

**IN THE MATTER OF**

**THE EXECUTIVE COUNSEL TO THE FINANCIAL REPORTING COUNCIL**

**-and-**

**(1) GRANT THORNTON UK LLP**

**(2) ERIC HEALEY**

**(3) KEVIN ENGEL**

**(4) DAVID BARNES**

**(5) JOANNE KEARNS**

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**SETTLEMENT AGREEMENT**

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1. This Settlement Agreement ("**Agreement**") is made on 9 July 2018 between Daniel Rouse as Interim Deputy Executive Counsel of the Financial Reporting Council ("**the Executive Counsel**"), Grant Thornton UK LLP ("**Grant Thornton**"), Mr Eric Healey ("**Mr Healey**"), Mr Kevin Engel ("**Mr Engel**"), Mr David Barnes ("**Mr Barnes**") and Ms Joanne Kearns ("**Ms Kearns**") (together "**the Parties**"). The Agreement is evidenced by the signatures of the Executive Counsel on his own behalf and by Richard Highley of DAC Beachcroft LLP on behalf of Grant Thornton, Mr Healey, Mr Engel, Mr Barnes and Ms Kearns.
2. The Parties recognise that the determination to be made in this case is a matter for the Tribunal member in accordance with paragraph 8(4)(ii) of the FRC Accountancy Scheme ("**the Scheme**").
3. Terms used in this Agreement shall have the same meaning as set out in the Scheme and the Sanctions Guidance dated 1 June 2014 ("**the 2014 Sanctions Guidance**").
4. If the decision is to approve the Agreement, including the sanctions set out below, then the Agreement shall take effect from the next working day after the date on which the notice of the decision is sent to the Parties in accordance with paragraph 8(4)(iv) of the Scheme.
5. The Particulars of Fact and Acts of Misconduct against Grant Thornton, Mr Healey, Mr Engel, Mr Barnes and Ms Kearns ("**the Particulars**") as a member firm and members respectively of the Institute of Chartered Accountants in England Wales ("**ICAEW**") were prepared by the Executive Counsel in accordance with the Scheme and are annexed. The agreed terms of settlement in relation to each respondent is as follows:

**(i) GRANT THORNTON**

6. The Particulars, insofar as they relate to Grant Thornton, are in respect of its loss of independence as auditor of (i) Nichols Plc ("**Nichols**") and (ii) the University of Salford ("**the University**") for those entities' financial years 2010-2013 inclusive, and the related serious and widespread inadequacies in the Manchester office's control environment, as well as deficiencies in firmwide policies and procedures in respect of retiring partners during the relevant period.
7. Grant Thornton, insofar as it relates to the firm, admits the Particulars and the ten Acts of Misconduct alleged against it.

**Sanction**

8. The Executive Counsel and Grant Thornton have agreed the following terms of settlement:
  - a. Fine of £4,000,000 (reduced in accordance with paragraph 59 of the 2014 Sanctions Guidance relating to settlement adjustments by 25% to £3,000,000);
  - b. Severe Reprimand.
9. The Fine shall be paid not later than 28 days after the date when this Agreement takes effect.
10. In determining the appropriate sanctions, the Executive Counsel adopted the approach set out in paragraph 16 of the 2014 Sanctions Guidance, as follows:

***Nature and Seriousness of the Misconduct***

11. The Executive Counsel considers that the factors relevant to assessing the nature and seriousness of the Misconduct are:
  - a. The admitted breaches led to a loss of independence in respect of 8 audits ("**the Audits**") over a period of over 4 years (as set out in Acts 1 to 9 of the Particulars) in that it is probable that a reasonable and informed third party would conclude that Grant Thornton's objectivity was, or was likely to be, impaired in relation to the Audits. The breaches resulted from admitted widespread and serious inadequacies in the firm's Manchester Office's control environment during the relevant period, as well as from firmwide deficiencies in policies and procedures relating to retiring partners (as set out in Act 10 to the Particulars).
  - b. The standards breached, namely Ethical Standards, are of critical importance as they are designed to preserve the integrity, independence and objectivity of audit and therefore support confidence that users can reasonably have in financial statements. The standards were breached on a number of occasions over a long period and in a significant way; given the nature of the risks posed, the breaches required the resignation of Grant Thornton as auditors of both

Nichols and the University but as set out in the Particulars, they did not in fact so resign but signed off on all of the Audits with unqualified opinions.

