

Edited for publication

IN THE MATTER OF:

THE FINANCIAL REPORTING COUNCIL ACCOUNTANCY SCHEME

AND IN THE MATTER OF

THE EXECUTIVE COUNSEL TO THE FINANCIAL REPORTING COUNCIL

- and -

(1) JOHN SHANNON

(2) RAYMOND FLYNN

(3) MATTHEW BOYLE

**REPORT OF THE DISCIPLINARY TRIBUNAL
OF THE FINANCIAL REPORTING COUNCIL**

BY

SIR BERNARD EDER (Legal Chair)

DR PAMELA ORMEROD (Lay Member)

MR JOHN ALEXANDER (Accountant Member)

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PART 1: INTRODUCTION

1. The Financial Reporting Council (the “**FRC**”) is the independent disciplinary body for the accountancy and actuarial professions in the UK. The FRC’s rules and procedures relating to accountants are set out in the Accountancy Scheme (the “**Scheme**”) and Accountancy Regulations of 8 December 2014.
2. This is the Report of the undersigned Dr Pamela Ormerod, Mr John Alexander and Sir Bernard Eder in respect of the Formal Complaint made by the Executive Counsel of the Financial Reporting Council (the “**Executive Counsel**”) pursuant to paragraph 7(10) of the Scheme in respect of the Respondent members in business:
 - (a) John Shannon (“**Mr Shannon**”), a member of Chartered Accountants Ireland (“**CAI**”) and Chief Executive Officer (“**CEO**”) of AssetCo Plc (“**AssetCo**”) between 30 March 2007 and 24 March 2011. Mr Shannon also held a substantial shareholding in AssetCo – some 27,741,104 of 90,712,740 ordinary shares allotted as at 17 November 2009. In May 2011, Mr Shannon was dismissed from AssetCo for breach of fiduciary duty (having resigned as a director on request two months earlier).
 - (b) Raymond Francis Flynn (also known as “Frank Flynn”) (“**Mr Flynn**”), a member of CAI and Chief Financial Officer of AssetCo between 30 March 2007 and 4 October 2010. Mr Flynn held a significant number of shares in AssetCo, albeit approximately one quarter of the number held by Mr Shannon. He resigned as director of AssetCo on 4 October 2010.
 - (c) Matthew Boyle (“**Mr Boyle**”), a member of CAI at all material times until 25 January 2013 (when he was excluded from membership) and Group Financial Controller of AssetCo between May 2009 and 27 July 2011 (having been employed by AssetCo from 30 March 2007). At all material times, Mr Boyle reported directly to Mr Flynn. Mr Boyle’s employment with AssetCo was terminated on 27 July 2011 following an internal disciplinary hearing as a result of Mr Boyle’s misappropriation of his employer’s funds.

The Tribunal reached unanimous agreement on the conclusions, findings and orders as set out in this Report.

3. The Formal Complaint relates to the Respondents' conduct principally in relation to the preparation and approval of the accounts and financial statements for the years ended 31 March 2009 and 31 March 2010, their conduct as Members within AssetCo during those financial years and Mr Shannon's subsequent contact with regulatory authorities namely, the FRC and Chartered Accountancy Regulatory Board ("**CARB**").
4. We set out below our findings and conclusions following the oral hearing that took place at the International Dispute Resolution Centre in Fleet Street, London EC4Y on 15, 16 and 17 January 2018. At that hearing (which was limited to issues of liability), Executive Counsel was represented by Joanna Smith QC and Jonathan Chew. However, it is important to note that the Respondents did not properly respond to the proceedings; and they did not appear and were not represented at that main hearing. Notwithstanding, we are satisfied that Executive Counsel has done everything reasonably possible to ensure that they have all been kept fully informed of the initiation and progress of the proceedings as appears from a witness statement submitted by David Anthony Johnson, a Senior Lawyer in the Enforcement Division of the FRC, dated 21 December 2017 and which may be found at Appendix A. In summary:
 - (a) With regard to Mr Shannon:
 - (i) Following initial contact in August 2014 with Mr Shannon and thereafter with Mr Shannon's nominated lawyer (Mr Gordon of Napier & Sons Solicitors), Mr Shannon was invited to attend an interview for the purposes of the Executive Counsel's investigation. Mr Shannon declined to attend on the grounds that he had no permanent employment and that his financial means were insufficient to incur the cost of attendance. Therefore, on 8 July 2015, Executive Counsel served on Mr Shannon (pursuant to paragraph 14(2) of the Scheme) a Notice requiring Mr Shannon to answer, in writing, various questions regarding AssetCo. On 12 August 2015, Mr Shannon provided his written responses (the "**Written Answers**"). Subsequently, Mr Shannon provided certain written responses to certain written questions as well as a sworn statement of financial resources at that time.
 - (ii) On 7 October 2016, the Executive Counsel served the Proposed Formal Complaint on Mr Shannon by delivery to Mr Gordon and to Mr Shannon's email address. On or about 20 January 2017, the Formal Complaint was

delivered to Mr Gordon with an email copy to Mr Shannon's email address. On 25 January 2017, Mr Gordon confirmed receipt. All subsequent correspondence has been sent to Mr Gordon and to Mr Shannon's email address.

- (iii) Further attempts to contact Mr Shannon appear from Mr Johnson's witness statement.
 - (iv) In the event, Mr Shannon failed to give notice to defend the present proceedings. Accordingly, on 13 March 2017, an order was made by the Tribunal that Mr Shannon was not permitted to serve a defence in these proceedings without the permission of the Tribunal. Thereafter, no application was ever made to serve a defence; and he has never served any defence.
 - (v) All documents in these proceedings (including the hearing bundle) have continued to be delivered to Mr Gordon.
- (b) With regard to Mr Boyle:
- (i) On 18 May 2015, Mr Boyle informed the Executive Counsel that email correspondence was "most practicable" since he resided in South East Asia and he provided his email address. Accordingly, relevant correspondence has been sent to that email address.
 - (ii) Pursuant to requests made pursuant to paragraph 14(2) of the Scheme, Mr Boyle was interviewed in person on 17 June 2015.
 - (iii) On 7 October 2016, the Executive Counsel sent a copy of *inter alia* the Proposed Formal Complaint to Mr Boyle's email address. On 12 October 2017, this was duly acknowledged by Mr Boyle by email.
 - (iv) Under cover of a letter dated 20 January 2017, the Formal Complaint was delivered to Mr Boyle by post and by email. On 24 January 2017, Mr Boyle acknowledged receipt and also provided an address in Belfast to which the evidence in support of the Formal Complaint should be sent. The evidence was delivered to that address.

- (v) In the event, Mr Boyle failed to give notice of intention to defend these proceedings. Accordingly, on 13 March 2017, an order was made by the Tribunal that Mr Boyle was not permitted to serve a defence in these proceedings without the permission of the Tribunal. Thereafter, no application was ever made to serve a defence; and he has never served any defence although there have been certain further communications with Mr Boyle as appears from Mr Johnson’s statement.
 - (vi) Attempts to serve the hearing bundle at the address provided by Mr Boyle have been unsuccessful. Mr Boyle was notified of this by email. By email dated 20 November 2017, Mr Boyle stated that he was “currently” abroad but that he would be returning in December and would be able to give a definite date (i.e. for when it would be convenient to deliver the hearing bundle) by the “end of the week”. Despite a further chaser by email, this information was not provided. However, on 20 December 2017, Mr Boyle sent an email providing certain information (previously requested by the Executive Counsel) with regard to his financial resources.
- (c) With regard to Mr Flynn:
- (i) Pursuant to requests made pursuant to paragraph 14(2) of the Scheme, Mr Flynn was interviewed in person on 8 June 2015.
 - (i) Unlike, Mr Shannon and Mr Boyle, Mr Flynn initially took an active part in these proceedings. In particular:
 - i on 1 December 2016, he made certain representations;
 - ii following service of the Formal Complaint on 20 January 2017, he filed a defence on 22 May 2017; and
 - iii following a request by the Executive Counsel, he provided certain further information.
 - (ii) However, following a further request for information by the Executive Counsel, an order by the Tribunal requiring him to comply with such request by 25 August 2017 and Mr Flynn’s failure to comply with such order, an order dated 3 September 2017 was made by the Tribunal that Mr Flynn’s

defence was struck out and he was not permitted to further defend the hearing of the Formal Complaint without the permission of the Tribunal. Thereafter, no application was ever made to further defend the proceedings although there have been certain further communications with Mr Flynn as appears from Mr Johnson's statement; and he wrote to the Tribunal shortly before the hearing in January 2018 (see paragraph 9 below).

5. In light of the above and bearing in mind the principles as stated by the Court of Appeal in *General Medical Council v Adeogba* [2016] 1 WLR 3687, we decided that we should proceed with the hearing.
6. In advance of the hearing, there were served on behalf of Executive Counsel signed statements from the following witnesses:
 - (a) Robert Francis Napper. He is a retired partner of Grant Thornton UK LLP ("GT") which firm was the auditor of AssetCo for successive financial years up to and including 31 March 2010. Mr Napper was the Senior Statutory Auditor who signed the audit reports of AssetCo for the financial years in question, viz. the financial years ended 31 March 2009 and 31 March 2010. He also signed in the name of GT the audit reports of AssetCo for the two previous financial years ended 31 March 2007 and 31 March 2008.
 - (b) A former employee of GT whom we shall refer to as M1. He was a member of the audit team which performed the audits of AssetCo for the financial years in question, viz. the financial years ended 31 March 2009 and 31 March 2010.
 - (c) A former employee of GT whom we shall refer to as M2. He was a member of the audit team which performed the audits of AssetCo for the financial years in question, viz. the financial years ended 31 March 2009 and 31 March 2010. During this period, he held the position of Manager.

In addition, the Executive Counsel served a detailed written opening skeleton argument which we have adopted where appropriate and after satisfying ourselves with regard to its accuracy.

7. Mr Napper and M1 both gave oral evidence at the hearing and were questioned by the Tribunal as appropriate. Executive Counsel indicated that it was willing to call M2 but,

in the event, the Tribunal did not consider that this was necessary and his statement was admitted in evidence.

