

**Barry Cooper: ICAC Conference, 28 June 2013**

**“Investigation and Discipline – is the Accounting Profession doing enough?”**

Ladies and gentlemen, thank you for allowing me the time to speak about an issue in which I am sure we are all interested a great deal - investigation and discipline of the accountancy profession.

I am very aware that this is a ‘hot’ issue here in the Caribbean.

I am also aware of a prominent case that is the subject of a commission of inquiry. But it is not my role here to name names or go over cases. We should leave that in the safe, trusted and capable hands of the investigators.

Before I begin, I want to say how proud I am of the accountancy profession.

I am also proud of the professional bodies that support and represent us.

Yes, there have been accounting and financial scandals and there will be more to come – we would be naïve to think otherwise. **(SHOW SLIDE OF TIME LINE).**

This slide serves as a reminder that corporate scandals continue; indeed at the time of compiling this speech, there were media reports that Scott London, the ex-partner from KPMG was due in court in the US to face charges of insider dealing. There is no doubt that the profession is under scrutiny.

Questions are often asked about the integrity and probity of this profession and others; but I believe it is this profession that is best placed to answer questions and to challenge perceptions.

These questions include ones such as:

- How do we ensure we are getting investigation and discipline right?
- How can the profession act to reduce the risks of such occurrences in future?
- And do the profession’s rules on ethics need to be strengthened?

There is no doubt that this is a wide ranging issue; so to stick to the time allocated me, I'll address each of these three questions in turn.

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**Firstly** – how can we ensure we get investigation and discipline right?

In my travels around the world, what I see is a profession willing to embrace change, to rise to a challenge and to find solutions to some tough issues.

When it comes to investigation, discipline and governance, I think as a profession we perform well; other regulated professions - such as law and medicine – are often seen as 'exclusive and elusive', who conduct their business behind closed doors.

This is often a public prejudice that as a profession we have to fight against too.

Ultimately, the profession's reputation rests on that of our members. This is especially true of practising members who provide professional services to the public, including accounting, auditing, investment business and insolvency services.

To protect the public interest and enhance the reputation of its members, ACCA takes its regulatory responsibilities very seriously.

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The issue of discipline, of professional conduct arose recently at an ACCA UK event held in conjunction with an organisation called Professions for Good.

This is a coalition of like-minded professions – architects, lawyers, accountants, HR professionals and surveyors – who all came together recently to discuss the value these professions bring.

The opener for ACCA's event came from a national journalist who said that we - whether accountant or lawyer - could be doing more to stick our heads above the

parapet, to explain what we do, to challenge wrong doing and support whistle-blowers. I think as a profession we could be doing more, and I will move onto this later.

For me, and for other Professions for Good members, what demarcates any profession from 'just a job' is the professional body behind it.

Whether it's the medical, legal or journalistic professions, it is the governance, rules, standards, ethics – yes, the disciplinary systems - underpinned by a professional body, that provides an assurance to its own members, its clients and the wider public.

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So how can we ensure that we get investigation and discipline right? Let me turn here to ACCA's expertise and knowledge in this area.

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ACCA – like many colleagues from professional bodies here in this room - believes that ethical conduct and compliance with standards are the hallmarks of any profession.

It therefore follows that an effective system of regulation is essential to ensure that members of a profession conduct themselves ethically and adhere to standards.

For ACCA, our preferred model for the regulation of the accountancy profession comprises three major components.

1. **Standards and regulations**, including auditing and financial reporting standards as well as ethical standards dealing with audit matters, such as independence, non-audit services and engagement partner rotation.
2. **Monitoring (also known as quality assurance)** – this ensures that audit work complies with relevant auditing standards and with the review of published financial statements, and to assess compliance with accounting standards and other legal requirements.

3. **Investigation and discipline**, to consider complaints made against members, students and firms and, if the allegations are substantiated, to impose sanctions.

In many professions, including accountancy, the responsibility for regulation has traditionally rested within the profession itself. These professional bodies assume the role of regulator.

However, in recent years a number of events, perceived by many as failures in the self-regulatory framework, have led to the establishment of regulatory bodies that are independent of the accountancy profession. These include the United States' Public Company Accounting Oversight Board (PCAOB).

In other jurisdictions, such as the European Union, self-regulation is still considered acceptable, subject to the establishment of independent oversight arrangements.

In the UK, most of ACCA's regulatory activities, and those of other accountancy bodies, are overseen by the Financial Reporting Council, which is independent of ACCA.