- c. The firm obtained audit fees in respect of the Audits totalling approximately £560,000 in circumstances where it has admitted it should not have undertaken the relevant audit engagements and that doing so constituted Misconduct.
- d. The Misconduct was not dishonest or deliberate or reckless save that the firm is responsible for the recklessness of its audit partner in relation to a certain aspect of Act 1 against Mr Engel.
- e. The Misconduct is very likely to undermine confidence in the standards of conduct in general of Member Firms and financial reporting.
- f. The case highlighted serious failures in the effectiveness of the firm's relevant systems and procedures and its implementation of ISQC1.

### ***Identification of Sanction***

12. Having assessed the seriousness of the Misconduct and considered the range of available sanctions, the Executive Counsel considers that the sanctions identified above are appropriate.
13. The Executive Counsel has taken into account aggravating and mitigating factors set out below, to the extent that they have not already been taken into account in considering the nature and seriousness of the Misconduct. The Executive Counsel has concluded that the sanctions set out in paragraph 8 above are appropriate, and no adjustment to sanctions is necessary, having regard to the purpose of the Scheme.

### ***Aggravating Factors***

14. The following aggravating factor was identified:
  - a. Grant Thornton has been sanctioned for Misconduct in relation to two previous matters. It was fined £1,600,000 (reduced to £975,000 for settlement) and issued with a Severe Reprimand on 8 July 2015 for Misconduct in relation to its audit of Manchester Building Society. It was further fined £3,500,000 (reduced to £2,275,000) and issued with a Severe Reprimand on 24 April 2017 for Misconduct in relation to its audit of AssetCo.

### ***Mitigating Factors***

15. The following mitigating factors were identified:
  - a. Grant Thornton has introduced changes and improvements to its procedures and policies relating to retiring partners since the Misconduct occurred, effectively preventing consultancy agreements being entered into or continued with former partners who join audit clients.
  - b. Grant Thornton has demonstrated contrition for the Misconduct.

### ***Deterrence***

16. Executive Counsel considers that, having regard to the circumstances of the case, a fine of £4,000,000 will act as an effective deterrent. Therefore, no adjustment for this factor is required.

### ***Discount for Settlement***

17. Having taken into account the admissions made by Grant Thornton and the stage at which those admissions were made (in accordance with paragraph 59 of the Sanctions Guidance) a reduction of 25% to the Fine is appropriate.

### ***Other considerations***

18. In accordance with paragraph 32(ii) of the Sanctions Guidance, the Executive Counsel has taken into account the size and financial resources of Grant Thornton and the effect of a Fine on its business; and whether there are arrangements that would result in part or all of the Fine being paid or indemnified by insurers.

### ***Costs***

19. The Parties have agreed the following terms of settlement for costs:

A sum of £165,000 to be paid by Grant Thornton, being the Executive Counsel's entire costs of, and incidental to, the investigation. The costs shall be paid no later than 28 days after the date when this Agreement takes effect. In accordance with paragraph 62 of the Sanctions Guidance, the Executive Counsel has taken into account Grant Thornton's financial position and the impact of the Fine; and whether there are arrangements which would result in part or all of any award of costs being paid or indemnified by insurers.

### **(ii) ERIC HEALEY**

20. The Particulars, insofar as they relate to Mr Healey, are in respect of his continued participation in Grant Thornton's business through a consultancy agreement notwithstanding his appointment to the audit committee and Council of the University and the Audit Committee of the Board of Nichols which led, inter alia, to the loss of independence of the Audits.

21. Mr Healey admits the Particulars, insofar as they relate to him, including the four Acts of Misconduct against him set out in the Particulars.

