged regular meetings between PSD executives and senior officials in HMRC to share intelligence and identify issues arising in respect of the work of tax advisers. We have also input into all of the recent consultations carried out by HMRC in respect of issues such as the regulations tackling the Promoters of Tax Avoidance Schemes and Raising Standards in the Tax Advice Market. We have also taken an active role in responding to thematic reviews produced by the Charities Commission on the work of chartered accountants acting as auditors or independent examiners and has overseen the response of PSD staff to those reviews including wider compliance checks and educational webinars to raise awareness of accounting developments.

   - **AML**: we have been proactive in this important area, setting up a dedicated AML Project Board to consider further initiatives on how to raise awareness of risks to members, how to improve the number and quality of SARs (Suspicious Activity Reporting) and how to improve the risk-based monitoring and assessment regimes.

     We have also encouraged the participation of the PSD Chief Officer as a member of the Economic Crime Strategic Board chaired by the Home Secretary.

   - **Professional Indemnity Insurance**: we have been actively monitoring the adverse developments in the PII market for accountancy firms (and professional services firms more generally). We have also made changes to the PII Regulations and guidance in order to ensure that accountancy firms maintain substantial insurance cover in line with our minimum requirements even if no commercial insurance cover is available for every part of a firm's business and we have also considered changes to the arrangements for firms entering ICAEW's Assigned Risks Pool to ensure that it remains a viable safety net. The

changes ensure that the public interest is protected as much as possible.

- **Interactive disciplinary database**: we have encouraged and overseen the development of an interactive disciplinary database which provides businesses and individual members of the public with the ability to search disciplinary records before determining whether to engage a member or firm.

- **Changes to Disciplinary Bye-laws**: we have made a number of significant changes to the Disciplinary Bye-laws since 2016 to make the ICAEW disciplinary scheme more efficient and more effective in investigating and sanctioning members for misconduct or poor work. Reforms have included the introduction of a Fitness to Practise process to ensure that ICAEW members who are suffering from mental health illness are not subject to the disciplinary process but who are also suspended from practising and offering services to the public.

- **Educational films**: we have encouraged and provided financial support for the PSD Chief Officer to continue with his initiative to create educational drama films to help ICAEW members and firms understand the consequences of not abiding by the Code of Ethics and maintaining high standards. The *False Assurance* and *Without Question* films have helped to highlight the importance of scepticism on the part of accountants, auditors and directors.

  We have also encouraged the current film joint venture project between the PSD Chief Officer and HMRC to create a drama film in the area of AML to raise awareness that accountants could be unwitting professional enablers of money laundering if they do not remain sceptical and comply with the regulations.

- **ATOL Licensed Practitioner scheme**: we approved, and we oversee, the Licensed Practitioner scheme which is a bespoke assurance scheme for firms who work for ATOL-bonded travel companies. It was designed with the Civil Aviation Authority to ensure that greater assurance is provided around the work of accountancy firms in this sector. This scheme was developed with the primary purpose of protecting the public.

All of these initiatives and actions have been started and overseen by us without any interference from ICAEW Board and ICAEW Council which is in keeping with the independence we have been given in our oversight role. While the IRB Chair and the PSD Chief Officer attend meetings of the professional body from time to time, this is to brief them on what we are doing rather than seeking permission to start or continue with any initiative in relation to ICAEW's regulatory and disciplinary work. Where ICAEW Council and ICAEW Board have been required, through the ICAEW governance processes, to endorse our recommendations, they have all been approved.

6. While members of the IRB observe meetings and hearings of the regulatory and disciplinary committees to consider how effectively and efficiently they operate as part of our quality assurance programme, all of the regulatory and disciplinary committees also act with complete independence not only from ICAEW Council and ICAEW Board, but also from us, in reaching decisions on key regulatory issues (e.g., the granting or removal of a licence) and on disciplinary cases.

7. We have a lot more contact with ICAEW's many oversight regulators than with the ICAEW Board and Council. We have regular interaction with:
   - the Financial Reporting Council (FRC);

- the Office for the supervision of Professional Body AML Supervisors (OPBAS);
- the Insolvency Service; and
- the Legal Services Board (LSB).

Senior officers from many of those bodies observe one or more of our board meetings during the year with our consent and encouragement.

8. The pivotal role which we play in the oversight of ICAEW's regulatory and disciplinary work and in our interaction with ICAEW's main oversight regulators can be seen pictorially in the diagram in Appendix 1.

SECTION 3: ANSWERS TO SPECIFIC QUESTIONS

Chapter 1: The Government's Approach to Reform

Question 1: Should large private companies be included within the definition of a Public Interest Entity (PIE)? Please give your reasons.

1. We believe that the definition of PIE should be focused around areas of systemic risk and, indeed, that the general public would expect that this is the driving factor in any such classification.

2. While we are supportive of extending the definition of PIE to capture large private companies which bring with them systemic risk, we do not believe that this is a simple case of just using one parameter (that of size: be it balance sheet, turnover or employees). We believe that there is a need for a more nuanced or customised solution where entities, regardless of whether they are public, private or some other structure, are assessed in relation to 'High', 'Medium' or 'Low' risk. We do not believe that size should necessarily equate to risk. Some 'essential' entities may be small in terms of turnover or number of employees, but their failure could have a significant detrimental impact to the national or local economy or damage a key part of infrastructure.

3. Conversely, we also believe that many companies which fall into the current definition of PIE have few risks or complexities associated with them. We believe the Government should seize this timely opportunity to assess the whole definition of PIE. The existing definition of a PIE in SATCAR comes from the definition of PIE in the EU Statutory Audit Directive 2014 ('SAD') and focuses almost exclusively on whether a company is publicly listed or is a financial services entity. However, this ignores the fact that many publicly listed companies are small (by turnover or number of employees) and/or pose little risk to the economic stability of the UK or the public and have uncomplicated accounts with low risk of audit failure. The exit of the UK from the EU should be seen as an opportunity for the Government to take an approach based more intuitively on risk rather than broad categories.

4. We believe that a key tool to aid the Government in the development of the new categories should be the work currently being undertaken by the International Ethics Standards Board for Accountants (IESBA) on the definition of PIE within the context of ethical standards around independence. This sets a series of criteria including the importance of entities within their industry sector, the range of stakeholders and the possible systemic impact on the economy should the entity fail.

5. We believe that these steps provide a more holistic and systemic change which we believe is more beneficial than simply extending the number of PIEs. This fits with post-Brexit goals of being more adaptive and flexible and applies an approach that should be consistent across future trading partners.

6. Indeed, we believe that the Government should consider reviewing the whole basis of the current PIE definition so that any companies considered to be high risk and required to be subject to greater reporting requirements and more regulatory scrutiny will be balanced by some of the existing PIEs being removed from the current high-risk designation. We believe that this may, indeed, be necessary to avoid creating capacity issues both within parts of the audit market and at ARGA.

7. We believe that there is a risk that many firms who currently audit companies which could become PIEs on an extension will choose to resign from the audits. There is a precedent for this in what happened when the PIE definition was introduced in 2016. At that time, 70 firms

audited at least one PIE. By 2020, this number had fallen to less than 30. If the same reaction happens again, more audits will fall to be carried out by a small number of the largest audit firms which may cause a capacity issue among those larger firms who are struggling for resource already as the country is emerging from the pandemic. Those firms may only be able to take on additional audit work by reviewing their existing audit client lists and resigning from other audit work which will be passed down to smaller firms who may, or may not, have the relevant expertise and resources to meet that demand. It is also unclear to us how this foreseeable contraction in the audit market is consistent with the CMA's concern about concentration among the largest audit firms.

8. We are also concerned that a large increase in the number of PIE companies, rather than altering the criteria for which companies should fall within that definition, may cause capacity issues at ARGA if the Government does not legislate to allow for ARGA to be able to delegate to us and the other professional bodies some, or all, of the monitoring and enforcement work associated with the new PIEs. The FRC has been unable to carry out its scheduled number of quality reviews of existing PIE audits over the last couple of years and may struggle, through no fault of its own, to boost its resources sufficiently to be able to review as many of the extended PIE audits within its jurisdiction as the Government would wish.

9. If the Government is not minded to adopt a risk-based approach, we consider it important that the new legislation provides the necessary flexibility for ARGA to be able to leverage the resources of the RSBs, on the basis that there would continue to be oversight by ARGA of the quality of our monitoring and enforcement work. We have a very experienced team of audit reviewers (QAD) who are monitored by the FRC Oversight Team. The latter has not queried any of the ratings which have been applied to firms where the audit has been overseen and QAD's ratings of the larger firms' audit quality are broadly similar to the ratings applied by the FRC. There would, therefore, appear to be no reason – from a quality or reliability perspective – why the Government should not legislate to provide ARGA with the flexibility to delegate monitoring and enforcement work in respect of any 'new PIEs'. There is nothing in the SAD which prevents delegation of regulatory work on the audits of companies which a country chooses to nominate as PIEs above and beyond the SAD definition. There is, of course, now also the flexibility for the Government post-Brexit to review the whole basis of the PIE definition and create a new, more appropriate, risk-based definition or at least to ensure that monitoring and enforcement work in respect of all 'new' PIEs can be delegated.

10. We believe that this flexibility will be crucial to enable ARGA to ensure that the quality review expertise both within it, and within its delegated RSBs, is leveraged in carrying out reviews of audits which target the highest risks. It will also be important to ensure that the audits of large private companies being moved into a new wider PIE definition receive the same level of scrutiny after these proposals are implemented as they do at the moment. It was noticeable to our QAD reviewers that when the definition of what audits fell within the jurisdiction of the FRC changed in 2016 from 'major audits' (which included large private companies) to PIEs and large private companies fell back within the jurisdiction of the RSBs, that there had been few reviews of audits of the large private companies, given the FRC's primary focus on PIEs.

Question 2: What large private companies would you include in the PIE definition: Option 1, Option 2 or another? Please give your reasons.

11. We have set out possible parameters in the response to Question 1. In particular, we have drawn attention to the good work which IESBA has already carried out on what companies should constitute public interest entities.

12. The current definition of PIE is both industry and market focused; thus, all banks and insurance companies, whether listed or not, and irrespective of size, are included. We understand that BEIS itself has risk indicators associated with industry and the FCA also applies these. Accordingly, an industry matrix informing the turnover metric may be a helpful starting point as

well as the consideration of whether to re-set the current PIE definition as suggested above. The opportunity should be seized to put in place a more holistic solution which extends simply beyond the component of 'size'. The resulted stratification will then, in the case of audit inspection programmes, allow for work to be directed down the right funnels (e.g. ARGA, RSBs, etc.) rather than a 'one size fits all' approach.

Question 3: Should AIM companies with market capitalisation exceeding €200m be included in the definition of a PIE? Please give your reasons.

13. We refer to our answers to Questions 1 and 2. We believe that whether a company should be regarded as a public interest entity should depend on a series of qualitative factors (which will include the degree of public ownership) and its designation should not be determined solely by quantitative measures.

Question 4: Should the Government give newly listed companies a temporary exemption from some of the new reporting and attestation requirements being considered for Public Interest Entities?

14. As we have noted in our opening paragraphs, we are concerned about the sudden step up from non-PIE to PIE, and the impact this has both on corporate entities and their auditors. Unless carefully applied, the rules could be seen as barriers to investment and growth simply due to the additional cost and reputational risk in being a PIE or, alternatively, listing might be sought outside the UK in less demanding markets. We believe the straight-line demarcation is a legacy of the EU Directives and should not be a straitjacket inhibiting an approach that is proportionate and targeted. A move to three categories of risk (High/Medium/Low) for companies may allow a less abrupt graduation for transitioning companies.

Question 5: Should the Government seek to include Lloyd's Syndicates in the definition of a PIE? Please give your reasons.

15. As noted before, we believe that the inclusion of any entity within the PIE definition should be based on qualitative risk factors. In considering risk in relation to insurance entities, we believe that the size of underwriting premiums, and not just turnover, should be considered alongside markets served.

Question 6: Should the Government seek to include large third sector entities as PIEs beyond those that would already be included in the definitions proposed for large companies? If so, what types of third sector entities do you believe should be included and why?

16. The third sector is an essential contributor of value to the nation and we believe that the public would expect those entities which are important to national and community wellbeing to be assessed to the same standards as others where they carry significant risk. We believe that this should not just be based on size (i.e., turnover or employees) but on a more holistic assessment.

17. The Government should also take into account the enhanced supervision by the Charities Commission in determining whether, and to what extent, charities should be classed as high risk. We are also concerned at the potential loss of many experienced trustees who may not be prepared to continue in their volunteer, unpaid roles if their charities become PIEs given the additional reporting and regulatory risk. The loss of experienced Trustees may outweigh any benefit or assurance gained from moving to PIE status.

Question 7: What threshold for 'incoming resources' would you propose for the definition of 'large' for third sector entities? Is exceeding £100m too high, too low or, just right?

18. We believe £100m is a suitable starting point but, again, that turnover is too blunt/unsophisticated a measure to determine risk on its own.

Question 8: Should any other types of entity be classed as PIEs? Why should those entities be included?

19. There may be benefit in ensuring that larger mutuals, such as those registered with the Financial Conduct Authority, are within this regime given the potential impact of failure on their stakeholders. This would include companies like the Co-operative and John Lewis. This fits with our overall view that there should be a tiered risk classification for companies with the classifications reviewed over a specified time frame (e.g., annually) and secondary legislation utilised to refresh the classifications.

Question 9: How would an increase in the number of PIEs impact on the number of auditors operating in the PIE audit market?

20. It is difficult to provide a reliable estimate for this. Although the definition of PIE was extended in 2016, the FRC also ceased to oversee major audits outside the new definition. We understand that up to 70 audit firms may have been brought in the scope in 2016 but, by 2020, the FRC's *Key Facts and Trends Report* was reporting on only 26 firms auditing the current PIEs. The transparency reporting and reputational risk may be inhibitors and, where firms had only one or two of such audits, the cost of compliance and reputational risk may have exceeded the commercial expediency of retaining such audits.

21. ICAEW has had some recent experience regarding the impact of imposing additional obligations on auditors. In January 2020, ICAEW required audit firms wishing to continue to audit in the Irish Republic to demonstrate competency and training in Irish law and tax. While most of the 2,600 firms registered on the Irish Audit Register were not carrying out Irish audit work and therefore did not apply, there was a reduction from 90 to 40 in the firms doing such work which wished to remain registered with the new obligations. We believe that the Government should keep in mind that audit firms are run as commercial businesses and, where they consider the risk/reward ratio to be out of balance, they will not continue with the work. We believe that lay members on accountancy firm boards may also pose valid questions challenging the traditional allegiance of firms to audit work generally, given the heightened risk in reputational risk and financial cost in providing this service.

Question 10: Do you agree that the Government should provide time for companies to prepare for the introduction of a new definition of PIE?

22. We believe that the Government should consider allowing time for the introduction of any new proposals which bring additional reporting requirements for companies. However, this should be balanced by the public expectation that the Government will take steps to reduce the likelihood of further high-profile corporate failures where alarm bells are not sounded through appropriate audits, effective governance or strong internal controls.

23. We have already indicated our thoughts on the step up to PIE status in Question 4 and suggested a tiering arrangement for some of the obligations. That tiering could also include phasing. Affected companies may require time to build up the resources and skills to comply with the increased reporting requirements and regulatory scrutiny particularly if the Government introduces many of the other reforms set out in the Consultation Document. This may involve a timeframe of 18 to 24 months; rushed timeframes would create a supply gap affecting the quality of the underlying accounting and auditing work and oversight. Unless the government can identify quick wins, we believe that the requirements should not generally commence until accounting periods commencing on or after 1 January 2024.

24. In the case of newly listed entities, it is relevant to note that, in the US, the SEC has granted exemptions of up to five years for some of the obligations of the Sarbanes-Oxley legislation in respect of these companies.

Question 11: Do you agree that the Government should seek to offer a phased introduction for a new definition of PIE?

25. Yes, for the reasons set out in the previous paragraph.

Chapter 2: Directors' Accountability for Controls

Question 12: Is there a case for strengthening the internal control framework for UK companies? What would you see as the principal benefits and disbenefits of stronger regulation of internal controls?

26. While internal controls of companies do not fall within our area of supervision and expertise, we support the initiatives in this area to improve the internal controls of these key entities as an important constituent, alongside good quality audits, in providing greater assurance around the quality and reliability of financial statements. Audit alone should never be the first line of defence and strengthened internal controls should provide directors with early warnings of emerging problems and a better understanding of any actual or prospective going concern issues. Stronger regulation of internal controls will add significant value to national, sector and industry transparency plus enhance audits and governance.

