8 July 2021

The Rt Hon Kwasi Kwarteng MP
Secretary of State
Department for Business, Energy & Industrial Strategy
1, Victoria Street
London
SW1H OET

Via email: audit.consultation@beis.gov.uk

Dear Secretary of State,

Re: Consultation on the Government's proposals on restoring trust in audit and corporate governance

The Corporate Reporting Users' Forum (CRUF) is delighted to respond to BEIS's consultation on the Government's proposals on restoring trust in audit and corporate governance.

The CRUF was established in December 2005 and we have been holding regular meetings since. CRUF UK has prepared this comment letter based on discussions in CRUF meetings and has reflected input from other CRUFs globally.

Responses to the questions raised in the consultation that relate to the issues that concern investors are set out below. As always, we do not seek to reach a consensus within the CRUF but to reflect a broad spectrum of users' views. Our comments are based on our professional experience.

Overall comments

The CRUF welcomes this initiative.

We believe that the proposed reform package to restore trust in audit and corporate governance will take a significant step toward doing so. It seems to us that these proposals are a good resulting cohesion of the three audit reform consultations by Sir Donald Brydon, Sir John Kingman and the CMA.

However, we are concerned that the scale of the proposed reforms will lead to distractions in the detail away from their main objectives, possibly resulting in more of what is already there – more reporting, more controls, more governance, more audit, more legal redress – in the hope that this will fix what is seen as broken and possibly without obtaining those objectives. It will be important for the proposed reform package to focus on its key desired outcomes including:

- ensuring investors can get high-quality, focused and reliable information on UK companies so they can invest here with even greater confidence,
- strengthening the UK's audit and corporate governance framework so investors gain greater confidence in their investments and those that manage and direct them on their behalves, and

- empowering shareholders to help them obtain these.

An essential requirement for the reforms is much better interaction between the users and producers of corporate reporting and audits. Historically companies, their boards and audit committees and their auditors have experienced almost no interaction with investors on company reporting and auditing. This lack of engagement could be seen as the source of things going wrong and then not being addressed properly or in time. Added to this, the FRC has lacked essential powers needed to provide effective regulatory oversight of all company directors and audits and this problem has been exacerbated by probable "regulatory capture", mainly being the holders of positions of influence within the FRC coming from audit firms and the accountancy profession. It is reassuring to see that much needed change is starting to take place, even before these audit reforms have been combined into a coherent package, with, in some cases, impressive results, such as the FRC's restructuring of itself. It is important that change, in line with the appropriate recommendations that are taken forward, continues and does so at pace.

Another engagement opportunity between corporates, their investors and auditors that should not be forgotten is a proposal to report on external signals (as recommended in the Brydon Review paragraph 16.4), as many investors believe that the risks of corporate failure for those close to a company are not difficult to spot well in advance of any failure. Not making this obligatory would be a lost opportunity.

It will be important in implementing the reforms that the balance of vested interests is tipped towards the key users of corporate reporting and audits, namely shareholders in companies, and away from the producers of corporate information and audits.

In our answers to Questions 46 and 47, we envisage a possible conflict of interest between auditors and directors of companies where the directors rely on auditors to keep them safe on corporate reporting matters. This conflict should not be allowed to arise within company law and the reforms should make it clear that auditors are responsible and accountable to the shareholders as a body for the companies they audit.

There is little comment or detail in the consultation document about the planning, resources and time needed to implement the proposals, monitor their implementation and to adapt them if needed. It will be important that BEIS and the government thinks through and puts together appropriate plans, resources and timescales to implement the proposals and make the restoring of trust in audit and corporate governance a success.

Our specific comments and answers to the consultation questions below should be considered in the context of our overall comments above.

CRUF's specific comments and responses to the consultation questions

Chapter 1 comments

In paragraph 1.1.9 the consultation says that the Government will look for opportunities to simplify or consolidate requirements on business. It will be important that the Government prioritises those opportunities which are in the interests of investors. The Government should not reduce companies' transparency or obligations to their investors.

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

Yes. For the reasons explained below, we consider that large private companies should be included.

Large private companies that are not credit institutions or insurance undertakings will be just as much public interest entities as those admitted to a regulated market or a credit institution or an insurance undertaking, because of their impact on and relevance to their investors, employees, customers, suppliers, other key stakeholders and the country's economy. There should be no difference in the audit and corporate governance regime for large companies of public interest, whether publicly or privately financed.

However, there should also be a pragmatic allowance in the regime for the proportional application of its requirements so that any such requirements that are not relevant or immaterial to a business may be ignored and this justified on the basis of immateriality.

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

The consultation document suggests there are 1,945 existing PIEs. Doubling this number under Option 1 appears to us to be impractical because of the additional need for PIE auditors and staffing at ARGA that may become required. Even increasing the number by a third under Option 2 seems ambitious.

Therefore, Option 2 would be our choice; recognising that a smaller entity using a regulated securities market for its financing would be automatically captured as a PIE.

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

Yes. Even though AIM is not a regulated securities market, we would see no difference in terms of public interest between investors in the AIM market and those in a regulated securities market's shares.

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

No. The whole point of the proposed reforms is to restore trust in audit and corporate governance. Such reforms or even the existing good practice of PIEs and their audits should apply to newly listed companies and to any additional PIEs captured by the new definition of PIE.

It would seem a nonsense if exemption differentiations could be used as loopholes to game the system and reduce trust rather than restore it.

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

We are not sufficiently knowledgeable of Lloyd's Syndicates to answer this question.

However, from a lay person's point of view, it seems odd that they are not already classed as insurance undertakings requiring them to be PIEs.

Q 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?

No. We think that the new definitions proposed for large companies should already capture and include large third sector entities as PIEs.

Q 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?

We are not sufficiently knowledgeable of third sector entities to advise on such a threshold.

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

No.

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

We cannot answer this question but would hope that the increase in the number of PIEs would increase the number of PIE auditors and therefore the choice of auditors amongst PIEs. It should be remembered that the number of PIEs will not remain static, and this perpetual dynamism should underpin some resilience and a widening of choice in the PIE audit market.

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

No. A new definition of PIE should be introduced as soon as the Government has decided what this should be. The implications for new PIEs, their existing or prospective directors, their auditors and relevant regulators should then be managed through transition periods for meeting any specific new requirements that these new PIEs will have to meet.

We would hope that most if not all UK businesses would emulate PIE good practice, proportional to its relevance for them, as they will see the benefits of obtaining or retaining public trust in them.

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

No. See our comments above to Question 10.

Q 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?

Strengthening the internal control framework improves overall governance and improvements in governance improve risk management.

The benefits are:

- True accountability from the board resulting from improved boardroom discussions on the level of residual risk remaining when considering the quality and application of internal controls.

