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1 February 2022

Dear Sir or Madam

**UK Accounting Standards Endorsement Board ('UKEB') – Call for comments on Draft Endorsement Criteria Assessment ('DECA'): IFRS 17 of 11<sup>th</sup> November 2021**

We set out why we believe that the UKEB has failed to demonstrate due process in order to comply with the requirements of the Statutory Instrument SI 2019-6851 ('the SI') in making its Endorsement Criteria Assessment on International Financial Reporting Standard 17 (IFRS 17) on insurance contracts.

**Omissions of process – case law and the context given by the statute**

The DECA shows no process to consider case law interpreting the Companies Act requirement in respect of the "true and fair view" of the SI at Section 7(1)(a)(i) and (ii).

Section 7(1)(i) of the SI ensures a consistency of adopted standards with section 393 Companies Act 2006 and is the overarching requirement that the company only (solus) accounts are sufficient to comply with company law.

The standard of preparation of accounts by directors is matched by the standard required for audited accounts. The Caparo decision<sup>2</sup> [our underlines] sets the standard in such terms as:-

*"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) and, secondly, to provide shareholders with reliable intelligence for the purpose of enabling them to scrutinise the conduct of the company's affairs and to exercise their collective powers to reward or control or remove those to whom that conduct has been confided."*

That is consistent with the statutory reference to materiality at s837(4)<sup>3</sup> Companies Act 2006 falling onto the auditors of a company's annual accounts.

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1 <https://www.legislation.gov.uk/uk/si/2019/685/made> SI 2019 International Accounting Standards and European Public Limited-Liability Company (Amendment etc.) (EU Exit) Regulations 2019 Statutory Instrument (SI) 2019/685

2 Caparo Industries plc v Dickman [1990] UKHL 2

3 Section 837(5) sets out the sufficiency for distributions of a description, whether that description is ordinary dividends, buybacks or preference dividends.

The DECA shows there has been no attempt to assess IFRS 17 against those objective criteria as set out in case law and statute.

### **Defective process – the omission of prudence**

There has been no attempt to assess IFRS 17 against the criteria of prudence.

### **Defective process – the substitution of the true and fair view test**

The DECA has replaced the true and fair view test by equating it with something different, “reflecting the economic substance”, viz: -

*“Para 29 “Our assessment has not identified any requirement of IFRS 17 that would prevent individual or consolidated accounts prepared using the standard, including the disclosures it requires, from fairly reflecting the economic substance of insurance contracts. On this basis, the assessment has not identified any requirement of IFRS 17 that would prevent those accounts from giving a true and fair view of the entity’s or group’s assets, liabilities, financial position and profit or loss.*

*“Para 30. We therefore [tentatively] conclude that IFRS 17 is not contrary to the true and fair principle set out in the Regulations.”*

If “reflecting economic substance” was the criteria for endorsement then that would be in the Statutory Instrument, or the Companies Act, and it is not. The DECA provides no basis for equating “true and fair view” with “reflecting the economic substance”.

### **Defective process - reliance on disclosure and “not preventing”**

The reason for endorsement of accounting standards was set out in Parliamentary Answer UIN HL13690:-

*“a new form of international accounting standard can only be adopted if it is not contrary to the principle that an undertaking’s accounts must give a true and fair view of the undertaking’s assets, liabilities, financial position and profit or loss. This requirement ensures that no new form of international accounting standard is adopted for use in the UK if the application of that standard would lead to companies in general contravening the true and fair test”.*

The DECA has not done that it states:-

*“Our assessment has not identified any requirement of IFRS 17 that would prevent individual or consolidated accounts prepared using the standard, including the disclosures it requires, from fairly reflecting the economic substance of insurance contracts.”*

The UKEB position is doubly defective.

Firstly, a standard “not preventing” a contravention of the true and fair view test is not the same as companies in general not contravening that test by following a standard. Using its logic the UKEB would be able to endorse no information such as a blank sheet of paper or irrelevant information such as a telephone directory.

Secondly, the term “including the disclosures” is a downgrading of the test required by the endorsement criteria, the test of the SI and s393 CA2006 applies to the numbers.

We therefore make the broad point that the consultation: 1) is deficient and 2) amounts to an exercise in misdirection.



## **Due process and the Financial Reporting Council ('FRC')**

We also note that there has been no reply to my letter of 3 June 2021 nor my follow up letter of 5th November 2021 where we requested to see the legal advice that the UKEB has to consider the 'true and fair view' endorsement criteria. This is particularly important given that there is purported to be a difference of opinion between Mr Martin Moore QC and Mr George Bompas QC as to the "true and fair view" test.

We note that neither the position of LAPFF or Mr Bompas QC was refuted by BEIS lawyers, despite some claims by the 'old FRC' that it had. The fact it has not been refuted was revealed by the information obtained from a Freedom of Act (FOI) request.

We have no doubt that were the UKEB on firm ground we would have received a timely reply, but as it is we have now been waiting for a response for 8 months. However, we also note that a journalist has published an email exchange within a UKEB subgroup and a member of that subgroup UKEB member (Catherine Coates, a solicitor at Clifford Chance). Ms Coates said in an email of 20 September 2021 [our underlines] that the UKEB was seeking a legal opinion on 'true and fair view' such that:-

*"I have spoken to Martin Moore and he is fine with supporting Michael Todd QC behind the scenes and understands the conflicts issue which prevents us from instructing him."*

That is plainly unacceptable. Ms Coates' email also says:-

*"We may also want to consider how much of the answers forms [sic] part of the published opinion and to what extent there are aspects of the advice we want to have to support our approach without making it public".*

That is also unacceptable and other parts of the e-mail exchange also undermine any sense of due process. Another exchange suggests not asking a question for a legal opinion as the UKEB might not like the answer.

We hold that if Mr Bompas was indeed wrong and Mr Moore indeed correct, then 1) the FRC would not have needed to pretend that government lawyers had said something they had not, 2) there would not need to be a discussion with the UKEB to suggest that Mr Moore QC could support Mr Todd QC "behind the scenes".

Any endorsement of IFRS 17 in the light of the above would be open to legal challenge on quite basic points. We trust that the UKEB will reconsult following a proper assessment of IFRS 17.

The Financial Reporting Council (FRC) has the responsibility for ensuring that the UKEB follows due process. We are therefore writing to the FRC, to ensure that the UKEB has due process. Grandfathering pre-Kingman Review FRC positions will be unsatisfactory as the FRC was a significant problem and has quite obviously been a subject of regulatory capture, i.e. it adopted positions favourable to the parties it regulated

Yours sincerely,

cc: Ms. Pauline Wallace, Chair UKEK