8. None of the Respondents provided any signed witness statements by way of defence to the allegations made against them; nor did they attend or give evidence at the hearing. However, we should emphasise that the legal and evidential burden of proving the matters set out in the Formal Complaint and the acts of misconduct relied upon lie firmly on Executive Counsel. We have proceeded on that basis.
9. We should also mention that, shortly before the hearing, Mr Flynn sent a letter dated 11 January 2018 addressed to the Chair of this present Tribunal attaching a 9 page letter in which he drew attention to certain matters including what were said to be certain errors in the skeleton argument served on behalf of Executive Counsel for the purposes of the substantive hearing. Mr Flynn's letter contained various important assertions and denials with regard to the substantive allegations made against him in particular with regard to his alleged involvement in and knowledge of certain events and matters. Although this letter came very late in the day, it was conceded on behalf of Executive Counsel that it was admissible as to the truth of its contents. However, it was further submitted that since Mr Flynn did not attend to give oral evidence and the assertions made in that letter were untested by cross-examination the contents of the letter should be given little, if any, weight. We have borne that submission well in mind. However, we have decided that the proper approach is to take those assertions into account and give them such weight as we consider appropriate in light of the contemporaneous documents and the totality of the evidence. It was accepted by the Tribunal and the Executive Counsel, however, that the letter did not constitute a Defence.
10. Following the hearing in January 2018, copies of the transcript were provided to the Respondents. Thereafter, the Tribunal circulated to Executive Counsel and each of the Respondents (as well as certain other parties) a copy of its draft Report limited to liability on a strictly confidential basis and set down a timetable for the service of written submissions from Executive Counsel and the Respondents with regard to sanctions and costs in light of the Tribunal's conclusions on liability as set out in its draft Report. In addition, the Tribunal invited the Respondents to provide any evidence with regard to their financial resources. The Tribunal subsequently received written submissions on behalf of Executive Counsel with regard to sanctions. In addition, the Tribunal received

evidence from Mr Flynn with regard to his financial resources and also his written submissions with regard to sanctions. The Tribunal received no response from Mr Shannon or Mr Boyle.

11. A further oral hearing then took place on 11 June 2018 at the International Dispute Resolution Centre in Fleet Street, London EC4Y to deal with the question of sanctions and costs. At that hearing, Executive Counsel was again represented by Joanna Smith QC and Jonathan Chew. Mr Shannon and Mr Boyle did not appear. Mr Flynn appeared in person at that hearing and agreed to be cross-examined. In the event, Ms Smith QC declined to cross-examine Mr Flynn. However, the Tribunal asked Mr Flynn various questions as recorded in the transcript taken during the hearing. So far as necessary, we deal with all this material in Part 7 of this Report.
12. We should also mention that at the hearing on 11 June 2018, the Tribunal considered the question as to whether certain parts of the Tribunal's Report should be redacted so as to anonymise references to certain third parties; alternatively to include a disclaimer of the kind referred to in the recent decision of the High Court in *R(Lewin) v FRC & ors* [2018] EWHC 446 (Admin). In that context, submissions were received on behalf some of those third parties urging the Tribunal to redact/anonymise such references. In addition, Executive Counsel drew our attention to the very recent decision of *Taveta Investments V FRC & ors* [2018] EWHC 1662 (Admin). The Tribunal has carefully considered those submissions. In principle, the Tribunal considers that there is a strong public interest in transparency and, for that reason, the Tribunal has been extremely reluctant to perform any redactions/anonymisations. However, the Tribunal accepts that the relevant third parties were not named Respondents in these proceedings and that, in the circumstances, the appropriate course is to perform limited redactions/anonymisations as now set out in this final Report.
13. Before turning to the detailed allegations in the Formal Complaint, it is convenient to summarise the relevant background as follows.
 - (a) Messrs Shannon and Flynn were involved in a management buy-out of AssetCo in late 2005.
 - (b) By 2007, AssetCo's business was primarily an outsourced fire and rescue services, including the provision of equipment. On 30 March 2007, AssetCo was admitted

to trading on AIM. Messrs Shannon and Flynn were in place in their roles at that date, and Mr Boyle worked for AssetCo.

- (c) AssetCo's business included the provision of outsourced fire and rescue services and the provision and maintenance of fire and rescue equipment under long term asset management contracts in the UK and Abu Dhabi. AssetCo's business in the UK was predominantly to provide fire and rescue services as follows:
- (i) in London, in conjunction with London Fire Brigade, through contracts signed with London Fire and Emergency Planning Authority (both "**London Fire**", or "**LFEP**" for the latter); and
 - (ii) in Lincoln, in conjunction with Lincolnshire Fire and Rescue, through contracts signed with Lincolnshire County Council (both "**Lincoln Fire**"). The primary contract was a 20 year contract between AssetCo Lincoln Limited and Lincoln Fire dated 19 April 2006 to own and manage Lincoln Fire's operational fleet and equipment ("**Lincoln Contract**").
- (d) The contracts with London Fire were AssetCo's largest contracts by value and some of the most important. As CEO and a negotiator on the contract with London Fire, we are satisfied that Mr Shannon knew or ought to have known their terms.
- (e) The primary contract with London Fire was a 20 year contract between AssetCo London Limited and London Fire to own and manage London Fire's operational fleet and equipment ("**London Contract**");
- (f) Pursuant to the London Contract, AssetCo supplied, maintained and made available for use a scheduled list of vehicles and equipment as set out in the contract, each item representing what the contract called a "slot";
- (g) The London Contract provided that each month London Fire would make a payment, called a "unitary payment", to AssetCo. The calculation of the unitary payment, which was set out in the London Contract, was based on (among other factors) the number of slots and the values attributable to those slots. Fundamentally, the unitary payment was fixed throughout the term of the London Contract save in the event of changes arising from:
- (i) the introduction of additional slots agreed with London Fire;

- (ii) indexation (i.e. in relation to the retail price index); and
 - (iii) replacement of assets at a higher specification but only where it was agreed with London Fire that this would lead to an increase in the unitary payment.
- (h) The vehicles and equipment AssetCo provided had a defined service life after which AssetCo had to replace them. Accordingly, AssetCo was required to invest a significant amount of money in fixed assets. These were financed by bank loans and finance leases.
- (i) As a result of the, largely, fixed payment structure of the London Contract, by 2008 the cash generated by the contract was insufficient to cover the cost of the finance required by AssetCo to comply with its contractual obligations, e.g. the purchase or supply of large capital items such as fire engines. Consequently, by around 2008, the Respondents were all aware that AssetCo (and its group companies) faced significant cash flow difficulties and needed to re-structure its debts in order to secure the long-term viability of the business.
- (j) Mr Boyle was appointed as Group Financial Controller in around May 2009. In 2009, AssetCo's business was expanded to include the provision of personnel, support and training in relation to outsourced fire and rescue services.
- (k) As directors, both Mr Shannon and Mr Flynn were obliged to prepare AssetCo's accounts (by section 394 and 399 of the Companies Act 2006), including the financial statements. By section 395, a company's individual accounts may be prepared in accordance with either section 396 or International Accounting Standards ("IAS"), and by section 403 group accounts may be prepared in accordance with IAS. AssetCo's consolidated financial statements were prepared purportedly in accordance with IAS and AssetCo's individual company financial statements were prepared purportedly in accordance with UK accounting standards. By section 414 of the Companies Act 2006, the annual accounts must be approved by the board of directors.
- (l) Mr Shannon and Mr Flynn approved the 2009 Financial Statements and 2010 Financial Statements. Pursuant to section 393 of the Companies Act 2006 they were prohibited from approving these accounts "*unless they are satisfied that they give a true and fair view of the assets, liabilities, financial position and profit or loss*" of

AssetCo. Mr Flynn signed the balance sheet in the 2009 and 2010 Financial Statements.

- (m) Mr Boyle, as Group Financial Controller, was primarily responsible for the provision of financial information for the preparation of the financial statements, including the provision of information (including, but not limited to, forecasts, working papers etc.) to GT. In practice, such information almost invariably went to GT through him. As such he was closely associated with the preparation of the 2009 and 2010 Financial Statements.
14. The financial statements of AssetCo for the years ended 31 March 2008, 31 March 2009 and 31 March 2010 were audited by GT. The key members of the GT audit team during that period were the three individuals referred to above, viz. Mr Napper, M1 and M2. GT issued unqualified audit opinions in respect of the 2009 Financial Statements and 2010 Financial Statements. These showed substantial net assets and profits.
15. However, shortly thereafter it came to light that AssetCo was suffering severe financial difficulties. In summary:
- (a) On 4 February 2011, HMRC presented a winding up petition.
 - (b) In March 2011, there was a placing of new shares raising £16 million of capital.
 - (c) Following that placing, Mr Shannon resigned from the Board and a new Board was appointed.
 - (d) In May 2011, the winding up petition was dismissed and Mr Shannon was dismissed as an employee.
 - (e) On 24 May 2011, a further winding-up petition was lodged which led in due course to a proposed Scheme of Arrangement to be voted on in September 2011. As part of that proposed Scheme of Arrangement, bank creditors agreed in principle to write down their debts from £79 million to £43 million.
 - (f) Over the course of the 18 months to September 2011, the share price “*collapsed*” (as per the 2011 Financial Statements) from 60p to 1.75p.
16. Following the resignation of Mr Shannon and the change of control in 2011, a new independent auditor, PricewaterhouseCoopers LLP (“PWC”), was appointed. In that

capacity, PWC carried out an investigation into the previous financial years. In summary, PWC came to the conclusion that the financial statements of AssetCo had been materially misstated in FY2009 and FY2010. This resulted in substantial restatements of net assets and profits for those years in the 2011 Financial Statements (for the 18-month period ending 30 September 2011) as summarised in the following table:

Year End	Original Net Assets £ millions	Restated Net Assets £ millions	Net Asset Differential £ millions	Original Profit £ millions	Restated Profit £ millions	Profit Differential £ millions
31/3/09	51.835	(68.754)	(120.589)			
31/3/10	60.818	(85.375)	(146.193)	2.271	(23.268)	(25.539)

17. The reasons given for these restatements were summarised in Section 5 of the Notes to AssetCo's consolidated financial statements prepared by PWC for the 18-month period ending 30 September 2011. For convenience, we attach a copy of that Section 5 as Appendix B.
18. Following such restatements, the FRC initially commenced proceedings against GT and Mr Napper in respect of certain particular acts of misconduct in relation to the audit of AssetCo's 2009 and 2010 Financial Statements. In the event, such acts of misconduct were admitted by GT and Mr Napper (for convenience, we attach a copy of such admitted acts of misconduct as Appendix C.). In the event, those proceedings were compromised on terms of a Settlement Agreement dated 14 March 2017 between Executive Counsel, GT and Mr Napper which provided (i) as against GT, for a fine of £3,500,000, adjusted for aggravating and mitigating factors and discounted for settlement to £2,275,000, and a Severe Reprimand; and (ii) as against Mr Napper, for a fine of £200,000, adjusted for aggravating and mitigating factors and discounted for settlement to £130,000, and exclusion from the Institute of Chartered Accountants in England and Wales ("ICAEW") for a recommended period of 3 years. The Settlement Agreement was subsequently approved in accordance with paragraph 8(4)(ii) of the FRC Accountancy Scheme. In passing, we note that a mitigating factor in the Settlement Agreement was stated to be that GT and Mr Napper were in some instances deliberately misled by AssetCo employees. However, none of the present Respondents were parties to those previous proceedings; nor were they parties to such Settlement Agreement. So, we bear well in mind that (i) such mitigating factors relied upon by GT and Mr Napper as part of

the Settlement Agreement are in no way binding upon the present Respondents; and (ii) the allegations in the present Formal Complaint must be determined on the basis of the evidence in these present proceedings.

