Spotlight on Corruption submission to the consultation on restoring trust in audit and corporate governance

Spotlight on Corruption is an anti-corruption charity that works to end corruption within the UK and wherever the UK has influence. We undertake detailed, evidence-based and impactful research on the implementation and enforcement of the UK's anti-corruption laws, looking for ways in which they can be improved. Our vision is for a society where strong, transparent, and accountable institutions ensure that corruption is not tolerated.

We welcome this consultation and recognise that the government is taking positive steps to reform the audit sector but at the same time we continue to be concerned by the slow pace of the government's agenda, noting that the Kingman review was published in December 2018 and the Brydon review in December 2019. During this time audit firms have continued to lurch from one corporate scandal to the next while facing minimal sanctions imposed on them by an under-resourced and ineffective regulator.

In order to deliver the government's long-anticipated reforms, the new regulator must be fully independent and able to stave off industry capture, but furthermore it must have the powers to tackle the types of predatory and negligent practices that have become embedded into the audit sector in order to promote any overall increase in quality. To be able to do this in a way that meets the public's expectations it is vital the new regulator is emboldened with sufficient resources to undertake speedy investigations into complex cases and conclude investigations within an acceptable time frame while also being given the powers to levy fines that serve as a deterrent for future misconduct.

To restore the public's trust in the sector the reforms must also include the establishment of a strong public accountability framework that breaks the current system of effective self-regulation of the audit firms and replaces it with a new regulatory landscape where the public and societal stakeholders are represented at all levels.

Key Recommendations:

- ARGA's governance arrangements must ensure it is fully independent and include an open and transparent recruitment process to guard against industry capture and have in place strong revolving door and conflict of interest prohibitions.
- Auditors' legal responsibilities and liabilities with regard to fraud detection should be clarified within the new ISA (UK) 240 standard document so that audit firms, auditor partners and the public have a better understanding of the required standards.
- An Independent Fraud Panel should be established within ARGA with sufficient powers and resources to conduct complex investigations into cases of serious audit failure. The Panel

should have at its disposal a range of sanctions including levying of fines that take into consideration the seriousness of the misconduct as well as the size of the audit firm.

- ARGA should introduce changes to the UK Corporate Governance Code to include mandatory malus and clawback conditions in PIE directors' remuneration agreements for causing, and/or failing to prevent conduct within companies that results in, negative material impact on firms' financial performance or reputation.
- ARGA should deliver a full structural separation between audit firms' audit and non-audit functions with prohibitions in place to restrict cross-subsidies or common ownership between firms. A structural separation would prohibit audit firms over a certain size from providing non-audit services in the UK, and would require firms to recruit non-audit related services externally from an independent non-audit practice.

Chapter 1 - Government's approach to reform

1.3 Resetting the scope of regulation

Q1. Should large private companies be included within the definition of a Public Interest Entity (PIE)? Please give your reasons.

Yes. We support the government's proposals to include certain large private companies within the definition of a Public Interest Entity. We recognise that additional corporate reporting and corporate governance requirements will fall on companies and entities emerging from the COVID-19 pandemic. However, these costs are outweighed by the potential increases to the protection of investors and wider public interests. Over the previous decade, the public has been left exposed after the collapse of large non-listed companies (e.g. BHS) due to corporate governance failings which have left pension deficits worth hundreds of millions of pounds and resulted in thousands of job losses. Recognising that the activities of large private companies can have significant negative effects on the public interest and generate financial liabilities and other costs, which are ultimately born by the public in the event of corporate failure, means large private companies and AIM-quoted entities should be required to take steps to ensure high standards of corporate governance. Such measures would also be consistent with the government's broader efforts to promote accountability and higher integrity standards for companies bidding on public contracts.

Q2. What large private companies would you include in the PIE definition: Option 1, Option 2 or another? Please give your reasons.

We support Option 1 as the most appropriate test for the PIE definition insofar as it captures both entities with lower turnovers and companies with significant physical or intangible assets.

Q4. Should the Government give newly listed companies a temporary exemption from some of the new reporting and attestation requirements being considered for Public Interest Entities?

No. The reporting and attestation requirements are required in order to promote the necessary levels of corporate governance for PIEs. Temporary exemptions may leave deep structural company problems unattended and may result in corporate failure. In recent years Greensill Capital collapsed prior to a purported listing while Finablr collapsed very shortly after listing.

Chapter 2 - Directors' accountability for internal controls, dividends and capital maintenance

2.1 Stronger internal company controls

Q12. 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?

We would support new requirements to promote more detailed reporting on companies' internal control frameworks. Requiring directors to provide information in a company's annual report on the effectiveness of the company's internal controls would be a welcome development if it results in increased transparency on company activities, the risks they encounter in the course of their activities, and the systems put in place to mitigate such risks. By disclosing such red flags, shareholders, stakeholders and the wider public would be provided with an effective early warning system enabling regulators to intervene at an early stage to resolve issues, potentially circumventing legal action from compliance failures or even corporate collapse. In the case of companies found to have had weak internal controls in place (i.e. Rolls Royce and Airbus) such reporting would reassure the public that where companies had failed to act appropriately in the past, directors were taking proactive steps to ensure such conduct would not be repeated.

We note that existing legislation[1] requires directors to be able to "disclose with reasonable accuracy, at any time, the financial position of the company at that time" which cannot be achieved without having proper functioning internal control systems in place. While we welcome any improvement to the system through additional control requirements, we would expect that current and future regulations would be enforced properly by an emboldened regulator.

Q13. 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?

With regard to the government's initial preferred position in Table 2: we support the option for requiring directors to undertake an annual review of the effectiveness of company's internal controls including the additional requirement to publish such information, and on any remedial steps taken to correct identified deficiencies.

In this sense, our preference is aligned with Option A which would require statements to go beyond narrow financial reporting and be based on a broad range of risk factors including compliance,

[1] Section 386 Companies Act 2006.

governance, climate and horizon scanning that best capture the range of factors that pose risks for the health of companies and wider stakeholders. However, we firmly support an approach that would result in directors being held to account for reporting false or inaccurate information with regard to a company's internal controls. Any new provision in this area to be an improvement must build on the equivalent provisions in the Companies Act requiring directors to keep proper books of account.