27. Our only concern in relation to a programme to strengthen the internal control framework is regarding the capacity in the market for suitably qualified accountants who would be required to assist companies in identifying companies' key internal controls and assisting in the re-design of any poor or imperfect controls. The experience in the US with the introduction of the Sarbanes-Oxley Act 2002 saw a boom in work for accountants in this work. Such a boom here would draw resources away from other crucial areas such as audit work (particularly PIE audit work) and accountants being hired in by companies and large accountancy firms from smaller firms to assist with this work which may cause capacity issues in the provision of audit and accountancy services to important parts of the UK economy such as the SME market.

Questions 13 to 18 are not responded to.

Chapter 3: New Corporate Reporting on Resilience, Assurance and Payment Practices

Questions 19 to 27 are not responded to.

Chapter 4: Supervision of Corporate Reporting

Questions 28 is not responded to.

Chapter 5: Company Directors

Question 29: Are there any other arrangements the Government should consider, to ensure that overlapping powers are managed effectively?

28. We welcome the introduction of the same liability for all directors which we had strongly supported in our response to the FRC review. The approach addresses the uneven playing field which currently exists where the FRC can only take enforcement action against chartered accountant directors. This change is, in our view, a fairer and more effective approach which is fully supported.

Questions 30 to 31 are not responded to.

Question 32: Should directors of public interest entities be required to meet certain behavioural standards when carrying out their statutory duties relating to corporate reporting and audits? Should those standards be set by the regulator? What standards should directors have to meet in this context?

29. We believe that it would be appropriate for PIE directors to meet certain behavioural standards when carrying out their statutory duties. The starting point for non-chartered accountant directors on a board could be the fundamental principles which have been used as the basis for the FRC bringing complaints against chartered accountant directors under the Accountancy Scheme. These principles include the obligation to act with integrity, with objectivity (no conflict of interests) and with professional competence and due care. We are not aware of there being any problems in the FRC tribunals considering complaints brought for breach of these principles. ARGA should set these standards and directors should be consulted in the process, perhaps through a body such as the Institute of Directors.

30. To be consistent with our comments in respect of the statutory enforcement regime against chartered accountants proposed in Chapter 11, we believe that the appropriate threshold test for liability to enforcement action should be misconduct as this is the standard liability test for disciplinary action/enforcement among professionals and the test which has been used for enforcement actions against chartered accountant directors under the Accountancy Scheme. We believe that it is important that the test involves a behavioural aspect rather than liability being based purely on non-compliance.

31. We do not understand, however, why this duty should not apply to all directors rather than just directors of PIE companies and would urge the Government to re-visit this when implementing the new standards for directors.

Questions 33 is not responded to.

Question 34: Are there other conditions that should be considered for the proposed minimum list of malus and clawback conditions? What legal and other considerations need to be taken into account to ensure that these conditions can be enforced in practice?

32. These powers need to be matched against those arising on insolvency. This would pick up misfeasance and breaches of fiduciary duty matters. Sales at undervalue are only really scrutinised once a company enters insolvency so matching the powers arising on insolvency is a neat way to respond and the message to directors would be that the new regulator will come after you for such matters even if the company does not enter into an insolvency process.

Chapter 6: Audit Purpose and Scope

Question 35: Do you agree that a new statutory requirement on auditors to consider wider information, amplified by detailed standards set out and enforced by the regulator, would help deliver the Government's aims to see audit become more trusted, more informative and hence more valuable to the UK?

33. The public have a strong interest in 'righting the wrongs' of the past in the audit/governance arena and we believe that a wider consideration of non-financial information by auditors will be a key facet in achieving this. We are therefore supportive of this proposal as an attempt to improve the quality of audit, and for audit to be regarded as a more valuable source of information. However, we feel there is a lack of clarity around these proposals.

34. We are concerned that a requirement for auditors to carry out more work on PIE audits, along with the potential expansion of the number of PIE companies and resignations of existing auditors of new PIEs may cause capacity issues at the firms who are prepared to carry out PIE audit work. It appears to us that an obligation on auditors to consider a wider scope of information will either require more auditors or audits will take longer. It is difficult now to see how an already strained market post-pandemic for experienced auditors will be able to cope easily with this additional demand. We would be concerned if compliance with this additional requirement could only be achieved by the larger firms recruiting experienced auditors from smaller audit firms as this might, in turn, undermine the quality of non-PIE audits or make it more difficult for smaller audit firms to have the expertise and experience available to remain in the audit market.

35. We also believe that the Government should consider the phasing of this additional requirement given the clear need for additional training of audit teams to be able to identify important issues emerging from the wider information. We believe that there will also need to be a requirement for training for the monitoring teams so that they are able to review the quality of the auditing of the wider information.

Question 36: In addition to any new statutory requirement on auditors to consider wider information, should a new purpose of audit be adopted by the regulator, or otherwise? How would you expect this to work?

36. We support both the new purpose of audit suggested by Brydon and that it should be adopted by ARGA.

Question 37 is not responded to.

Question 38: Should the regulator's quality inspection regime for PIE audits be extended to corporate auditing? If not, how else should compliance with rules for wider audit services be assessed?

37. We believe that ARGA's quality inspection regime for PIE audits should be extended to corporate auditing. However, we are concerned again at the additional requirements which this will place on ARGA and question how easy it will be for ARGA to recruit sufficient expertise to evaluate the performance of auditors in reviewing this information. This additional requirement will come at the same time as ARGA will be looking for additional quality inspection staff to cater for the increased number of audits of companies falling within any extended PIE definition. We are concerned at the ability of ARGA to compete for the necessary expertise against the large audit firms who will be gearing up at the same time and looking in the same talent pool which is already under strain.

Question 39: What role should ARGA have in regulating these wider auditing services? Should its role extend beyond setting, supervising and enforcing standards?

38. We believe that ARGA may have a role in determining which qualifications in these specialist areas will be required to give the skills needed to provide assurance opinions.

Question 40. Would establishing new, enforceable principles of corporate auditing help to improve audit quality and achieve the Government's aims for audit? Do you agree that the principles suggested by the Brydon Review would be a good basis for the regulator to start from?

39. We are supportive of these principles.

Question 41 is not responded to.

Question 42: Do you agree with the Government's proposed response to the package of reforms relating to fraud recommended by the Brydon Review? Please explain why.

40. The move to include the detection of fraud as part of the audit remit is one that we welcome as a positive step. The context in which fraud is approached in the Consultation Document is very much linked to the accuracy of financial statements and, by implication, materiality. However, fraud has impacts below levels of financial materiality which can have significant impact on the reputation and sustainability of an enterprise, as well as affecting the public and the consumer in differing ways. Consequently, we think that further thinking is required in this area before a package of reforms on fraud is developed. The procedures audit firms are required to follow in respect of money laundering are already covered by OPBAS and should be brought into any development of approach in this area.

41. The proposals on auditor education and skills appear to be a sensible step. Ultimately, more cases should be shared with auditors, both by ARGA and the RSBs, so that they can see how fraudulent reporting can occur. Of course, there are very few cases that go to court so in reality, it is questionable how many cases would sit on the proposed register.

42. We also have concerns around the mechanics and logistics of the suggested register. In particular, we are concerned as to how the auditors might create, maintain and update the register. This may be better managed and maintained centrally by ARGA or the RSBs, but with the auditors having access. There also needs to be better intelligence and evidence sharing with the auditors of fraudulent reporting typologies, drawn from cases that did not reach court so that auditors have all the information available to them.

Questions 43, 44 to 46 are not responded to.

Question 47: Are auditors' concerns about their exposure to litigation likely to constrain audit innovation, such as more informative auditor reporting, the level of competition in the audit market (including new entrants) or auditors' willingness to embrace other proposals discussed in this consultation? If so, in what way and how might such obstacles be overcome?

43. We are pleased to see that auditor liability is considered in the Consultation Document. However, we believe that the Government should recognise that the barriers to competition in the audit market stem not just from litigation risk but due to concern on the part of firms and their insurers about the size of financial penalties which might be imposed by the regulator. From our oversight of our own PII Committee, we have seen a significant deterioration in insurers' appetite to write insurance for accountancy firms and we believe that there will be significant difficulties for firms wanting to enter the PIE audit market in obtaining insurance

cover for the increased risks involved in this work at premiums which might make this an unattractive move for most. If the Government wants to encourage new firms to carry out this work, it will need to consider limiting the financial penalties which might be imposed for any failure or tying those penalties to a multiple of the fees which the firms will earn. This way, the firm (and its insurers) will have assurance regarding the size of the risk it is taking by agreeing to get involved in this area.

44. It is also the size of the regulator's financial penalties and the reputational damage which comes with it, which has been causing recent significant movement of audits. Larger firms have been resigning more frequently from audit clients which are considered high risk/low margin. We are already seeing the movement of large company audits to much smaller firms and, while this is expanding the number of firms involved in that work, we are concerned that this may lead to a drop in audit quality due to some of the smaller firms not having sufficient resources and sector expertise. Some of the proposals, and the proposed increase in the responsibilities being placed on firms, may cause more audit engagements to be terminated by the larger firms. We consider that the Government should ensure that none of the proposals will exacerbate this situation.

Question 48: Do you agree that a new, distinct professional body for corporate auditors would help drive better audit? Please explain the reasons for your view.

45. No. We do not believe a distinct professional body needs to be created or how such a body will drive better audit.

46. While we agree that consideration needs to be given to an enhanced qualification for auditors, we believe that attempting to develop such a qualification outside of the existing accountancy bodies would involve considerable upheaval, complication and overlap for little benefit. Set in the context of the better regulation principles, we believe that more efficient and inexpensive outcomes can be achieved through leveraging the existing infrastructure and honing it to the required standards.

47. The creation of a new audit qualification, which would sit alongside an accountancy qualification for the purpose of eligibility, is not a new concept and ICAEW has experience of creating subject matter CPD (continuing professional development) outside of the core accountancy skills. Since 2014, ICAEW has regulated probate services where either a legal qualification, or an accountancy qualification with a top up training and examination, have qualified individuals to carry out the reserved activity of probate. This process has been overseen by the Legal Services Board.

48. The probate licensing model also illustrates how regulation of non-accountants might work in this context, where it is proposed environmentalists, forensic accountants and other niche experts without an audit qualification could sit within an audit regulatory framework. The ICAEW Probate Regulations allow individuals without the accountancy or legal qualification to be authorised if they can demonstrate their knowledge of key learning outcomes. These individuals are then tied into the ICAEW Disciplinary Bye-laws, ethics, standards and regulations. If a learning framework were developed for these specialists with an audit and assurance underpinning, we would be able to effectively regulate these additional individuals.

49. There is also no need for a new body to be created to take on other regulatory tasks such as licensing, quality assurance and enforcement. As we have set out in the introduction to this response, we believe that the creation of the independent regulatory boards at the existing professional bodies have created strong governance around the bodies' regulatory and disciplinary work.

Questions 49 to 51 are not responded to.

Chapter 7: Audit Committee Oversight

Questions 52 to 59 are not responded to.

Question 60: Do you believe that the existing Companies Act provisions covering the departure of an auditor from a PIE ensure adequate information is provided to shareholders about an auditor's departure? If you believe those provisions are inadequate, do you think that the Brydon Review recommendations will address concerns in this area? What else could be done to keep shareholders informed?

50. We note that this question is asked in the context of what information is provided when an auditor terminates their appointment. We agree more can be done in this area. While we have no problem with the Consultation Document's desire for more meaningful disclosure, our main concern is what may not currently get reported at all, rather than the level of detail firms do disclose. Existing powers under the Audit Regulations allow us to go back and require a departing auditor to give us more background on any disclosures, but this requires both a risk trigger and resources to follow up.

51. Up to 50% of all the cessation statements we receive each year confirm there are 'no circumstances' to be brought to shareholders attention. As a regulator it is helpful to know the reason for the resignation, however 'trivial', so we can amalgamate with any other intelligence and decide what is important. We believe that it will assist us and other RSBs if the option was removed for auditors to report 'no circumstances'.

52. The Consultation Document refers to six circumstances recommended by the Brydon review where the departing auditor would be required to confirm if those circumstances had prompted their departure. We believe that it would be helpful if these were seen as headings with the auditor being required to elaborate on and to confirm whether they were relevant rather than allowing auditors to remain silent.

53. The suggestions for disclosure in the Consultation Document are, of course, aimed at informing shareholders. However, we believe that the Government should also focus on what information will be useful to regulators who are equally interested in any other reasons the auditor resigned – for example, potential breaches of ethical standards (concerning non audit work or other independence issues), overdue fees from the client, or the reasons why the client did not now 'fit the firms risk appetite'. There is also no current deterrent within the legislation for the auditors not disclosing. This weakness could potentially undermine completeness of disclosures. We believe that any new disclosure provisions should have an enforcement mechanism attached.

54. There is also a wider issue here in relation to the departure of an auditor; the visibility to the regulators of which firm has been subsequently engaged to take on that audit. At present, while the appointment of a new auditor has to be approved by ordinary resolution, there is no requirement to file a notice of the appointment of a new auditor at Companies House. This means that there is no visibility for the FRC and the RSBs as to which firm has taken over this audit and there may be no knowledge until such time as the first set of financial statements audited by the new film are filed at Companies House which may be too late.

55. It is important not only for the shareholders to know of the reasons why an auditor is departing, but also it is equally important for regulators to know who will take over that audit before the first audit is carried out. This would allow the regulators (ARGA and the RSBs) to perform an assessment to see whether they believe that a firm is capable (based on expertise, capacity and regulatory history) to take on such an audit and, if not, to consider whether the firm's decision to accept that new audit should be referred to the registration or supervision committee to consider. This would provide an added layer of protection to shareholders that the

successor firm was considered a good alternative to the departing auditor.to the departing auditor.

Chapter 8: Competition Choice and Resilience in the Audit Market

Question 61: Should the 'meaningful proportion' envisaged to be carried out by a Challenger be based on legal subsidiaries? How should the proportion be measured and what minimum percentage should be chosen under managed shared audit to encourage the most effective participation of challenger firms and best increase choice?

56. We do not believe we are in an informed position to express a view in relation to the proposal to introduce managed shared audit. However, we do have some concerns around the question of liability and the consequential issue of insurance which may flow from the introduction of this requirement. Paragraph 8.1.12 appears to suggest that liability would lie solely with the lead audit firm. Paragraph 8.1.13 also appears to suggest that the challenger firm in the example above would not bear joint and several liability for the entire audit. However, it is not then clear what would happen in a scenario where a major company had to restate its accounts as a result of a failure by a challenger firm to identify a material misstatement which impacted the group accounts.

57. Is the Government expecting that the lead audit firm would be solely liable under statute both for regulatory consequences and for any civil damages claim? Or is it envisaged that, while the lead audit firm would be liable it would be able to pass on some of its liability to the challenger firm whose work has caused or contributed to the issues? Is it also envisaged that regulatory action would only be taken in that scenario by ARGA against the lead audit firm and not the challenger firm? This would seem unfair unless the lead audit firm is culpable for not having checked fully the work carried out by the challenger firm. If it were to have to check all of the work, this will create significant duplication at significant extra cost. If it is envisaged that the challenger firm could be liable for civil action damages or for regulatory penalties, this may deter firms from participating in managed shared audits particularly as a result of insurance issues.

58. Indeed, we have concerns at the availability and affordability of insurance arrangements for challenger firms if they could be liable for regulatory penalties and costs and/or for civil damages for their work within a managed shared audit. We know from our own monitoring of the insurance market that the availability and affordability of insurance for professional advisors has tightened considerably in the last 12 months. The number of requests for temporary insurance cover (where no insurance can be immediately found) in our risk pool in 2020 was twice that of 2019. Insurers are being more selective, increasing risk premiums, or pulling out of the market completely.

59. Insurers will be focused on the size of the financial penalties which have been imposed on firms by the FRC since its sanctions review in 2018 and at the current FRC sanctions policy where the financial penalties are set by taking into account the last full year turnover of a firm (not the audit turnover) and there is no direct link in the sanctions regime between the fees earned from the audit work in question and the regulatory penalty (as there is in the ICAEW sanctions guidance). The availability and cost of insurance will determine whether challenger firms are able to participate in the way the Government expects.

60. If larger firms are left with sole liability for all regulatory penalties and civil action damages in circumstances where the error or fault lay in the work of another firm, this may be a further disincentive for the larger firms to want to tender for audits of companies where they consider the overall risk or the risk in certain parts of a client group to be too high. If all larger firms do not tender, this could lead to a scenario where the group audit of a large entity may fall to be dealt with by challenger firms. While some may be able to deal as effectively in taking the lead on large entity audits, others may not have the same level of experience and expertise in

dealing with the issues which may arise.

61. Given that the viability of managed shared audits depends on the willingness of the larger firms to take on sole liability, for challenger firms to become involved and the availability and affordability of insurance, we are concerned at the intention of the Government to make managed shared audit a requirement for all of the FTSE 350 companies. Companies could then be fined for having failed to appoint two audit firms to carry out a managed shared audit through no fault of their own because there was no capacity in the market.