### **Sanction**

22. The Executive Counsel and Mr Healey have agreed the following terms of settlement:

- a. Exclusion from the ICAEW for a recommended period of five years; any application for readmission after the specified period shall not necessarily be approved, but shall be considered by the ICAEW on its merits; and
  - b. Fine of £200,000 (reduced in accordance with paragraph 59 of the 2014 Sanctions Guidance relating to settlement adjustments by 25% to £150,000);
23. The Fine shall be paid within 12 months, in instalments to be agreed, with the first instalment to be paid not later than 28 days after the date when this Agreement takes effect.
24. In determining the appropriate sanctions, the Executive Counsel adopted the approach set out in paragraph 16 of the 2014 Sanctions Guidance, as follows:

***Nature and seriousness of the Misconduct***

25. The following factors are relevant:
- a. The Misconduct involved serious breaches of important standards and included breaches of the fundamental principle of objectivity. These occurred over a significant period of time and as a result of Mr Healey's actions, independence was lost in relation to the Audits.
  - b. Mr Healey earned circa £82,500 from Grant Thornton under his consultancy agreements and £66,000 by virtue of his role on the Board of Nichols.
  - c. The Misconduct was, in certain respects, reckless.
  - d. The Misconduct is very likely to undermine confidence in the standards of conduct in general of Members and in financial reporting.
  - e. Mr Healey held a senior position and had supervisory responsibilities. Mr Healey was a senior partner at Grant Thornton and then took key management positions at the University and Nichols.

***Identification of Sanction***

26. Having assessed the seriousness of the Misconduct and considered the range of available sanctions, the Executive Counsel considers, having regard to paragraph 44, that the sanctions identified above are appropriate.
27. In accordance with paragraph 45 of the Guidance, the Executive Counsel has fully considered all other available sanctions, to ensure that exclusion is the most appropriate sanction (either on its own or in conjunction with another sanction or sanctions) and is proportionate when taking into account all the circumstances of the case.
28. The Executive Counsel has determined that Exclusion from membership and a Fine are appropriate sanctions. The Executive Counsel has then taken into account any

aggravating and mitigating factors set out below, to the extent that they have not already been taken into account in considering the nature and seriousness of the Misconduct. Executive Counsel has concluded that the sanctions set out in paragraph 22 above are appropriate, and no adjustment to sanctions is necessary, having regard to the purpose of the Scheme.

***Aggravating Factors***

29. No aggravating factors have been identified.

***Mitigating Factors***

30. The following mitigating factors were identified:

- a. Mr Healey has admitted the Misconduct and apologised for it.
- b. Mr Healey has a good compliance history and disciplinary record.

***Deterrence***

31. Executive Counsel considers that, having regard to the circumstances of the case, the proposed sanctions will act as an effective deterrent. Therefore, no adjustment for this factor is required.

***Discount for Settlement***

32. Having taken into account the admissions made by Mr Healey and the stage at which those admissions were made in accordance with paragraph 59 of the Sanctions Guidance) a reduction of 25% to the Fine is appropriate.

***Other considerations***

33. In accordance with paragraph 32(ii) of the Sanctions Guidance, the Executive Counsel has taken into account Mr Healey's financial resources and the effect of a Fine on Mr Healey; and whether there are arrangements that would result in part or all of the Fine being paid or indemnified by insurers.

***Costs***

34. The Executive Counsel and Mr Healey have agreed that there shall be no order for costs against Mr Healey.

**(iii) KEVIN ENGEL**

35. The Particulars, insofar as they relate to Mr Engel, are in respect of his role as audit engagement partner for Nichols for the 2011, 2012 and 2013 financial years and his failure to inform Nichols that his loss of independence was such that no audit opinion should have been given but rather that Grant Thornton should have resigned the audits.

36. Mr Engel admits the Particulars, insofar as they relate to him, including the three Acts of Misconduct against him set out in the Particulars.

## **Sanction**

37. The Executive Counsel and Mr Engel have agreed the following terms of settlement:

- a. Fine of £100,000 (reduced in accordance with paragraph 59 of the 2014 Sanctions Guidance relating to settlement adjustments by 25% to £75,000); and
- b. Severe Reprimand.

38. The Fine shall be paid within 24 months, in instalments to be agreed, with the first instalment to be paid not later than 28 days after the date when this Agreement takes effect.