Such a system would replicate some of the responsibilities for directors established in the financial services sector under the Senior Managers Regime whereby directors can be held accountable for firms' breach of regulatory requirements. As experience from the US' Sarbanes-Oxley Act has demonstrated, strengthening director liability has led to an increase of directors self-reporting potential violations of the US FCPA Act and improved compliance overall.[2] It could be expected that a similar measure in the UK would encourage directors to self-report any suspicions of irregularities to the regulators in order to avoid prosecution under the Bribery Act. We agree that ARGA should be given the necessary powers to investigate the accuracy and completeness of such directors statements and where necessary to order amendments or call for an external audit of a company's internal controls. For this system to work, ARGA must be given a full range of powers to effectively sanction directors who fail to install proper controls and report correctly on their implementation. Appropriate sanctions should include fines and other measures including disqualifications for the most serious of offences.

In relation to the role of the auditor, we support Option C that would require an auditor to undertake additional audit and assurance to verify that the contents of the directors' statements on the functioning of a company's internal controls are accurate. This provision would replicate Section 404 of Sarbanes-Oxley Act requiring the auditor to assess and provide a written attestation on the controls. Implementing this requirement for audit firms would provide an incentive to challenge directors' statements, help identify fraud and provide further assurances for investors, stakeholders and the general public. In the case of corporate failure, ARGA should be given the powers to investigate the adequacy of an auditor's work and where non-compliance is identified ARGA should be able to take robust enforcement actions against audit firms and audit partners.

As the Kingman review noted, there is significant support for introducing a UK tailored version of the Sarbanes-Oxley Act amongst senior audit committee chairs with experience of working for US listed companies.[3] There are understandable concerns relating to the cost of implementing similar provisions to those of the Sarbanes-Oxley Act voiced by professional bodies including the ICAEW.[4] However, a UK version of the Act would encourage firms to develop automated and centralised systems which would result in long-term economic savings and would be more conducive to audit. According to the US

[2] LaCroix, Kevin. "Foreign Corrupt Practices Act: A '70s Revival and Growing D&O Risk." National Underwriter. P & C 111, no. 13 (April 2, 2007).
[3] Kingman Independent Review of the Financial Reporting Council. Section 3.19.
[4] The Institute of Chartered Accountants in England and Wales (ICAEW). 'The consequences surrounding internal control.'
https://www.icaew.com/technical/audit-and-assurance/audit-reform/commentary-on-audit-reviews/the-consequences-surrounding-internal-control

Securities and Exchange, auditor's compliance with Section 404 provisions has become much less costly over time due to improved communications between auditors and management, focus on higher risk areas and overall streamlining of procedures.[5]

Q14. If the framework were to be strengthened, which types of company should be within scope of the new requirements?

The new rules on director statements on internal controls and auditor's attestations should apply to both listed companies, large private companies, AIM-quoted firms and all PIEs. We agree with the government's plan to phase in the requirements for PIEs after two years.

Chapter 3 - New corporate reporting

3.1 Resilience Statement

Q20. Should the Resilience Statement be a vehicle for TCFD reporting in whole or part?

Anti-corruption measures put in place by companies should appear on company resilience statements
Bribery and corruption remain a challenge and a risk to UK business. The 2020 Global Economic Crime Survey showed that 25% of respondents have experienced bribery in the past 24 months, and 38% of organisations have been asked to pay a bribe. One way to address these risks is for companies to publicly disclose information regarding the effectiveness of their anti-corruption programmes including the extent to which they are subject to internal review and external audit. Taking a proactive approach in this manner would also enhance companies' reputations, build trust with consumers, investors, employees, creditors and suppliers by signalling that integrity in business dealings is a priority for the company. This would also ensure that companies are keeping pace with the international trend in this direction that requires companies to demonstrate they have in place effective compliance, which in the case of misconduct occurring, may soften the company's exposure to regulatory sanctions.[6] Transparency International UK has published research[7] on the type of information which should be included in the statement such as; the publication of a comprehensive anti-bribery and corruption policy, a risk assessment and how this informs its anti-bribery and corruption programme, information on the company deals with conflicts of interest, information on how the company monitors the programme, information on the company deals with incidents including an overview of high-level results from incident investigations and disciplinary actions, information on how the companies deal with third parties and private procurement transparency.

[5] US Securities and Exchange Commission. Study of the Sarbanes-Oxley Act of 2002 Section 404 Internal Control over Financial Reporting Requirements. https://www.sec.gov/news/studies/2009/sox-404_study.pdf
[6] US Department of Justice guidance for prosecutors emphasises the extent to which companies' compliance programmes were effective at the time of any misconduct. https://www.justice.gov/criminal-fraud/page/file/937501/download
[7] Transparency International. Open for Business. https://www.transparency.org.uk/publications/open-business-anticorruption-governance-disclosure-guidance

Companies should be required to report on climate risks on resilience statements

The UK has now set a commitment to achieve net-zero greenhouse gas emissions by 2050 with interim targets which mean businesses must now change their behaviour. If companies do not change their business models in line with these trends, they will misallocate shareholder capital, make the climate situation worse and/or will not be profitable. Companies doing this may cease to be going concerns in the foreseeable future. As a consequence, we believe climate change is a key factor to be considered in financial statements. However, the overwhelming majority of companies are failing to meaningfully disclose climate-related risks, impacts and financial implications.

The government should create specific duties for companies, and their directors and auditors, to ensure climate risk is reflected in financial statements. This should include stating whether and how they have adopted assumptions about the net-zero transition, and if not, explain what the impact would be if they had.

The new rules should contain a duty on company directors to:

- State in the notes to the financial statements whether and how they have adopted Paris-aligned assumptions/estimates in their accounts; and
- If they have not, provide supplementary disclosures in the notes to the financial statements about how the accounts would be impacted if they had used Paris-aligned assumptions/estimates.

Auditors should likewise be required to undertake Paris-aligned audits that test accounts against Paris-aligned assumptions/estimates and flag to shareholders any concerns about the assumptions used by the company. It is essential that auditors acquire expertise in this area immediately in order to apply professional skepticism to companies' claims on climate issues. If they don't, there is a real risk that auditors' opinions may result in verifying contentious reporting and contribute toward 'greenwashing.'