62. Some of the proposals in the Consultation Document also widen the risk factors for audit firms becoming involved in managed shared audit across a number of fronts which include;

- the stakeholder group to which the auditor is theoretically responsible (thus taking the liability beyond Caparo);
- the breadth of data where an audit opinion is required;
- judgement on resilience statements;
- the inter-dependability created by shared audits.

63. If the shared audit initiative is to be successful, ARGA and the Government will need to ensure appropriate dialogue takes place with the insurance market and if appropriate the FCA, to make sure the risks are understood and contained. Otherwise, the competition aims will be frustrated by non-audit external factors.

Questions 63 and 64 are not responded to.

Question 64. Do you have any further comments on how the operational separation proposals should be designed, codified (in legislation and regulatory rules), and enforced in order to achieve the intended outcome of incentivising higher audit quality?

64. While we share the Government's objective in ensuring that key judgments within audits are not influenced by the extent of revenue earned from non-audit services, we are concerned that any moves beyond operational separation into separate profit pools and full structural separation may actually undermine audit quality in the long run through "bright young accountants" being discouraged from applying to join these firms due to poorer financial prospects and having to specialise too early without the ability to sample other aspects of accountancy.

65. The scope is indicated as applying initially to audit firms that carry out statutory audits of 15% of FTSE 350 by audit fee but suggesting it could be extended by ARGA at its discretion at a later time. We believe it may be more appropriate for it to apply to larger firms with, say, over 20 principals as anything below this may bring structural challenges especially where audit is less than 50% of their business. We are concerned that firms faced with this challenge may find this better resolved by simply exiting the market. We saw this in 2019 when we had to advise 30 audit firms registered in Ireland where their structures complied with UK audit law but not Irish audit law. Most chose to exit the registration rather than amend their structures.

66. A continuing challenge for us in the authorisation of audit firms and individuals has been the ownership structure of the practices and their ability to meet the control criteria set out in schedule 10 paragraph 7 of the Companies Act 2006 which is transposition of the EU Audit Directive 2014. The criteria under the Act and EU law require audit qualified personnel to control ownership and management decisions. Accordingly, the proposed terms of reference in the paper for an audit board with lay majority and lay chair would appear to us to clash with this. There appears to be a conflict between the focus of EU law – which is based on audit quality – and that expressed in the Consultation Document.

67. An innovation in firm ownership which we have had to address has been the use of employee trusts. These cause complications under current law as the audit partners as trustees have a conflict between their audit responsibilities and their duties under the Trustees Act 2000. The opportunity should be taken here to allow this model to function within the ownership environment. These trusts may also have to be considered afresh if cross-practice, as staff as well as partners could be affected by independence conflicts. This may also apply to companies within practices that employ the staff separate to the main partnership.

68. The meaningful audit percentage needs to be expressed in the context of overseas as well as UK subsidiaries. The ability of challenger firms to move up the capacity chain necessarily means building up the overseas as well as UK competencies within those firms. This may entail variable percentages for overseas and UK due to the practical circumstances of individual companies.

Questions 65 to 67 are not responded to.

Question 68: Do you have comments on the proposed measures? Are there any other measures the Government should consider taking forward to address the lack of resilience in the audit market?

69. We have two comments on the proposed powers of ARGA to request additional information from the firms. Firstly, a firm intending to become challenger firm would need to be comfortable with the concept of their firm's finances and remuneration decisions being given such scrutiny. Unless carefully considered, and applied with proportionality, the requirements might act as a deterrent to would be new entrants.

70. We also repeat our concerns around the insurance aspect which will require the buy in of insurers as well as the relevant firms. If the insurance market is unsympathetic to the scrutiny outlined in paragraph 8.3.18 or believes this to be straying into areas patrolled by the FCA, there could be some difficulties in securing the comfort information ARGA would require. In some instances, insurers require their information not to be disclosed to third parties, and if ARGA is a potential beneficiary of the insurance arrangements (for example through the funding of legal costs) then there may be a perceived conflict.

Chapter 9: Supervision of Audit Quality

Question 69: Do you agree with the Government's approach of allowing the FRC to reclaim the function of determining whether individuals and firms are eligible for appointment as statutory auditors of PIEs?

71. We agree that ARGA needs to have a close involvement in the licensing of individuals within firms that audit PIEs and we are pleased to note that the Government has pursued the option of a dual or top-up licensing system for audit registration which we suggested in the response to the FRC Review.

72. We believe that the Government has struck an appropriate balance between the RSBs maintaining the firms' main audit registration for all of their non-PIE audit work but with ARGA having the additional and exclusive responsibility for determining the eligibility criteria for firms to have a top-up licence to audit PIEs and for those who wish to be Responsible Individuals (RIs) on PIE audits and with the results of the reviews of PIE audit work being reported to a Supervision Committee at the FRC/ARGA rather than to the RSB's registration committees.

73. We believe that care will need to be taken to effect close liaison between ARGA's Supervision Committee and the RSBs' registration committees to ensure that the respective committees are aware of all relevant facts when taking decisions in respect of the renewal of audit and PIE registrations and the continuing approval of RIs. We say this because many auditors are currently involved in signing a mix of PIE and non-PIE audits each year and the number who do may increase with any extension to the PIE audit definition. It is clearly important that the respective committees take consistent views.

74. We also believe that it will be crucial for the FRC/ARGA to strike the right balance in establishing the eligibility criteria for RIs seeking a licence to carry out PIE audit work as, while improving and maintaining audit quality must be of paramount importance, onerous eligibility criteria might restrict the ability of RIs from challenger firms being approved if their firms are appointed as lead auditors on PIE clients. This would work contrary to the objectives in the rest of the Consultation Document which seek to increase the exposure of challenger firms to audit work at the FTSE 350 companies to increase competition in the audit market.

75. It will be important, however, to ensure that there is a smooth transition to the new dual licensing or top-up licensing system so that it does not require the administrative nightmare of all RIs having to seek initial authorisation to be able to continue working on PIE audits. We believe that consideration should be given to a grandfathering scheme for existing RIs who have PIE audit experience and who have a good regulatory record from prior inspections.

76. While we appreciate that the 2016 Ministerial Direction should lapse when the proposed legislation comes into effect as it was only intended to clarify the Government's intentions for how the FRC would operate pursuant to SATCAR[2], we believe that the Government needs to make express provision in the new legislation for the important role which will still be played in the audit regulatory framework by the RSBs.

77. The Direction was given in 2016 so as to provide all RSBs with some assurance as to the extent of the delegation of audit regulatory tasks. This was considered then to be important so that all the bodies could continue to recruit and retain the highest quality monitoring, licensing and enforcement staff and so that the bodies could confidently make significant investments in technology which would make their work more effective and more efficient.

[2] Statutory Auditors and Third Country Auditors Regulations 2016

78. The assurance provided by the Direction has given us the confidence in the last five years to make a considerable investment in a new automated scheduling system which increases the efficiency of the administration of our many hundreds of reviews. We have also been able to expand the size of the enforcement team to respond to the recent rise in the number of complaints by bringing in high quality staff who know that ICAEW Professional Standards Department (PSD) has these designated tasks, which helps to provide job security.

79. While the RSBs are still expected to carry out hundreds of visits to audit registered firms each year and to investigate with hundreds of audit complaints to continue to deal with the main audit registrations, it is crucially important to the whole audit regulatory eco-system that we, and the other RSBs, are given a defined role with defined tasks (all of course subject to satisfactory performance) in the future legislation so that we can continue to recruit the highest quality staff (particularly during challenging recruitment conditions) and to make further investments to ensure the greatest efficiency in our operations.

Question 70: What types of sensitive information within AQR reports on individual audits should be exempt from disclosure?

80. In our previous representations on the FRC Review, we have expressed concern over the appropriateness of the step of publishing the results of individual audit inspections. While we agree this could provide further transparency on the quality of the audit work and provide a further incentive to improve audit quality to avoid such public disclosures, the decision to allow ARGA to publish them appears to us to give too much weight to increased transparency and too little consideration of the impact of such disclosures on the share price of the companies whose audits are questioned publicly, and of the impact of such disclosures on the careers of the auditors in question. From our perspective, as an audit regulator that wants to see higher standards in audit, we are concerned generally about these proposals providing another disincentive for young accountants to wish to specialise in audit.

81. We are also concerned that the proposal does not make clear that the audit firm and the auditor will have an opportunity for their representations about the quality of the audit to be considered by an independent committee or body prior to the proposed publication. It may be that the Government has this in mind, but it is not clear from the proposal. In our role as a regulator and the publisher of regulatory decisions, we are very conscious of the rights of the individual under Article 6 of the European Convention on Human Rights. Our sanctions policy and publication ensure that an appropriate balance is made between public interest and the rights of the individual. For these reasons, we would feel very uncomfortable about adopting, or being required to adopt, the same practice for the publication of poor reviews arising out of the work undertaken by QAD. So, we ask that the Government ensures that, if this proposal is implemented, it operates with the right safeguards which are mentioned but not illustrated in the Consultation Document.

82. The focus is also on the reputation and market impact rather than the impact on the audit firm and individual auditor. These disclosures, even minor, may be terminal to the career of an auditor, or a fledgling challenger firm, and makes the attraction of working in this field much reduced. We are concerned at the damage that such a proposal might cause to the pipeline of quality auditors in the future. We do not see how the approach is consistent with the proposed duties of ARGA set out in chapter 10.

83. The Consultation Document refers to investors as those who would benefit from highly edited reports. However, these are not the only stakeholders who have an interest in this area. Many of the public interest entities are of interest, not because they are listed, but because there is a wider impact on the public and the consumer from their operations. For example, adverse reports on a retailer or energy provider combined with adverse press commentary could rapidly put entities out of business. We do not see how this sits comfortably with overall public interest.

It seems to us that the interest of the investor in this case is being put ahead of that of the consumer.

Question 71: In addition to redacting sensitive information within AQR reports on individual audits, what other safeguards would be required to offer adequate protection to the entity being audited whilst maintaining co-operation with their auditors?

84. We are concerned about whether the reader of this information will have sufficient understanding of the meaning of what is being said in an AQR report and appreciate the context. We see as a very real danger that a report which reveals a technical breach in failing to secure a piece of audit evidence could be interpreted by uninformed readers, including journalists, as being evidence of a completely failed audit. This could, in turn, generate potentially career-ending criticism for the auditor and has the potential to distort the audited entity's stock price when the price would not be impacted if the proper context was understood. The Hampton rules laid down by the Legislative and Regulatory Reform Act require the disclosures to be proportionate and targeted thus minimising this risk. We consider that there is also a risk that these disclosures may conversely undermine further the public's trust in auditors.

Question 72: Do you agree with the Government's approach to component audit work done outside the UK? How could it be improved?

85. We do not have an issue in principle with this. We believe that it makes sense for ARGA to be able to ask for this information direct. However, there may also be political issues to take into consideration. A request by a regulatory body independent of the Government is one thing; a demand by a third country government body is more challenging to the autonomy of a state in its own affairs. We believe that the power, if granted, would need to be exercised judiciously, and probably should be negotiated alongside adequacy and equivalence agreements with country governments rather than separate to them.

Question 73: Do you agree that it is problematic if documents that the auditor reviewed as part of the audit are unavailable to the regulator because of the audited entity's legal professional privilege? If so, what could be done to solve or mitigate this issue while respecting the overall principle of legal professional privilege?

86. We believe that a regulator reviewing the quality of audit work can only do that effectively and completely if the regulator is able to gain access to any document which was relied on by the auditor in reaching a conclusion on whether the financial statements showed a true and fair view. If, in the circumstances of the audit, it was important for an auditor to review privileged advice provided to the audit client, for example, in respect of the chances of the audited entities winning a significant legal dispute and the likely recoveries which would be made, then a regulator's audit quality inspector can only reach a reliable opinion on the quality of the audit by also having access to this document.

87. However, we do understand the importance of legal advice privilege and the damage which could be caused to audited entities if an opponent were to know that privilege had been waived and demanded access to the same advice. We are also concerned at the possibility of audited entities being more reluctant to be open with their auditors if they knew that their legal opinion may be disclosed to the auditor's regulator and, even more so, if that regulator was either compelled to disclose that document to other regulators or law enforcement agencies or there was a gateway (statutory or otherwise) which allowed another regulator or law enforcement agency to request sight of that document.

88. We believe that the Government is in a position to balance these two competing interests in the new legislation by designating the disclosure of a privileged legal opinion by an audited entity to its auditor as being a limited waiver of privilege only for the purpose of the inspection of the quality of the audit and any consequential disciplinary action under regulatory obligations, and

prohibit the regulator from being able to use it for any other purpose and prohibiting the regulator from providing a copy of that document (or relaying the information in it) to any other party including other regulators and law enforcement agencies.

Chapter 10: A Strengthened Regulator

Question 74: Do you agree with the proposed general objective for ARGA?

89. We believe that ARGA should have well-defined statutory objectives rather than widely framed objectives so that its focus is kept on the primary issues it is being created to focus on; audit and corporate governance. We also believe that 'public confidence' needs to be defined more clearly within the legislation rather than being open to interpretation which will cause uncertainty.

Question 75: Do you agree that ARGA should have regard to these regulatory principles when carrying out its policy-making functions? Are there any other regulatory principles which should be included?

90. We believe strongly that ARGA should be set up as an 'improvement regulator', one which works constructively and positively with those it regulates to bring about improvements in standards, and which encourages new entrants to boost competition and one which uses enforcement powers only in exceptional cases. The proposed principles appear to us to focus more on process and outcomes than the effectiveness of the approach to be taken.

91. The Legal Services Act sets out 8 objectives[3], some of which we believe are relevant here. These include diversity, consumer interest (though wider public interest might cover that) and the rule of law. We also recommend that section 28 of that Act, which requires the LSB and its regulators to comply with the Hampton Principles, should be applied to ARGA and its RSBs.

[3] Legal Services Act 2007 section 1

Chapter 11: Additional Changes in the Regulator's Responsibilities

Question 76: Should the scope of the regulator's oversight arrangements be initially confined to the chartered bodies and should they be required to comply with the arrangements?

The central proposal for an enhanced statutory accountancy oversight role for ARGA appears to be based on some misperceptions about the effectiveness of the current regulatory framework for chartered accountants. The Government should build on the current robust regulatory infrastructure, recognising that ICAEW and the other professional bodies can be relied on to recognise public interest concerns arising out of the work carried out by chartered accountants and the additional assurance provided by a number of oversight regulators.

92. Prior to considering whether the scope of the new oversight role should be confined to the chartered bodies, we believe it is important to express our concerns about the reliability of the assumptions which have been made in concluding that there is a need for ARGA to have an enhanced accountancy oversight role.

93. We believe that it is clear from the narrative in both the FRC Review and the Consultation Document that there has been very little, if any, recognition of the current regulatory arrangements covering the work of chartered accountants. In particular, it appears that little consideration has been given to the important role which we, and the independent regulatory boards of the other accountancy bodies, play already in overseeing public interest issues arising out of the work of chartered accountants. We consider that a full analysis would show that the creation of a new oversight role is unnecessary. Indeed, the current voluntary arrangements were only put in place after Enron/Worldcom many years before ICAEW, and other bodies, introduced independent regulatory boards who have since taken the lead in this area.

94. We have addressed in the paragraphs below whether there is any need for the proposed oversight role, the degree of oversight which is already carried out by us and other oversight regulators, and the concerns we have about the areas identified as part of ARGA's work programme. We have then set out an alternative proposal for the Government to consider before addressing the substance of Question 76.

Evidential basis for the new oversight role

95. We are concerned that, in proposing to implement Recommendations 39-41 of the FRC Review, the Government may not have realised just how little the FRC Review team engaged during 2018 with us, and with the other accountancy bodies, to gain a full understanding of the current accountancy oversight framework. This was, perhaps, not surprising given that the FRC does not currently play any significant accountancy oversight role and the objective of the FRC Review was to look at the FRC's performance particularly in relation to its primary role as an audit regulator.

96. Recommendations 39-41 appear to have been based only on the alleged reluctance of the accountancy bodies to implement all recommendations which had been made by the FRC in the thematic reviews it had conducted pre-2010 (paragraph 2.77). We say 'alleged' because this point was never put to us by the FRC Review team and we were not provided with examples or an opportunity to comment ahead of publication.

    The FRC Review does not then make any reference to the significant changes which had been made by all bodies since 2010 which included the introduction of independent regulatory boards to oversee the regulation of chartered accountants. No enquiries were made of us as to

what happens now when an oversight regulator makes recommendations for change. If enquiries had been made, we would have demonstrated how all external inspection reports are reviewed by us and how we oversee the implementation of any required changes.

97. We do not, therefore, consider that there is any evidence in the FRC Review which supports the need for Recommendations 39-41.