Similarly, in Ireland most of the regulatory activities of the accountancy bodies are overseen by the Irish Auditing and Accounting Supervisory Authority.

And in the Caribbean, regulation of the profession is primarily undertaken by the institutes of chartered accountants of each country, although in Jamaica the independent Public Accountancy Board has primary responsibility to regulate the profession. Furthermore, because many accountants in the region are members of other bodies such as ACCA and CGA, those bodies also have a part to play.

Regulation by professional bodies is described as self-regulation.

ACCA believes both systems – self-regulation with robust independent oversight and independent regulation – can be effective. We also stand by the belief that any system for the regulation of the accountancy profession should comply with the

internationally recognised standards established by the International Federation of Accountants (IFAC) on quality assurance (monitoring), investigation and discipline.

However, it is important that self-regulation is accompanied by appropriate oversight representing the public interest. This oversight is usually exercised by establishing a board, independent of the profession, which oversees the system of self-regulation exercised by the professional body. This ensures that conflicts of interest do not arise and that regulation is conducted by the professional body with integrity. ACCA believes that independent oversight of self-regulation is essential to protect the public and to give credibility to professional body regulation.

In 2008, ACCA established its own Regulatory Board, which is made up of a majority of non-accountant members.

They have the responsibility for overseeing ACCA's work in licensing practitioners, setting standards, monitoring firms of accountants, fulfilling the requirements of statutory oversight regulators and investigating complaints.

The Board comprises three members of ACCA's Council and seven independent 'lay' appointees - non-accountants - one of whom is Lay Chairman.

Placing the management of regulation and discipline at arm's length from the governance of ACCA's other activities provides clear lines of oversight and responsibility; it helps to reassure stakeholders that ACCA's arrangements are operated impartially, with integrity and in the public interest.

In addition to effective oversight arrangements, ACCA believes that the regulatory activities of a professional body must be free of undue influence by members of that body. This must be done to preserve the integrity of the regulatory processes.

For example, ACCA does not advocate the use of 'peer review' as an effective form of practice monitoring. We believe this because it involves practising members undertaking the inspection and assessment of each other's work. One of the major changes effected by the Sarbanes Oxley legislation after the collapse of Enron was

the establishment of the Public Company Accounting Oversight Board to regulate auditors of US public companies, replacing the previous peer review system that had become discredited.

So how does ACCA investigate - and where necessary - discipline?

Transparency and independence are central to our work.

Let me explain:

Firstly, complaints received by ACCA are dealt with by our - Professional Conduct team, which incorporates ACCA's Conciliation Service.

Our conciliation, investigation and disciplinary processes are designed to deliver public value by upholding ACCA's regulations and Code of Ethics and Conduct. This is done through a swift, decisive, fair and transparent process. This ensures effective sanctions against members and students who damage or put at risk the interests of the public. At the same time, we aim to take a proportionate approach to less serious cases.

I'll go onto to speak about public value in a moment, but let me explain further our rigorous process.

Urgent client care issues are resolved through conciliation and members are given advice and encouragement to adopt best practice standards.

While breaches of standards are often identified, in only a minority of cases are they sufficiently serious to be dealt with at a disciplinary hearing.

So let's look at what happens when we reach the disciplinary stage:

- Where an investigating officer, after the conclusion of an investigation, believes that misconduct is indicated, a report of the allegations is prepared for an independent assessor.

- This assessor's role is to consider whether there is a case to answer, and whether the allegations should be referred to the Disciplinary Committee.
- The assessor is not able to refer a case to the Disciplinary Committee unless they are satisfied that there is a real prospect of a reasonable tribunal finding an allegation proved **and** it is in the public interest for a hearing to take place. The assessor has the power to rest allegations on file if that test is not met.

ACCA's Case Presenters, who are experienced barristers have the power to apply to the Disciplinary Committee to withdraw allegations after an assessor has referred them.

This power is exercised sparingly, usually as a result of the member submitting further evidence which leads the Case Presenter to believe that no reasonable tribunal could find the allegations proved. A case cannot be withdrawn unless the Disciplinary Committee agrees. This is an example of the transparency and independence of the process.

ACCA has a robust system in place that we believe is world class, is transparent, is fair and which is open – our Byelaws state that ACCA will publish “disciplinary orders in those cases where a complaint is found proved in whole or in part.” (**ACCA Rulebook p.20, 9i**). We also state in our Rulebook that meetings of the Disciplinary Committee are open to the public, unless the Committee determines that the public shall be excluded from attending – under special circumstances, for instance where publicity would prejudice the interests of justice. (**ACCA Rulebook p. 225, 16a**). We also prohibit Council members and ACCA staff from sitting on the Committee or being able to influence its decisions. And for some years, our Committee must have a majority of non-accountants to be quorate.