Chapter 4 - Supervision of corporate reporting

Q28. 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 support the government's plans to give ARGA the power to direct changes to company reports and accounts by replacing the existing system through which a court order must be sought. Such a system should be proportionate and give companies an opportunity to appeal any decision. We additionally support the proposals to publish the results of corporate reporting reviews with a strong preference for publication in full over the inclusion of summaries to best promote transparency.

We agree with the Kingman review's observation that the limited scope of corporate reporting review (CRR) is one of the FRC's key weaknesses and therefore we welcome the government's proposals to

expand the scope of the CRR to review process to include all sections of the annual report including governance sections and remuneration reports. In addition, it is essential that these provisions are not limited to PIE entities in order to avoid creating a gap in regulatory oversight if it were to exclude all large private companies and limited liability partnerships.

With regard to the corporate reporting framework and questions over the length of company reporting, we support the government's proposals to give ARGA a regulatory principle promoting brevity, comprehensibility and usefulness. It is important, however, that brevity should be applied to supplementary material that is outside of the scope of financial and governance reporting such as marketing materials or other ancillary contents.

We would especially be in favour of a new regulation which would standardise company reports into machine readable formats that would promote cross-comparison of financial reporting by regulators, investors and stakeholders alike, as well as promoting digital accessibility. Civil society organisations should be actively consulted in the development of any further guidance on standardisation.

Chapter 5 - Company Directors

We support the Kingman review's recommendations for an effective enforcement regime that holds executive directors, CFOs, chairs and audit committee chairs of PIEs to account for their duties in relation to corporate reporting and audits. The new regulator should have adequate powers and resources to investigate cases where directors have failed to comply with the rules and should be given a range of sanctions to effectively punish directors for poor compliance.

5.1 Enforcement against company directors

Q29. Are there any other arrangements the Government should consider to ensure that overlapping powers are managed effectively?

On its establishment ARGA should become a party to the existing MoU between FCA and the FRC that clearly delineates responsibilities to avoid any replication of investigative areas. In circumstances where cooperation is required, both the FCA and ARGA should commit to full transparency in order to better serve investigations and secure the best possible outcome.

Q30. Are there any additional duties that you think should be in scope of the regulator's enforcement powers?

In addition to the duties in the scope of the new enforcement powers, we would support adding a requirement similar to that of Section 404(b) of the Sarbanes-Oxley Act of 2002 on a director's duty to provide an accurate assessment on the effectiveness of a company's internal controls. If implemented, such a measure would assist companies in setting the 'tone from the top' through displaying directors' commitment to rigour in the creation and management of company's internal control environments and therefore promoting company-wide ethical values. Failure to comply with the requirement should result

in enforcement action of the same type currently used against directors for failing to keep adequate accounting records as required by the Companies Act.[8]

Q31. 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?

We support the government's plans to give the regulator powers to impose more detailed requirements relating to directors' statutory duties including on corporate reporting and audit. As recommended in the Brydon review, the concept of "adequate accounting records" is a minimum requirement and should be updated to reflect the types of documentation required by auditors to undertake a thorough audit. The new regulator should be empowered to issue detailed guidance in this area to ensure directors are aware of their duties and responsibilities.

Q32. 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?

We support the proposals for directors of PIEs to comply with specific behavioural standards that go beyond the requirements of directors' obligations under the Companies Act 2006. By adding a specific requirement for directors to act with honesty and integrity when carrying out their corporate reporting and audit duties, the new regulator would be able to open enforcement actions against directors for conduct that falls below the legal threshold for legal action but is serious enough to warrant regulatory intervention.

Q33. Should the Government's proposed enforcement powers be made available to the regulator in respect of breaches of directors' duties?

Yes. In order for the new regulatory regime to have the confidence of all stakeholders it is vital that ARGA is provided with sufficient enforcement powers and the necessary resources to undertake thorough investigations into potential breaches of requirements and that it is afforded a range of sanctions in order to ensure it fulfils its mandated goals.

We agree with the proposals to apply the civil standard of proof 'on the balance of probabilities' when disputing facts. We welcome the proposed range of sanctions including reprimands, fines and disqualifications. Where fines are issued they must be of a sufficient size in order to be both proportionate to the violation but also large enough to pose a strong deterrent for repeat offending to other directors.

5.2 Strengthening clawback and malus provisions in directors' remuneration arrangements

[8] Section 386 of the Companies Act 2006.

Q34. 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 fully support the proposals of the government and of the BEIS committee to introduce malus and clawback conditions in directors' remuneration agreements underpinned by changes to the UK Corporate Governance Code to promote better alignment between management culture of ethical behavior. Malus and clawback arrangements in directors' remuneration arrangements are vital to stop directors being rewarded for company failure and help to align the financial interests of directors with the companies they are running. The UK's clawback regime is currently ineffectual and the mandatory regime applies only to certain roles in financial institutions. Evidence from the US demonstrates that clawback provisions result in better financial reporting quality and are supported by investors.[9]

According to academic research, one of the key challenges of designing triggering events based on non-financial issues (i.e. various types of ethical misconduct, violations of a company's Code of Conduct) or other types of conduct that may result in negative "material impact" to the company is the problem of adequately defining such types of misconduct.[10] Evidence suggests that the use of "material impact" and ambiguity over its precise meaning can generate discretionary leeway which in France and Germany has led to enforcement problems.[11] In order to avoid these issues, the government should consider the enforceability of the proposed triggering events in order that the new regulator can make effective use of the clauses. Particular attention should be paid to the US experience and the difficulty faced by the Securities Exchange Commission in enforcing the clawback provisions of the Sarbanes-Oxley Act of 2002.[12]

Chapter 6 - Audit purpose and scope

6.1 The purpose of audit

Q35. 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?

[9] See: Dehaan, E., Hodge, F., & Shevlin, T. (2013). Does voluntary adoption of a clawback provision improve financial reporting quality?. *Contemporary Accounting Research*, *30*(3), 1027-1062; Chan, L. H., Chen, K. C., Chen, T. Y., & Yu, Y. (2012). The effects of firm-initiated clawback provisions on earnings quality and auditor behavior. *Journal of Accounting and Economics*, *54*(2-3), 180-196.