19. These present proceedings were commenced by the FRC against Mr Shannon, Mr Flynn and Mr Boyle by means of a Formal Complaint dated 9 January 2017. For convenience, we attach a copy of that Formal Complaint as Appendix D.
20. In summary, the main allegations in that Formal Complaint are in respect of the following:
 - (a) The payment (“**the Payment**”) by AssetCo of £1.5 million to Jaras Property Development Limited (“**Jaras**”), a company associated with Mr Shannon, in December 2009, and the subsequent mis-description of this payment in the 2010 Financial Statements.
 - (b) The acquisition by AssetCo of Graphic Traffic Limited (“**Graphic**”) from Mr Shannon and the dishonest forgiveness of a debt due to AssetCo Municipal Limited (“**Municipal**”) in relation to the 2010 Financial Statements.
 - (c) The incorrect goodwill value recorded for Graphic in the 2010 Financial Statements.
 - (d) The deliberately misleading accounting treatment of a preference share issue in respect of AssetCo’s Abu Dhabi business and the consequent understatement of liabilities.
 - (e) Mr Flynn’s provision of false explanations to AssetCo’s auditors (GT) in respect of a management agreement relating to the aforementioned preference share issue.
 - (f) Mr Shannon’s failure to be involved in or properly oversee the preparation and approval of the 2009 and 2010 Financial Statements.
 - (g) The deliberate recognition, in the 2009 and 2010 Financial Statements, of revenue and debtors which did not exist, and the creation of false documents to support such recognition, in relation to assets and services provided to London Fire.
 - (h) The preparation and approval of the 2009 and 2010 Financial Statements which should have included substantial impairments in the assessments of goodwill

and of the carrying values of subsidiaries, but did not do so, resulting in a substantial overstatement.

- (i) Mr Shannon's provision of information to the FRC and CARB.
- (j) Mr Boyle's provision of false information to AssetCo's auditors (GT).

21. Before turning to consider these specific allegations, it is convenient to identify relevant legal principles which were relied upon by Executive Counsel and which we accept.

A. The Scheme, Adverse Findings and Misconduct

22. The purpose of the FRC Accountancy Scheme¹ (the "Scheme") is defined at para 1(2) as being "*to protect the public, maintain public confidence in the accountancy profession and uphold proper standards of conduct*". Upholding proper standards of conduct is therefore a core purpose of the Scheme.

23. The Tribunal's task, under para 9(7) of the Scheme is to determine whether to make an Adverse Finding in respect of the Misconduct alleged by the Executive Counsel in the Complaint. The standard of proof is the civil standard of proof (para 12).

24. An "Adverse Finding" is defined in para 2(1) of the Scheme, so far as is relevant, as:

"a finding by a Disciplinary Tribunal that a Member or Member Firm has committed Misconduct."

25. "Misconduct" is defined in the same paragraph as:

"an act or omission or series of acts or omissions, by a Member or Member Firm in the course of his or its professional activities (including as a partner, member, director, consultant, agent, or employee in or of any organisation or as an individual) or otherwise, which falls significantly short of the standards reasonably to be expected of a Member or Member Firm or has brought, or is likely to bring, discredit to the Member or the Member Firm or to the accountancy profession."

26. The acts or omissions relied on by the Executive Counsel concern professional standards applicable to the Respondents. The relevant standards are those of the CAI Code of Ethics effective from 1 July 2006 (the "**Code**"). While the majority of the Allegations contain allegations that the Respondents acted dishonestly or recklessly, for acts or omissions to

¹ The current Scheme is dated 2014. There were earlier versions of the Scheme in place at the time although these were not materially different from the current Scheme.

fall significantly short of the standards reasonably to be expected of a Member or Member Firm, no element of moral blameworthiness is necessarily required (see the finding of the Tribunal in *FRC Executive Counsel v Deloitte and Einollahi*² Appeal 2014/15 at [27] set out by Singh J in *R (Baker Tilly) v FRC* [2015] EWHC 1398 (Admin) at [97]).

27. In the MG Rover case (*FRC Executive Counsel v Deloitte and Einollahi*² Appeal [2014/15]) the Tribunal at para 18 onwards gave the following summary of the test:

“18. Before we can make a finding that the Respondents or either of them are guilty of misconduct and make a finding adverse to them we have to be satisfied not only that there has been a departure from the conduct reasonably to be expected of a member or member firm but that that departure has been significant. Whether that departure is significant is a matter for our judgment. A trivial departure will not suffice. We have to be satisfied before we reach a conclusion that there has been such a departure, that the Executive Counsel has proved that no reasonable accountant would have acted in the way that the Respondents have acted.

24. We accept the Respondents’ contention that for the Respondents to be guilty of misconduct and to have acted in a way that no reasonable professional would have acted the conduct has to amount to more than mere carelessness or negligence and has to cross the threshold of real seriousness. It is not sufficient for the Executive Counsel to prove that the Respondents failed to act in accordance with good or best practice or that most or many members of the profession would have acted differently. The conduct has to be more serious than that.”

28. The legal test for Misconduct was common ground in the MG Rover appeal (before the Right Honourable Sir Stanley Burnton). As submitted on behalf of the Executive Counsel, it is a helpful summary of the proper approach which we are content to adopt.
29. As further submitted on behalf of the Executive Counsel, dishonesty or reckless breaching of the relevant standards will inevitably amount to Misconduct. It is an intentional (either deliberate or wilfully blind) departure from applicable standards of conduct reasonably to be expected, and therefore not trivial. This is consistent with Lord Bingham MR’s analysis of dishonesty in professional discipline in *Bolton v Law Society* [1994] 1 WLR 512, 518-9. Depending upon the circumstances, negligent acts or

² Tribunal 2 September 2013; Appeal 20014/2015. Referred to and set out by Singh J in *R (Baker Tilly and others) v FRC and others* [2015] EWHC 1398 (Admin) at [94] to [95].

omissions which are particularly serious may amount to Misconduct where they meet the threshold of real seriousness. The above MG Rover test was applied to allegations of competence by the Tribunal in Connaught (Report of 12 April 2017).

30. In summary, the Scheme sets a clear test for Misconduct: a Member commits Misconduct if his conduct falls significantly short of the standards reasonably to be expected of a professional accountant, in this case, in business.
31. Paragraph 14(1) of the Scheme requires members to co-operate fully with any investigation by Executive Counsel. Paragraph 14(2) gives Executive Counsel the power to require any member *inter alia* to provide information and explanation relevant to any matter under investigation and by paragraph 14(3), upon a failure to comply with the obligations in paragraphs 14(1) and (2) Executive Counsel can present such matters to the Tribunal, and the definition of “Adverse Finding” includes such a failure to comply.

B. Dishonesty and Recklessness

32. The Executive Counsel alleges that the Respondents acted recklessly on some occasions and on others dishonestly.
33. As to the legal test for dishonesty, the Executive Counsel submitted (and we accept) that the law is as now stated by Supreme Court in *Ivey v Genting Casinos (UK) Ltd* [2017] UKSC 67, [2017] 3 WLR 1212. In essence, there is now a single test for dishonesty. The “second limb” of the test in *R v Ghosh* [1982] QB 1053, which provided for a further subjective test in criminal cases is no longer good law. The Supreme Court set out the relevant test at [62] and disapproved *Ghosh* at [74]:

*“62 Dishonesty is by no means confined to the criminal law. Civil actions may also frequently raise the question whether an action was honest or dishonest. The liability of an accessory to a breach of trust is, for example, not strict, as the liability of the trustee is, but (absent an exoneration clause) is fault-based. Negligence is not sufficient. Nothing less than dishonest assistance will suffice. Successive cases at the highest level have decided that the test of dishonesty is objective. After some hesitation in *Twinsectra Ltd v Yardley* [2002] 2 AC 164, the law is settled on the objective test set out by Lord Nicholls of Birkenhead in *Royal Brunei Airlines Sdn Bhd v Tan* [1995] 2 AC 378: see *Barlow Clowes International Ltd v Eurotrust International Ltd* [2006] 1 WLR 1476, *Abou-Rahmah v Abacha* [2007] Bus LR 220 and *Starglade Properties Ltd v Nash* [2011] Lloyd's Rep FC 102. The test now*

clearly established was explained thus in the Barlow Clowes case, para 10 by Lord Hoffmann, who had been a party also to the Twinsectra case:

“Although a dishonest state of mind is a subjective mental state, the standard by which the law determines whether it is dishonest is objective. If by ordinary standards a defendant’s mental state would be characterised as dishonest, it is irrelevant that the defendant judges by different standards. The Court of Appeal held this to be a correct state of the law and their Lordships agree.””

...

“74 These several considerations provide convincing grounds for holding that the second leg of the test propounded in R v Ghosh [1982] QB 1053 does not correctly represent the law and that directions based upon it ought no longer to be given. The test of dishonesty is as set out by Lord Nicholls in Royal Brunei Airlines Sdn Bhd v Tan [1995] 2 AC 378 and by Lord Hoffmann in Barlow Clowes International Ltd v Eurotrust International Ltd [2006] 1 WLR 1476 , para 10: see para 62 above. When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual’s knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.”