39. In determining the appropriate sanctions, the Executive Counsel adopted the approach set out in paragraph 16 of the 2014 Sanctions Guidance, as follows:

### ***Nature and seriousness of the Misconduct***

40. The following factors are relevant:

- a. The standards breached, namely Ethical Standards, are of critical importance as they are designed to preserve the integrity, independence and objectivity of audit and therefore support confidence that users can reasonably have in financial statements. Mr Engel has also admitted a breach of the fundamental principle of objectivity.
- b. The Misconduct took place over a relatively long period of time.
- c. The Misconduct was, in a certain respect in relation to Admitted Act 1, reckless.
- d. The Misconduct is very likely undermine confidence in the standards of conduct in general of Members.
- e. The Member held a senior position and had supervisory responsibilities.

### ***Identification of Sanction***

41. Having assessed the seriousness of the Misconduct and considered the range of available sanctions, the Executive Counsel has determined that a Fine and a Severe Reprimand are appropriate sanctions.

42. The Executive Counsel has then taken into account any aggravating and mitigating factors set out below, to the extent that they have not already been taken into account in considering the nature and seriousness of the Misconduct. Executive Counsel has concluded that the sanctions set out in paragraph 37 above are appropriate, and no adjustment to sanctions is necessary, having regard to the purpose of the Scheme.

### ***Aggravating Factors***

43. No aggravating factors were identified.

***Mitigating Factors***

44. The following mitigating factors were identified:

- a. Mr Engel has admitted the Misconduct and demonstrated contrition for it.
- b. Mr Engel has a good compliance history and disciplinary record.

***Deterrence***

45. Executive Counsel considers that, having regard to the circumstances of the case, the proposed sanctions will act as an effective deterrent. Therefore, no adjustment for this factor is required.

***Discount for Settlement***

46. Having taken into account the admissions made by Mr Engel and the stage at which those admissions were made in accordance with paragraph 59 of the Sanctions Guidance) a reduction of 25% to the Fine is appropriate.

***Other considerations***

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

***Costs***

48. The Executive Counsel and Mr Engel have agreed that there shall be no order for costs against him.

**(iv) DAVID BARNES**

49. The Particulars, insofar as they relate to Mr Barnes, are in respect of his role as audit engagement partner for the University for the 2010, 2011 and 2012 financial years and his failure to inform the University that Mr Healey's appointment to the Audit Committee and thereafter to the Council was a significant fact or matter which bore upon Grant Thornton's objectivity and independence in respect of each of these years.

50. Mr Barnes admits the Particulars, insofar as they relate to him, including the Act of Misconduct against him set out in the Particulars.

***Sanction***

51. The Executive Counsel and Mr Barnes have agreed the following terms of settlement:

- a. Fine of £70,000 (reduced in accordance with paragraph 59 of the 2014 Sanctions Guidance relating to settlement adjustments by 25% to £52,500); and

- b. Reprimand.
52. The Fine shall be paid not later than 28 days after the date when this Agreement takes effect.
53. In determining the appropriate sanctions, the Executive Counsel adopted the approach set out in paragraph 16 of the 2014 Sanctions Guidance, as follows:

***Nature and seriousness of the Misconduct***

54. The following factors are relevant:
- a. The standards breached, namely Ethical Standards, are of critical importance as they are designed to preserve the integrity, independence and objectivity of audit and therefore are key to supporting confidence that users can reasonably have in financial statements.
  - b. The Misconduct took place over a relatively long period of time.
  - c. The Misconduct could undermine confidence in the standards of conduct in general of Members and Member Firms and/or in financial reporting.
  - d. The Member held a senior position and had supervisory responsibilities.
  - e. The Misconduct was not dishonest, deliberate or reckless.
  - f. The Member was not solely responsible for the Misconduct.

***Identification of Sanction***

55. Having assessed the seriousness of the Misconduct and considered the range of available sanctions, the Executive Counsel has determined that a Fine and a Reprimand are appropriate sanctions.
56. The Executive Counsel has then taken into account any aggravating and mitigating factors set out below, to the extent that they have not already been taken into account in considering the nature and seriousness of the Misconduct. The Executive Counsel has also considered whether any adjustment to the sanctions for deterrence is required in this case. The conclusion reached is that the sanctions set out in paragraph 51 above are appropriate, having regard to the purpose of the Scheme.

***Aggravating Factors***

57. No aggravating factors were identified.

***Mitigating Factors***

58. The following mitigating factors were identified:

- a. Mr Barnes has admitted the Misconduct and demonstrated contrition for it.
- b. Mr Barnes has a good compliance history and disciplinary record.