[10] Stark, J. (2020). Clawback Provisions in Executive Compensation Contracts.

[11] See: Georg Seyfarth, "Clawback-Vereinbarungen in Vorstandsverträgen - Teil II", Wertpapier-Mitteilungen 2019, 569, 572–575 as well as Seyfarth, WertpapierMitteilungen 2019 (fn. 39), 527. As referenced in Stark, J. (2020). Clawback Provisions in Executive Compensation Contracts.

[12] See: Prescott, Gregory, and Carol Vann. 2018. Implications of clawback adoption in executive compensation contracts: a survey of recent research. *The Journal of Corporate Accounting & Finance* 1: 59–68 and Erkens, Michael, Ying Gan, and Burcin Yurtoglu. 2018. Not all clawbacks are the same: consequences of strong versus weak clawback provisions. *Journal of Accounting and Economics* 66: 291–317.

Yes. Auditors should have the statutory requirement to consider wider information including director conduct during the course of their work. It is important the ARGA develops a detailed list of additional requirements in a similar format to auditing standards in order that all audit firms are clear on the expected standard of work. We suggest the government goes beyond the Brydon recommendations[13] and introduce the statutory requirement to include information which is relevant to a broader range of stakeholders including on; compliance with the Corporate Governance Code, reporting on executive pay, pay gaps and pay ratios, environmental compliance, climate change impact assessments and treatment of suppliers. This list should aim to broaden minimum reporting requirements in line with a better understanding of companies' embeddedness in communities and the potential consequences corporate failure can have on those stakeholders.

Q36. 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. It is important that from the outset the new regulator publishes a strong purpose statement with the objective of reassuring company stakeholders and the wider public that the new regulator will attempt to turn the page on the profound crisis of trust affecting the audit market.[14]

6.4 Tackling Fraud

Q42. 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.

Overall, we welcome the government's plans to introduce a series of measures based on the Brydon review's recommendations to clarify auditors' responsibilities to identify whether financial statements are affected by fraud. However, we are also concerned that a more substantial problem has been the lack of enforcement of the existing standards and worry that audit firms too often escape being held to account to major failings. Introducing these measures in isolation will not address wider issues of corporate failure stemming from fraud, and therefore should form part of a holistic approach in which the duties and responsibilities of company directors and management to prevent fraud are also strengthened.

Directors' responsibilities and related reporting
We support the government's proposals to require company directors to report on the steps they have taken to prevent and detect material fraud. In tandem with the recommendation we have made in Chapter 5 on directors' liability to adequately report on the effectiveness of company controls, directors

[13] Recommendations 5.2.6 and 5.3.2. Report of the Independent Review into the quality and effectiveness of audit. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/852960/brydon-review-final-report.pdf
[14] Trust in UK corporate sector is low, admits chief of audit watchdog. Financial Times. https://www.ft.com/content/68cefde9-3f9c-4dba-a736-9548648ac4ab

statements should include information on the results of internal fraud risk assessments. Creating a director's liability for failing to adequately report on fraud prevention measures will go some way to reinforce directors' central role in deterring fraud and establishing the 'tone from the top' with regard to a company's internal culture and ethics policies.

While this proposal would be welcome, it is vital that the new regulator is given the necessary powers to investigate directors' compliance with the rules, and where appropriate to issue sanctions to punish non-compliance and serve as a deterrent to improve conduct in other PIEs.

Auditors' responsibilities regarding fraud detection

We welcome the government's proposal to accept the new auditing standard (ISA UK 240) following the FRC consultation in 2020 which would require audit teams to undertake more extensive risk assessment and ensure more discussions are held within engagement teams on fraud risks. Recent history shows, however, that audit firms continue to fail to meet ISA 240 standards and we are unconvinced that tweaking the requirements on undertaking risk assessments within audit engagement teams will lead to an upturn in the identification of complex frauds. In this sense, the priority should be ensuring that audit firms are held to the existing standards. Using Patisserie Valerie as an example, auditors in this case failed to spot large discrepancies between amounts declared on accounts and amounts deposited in bank accounts (KPMG claims the company's cash position was overstated by £54m). This fraud may well have been uncovered much earlier if the auditors had been incentivised to carry out the required verification processes as imagined in the current standards.

Auditors failing to verify the correct relationship between a company's financial statements and amounts deposited in bank accounts with corresponding bank statements has been at the heart of corporate scandals in recent years (e.g. Carillion, BHS, and Autonomy, Wirecard). In theory, ISA UK 240 should require auditors to exercise professional scepticism which is buttressed by ISA 500's requirement for auditors to collect sufficient, appropriate audit evidence including on verification of a company assets including bank deposits. However, in each of these scandals auditors failed to collect sufficient proof of the veracity of financial statements which demonstrates a lack of professional scepticism required by ISA UK 240. In our view, updating ISA UK 240 may bring welcome improvements if auditors' responsibilities are sufficiently clarified, but this should also be complemented by the removal of some of the conflicts of interest between the audit and non-audit arms of the large audit firms. By doing so, auditors would be more likely to put in place more rigorous audit practices when freed of the financial pressures to retain clients.

We are also concerned that the the proposed changes to ISA UK 240[15] continue to muddy the waters with regard to auditors legal obligations and liabilities, and instead attempt to lay the ground for audit failures by placing undue importance to the "inherent limitations of an audit" - a concept which we find

[15] Financial Reporting Council. PROPOSED INTERNATIONAL STANDARD ON AUDITING (UK) 240 (REVISED 2021) https://www.frc.org.uk/getattachment/ac4b8f2d-a6a0-43c0-84fe-2b972b322f5f/ISA-(UK)-240-2020-Exposure-Draft-FINAL.pdf

to have no substantial basis in law.[16] This concept has also been criticised in the BEIS Committee's report on the Future of Audit as part of a "mythology" that propagated by the Big 4 firms and Grant Thornton "to underplay the role or scope of audit" in relation to their obligations to detect material fraud.