34. Thus the test is: is the Respondents’ conduct dishonest applying the objective standards of ordinary decent people to what it is found as a fact the Respondent knew or believed?
35. The proper standard of proof in a dishonesty case was summarised by Morgan J in *Group Seven v Nasir* [2017] EWHC 2466 (Ch) [2018] PNLR 6, considering the earlier authorities at [49]-[50]:

“The fact that the allegations are serious led some of the Defendants to submit that the more serious the allegation the more cogent must be the evidence relied upon. Counsel for [D] also submitted that because the consequences for [D] of a finding of dishonesty would be very grave, the stronger must be the evidence before a court could hold that the allegation had been proved. These submissions were said to be based on the speech of Lord Nicholls in [1996] A.C. 563, in particular at 586. However, that passage in the speech of Lord Nicholls has been discussed on a number of later

occasions where it has been pointed out that it has been misunderstood: see [2009] 1 A.C. 11 at [5]-[15] and at [62]-[73], [2010] 1 A.C. 678 at [10]-[13] and [2013] 1 A.C. 680 at [35]-[36]. It is clear from those decisions that the nostrum “the more serious the allegation, the more cogent the evidence needed to prove it” is wrong: see re B (Children) at [64] per Lady Hale of Richmond. These authorities were reviewed in Otkritie International Investments Management Ltd v Urumov [2014] EWHC 191 (Comm) at [84]-[91] and see also I T Human Resources plc v Land [2016] F.S.R. 10 at [113].

50 The correct position in relation to the standard of proof is as follows. The standard of proof is the civil standard, that is the allegations require to be proved on the balance of probabilities. It must be proved that the fact which is in issue more probably occurred than it did not occur. While it is obviously right to consider the inherent probability, or the inherent improbability, of an event in considering whether it has been proved on the balance of probabilities, there is no necessary connection between seriousness and inherent improbability.”

36. As a matter of general law, a person acts recklessly in the following circumstances (*R v Lawrence* [1982] AC 510, 526 per Lord Diplock):

“Recklessness on the part of the doer of an act does presuppose that there is something in the circumstances that would have drawn the attention of an ordinary prudent individual to the possibility that his act was capable of causing the kind of serious harmful consequences that the section which creates the offence was intended to prevent, and that the risk of those harmful consequences occurring was not so slight that an ordinary prudent individual would feel justified in treating them as negligible. It is only when this is so that the doer of the act is acting ‘recklessly’ if, before doing the act, he either fails to give any thought to the possibility of there being any such risk or, having recognised that there was such risk, he nevertheless goes on to do it.”

37. As stated above, the Respondents did not appear at the hearing and did not give evidence. Notwithstanding, it was submitted on behalf of the Executive Counsel that it was still open to infer dishonesty from the available documentation. In particular, the Executive Counsel submitted that this was the proper approach for two main reasons. First, the available documentation is likely to be the best source of proving objective fact. In *Central Bank of Ecuador v Conticorp* [2015] UKPC 11, the Privy Council recently approved the dictum of Robert Goff LJ in *The Ocean Frost* [1985] 1 LI R 56-7:

“Speaking from my own experience I have found it essential in cases of fraud, when considering the credibility of witnesses, always to test their veracity by

reference to the objective facts proved independently of their testimony, in particular by reference to the documents in the case, and also to pay particular regard to their motives and to the overall probabilities. It is frequently very difficult to tell whether a witness is telling the truth or not; and where there is a conflict of evidence such as there was in the present case, reference to the objective facts and documents, to the witnesses' motives and to the overall probabilities can be of very great assistance to a judge in ascertaining the truth."

Second, where a person does not give evidence, a proper way to prove knowledge of falsity is proving the means of knowledge. See Phipson on Evidence 18th edition at 16–05 and *R v Wickes* [1936] 1 All ER 384, 387-8 (a criminal libel case):

"The best and often the only way of proving that a statement was known to be false by the person who made it is to prove that he had the means of such knowledge. A jury is then entitled to draw what may be, in some circumstances, the irresistible inference that he had knowledge in fact. In the present case the jury may well have thought in the absence of any evidence to the contrary (and the appellant gave none), that a man who had had a fairly intimate knowledge of Mr. [X] for some years, would know very well whether statements about Mr. [X]'s character were true or not..." (emphasis added)

38. We accept that submission – although, at the risk of repetition, we would emphasise that at every stage the legal and evidential burden remains on the Executive Counsel to prove each of the allegations against each of the Respondents to the requisite standard. Nothing less will do.

C. CAI Code of Ethics

39. The Code applies to the Respondents. The Code has five fundamental principles, including integrity, objectivity, professional competence, and professional behaviour.
40. Section 110 contains the fundamental duty of integrity, defined at 110.1 as *"an obligation on all professional accountants to be straightforward and honest in professional and business relationships. Integrity also implies fair dealing and truthfulness."*
41. Paragraph 110.2 contains a specific prohibition that:

"...a professional accountant should not be associated with reports, returns, communications or other information where they believe that the information:

- (a) Contains a materially false or misleading statement;*

- (b) Contains statements or information furnished recklessly; or*
- (c) Omits or obscures information required to be included where such omission or obscurity would be misleading.”*

42. A lack of integrity encompasses both dishonest and reckless statements or conduct: *Batra v FCA* [2014] UKUT 214 (TCC) at [15]:

“15. The Tribunal in First Financial Advisors Limited v FSA [2012] UKUT B16 (TCC) agreed with the observation in Vukelic and endorsed the guidance in Hoodless and Atlantic Law. At [119], the Tribunal observed:

“Even though a person might not have been dishonest, if they either lack an ethical compass, or their ethical compass to a material extent points them in the wrong direction, that person will lack integrity.”

We agree. A lack of integrity does not necessarily equate to dishonesty. While a person who acts dishonestly is obviously also acting without integrity, a person may lack integrity without being dishonest. One example of a lack of integrity not involving dishonesty is recklessness as to the truth of statements made to others who will or may rely on them or wilful disregard of information contradicting the truth of such statements.”

43. Objectivity is defined at paragraph 120.1 as *“an obligation on all professional accountants not to compromise their professional or business judgement because of bias, conflict of interest or the undue influence of others”*.
44. There is an obligation to exercise professional competence and due care at paragraph 130 which requires an obligation to act *“diligently”* (paragraph 130.1(b)), defined at 130.4 as acting *“carefully, thoroughly and on a timely basis”* (paragraph 130.4).
45. Professional Behaviour is defined at paragraph 150.1 as *“an obligation on professional accountants to comply with relevant laws and regulations and avoid any action that may bring discredit to the profession. This includes actions which a reasonable and informed third party, having knowledge of all relevant information, would conclude negatively affects the good reputation of the profession.”*
46. The Respondents all acted as members in business, to which part C of the Code applied. Paragraph 300.2 emphasises that the public at large may rely on professional accountants in business, who may be responsible for the preparation and reporting of financial information.

47. Section 320 sets out standards of professional accountants in the preparation and reporting of financial information including financial statements. By paragraph 320.1, “*a professional accountant in business should prepare or present such information fairly, honestly, and in accordance with relevant professional standards so that the information will be understood in its context.*” The Executive Counsel submitted (and we accept) that this is particularly relevant in this case.
48. Paragraph 320.2 imposes a specific obligation that a professional accountant in business who has responsibility for the preparation or approval of the financial statements should ensure they are presented in accordance with the applicable financial reporting standards.
49. In this case, those relevant reporting standards were given legal application by the Companies Act 2006. Material sections are:
- (a) Section 393(1) provides that “*The directors of a company must not approve accounts ... unless they are satisfied that they give a true and fair view of the assets, liabilities, financial position and profit or loss*” of the company or group.
 - (b) Section 394 imposes a duty on directors to prepare accounts (unless exempted).
 - (c) By section 395(1) individual company accounts may be prepared in accordance with section 396 or IAS. Equivalent provisions in section 403(1) provide for group accounts to be prepared either in accordance with section 303 or IAS. Both AssetCo’s group and individual accounts were purportedly prepared in accordance with IAS.
 - (d) By section 414, annual accounts must be approved by the board of directors and the balance sheet signed on behalf of the board by a director. Mr Flynn signed the balance sheet in the 2009 and 2010 Financial Statements.
 - (e) Paragraph 320.3 requires a professional accountant in business to maintain information for which he is responsible in a manner that:
 - “(a) *describes clearly the true nature of business transactions, assets or liabilities;*
 - (b) *classifies and records information in a timely and proper manner; and*
 - (d) *represents the facts accurately and completely in all material respects.*”

- (f) Paragraph 320.4 recognises self-interest as a potential threat to members in business' compliance with fundamental principles. For that reason, 320.4 requires that:

“Professional accountants should not be associated with reports, returns, communications or other information where they believe that the information:

Contains a materially false or misleading statement;

Contains statements or information furnished recklessly;

Omits or obscures information required to be included where such omission or obscurity would be misleading.”

D. The Allegations in the Formal Complaint

50. In the Formal Complaint, the allegations are listed by individual Respondent. However, multiple allegations, including against different Respondents, arise from the same sets of facts; and it is therefore convenient to consider the five classes of allegation together:
- (a) The payment by AssetCo Group Limited of £1.5 million to Jaras Property Development Limited (“**Jaras**”) in December 2009 and the treatment of that payment in the financial statements – see Part 2 below.
 - (b) The acquisition and treatment in the financial statements of the acquisition by AssetCo of Graphic Traffic Limited (“**Graphic**”) – see Part 3 below.
 - (c) The accounting treatment of a preference share issue in respect of AssetCo's Abu Dhabi business, and Mr Flynn's provision of allegedly false explanations to GT in respect of that investment (the “**XYZ Investment**”) – see Part 4 below.
 - (d) Allegations relating to the preparation of the 2009 and 2010 Financial Statements including: (a) the alleged deliberate recognition of revenue and debtors which did not exist and the creation of false documentation to support the same; (b) allegedly knowing substantial overstatements of the goodwill and carrying value of subsidiaries; and (c) Mr Shannon's failure to oversee the preparation of the relevant Financial Statements (the “**Accountancy Allegations**”) – see Part 5 below.
 - (e) Allegations against Mr Boyle and Mr Shannon relating to provision of information to GT and the FRC respectively – see Part 6 below.