98. We are also concerned at the reliability of the additional evidence put forward by the Government in the Consultation Document to support the need for *'the enhanced oversight role'*. We are particularly disappointed at the suggestion in paragraph 11.1.7 that there is a need for this role due to the fact that the current *'self-regulatory regimes'* operated by the professional bodies *'accommodate significant risks around money laundering as well as tax avoidance, and poor practices in the tax advice market'*. A proper analysis of the documents referenced in the footnotes to that paragraph would have identified that they did not support any of the conclusions in that paragraph.

- **National Risk Assessment of Money Laundering and Terrorist Financing 2020**: while this report noted a high risk of money laundering through accountancy service providers (ASPs), it does not differentiate between ASPs who are members of professional bodies and unregulated accountants. There are also no examples given in the report (or provided to us separately) of chartered accountants having been involved in such activities. We are also overseen by OPBAS in our work in this area.

- **HMRC's Tackling Promoters of Tax Avoidance**: the consultation report noted at paragraph 1.4 of the Executive Summary that; '*In particular chapter two highlights that promoters of tax avoidance schemes are rarely members of professional bodies. Many tax advisers adhere to high professional standards and are a very useful source of advice and support to taxpayers. The changes in this document are not aimed at such professionals.*'

- **HMRC's Raising Standards in the Tax Advice Market:** the summary of responses and next steps published at the end of the consultation noted that: *'Respondents were largely of the view that most problems lie with the circa 30% of unaffiliated tax advisers and that, as such, a one-size-fits-all solution may not be appropriate'.*

In addition to providing no support for the conclusions in paragraph 11.1.7, these documents appear to suggest that the failures and risks lie predominantly in the conduct of unregulated accountants rather than chartered accountants. Indeed, these documents raise the question whether the proposed reforms are targeted in the right areas for the greater protection of businesses (particularly SMEs) and members of the public, many of whom will not be able to discern the difference between engaging a chartered accountant and an unregulated accountant.

99. We do not consider that any of these documents support the conclusion in paragraph 11.1.7 that the *'self-regulatory regimes'* are failing or are weak in their oversight. Indeed, conversely, the responses to the tax consultations indicate that the poor conduct is predominantly among unregulated accountants, not chartered accountants, which, in turn, raises the question (which we have addressed in our answer to Question 78) as to whether the Government's proposals are targeted in the right place to protect the public interest.

100. We should add that we take our responsibilities as an AML Supervisor very seriously and have been very proactive in this area through the work of our AML Project Board.

We would be very surprised if OPBAS agreed with the conclusion in paragraph 11.1.7 in relation to our regulation of chartered accountants in this area. Likewise, we would be surprised if HMRC supported the conclusions about our work to regulate the conduct of tax advisers given the lead role we played in introducing important changes into the Professional Conduct Relating to Taxation, and the conclusion HMRC reached after its *Raising Standards in the Tax Advice Market* consultation in November 2020. One of the options floated in that consultation was to introduce regulation for all tax advisers but, ultimately, HMRC concluded that this was not necessary and that it would; *'continue to work in partnership with adviser professional bodies to understand the role they play in supervising and supporting their members and raised standards in the profession'* while concluding also that there should be an obligation on unregulated accountants to carry professional indemnity insurance.

101. We have noted that paragraph 11.1.15 also seeks to provide support for the need for ARGA to undertake this role by raising general concerns about the weakness of self-regulation by reference to the very different regimes which were in place in the US at the time of the Enron and Worldcom scandals nearly 20 years ago. We do not believe that the current regulatory regimes should be considered weak because of this. We also consider that *'self-regulation'* is not an accurate description of how ICAEW now operates. While it may have been an accurate description even as recently as 2015, significant governance changes have been made since that time to create independent oversight by an independent board, charged with acting in the public interest.

102. Since the start of 2016, we have, as an independent regulatory board, overseen the regulatory and disciplinary work carried out by ICAEW staff and regulatory and disciplinary committees and we are solely responsible for setting regulatory strategy, policies and budgets. All of the regulatory and disciplinary committees which we oversee have either lay majority or lay parity constitutions and make independent decisions. There is not one aspect of ICAEW's regulatory and disciplinary work now where chartered accountant members have a majority in a decision-making process (although they do play a part in providing expert insight and advice to lay members). It is also worth pointing out that no recent governance review by any of ICAEW's oversight regulators has raised any issue with the independence of these arrangements. We attach a document in Appendix 2 *'8 facts to place the reference to self-regulatory regime in the right context'* which provides further insight.

103. We do not consider that regulation by a professional body provides a lack of *'disincentive'* to unscrupulous members as claimed in paragraph 11.1.15. We note that no evidence is referenced to support this statement. In contrast, the disciplinary pages on the ICAEW website contain many reports of ICAEW members and firms having been disciplined and sanctioned for poor conduct, with reports of members having licences or practising certificates removed or suspended or being excluded altogether as members.

104. We do not agree that ICAEW lacks the *'power to tackle serious issues'*. We note that no evidence is referenced to support this statement either. We believe that the available evidence supports the opposite conclusion and that a good example would be the complex investigation which PSD carried out into the conduct of the Deloitte partners who acted as the administrators and liquidators of the Comet Group and the subsequent disciplinary proceedings which resulted not only in a significant settlement but which also led to ICAEW being lauded by a High Court judge for intervening in the liquidation of the Comet Group to protect the interest of unsecured creditors. We have set out details of this case and other high profile enforcement cases in Appendix 3. As a result of PSD's intervention in Comet, the Additional Liquidator is now bringing a claim for £82m on behalf of the unsecured creditors against Comet's former owners.

105. Contrary to what is stated in paragraphs 11.1.7 and 11.1.15, from our insight and first-hand experience, we believe the current regulatory framework is working well and that the creation of

any additional oversight role would lead to duplication and confusion.

Role of other oversight regulators in identifying public interest issues arising in accountancy

106. While the Government recognises at paragraph 11.1.24 the existence of other oversight regulators and the potential for overlap (it does not mention the FCA's oversight role in respect of investment business advice), it has failed to recognise that those oversight regulators have been created to monitor those areas of accountancy work which Parliament has already identified as being where public interest risks are most likely to emerge. The list also does not include other important public bodies like HMRC and the Charities Commission which, while not strictly oversight regulators, monitor public issues arising in their areas of interest and publish reports highlighting emerging issues.

107. This raises a question as to what other public interest issues ARGA needs to monitor which are not already being monitored closely by the independent regulatory boards and other oversight regulators. The paucity of public interest issues arising out of the work of chartered accountants which do not fall within the jurisdiction of other statutory oversight regimes, can be seen most clearly in the fact that, outside of complaints about auditors and directors, there have been only three 'accountancy' complaints called in for investigation by the FRC under the Accountancy Scheme in the last 10 years.

108. We are concerned that the creation of an enhanced accountancy oversight role for ARGA is not only unnecessary but that it will create significant overlap with the existing arrangements and lead to confusion among members, firms, regulators and the public. The organogram at page 1 of the Appendix which shows the interaction between oversight regulators, the IRB and the regulatory and disciplinary committees.

ARGA's proposed expert programme of work

109. We note that paragraphs 11.1.25 to 11.1.28 of the Consultation Document attempt to set out what ARGA would do in its new role. We believe that a careful analysis of the proposed programme would confirm our view that this role is unnecessary:

Training and qualifications	ICAEW is not a training provider. ICAEW's principal qualification, the ACA, is already the subject of oversight by the FRC in ICAEW's role of Recognised Qualification Body. While ICAEW offers other qualifications and certificates e.g., insolvency diploma, the supervision of those qualifications falls to other oversight regulators.
Licensing	ICAEW's licensing work for statutory and local public audit is already overseen by the FRC. All other licensing work is overseen by other oversight regulators with the exception of the Licensed Practitioner Scheme for ATOL registered agents which is overseen by the Civil Aviation Authority.

Practice Assurance	The operation of ICAEW's (non-statutory) Practice Assurance scheme is overseen by ICAEW's Practice Assurance Committee which has lay parity constitution with a lay chair. As AML compliance checks are part of the PA Scheme, OPBAS plays an active role in reviewing the approach to assessing firm risk, frequency of visits and competence of the reviewers in its regular inspections.
Complaint handling	The quality of ICAEW's complaint-handling work is already reviewed by the FRC in relation to its audit oversight role. All complaints against chartered accountants are handled in accordance with a standard methodology and in accordance with the Visual Files case management system. The quality of ICAEW's complaint-handling work is the subject of regular reviews by ICAEW's other oversight regulators.
Disciplinary procedures	ICAEW's disciplinary procedures are approved by the Privy Council as a condition of ICAEW's Royal Charter and the FRC is already the standing advisor to the Privy Council on any changes in its role as Competent Authority for audit. ICAEW has one disciplinary scheme for all regulated and unregulated work and conduct so the FRC already reviews these processes in its role as Competent Authority. ICAEW's disciplinary procedures are also reviewed on a regular basis by other oversight regulators including the Insolvency Service, OPBAS and the LSB. The latter has a statutory approval power for any changes to disciplinary and regulatory arrangements under the Legal Services Act.[4]
Governance arrangements	ICAEW's governance arrangements are already subject to reviews by the FRC in its role as the Competent Authority for audit. The arrangements are also subject to review by other oversight regulators including OPBAS, the Insolvency Service and the LSB (ICAEW has made recent governance changes to comply with the LSB's revised Internal Governance Rules[5]).

110. The table above demonstrates that there is nothing which ARGA itself would not already be monitoring as part of its role as the Competent Authority for audit, or which is not already subject to the exclusive jurisdiction of other oversight regulators, or which is not already checked regularly by other oversight regulators. We also as a board oversee all of the areas set out in the work programme and have been proactive in making changes to improve efficiencies and effectiveness. For example, we have introduced significant changes to the ICAEW disciplinary scheme over the past 6 years with the introduction of Fitness to Practise Regulations, settlement powers, sanctioning powers for the Practice Assurance Committee, fixed penalty notices for minor non-compliance and fast-track regime for serious conviction complaints to be taken straight to Tribunal. We also intend to introduce a new disciplinary framework in April 2022 which will make our disciplinary processes more efficient and effective and more accessible and understandable to the public.

[4] Legal Services Act 2007 Schedule 4 paragraph 19
[5] LSB Rules and Guidance | The Legal Services Board

Alternative proposal

111. Our analysis above makes it clear why we do not consider that there is any need for the Government to create an accountancy oversight role for ARGA and that any new role risks creating further confusion for all given the number of overseers in this space. However, we realise that the Government might be concerned to allow the primary responsibility for oversight of chartered accountants to remain with us, and the other accountancy bodies' regulatory boards without assurance that we will continue to operate independently and with the primary objective of acting in the public interest.

112. We believe that this assurance could be obtained by the Government making ARGA responsible only for checking the robustness of the governance arrangements in place rather than creating an unnecessary programme of work.

113. This would follow the model used in legal services regulation where the LSB has the statutory responsibility under the Legal Services Act for issuing (and revising from time to time) Internal Governance Rules (IGRs[6]) which set down minimum governance requirements for legal service regulators. These include, for instance:

- Minimum lay representation in the constitution of the regulatory board.
- Independent appointment committee for chair/members of the regulatory board.
- Independent budget-setting.
- Independent setting of regulatory fees.
- No dual roles for staff between the representative and regulatory functions of a professional body.

114. If this model was adopted for accountancy oversight, ARGA's responsibility would be limited to issuing initial IGRs, keeping them under review and carrying out an annual check to ensure compliance with the IGRs which it can do as part of the annual review, which is carried out at the moment by the FRC, of our governance arrangements in its role as Competent Authority for audit.

115. We consider that this alternative proposal would allow us to continue and expand our proactive oversight role, while providing assurance to the public and the Government that we were continuing to operate independently and in the public interest. It would also, importantly, remove one of the many responsibilities which are proposed to be placed on ARGA when it is created and allow it to concentrate on its primary areas of focus in audit and corporate governance. Indeed, ARGA would only be required to carry out a more extensive role if any of the professional bodies was deemed to be non-compliant with the IGRs and did not remedy the breach within a reasonable time.

116. In addition to, or instead of, the above proposal, the Government could also include the proposal for ARGA to have an enhanced accountancy role in the legislation as a time-limited reserve power so that it can be fully implemented if the current system was not considered to be working effectively after a further review (in which we would willingly participate).

117. We consider that this alternative proposal would also fit much better with the principles set down by the Better Regulation Executive – which point to the need for firm evidence before Government departments introduce any new regulations – and also the Hampton Principles which make clear that any new regulations should be proportionate and targeted. We do not believe that the creation of the proposed oversight role would be either proportionate or

[6] LSB Rules and Guidance | The Legal Services Board

targeted.

Should the arrangements be confined to the chartered bodies?

118. Whereas our primary contention is that there is no need for these new arrangements to be introduced, if the Government is still minded to implement them, we ask that it considers first what its own evidence has highlighted as to where issues arise in relation to the work of accountants and what would serve best the public interest.

119. As we noted above, the documents referenced in paragraph 11.1.7 indicate that issues in relation to tax avoidance schemes and poor tax advice result, either exclusively or to a significant extent, from the work of unregulated accountants. Also, neither we, nor other accountancy bodies, have been presented with any evidence suggesting involvement of chartered accountants with money laundering, so we can only presume that the reference in the National Risk Assessment is to unregulated accountants. Given this, it seems to us to be odd, and contrary to the public interest, that the Government is contemplating creating an oversight role for ARGA to review the oversight by an independent regulatory board, like us, which is also charged with acting in the public interest, rather than devising an oversight role which would cover the conduct of accountants attached to other bodies and unregulated accountants who operate outside of any professional body and who can provide advice to the public without any qualifications or insurance and who are not subject to any code of ethics or disciplinary framework.

120. The limitation of the arrangements to chartered bodies appears to be based only on the fact that there are likely to be few unregulated accountants holding senior positions within the financial reporting processes at PIEs or providing accountancy services to PIEs. While we agree with that presumption, this will amount to a very small percentage of all ICAEW members and the oversight role will include considering public interest issues arising outside of financial reporting including areas such as tax and the requirement for ARGA to acquire such expertise.

121. We also consider that the Government's approach to accountancy oversight is inconsistent with the later proposal in Chapter 11.1 that the new statutory enforcement powers should be extended beyond PIE work to all complaints which raise 'public interest concerns'. As we have pointed out in our response to Question 78, it seems unfair and inconsistent to extend those powers to apply to wrongdoing raising public interest concerns and yet limit the exercise of those powers to members of chartered bodies, particularly given the evidence in the documents referenced at paragraph 11.1.7 which suggest the involvement of unregulated accountants in public interest issues such as tax avoidance schemes and poor tax advice.

122. Given the clear areas of duplication and lacunae created by the current proposals and the absence of any evidence to suggest that oversight in this area by the independent regulatory boards is not working, we believe that the Government should re-consider the new proposed arrangements in Chapter 11.1 from a public interest angle before deciding to proceed with its current plan.

Question 77: What safeguards, if any, might be needed to ensure the power to compel compliance is used appropriately by the regulator?

We do not believe that there is any need for ARGA to have a power to compel compliance by a chartered body in the public interest in circumstances where the bodies' independent regulatory boards are already required to act in the public interest. If ARGA is provided with this power, it should be the subject of robust safeguards including the requirement for its use to be authorised by the ARGA board and for there to be an independent and robust appeal process.

123. It is, in a sense, not surprising that the FRC Review recommended that there needed to be a power to compel the chartered bodies to take action in the public interest, given that it makes no reference to the IRB (or any of the other independent regulatory boards) and the requirement which we already have to act in the public interest.

124. As part of our oversight role, we receive copies of all inspection reports and thematic reviews carried out by all of ICAEW's oversight regulators and we review carefully all of the recommendations and requirements set out in those reports and oversee whatever work is necessary to be taken by the PSD Senior Management Team (PSD SMT) to comply. We are also appraised of issues emerging in draft reports and provide our views to PSD SMT, and sometimes also directly to the oversight regulator, as to whether the recommendations and requirements are reasonable or based on a misunderstanding of existing processes.

125. Given our oversight and involvement, and our requirement to act in the public interest, we consider this power to be unnecessary. However, if the Government decides nevertheless to implement, we believe that the legislation should make clear that the power would only be invoked in extreme circumstances, given that it would be challenging a decision taken by an independent board that the requested course of action was not in the public interest, and it should include the following safeguards:

- A requirement on ARGA to agree any proposed change to regulatory arrangements with all other oversight regulators who have an interest in those regulatory arrangements first prior to requiring a change and using its power to compel that change, and for any such change to be consistent across all accountancy bodies.

- Requirements should be proportionate and targeted solely at protecting individuals and businesses who use/need accountancy services.

- A requirement for the ARGA oversight team to consult with the relevant independent regulatory board prior to exercising the power to compel.