In order to establish auditors' responsibilities, the standards document should make it clear to auditors that UK law takes primacy over the international principles on which the proposed standard is based.[17] In its current form, the ISA UK 240 proposed standard contains only one paragraph that refers to auditors' "additional responsibilities under law." In this sense, the language used in the standards documents to express limitations of an audit should not be used to affect or minimize the legal standards for an auditor's liability. Auditors' legal responsibilities were recently clarified in the Court of Appeal in 2020 ruling which upheld a 2019 High Court judgment[18] that found Grant Thornton to have acted negligently for failing to identify fraudulent dividend payments during its audit of AssetCo.[19] In the ruling, the judge found that Grant Thornton's failure to identify the fraud being perpetrated by AssetCo's management constituted a breach of the auditor's duty of care.

In addition, the standards should reflect auditors' potential liabilities for breach of duties including on identifying fraud. The AssetCo vs Grant Thornton Court of Appeal ruling[20] found that the *SAAMCO* principle[21] should be applied to instances in which audit failure is directly responsible for financial losses. In these cases, losses may be recoverable from the auditor and are connected to the advice given by auditors and the financial losses incurred as a direct result of that advice being wrong.[22]

One technical area in which the ISA 240 could be further improved is through an additional requirement for auditors to at least consider whether other forms of financial crime have taken place such as bribery

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[16] Section 8a of the proposed new ISA UK 240 standard accepts in passing that "*The auditor may have additional responsibilities under law, regulation or relevant ethical requirements regarding an entity's non-compliance with laws and regulations, including fraud, which may differ from or go beyond this and other ISAs (UK).*"

[17] The 1990 case (Caparo vs Dickman) clearly establishes auditors' legal responsibilities to detect fraud. "It is the auditors' function to ensure, so far as possible, that the financial information as to the company's affairs prepared by the directors accurately reflects the company's position in order, first, to protect the company itself from the consequences of undetected errors or, possibly, wrongdoing (by, for instance, declaring dividends out of capital)." Caparo Industries v Dickman 1990 House of Lords."

[18] ASSETCO PLC- and - GRANT THORNTON UK LLPhttp://www.bailii.org/ew/cases/EWHC/Comm/2019/150.html

[19] ASSETCO PLC- and - GRANT THORNTON UK LLP http://www.bailii.org/ew/cases/EWCA/Civ/2020/1151.html. The judge found that
"GT assumed a responsibility to protect AssetCo against losses suffered as a result of fraudulent trading conducted by the AssetCo management in circumstances where it is agreed that GT should have detected that the business was being conducted fraudulently, and in circumstances where such fraudulent trading would not have continued had GT complied with its auditing duties."

[20] ASSETCO PLC- and - GRANT THORNTON UK LLP http://www.bailii.org/ew/cases/EWCA/Civ/2020/1151.html

[21] Established in *South Australia Asset Management Corpn v York Montague Ltd* [1997] AC 191 (SAAMCO) and expanded upon in *Hughes-Holland v BPE Solicitors* [2017] UKSC 21.

[22] See the opinion of: Herbert, Smith, Freehills: https://hsfnotes.com/litigation/2020/09/08/court-of-appeal-considers-application-of-saamco-principle-in-context-of-auditors-negligence-case/ and DAC Beachcroft: https://www.dacbeachcroft.com/en/gb/articles/2020/december/the-court-of-appeal-applies-saamco-principles-to-audit-claims/

and corruption. Auditors are ideally placed to identify opportunities for corruption and bribery such as unexplained fluctuations in payables, expenses or disbursements during the course of an audit and should be required to take steps to assess whether companies have or continue to engage in such conduct.

Forensic audit teams

Where auditors obtain credible evidence of management interference or override of internal controls in the preparation of financial statements, audit firms should have a separate and specialist forensic audit team to assess the evidence. If this evidence is corroborated then audit firms should report their findings to the regulator and resign from the engagement.

Auditor reporting on fraud

We support the government's plans to legislate to require auditors to report on work undertaken to verify directors' statements on actions taken to prevent and detect material fraud. At the bare minimum this should include information on the steps taken to verify revenues, check for concealed liabilities and expenses, assess the potential for improper asset valuation, check for improper disclosures. This reporting should also contain a detailed auditor's opinion on the effectiveness of company fraud controls.

Auditor education and skills

The obligations for auditors to consider and identify fraud and other forms of financial crime should be central to audit education, training and professional development across the new corporate auditing profession. Developing tailored, fraud detection certifications and professional qualifications would drive up standards and also provide increased numbers of experts that could be called on by audit firms when fraud risks are identified during audits. The new audit professional body should seek the input of expert groups such as The Association of Certified Fraud Examiners, Fraud Advisory Panel, academics and other experts to assist with developing training and qualifications.

The new regulator should manage a fraud register with all relevant documentation on previous instances of fraud, how they were investigated and with assessments on auditors performance. Collecting case studies in this manner would contribute toward building a repertoire of knowledge and would be a powerful educational tool for auditors and practitioners. Such a register would be accessible to the public to enhance public understanding of how fraud is committed within businesses and the role of auditing in preventing such conduct.

Enforcement decisions - the role of an Independent Auditor Fraud Panel

We urge the government to reconsider its decision not to establish a specialised, independent Auditor Fraud Panel as recommended in the Brydon review based on the Panel on Takeovers and Mergers. Such a panel equipped with powers to investigate cases of audit failure, compel audit firms to hand over documents, judge auditors' culpability and to levy fines on auditors and audit firms where appropriate would provide an effective, independent enforcement mechanism to handle the most serious cases of audit failure as well as representing a powerful incentive for compliance with the rules. This would also

break the existing system whereby FRC Case Management Committee members handling investigations have long standing connections to the large audit firms. The current system whereby the same body sets the rules, investigates and judges audit failure should be replaced by a more robust system based on separate functions. In setting up the panel the government should take lessons from the operation of the FRC's Audit Enforcement Procedure and the findings of the Kingman review that highlighted the length of time it takes for the FRC to open and conclude investigations. Part of this delay results in the inability of the FRC to be able to compel firms to provide documentation to facilitate investigations. Ensuring that the fraud panel has the right combination of powers and resources will result in better performance and increase the likelihood of meeting performance targets.