***Deterrence***

59. The Executive Counsel considers that, having regard to the circumstances of the case, the proposed sanctions will act as an effective deterrent. Therefore, no adjustment for this factor is required.

***Discount for Settlement***

60. Having taken into account the admissions made by Mr Barnes and the stage at which those admissions were made in accordance with paragraph 59 of the Sanctions Guidance) a reduction of 25% to the Fine is appropriate.

***Other considerations***

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

**Costs**

62. The Executive Counsel and Mr Barnes have agreed that there shall be no order for costs against him.

**(v) JOANNE KEARNS**

63. The Particulars, insofar as they relate to Ms Kearns, are in respect of her role as audit engagement partner for Nichols for the 2010 financial year and her failure to provide appropriate disclosure to Nichols that Mr Healey's appointment to the Board of Nichols was a significant fact which bore upon Grant Thornton's independence.

64. Ms Kearns admits the Particulars, insofar as they relate to her, including the two Acts of Misconduct against her set out in the Particulars.

**Sanction**

65. The Executive Counsel and Ms Kearns have agreed the following terms of settlement:

- a. Fine of £60,000 (reduced in accordance with paragraph 59 of the 2014 Sanctions Guidance relating to settlement adjustments by 25% to £45,000); and
- b. Reprimand.

66. The Fine shall be paid in instalments with the first instalment to be paid not later than 28 days after the date when this Agreement takes effect.

67. In determining the appropriate sanctions, the Executive Counsel adopted the approach set out in paragraph 16 of the 2014 Sanctions Guidance, as follows:

#### **Nature and seriousness of the Misconduct**

68. The following factors are relevant:

- a. The standards breached, namely Ethical Standards, are of critical importance as they are designed to preserve the integrity, independence and objectivity of audit and therefore are key to supporting confidence that users can reasonably have in financial statements.
- b. The Misconduct took place over a relatively short period of time.
- c. The Misconduct could undermine confidence in the standards of conduct in general of Members and Member Firms and/or in financial reporting.
- d. The Member held a senior position and had supervisory responsibilities.
- e. The Misconduct was not dishonest, deliberate or reckless.
- f. Ms Kearns was not solely responsible for the Misconduct.

#### ***Identification of Sanction***

69. Having assessed the seriousness of the Misconduct and considered the range of available sanctions, the Executive Counsel has determined that a Fine and a Reprimand are appropriate sanctions.

70. The Executive Counsel has then taken into account any aggravating and mitigating factors set out below, to the extent that they have not already been taken into account in considering the nature and seriousness of the Misconduct. The Executive Counsel has also considered whether any adjustment to the sanctions for deterrence is required in this case. The conclusion reached is that the sanctions set out in paragraph 65 above are appropriate, having regard to the purpose of the Scheme.

#### ***Aggravating Factors***

71. No aggravating factors were identified.

#### ***Mitigating Factors***

72. The following mitigating factors were identified:

- a. Ms Kearns has admitted the Misconduct and demonstrated contrition for it.
- b. Ms Kearns has a good compliance history and disciplinary record.

***Deterrence***

73. Executive Counsel considers that, having regard to the circumstances of the case, the proposed sanctions will act as an effective deterrent. Therefore, no adjustment for this factor is required.

***Discount for Settlement***

74. Having taken into account the admissions made by Ms Kearns and the stage at which those admissions were made in accordance with paragraph 59 of the Sanctions Guidance) a reduction of 25% to the Fine is appropriate.

***Other considerations***

75. In accordance with paragraph 32(ii) of the Sanctions Guidance, the Executive Counsel has taken into account Ms Kearns' financial resources and the effect of a Fine on Ms Kearns; and whether there are arrangements that would result in part or all of the Fine being paid or indemnified by insurers.

**Costs**

76. The Executive Counsel and Ms Kearns have agreed that there shall be no order for costs against her.

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[09/07/2018]

**Daniel Rouse**

**Interim Deputy Executive Counsel**

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[09/07/2018]

**Owen Brookman**

**General Counsel**

**On behalf of Grant Thornton UK LLP**

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[09/07/2018]

**Eric Healey**

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[09/07/2018]

**Kevin Engel**

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**David Barnes**

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[09/07/2018]

**Joanne Kearns**