PART 2: THE JARAS ALLEGATIONS

51. The following are the Jaras allegations in the Formal Complaint:

Mr Shannon: Allegation 1

In making or procuring the payment of £1.5 million from AssetCo to Jaras in December 2009 for his own personal benefit and in dishonestly seeking to justify that payment by reference to a different explanation, Mr Shannon's conduct fell significantly short of the standards reasonably to be expected of a Member in that he:

- (a) failed to act in accordance with the fundamental principle of integrity (contrary to paragraph 110.1 of the Code); and/or**
- (b) failed to act in accordance with the fundamental principle of objectivity (contrary to paragraph 120.1 of the Code); and/or**
- (c) has brought or is likely to bring discredit to the accountancy profession or to himself as a Member (contrary to paragraph 150.1 of the Code).**

Mr Shannon: Allegation 2

In approving the 2010 Financial Statements, Mr Shannon's conduct fell significantly short of the standards reasonably to be expected of a Member in that he dishonestly caused or permitted the financial statements to record the Jaras Payment as an asset balance with Jaras and not a payment made in connection with his personal affairs and/or for his personal benefit. In doing so he:

- (a) failed to act in accordance with the fundamental principle of integrity (contrary to paragraphs 110.1 or 110.2 of the Code); and/or**
- (b) failed to act in accordance with the fundamental principle of objectivity (contrary to paragraph 120.1 of the Code); and/or**
- (c) dishonestly failed to ensure that those financial statements represented the facts accurately and completely (contrary to paragraph 320 of the Code); and/or**
- (d) has brought or is likely to bring discredit to the accountancy profession or to himself as a Member (contrary to paragraph 150.1 of the Code).**

Mr Shannon: Allegation 11

In his various explanations as to the status of the Jaras Payment, Mr Shannon's conduct fell significantly short of the standards reasonably to be expected of a Member in that:

- (a) Mr Shannon dishonestly gave a false and/or misleading explanation for the Jaras Payment in his witness statements in proceedings relating to winding up petition 207 of 2011; and**
- (b) Mr Shannon dishonestly gave a false and/or misleading explanation for the Jaras Payment to CARB.**

By doing so, he:

- (a) failed to act in accordance with the fundamental principle of integrity (contrary to paragraph 110.1 of the Code); and/or**
- (b) failed to act in accordance with the fundamental principle of objectivity (contrary to paragraph 120.1 of the Code); and/or**
- (c) has brought or is likely to bring discredit to the accountancy profession or to himself as a Member (contrary to paragraph 150.1 of the Code).**

Mr Flynn: Allegation 13

In approving the 2010 Financial Statements, Mr Flynn's conduct fell significantly short of the standards reasonably to be expected of a Member in that he dishonestly caused or permitted the financial statements to record the Jaras Payment as an asset balance with Jaras and not a payment connected to Mr Shannon's personal affairs and/or made for Mr Shannon's personal benefit. By doing so he:

- (a) failed to act in accordance with the fundamental principle of integrity (contrary to paragraphs 110.1 or 110.2 of the Code); and/or**
- (b) failed to act in accordance with the fundamental principle of objectivity (contrary to paragraph 120.1 of the Code); and/or**
- (c) dishonestly failed to ensure that those financial statements represented the facts accurately and completely (contrary to paragraph 320 of the Code); and/or**
- (d) has brought or is likely to bring discredit to the accountancy profession or to himself as a Member (contrary to paragraph 150.1 of the Code).**

Mr Boyle: Allegation 23

In preparing the 2010 Financial Statements Mr Boyle’s conduct fell significantly short of the standards reasonably to be expected of a Member in that he dishonestly caused or permitted the financial statements to record the Jaras Payment as an asset balance with Jaras and not a payment connected to Mr Shannon’s personal affairs. By doing so, he:

- (a) failed to act in accordance with the fundamental principle of integrity (contrary to paragraphs 110.1 or 110.2 of the Code); and/or**
- (b) failed to act in accordance with the fundamental principle of objectivity (contrary to paragraph 120.1 of the Code); and/or**
- (c) dishonestly failed to ensure that those financial statements represented the facts accurately and completely (contrary to paragraph 320 of the Code); and/or**
- (d) has brought or is likely to bring discredit to the accountancy profession or to himself as a Member (contrary to paragraph 150.1 of the Code).**

52. In summary, the relevant facts were as follows. Mr Shannon was the original sole shareholder in Jaras but sold his shareholding to Herd Estates Limited in around October 2005 for £1 million (“**Herd**”, the “**Shares**”). That contract (the “**Shares Sale Contract**”) included both put and call options. The put option (requiring Mr Shannon to buy the Shares back from Herd) was exercisable in a six-month period after the second anniversary of the Shares Sale Contract. The contract obliged Mr Shannon to make periodic payments to Herd for two years in consideration for his call option (clause 7.1). So, while structured as a sale, the transaction served, in effect, as a secured loan to Mr Shannon from Herd: the periodic payments constituted Mr Shannon’s “interest” payments and the options allowed either party to terminate the arrangement and cause Mr Shannon to repurchase the shares. At some point in the financial year ending 31 March 2008, Herd exercised the put option requiring Mr Shannon to re-purchase the Shares and on around 17 June 2008, Mr Shannon paid Herd £1,193,250 (plus £428.76 interest) for the Shares (being the sum outstanding after taking into account an earlier payment of £500,000). The result is that from around 17 June 2008, Mr Shannon once again owned the Shares in Jaras. Meanwhile, on 13 June 2008, Mr Shannon was appointed director and company secretary of Jaras.

53. Meanwhile, by two leases (the “**Jaras Leases**”) dated 5 October 2005, AssetCo (Ireland) Limited (“**AssetCo Ireland**”), a subsidiary of AssetCo, leased certain properties in Mallusk, Northern Ireland (the “**Mallusk Properties**”) from Jaras. The Jaras Leases were each for a 15-year term with upwards-only rent reviews on the fifth and tenth anniversary. On around 20 November 2008, AssetCo Ireland (which had by then changed its name to Fleet Management (Ireland) Limited) assigned its tenancy under the Jaras Leases to AssetCo Group Limited. It is important to note that neither AssetCo Group Limited’s nor AssetCo’s 2009 Financial Statements refer in the “related party transactions” note to any liability or payments (whether under the Jaras Leases or otherwise) to Jaras as a related party.

54. On 9 December 2009, Mr Shannon wrote to Mr Flynn by email timed at 16.14 stating:

“[w]ould you kindly drawdown 1.5m of funds off deposit and telegraphically transfer to the Jaras Property Development account at Bank of Ireland, where our rent payments are paid into. Ideally if cleared funds where [sic: were] there for end of play tomorrow”.

55. On the following morning, i.e. 10 December 2009, Mr Flynn emailed a Ms Justyna Chort (an AssetCo employee) copying Mr Boyle stating:

“Could you transfer the £1.5m when it is received from Anglo Irish into the Jaras Property account...”

Thanks

F

PS Matt [Mr Boyle], could you add this to John’s Directors Current account.”

As appears below, there is no doubt that the reference to “*John’s Directors Current account*” is a reference to the John Shannon’s Director’s Account.

56. That same day, i.e. 10 December 2009, £1.5 million was duly transferred into Jaras’ bank account 64715267 and confirmed by Ms Chort. However, the following day, i.e. 11 December 2009, that same sum, i.e. £1.5 million, was transferred out of that account. This transfer out was accounted for in Jaras’s financial records by an increase of £1.5 million to Mr Shannon’s loan account with Jaras. In effect, therefore, although the Payment was routed through Jaras, it was a payment for Mr Shannon’s personal benefit. This is also confirmed by the later emails referred to below.

57. On 25 January 2010, Mr Shannon emailed Mr Flynn. The subject title was “Director’s current account”. He stated:

“Frank. Just to confirm I have drawn down £1.5m through my current account as part of the restructuring of my personal financing. It is my intention to clear this before year end through orderly stock disposal to repay the Kaupthing loan.” (emphasis added)

The reference to the “*Kaupthing loan*” was a loan taken out personally by Mr Shannon with Kaupthing Singer & Friendlander. In our view, this email is important because it demonstrates that the payment of £1.5 million was, in Mr Shannon’s own words, part of the “*restructuring*” of his own “*personal financing*”. This is consistent with the email from Mr Flynn dated 10 December 2009, referred to above, where he gave instructions to Mr Boyle to add the payment to “*John’s Directors Current Account*”. It is also important to note that although the email stated Mr Shannon’s apparent intention to “clear” this before the year end, this never happened and the money was never repaid either before the year end or at any time thereafter.

58. As appears below and in light of Mr Shannon’s failure to repay the sum of £1.5 million, steps were then taken in the run-up to the end of March 2010 (being the end of the financial year) to change the accounting treatment of the £1.5 million payment from being a payment to Mr Shannon personally to being a rental payment purportedly for the benefit of AssetCo.
59. Thus, on 2 February 2010, Mr Shannon emailed *inter alia* Mr Boyle. Under the subject “cash flow”, he wrote:

“...the plan is I drop the £1.5m back into the business for the end of the month (after the SOC announcement), so the challenge is how we ensure we work through the next 2 to 3 weeks. Also, we need to get comfortable that we can live without distraction until March...”

60. On 22 March 2010, Mr Shannon emailed Mr Boyle stating:

“Matt...Would you correct the posting of the £1.5m payment to Jaras from my Director’s current account to a sundry debtor account for Jaras, as property owner for the NI property?”

61. On 29 March, Mr Flynn emailed Mr Shannon at 17.55 stating:

“...could you give me an update on how the sale of your shares is progressing as we have only 2 days to go to 31st March? On the assumption that the shares are not likely to be sold by Wednesday are you content that I bring this matter up at the PLC Board meeting or do you have any other suggestions regarding how this should be managed? – F”

62. Mr Shannon replied under 20 minutes later at 18.12 writing:

“You will be as up to speed on the share sale as I am. Nothing will be in place for 31st.

Clearly my preference is that you don’t withdraw the first card from the house, and less than ideal that I’m not physically at the Board.

We both know the transaction could be accounted for as a debtor from Jaras, and because Jaras wasn’t a related party last year it would be on any radar screen. The payment was to Jaras not to me, so manageable if we agree to manage it.