To function properly, the panel must be operationally independent from the ARGA and all panel members must be selected in line with the independence standards established by the CSPL.[23] It is vital that the panel is established with safeguards in place to prevent industry capture, but at the same time a balance should be found to include senior practitioners and advisors from industry. Failing to establish an independent Auditor Fraud Panel would be a missed opportunity to reinforce the independence of the audit market through the provision of an operationally independent enforcement function.

6.5 Auditor reporting

Q43. 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.

In a continuation of the response to question 35 we support the government's proposal to require auditors to report on how they have taken steps to consider future risks to a business in order to arrive at a more accurate picture of the true state of a company. This obligation to consider 'external signals' of risk should be expanded beyond a focus on solely financial determinants such as one-off and non-recurring items but should include other risk factors such as companies' changing exposure to fraud and corruption risks as company directors modify strategic priorities and location of operations.

6.9 A new professional body for corporate auditors

Q48. Do you agree that a new, distinct professional body for corporate auditors would help drive better audit? Please explain the reasons for your view.

We support the government's plans to create a dedicated professional body for auditors. Members of the body should be expected to uphold professional standards and the new body should develop and oversee a new Code of Ethics for auditors. In order to help rebuild the public's faith in the corporate

[23] Committee on Standards in Public Life. 'Striking the Balance.' https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/554817/Striking_the_Balance__web__-_v3_220916.pdf

sector, the body should have the powers to discipline or expel auditors for failing to live up to required professional standards.

The new body should also be empowered to attract and retain competent professionals and train them in a climate which both develops their technical audit skills and also provides them with a wider appreciation of the role of the audit in safeguarding the public interest against the consequences of corporate failure. In addition, the body should develop a state of the art training and certification regime to train auditors in specialist skills required to undertake audits in the new regulatory environment including on better identifying non-financial risks faced by companies such as fraud, climate resilience and their broader CSR responsibilities.

Q49. 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?

Q50. Should corporate auditors be required to be members of, and to obtain qualifications from, professional bodies that are focused only on auditing?

We recognise the trade-offs involved and the difficulty of the transitional arrangements, particularly with regard to professional qualifications. We support the government's suggestion of a 'clean break' with the accountancy bodies whereby corporate auditors, in addition to their accountancy qualifications, would require new specialist audit certificates to practice that are better aligned with the new regulator's remit and objectives.

Q51. Do you agree that a new audit professional body should cover all corporate auditors, not just PIE auditors?

Yes. We agree with the government's position that if the new professional body were only to include PIE auditors then a two-tier audit profession would be created.

Chapter 8

8.2 Operational separation between audit and non-audit practices

Q64. 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?

We remain unconvinced that the proposed operational split (based on separate financial statements and the creation of a new board to oversee the non-audit side of the business) addresses the conflict of interest risks that have become embedded in the audit firms. If the government decides to implement an 'operational separation' as endorsed by the CMA between audit and non-audit sides of the frim, it is

vital that at minimum the new requirements comply with the CMA proposals as listed in the consultation document in section 4.5 and with the FRC's 2020 principles for operational separation.[24] At the bare minimum, operational separation should include separate profit and loss accounting for the auditing and non-auditing side, with persons on the auditing side only compensated from the auditing results. In addition, revolving door restrictions to limit movement of personnel between the audit and consultancy arms of firms.

To be able to effectively supervise and monitor how audit firms are implementing the operational separation, an appropriate statutory framework should be developed giving ARGA appropriate inspection rights to both the audit and consultancy side of firms.

We have concerns that operational separation, in practice, does not create sufficient barriers or the necessary distance between the two parts of the firms, thereby preventing the development of two separate work cultures. If this approach is taken, the government should learn lessons from ring-fencing measures introduced into the retail banking system. A further key aspect of the new system will be a robust monitoring and assessment system that can analyse whether the operational separation is having any material impact on the sector and whether it is meeting the desired policy objectives. In addition, there would need to be in place a robust sanctions regime with a suitable deterrent for firms and audit partners for circumventing the operational separation. Considering the potentially burdensome nature of introducing these new requirements on both the regulator and audit firms, we would suggest the government revisit a structural split. If the operational separation is chosen, we would urge the government to accept the BEIS committee's request that the CMA and ARGA undertake a review into the effectiveness of the operational split within three years of the regime coming into place.

Q67. 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?

At the outset we regret the decision of the CMA not to take on board the recommendations of the BEIS Committee's report on the Future of Audit to aim for full legal separation of audit and non-audit services.[25] In our view this would have been the best solution to address the longstanding underlying tensions affecting the sector including; conflict risks from shared systems, audit partners sharing in the profits earned from the consultancy side of the business, the risks emanating from 'one firm' culture and conflict rules whereby firms may consider the potential loss of future non-audit work when deciding to bid for audits. Such a structural split would remove dependence on shared operating systems, firm branding and other shared resources that if removed would facilitate the development of distinct audit and non-audit firm cultures. We take the view that the operational split does not attend to these issues,

[24] FRC principles for operational separation of audit practices. https://www.frc.org.uk/getattachment/281a7d7e-74fe-43f7-854a-e52158bc6ae2/Operational-separation-principles-published-February-2021-(005).pdf

[25] See section 124
https://publications.parliament.uk/pa/cm201719/cmselect/cmbeis/1718/171807.htm#_idTextAnchor065

and in addition does not challenge the footprint of Big 4 firms that blocks challenger firms from entering the market.

Chapter 9 - Supervision of audit quality

9.1 Approval and registration of statutory auditors of PIEs

Q69. 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. ARGA should be given this function and operate an exclusion list.

9.2 Monitoring of audit quality

Q70. What types of sensitive information within AQR reports on individual audits should be exempt from disclosure?

We support the recommendation made by the Kingman review to work towards ensuring that the results of AQRs reports are published in full on completion. As the review notes, at the time of publication (2017/2018), no firms subject to AQR reviews met the FRC's stated quality target, including all of the Big 4 firms. Publishing these reports in full without anonymity would promote transparency with regard to the quality of audit firms work and therefore allow PIEs to make more informed decisions as to their audit choices. The review additionally notes that the proposal to publish AQR reports in full is already popular with investors and finance directors.[26] Any exemptions affecting disclosure should be limited to a narrow predefined criteria.