- A requirement that the power to compel should only be exercised with full ARGA board approval.

- A fair and independent appeal process.

We have provided more detail on each of these safeguards in the paragraphs below.

Prior agreement of other oversight regulators to changes to regulatory arrangements

126. While we have a separate regulatory process administered by a separate regulatory committee for each area of regulation carried out by ICAEW, some of our regulatory and disciplinary arrangements are used for a multitude of purposes and are the subject of interest and inspection by many oversight regulators. For example, ICAEW's disciplinary scheme covers the investigation and prosecution of all disciplinary complaints against ICAEW members and firms irrespective of the type of work carried out and has been approved by the FRC and other oversight regulators who also consider any proposed changes to it. Indeed, the LSB has a statutory responsibility under the Legal Services Act to approve any changes to ICAEW's regulatory arrangements, including changes to the disciplinary scheme. Likewise, ICAEW's Practice Assurance scheme is used to consider the compliance of members and firms with certain ICAEW regulations and statutory regulations including compliance with anti-money

laundering legislation and the scheme is inspected bi-annually by OPBAS which has views in respect of the risk-based approach adopted etc.

127. What this means is that the Government needs to ensure that any power to compel is not used by ARGA in a way which would put ICAEW (or another professional body) in breach of other legal/regulatory requirements or put ICAEW at risk of criticism or regulatory action by another oversight regulator in respect of any change it is compelled to make. This would, therefore, require ARGA to obtain consents from all other interested oversight regulators to any requirement to change those arrangements before using the power to compel ICAEW (and the other bodies) to make changes to those arrangements.

128. We know from recent experience that different regulators look at different proposals in different ways. In March 2021, the LSB published a Decision Notice in which it refused to approve changes to our Disciplinary Bye-laws relating to the introduction of a Code of Conduct for complainants in circumstances where it knew that the proposed change had been approved by the Privy Council which, in turn, had sought advice from the FRC. Nevertheless, the LSB rejected the changes, indicating that it believed that such changes would not be in the public interest.

129. We are also concerned about how the use of the power to compel a body to change its regulatory arrangements would work if changes can only be made to those arrangements under the bodies' royal charters by approval of Council and/or members and can only be implemented with the approval of the Privy Council.

130. Given these potential issues, and the oversight of the current regulatory arrangements by us, we believe that, if the Government is minded to create this power, it should consider whether such a power should extend to allow ARGA to require changes in existing regulatory arrangements. After all, the FRC has already approved all recent changes which have been made to the regulatory arrangements, including substantial changes which have been made in recent years to the disciplinary scheme, in its role as standing advisor to the Privy Council.

Proportionate and targeted

131. We believe that any requirements which ARGA seeks to impose on the professional bodies should be both proportionate and targeted with the sole or primary objective of any required change being to protect individuals and businesses who consume/use accountancy services. This would ensure adherence to the Hampton Principles for regulations and also ensure that the power is rarely used given the public protections which are already built into the way in which we operate and the primary oversight which we undertake of the work carried out by chartered accountants.

132. In considering what is proportionate, ARGA should be required to consider the extent of the benefit which would be created for the public in forcing a body to take an action compared to any costs which would be incurred by the body in implementing the requested action. This is important because those costs will almost certainly be passed onto members and firms by the body and passed on, in turn, by members and firms to their customers. In considering what is 'targeted', ARGA should be obliged to consider whether the action requested is required in respect of the oversight of all members or just some members or whether the requirement to change should be in respect of the whole of process rather than a particular aspect of a process. Given that a sixth of ICAEW members are located outside the UK[7] there is also an international consideration required.

[7] FRC Key Facts and Trends in the Accountancy Profession October 2020 pages 5 and 6

Requirement for the ARGA oversight team to consult with regulatory boards

133. We have overseen the results of all inspections/reviews by oversight regulators of the work of PSD since the creation of the IRB at the start of 2016. We have seen and reviewed draft inspection reports, received presentations on these from members of the oversight teams from oversight regulators and reviewed final reports before overseeing the work carried out by the PSD SMT to comply with recommendations. We know from our oversight role that the requirements and recommendations which appear in the final inspection report are sometimes quite different from those which were contained in the first draft report. Many are withdrawn because they were based on a misunderstanding of the existing processes or because they would be too impractical to implement and/or would provide little practical benefit.

134. Given this experience and our public interest objective, we believe the Government should make it a pre-condition of the exercise of any power that the ARGA oversight team should consult with ourselves (and/or the independent regulatory boards at other bodies for matters affecting them) prior to exercising the proposed power to compel so as to explain why ARGA considers the proposed course of action is in the public interest.

135. We believe if this pre-condition was inserted into any power this may lead to a reduction in the use of the power either because we would understand and accept the need for change and ensure that the requested change or action is taken without the need for ARGA to use its power or because we may be able to explain from our own experience and expertise, and our unique insight, why we believe the proposed action or change was not necessary to the satisfaction of ARGA.

Requirement for ARGA board to approve the exercise of the power to compel

136. Given the points we make above at paragraphs 124 to 125 about the power only being used in circumstances where we were supporting the PSD SMT in its objections to the proposed course of action, we consider that it is essential that the power to compel must be authorised by a resolution of the ARGA board.

137. Not only would such a requirement reflect the fact that an independent board was objecting to the proposed course of action, but it would also ensure that sufficient objectivity is injected into the process rather than the power being exercised by the future ARGA Director of Oversight who might have been involved in deciding that such a course of action was necessary in the first place. Such a requirement may also reduce the chance of an appeal process being invoked.

Fair and independent appeal process

138. We believe that it will be essential for the Government to create a fair and independent appeal process against a decision to compel a chartered body to take a required course of action. We also believe that appeals should be considered and determined by persons outside of ARGA particularly if the ARGA board has resolved to use the power to compel and given the power was being exercised to override objections by an independent board which was also charged with acting in the public interest. Without this appeal process, the challenge might need to be made through judicial review which would be a costly and lengthy process for both ARGA and ourselves and not in the public interest.

139. Of course, any such appeal process should provide the usual rights for the appellant to review all material provided by ARGA to the appeal body and to have a reasonable opportunity to provide written representations as to why it was inappropriate and not in the public interest to use the power to compel a particular course of action.

Importance of ARGA having the necessary expertise

140. While not a safeguard, we believe that it is crucially important that any such power should only be exercised by ARGA once it has been able to assemble a team which is sufficiently 'expert to identify public interest concerns arising' from the work carried out by chartered accountants. Given that the FRC has been focused almost predominantly on audit oversight, we believe that this will require different expertise and skillsets than currently exist within the FRC oversight team.

Question 78: Should the regulator's enforcement powers initially be restricted to members of the professional accountancy bodies? Should the Government have the flexibility to extend the scope of these powers to other accountants, if evidence of an enforcement gap emerges in the future? What are your views on the suggested mechanisms for extending the scope of the enforcement powers to other accountants (if it is appropriate at a later stage)?

We consider the proposal to limit ARGA's enforcement powers to members of professional accountancy bodies to be inconsistent with the proposal to extend the scope of the powers to 'wrongdoing giving rise to public interest concerns' and inconsistent with a regulatory framework designed to protect the public interest.

141. We consider the proposal to limit ARGA's enforcement powers to members of the chartered bodies to be inconsistent with the proposal to extend the scope of the powers to wrongdoing giving rise to public interest concerns, and not consistent with a regulatory framework designed to protect the public interest.

142. We agree with the Government's conclusion at paragraph 11.1.41 that it is far less likely for unregulated accountants to be employed in the financial reporting processes of PIEs or to provide services to PIEs. However, we consider that the decision to exempt unregulated accountants from the new statutory enforcement powers is inconsistent with the proposal set out later in paragraph 11.1.51 for ARGA's statutory enforcement powers to extend beyond work carried at, or for, PIEs.

143. While paragraph 11.1.51 seeks to justify the extension of the statutory enforcement power recommended by the FRC Review on the basis that the regulator would be *'left without effective enforcement powers in relation to wrongdoing by those accountants* [accountants who are members of professional bodies*] even where it gave rise to public interest concerns'*, it fails to appreciate that, as a result of the restriction proposed at paragraph 11.1.41, it creates a situation where chartered accountants could face disciplinary action by ARGA or their professional body in respect of complaints relating to 'public interest concerns' but an unregulated accountant accused of something similar will face no action at all. This will be the case even if it the unregulated accountant had no formal qualifications nor carried any Professional Indemnity Insurance (PII) to compensate anyone who has been damaged financially as a result of their actions.

144. We believe that this inconsistency is compounded by the earlier reference at paragraph 11.1.7 to the areas where the Government considered that there was evidence that the self-regulatory bodies were failing. That paragraph focuses on documents referring to accountants who had been assisting or turning a blind eye to money laundering or who had been creating or promoting tax avoidance schemes or who had been providing poor tax advice. However, as we pointed out in our answer to Question 76, the tax consultation documents suggest that it is far more likely that unregulated accountants would be responsible for poor conduct. Therefore, unless the Government believes that none of this conduct would constitute 'wrongdoing giving

rise to public interest concerns', it would seem inconsistent, unfair and against the public interest to limit the proposed statutory enforcement powers only to members of chartered bodies.

145. It seems to us that either the Government should keep to the limitations of the FRC Review's recommendation to limit ARGA's statutory enforcement powers only to those accountants involved in PIE work or, if it extends the powers to cover 'wrongdoing giving rise to public interest concerns', it should ensure that the statutory power is wide enough to prosecute the wrongdoer, irrespective of whether he or she is a member of a chartered body.

146. It follows, from our response to the first of the questions raised in Question 78, that our answer to the second question must be that there would already be a wide enforcement gap immediately on implementing the current proposals. If this gap is not rectified as a result of the Government considering this, and other responses to the Consultation Document and dealt with in the initial legislation, clearly it should follow that the Government should have the flexibility to extend the statutory enforcement regime to unregulated accountants.

147. As for the third question, we agree that the two options in paragraph 11.1.41 are the two most obvious ways in which the proposed statutory regime could be extended to cover the wrongdoings of unregulated accountants but, again, would note that this paragraph refers to extending the powers to those providing accountancy services to PIEs which is inconsistent with the proposed extension of the ambit of the statutory enforcement powers to the wrongdoing giving rise to public interest concerns. We believe that any future extension should – for fairness and in the public interest – mirror the ambit of the powers over members of chartered bodies whether limited to PIEs or extended to wrongdoing giving rise to public interest concerns.

148. As a board charged with acting in the public interest, it is of concern to us that the proposals in this part of Chapter 11 are likely to create an even wider divergence between the degree of regulation to which chartered accountants will be subject to and the complete lack of regulation of accountants who are not members of professional bodies. While we can only speculate, any increase in regulation, coupled with the proposal later at paragraph 11.1.47 to reduce the liability threshold for disciplinary action below that of misconduct, may lead to chartered accountants considering whether the benefits of membership set out in paragraph 11.1.42 do outweigh the added costs they incur through their membership and the greater exposure to disciplinary action.

149. Instead of having a back-up plan to widen the net later to include unregulated accountants if their ranks are swelled by these proposals, we believe that the Government should seize this opportunity to ensure that all those offering accountancy and tax services to the public are properly regulated. Surely it would be better to ensure that all those offering accountancy and tax services operated on a level playing field so there could be no gain to be made by resigning membership? This way, the Government would not need its back-up plan and would be making sure that the public was properly protected against poor conduct or poor advice from all those offering accountancy and tax services by requiring them to have a minimum level of qualification, to comply with a code of ethics, to be subject to a robust disciplinary scheme and to hold a minimum level of professional indemnity insurance.

Question 79: Should the regulator be able to set and enforce a code of ethics which will apply to members of the chartered bodies in the course of professional activities? Should the regulator only be able to take action where a breach gives rise to issues affecting the public interest? What sanctions do you think should be available to the regulator?

We have a number of concerns about the proposals in the narrative leading up to Question 79 including, in particular, the proposal to set a lower liability threshold for chartered accountants within the new statutory enforcement powers which will be inconsistent with the liability threshold in ICAEW's own disciplinary scheme and will set a liability threshold lower than most other UK professionals. We also consider that the Government's proposal to extend the scope of the statutory enforcement powers beyond the FRC Review recommendation will create unfairness and uncertainty, and that there is no compelling reason to create a new Code of Ethics.

150. We have a number of concerns about the proposals in the narrative leading up to Question 79 including, in particular, the proposal to set a lower liability threshold for chartered accountants than any other UK professional (other than auditors). We consider the Government's proposal to extend the scope of the enforcement powers beyond PIEs is unnecessary and will create unfairness and uncertainty and we can see no need or justification for creating a new Code of Ethics.

151. Before referring to ARGA being provided with a power to set a new Code of Ethics, the narrative leading up to Question 79 refers to the Government's intention to lower the liability threshold for liability to disciplinary action for chartered accountants who will be subject to the new statutory enforcement powers. However, Question 79 does not ask consultees to express their views on this proposal despite it being a radical departure from what currently exists. We can only presume that this was an unintended omission. Indeed, we do not believe that we can provide cogent answers to the three questions contained within Question 79 without first expressing our concerns about the proposal to change the liability threshold.

Lowering of the misconduct test

152. We agree with the conclusion of the FRC Review (at paragraph 2.64) that it is highly unsatisfactory for the FRC, investigating the conduct of a chartered accountant finance director and an auditor, to have to bring disciplinary proceedings against the former under the Accountancy Scheme (the Scheme) with a liability threshold of misconduct, and proceedings against the latter under the Audit Enforcement Procedure (AEP) with a lower liability threshold of breach of any relevant requirement. Indeed, we support the recommendation made in the FRC Review, and now adopted by the Government, that ARGA should be provided with statutory powers to bring enforcement actions against all key actors in a financial reporting/audit matter within the same process, with all being subject to the same liability threshold.

153. However, we disagree with the conclusion of the FRC Review that the only way to cure the misalignment of liability thresholds is to change the misconduct test to the lower test set out in the AEP (the AEP Test). We do not believe that any analysis of the prevalence of the misconduct test across UK professionals was carried out by the FRC Review team prior to making this recommendation. In contrast, when considering changes to the wording of the liability thresholds for chartered accountants in 2017, we took advice from Kate Gallafent QC of leading public and administrative law chambers, Blackstone Chambers, on changes which we were considering making to Disciplinary Bye-law 4 which sets out the liability threshold to disciplinary action of chartered accountants. It was clear from the advice which we received

from Leading Counsel at that time that the misconduct test was used as the usual liability threshold for UK professionals.

154. We have consulted again with Kate Gallafent QC in the course of formulating our response to the proposals in Chapter 11.1 and asked her to review again the liability thresholds to disciplinary action of professionals in the UK and we have included a copy of her written advice to us in Appendix 4. This confirms that the misconduct test which applies to chartered accountants in our Disciplinary Bye-laws (DBLs) is in line with the liability thresholds for all other UK professionals. Given that advice, we believe that the Government should refrain from extending such a low liability threshold to chartered accountants and re-consider instead whether the threshold test for auditors should remain out of line with all other UK professionals.

155. While we recognise that auditors hold an important role in assessing whether the financial statements of the largest UK companies show a 'true and fair' view, we have not seen a justification, either at the time the AEP Test was introduced in 2016, or since, as to why auditors should have a lower liability threshold to disciplinary action than other professionals, say, solicitors and surveyors (who act on house purchases – the biggest transaction in most people's lives) and doctors, nurses and other healthcare professionals (whose actions or omissions can endanger lives).

156. Given the survey carried out by Ms Gallafent QC, and her conclusion that most UK professionals will only be subject to disciplinary action if misconduct is proven or if their competence fell below the standards expected of them (incorporating a behavioural aspect), we consider that the Government should refrain from providing that chartered accountants should also be subject to a lower liability threshold. Aside from the lack of any general justification for chartered accountants to be subject to a lower threshold, the Government should avoid the unfairness and inconsistency which would flow from the implementation of this proposal. This can be seen by considering a scenario (not an unlikely one given the proliferation of multi-disciplinary practices) where a solicitor and a chartered accountant work together on a tax scheme in which high profile celebrities are participants. If the scheme fails and results in complaints being investigated by both ARGA and the Solicitors Regulation Authority, the chartered accountant will be subject to a lower disciplinary threshold than the solicitor. This does not appear to us to be fair or in the public interest.

157. As we have no current intention to lower the liability threshold in our DBLs (particularly in the light of Ms Gallafent QC's updated advice), we are also concerned that a change to the liability threshold for chartered accountants in the new statutory enforcement powers will create inconsistent outcomes for ICAEW chartered accountants depending on whether the complaints against them are investigated by ARGA or by us. This situation will be exacerbated, as we explain below, if the Government introduces a subjective discretion for ARGA to investigate complaints which raise matters of 'public interest concern' rather than set demarcation lines between which complaints should be taken by ARGA.