It[’]s either something for you and I to sort out with all the other stuff, or something you want to take a different direction.” (emphasis added)

63. In context, the passage in the third paragraph above was probably intended to read “because Jaras wasn’t a related party last year it would not be on any radar screen.” In any event, this email is, in our view, important in a number of respects. First, it shows that the anticipated share sale (which would have provided Mr Shannon with the funds to repay the Jaras Payment) was not going to take place by 31st March and that, as a result, there was an urgent looming problem which had to be addressed before the year-end. Second, Mr Shannon’s stated preference that Mr Flynn did not “..*withdraw the first card from the house..*” reflects the substantial financial pressure that AssetCo was under at this time as the financial year-end was fast approaching. Moreover, the implication would seem to be that Mr Shannon was keen that the transaction should not be raised with the Board; and that he was well aware that his misuse of funds would be revealed if the truth were told. Fourth, the suggestion that the transaction could be accounted for “*as a debtor for Jaras*” and that the Payment was “*...to Jaras not to me, so manageable if we agree to manage it.*” could not be done honestly given that, as appears above, although the Payment was routed through Jaras, it was plainly done for Mr Shannon’s personal benefit.
64. There is no evidence that the transaction was ever raised with or approved by the Board. Rather, it appears that the problem was “managed” by the creation of a false invoice,

dated on its face 28 March 2010, purportedly raised by Jaras against AssetCo Engineering Limited. This was stated to be for £1.5 million of which £1.2 million was identified as “6 years['] rental adjustment at £200k per annum” and £300,000 as “facilities and site upgrade.” However, although bearing the date 28 March 2010, the metadata for the invoice show that it was created not on 28 March 2010 but over 2 months later, i.e. on 15 June 2010, when GT was carrying out the audit and seeking an explanation for the Payment. 15 June 2010 was also the date when [...] sent a draft copy of the invoice stated to be “...from John...” (which can only be a reference to John Shannon) to Mr Flynn and Mr Boyle asking if the invoice was “as agreed”. Mr Flynn responded the following day, i.e. 16 June 2010, telling [...] to resend the invoice with no VAT on it. [...] then replied by asking whether the invoice should be to “AssetCo Engineering or Assetco ROI”. Mr Flynn responded: “[...], could you send it to AssetCo Engineering? I think that will result in less queries – thanks – F.” (emphasis added) The metadata show that the document was last modified on 17 June 2010 which was the date when a copy of the corrected invoice was sent by [...] to Mr Flynn and then forwarded by, first, Mr Flynn to Mr Boyle and then by Mr Boyle to M1 and M2.

65. On the same day, i.e 17 June 2010, according to the contemporaneous minutes of an AssetCo audit committee meeting attended by GT representatives, there was a discussion about what were described as the “...potentially sensitive related party transactions...” including the Jaras Payment. By the time this discussion took place, it appears that Messrs Shannon, Flynn and Boyle had left the meeting and the non-executives stated that “...they were unaware of the exact nature of the transactions but would discuss these with John Shannon and revert back to [Mr Napper] with any concerns they might have...”.
66. Shortly thereafter, Mr Wightman (AssetCo Chairman) sent an email, on 19 June 2010, to Mr Shannon asking for clarification with regard to *inter alia* the Jaras Payment as follows:

“I understand that there is a prepayment to Jaras of £1.5m representing 6 years future rent on the Mallusk property plus £300k other charges. I do not understand what the commercial benefit to the group would be from this transaction, especially given the group’s cash position.”

67. Mr Shannon responded by email the same day as follows:

“Jaras Development. The rent on the NI site was to have been adjusted from 2005 (BIMBO), however I agreed with the landlord, Herd Estates, for this charge only to come through when my option to buy the site back was called (May 09). The options for us were to either to take the rent hit this year via the previous landlord, or to smooth it out over the next few years with the new landlord.. Jaras paid Herd £1.5m to reflect the rental and capital charges “accrued” and AssetCo paid Jaras the equivalent amount...Your comment about the cash position is a little one sided as I don’t remember much comment when I put in £2m into the business in 2008.”

68. According to an email from Mr Napper on 21 June 2010, it appears that GT had noted from a review of journals at the year end that the amount of £1.5 million was “...journalised from the directors’ current account to prepayments...”. The email continued:

“...per discussions with management we have been told that this was an error and should not have been posted to the current account originally however we cannot see a journal bringing the debit into the balance sheet... We also note from the review of the cashflow forecasts that there is an expected inflow of this same amount in September 2010. We understand from discussions with management that this is due to the fact that management are attempting to request the money back.”

69. In the course of the audit of the 2010 Financial Statements (the “**2010 Audit**”) GT recorded in a note dated 9 July 2010 under the heading: “Summary of Significant Matters” the following:

“Jaras Development prepayment - £1.5 million: Nature of the Issue: At 31 March 2010 the AssetCo Group Limited showed a £1.5 million prepayment due to Jaras Development Limited. This is a company owned indirectly through its parent company by John Shannon. Prior to the year end Jaras requested a £1.5 million prepayment for 6 years rent and £300,000 prepayment for leasehold improvements. AssetCo duly paid.

Conclusion: This is considered to be a related party transaction and therefore recorded as such in the notes to the accounts.”

70. This explanation was based on the invoice and information provided by Mr Shannon, Mr Flynn and Mr Boyle as referred to above; and was, in effect, carried through into the 2010 Financial Statements which stated in material part as follows:

“In May 2009, [Jaras], a company from which the Group rents a property was purchased by John Shannon, the value of these rentals amounted to £166,666

in the year. At 31 March 2010, the Group had an asset balance with this company totalling £1.5m (2009: £nil).”

71. That reference to the purchase taking place in May 2009 was wrong (as Mr Shannon knew) since it in fact took place in June 2008. Be that as it may, the important point is that the Payment was recorded in AssetCo’s 2010 Financial Statements as an asset balance with Jaras of £1.5 million when, in fact, this was obviously untrue.
72. There are two further matters to record. First, in the course of the winding up proceedings, Mr Shannon produced a number of witness statements including one dated 18 April 2011 where he stated in paragraph 49 as follows:

“49. The Board agreed to advance payment of £1.2 million of AssetCo’s contingent rental liability, along with payment of the £300,000 spent by Jaras on site improvements for which AssetCo was liable as tenant pursuant to clauses 1.9, 1.10 and 5.4.9 of the leases...”

73. This statement was false and must have been known by Mr Shannon to be false, in particular because (i) the Payment was never agreed in advance by the Board; and (ii) the Payment was plainly one for Mr Shannon’s personal benefit.
74. Second, in the course of correspondence with the CARB, Mr Shannon wrote a letter dated 4 December 2012³ giving an explanation with regard to the Jaras payment:

“Jaras Property Developments Limited, a company established by me in 1999, owned and developed the site as landlord for Fleet Management (Ireland) Limited, a company owned and established by me in 1997 (I refer to Appendix 1 of my letter dated February 11th). Fleet Management (Ireland) Limited was acquired by AssetCo Group Limited in October 2003 through a holding company, AssetCo (Ireland) Limited. A new 20 year lease was entered into in 2003 between AssetCo (Ireland) Limited and Jaras Property Developments Limited. The 4-acre facility was developed as a vehicle maintenance facility with integrated office accommodation and vehicle parking/wash facilities.

To raise capital in 2005 to fund my participation in the Management Buy-in/Buy-out of AssetCo, I disposed of my interests in Jaras Property Developments Limited to Herd Estates Limited, with a Put Option to acquire the Company back again at an agreed premium exercisable from October 2008. A new 20-year lease was entered into with Jaras Property

³ Although dated 4 December 2014, it is assumed that this was an error and that the date of the letter was in fact 4 April 2012. It was received by CARB on 11 April 2012.

Developments Limited in 2005 with 5-yearly upward only rent reviews from 2015.

The Put Option was exercised and I acquired Jaras Property Developments Limited in mid 2009.

An advance rental payment of £1.5m was made by AssetCo to Jaras in December 2009. In December 2009, AssetCo as tenant on the existing lease had a contingent liability under the lease of £3.2m owing to Jaras as landlord. The advance rental payment was on the basis of 6-years discounted rental costs through to 2015 (the date of the next formal rent review). The commercial benefit to AssetCo was a significantly reduced rental cost (circa 20%) on a facility where advanced discussions had been held by the Landlord with Northern Ireland Fire and Rescue Service on the relocation of the Service's vehicle maintenance facility to operate as a "Shared Cost Centre". The strategic benefit for AssetCo was the opportunity to have the one target NI based client operating its activities from a shared location.

The transaction was discussed and unanimously approved by the full plc Board, independent of my participation, prior to completing, disclosed in AssetCo's financial accounts for the year ended 31 March 2010; and disclosed in the 2010 Annual Report and Accounts. The transaction did not merit inclusion in Grant Thornton's Key Issues Memorandum for the financial year ended 31 March 2010..."

75. Again, this explanation was false and must have been known by Mr Shannon to be false in particular because (i) the transaction was never discussed or approved by the Board "prior to completing"; and (ii) the Payment was for Mr Shannon's personal benefit. It is also worth mentioning that given the financial difficulties which AssetCo were facing at the time of the Payment, the suggestion that Mr Shannon's explanation had a "commercial benefit" to AssetCo rings somewhat hollow as Mr Wightman's email dated 19 June appears to have recognised: there is no commercial rationale for pre-payment of 6 years' rent which was not due under the leases and no details or supporting evidence of site upgrades were ever given. It is fair to say that Mr Shannon is right when he said that the transaction had not been included in GT's Key Issues Memorandum; but that was only because a false explanation bolstered by a fake invoice had been provided to GT as to the nature of the Payment.
76. Against that background, it is our conclusion that Allegations 1, 2 and 11 against Mr Shannon are proven. In summary, our observations and conclusions are as follows:

- (a) Mr Shannon caused or procured the £1.5 million Payment to be made from AssetCo to Jaras in December 2009.
- (b) Although the Payment was routed through Jaras, it was for the personal benefit of Mr Shannon.
- (c) Thereafter, in the course of March-June 2010, a conscious and deliberate decision was taken by Mr Shannon to generate a false explanation with regard to the nature and purpose of the Payment. To that end, he dishonestly procured the creation of a false invoice from Jaras to AssetCo which described the £1.2 million payment as “6 years['] rental adjustment at £200k per annum” and referred to £300,000 described as “*facilities and site upgrade.*” This description was false and Mr Shannon knew that it was false. He also knew that the false explanation of the Jaras transaction would be provided to GT for their work on the 2010 Audit.
- (d) The Jaras Payment was incorrectly recorded in the financial statements as an asset balance with Jaras. As CEO, Mr Shannon was responsible for ensuring that the financial statements gave a true and fair view; but Mr Shannon knew that the description of the Jaras Payment in the financial statements was misleading. In fact the true position was reflected in Mr Shannon’s emails of 9 December 2009 and 25 January 2010.
- (e) Mr Shannon dishonestly gave a false and/or misleading explanation for the Jaras Payment in his witness statements in proceedings relating to winding up petition 207 of 2011.
- (f) Mr Shannon dishonestly gave a false and/or misleading explanation for the Jaras Payment to CARB.
- (g) These dishonest acts for Mr Shannon’s own benefit are a breach of the fundamental principles of integrity, objectivity, and bring discredit to the profession.
- (h) As well as constituting breaches of the principles of integrity, objectivity and professional conduct, this is a breach of paragraph 320 of the Code, namely the requirement to ensure the financial statements represented the facts accurately and completely.