We have just published our Report on regulation for 2013, which details our regulatory activities. The report shows that thankfully, over 2012, the overall

percentage of ACCA members subject to complaints has remained very low, at a time when ACCA has seen significant growth in overall membership. The percentage of members about whom complaints prove sufficiently serious each year to warrant disciplinary action was 0.013% in 2012, 0.029% in 2011 and 0.028% in 2010.

We hope this process, this transparency, instils trust in how we deal with complaints against our members or students, no matter how serious.

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And what happens in cases where there are more than one professional body is involved?

This is where we need to ensure close working relationships. I know from my colleagues here in *ACCA Caribbean* that we have excellent relationships with professional bodies here.

Where there are a number of regulatory bodies interested in a member's conduct, there is of course a pecking order about who investigates based on public interest, importance and jurisdiction. Where there is a possibility of criminal prosecution, professional bodies normally have to wait until the police have concluded their investigation or the Director of Public Prosecutions agrees.

Then, if charges are being brought, wait until the trial has been completed so we do not prejudice the criminal prosecutions.

When someone holds dual membership, the primary investigative professional body would be the one who has primary jurisdiction over the member's activities. This is sensible. But the secondary body still has a public interest remit here – this body will normally wait until the primary regulator has concluded their processes in order to minimise regulatory duplication.

ACCA always liaises closely with the primary regulator in such matters to ensure that, ultimately, the public interest is served.

There is no requirement for the secondary regulator to mirror the outcome of the primary regulator's investigation, and in fact that would not be possible because ACCA's disciplinary tribunals are independent and their discretion cannot be hampered.

**Second question:** How can the profession act to reduce the risks of such occurrences in future?

Regulation is about managing risk. In respect of investigative and discipline work, this is about minimising risk to the public arising from members not doing the right things. Lack of effective supervision and enforcement of regulatory rules or principles, can lead to regulatory inefficiency and a culture of non-compliance. This is a breeding ground for risk. As we all know, there is no such thing as a zero risk environment. People are not machines, they make mistakes and they do not always behave as we would expect.

As an academic, I believe dealing with the risk of wrong-doing must come down to the profession's training and development. It must come down to solid whistle-blowing policies. And it must come down to investigation and discipline not just being done but being seen to be done.

Good and effective risk management is all about understanding the environment in which one operates – it is about understanding the control environment, including the competence of the board and staff, the culture, key motivators and the ethical climate. Good risk management is also about understanding a company's strategy, its purpose and the associated risks. Good and effective risk management must also include an appreciation that it is not about managing individual risks, but about understanding patterns of risk and how they are interrelated.

It is also about ensuring that the board and the company's attitude to risk are aligned, and that everyone understands their willingness to accept it.

A process of feedback involving monitoring and learning, so that strategic and other key decisions are taken only where the risks are understood and acceptable. In any complex large organisation, an independent assurance function that gives objective assurance, to the board or the non-executive directors, on each of the above elements. The board having ownership of, and strong commitment to, risk management, including a clear understanding of the above elements and strong non-executive directors.

**This leads me onto my third question:** Do the profession's rules on ethics need to be strengthened?

The accountancy profession has a code of ethics, as do most other professions.

As a reminder, for accountants, the International Ethics Standards Board for Accountants (IESBA) publishes the Code of Ethics for Professional Accountants. The IESBA code was previously issued by the Ethics Committee of the International Federation of Accountants (IFAC), and so was commonly referred to as 'the IFAC code'. It is still known as this.

I believe this Code is strong. It is global and it makes sense.

And for ACCA, we have our own Rulebook for members and students.

This sets out, in the Code of Ethics and Conduct, a set of principles which follow those in the IFAC Code.

This is very much a principles-based framework which calls on all accountants to recognise and aspire to fundamental behavioural standards in all the professional work they do.

However, it is often recognised that significant pressure can build on a person to act in a less than ethical way, and it can be very difficult to refuse to breach a

fundamental ethical principle when someone is being threatened with serious consequences.

I confess that I am no expert in the philosophy of ethics, but as an accountant and as an academic, I do have a professional interest in ethics and ethical behaviour.

ACCA's own commitment to ethics was bolstered in 2006, when we re-launched our qualification to place ethics and professionalism at its heart. Since then it has included a unique online module which will present students with challenging real-life ethical dilemmas.