158. We do not believe that a correction of the current misalignment of threshold tests by changing the liability threshold for individual auditors back to misconduct/falling short of professional standards would undermine our or the FRC's or ARGA's future important enforcement work in respect of failed audits if the AEP test continued to apply to the audit firms. Under the Companies Act, it is the audit firms that are the registrants and it is they who have the statutory responsibility for ensuring that an audit is carried out in accordance with prevailing Auditing Standards, not only through the actions of the Responsible Individuals but by ensuring that there are robust quality assurance procedures in place. Indeed, our own DBLs have a similar non-compliance test for audit firms who are liable for disciplinary action if they have failed to comply with the Audit Regulations which we issue jointly with ICAS and the CAI (DBL 6.2a).

159. However, under our DBLs, an individual auditor will only face disciplinary action if he/she has brought the Institute into discredit or carried his/her work significantly below the standards to be expected of them. This liability test incorporates an important behavioural aspect and means that complaints are only brought against individual auditors if they have been responsible for seriously defective audit work or have circumvented the internal risk and quality processes put in place by their firm. We believe that there is an important difference between the liability of a registrant with its statutory responsibilities and the liability of an individual auditor.

160. We are responsible, like the FRC (and ARGA in the future), for taking all available steps to try to improve audit quality among ICAEW audit-registered firms. However, we are concerned to ensure that there are no disincentives for bright young accountants to want to specialise in auditing in the future and to aspire to be Responsible Individuals on the audits of the largest PIEs. In addition to querying why a lower liability threshold is appropriate for chartered accountants under the new statutory enforcement powers, we believe that the maintenance of a lower liability threshold for **individual** auditors may act as a disincentive given that a disciplinary record may be career-ending or, at least, career-limiting. For example, we understand that tenders for audit committees now invariably request disclosure of disciplinary records of anyone in the proposed audit team.

Should the powers apply to matters raising public interest concerns?

161. This brings us now to our response to the question whether ARGA should only take enforcement action where a breach gives rise to issues affecting the public interest. We believe from reading the narrative leading up to Question 79 that this question may have been mis-phrased as there is no suggestion in the narrative that the Government is considering that ARGA's statutory enforcement powers should go *wider* than issues affecting the public interest. Indeed, the only debate in the narrative appears to be whether the Government should be extending the remit of the new statutory enforcement regime against chartered accountants beyond the ambit suggested by the FRC Review which recommended that the ambit be limited to wrongdoing in relation to PIEs. We consider that this was the true purpose of the question so will respond to that issue.

162. We are concerned about the proposed extension of the statutory powers to include 'wrongdoing giving rise to public interest concerns' for a number of reasons. Firstly, as we have already noted in our answer to Question 78, the proposed extension appears to us to be inconsistent with the decision to exempt unregulated accountants from the scope of the statutory powers despite the Government making reference in paragraph 11.1.7 to documents which indicate that unregulated accountants are more likely to be involved in 'wrongdoing in public interest matters'.

163. We believe that fixing an ambit around 'public interest concerns' will create uncertainty for accountants, complainants and even regulators as to whether a complaint will be investigated and prosecuted by ARGA or be left to the relevant chartered body. We consider that this would be a highly unsatisfactory situation particularly if the Government incorporates the AEP Test in the new statutory regime. The combination of the wider, indefinite 'public interest concerns' test, and differences between the liability thresholds used by the regulators, will create inconsistency and unfairness. Indeed, it may lead to accountants and complainants seeking to challenge the subjective decision taken by ARGA by way of judicial review.

164. Given all of these potential issues, we believe that the Government should not go wider than the narrower ambit recommended by the FRC Review. If that recommendation is adopted, it will be immediately clear to all concerned which body had the sole jurisdiction to investigate and prosecute the complaint.

165. We are also concerned that the Government's motivation for a wider ambit appears to be its concern that, if the enforcement powers are restricted to PIE work, this would leave the investigation/prosecution of complaints of wrongdoing giving rise to public interest concerns *'entirely to the professional bodies'* (paragraph 11.1.54). The Government appears to be concerned to replicate the same ambit as currently exists under the Scheme but without considering first whether such an ambit is now necessary.

166. The Scheme was developed in 2003 not long after the financial and auditing scandals at Enron and Worldcom, many years before the creation of the IRB and at a time when ICAEW's disciplinary bodies had a majority of chartered accountant members. Since that time, substantial changes have been made to the governance arrangements around ICAEW's regulatory and disciplinary work and our experience of supervising the work of ICAEW's Professional Conduct Department (PCD) would suggest that any concern about PCD's capabilities and robustness would be misplaced. We have already referred to the quality and robustness of the work carried out by PCD (details of which are in Appendix 3). Those examples, and the oversight which we exercise, should provide the necessary assurance that ARGA's proposed statutory enforcement powers do not need to be extended beyond the ambit recommended by the FRC Review.

167. As we noted in our answer to Question 76, most matters which raise public interest issues arise either in audit or in other areas of accountants' work which are already covered by other statutory regimes so the Government's proposed extension of the ambit of the new powers would, in the case of ICAEW, cover very few matters, all of which, we believe, PCD would be more than capable of dealing with under our oversight. We believe that there have only been three public interest complaints called in and dealt with by the FRC under the Scheme during the last 12 years; a complaint relating to a tax avoidance scheme, a complaint about a corporate finance advisor and a complaint about an insolvency practitioner's conduct (where any such complaint would fall in the future under the oversight of the Insolvency Service).

168. The final concern we raise, in respect of the Government's proposal to go for a wider ambit for the powers than that recommended by the FRC Review, is the potential impact the combination of the new statutory enforcement powers, a wide and indefinite public interest test and the lowering of the traditional misconduct liability threshold will have on the availability and affordability of professional indemnity insurance for all accountancy firms. We have become increasingly concerned about developments in the PII market for accountancy firms over the past two years and the increasing number of accountancy firms who are struggling to obtain insurance on acceptable terms. This is partly due to the exit of a significant number of insurance underwriters from the PII market for professionals (we have seen a drop of over a third in the number of insurers offering cover to accountancy firms in the last two-three years) and insurers becoming more risk averse when they assess the work carried out by firms.

169. We believe that the remaining PII insurers will be concerned at the risk of firms falling subject to statutory enforcement action by ARGA for non-regulated accountancy work and that liability can be established at a lower threshold. While insurers would be able to differentiate, when assessing risk, between firms who supply services to PIEs and those who do not, the proposal to set a wider and indefinite 'public interest concerns' test will inevitably cast a shadow over many more firms. If firms are unable to obtain cover for the minimum amount required under our PII Regulations and on our minimum policy wording (required for protection of the consumer and the public interest), the principals in the firms are faced either with closing down their practices or, more likely, resigning their ICAEW membership and either trading without insurance or putting in place less comprehensive insurance. Any such development would be detrimental to the public interest because a firm's insurance arrangements might not cover all future claims. We believe that it is important that the Government considers the current fragility of the PII market for accountancy firms before taking any action which might cause more firms to struggle to obtain cover. We do not believe that this is in the public

interest.

170. If we were wrong in our initial assumption that the question had been mis-phrased, and the Government is seeking feedback on whether the ambit of ARGA's new statutory powers should extend beyond public interest concerns, then, given our concern about the extension of the ambit to include 'public interest concerns', we would argue strongly against any further extension. Any extension of the ambit of the powers to take on complaints which do not concern 'wrongdoing in relation to public interest concerns' would essentially stretch the ambit to include all potential complaints against chartered accountants. Not only would such a wide ambit – wider than the current ambit under the Scheme – not be justified given our oversight work and the increased quality of resources within PCD, and its successful investigation and prosecution of major cases, but it would also create even greater concern among PII insurers that all firms could be the subject of an ARGA enforcement action with a lower liability threshold.

Should the regulator be able to set and enforce a code of ethics?

171. We do not consider it is necessary for the Government to create a *'standardised code of ethics'* to govern the conduct of chartered accountants. As the Government notes in Chapter 11, the codes of ethics put in place by UK accountancy bodies are taken from the IESBA code of ethics for accountants and that Code, which has recently been extensively revised, applies internationally to the work of accountants. We note that no examples are provided as to why the Government believes that the current codes of ethics are not fit for purpose or why a change is necessary or desirable.

172. We also raise two practical issues which would arise if ARGA were to be given the power to set a new code of ethics and it proceeded to do so. Firstly, this would create confusion in respect of the increasing number of accountants whose work crosses borders as to which code of ethics (if there was a new code in the UK) would apply to their conduct and where one code stopped applying and one started. Secondly, ICAEW has an increasing number of members based in countries outside of the UK (over 25,000 of the current near 160,000 membership) and it would be left with imposing two different codes of ethics on its members and taking disciplinary action under two different codes which we believe will create considerable confusion. We are not sure what has prompted the Government to consider that such a change is necessary, but we urge the Government to re-consider these proposals.

What sanctions should be available to ARGA?

173. We agree that the same range of sanctions as are currently set out in the Accountancy Scheme should be used in the new statutory enforcement regime.

Power to compel third parties to provide information

174. We agree that the current regime is 'severely limited by the lack of power to compel third parties to provide relevant information in an investigation' (paragraph 11.1.37) and that ARGA should be provided with statutory powers to compel third parties to provide information where it is exercising its statutory powers to investigate chartered accountants who are employed by a PIE and involved in the financial reporting process or providing services to a PIE.

175. We ask, however, that the Government considers extending the statutory power to require information from third parties to ICAEW and the other chartered bodies. ICAEW's disciplinary processes provide the right only to demand information and documentation from members and member firms through their membership of ICAEW. It is not possible within the DBLs to provide for an enforceable right against third parties to produce documentation. This makes it very difficult sometimes for the PCD to investigate alleged misconduct by chartered accountants working in business, including those employed by companies in the financial reporting process.

176. If the power to compel the production of information is not extended to the chartered bodies, this will create another inconsistency between potential outcomes in an investigation depending on whether the matter is investigated by ARGA or the chartered body. If only ARGA is provided with this power and ARGA investigates a matter, it will have access to all relevant information in contrast to the chartered bodies who might struggle to substantiate a complaint without access to documentation held by third parties. While a matter may not raise public interest concerns, the alleged misconduct could be far more serious than that alleged in the public interest matter and yet the limitation of the proposed power to ARGA would potentially stop any enforcement proceedings being brought in respect of the more serious misconduct. This would appear to us to a very unsatisfactory outcome and one which runs contrary to the public interest.

Questions 80 to 94 are not responded to.

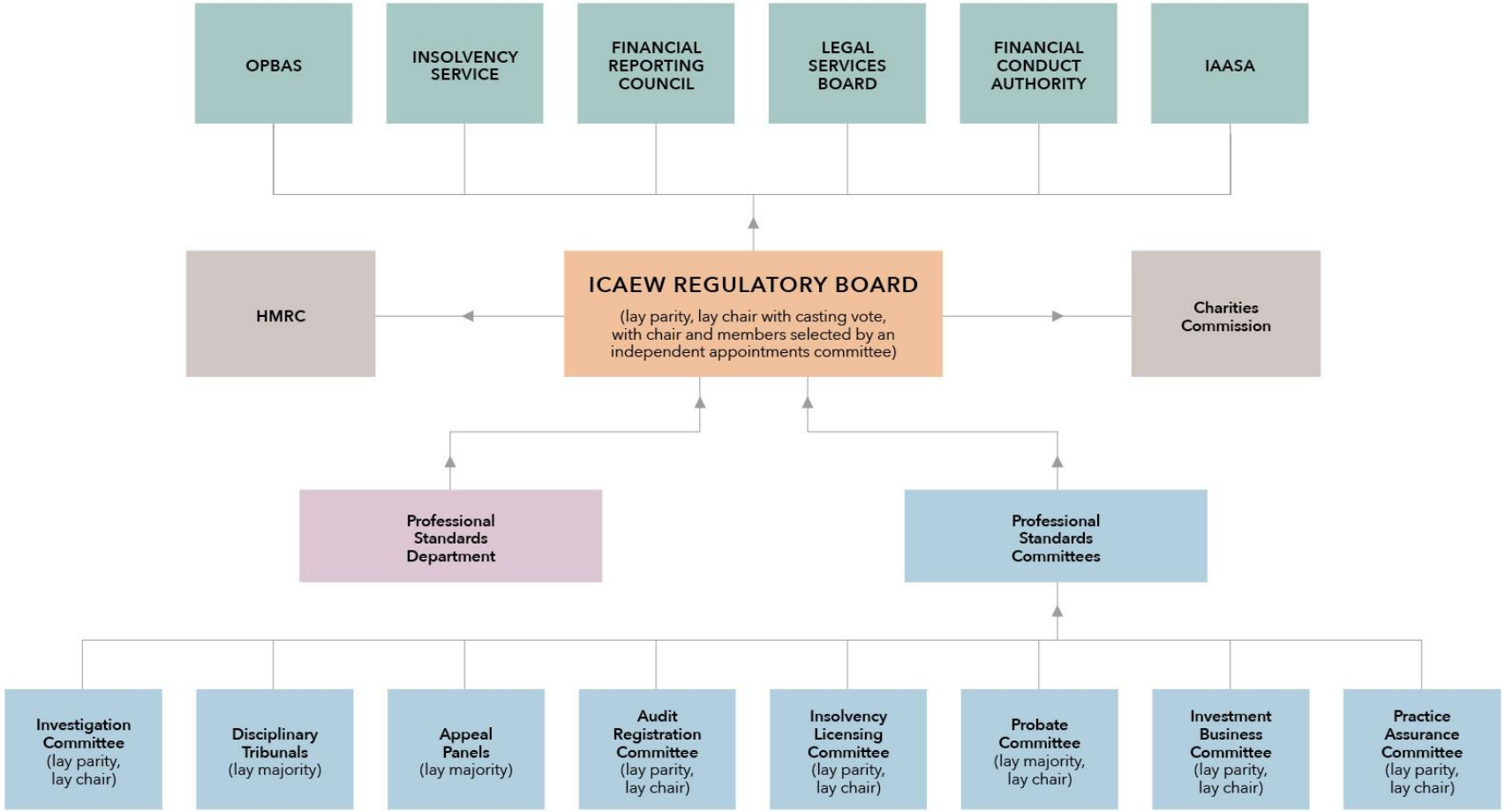
Question 95: Should auditors receive statutory protection from breach of duty claims in relation to relevant disclosures to the regulator? Would this encourage auditors to report viability and other concerns to the regulator?

177. We agree with the proposal to align the statutory protection with that applied to the financial services industry. This also brings the approach into line with the protections afforded in other jurisdictions outside the UK.

Questions 96 to 98 are not responded to.

SECTION 4: APPENDICES

APPENDIX 1: OVERSIGHT STRUCTURE: THE ICAEW REGULATORY BOARD (IRB) AND OVERSIGHT REGULATORS



APPENDIX 2: 8 FACTS TO PLACE THE REFERENCE TO 'SELF-REGULATORY REGIME' IN THE CORRECT CONTEXT

1. Degree of external oversight

ICAEW's regulatory and disciplinary work is overseen by the following oversight regulators:

- **The Financial Reporting Council** (FRC) which carries out an annual review of ICAEW's registration, monitoring and enforcement work relating to statutory audit, local public audit and accountancy matters in general.

- **The Insolvency Service** which carries out regular reviews of ICAEW's registration, monitoring and enforcement work relating to insolvency.

- **The Office for the Supervision of Professional Body AML Supervisors** (OPBAS) which carries out an in-depth bi-annual inspection of ICAEW's work as an AML Supervisor.

- **The Legal Services Board** (LSB) which carries out a full performance assessment every year of ICAEW's work as a probate regulator.

- **The Irish Audit & Accountancy Supervisory Authority** (IAASA) which carries out periodic inspections of ICAEW's work as an Irish audit and accountancy regulator.

- **The Financial Conduct Authority** (FCA) which has the right to inspect and review ICAEW's work as a Designated Professional Body under the Financial Services & Markets Act 2000.

ICAEW's regulatory and disciplinary work is also monitored and subject to public comment by other regulators such as:

- **HMRC**

- **The Charities Commission**

No significant issues have been identified in respect of ICAEW's performance in its registration work, monitoring and enforcement in the published reports of its principal oversight regulators:

- All of the FRC's published reports of its oversight work since becoming the Competent Authority for audit in 2016 have confirmed that ICAEW is in full compliance with the conditions set out in the 2016 Delegation Agreement.

- None of the Insolvency Service's published reports since 2015 when the new regulatory objectives were introduced into the Insolvency Act have identified any failure to comply with any of the regulatory objectives.

2. Independent governance

- ICAEW has had an independent regulatory board, the ICAEW Regulatory Board (IRB), governing its regulatory and disciplinary functions since 2015.

- The IRB has parity of lay and chartered accountant members with a lay chair who has a casting vote.