- Improved individual and collective understanding, making it easier to define risk appetite and tolerances.
- Clarification over the level of strategic, operational and financial resilience that helps define the scope of business continuity planning thereby reducing the likelihood of, but responding better to, crises.

The benefits create a virtuous circle that also support other aspects of this consultation on resilience and better planning for reverse stress testing.

More boardroom time will be needed to put the review process on a formal footing, including adapting governance structures and information channels to cover broader and more precise risk and control reporting.

In this context, corporate risk management may need reviewing and changing. Risk is a loaded term that focuses on the negative and risk management should be balancing between probable benefits and probable harms. Too much focus on the negatives and mitigating them will result in limitations of or constraints on the positives.

Q 13. If the control framework were to be strengthened, would you support the Government's initial preferred option (Table 2)? Are there other options that you think Government should consider? Should external audit and assurance of the internal controls be mandatory?

We broadly agree with Table 2's contents regarding directors but would like to see the following changes:

- That directors first be required to review the effectiveness of all the company's internal controls. This is because all activity and related risk and controls influence the financial, viability and resilience positions. Then they can assess the controls relating to financial accounting.
- Reporting on any deficiencies found and remedial actions taken should be expanded to include all internal controls.

When we say 'all' the company's internal controls, these should be determined proportionately in the sense that the relevant benchmark system and the principles and guidance should provide materiality assessment guidance.

Regarding external audit and assurance, our preferred option is Option C. However, we do not think this should be mandatory and, as suggested in Table 2, the initial preferred option, it should be left to Audit Committees and shareholders and, if required, be included in the Audit and Assurance Policy.

Option A only makes sense if we can believe directors have sufficient skills and aptitude in risk management and internal controls. We cannot.

We regard Option B as an undesirable "half-way house." Once auditors are going to say anything publicly about their view on controls, they will consider it necessary to do an extensive amount of reviewing of the controls. Hence we prefer moving to the logical end-point, which is Option C.

Option C has the added advantage that the auditor, as part of the work needed to express a formal opinion on the directors' assessment of the effectiveness of the internal control systems, will simultaneously obtain assurance for their own audit purposes of the quality of controls on which they will be basing their audit work.

That will help the auditor with improved challenge and judgement, as mentioned in Section 7: "Professional scepticism and the ability to exercise constructive challenge are both key in delivering quality audits".

Q 14. If the framework were to be strengthened, which types of company should be within scope of the new requirements?

All PIEs.

Chapter 2 comments

Considering the history of English company law, we understand 'capital maintenance' to be short-hand for maintaining original levels of equity capital by ensuring it is not eroded by unlawful distributions in contravention of Companies Act 2006 s830 and subsequent sections. A balance sheet is composed of risky assets and risky liabilities, hence net assets, i.e. capital, is always at risk, and therefore cannot be maintained consistently at any level. One of the main purposes of capital is to protect creditors by absorbing losses up to the limited liability of that capital.

For similar reasons we understand 'balance sheet resilience' to be a measure of potential losses that may be absorbed. Perhaps some creditors (e.g. subordinated debt holders) prefer less resilient balance sheets given the prospect of higher returns.

We understand that the underlying concern is when dividends are paid not out of earnings, but from proceeds such as from the issuance of new debt, i.e. the concern is about inappropriate or concealed use of liabilities to fund dividends or other distributions. Some of the recent accounting scandals have arisen where companies appear to have concealed from investors and other users of financial statements the full extent or true nature of the erosion of capital due to the debt overhangs held by them (Carillion and Greensill come to mind), or giving assets incorrect holding values, or not properly reflecting liabilities (some banks in the financial crisis come to mind).

Q 15. Should the regulator have stronger responsibilities for defining what should be treated as realised profits and losses for the purposes of section 853 of the Companies Act 2006? Would you support either of the two options identified? Are there other options which should be considered? What should ARGA consider when determining what should be treated as realised profits and losses?

The terms realised and unrealised profits and losses are not as helpful in assessing what is distributable as an assessment of the riskiness and/or estimation uncertainty of any relevant assets. We think there should be a way of distinguishing risky assets from less risky assets such as short-dated government bonds and non-risky assets such as cash, and quantifying the risks, including estimation uncertainties of the assets (and liabilities). For example, asset valuations using the level 3 (difficult to value assets) method ('mark to model') are generally subjective and subject to estimation bias, hence more capital should be held to absorb losses arising from possible valuation error or model risk.

However, in the absence of suggesting another option, we would support option 1.

Q 16. Would the proposed new distributable profit reporting requirements provide useful information for investors and other users of accounts? Would the cost of preparing these disclosures be proportionate to the benefits? Should these requirements be limited to listed and AIM companies or extended to all PIEs?

The two options presume that the current definition of 'distributable reserves' (i.e. accumulated, realised and unutilised profits less accumulated realised losses), is an appropriate way to capture the resilience of capital. Again, capital does not have to be resilient, but if it is not, investors (creditors and shareholders) should fully understand, through appropriate disclosure requirements, when it is not. As a result we generally support the reporting requirements and their preparation costs, which should apply to all companies.

Q 17. Would an explicit directors' statement about the legality of dividends and their effect on the future solvency of a company be effective in both ensuring that directors comply with their duties and in building external confidence in compliance with the dividend rules? Should these requirements be limited to listed and AIM companies or extended to all PIEs?

Again, users' questions will revolve around whether distributions have taken account of increasing leverage (or the risks and estimation uncertainties in valuations or models) . Appropriate disclosure should be a legal requirement - see our answer to Question 16. Any disclosure requirements should apply to all PIEs.

Q 18. Do you agree that the combination of recently introduced Companies Act section 172(1) reporting requirements along with encouragement from the investment community and ARGA will be enough to ensure that companies are sufficiently transparent about their distribution and capital allocation policies? Should a new reporting requirement be considered?

See our reply to Question 17. Any new reporting requirement should be about the degree of leverage (or the possible estimation uncertainties in valuations and models) to which creditors and shareholders are exposed.

Q 19. Do you agree that the above matters should be included by all companies in the Resilience Statement? If so, should they be addressed in the short or medium term sections of the Statement, or both? Should any other matters be addressed by all companies in the short and medium term sections of the Resilience Statement?

Yes, the above matters, being:

- threats to liquidity, solvency and business continuity in response to a major disruptive event,
- supply chain resilience and any other areas of significant business dependency,
- digital security risks,
- the business investment needs of the company to remain productive and viable,
- the sustainability of the company's dividend and wider distribution policy, and
- climate change risk.

They should be included in all companies' resilience statements.

They should be addressed in the short-term section as their probabilities of impacts or crystallising will be more ascertainable in the short term of one to two years. As all futures are uncertain and unpredictable, such detailed matters are not appropriate for the medium (three to five years) and long term (over five years) sections.

Another matter that should be included in the short term ("going concern") section is the existence, security and realisability of cash held at the balance sheet date and the certainty or not of cash flow forecasts for the subsequent short term (two year) period.