9.3 Regulating component audit work done outside the UK

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

Yes. We support the government's proposals to implement the Kingman review's recommendation to give ARGA powers to examine the quality of audit work undertaken on overseas subsidiaries of UK-registered entities. The new regulator should develop a risk-based approach to deciding which entities could be subject to inspection. Giving ARGA the powers to access non-UK files would provide auditors working in multinational firms another incentive to ensure audit work is carried out in a thorough and consistent manner across a firm's operations irrespective of jurisdiction

[26] See Kingman review. Section 2.21.

Chapter 10

10.1 Establishing the regulator

Q74. Do you agree with the proposed general objective for ARGA?

Broadly, we support the proposed general objective that includes a reference to 'the wider public interest.' We would welcome a more concise definition that makes it explicit that public interest is heavily connected to social, ethical and environmental considerations in addition to the financial health of companies. If the government decides to 'broadly frame' this objective, it should do so with caution to prevent the definition of 'public interest' being captured by companies attempting to conflate their business operations with the public interest.

Q75. 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 consider the government's proposals to create two overriding operational objectives (ensuring quality and competition) supplemented by regulatory principles to which the body should "have regard to" (including on anticipating future corporate governance, reporting or audit risks) create the risk that such principles or 'duties' will become secondary concerns, particularly given the proposed wide margin of discretion for ARGA to achieve its objectives. We suggest that regulatory principles are upgraded into objectives.

10.2 Governance

In the absence of specific questions on the consultation document, here we will provide some comments on this section's headings.

Remit letter

We support the proposals for the regulator's remit letter to be renewed at least once per parliamentary term, and should be laid before parliament.

Annual report

The government should introduce legislation to require the regulator to present its annual report to the Secretary of State on an annual basis and then presented to parliament. The report should combine both a broad evaluation of the regulator's performance in meeting its objectives and regulatory principles, make recommendations for operational improvement and also contain specific statistical breakdowns of supervision and enforcement activities. The annual report of the Independent Fraud Panel should be included as an annex.

Other requirements

We welcome the government's plans to place the new regulator firmly within the scope of Freedom of Information Act as recommended by the Kingman review. In our view, the fact that the FRC was the sole

exemption from some of the Act's provisions created a democratic deficit which should be corrected as soon as possible.[27] Beyond this commitment, the proposals do not offer much detail on other aspects of transparency and therefore we would encourage the government to commit to making ARGA as transparent as possible by promptly and pro-actively publishing its corporate governance documents, including minutes of meetings, registers of interests, rules, policies, accounts, annual reports, guidance, decision-making processes.

Leadership and Board: role and membership

If ARGA is to function as envisaged by the government it is essential that its integrity and independence is enshrined in law from the outset. Under the plans in their current form, ARGA will be legally and operationally independent of the government but will fall "under the government's strategic direction." The exact relationship remains undefined but the white paper suggests giving the Secretary of State powers to appoint non-executive members which would be agreed upon by the Chair of the BEIS Select Committee. This approach is welcome but could be further strengthened by giving the BEIS Select Committee the ability to nominate candidates for scrutiny hearings with appointment proposals being submitted to the Secretary of State to take the final decision. Any appointment mechanism for ARGA should meet the independence criteria defined by the CSPL in its report on upholding standards in regulators and any ministerial guidance received by ARGA should be published. There is also a more symbolic issue that if the government is committed to audit reform, then ARGA's board requires 'new blood' and a fresh impetus to regulate the audit market. Steps should be taken to prevent the FRC's current board from being reappointed en masse to head ARGA.

Establishing greater independence between the regulator and industry must be a primary consideration but the plans in their present form do not offer much detail on how the government proposes to achieve this and are therefore a significant gap in the proposals. We suggest that the regulator follows the best practice identified by the CSPL and ensures that staff at all levels are clearly aware of conflicts of interest and are explicitly advised about the risks of bias in decision making. In addition, the government should guarantee the independence of the body's chair by putting in place measures to safeguard against potential conflicts of interest between the person's role as chair and their professional duties.

We would also like to see the government put in place strong revolving door prohibitions preventing ARGA board members from re-entering the audit industry immediately after finishing their mandates and an outright ban on serving board members holding industry positions. It is vital that once appointed, board members are required to declare actual or potential conflicts of interest at every board meeting, with recusals clearly recorded, and that these declarations and minutes of meeting are regularly published in the public domain. The FRC's current 'decision makers register of interest' publication should be carried over into ARGA and should be expanded to include references to specific incidences

[27] Department for Business, Energy and Industrial Strategy: Non-departmental Public Bodies Question for Department for Business, Energy and Industrial Strategy UIN 156310, tabled on 21 June 2018. https://questions-statements.parliament.uk/written-questions/detail/2018-06-21/156310

where measures were taken to mitigate perceived or real conflicts of interest in relation to decisions taken at board level. Obligations on conflicts of interest should be based on the recommendations of the Boardman review and include a staff code of conduct, a centralised database of declarations and training and guidance offered to all ARGA staff members.

Lastly, ARGA's board should contain representatives from civil society organisations to ensure that the views of the public and other societal stakeholders are represented during board meetings and when voting on implementing new rules or policies. In addition, there should be a role for representatives from the investor and lending communities on ARGA's board, members of which could bring significant financial expertise to the regulator from non-audit backgrounds.

Enforcement

We support the government's plans to require the new regulator to report to parliament on its enforcement functions and be held accountable through appearances before the BEIS Select Committee. This approach should be the same for both the ARGA enforcement arm as well as the Independent Fraud Panel.

We are unconvinced by the case for the ARGA's board to exercise stronger ownership of its investigation and enforcement functions including the power to launch investigations at the risk of political interference entering the decision making chain. The threshold for opening an investigation could be subject to review by the board but to ensure operational independence a version of the FRC's Conduct Committee should take the final decision and should also take the decision on whether to refer fraud cases to the Independent Fraud Panel.