- The IRB has its own independent nominations committee – the Regulatory & Conduct Appointments Committee (RACAC) – chaired by Sara Nathan OBE.

- The IRB has a wide remit including the setting of strategy and budget, determining regulatory fees and supervision of the performance of all disciplinary and regulatory committees.

- The IRB's Terms of Reference make clear that its primary objective is to **act in the public interest**, not the interest of ICAEW members or firms.

- Meetings of the IRB are attended annually by the FRC Oversight Team and periodically by representatives from the Insolvency Service and the Legal Services Board.

- ICAEW's governance arrangements, and the separation of ICAEW's regulatory functions from its representative functions, are inspected every year by the FRC, every two years by OPBAS and from time to time by the Insolvency Service, the FCA and the IAASA.

- ICAEW is compliant with the internal governance rules issued by the LSB which requires an independent regulatory board, independent appointment committee, independent budget-setting and complete separation of the regulatory functions.

3. Lack of autonomy over changes to regulatory/disciplinary arrangements

- All changes to ICAEW's Charter, Principal Bye-laws and Disciplinary Bye-laws can only be made with Privy Council consent (with the FRC being the standing advisor to the Privy Council for this purpose).

- All changes must also be approved in advance by the Legal Services Board under powers provided to it by the Legal Services Act.

- All changes made to ICAEW's regulatory arrangements must also be compliant with the regulatory objectives in the Insolvency Act, the Money Laundering Regulations (which require separation of regulatory and representative functions) and the Financial Services & Markets Act 2000 (in relation to investment business advice). Directions can be issued to reverse any changes made which are not compliant.

4. Independent decision-making on regulatory issues/disciplinary cases

- ICAEW's Regulatory Committees (Audit Registration Committee, the Insolvency Licensing Committee, the Probate Committee and the Investment Business Committee) which make all decisions in respect of the granting and withdrawal of licences to firms/insolvency practitioners to carry out regulated work, all have parity of lay and

chartered accountant members with lay chairs.

- The Investigation Committee, which deals with less serious complaints, has parity of lay and chartered accountant members with a lay chair.

- The Disciplinary Tribunals, which deal with more serious complaints, have a majority of lay members (2:1).

- The Appeal Panels, which hear appeals from Tribunal decisions, have a majority of lay members (3:2).

5. Independent internal oversight

- All regulatory and conduct committees have subcommittees (lay majority or lay parity) which carry out annual reviews of decisions by ICAEW staff under delegated powers. No significant issues have been raised in any recent report.

- The Investigation Committee's subcommittee (lay majority or lay parity) carries out an annual review of all cases closed by staff without reference to the committee. No significant issues have been raised in any recent report.

6. Safeguards to protect the rights of complainants

- Disciplinary Bye-law 9.4 provides a right for a complainant to seek a review by the Investigation Committee of any decision by staff to reject a complaint on assessment.

- Disciplinary Bye-laws 17 and 18 provides a right for a complainant whose complaint has been investigated and then rejected by the Investigation Committee to seek a review from the Reviewer of Complaints (pool of lawyers who are independent from ICAEW).

- Disciplinary Bye-law 26A provides the right for the Investigation Committee to challenge any decision made by a Disciplinary Tribunal if it considers the decision to clear a chartered accountant to be flawed and that it should be challenged in the public interest.

7. Independent review of allegations of failures to investigate specific complaints

- Any complainant who is dissatisfied with the way in which an audit or accountancy complaint has been handled has the right to request a review of the investigation file by the **FRC**. The FRC has access to the whole investigation file. No significant issue has arisen out of any recent reviews of the handling of complaints.

- Any complainant who is dissatisfied with the way in which an insolvency complaint has been handled has the right to request a review of the investigation file by the **Insolvency Service**. The Insolvency Service has access to the whole investigation file. No significant issue has arisen out of any recent reviews of the handling of complaints.

8. Independent determination of sanctions policy for disciplinary matters

- The Investigation Committee, the Disciplinary Tribunals and the Appeal Panels must set sanctions in accordance with the Guidance on Sanctions.

- The starting point tariffs in the Guidance on Sanctions are set by the IRB after consultation with the lay chairs of the Investigation, Disciplinary and Appeal Committees and after review of tariffs for similar sanctions imposed by other professional services regulators.

- Some significant increases have been made to certain tariffs since the IRB was provided with responsibility for the Guidance on Sanctions in 2015.

- The sanctions for insolvency complaints must comply with the Common Sanctions Guidance issued by the Insolvency Service.

APPENDIX 3: SUMMARY OF PUBLIC CASES BROUGHT BY ICAEW'S PROFESSIONAL CONDUCT DEPARTMENT (PCD)

Comet Group Limited (January 2020)

A record fine of £1 million was paid as a result of the settlement of complaints brought against the three Deloitte partners, who acted as administrators of Comet in 2012 and against Deloitte itself relating to the acceptance of the administration appointment and failures in relation to their investigation of key matters within the administration. The lead administrator, Mr Kahn, who had already given up his insolvency licence, accepted a Severe Reprimand as did Deloitte with Mr Farrington given a Reprimand. View the settlement order.

As well as carrying out an extensive investigation and bringing disciplinary proceedings, PCD was forced to defend an application brought in the High Court in 2018 by the administrators (by then liquidators) seeking directions to stop ICAEW interfering with the liquidation by refusing to release the administrators from their undertaking not to make any further payments to the secured creditor until they had produced conclusive evidence about the validity of its security. The judgment handed down by Sir Nicholas Warren in June 2018 (High Court Judgment Template (wilberforce.co.uk) lauded ICAEW for its attempts to protect the interests of the unsecured creditors and appointed an Additional Liquidator, Mr Carton-Kelly, to carry out an investigation into the circumstances of the takeover of the Comet Group by OpCapita, including the granting of the security.

As a result of his subsequent investigation, Mr Carton-Kelly has issued legal proceedings against Darty, the former owners of Comet, seeking £82m on behalf of Comet's unsecured creditors based on a claim that Darty received a preference payment.

H Group

After the conclusion of High Court proceedings, complaints brought by PCD against Wilkins Kennedy and two current partners were upheld by the Investigation Committee and consent orders were accepted including financial and non-financial sanctions. More serious complaints were referred by the Investigation Committee to the Disciplinary Tribunal against former Wilkins Kennedy partner, Martin MacDonald and former Wilkins Kennedy, Jeremy Newman. Mr MacDonald agreed a settlement in March 2020 whereby he was agreed to be excluded and in October 2020, the Disciplinary Tribunal ordered the exclusion of Mr Newman after a 3-day Tribunal hearing.

In the case of H

Miss H was accused of dishonestly impersonating a former colleague to take advantage of a tax advice helpline at her former employer. Complaints based on dishonesty and lack of integrity were referred by the Investigation Committee to the Disciplinary Tribunal which found both complaints unproved.

The Investigation Committee then determined in accordance with a new right of appeal introduced into ICAEW Disciplinary Bye-laws by the IRB in 2018 to appeal the Tribunal's decision on the grounds that the lay member majority panel had erred in law in applying the test for dishonesty. In May 2021, an Appeal Panel allowed the Investigation Committee's appeal and found Ms H to have been found guilty of dishonesty and remitted the matter to a differently-constituted Disciplinary Tribunal to impose sanctions. The second Tribunal made an order excluding Ms H as a member.

APPENDIX 4: ADVICE FROM KATE GALLAFENT QC

IN THE MATTER OF THE WHITE PAPER ON RESTORING TRUST IN AUDIT AND CORPORATE GOVERNANCE

AND THE TEST FOR LIABILITY TO DISCIPLINARY ACTION

ADVICE

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1. I have been asked to advise the ICAEW Regulatory Board (IRB) of The Institute of Chartered Accountants in England and Wales in relation to the proposal set out in the White Paper on Restoring Trust in Audit and Corporate Governance in relation to the test for liability to disciplinary action.

The White Paper Proposal

2. The proposal to change the liability test for chartered accountants arises from the current difference in approach to the test for liability to disciplinary action between the Accountancy Scheme and the Audit Enforcement Procedure (AEP) introduced in 2016. As set out in the White Paper, the current position is that:

> "*Under the Accountancy Scheme, the test applied as to whether disciplinary action should be taken is where there has been misconduct. The meaning of misconduct within the Scheme is broad and covers any act or omission by a member in the course of their professional activities which either falls significantly short of the standards reasonably to be expected of them, or which has brought, or is likely to be bring, discredit to that member or the accountancy profession in general. This differs from the regulator's enforcement powers in relation to statutory auditors, which are exercisable in relation to breaches of specific requirements provided for in legislation or standards determined by the regulator*." (§11.1.31)

3. The Financial Reporting Council Independent Review (FRC Review) in December 2018 recommended that the regulator should instead be able to take enforcement action in relation to accountants working in, or providing services to, public interest entities (PIEs) on a "*lower*" liability test e.g. whenever they have breached existing requirements including "*legislative requirements, financial reporting standards and professional ethical*

standards".

4. The Government has proposed that the misconduct test should be replaced in the new statutory enforcement powers, and that the regulator should instead take enforcement action in respect of breaches of specific requirements which apply to accountants (White Paper §11.1.47).

5. So far as those "*specific requirements"* are concerned, under the AEP an "allegation" means information about a Statutory Auditor or Statutory Audit Firm which "*raises a question as to whether they have breached a Relevant Requirement*" (§1). "*Relevant Requirement*" has the meaning set out in Regulation 5(11) or 11(5)(b) of SATCAR 2016. These include "*the standards of integrity, objectivity, professional competence, due care and professional scepticism as determined by the competent authority in accordance with Schedule 1"* (Regulation 4(2)(a)) and "*any auditing standards, procedures or requirements imposed by the competent authority"* (Regulation 2(c)).

6. A breach of any Relevant Requirement relating to Regulation 2(c) would include, for example, a breach of ISA 230 which sets out the documentation requirements for auditors in audit working papers. In practical terms, under the AEP, all that is required for an allegation to be proved is that there has been, as a matter of fact, a failure to meet those documentation requirements. It is not necessary to show that that failure fell significantly short of the standards reasonably to be expected of them, or that it has brought, or is likely to be bring, discredit to that member or the accountancy profession in general. In other words, the AEP reduced the threshold for liability to disciplinary action for individual auditors in relation to audit matters to mere negligence.

7. The effect of the White Paper Proposal is that the threshold of mere negligence would apply in the future, not only to individuals acting as statutory auditors but also to any chartered accountant who falls within the ambit of the regulator's new statutory enforcement powers. While the FRC Review recommended that the powers should apply to chartered accountants who work for or provide services to Public Interest Entities (PIEs), the Government is proposing that the powers apply more widely to any chartered accountant who is investigated for 'wrongdoing giving rise to public interest concerns' and not limited to work for PIEs.

8. Against this background, in order to assist the IRB in its response to the consultation, I have been asked to advise on the extent to which the threshold tests for disciplinary action which currently apply to chartered accountants (either under the Accountancy Scheme or under the Institute's Disciplinary Bye-Laws for individuals generally)[1] is in line with other threshold tests for disciplinary action for other regulated professionals in the UK.

[1] Disciplinary Bye-Law 4.1 provides (so far as relevant) that a respondent shall be liable to disciplinary action:

(a) if they have committed misconduct; by committing any act or default, whether in the course of carrying out professional work or otherwise, likely to bring discredit on themselves, ICAEW or the profession of accountancy, or so as to fall significantly short of the standards reasonably expected of a member, provisional member, foundation qualification holder, provisional foundation qualification holder or CFAB student;

(b) if they have demonstrated professional incompetence; by performing professional work, whether as a principal, director, employee or as an individual, incompetently, to such an extent, or on such a number of occasions, as to fall significantly short of the standards reasonably expected of a member, provisional member, foundation qualification holder, provisional foundation qualification holder or CFAB student;

Analogous regulated professions

9. The following regulated professions all use the concepts of misconduct / conduct which falls short of the expected standards and professional incompetence (consistent with the Institute's Disciplinary Bye-Law 4.1(a) and (b)) as the basis for liability for disciplinary action.

Architects

10. Section 15(1) of the Architects Act 1997 provides that the Professional Conduct Committee of the Architects Registration Board may make a disciplinary order in relation to a registered person if, so far as relevant:

> *"(a) It is satisfied, after considering his case, that he is guilty of unacceptable professional conduct or serious professional incompetence;"*

11. "Unacceptable professional conduct" is defined at section 14 (entitled "*Professional misconduct and competence"*) as "*conduct which falls short of the standard required of a registered person"*).

Healthcare practitioners

Chiropractors

12. The Chiropractors Act 1994 provides (at section 22) that its Professional Conduct Committee may take specified steps (including removal or suspension from the register) where it finds as well-founded an allegation to the effect that (so far as relevant):

> *"(a) he has been guilty of conduct which falls short of the standard required of a registered chiropractor;*
> *(b) he has been guilty of professional incompetence;"* (section 20(1))

13. Conduct which falls short of the standard required of a registered chiropractor is referred to as "*unacceptable professional conduct'*.

Dentists

14. The Dentists Act 1984 (as amended) provides that its Practice Committees may make specified directions (including erasure or suspension from the register) if they find that a dentist's fitness to practise is impaired (s.27B). The grounds upon which the fitness to practise of such person is impaired for the purposes of that Act include, so far as relevant:

> *"(a) misconduct;*
> *(b) deficient professional performance;"* (section 27(2))

Medical practitioners

15. The Medical Act 1983 (as amended) provides that a Medical Practitioners Tribunal may make specified directions (including erasure or suspension from the register) if it finds that a registered person's fitness to practice is impaired (s.35D(2)). The grounds upon which the fitness to practise of such person is impaired for the purposes of that Act include, so far as relevant:

> *"(a) misconduct;*
> *(b) deficient professional performance;"* (section 35C(2))

Nursing and Midwifery

16. The Nursing and Midwifery Order 2001 provides (at Article 29(2)) that its Fitness to Practise Committee may make specified orders if it finds as well-founded an allegation that the registrant's fitness to practise is impaired by reason of, so far as relevant:

> "*(i) misconduct,*
> *(ii) lack of competence,"* (Article 22(1)(a))

Opticians

17. The Opticians Act 1989 provides that its Fitness to Practise Committee may make specified directions (including erasure or suspension from the register) if it finds that a registered optometrist's or registered dispensing optician's fitness to practise is impaired (s.13F). The grounds upon which the fitness to practise of such person is impaired for the purposes of that Act include, so far as relevant:

> *"(a) misconduct;*
> *(b) except in the case of a student registrant, deficient professional performance;"* (section 13D(2))

Osteopaths

18. The Osteopaths Act 1993 provides (at section 22) that its Professional Conduct Committee may take specified steps (including removal or suspension from the register) where it finds as well-founded an allegation to the effect that (so far as relevant):

> *"(a) he has been guilty of conduct which falls short of the standard required of a registered osteopath;*
> *(b) he has been guilty of professional incompetence;"* (section 20(1))

19. Conduct which falls short of the standard required of a registered osteopath is referred to as "*unacceptable professional conduct*'.

Pharmacists

20. The Pharmacy Order 2010 provides that its Fitness to Practise Committee may make specific directions (including removal or suspension from the register) if it finds that a a registered person' fitness to practise is impaired (Article 54(2)). A person's fitness to practise is regarded as "impaired" only by reason of, so far as relevant:

> **"***((a) misconduct;*
> *(b) deficient professional performance (which includes competence);"* (Article 51(1)

Social Care workers

21. The Social Workers Regulations 2018 provide its "adjudicators" may take steps (including ordering the removal of a social worker from the register or their suspension from practising) if they determined that the social worker's fitness to practise is

impaired (paragraph 12 of Part 3 of Schedule 2 to the Regulations). A social worker's fitness to practise may be impaired by reason of, so far as relevant:

> "*(a) misconduct,*
> *(b) lack of competence or capability,"* (Regulation 25)

Other health professionals

22. The Health Professions Order 2001 provides (at Article 29(5)) that its Health Committee or Conduct and Competence Committee may make specified orders if it finds as well-founded an allegation that the registrant's fitness to practise is impaired by reason of, so far as relevant:

> "*(i) misconduct,*
> *(ii) lack of competence"* (Article 22(1)(a))

Other professions

23. There are a smaller number of regulated professions for which the threshold for liability to disciplinary action is characterised differently to that identified above.

Barristers

24. The Bar Standards Board Handbook defines "professional misconduct" to mean "*a breach of this Handbook by an applicable person which is not appropriate for disposal by way of the imposition of administrative sanctions, pursuant to Section 5.A"* (Part 6: Definitions).

25. Part 5.A provides that at the conclusion of an investigation of an allegation the Commissioner has the power to decide, amongst other matters, "*that the conduct alleged did constitute a breach of the Handbook (on the civil standard of proof) and that the breach should be dealt with by the imposition of an administrative sanction"* (rE19.3). An administrative sanction means "*the imposition of an administrative warning, fixed penalty fine or other administrative fine up to the prescribed maximum, or any combination of the above in accordance with Section 5.A"* (Part 6: Definitions).