Q 20. Should the Resilience Statement be a vehicle for TCFD reporting in whole or part?

No. We believe TCFD reporting should be kept separate from a company's annual report and audited financial statements as sustainability reporting and standards are at a fledgling stage and good practice needs to be determined still. This belief is held to avoid annual reports becoming longer and more obfuscating, especially if TCFD reporting falls into the trap of becoming "compliancy", tick box or boiler plate rather than meaningful. However, any relevant material climate change risks should be addressed in the short term section as mentioned above in our answer to Question 19.

Q 21. Do you agree with the proposed company coverage for the Resilience Statement, and the proposal to delay the introduction of the Statement in respect of non-premium listed PIEs for two years? Should recently-listed companies be out of scope?

Yes, we agree with the proposed company coverage and the delay for non-premium listed PIEs for two years. For the reasons mentioned in our reply to Question 10 above, recently listed companies should be in scope, not out of scope.

Q 22. Do you agree with the proposed minimum content for the Audit and Assurance Policy? Should any other matters be addressed in the Policy by all companies in scope?

Yes, we agree with the proposed minimum content of:

- an explanation of what independent assurance, if any, the company intends to obtain in the next three years in relation to the annual report and other company disclosures beyond required by statutory audit,
- a description of the company's internal auditing and assurance processes,
- a description of what policies the company may have in relation to the tendering of external audit services, and
- an explanation of whether, and if so how, shareholder and employee views have been considered in the formulation of the Audit and Assurance Policy.

The other matters that should also be addressed are:

- an overview or summary of the company's audit and assurance policy, including its purpose, objectives and structures and processes. This should also refer to the statutory audit, including a clear explanation of materiality and how it is used, as it should not be assumed that key stakeholders will understand this,
- who is responsible for what, and
- any other key policy matters suggested by key stakeholders and agreed to by the Audit Committee or owner of the policy.

The other matters suggested above are mentioned for the avoidance of doubt and in case they are forgotten because of an assumption that they are well known and do not need a mention. In a similar context, we believe that any matters other than the minimum content should be decided by the Audit Committee or whoever owns the policy with input from the board, audit committee, shareholders and employees.

Q 23. Should the Audit and Assurance Policy be published annually and subject to an annual advisory shareholder vote, or should it be published and voted on at least once every three years?

The Audit and Assurance Policy should be published and voted on at least once every three years or when any significant changes are made to the policy within the three year period. For simple check and balance processes (rather than key responsibilities of companies and directors to shareholders and other key stakeholders), significant changes should not in normal or usual circumstances occur annually.

Audit and assurance will be more important than remuneration for shareholders to engage on. The policy and it being voted on will be a catalyst for improved shareholder engagement on company reporting and auditing. A three year cycle should not prevent more regular shareholder engagement, especially where shareholders have reporting concerns in the interim. It will be for companies and audit committees to proactively seek these out.

Q 24. Do you agree with the proposed scope of coverage and method for implementing the Audit and Assurance Policy?

Yes, we agree with the scope. We have comments below on the method.

We suggest that a lot of unlisted PIEs will have shareholders (or equivalent) and it will be important that listed and unlisted PIEs with shareholders are not treated differently. Therefore such unlisted PIEs should also have requirements for a shareholders' vote and a minimum content statement of how shareholder views have been considered.

We cannot see why other listed and unlisted PIEs should have a further two years to prepare and publish their Audit and Assurance Policy. The entry into force of the reporting requirement is uncertain and it would be reasonable to assume the earliest would be for years ending 31st December 2022, which would mean years ending 31st December 2024 for other listed and unlisted PIEs. On the basis that companies will already be thinking about this and putting in place policies as good practice, we therefore suggest that a further one year will be more acceptable.

Q 25. In order to improve reporting on supplier payments, should larger companies be required to summarise their record on supplier payments over the previous 12 months as part of their annual Strategic Report (applying at a group level in the case of parent companies)? If so, what should the reporting summary include at a minimum? Do you have alternative suggestions on how to improve supplier payments reporting?

Late payment of suppliers is an important issue and one which needs to be addressed. However, we are doubtful whether requiring companies to report on their supplier payment record over the previous twelve months is likely to be helpful. This is because:

- there may be a variety of different terms agreed for different suppliers, particularly those for large and/or complex supply contracts for which there may be bespoke terms,
- in some cases payment delays may result from invoice queries or disputes,
- in most cases we suspect that there will be insufficient information provided for shareholders to be able to hold management to account and force management to change its practices if needed.

We believe that it would be better if the auditor were to comment in the audit report, perhaps as part of the 'graduated audit findings'. Having said what we have said in the previous paragraph above, this may require summary disclosures of supplier payment practices in relevant notes to the financial statements such as those relating to profit or loss account costs and/or trade creditors. This would then need to be audited and any resultant graduated audit findings reported would provide shareholders with a more concise and readily understandable assessment of whether there was reason to be concerned about the company's payment practices. Armed with this information they would be in a strong position to challenge the company's management more effectively.

Q 26. To which companies should improvements in supplier payments reporting apply: companies which are PIEs and already report under the Payment Practices Reporting Duty, or PIEs with more than 500 employees?

As suggested above in the response to Question 25, a comment on payment practices should be contained in the auditor's report and in this respect it should apply to PIEs with more than 500 employees.

Q 27. Do you agree with the Government's proposal not to introduce a new statutory requirement at this time for directors to publish an annual public interest statement?

Yes. For the time being this is adequately covered by Section 172 requirements.

Q 28. Do you have any comments on the Government's proposals for strengthening the regulator's corporate reporting review function set out in this chapter?

We believe that the proposals that are being made are entirely appropriate. The FRC has already started a major review of corporate reporting (A Matter of Principles - the future of corporate reporting). We very much welcome this. However, improving the clarity, brevity, comprehensibility and usefulness of corporate reporting is going to be a long and difficult exercise. Guidance can be given on good practice but it is going to be much more difficult to eradicate the boilerplate, jargon, hype and obfuscation that currently pervades much corporate reporting. If much is to change, the FRC/ARGA will need stronger powers than just the ability to issue guidance. We suggest that the new regulator's principle relating to promoting brevity, comprehensibility and usefulness in corporate reporting is linked to its new power to direct changes to the entire annual report.

While a significant number of companies work with the Plain English Campaign on their consumer-related communications, it seems that very few seek any input from the Plain English Campaign on the drafting of their narrative reporting to shareholders. It appears to us that accountants and auditors involved in annual reports and financial statements are not doing a quality job if any content of those annual reports and financial statements are not fully understandable to users.

Companies should be encouraged to ensure that their narrative reporting meets basic Plain English standards. The FRC should be given the powers and sanctions to make this happen.

Q 29. Are there any other arrangements the Government should consider to ensure that overlapping powers are managed effectively?