77. As for Mr Flynn, it is our conclusion that Allegation 13 is proven. In summary, he knew that the Payment was for Mr Shannon's personal benefit both at the time (see the emails in December 2009 and January 2010), and subsequently when he raised the issue of how to deal with the payment in March 2010. He was involved in the provision of the false invoice to GT and knew it did not represent the true position. Mr Flynn therefore approved the 2010 Financial Statements knowing them to be misstated.
78. As for Mr Boyle, it is our conclusion that Allegation 23 is proven. In summary, he was similarly involved in the original treatment of the Payment as a personal payment by email of 10 December 2009, the creation of the false invoice and its provision to GT for audit purposes.

PART 3: GRAPHIC ALLEGATIONS

79. The following are the Graphic allegations in the Formal Complaint:

Mr Shannon: Allegation 3

When causing or procuring AssetCo to purchase Graphic, Mr Shannon's conduct fell significantly short of the standards reasonably to be expected of a Member in that he dishonestly claimed a debt was owing from Graphic to him when no such debt was owing, in order that a debt owed by Joel Shannon to AssetCo Municipal would be forgiven. In so doing he:

- (a) failed to act in accordance with the fundamental principle of integrity (contrary to paragraph 110.1 of the Code); and/or**
- (b) failed to act in accordance with the fundamental principle of objectivity (contrary to paragraph 120.1 of the Code); and/or**
- (c) has brought or is likely to bring discredit to the accountancy profession or to himself as a Member (contrary to paragraph 150.1 of the Code).**

Mr Shannon: Allegation 4

In approving the 2010 Financial Statements recording the Graphic Purchase, Mr Shannon's conduct fell significantly short of the standards reasonably to be expected of a Member in that the 2010 Financial Statements record a goodwill value for Graphic of £956,000, which Mr Shannon knew wrongly accounted for a debt of £685,000 stated as due by Graphic to Mr Shannon, which was not in fact due. Further, there was no evidence in Graphic's accounting and trading history to justify the amount of goodwill recorded (such matters being known to Mr Shannon). In so doing, he:

- (a) failed to act in accordance with the fundamental principle of integrity (contrary to paragraphs 110.1 or 110.2 of the Code); and/or**
- (b) failed to act in accordance with the fundamental principle of objectivity (contrary to paragraph 120.1 of the Code); and/or**
- (c) dishonestly failed to ensure that those financial statements represented the facts accurately and completely (contrary to paragraph 320 of the Code); and/or**
- (d) has brought or is likely to bring discredit to the accountancy profession or to himself as a Member (contrary to paragraph 150.1 of the Code).**

Mr Flynn: Allegation 14

When AssetCo acquired Graphic, Mr Flynn's conduct fell significantly short of the standards reasonably to be expected of a Member in that he accepted that a debt was owing from Graphic to Mr Shannon without obtaining any evidence to support the existence of the debt. In so doing, he:

- (a) failed to act in accordance with the fundamental principle of integrity (contrary to paragraph 110.1 of the Code); and/or**
- (b) failed to act in accordance with the fundamental principle of objectivity (contrary to paragraph 120.1 of the Code); and/or**
- (c) has brought or is likely to bring discredit to the accountancy profession or to himself as a Member (contrary to paragraph 150.1 of the Code).**

Mr Flynn: Allegation 15

In approving the 2010 Financial Statements recording the Graphic Purchase, Mr Flynn's conduct fell significantly short of the standards reasonably to be expected of a Member in that he approved a goodwill value for Graphic of £956,000, in the absence of evidence to support the purported John Shannon Debt of £685,000. Further, he approved the goodwill value when there was no evidence in Graphic's accounting and trading history to justify that value (as Mr Flynn knew or ought to have known). In so doing, he:

- (a) recklessly failed to act in accordance with the fundamental principle of integrity (contrary to paragraphs 110.1 or 110.2 of the Code); and/or**
- (b) recklessly failed to act in accordance with the fundamental principle of objectivity (contrary to paragraph 120.1 of the Code); and/or**
- (c) recklessly failed to ensure that those accounts represented the facts accurately and completely (contrary to paragraph 320 of the Code); and/or**
- (d) has brought or is likely to bring discredit to the accountancy profession or to himself as a Member (contrary to paragraph 150.1 of the Code).**

Mr Boyle: Allegation 27

In preparing the 2009 and 2010 Financial Statements for the AssetCo group of companies, Mr Boyle's conduct fell significantly short of the standards reasonably to be expected of a Member in that:

- (a) **the 2010 Financial Statements record a goodwill value for Graphic of £956,000. There was no evidence to support the purported debt of £685,000 due by Graphic to Mr Shannon and no evidence in Graphic's accounting and trading history to justify that goodwill value (as Mr Boyle knew or ought to have known).**

In so doing, he:

- (a) **recklessly failed to act in accordance with the fundamental principle of integrity (contrary to paragraphs 110.1 or 110.2 of the Code); and/or**
- (b) **recklessly failed to act in accordance with the fundamental principle of objectivity (contrary to paragraph 120.1 of the Code); and/or**
- (c) **recklessly failed to ensure that those financial statements represented the facts accurately and completely (contrary to paragraph 320 of the Code); and/or**
- (d) **has brought or is likely to bring discredit to the accountancy profession or to himself as a Member (contrary to paragraph 150.1 of the Code).**

80. At the heart of these allegations is the allegation that Mr Shannon dishonestly claimed that a debt of £685,000 was owed to him by Graphic which could then be offset against a debt in the same sum in fact owing from his son Joel Shannon to Municipal, with the result that such latter debt was, in effect, forgiven.

81. Graphic was a company that provided graphics to be affixed on to vehicles. Mr Shannon acquired Graphic in around 2001 and, for about 9 years, was sole shareholder and sole director of that company.

82. For the financial year ended 30 April 2009, the abbreviated balance sheet for Graphic's filed accounts showed as follows:

Fixed assets	£239,214
Current assets	£303,128
Creditors falling due within 1 year	(£672,607)
Creditors falling due after 1 year	(£34,500)
Total net liabilities	(£164,765)

83. For the financial year ended 30 April 2010, Graphic filed accounts as a dormant company⁴. The abbreviated balance sheet for those accounts showed as follows:

Fixed assets	£0
Current assets	£85,344
Creditors falling due within 1 year	(£250,109)
Creditors falling due after 1 year	(£0)
Total net liabilities	(£164,765)

84. Each of these sets of accounts were signed off by Mr John Shannon.
85. AssetCo's 2009 Financial Statements record, under note 35 "Related Party Transactions":

"[Graphic] is a related party due to John Shannon being a common director. During the year, the Group made purchases of £231,302 (2008: £119,000) from this company."

86. According to AssetCo's 2010 Financial Statements, in the 2010 Financial Year, AssetCo made purchases from Graphic of £235,013 up to 30 March 2010 when AssetCo Group Limited acquired Graphic (the "**Graphic Purchase**").
87. AssetCo Group Limited acquired Graphic by a share purchase agreement (the "**Graphic SPA**") dated 30 March 2010. The Graphic SPA provided for purchase of 350 £1 ordinary shares for a total price of £1 (clause 3.1 and the definitions in clause 1.1). Mr Flynn and Mr Shannon were present at the board meeting that approved the Graphic Purchase.
88. In the course of the preparation of the 2010 Financial Statements, Mr Boyle explained the Graphic Purchase in a discussion with M1 and M2 of GT on 21 May 2010. That explanation was recorded in an email by M1 dated 23 May 2010. In summary, the explanation as provided by Mr Boyle and recorded in that email by M1 was as follows:
- (a) Before the Graphic Purchase in March 2010, Graphic owed Mr John Shannon around £685,000.

⁴ A company is "Dormant", as defined in Section 1169 of the Companies Act 2006, during any period in which it has no significant accounting transaction, being a transaction required by section 386 to be entered into the accounting records. Section 386 requires records that are sufficient inter alia to show and explain the company's transactions (section 386(2)(a)).

- (b) Separately, Mr John Shannon had funded his son's ("**Joel Shannon**") purchase of a different company, Star Rentals Limited ("**Star Rentals**"), for £1,585,000 from Municipal. £685,000 of that consideration was deferred and remained unpaid in March 2010 and as a result, Joel Shannon (or a company owned or controlled by him) owed Municipal £685,000.
- (c) Upon the Graphic Purchase taking place, the debt owed by Mr Joel Shannon to Municipal and the alleged debt purportedly owed by Graphic to Mr Shannon were treated as debts owed to and by the wider AssetCo group since Graphic was now part of that wider group.
- (d) Those two sums were therefore netted off so that no balance was payable to, or due from, related parties.
89. However, no documentary or contemporaneous evidence was provided by Mr John Shannon of the debt allegedly owed to him at the time of the 2010 Audit. Nor has any documentary evidence been provided of this debt in Mr Shannon's fourth witness statement in the Insolvency Proceedings or in his explanation to CARB dated 4 April 2012 or at any time thereafter.
90. The AssetCo 2010 Financial Statements record the acquisition of Graphic at note 31, and include the following table showing the calculation of Graphic's goodwill:

	£'000
Property plant and equipment	43
Inventories	14
Trade and other receivables	507
Total assets	564
Less: Trade and other payables	<u>(1,519)</u>
Net liabilities	(955)
Total consideration	<u>(1)</u>
Goodwill	<u>956</u>

91. It records net liabilities of £955,000. As the consideration payable was £1,000 (in contrast to the £1 consideration stated in the SPA), the goodwill figure is £956,000 (as noted in the table). The note states "*the Group completed the acquisition of...Graphic...for a consideration of £1,000 creating goodwill on acquisition of £956,000. This business has*

been purchased with a view to resale hence the goodwill is included within assets held for sale.”