To be effective, ethical practices need to be relevant to the way each business operates, woven into the culture of each and, crucially, adopted by individuals of integrity within the organisation.

The lead for this process must come right from the top, from the CEO and from the Boardroom. It needs to be linked to the company's risk strategies.

Businesses, and where appropriate regulators, should seek to ensure that they commit themselves to recruiting and developing staff, especially senior executives, directors and financial staff, who have a strong ethical 'compass'.

This process should aim to go beyond aiming to merely stay within the law or to comply with a code, and to develop a business which actively operates in accordance with an agreed ethical framework.

Therefore, the importance of addressing any threats to those fundamental principles needs to be appreciated.

In an ideal world, a member would not be in a situation where any of the fundamental principles are being threatened.

However, section 3.3 of the *ACCA Rulebook* assists members in identifying situations that need to be managed, and dealing with any such threats should they arise.

The five fundamental principles set out in the ACCA code are:

- *Integrity* - being straightforward and honest in all professional and business relationships
- *Objectivity* - not allowing bias, conflicts of interest or undue influence of others to override professional or business judgements
- *Professional competence and due care* - having a continuing duty to maintain professional knowledge and skill at a level required to ensure that a client or employer receives competent professional service based on current developments in practice, legislation and techniques
- *Confidentiality* - respecting the confidentiality of information acquired as a result of professional and business relationships; and not disclosing such information to third parties without proper and specific authority – unless there is a legal duty or demand to disclose. And not using confidential information acquired as a result of professional and business relationships for one's personal gain or for the gain of others such as family and friends.
- *Professional behaviour* - complying with relevant laws and regulations and avoiding any action that discredits the profession.

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Any system of regulation must have the protection of the public interest as its overriding objective, over and above the interests of the members of the profession.

This issue of the public interest brings me onto a related issue – that of public value.

For ACCA, this means three things: **to act in the public interest, to promote ethical businesses and grow economies.**

Last year, we conducted global research to understand public value better, to understand the value of the profession better.

This report, called '*Closing the Value Gap*' found that the accountancy profession will continue to lose credibility if it fails to educate the public and its stakeholders of its value and take steps to rebuild trust in the industry.

For this report, we surveyed more than 250 accountants, 1,500 consumers and key opinion leaders from around the world to better understand the value the accountancy profession can offer and the value that the public believes the profession provides.

In recent years, the role of the accountant has evolved significantly in line with changing regulation and business law, but the research showed there is a perception gap between the profession and the public when it comes to the issue of trust.

We found with this research that three quarters of accountants believe that the general public consider them to be trustworthy, while just 55 per cent of the public agreed – this highlighted the huge gap between how the industry sees itself and what the public actually thinks.

This is in part due to a lack of understanding of the role that accountants play in driving the success of businesses of all sizes, which are so crucial to economic growth and recovery.

When it comes to gaining public trust, the report offered five recommendations for the accountancy profession to close the value gap:

1. Engage in discussion with stakeholders and the public at large about what it means to be an accountant
2. Talk about audit - what it is and what it is not
3. Take the initiative and explain how accountants add value
4. Address real concerns about ethical issues and conflicts of interest
5. Develop the soft skills needed to do this engagement and build trust with people.

The results from the report also showed that the profession needs to work on its own image compared to other professions. The public ranks the accountancy profession

below high-trust alternatives such as doctors, nurses, architects and engineers, but is seen as more trustworthy than bankers, politicians, journalists and lawyers.

Richard Sexton, executive board member for reputation and policy at PwC, was interviewed for this research report. He is quoted as saying: *“As accountants, it is important that we come out of the shadows as a profession. Although there will be some challenging conversations, it is important that we get better at explaining what we do, how we do it and how we generate value.”*

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As a profession, we can never guarantee that no member ever will breach regulations, or behave unethically. If only life was as simple as that.

But what regulation is – in its broadest sense - is about giving members standards to which members can adhere and aspire.

Where a professional body has the role of being a national regulator, then it is our role to make sure that we have appropriately high standards. We have to make sure members are aware of these standards; and where there is a complaint, where there is a breach, we have to deal with issues appropriately and transparently.

If any profession does not investigate a complaint or an issue with independence and openness, then it loses trust. If regulation is lax, then people lose trust in the system.

This is in the public interest. If we get it wrong, we risk reputational damage; we lose trust in what we do; and we damage the reputation of those who do the right thing, day in and day out.

Ladies and gentlemen, thank you for listening.

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