We have no comments on other possible arrangements that might be put in place right now to ensure that overlapping powers are managed effectively. However, we strongly recommend that this issue is kept under close review over the next three to five years and that appropriate mechanisms are in place for prompt action to be taken if problems arise with the overlap and coherence of existing powers.

Q 30. Are there any additional duties that you think should be in scope of the regulator's enforcement powers?

The powers outlined appear to relate essentially to the financial statements. However, the Brydon review and this consultation document recommend that the scope of the audit should go beyond simply verifying the financial statements and should cover wider information contained in the annual report.

This being the case, we believe that the regulator should have the power to take action against directors who make misleading or overly-optimistic statements in the narrative sections of a company's reports. The report by the BEIS and Work and Pensions Committee (May 2018) into the collapse of Carillion commenting on the role of the Chairman, Philip Green, in Carillion's demise noted:

"Mr Green appears to have interpreted his role as Chairman as that of cheerleader-in-chief. His statement in the 2016 Annual Report and Accounts, signed on 1 March 2017, just four months before the profit warning, concluded:

'Given the size and quality of our order book and pipeline of contract opportunities, our customer-focused culture and integrated business model, we have a good platform from which to develop the business in 2017'.

Even more remarkably, on Wednesday 5 July 2017, a few days before the Monday 10 July profit warning, Carillion board minutes recorded:

'In conclusion, the Chairman noted that work continued toward a positive and upbeat announcement for Monday, focusing on the strength of the business as a compelling and attractive proposition […]'."

It is important that the regulator has the power to act against directors who make or approve actual or potentially misleading statements in the narrative sections of any company report or in any update on the company's performance, prospects, viability as a going concern or longer-term sustainability.

Q 31. Are there any existing or proposed directors' duties relating to corporate reporting and audit that you think should be specifically included or excluded from further elaboration for the purposes of the directors' enforcement regime?

No, there are none that we can identify.

Q 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?

Yes. The contract that a director has with the company that employs him or her, like an insurance contract, includes the concept of 'utmost good faith'. It should not be possible for a director to:

- act dishonestly by, for example, seeking in any way to deceive the auditor,
- make any sort of false or dishonest public statement about the company, or
- knowingly do or say anything that would bring the company into disrepute or damage its reputation and
- be able to do so without any fear of sanction or retribution.

A good example of the last bullet point would be the recent case at Rio Tinto which deliberately destroyed the Juukan Gorge caves in Australia despite clear advice that the site was highly sensitive and of great historic significance. The Company and its directors were ultimately held to account for this but only after the damage had been done.

With regard to setting specific standards, we believe that the regulator should define and agree these with stakeholders.

Q 33. Should the Government's proposed enforcement powers be made available to the regulator in respect of breaches of directors' duties?

Yes, we believe that this would be appropriate.

Q 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?

We support the proposed minimum list of malus and clawback provisions. We are unable to comment on legal and other considerations for enforcing the minimum provisions.

We would add a further condition to the minimum list and that is unreasonable failure to protect the interests of shareholders. It seems to us that directors, especially in companies in difficulties, forget about protecting the potential residual value of companies for shareholders and, as a result, do not precipitate any insolvency or administration or similar closing down in a managed way. There will also be situations where companies and their directors can see that any viability of or resilience in their business model is finite and without remedy. In this situation they should prioritise the protection of residual value for key stakeholders including shareholders.

Q 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?

Yes, so long as the wider information to be considered, amplified by detailed standards, properly reflects the newly proposed definition of the purpose of audit - To help establish and maintain deserved confidence in a company, in its directors and in the information for which they have responsibility to report, including the financial statements. It should also reflect the relevant requirements of consumers of corporate reporting (including statutory audits), namely shareholders, as reflected in Audit and Assurance Policies.

Q 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?

Yes. We would expect this to work as a result of the regulator (and any other body responsible for the new audit profession) pursuing the new purpose with the help of input from consumers of audits, (in the user rather than producer led approach envisaged by Kingman and Brydon). Together they could develop and implement an operating plan or model of what this would mean in practice.

Q 37. Do you agree with the Government's approach of defining the wider auditing services which are subject to some oversight by the regulator via the Audit and Assurance Policy?

Yes, generally we agree with the Government's approach. This is because, if we understand the approach correctly, the definition of wider auditing services will be driven by what is declared in Audit and Assurance Policies ("AAPs") and, as a result, will be led by shareholders, as consumers of corporate audits, who input into those AAPs.

In our view it is wrong to differentiate between PIEs and smaller companies in respect of the purpose of audit, as they will benefit from any impacts on cost of capital or from improved confidence in the information being assured. Smaller companies tend to become the PIEs of the future through creative destruction or destructive creation and innovation.

Q 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?

Yes.

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

The role should be the same as regulating statutory auditing, bearing in mind that wider auditing services standards may have to be developed.

We cannot see any need to extend the role beyond setting, supervising and enforcing wider auditing standards.

Q 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?

Yes and yes.

Q 41. Do you agree that new principles for all corporate auditors should be set by the regulator and that other applicable standards or requirements should be subject to those principles? What alternatives, mitigations or downsides should the Government consider?

Yes. Prioritising principles over rules, or substance over form, or the spirit over the letter, is always preferable in a good regulatory regime based on our experience. In a way it is what differentiates UK regimes compared with those of the USA and the EU, which tend to prefer rules or codified legal requirements. It also allows for judgements to be made based on what is right or wrong, and reduces the risk of using the excuse of following the rules as an acceptable defence where the outcomes have been more wrong than right.

Alternatives and mitigations should not be needed. We cannot envisage any serious downsides as we accepted the Brydon review conclusion that its recommendations should be seen as a holistic package.

Q 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.

Yes, as the reforms should:

- Make it clearer that directors are responsible for preventing fraud, usually through implementing adequate financial controls, and detecting it,
- Make it clearer what auditors are responsible for in respect of fraud, mainly identifying any that will cause a material misstatement in a company's financial statements,
- Provide appropriate standards, guidance, training and other relevant support to directors and auditors in preventing and detecting fraud,
- Clarify or simplify the complexities, which arise mainly out of the misunderstandings of or the propensities to, misinterpret the requirements of the regime, and
- As a result, reduce the expectations gap noted in the Brydon review.

Chapter 6 comments

In the consultation paragraphs 6.5.7 to 6.5.12 discuss auditors reporting new information materially useful to users. We note the usual tendency to avoid disclosing so called commercially sensitive information and potentially to allow it to be delayed in being reported or even suppressed. In our view, it is unlikely that an auditor's disclosure of 'new' information that is materially useful to users would ever actually be inside information. If it is determined to be inside information, it is unlikely to warrant delayed reporting or non-reporting in the public interest. Therefore, in such cases it should be required to disclose this information immediately; and we support the FRC deciding to take the Brydon proposal forward and resolving with the FCA the complex interaction of the proposal and the current law on market abuse.

