

# The Audit Enforcement Procedure: Consultation on proposed amendments

A consultation issued for public consultation by the Financial Reporting Council (FRC)

Comments from ACCA  
5 May 2023  
Ref: TECH-CDR-2058

ACCA (the Association of Chartered Certified Accountants) is the global professional body for professional accountants.

We're a thriving global community of **241,000** members and **542,000** future members based in **178** countries and regions, who work across a wide range of sectors and industries. We uphold the highest professional and ethical values.

We offer everyone everywhere the opportunity to experience a rewarding career in accountancy, finance and management. Our qualifications and learning opportunities develop strategic business leaders, forward-thinking professionals with the financial, business and digital expertise essential for the creation of sustainable organisations and flourishing societies.

Since 1904, being a force for public good has been embedded in our purpose. In December 2020, we made commitments to the UN Sustainable Development Goals, and we report on progress in ACCA's annual integrated report. We believe that accountancy is a cornerstone profession of society and is vital in helping economies, organisations and individuals to grow and prosper. It does this by creating robust trusted financial and business management, combating corruption, ensuring organisations are managed ethically, driving sustainability, and providing rewarding career opportunities.

And through our cutting-edge research, we lead the profession by answering today's questions and preparing for the future. We're a not-for-profit organisation. Find out more at [accaglobal.com](https://accaglobal.com)





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

**Joe Johnson**

Director – Professional Conduct  
[joe.johnson@accaglobal.com](mailto:joe.johnson@accaglobal.com)

**Stefan Pegram**

Director – Practice Regulation  
[sundeeep.takwani@accaglobal.com](mailto:sundeeep.takwani@accaglobal.com)

**Laura Murphy**

Lead – Regulator Reporting  
[laura.murphy@accaglobal.com](mailto:laura.murphy@accaglobal.com)

**ACCA**



+44 (0)20 7059 5000



[info@accaglobal.com](mailto:info@accaglobal.com)



[www.accaglobal.com](http://www.accaglobal.com)



The Adelphi 1/11 John Adam Street London WC2N 6AU United Kingdom

## GENERAL COMMENTS

---

ACCA welcomes the opportunity to comment on The Audit Enforcement Procedure Consultation on Proposed Amendments to the procedure and related guidance (**Consultation Document**) issued by the Financial Reporting Council (**FRC**) on 3 April 2023.

We have endeavoured to provide a thoughtful and constructive response. In preparing our response, we have reviewed the Consultation Document and considered FRC's Audit Enforcement Procedure (January 2022) (**Current AEP**) together with its Guidance for the Case Examiner (January 2022) (**CEG**) and Hearings Guidance (January 2022) (**HG**) (together **Current Documentation**). ACCA is conscious of the benefits of consultation and is grateful for the synopsis of the proposed amendments to the Current Documentation (**Proposed Amendments**), and the comparison documentation which enables a reader to easily identify the proposed changes.

## AREAS FOR SPECIFIC COMMENT

---

**Question 1: Do you have any comments on the proposed changes to the AEP described above and set out in Appendix A? Please respond by reference to specific rule numbers of the amended AEP.**

ACCA is generally supportive of the Proposed Amendments and notes that many are intended to be clarificatory in nature. However, we have identified some areas for comment and/or that are of concern and which also interact with FRC's proposed amendments to the CEG and HG (together the **Proposed Guidance**). These are highlighted below.

### Rule 5

ACCA notes FRC's intention to amend Rule 5 of the Current AEP so that, where the Case Examiner determines that information raises a question as to whether the Relevant Requirement has been breached, they would need to decide on next steps after having taken due account of any relevant guidance issued to the Case Examiner by the FRC's Board from time to time.

Whilst ACCA is generally supportive of the potential additional oversight and engagement that the Proposed Amendments to Rule 5 offer, we note that reference to the status of applicable guidance within the Current AEP is limited and that the inclusion of an express obligation to consider the Proposed Guidance may result in uncertainty. ACCA suggests that FRC consider



whether, for certainty, it is appropriate to, more generally, clarify the status of all applicable guidance.

#### Paragraph 10A, GCE

ACCA is also conscious that the Proposed Guidance (together with other guidance published by the FRC from time to time) will be key to ensuring a fair and transparent outcome that protects the public interest in a proportionate manner.