We share the concern expressed in the Kingman review into the length of time it takes for the FRC to conclude investigations. It should be noted that despite benefitting from additional powers to speed up its case handling the FRC continues to miss its target to conclude investigations within 2 years. To solve these issues the new regulator should be given sufficient resources as well as powers to compel audit firms to provide relevant information required during the course of an investigation so that investigations can be concluded within a maximum two year period.

In addition, despite the FRC seeming to have an appropriate set of sanctions available to it (reprimands, fines, requiring the waiver or repayment of client fees and exclusion from professional bodies, removal of audit partners from future engagements), we note that fines issued by the FRC to audit firms when compared to annual revenues are negligent and are seen as a cost of doing business.[28] We suggest the government should reassess this area urgently to ensure the new regulator can levy fines of an appropriate size that will act as a deterrent for the firms to improve compliance. The government should take into consideration the recommendations of the Clarke review into the FRC's enforcement

[28] Review recommends larger fines for accountancy firms. Financial Times. https://www.ft.com/content/60538b1e-ceae-11e7-9dbb-291a884dd8c6

procedures to develop a formula for fines that balances the need to act as a deterrent while considering the egregiousness of the conduct and also the size of the audit firm.

Resources

ARGA must be sufficiently resourced to deliver on its new mandate as an upgrade to the FRC. In order to promote genuine reform of the audit sector it is vital that ARGA has at its disposal the resources and 'appetite' to undertake and conclude complex investigations into audit failure within acceptable timeframes. It is equally important that ARGA can draw on the resources necessary to handle any legal challenges to its decisions that the larger audit firms may make. To raise the funds necessary we suggest the government should consider reassessing the present system based on a combination of the FRC collecting contributions from the accounting profession and through the preparers levy on listed and large private companies.[29] In the US, the equivalent regulator Public Company Accounting Oversight Board (PCAOB), is funded by a levy collected solely from companies under audit by registered firms and has a budget of approximately £203 million.[30] In this case, the government should assess which combination could be used to further expand ARGA's budgetary resources.

Chapter 11

11.4 Powers of the regulator in cases of serious concern

94. Are there other 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?

We support the Brydon review's recommendation to introduce a duty of alert for auditors of PIEs to report their concerns to the regulator. We would like to see the duty of alert based on a wide range of risk factors that go beyond financial issues to include on-going viability concerns as well internal governance risks of firms.

11.7 Whistleblowing

As the 2020 Rihan vs Ernst Young case[31] has demonstrated, it is of vital importance that auditors come forward with information when audit firms conspire with their clients to hide evidence of criminality and other wrongdoing. Whistleblowing in the audit sector is rare, and it is generally accepted that becoming

[29] See: FRC funding https://www.frc.org.uk/about-the-frc/funding
[30] SEC Approves 2021 PCAOB Budget and Accounting Support Fee https://www.sec.gov/news/press-release/2020-322#:~:text=On%20November%2019%2C%202020%2C%20the,be%20assessed%20on%20issuers%3B%20and
[31] Rihan-v.-EY-Global-Ltd https://www.judiciary.uk/wp-content/uploads/2020/04/Rihan-v.-EY-Global-Ltd-and-others-Approved-Judgment-17-April-2020.pdf

a whistleblower involves a major risk of financial loss through the risk of subsequent unemployability.[32] while it is further recognised that auditors face serious challenges to maintain their anonymity after coming forward. The Rihan case has demonstrated that audit firms are prepared to pursue whistleblowers through the courts, even when evidence of their wrongdoing is divulged to the public in the process thereby creating another disincentive for auditors to come forward.

Despite dozens of FRC investigations over the years into audit firms for serious failings and misconduct, the FRC has only investigated 25 cases based on whistleblower concerns, none of which resulted in any firm action[33] which suggests that there is significant distrust of the existing protections for whistleblowers. These low numbers are not consistent with whistleblowing trends in other areas of the economy where 40% of occupational fraud is detected through tips from employees, customers, vendors, and other anonymous sources.[34] In this context it is clear that the current system for handling whistleblowers is in need of an overhaul.

In general, we support the logic of Brydon's recommendation to bring audit firms within the scope of the Public Interest Disclosures Act to harmonise the profession with other sectors. However, we also accept the government's assessment that this step may be redundant given the tendency, in the few cases that it occurs, for whistleblowers to approach the regulator directly instead of the audit firms. As a consequence, to encourage more whistleblowers to come forward we recommend that the government establish an independent audit whistleblower function housed with ARGA to act as a first point of contact for auditors wishing to make a complaint regarding their employer's conduct. The function would be given the powers to develop arrangements that facilitate whistleblowing within the audit sector and enshrine legal protections for individuals coming forward. In addition, the function would develop industry-wide whistleblowing standards such as requiring audit firms to have in place clear whistleblower policies and procedures as well as providing regular training to employees at all levels on their responsibilities under the rules.[35]

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[32] Para 590. https://www.judiciary.uk/wp-content/uploads/2020/04/Rihan-v.-EY-Global-Ltd-and-others-Approved-Judgment-17-April-2020.pdf

[33] BEIS committee Future of Audit. https://publications.parliament.uk/pa/cm201719/cmselect/cmbeis/1718/171811.htm#_idTextAnchor135

[34] Cpab Exchange. An auditor's responsibilities related to fraud in an audit of financial statementshttps://www.cpab-ccrc.ca/docs/default-source/thought-leadership-publications/2019-fraud-thematic-review-en.pdf?sfvrsn=17f0b689_14

[35] As noted in the Rihan judgement, at the time that the auditor went to the media over his concerns, EY had no written whistleblower policy in place (Para 590). The judgement confirms that EY owed a duty of care to the whistleblower, and should have taken steps to prevent the claimant from suffering loss of earnings as a consequence of EY's failure to perform the audit in an ethical and professional manner. Justice Kerr's ruling is also implicit that EY's duty of care to the whistleblower was unaffected by EY's complex corporate structure. https://www.judiciary.uk/wp-content/uploads/2020/04/Rihan-v.-EY-Global-Ltd-and-others-Approved-Judgment-17-April-2020.pdf