Q 43. Will the proposed duty to consider wider information be sufficient to encourage the more detailed consideration of i) risks and ii) director conduct, as set out in the section 172 statement? Please explain your answer.

Further to and in the context of our response to Question 35, the proposed duty to consider wider information should be sufficient to encourage a more detailed consideration of section 172 statement risks and director conduct. We believe this because the proposed duty recognises that wider information will be available to an auditor (beyond the company and its financial statements being audited), including their experience of director conduct during their audits, and is framed in exactly this way.

In respect of this question and Question 35, we note that the proposed Audit Principles suggested by the Brydon review do not contain a principle:

- for considering wider information, or
- for having a more holistic approach to audits, or
- for standing back and considering how the evidence obtained supports an audit opinion, or
- for considering not just confirmatory information but also contradictory information;

and therefore suggest that any development of proposed Audit Principles considers a principle(s)in this respect.

Q 44. Do you agree that auditors' judgements regarding the appropriateness of any departure from the financial reporting framework proposed by the directors should be informed by the proposed Principles of Corporate Auditing? What impact might this have on how both directors and auditors assess whether financial statements give a true and fair view?

Yes, we agree. We are supportive of the "true and fair override" as we believe there will always be some situations when following the financial reporting framework that will give the wrong answer and where there will be a need for this valuable safety valve as described in the Brydon review.

We cannot predict what impact this will have on directors' and auditors' assessments of financial statements giving a true and fair view. However, we do hope that those directors and auditors who do will stop arguing that following the financial reporting framework will automatically result in financial statements giving a true and fair view, and instead recognise, as you point out in your consultation, that IFRS and FRC guidance indicates that there will be a minority of cases where complying with the requirements of the accounting standards may not be consistent with giving a true and fair view.

Q 45. Do you agree that the need for specific assurance on APMs or KPIs, beyond the scope of the statutory audit, should be decided by companies and shareholders through the Audit and Assurance Policy process?

Yes.

Q 46. Why have companies generally not agreed LLAs with their statutory auditor? Have directors been concerned about being judged to be in breach of their duties by recommending an LLA? Or have other factors been more significant considerations for directors?

We have no answers to your questions on why companies generally have not agreed LLAs with their statutory auditors and on directors being concerned about being judged to be in breach of their duties by recommending LLAs. CRUF participants, who have been or are shareholders, have no recollections of even actually being asked about LLAs.

However, we can imagine that companies and their directors and management have been influenced by self preservation in not agreeing LLAs with their statutory auditors. We are aware that companies and directors sometimes rely on their statutory auditors to keep them safe in the realm of corporate reporting and financial statements and therefore would also feel that if they agreed to a LLA their auditors would not be incentivised to keep them safe to the maximum level possible. If we are right that this is a significant consideration in deciding whether to agree an LLA with a statutory auditor, this will need to be addressed so that directors have to rely on themselves individually and collectively when financially reporting and not on statutory auditors. If they have so relied on auditors to keep them safe and auditors have colluded with this reliance, then it could be argued that auditors will have been conflicted and not independent or objective in their audits and responsibilities for them to shareholders.

We hope that such situations will be resolved by the overall reforms and especially through the engagement and dialogue between shareholders, audit committees and auditors, principally in respect of Audit and Assurance Policies.

Q 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?

Again, we have no answers to these questions. We cannot envisage any situations where CRUF participants, or those in the shoes of shareholders, would sue auditors under their legal liability obligation in company law for any audit innovation, more informative reporting or other steps taken to restore trust in audit as set out in this consultation that are in our interests.

We agree that auditors' legal liability should not be extended beyond that owed to shareholders as a body. The real shareholders or beneficial owners of companies have been intermediated enough from ownership of their companies and do not need auditors to have their legal liability extended to anyone else. This includes directors (see our answer to Question 46) who supposedly are agents representing shareholders as a body (except in respect of their shareholdings as part of this body), and other third parties.

We support the process around shareholders agreeing with companies on their Audit and Assurance Policies, including using this to mitigate any auditors' concerns that may constrain audit innovation, etc. However, we do not agree with the Government that company directors should be the ones who agree liability arrangements with auditors as this should be by the actual employers of auditors in law, the shareholders as a body (again see our answer to Question 46).

Q 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.

Yes, we agree that a new, distinct professional body for corporate auditors, such as a Chartered Institute of Corporate Auditors, would help drive better audit. We agree with reasons set out in the Brydon review and your consultation document. We would add that we could see a separation between professional accountants and professional auditors resulting in a natural tension between the two, which would improve the development and quality of financial reporting and audit.

Q 49. What would be the best way of establishing a new professional body for corporate auditors that helps deliver the Government's objectives for audit? What transitional arrangements would be needed for the new professional body to be successful?

As indicated in our answer to Question 48, we believe a new, distinct professional body for corporate auditors should be established and the best way to establish it and its public interest would be to grant it a royal charter.

The transitional arrangements should be left to the regulator, FRC and then ARGA depending on timing, in consultation with relevant interested parties. These parties include shareholders, the Institutes of Chartered Accountants, providers of statutory audits and those who provide wider assurance services and therefore could become corporate auditors.

Q 50. Should corporate auditors be required to be members of, and to obtain qualifications from, professional bodies that are focused only on auditing?

Yes.

Q 51. Do you agree that a new audit professional body should cover all corporate auditors, not just PIE auditors?

Yes.

Q 52. Do you agree that ARGA should be given the power to set additional requirements which will apply in relation to FTSE 350 audit committees?

Yes, we agree. We would also like to see the application of these additional requirements extended beyond FTSE 350 audit committees to the wider community of PIEs.

Q 53. Would the proposed powers for ARGA go far enough to ensure effective compliance with these requirements? Is there anything further the Government would need to consider in taking forward this proposal?

It seems to us that the proposed powers should be sufficient, especially if they are subject to the subsequent post implementation review after five years mentioned in the consultation's paragraph 1.1.7.

The extent of ARGA's powers, however broad and deep, will always be limited by the quality of the individuals appointed to a company's audit committee and their willingness to listen, learn, apply, and engage in proactive, sound challenge as well as reasoned, objective defence with shareholders and auditors. An emphasis on audit committee training, equivalent to the scope potentially applying to auditors, should be seriously considered. Having financial acumen, often the key requirement as represented by having a professional accounting qualification, is insufficient given the complex interplay between risk, control, cost, benefits and performance.

Also, in our view, the proposals will not discourage high quality individuals from seeking appointment to audit committees. They hopefully will discourage those seeking an easy life on audit committees.

Q 54. Do you agree with Sir John Kingman's proposal to give the regulator the power to appoint auditors in specific, limited circumstances (i.e. when quality issues have been identified around the company's audit; when a company has parted with its auditor outside the normal rotation cycle; and when there has been a meaningful shareholder vote against an auditor appointment)?