ACCA notes that at paragraph 10A of the GCE, the FRC has sought to introduce the concept of a “Referral Case” which ACCA understands places an additional obligation on a Case Examiner (**Obligation**) to determine whether a case is a Relevant Case where:

- information exists that raises a question as to whether a Statutory Auditor or Statutory Audit Firm has breached a Relevant Requirement; and
- the Case Examiner has otherwise decided not to refer the matter to the Board in accordance with Rule 5(d).

ACCA further understands that a case would be considered to be a Relevant Case where a decision to take no further action or pursue Constructive Engagement in respect of it may be contentious, high profile or may risk undermining confidence in the FRC (or the wider) regulatory regime. A non-exhaustive list of factors to be taken into account by the Case Examiner in making their determination are set out in paragraphs 10A(a)-(e) of GCE which includes at 10A(d) reference cases that relate to an event which is high profile or has attracted or is likely to attract significant media or political attention or the attention of other regulators.

As noted above, ACCA is generally supportive of the potential additional oversight and engagement that the Proposed Amendment to Rule 5 offers. However, we are conscious of the importance of ensuring that confidence is maintained in the profession and in the applicable regulatory framework, including by ensuring that powers are exercised only to the extent that it is necessary to protect the public and that any such exercise is fair and proportionate and without prejudice to natural justice. Thus, providing reassurance to the public that the FRC’s enforcement process is fair and not unduly weighted against the Respondent.

Accordingly, ACCA suggests that the FRC considers supplementing the Proposed Guidance to ensure that this is expressly clear both in relation to the exercise of powers pursuant to the Proposed Amendments at Rule 5 and at Rule 5A.

#### Rule 5A

As noted above, ACCA is generally supportive of the additional oversight that the Proposed Amendment to Rule 5A provides. However, to maintain public confidence in the Proposed AEP



(and the wider regulatory regime), we consider that the proposed powers should only be exercised where there is a clear public interest imperative to do so.

#### Rule 134

ACCA is supportive of the extension of the period for reconsideration pursuant to Rule 131 (other than in respect of Rule 131(a)(ii)) and which it does not consider to be unreasonable.

However, ACCA considers that it is important that the powers provided to the Board under Rule 134 are exercised only to the extent that it is necessary to protect the public and that that any such exercise is fair and proportionate and without prejudice to natural justice.

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

ACCA is broadly supportive of the Proposed Amendments as we consider that, in the main, they provide additional clarity to the Current AEP. Where ACCA has concerns or comments about any aspect of the Proposed Amendments, we have sought to articulate this in our response to Question 1.

#### **Question 3: Do you have any general comments on the amended AEP?**

Where ACCA has any concerns or comments about any aspect of the Proposed Amendments, we have sought to articulate this in our responses to Questions 1, 2 and 4.

#### **Question 4: Do you have any other comments on the issues raised in this consultation?**

ACCA welcomes the inclusion in the Consultation Document of the Proposed Guidance and notes that this information has been provided for illustrative purposes only.

ACCA is also conscious that the Proposed Guidance (together with other guidance published by the FRC from time to time) will be key to ensuring a fair and transparent outcome that protects the public interest in a proportionate manner.

#### Paragraph 5A, HG

ACCA notes that the FRC intends to include a new paragraph 5A within the HG which seeks to streamline the process by clarifying that “factual evidence” does not include witness statements. ACCA is concerned that the proposed clarification may have unintended consequences in that witness evidence may be excluded when, in certain circumstances, it constitutes evidence of fact.



ACCA suggests that the FRC provide additional clarification to make it clear that evidence served pursuant to Rule 34 of the Current AEP should, to the extent that it relies on witness evidence, be fair and transparent and sufficient to enable a reader to properly understand the allegations being made together with the basis for those allegations.

Further, ACCA has been unable to identify provisions that relate to the subsequent service of witness related evidence and suggests that the FRC makes provision for this, either as part of Case Management or more specifically.

#### Paragraph 2, GCE

ACCA notes that the proposed deletions at Paragraph 2 of the GCE are intended to clarificatory in nature. ACCA is unsure of FRC's intention in making those deletions. However, we have concluded that it is to ensure that the deleted sentence does not unduly narrow the first sentence of such Paragraph 2.

#### Drafting Considerations

ACCA has identified instances where the drafting may not be as intended including:

- paragraph 23(c), of the draft Hearings Guidance which includes “3 Rule 57 of the Audit Enforcement Procedure” but which is not included in the HG;
- paragraph 10A, which could be simplified (e.g.: through the inclusion of an additional paragraph number at the end of sub-paragraph 10A(ii)) which may render it more accessible particularly to a lay reader.