26. The definition of professional misconduct in respect of barristers therefore imports a seriousness threshold, below which a matter may be dealt with by way of administrative sanction rather than disciplinary action.

27. The BSB Handbook also limits liability to disciplinary action to cases where the "*disqualification condition"* is met, which means "*that an applicable person has (intentionally or through neglect) …. breached a relevant duty to which the person is subject"* (or caused or contributed to a BSB regulated person having done so) and "*the BSB is of the view that it is undesirable that the applicable person should engage in one or more of the relevant activities"*[2] (Part 6: Definitions)

Chartered Surveyors

28. The current Bye-Laws of the Royal Institution of Chartered Surveyors (made under Article 17 of its Supplemental Charter 1973) provide that a Member may be liable to disciplinary action thereunder by reason of, so far as relevant:

> "*(a) conduct liable to bring RICS into disrepute; or*
> *(b) serious professional incompetence; or*
> *(c) a failure to adhere to these Bye-Laws or to Regulations or Rules governing Members' conduct;"* (B5.2.2)

29. On its face, Article 17(c) appears to be akin to the current position under the AEP, that is, strict liability for mere negligence. However, it should be read together with the Rules of Conduct made by the Standards and Regulation Board of RICS (made under Article 18 of the Supplemental Charter 1973 and Bye-Law 5) which set out the standards of professional conduct and practice expected of Members of RICS.[3] Under the heading 'Scope' the Rules state:

> "*Not every shortcoming on the part of a Member, nor failure to comply with these Rules, will necessarily give rise to disciplinary proceedings."*

[2] Being the activities set out in paragraph 7(3) of the Legal Services Act (General Council of the Bar) (Modification of Functions) Order 2018 in relation to individual barristers.

[3] The Personal and Professional Standards established under the Rules of Conduct include:

> "3 *Ethical behaviour*
> *Members shall at all times act with integrity and avoid conflicts of interest and avoid any actions or situations that are inconsistent with their professional obligations.*
> 4 *Competence*
> *Members shall carry out their professional work with due skill, care and diligence and with proper regard for the technical standards expected of them."*
> *Subject to two exceptions not here relevant*

Police

30. The Police (Conduct) Regulations 2020 provide for liability based on misconduct, which is defined[4] as "*a breach of the Standards of Professional Behaviour that is so serious as to justify disciplinary action"* (Regulation 2(1)).

31. It should be noted that the 2020 Regulations replaced the Police (Conduct) Regulations 2012 which defined misconduct as "*a breach of the Standards of Professional Behaviour"* (Regulation 3(1)).

32. As such, whilst there was previously (in principle) strict liability for any breach of the Standards of Professional Behaviour, since 2020 the concept of misconduct itself incorporates a threshold of seriousness.

Society of Lloyd's

33. The Society of Lloyd's Enforcement Bye-laws provide that the Council may institute enforcement proceedings against any person subject to the enforcement jurisdiction that it considers has committed or intended to commit misconduct (Part F paragraph 16). Misconduct is defined to mean:

> "*(a) engaging in or being associated with or conspiring with another person to engage in discreditable conduct, whether or not connected with the business of insurance;*
> *(b) conduct that is detrimental to the interests of the Society, members, underwriting agents or Lloyd's policyholders or others doing business at Lloyd's;*
> *(c) a contravention or failure to observe –*
> *(i) any provision of Lloyd's Acts 1871-1982;*
> *(ii) any requirement of the Council including any byelaw; or*
> *(iii) any direction or order of the Enforcement Board, an Enforcement Tribunal or the Appeal Tribunal."* (Part B paragraph 3)

34. A contravention or failure to observe any of the specified provisions, requirements or directions / orders, therefore gives rise to strict liability.

Solicitors

35. The Solicitors Act 1974 (as amended) provides that the Law Society (now the Solicitors Regulation Authority) may "*make rules for regulating in respect of any matter the professional practice, conduct, fitness to practise and discipline of solicitors and for empowering the Society*

to take such action as may be appropriate to enable the Society to ascertain whether or not the provisions of rules made, or of any code or guidance issued, by the Society are being or have been complied with" (s.31(1)). If any solicitor fails to comply with rules made under that section "*any person may make a complaint in respect of that failure to the Tribunal"* (s.31(2)).

36. The SRA has to power to give a person a written rebuke or direct them to pay a penalty not exceeding £2,000 if it is satisfied:

> *"(a) that a solicitor or an employee of a solicitor has failed to comply with a requirement imposed by or by virtue of this Act or any rules made by the Society, or*
> *(b) that there has been professional misconduct by a solicitor."* (s.44D(1)&(2))

37. The power to make other disciplinary orders (including striking off the roll or suspending a solicitor from practice) is vested in the Solicitors Disciplinary Tribunal (s.47(2)).

38. On the face of the Solicitors Act 1974 any breach of a relevant rule made by the SRA (without more, i.e. mere negligence) gives rise to liability to disciplinary action.

39. This was the position adopted by the SRA in the case of *SRA v Leigh Day and others* [2018] EWHC 2726 (Admin), in which the SRA argued that the Tribunal had erred by introducing concepts of professional misconduct instead of simply focusing on whether or not there had been a breach of the relevant rule. However, the Divisional Court rejected the argument that liability arose whenever there had been a breach of a rule made by the Law Society / SRA:

> "*In truth, if such an allegation under Principle 5 is to be pursued before a tribunal then it ordinarily needs to have some inherent seriousness and culpability. It no doubt can be accepted that negligence may be capable of constituting a failure to provide a proper standard of service to clients. But even so, questions of relative culpability and relative seriousness surely still come into the equation under this Principle if the matter is to be the subject of disciplinary proceedings before a tribunal."* (§156)

40. The Court relied upon the Scottish Court of Session case of *Sharp v Law Society* [1984] WC 129 in support of this analysis, in which the Court had held that "*whether a breach of the rules should be treated as professional misconduct depended on whether it would be regarded as serious and reprehensible by competent and responsible solicitors and on the degree of culpability"* (§157). It went on to note

> *"We appreciate that there may be some breaches of some rules – for instance, accounts rules: see, for example, Holden v Solicitors Regulation Authority [2012] EWHC 2067 (Admin) – which can involve strict liability. But that cannot be said generally with regard to all alleged breaches of the code principles coming before the Tribunal; which in our view ordinarily will involve an evaluative judgment and an assessment of seriousness to be made."*

41. As such, even though the Solicitors Act 1974 provides on its face for strict liability for breaches of all rules made by the Law Society / SRA, save in certain cases (such as the accounts rules), in order to determine whether a person has become liable to disciplinary action it will be necessary to apply an evaluative judgment and an assessment of the seriousness of the conduct.

Veterinary Surgeons

42. The *Veterinary Surgeons Act 1966* provides, so far as relevant, that a registered veterinary surgeon may have his name removed from the register or suspended if:

> *"any such person is judged by the disciplinary committee to have been guilty of disgraceful conduct in any professional respect"* (section 16(1)(b))

43. The position of veterinary surgeons is something an outlier, as it has retained the concept of "*disgraceful conduct"* which was replaced in the healthcare context by "*serious professional misconduct"* many years ago. However, the Privy Council, having noted that in "*in the case of most professions the prohibition is framed in different terms from disgraceful conduct in a professional respect, that which is most commonly found being serious professional misconduct"* found that disgraceful conduct in a professional respect is conduct which falls far short of what which is expected of the profession (*McLeod v Royal College of Veterinary Surgeons* [2006] UKPC 39 at §21).

44. As such, the position of the Royal College of Veterinary Surgeons is no different to that of the Institute insofar as the first limb of misconduct' is concerned.

Analysis

45. The disciplinary schemes of the majority of professions are not based on strict liability, and even those which are, on their face, are likely not to be construed or applied by the courts as having done so following the decision in *SRA v Leigh Day*, save where the relevant rule is so central to the professional person's conduct that strict liability is appropriate (such as breaches of solicitors accounts rules relating to the holding of client money).

46. The reason for that approach is clear from earlier decisions on the nature of professional misconduct.

47. Having reviewed the relevant authorities, Jackson J. in *R (Calhaem) v General Medical Council* [2007] EWHC 2606 (Admin) derived as a principle that "*mere negligence does not constitute "misconduct" within the meaning of section 35C(2)(a) of the Medical Act 1983. Nevertheless, and depending on the circumstances, negligent acts and omissions which are particularly serious may amount to 'misconduct'*" (§39(1)).

48. In *R (Remedy UK Ltd) v GMC* [2010] EWHC 1245 (Admin), Elias J said at [37]:

> "*Misconduct is of two principal kinds. First, it may involve sufficiently serious misconduct in the exercise of professional practice such that it can properly be described as misconduct going to fitness to practise. Second, it can involve conduct of a morally culpable or otherwise disgraceful kind which may, and often will, occur out with the course of professional practice itself, but which brings disgrace upon the doctor and thereby prejudices the reputation of the profession*."

49. In *Walker v Bar Standards Board* (unreported), 29 September 2013, Sir Anthony May put it as follows:

> "*11. … the stigma and sanctions attached to the concept of professional misconduct across the professions generally are not to be applied for trivial lapses and, on the contrary, only arise if the misconduct is properly regarded as serious …*
>
> *16. … the concept of professional misconduct carries resounding overtones of seriousness, reprehensible conduct which cannot extend to the trivial …"*

50. Similarly, in *Khan v Bar Standards Board* [2018] EWHC 2184 (Admin) Warby J said:

> "*The authorities make plain that a person is not to be regarded as guilty of professional misconduct if they engage in behaviour that is trivial, or inconsequential, or a mere temporary lapse, or something that is otherwise excusable, or forgivable. There is, as Lang J put it, 'a high threshold'. Only serious misbehaviour can qualify. I am not sure that the threshold of gravity is quite as rigid or hard-edged as Mr Beaumont suggests. I do not believe that in Walker Sir Anthony May was seeking to crystallise an exhaustive definition of professional misconduct. Rather, he was reaching for a touchstone to help distinguish the trivial or relatively unimportant from that which merits the 'opprobrium' of being labelled as professional misconduct.* " (at §36)

51. The current liability test for chartered accountants under the Accountancy Scheme and the ICAEW's Disciplinary Bye-laws (at DBL 4.1(a) and (b)) is therefore consistent with the approach applicable to most, if not all, other regulated professionals in the UK, and the approach of the courts to such disciplinary schemes.[5]

52. Against that background, it appears that, in proposing to lower the liability threshold for chartered accountants to that introduced for statutory auditors in 2016, the Government has not had due regard to the fundamental and long-standing principles applicable to the regulation of individual professional persons, and the requirement that professional misconduct by individual persons should not be based on strict liability (save in very particular circumstances, such as the rules in relation to the handling of client monies by solicitors).

53. Notably, the breadth of conduct which it is proposed would give rise to liability for disciplinary action by the ARGA would be far wider than that condoned by the court in *Leigh Day*. For example, liability would arise on a strict liability basis irrespective of the precision (or lack of it) of the relevant standard said not to have been met, or the centrality (or lack of it) of that standard to the professional person's obligations. The proposal would, therefore, result in liability to disciplinary action in principle for exactly the "*trivial or relatively unimportant*" breach or "*trivial lapses*" which have been held do **not** merit the opprobrium of being labelled as professional misconduct by an individual person.[6]

54. I emphasise the fact that this distinction has been drawn in the context of individual persons, rather than organisations or institutions, because in my view it not only reflects the greater opprobrium attaching to an individual person than e.g. a firm arising from a finding of professional misconduct (which may explain why the introduction of the AEP's lower threshold was regarded as being justified, given that such cases are also brought against firms as the audit registrants), but because of the importance of there being some behavioural element to that individual's personal conduct (i.e. falling short of the relevant standards or acting discreditably) for it to be rendered reprehensible.

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[5] For completeness, I note that DBL 4.1(c) – (h) inclusive creates a liability to disciplinary action in special circumstances that are central to the conduct of chartered accountants, such as breaches of orders, rules and regulations of the Institute, unauthorised regulated activities and insolvency. These breaches or occurrences are inherently serious by their nature and in my view these provisions are consistent with the approach in *Leigh Day* where strict liability may be justified.

[6] I note that the FRC's Guidance on the opening of AEP Investigations (March 2021) suggests that it may be decided that there is not a good reason to investigate if there is "*a minor breach of the Relevant Requirements*" (§7(d)), but this is expressly caveated with the statement that such a factor "*does not necessarily preclude a finding of good reason to investigate*".

55. In summary, I consider that the proposal would create a lower threshold for liability to disciplinary action for chartered accountants than for all (or most) other regulated professionals in the UK, for which no substantive justification has been identified.

KATE GALLAFENT QC
Blackstone Chambers

7 July 2021

APPENDIX 5: ICAEW'S REGULATORY ROLE

Over the last 30 years, our regulatory role has been enhanced by the addition of statutory regulatory roles in the areas of audit, anti-money laundering, insolvency, investment business and probate.

ICAEW is*:

- the largest recognised supervisory body (RSB) and recognised qualifying body (RQB) for statutory audit in the UK. There are 2,561 firms and 7,295 responsible individuals registered with us under the Companies Act 2006;
- a prescribed accountancy body (PAB) and recognised accountancy body (RAB) for statutory audit in Ireland. There are 38 firms and 253 responsible individuals registered with us under the Republic of Ireland's Companies Act 2014;
- the largest recognised supervisory body (RSB) for local audit in England. We have eight firms and 101 key audit partners registered under the Local Audit and Accountability Act 2014;
- the largest insolvency regulator in the UK. We license over 840 insolvency practitioners (out of a total UK population of 1,550) as a recognised professional body (RPB) under the Insolvency Act 1986;
- a designated professional body (DPB) under the Financial Services and Markets Act 2000 (and previously a recognised professional body under the Financial Services Act 1986). We license over 1,900 firms to undertake exempt regulated activities under this Act;
- a supervisory body recognised by HM Treasury for the purposes of the Money Laundering Regulations 2017, dealing with over 12,000 firms; and
- an approved regulator and licensing authority for probate under the Legal Services Act 2007. Over 340 firms are accredited by ICAEW to carry out this reserved legal activity.

and:

- more than 330 firms are accredited to perform ATOL returns work under the ICAEW Licensed Practice scheme for ATOL Reporting Accountant work. This was set up in 2016 after the Civil Aviation Authority (CAA) gave approval for ICAEW to license, register and monitor firms which perform ATOL returns work.
- Our Practice Assurance scheme provides ICAEW members working in practice with a framework of principles-based quality assurance standards. We monitor over 12,000 firms to ensure they comply with the Practice Assurance standards.

* Data is correct as at 31 December 2020.

Our role as a world-leading improvement regulator
We protect the public interest by making sure ICAEW's firms, members, students and affiliates maintain the highest standards of professional competency and conduct. ICAEW's regulatory and disciplinary roles are separated from ICAEW's other activities so that we can monitor, support or take steps to ensure change if standards are not met. These roles are carried out by the Professional Standards Department and overseen by the independent ICAEW Regulatory Board (IRB).

Our role is to:

- **authorise** ICAEW firms, members and affiliates to undertake work regulated by law: audit, local audit, investment business, insolvency and probate;
- **support** the highest professional standards in general accountancy practice through our Practice Assurance scheme;
- **provide** robust anti-money laundering supervision and monitoring;
- **monitor** ICAEW firms and insolvency practitioners to ensure they operate correctly and to the highest standards;
- **investigate** complaints and hold ICAEW firms and members to account where they fall short of standards;
- **respond** and comment on proposed changes to the law and regulation; and
- **educate** through guidance and advice to help stakeholders comply with laws, regulations and professional standards.

Chartered accountants are talented, ethical and committed professionals. There are more than 1.8m chartered accountants and students in the world, and more than 187,800 of them are members and students of ICAEW. All of the top 100 global brands employ chartered accountants.*

Founded in 1880, ICAEW has a long history of serving the public interest and we continue to work with governments, regulators and business leaders globally. And, as a world-leading improvement regulator, we supervise and monitor over 12,000 firms, holding them, and all ICAEW members and students, to the highest standards of professional competency and conduct.

We promote inclusivity, diversity and fairness and we give talented professionals the skills and values they need to build resilient businesses, economies and societies, while ensuring our planet's resources are managed sustainably.

ICAEW is the first major professional body to be carbon neutral, demonstrating our commitment to tackle climate change and supporting UN Sustainable Development Goal 13.

We are proud to be a founding member of Chartered Accountants Worldwide, a network of 750,000 members across 190 countries which promotes the expertise and skills of chartered accountants around the world.

We believe that chartered accountancy can be a force for positive change. By sharing our insight, expertise and understanding we can help to create sustainable economies and a better future for all.

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