Yes.

Q 55. To work in practice, ARGA's power to appoint an auditor may need to be accompanied by a further power to require an auditor to take on an audit. What do you think the impact of this would be?

The threat alone may act as an incentive for companies to improve their act and approach to finding an auditor. The issues are more about why an auditor needs to be forced upon a company or why no auditor wants to take on the appointment. It suggests something more serious is going on and that specialist skills are needed beyond those required for a statutory audit – something between appointing an auditor and appointing an administrator.

Whether or not this works in practice depends on how prevalent the issues are and the number of companies needing an auditor to be appointed by ARGA. On the basis that recent experience suggests the need is small (examples such as Laura Ashley and Sports Direct only come to mind), requiring auditors to take on an audit should work in practice. If the need is large, as may be suggested by recent experience of auditors resigning from high risk audits or refusing to be considered for appointment, we doubt this would work in practice with such limited choice at the moment between the Big4 or even Big6. The power would have to be developed hand-in-hand with increasing the number of capable challenger firms.

Q 56. What processes should be put in place to ensure that ARGA can continue to undertake its normal regulatory oversight of an audit firm, when ARGA has appointed the auditor?

The issue of managing the conflict of interest between ARGA monitoring the appointed audit firm and ARGA as the appointer of this audit firm should be addressed by the appointment being ratified by the company's shareholders, as envisaged in Sir John Kingman's letter. We have no other comments on the process.

Q 57. What other regulatory tools might be useful when a company has failed to find an auditor or in the circumstances described by Sir John Kingman (i.e. when quality issues have been identified around the company's audit; when a company has parted with its auditor outside the normal rotation cycle; and when there has been a meaningful shareholder vote against an auditor appointment)?

See our response to Question 55.

Q 58. Do you agree with the proposals and implementation method for giving shareholders a formal opportunity to engage with risk and audit planning? Are there further practical issues connected with the implementation of these proposals which should be considered?

Yes.

We would expect all retail shareholders, including nominee account shareholders, to be in scope. We are concerned that Brydon's suggestion of relating this to "size of shareholdings" (in 7.3.6, 4th bullet) will disenfranchise any smaller shareholders, who want to engage.

Q 59. Do you agree with the proposed approach for ensuring greater audit committee chair and auditor participation at the AGM? How could this be improved?

Yes, but with some modifications.

We would like to see Brydon's recommendation on having a standing item on the AGM agenda for questions to the audit committee chair and the auditor. The reasons are various and stated throughout the consultation: to discuss the state of internal controls, the audit and assurance policy and process, the ability for shareholders to suggest topics for audit, and the appropriateness of the relationship between the auditor and the company as summarised in the bulleted list in 7.3.14. A standing item brings together the individual parts into a cohesive whole.

Whilst the Companies Act 2006 does appear to address the concerns, it is at such a high level that it is difficult to apply in practice. Something much more substantial is needed. See also our answer to Question 60.

Q 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?

We believe the provisions are inadequate.

Yes, we believe the Brydon recommendations, in the main, will address these issues so long as our concerns in Question 58 are addressed.

The real issue is not whether the Companies Act provisions are adequate but why they are not used. Lack of use is, in itself, proof that the provisions are inadequate.

This is all part of the bigger picture of shareholder disengagement, partly structural, partly procedural, in the audit process. Because the audit committee chair and the auditor are not apparent at AGMs, it has become a de facto expectation to not scrutinise the audit.

Two parts of the Act concern us. The first is that all discretion rests with the auditor to raise issues: "The statement must include details of any matters which the auditor considers need to be brought to the attention of the shareholders or creditors of the company in connection with them ceasing to hold office". We believe that the proper and informative use of this discretion may be prevented by auditors trying to avoid litigation. If this is the case, they should be provided with a safe harbour against litigation from any such reporting of matters connected with them ceasing to hold office.

The second relates to shareholders. If shareholders have concerns, they can call for a general meeting but only if those raising concerns hold at least 5% of the shareholding. This disenfranchises retail shareholders, and those holding nominee accounts who do not have their name on the company register. However, this concern may be mitigated by audit committees and auditors seeking all shareholder concerns in the planning stages of audits and reporting on these in due course.

Q 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?

We are not convinced that "managed shared audit" will be successfully implemented and, as a result, a cap on market share will eventually have to be introduced if the outcomes looked for are audit choice and market resilience. We believe that the provision of audit services is competitive and no remedies need be introduced in respect of this. We are sceptical of the majority views that challenger firms do not have the capacities or expertise to carry out audits of larger or more complex entities. In the context of our concerns around auditors' conflicts of interests in keeping directors safe on corporate reporting as part of their audit services, this would explain why the Big4 are dominant. If appointment of auditors was solely up to shareholders or the regulator with ratification by shareholders, the Big4 dominance may dissipate. However, increasing choice and resilience will not necessarily result in the outcomes looked for from these reforms, namely quality corporate information and quality audits.

There are very good reasons why it has become increasingly common, almost standard, for the appointment of a single network to audit all, or almost all, of a PIE group, not least because the auditors of the top company and the rest of the group need to be authorised to carry out audits in all locations and for the lead audit partner to rely on the component audits. Why would shareholders want a more complex arrangement like joint or shared audits?

Recent experience suggests that challenger firms are already being appointed to FTSE 350 audits, so why would they want to participate in shared audits, especially if they feel they have the capacities and expertise to do the audits?

Consequently, the Government needs to accept that managed shared audits are not a viable remedy.

As a result of our scepticism on the proposed remedy, we have no answers to this question.

Q 62. How could managed shared audit be designed to incentivise Challenger firms to invest in building their capability and capacity? What, if any, other measures, would be needed?

See our answer to Question 61. It follows that we have no answer for this question.

Q 63. Do you have comments on the possible introduction in future of a managed market share cap, including on the outlined approach and principles? Are there other mechanisms that you think should be considered for introduction at a future date?

With reference to our comments for Question 61, we believe introducing a remedy to increase choice and resilience in the audit market is not needed as this will not lead to any significant increase in audit or corporate reporting quality. From a principal user of audits', shareholders', point of view, joint and shared audits introduce too many complexities. This eventually leads to the conclusion that a market share cap that limits the market share of any firm to a particular number of FTSE 350 audits would make some difference. A sensible limit to start with would be 20% of FTSE 350 audits, i.e. 70 audits per firm.

Another mechanism could be Sir John Kingman's proposal of an independent regulator, like ARGA, appointing the auditors of all PIEs. This could be ratified by the shareholders of the companies those auditors would be responsible and accountable to.

Q 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?

Broadly, we think these proposals are satisfactory.

