

IN THE MATTER OF

THE EXECUTIVE COUNSEL TO THE FINANCIAL REPORTING COUNCIL

-and-

RUSSELL SINCLAIR MCBURNIE

SETTLEMENT AGREEMENT

- 1) This Settlement Agreement ("**Settlement Agreement**") is made on the 4th day of May 2018 between Claudia Mortimore as the Executive Counsel of the Financial Reporting Council ("**FRC**"), of 8th Floor, 125 London Wall, London, EC2Y 5AS ("**the Executive Counsel**") of the first part, and Russell Sinclair McBurnie ("**Mr McBurnie**") of the second part. The Executive Counsel and Mr McBurnie together are described as "**the Parties**".
- 2) The Settlement Agreement is evidenced by the signatures of the Executive Counsel on her own behalf and by Mr McBurnie on his own behalf.
- 3) The Formal Complaint alleging Misconduct against Mr McBurnie as a Member of the Institute of Chartered Accountants in England and Wales ("**the ICAEW**") was delivered by the Executive Counsel under paragraph 7(11) of the FRC Accountancy Scheme ("**the Scheme**") on 8 December 2016. The amended Formal Complaint as submitted to the Disciplinary Tribunal ("**the Tribunal**") is annexed to this Settlement Agreement.
- 4) The amended Formal Complaint relates to the conduct of Mr McBurnie in relation to the preparation and approval of the financial statements of RSM Tenon Group plc ("**RSM Tenon**") for the financial year ended 30 June 2011 ("**FY11**"). More specifically, the conduct of Mr McBurnie fell significantly short of the standards reasonably to be expected of a Member in respect of the preparation and approval of the financial statements of RSM Tenon for FY11 in the following areas:
 - i) The accrual of bonus payments;
 - ii) Certain aspects in relation to the recognition of Work in Progress and amounts recoverable on contracts;
 - iii) The recognition of prepaid fees for the purpose of obtaining IVA appointments;
 - iv) The Econocom Leases;
 - v) The assessment of the impairment of goodwill; and
 - vi) The preparation of the financial statements on a going concern basis.

- 5) Mr McBurnie admits Allegations 1, 2, 4, 7, 8, 9, 10, 12 and 16 in the amended Formal Complaint.
- 6) The Parties recognise that the determination to be made in this case is a matter for the Tribunal in accordance with paragraph 8(5) of the Scheme.

Mr McBurnie - Sanction

- 7) The Executive Counsel and Mr McBurnie have agreed the following terms of settlement:
 - i) A Fine of £60,000 (discounted for settlement by 5% to £57,000). The Fine shall be paid not later than 28 days after the date when the Settlement Agreement takes effect.
 - ii) Exclusion from the ICAEW for a recommended period of 5 years; any application for readmission shall not necessarily be approved, but shall be considered by the ICAEW on its merits.
- 8) In reaching this Settlement Agreement with Mr McBurnie, the Executive Counsel considered the following stages and took account of the following factors in accordance with the Sanctions Guidance (1 June 2014):

Nature and Seriousness of the Misconduct

- 9) The Misconduct risked the loss of significant sums of money;
- 10) The Misconduct involved a failure to comply with professional standards across a number of areas in preparing and approving the financial statements of RSM Tenon for FY11;
- 11) The nature, extent and importance of the standards breached. The Misconduct relates to Mr McBurnie's breach of two of the Fundamental Principles of the ICAEW Code of Ethics;
- 12) The Misconduct involved a failure to act or conduct business with integrity;
- 13) The Misconduct involved recklessness but not dishonesty;
- 14) The Misconduct potentially adversely affected a significant number of people in the United Kingdom as RSM Tenon was a publicly listed company;
- 15) The Misconduct could undermine confidence in the standards of conduct in general of the Members, and/or in financial reporting and/or in the profession generally;
- 16) Mr McBurnie held a senior position and had supervisory responsibilities;
- 17) Mr McBurnie was not solely responsible for the Misconduct; and
- 18) The Misconduct was extensive, comprising nine Allegations (as detailed in the amended Formal Complaint).

Identification of Sanction

- 19) Having assessed the nature and seriousness of the Misconduct, the Executive Counsel has determined that a Fine and an exclusion is an appropriate sanction. Executive Counsel has then taken into account any aggravating and mitigating factors that exist (to the extent that they have not already been taken into account in relation to the seriousness of the Misconduct). Having considered those additional factors set out below, Executive Counsel has determined that no adjustment to sanction is necessary.

Aggravating Factor

- 20) Executive Counsel has concluded there are no aggravating factors to be taken into account.

Mitigating Factors

- 21) Mr McBurnie has a good compliance history and disciplinary record.
- 22) The Allegations are in relation to one financial year.
- 23) Mr McBurnie did not stand to gain any profit or benefit from the Misconduct.

Deterrence

- 24) No adjustment for deterrence is required in this case.

Discount for Admissions and Settlement

- 25) Having taken into account full admissions by Mr McBurnie and the stage at which those admissions were made (in Stage 2 of the case in accordance with paragraph 59 of the Sanctions Guidance), the Executive Counsel determined that a reduction of 5% as to the Fine as a settlement factor is appropriate.

Other Considerations

- 26) In accordance with paragraph 32 (iii) of the Sanctions Guidance, the Executive Counsel has taken into account Mr McBurnie's financial resources and whether there are arrangements that would result in part or all of the Fine being paid or indemnified by insurers.

Mr McBurnie - Costs

- 27) The Executive Counsel and Mr McBurnie have agreed that a sum of £825,000 is to be paid by Mr McBurnie as a contribution towards the Executive Counsel's costs of, and incidental to, the investigation. The costs shall be paid not later than 28 days after the date when the Settlement Agreement takes effect.
- 28) In accordance with paragraph 62 of the Sanctions Guidance, the Executive Counsel has taken into account Mr McBurnie's financial position and the impact of the Fine; and whether there are arrangements that would result in part or all of the costs being paid or indemnified by insurers.

- 29) If the decision of the Tribunal is to approve the Settlement Agreement, including the sanctions set out above, then the Settlement Agreement shall take effect from the next working day after the date on which the notice of the decision is sent to Mr McBurnie in accordance with paragraph 8(5) of the Scheme.
- 30) The Settlement Agreement and annex will remain confidential until publication in accordance with paragraph 8(6) of the Scheme.

Claudia Mortimore

4 May 2018

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Claudia Mortimore
Executive Counsel

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Date

R Sinclair McBurnie

4/5/18

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Russell Sinclair McBurnie

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Date