We agree with the point in paragraph 8.2.1 of the consultation document that says "there is a 'one firm' culture in multidisciplinary firms, diluting the culture of objectivity and challenge required by auditors", and that this needs to change. The operational separation proposals should be designed to ensure that auditors' first duty is to shareholders in respect of the quality of the audit.

Q 65. The Government proposes to require that all audit firms provide annual reports on their partner remuneration to the regulator. This will include pay, split of profits, and which audited entities they worked on. Do you have any comments on this approach?

The report to the regulator should include the fees and hours charged by the audit partner to each client and the firms' audit fee and any other non-audit fees the firms have charged to each audit client. This degree of detail is needed to evaluate what work has been done. Without this detail, the summary data mentioned in this question may be of limited use. The extra data, we have proposed, would have helped to highlight the concerns about Carillion for example.

The proposals for independent Audit Boards within firms appear a good idea to us.

These Audit Boards will be responsible for remuneration and reward systems through the Audit part of the firm. They will set out performance targets and ensure that the right competencies and behaviours are rewarded - and hence encouraged and incentivised. Paragraph 8.2.11 refers to this, but does not explain the detail. It is difficult for us to comment further without a worked example, but the concept is, we believe, possible in theory.

The publication of separate financial profit and loss statements for the audit practices (paragraph 8.2.10) is welcomed. This will highlight the relative profitability of the different parts of firms, cross subsidies if they exist and the need for separate Audit Boards.

Q 66. In the event that the Government wishes to go further than the existing operational split proposals in future and implement split profit pools in line with the CMA recommendation, do you have any comments on how these can be made to work effectively?

It is difficult for us to comment on the impact of split profit pools, without a detailed knowledge of the size and scope of central costs and how these might be charged to the Audit and non-Audit parts of the firm.

Allocation of central costs to different parts of the multi-disciplinary firm is a complex task and can be done in many ways. At present, Audit is about 25-30% of most of the Big4's total revenue. One could argue that it needs much investment so should bear only a small part of the central costs. Alternatively, one could argue that the future growth of the business is from fast growth non-Audit areas and investment should be focussed there and these parts of the business should not be saddled with large central costs.

The simplest approach is to mandate that central costs be charged pro-rata to revenues. This would ensure consistency and aid comparability between Big4 Audit firms' profits.

We note that Audit tends to have proportionately more staff than non-Audit and that they have lower average remuneration. This may reflect that their staff are more junior and have less experience and competence than staff in other areas. If true, this needs to be addressed to ensure audit teams have high quality auditors to conduct high quality audits.

Q 67. The Government believes these proposals will meet its objectives. In the event that they prove insufficient to improve audit quality, and full separation of professional services firms is required, do you have any comments on how to make this work most effectively?

In our previous submissions to Brydon and CMA, we highlighted the attractions of Audit being mandated to be a separate firm (for the Big4 in the UK). The FRC/ARGA cannot have powers over firms based overseas, so any separation plan needs to recognise this. It may take some time for other countries to follow the leadership of the UK, if and when we choose to go down this route.

The Government, and all parties, will need patience to make this work effectively and all will need to work constructively together to achieve the common objectives.

Q 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?

The fundamental problem with auditing as a profession is that it is dangerous. Management often wishes to paint a particular picture of the company's results, and in practice shareholders and the directors they appoint almost always follow management's wishes when it comes to changes of auditor. Accordingly, the auditor is always in danger of being presented with deceptive accounts to audit, with enormous liability risks and reputational costs in the event of audit failure.

It would help if corporate failures were not automatically nearly always also called audit failures. Making all directors accountable for financial and governance reporting and making them no longer reliant on external auditors for this will go some way to addressing the issue. It may help if the same directors were made responsible for unreasonable corporate failures and auditors given a safe harbour unless negligent or wilfully fraudulent.

While the law allows companies to agree a liability cap with their auditors, this has been little used (see our comments to Question 46).

If the Government is seriously concerned about avoiding the failure of a Big4 audit firm, it should introduce a statutory liability cap for auditors in the UK, and work with its international trading partners for the introduction of similar caps in other jurisdictions which have significant capital markets.

Q 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?

Yes.

We would also point out that we hope the Government and the regulator have recognised that the Recognised Supervisory Body ("RSB") for the appointment of non PIE auditors should be the new professional body for corporate auditors as described in section 6.9 of the consultation (when it has been set up and is fully functioning).

Chapter 9 comments

We believe that more work needs to be done in developing the definition of audit quality, i.e. what does a "quality audit" mean, and indicators of audit quality ("AQIs"), especially at an individual engagement level. This should be led by the regulator but also driven by the key stakeholders in or users of statutory auditors, namely company shareholders.

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

We cannot envisage any types of sensitive information being in AQR reports and therefore any need to provide exemptions from disclosure. AQRs by their nature are of historic audit file information and therefore removed from any granular and potentially sensitive information of the company or group being audited. Even the auditors being reviewed will be accessing and recording mainly historic information. By the time AQR reports are published, any information, even if it was sensitive, will have lost its sensitivity. If it has not, it would raise all sorts of questions on why it had not been published sooner under the requirements of MAR relating to inside information.

One CRUF participant is a former member of the FRC's Audit Quality Review Committee and we understand from them that in their four years from 2017 to 2020 they cannot recollect any AQR reports seen by the committee that had any sensitive information requiring a consideration of exemption from disclosure.

Again, we repeat our view covered in our comments on Chapter 6, that we are sceptical of there ever being any sensitive information for public interest entities. Most if not all cases would require public disclosure under the relevant requirements for any public securities market.

Q 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?

As audits are for shareholders as a body, we see no obvious reasons for redacting sensitive information (see response to Question 70 above), or for providing other safeguards to adequately protect an entity being audited. Auditors should be reporting any non cooperation from the entity being audited to its shareholders.

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

We have no reasons not to agree with the Government's approach and we are not sufficiently knowledgeable to suggest any improvements.

Q 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?

Yes, we agree but, not being lawyers, have difficulty in suggesting solutions or mitigants.

Q 74. Do you agree with the proposed general objective for ARGA?

We agree with the general objective, however we believe that ARGA should hold directors to account, not companies. The company is its members, i.e. shareholders, who rely on the honesty and integrity of directors and auditors to present a true and fair picture of the accounts.

Q 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?

We agree.

We suggest two other principles should be considered:

- promoting quality in statutory audit work, corporate reporting and corporate governance, and
- anticipating emerging corporate governance, reporting or audit benefits.

The latter is so the regulator does not focus on just the negatively inclined risks but also on potential benefits.

Q 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 scope of oversight and supervision should extend to all "qualified" accountants and auditors.

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

Judicial review is the safeguard used by the PRA and FCA, possibly other regulators.

Q 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 do not think that, apart from enforcing compliance with technical standards, any other enforcement framework is necessary.

Q 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?

Yes and yes. Based on our limited knowledge of the current sanctions available to regulators of accountants and auditors, these should be available to the regulator.

Q 80. Is ARGA the most appropriate body to undertake oversight and regulation of the actuarial profession?

We do not have sufficient experience to answer this question. However, we have also not changed our minds that the FRC/ARGA should focus on regulating corporate reporting, auditing and governance and, as a result, cannot see ARGA as the most appropriate body to oversee and regulate the actuarial profession. It will be important that any appropriate body decided on, if separate from ARGA, the PRA and FCA, has a MoU with these regulators to deal with any overlaps on matters related to the actuarial profession.

Q 81. Should the regime for overseeing and regulating the actuarial profession be placed on a strengthened and statutory basis?

Further to our comments under Question 80 above, we cannot answer this question but suggest there is a review of the actuarial profession that determines why and how it should be regulated, similar to the Brydon Review of the audit profession.

Q 82. Do respondents support the proposed principles for the regulation of the actuarial profession? Respondents are invited to suggest additional principles.

See Question 81.

Q 83. Are the proposed statutory roles and responsibilities for the regulator appropriate? Are any additional roles or responsibilities appropriate for the regulator?

See Question 81.

Q 84. Should the regulator continue to be responsible for setting technical standards? Should these standards be legally binding? Should the regulator be responsible for setting technical standards only?

See Question 81.

Q 85. Should the regulator be responsible for monitoring compliance with technical standards? Should it also consider compliance with ethical standards if necessary?

See Question 81.

Q 86. Should the regulator have the power to request that individuals provide their work in response to a formal request – and to compel them to do so if necessary?

See Question 81.

Q 87. Should the regulator have the power to take appropriate action if work falls below the requirements of the technical standards? What powers should be available to the regulator in these instances?

See Question 81.

88. Do respondents agree with the proposed scope for independent oversight of the IFoA? In which ways, if any, should the scope be amended?

See Question 81.

Q 89. Should the regulator's oversight of the IFoA be placed on a statutory basis? What, if any, powers does the regulator require to effectively fulfil this role?

See Question 81.

Q 90. Does the current investigation and discipline regime remain appropriate? Should it be placed on a statutory basis? What, if any, additional powers does the regulator require to fulfil this role?

See Question 81.

Q 91. Do respondents think that the regulator's remit should be extended to actuarial work undertaken by entities? What would be the appropriate features of such a regime, including the appropriate enforcement powers for the regulator?

See Question 81.

Q 92. Should the regulator's independent investigation and discipline regime for matters that affect the public interest also apply to entities that undertake actuarial work? Should the features of the regime differ for Public Interest Entities?

See Question 81.

Q 93. Does the regulator require any further powers in relation to its regulation and oversight of the actuarial profession?

See Question 81.

Q 94. Are there others matters which PIE auditors should have to report to the regulator? Could this duty otherwise be improved to ensure that viability and other serious concerns are disclosed to the regulator in a timely way?

Auditors should be required to report to the regulator on every occasion when they become suspicious that what they are being told by a PIE director or senior member of PIE management cannot be relied upon. They should be required to report at the point where suspicion arises, with a follow up report to confirm whether the suspicion was erroneous or well founded.

Such communications should receive blanket legal privilege, so that the auditor is immune and has a safe harbour from any claim by the company or the individual due to a breach of trust, defamation, or any other cause of action.

This would make PIE directors and management much more aware of their duty to always disclose fully and honestly to auditors.

Q 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?

Yes.

See Question 60 - this should also apply to reporting on matters where an auditor ceases to hold office.

Q 96. How much time should be given to respond to a request for a rapid explanation?

A standard maximum of 30 days is probably appropriate. However the regulator should be able to specify a shorter period if the auditor considers that to be appropriate.

For example, in extreme circumstances a 24 hour notice period would be reasonable if the PIE's management are simply being asked to report to the regulator what they know, or to supply existing documents in their possession, rather than being asked to assemble new information. This is the same period we believe is currently used for financial services firms regulated by the FCA and/or PRA.

Q 97. Should the regulator be able to publish a summary of the expert reviewer's report where it considers it to be in the public interest?

The regulator should have this power. However the PIE should be able to see in advance what is to be published, with a rapid appeal mechanism if the regulator and the PIE cannot agree on the precise wording of what is to be published.

Q 98. Are there any additional powers that you think the regulator should have available where an expert review identifies significant non-compliance by a company in relation to its corporate reporting and audits?

Nothing beyond what is proposed elsewhere in the consultation document comes to mind.

Chapter 11 comments

We do not agree with the consultation conclusion not to follow the Brydon Review recommendation on whistleblowing. In most, if not all, cases of serious problems in companies and audits (and other areas), people will not be incentivised to whistleblow in the public interest. It takes very brave and altruistic people to do so. The Government needs to review whistleblowing, the current problems with whistleblowing regimes and the protection it could bring to public interest with a view to making sure that whistleblowers get the support (e.g. access to specialists in the area concerned), protection (e.g. legal protection) and compensation they need.

About the Corporate Reporting Users' Forum (CRUF)

The CRUF was set up in 2005 by users of financial reports to be an open forum for learning about and responding to the many accounting and regulatory changes that affect corporate reporting and auditing. In particular, participants are keen to have a fuller input into the deliberations of accounting and auditing standard setters and regulators. CRUF participants include buy and sell-side analysts, credit ratings analysts, fund managers, investors and corporate governance and ESG professionals. Participants focus on equity and fixed income markets. The Forum includes individuals with global or regional responsibilities and from around the world, including Australia, Canada, France, Germany, Hong Kong, India, Japan, New Zealand, South Africa, UK and USA.

The CRUF is a discussion forum. Different individuals take leadership in discussions on different topics and in the initial drafting of representations. In our meetings around the world, we seek to explore and understand the differences in opinions of participants. The CRUF does not seek to achieve consensus views, but instead we focus on why reasonable participants can have different positions. Furthermore, it would not be correct to assume that those individuals who do not participate in a given initiative disagree with that initiative. This response is a summary of the range of opinions discussed at the CRUF meetings held globally. Local country differences of opinion are noted where applicable.

Participants take part in CRUF discussions and joint representations as individuals, not as representatives of their employer organisations. Accordingly, we sign this letter in our individual capacity as participants of the Corporate Reporting Users' Forum and not as representatives of our respective organisations. The participants in the Forum that have specifically endorsed this response are listed below.

Signatures

Charles Henderson
UK Shareholders' Association

Jed Wrigley
Investment Advisor

Sue Milton
UK Shareholders' Association

Jane Fuller, FSIP
CFA Society of the UK

Marietta Miemietz
Primavenue Advisory Services

Peter Parry
UK Shareholders' Association

Peter Reilly
The Bailey Network

Greg Collett
Pictet Asset Management

Jeremy Stuber

Chie Mitsui, CMA, Senior researcher
Nomura Research institute

Yosuke Mitsusada