92. The sum of £1,519,000 stated for “Trade and Other Payables” (in the above table) included the £685,000 debt allegedly due to Mr John Shannon (such sum being by its nature a receivable and also there being no other category of assets in the table large enough to include that purported debt). Absent this debt, the “Trade and Other Payables” figure would have been £834,000. In that event, the table showing the calculation of Graphic’s goodwill value in the 2010 Financial Statements would have read as follows:

	£’000
Property plant and equipment	43
Inventories	14
Trade and other receivables	<u>507</u>
Total assets	564
Less: Trade and other payables	<u>(834)</u>
Net liabilities	(270)
Total consideration	<u>(1)</u>
Goodwill	<u>271</u>

93. As referred to above there was no – and there never has been any – documentary or other contemporaneous evidence to support the existence of the £685,000 debt allegedly owed to Mr John Shannon.
94. So far as Mr Shannon is concerned, it is our conclusion that Allegations 3 and 4 are proven. In summary:
- (a) If there had been a genuine debt of £685,000 owed by Graphic to Mr John Shannon, it is inconceivable that there would be no documentation or contemporary evidence to prove or at least support its existence.
 - (b) However, no such documentary or other contemporaneous evidence has ever been provided which is, of itself, strong evidence that such alleged debt never existed.
 - (c) On the contrary, the alleged debt is nowhere recorded in Graphic’s accounts which were signed off by Mr John Shannon himself. That is further very strong evidence that such debt never existed.

- (d) The fact that the alleged debt was in an amount identical (or virtually identical) to the debt owed by his son, Mr Joel Shannon, raises the strong inference that it was created in order to allow the netting-off to take place and, in the result, to avoid that latter debt being paid.
 - (e) Had the true position been stated in the accounts, the sums payable and so net liabilities would have been reduced by £685,000 to £834,000 and £270,000 respectively. As a result, goodwill would have been reduced from £956,000 to £271,000. There was accordingly a significant overstatement in goodwill.
 - (f) Having regard to all the above, it is our conclusion that the alleged debt supposedly due by Graphic to Mr John Shannon never existed and was not genuine; and that it was a sham created dishonestly by Mr John Shannon.
 - (g) This dishonest behaviour was in breach of the principles of integrity, objectivity and brings the profession into disrepute, and amounts to Misconduct.
 - (h) The treatment of Graphic in the 2010 Financial Statements caused or permitted by Mr Shannon lacked integrity, objectivity, dishonestly failed to represent the facts accurately and completely, and brings the profession into disrepute.
95. So far as Mr Flynn is concerned, it is our conclusion that Allegations 14 and 15 are proven. In summary:
- (a) As to Allegation 14:
 - (i) Mr Flynn failed to act in accordance with the standards of integrity, objectivity, and brought the profession into discredit in recklessly allowing Mr Shannon's purported debt to be netted off.
 - (ii) There was no evidence at all for the debt, the benefit to Mr Shannon in netting off a sum owed by his son was obvious, and the fact that the claimed debt was in the same amount as the debt in fact owed by Joel Shannon was known to Mr Flynn and was suspicious.
 - (iii) In those circumstances, Mr Flynn knew that the proposed course of action might involve a breach of the standards of integrity and objectivity in that, in

substance, a suspicious payment unsupported by evidence was being made to benefit a director's son, but proceeded nevertheless.

- (iv) In his position as CFO and regardless of who may have actually drafted the accounts, Mr Flynn recklessly permitted the 2010 Financial Statements (which he signed off) to include a goodwill value that included the purported £685,000 debt and there was nothing to justify the goodwill value provided.

(b) As to Allegation 15:

- (i) For the same reasons as identified in Allegation 14, Mr Flynn was reckless in allowing the debt claimed by Mr Shannon to be included in the financial statements given Mr Shannon's conflict of interest, the absence of any evidence and the suspicious amount of the debt.
- (ii) The goodwill value was not supported by Graphic's accounts or trading history. Mr Flynn should have appraised himself of that trading history. If he did not, he recklessly failed to do so, in that he knew that to sign off the financial statements while not having so appraised himself may involve a breach of the Code. If he did, then he knew of the losses and liabilities of Graphic and recklessly failed to ensure the 2010 Financial Statements represented the facts accurately and completely, in addition to breaches of integrity, objectivity, and professional behaviour.

96. So far as Mr Boyle is concerned, it is our conclusion that Allegation 27 is proven in so far as it relates to Graphic. In summary:

- (a) Mr Boyle was Group Financial Controller and so knew or should have known of the trading history of the subsidiaries including Graphic. As aforesaid, there was no evidence to support the Graphic goodwill figure including the claimed £685,000 debt.
- (b) Mr Boyle was reckless in permitting the 2010 Financial Statements to state the goodwill figure for Graphic it did; he either knew of Graphic's position, or he did not know but knew he had failed to investigate it. In either case he proceeded in any event. He must have known that proceeding in those circumstances would amount to a breach of the Code.

PART 4: THE XYZ INVESTMENT

97. The following are the allegations in the Formal Complaint concerning a certain company which we shall refer to anonymously as XYZ and a particular investment (the “XYZ Investment”):

Mr Shannon: Allegation 10

In approving the 2009 and 2010 Financial Statements recording the liability element of the XYZ Investment as £7.045 million, Mr Shannon’s conduct fell significantly short of the standards reasonably to be expected of a Member in that:

- (a) **the £7.045 million figure was accounted for without considering the effect of the £900,000 payable to a XYZ company under the purported management agreement. As Mr Shannon knew, this payment was made under a purported management agreement for which no management services were ever received by AssetCo (Abu Dhabi) Limited.**

In so doing, he:

- (a) **failed to act in accordance with the fundamental principle of integrity (contrary to paragraphs 110.1 or 110.2 of the Code); and/or**
- (b) **failed to act in accordance with the fundamental principle of objectivity (contrary to paragraph 120.1 of the Code); and/or**
- (c) **dishonestly failed to ensure that those financial statements represented the facts accurately and completely (contrary to paragraph 320 of the Code); and/or**
- (d) **has brought or is likely to bring discredit to the accountancy profession or on himself as a Member (contrary to paragraph 150.1 of the Code).**

Mr Flynn: Allegation 16

In approving the 2009 and 2010 Financial Statements recording the liability element of the XYZ Investment as £7.045 million, Mr Flynn’s conduct fell significantly short of the standards reasonably to be expected of a Member in that he knew that the £7.045 million figure was calculated on a basis that disregarded the £900,000 payable under the purported management agreement which Mr Flynn knew was a device to pay [an XYZ company] £900,000 per year (for no services) to seek to reduce the proportion of the preference shares recorded as a liability. In so doing, he:

- (a) failed to act in accordance with the fundamental principle of integrity (contrary to paragraphs 110.1 or 110.2 of the Code); and/or
- (b) failed to act in accordance with the fundamental principle of objectivity (contrary to paragraph 120.1 of the Code); and/or
- (c) dishonestly failed to ensure that those financial statements represented the facts accurately and completely (contrary to paragraph 320 of the Code); and/or
- (d) has brought or is likely to bring discredit to the accountancy profession or to himself as a Member (contrary to paragraph 150.1 of the Code).

Mr Flynn: Allegation 17

In providing explanations to Grant Thornton as to the details of the Management Agreement, Mr Flynn's conduct fell significantly short of the standards reasonably to be expected of a Member in that:

- (a) Mr Flynn dishonestly provided a false explanation of the Management Agreement sent by the email of 8 June 2009 informing Grant Thornton that the fee was calculated by reference to time costs when there was no such calculation; and/or
- (b) Mr Flynn dishonestly confirmed a false explanation of the Management Agreement by the email of 14 June 2009 informing Grant Thornton that the contracts were negotiated independently and/or that clauses had been included to reduce the fee payable in the event of non-performance, when this was not the case.

In doing so, he:

- (a) failed to act in accordance with the fundamental principle of integrity (contrary to paragraph 110.1 of the Code); and/or
- (b) failed to act in accordance with the fundamental principle of objectivity (contrary to paragraph 120.1 of the Code); and/or
- (c) has brought or is likely to bring discredit to the accountancy profession or to himself as a Member (contrary to paragraph 150.1 of the Code).

98. In summary, these allegations concern a £15 million investment (the “**XYZ Investment**”) which Mr Shannon negotiated with another entity, part of XYZ through a preference share issue. As part of the XYZ Investment, the main thrust of the allegation is that a “management agreement” was entered into which was designed to disguise what

was in substance a payment of interest on the XYZ Investment. By structuring the XYZ Investment with a management agreement, Messrs Shannon and Flynn reduced the proportion of the XYZ Investment shown as debt on the balance sheet.

99. In considering these allegations, a convenient starting point is an email dated 11 December 2008 from Mr Shannon to Mr Wightman which was also copied to Mr Flynn. The email referred to a discussion/negotiation the previous week and attached “heads of terms” from XYZ regarding what was described as a “£15m cumulative redeemable preference share investment” and stated in material part:

“...The offer has been "structured" around our funding requirement to support our Abu Dhabi activity [sic] although I have managed to ensure we have access to £5m immediately to support the current working capital position of the Group. Our working capital facilities with Barclays have reduced from £7m to approx. £Nil, which has resulted in us having to use our supplier base to fund the gap. Barclays are not providing any current access to debtor finance. In reality with TVAC closed, we still need £5m of working capital facilities from Barclays/someone. Our current cash position is untenable and is potentially placing the overall business at risk.” (emphasis added)

100. The email ended with a recommendation by Mr Shannon “...for the board to accept the offer and allow us to move forward to secure the funding.”
101. The heads of terms provided for a £15 million preference share issue to a new special purpose AssetCo subsidiary for the purpose of investment in business in Abu Dhabi and subsequently elsewhere in the Middle East. As contemplated by the heads of terms, the preference shares were to carry a 6% annual interest coupon. This (i.e 6% x £15m) equates to £900,000 per annum.
102. On 11 December 2008, Mr Flynn forwarded that email and the heads of terms to Mr Napper at GT. On the following day, i.e. 12 December 2008, M1 responded in a long email recording that Mr Flynn had asked GT “...to advise on how to appraise the terms of the agreement in its current form and outline the accounting behind it...and to advise on how the terms could be changed to ensure that the minimum possible liability is shown on the balance sheet at any given reporting date.” The email then set out a summary of the terms and an explanation of the accounting treatment as well as what were described as five “options for reducing the liability element”. Option 3 was to remove the interest coupon.

103. There is some uncertainty as to exactly what then happened. The documents we have seen include an email dated 17 December 2008 from Mr Flynn to M1 and Mr Boyle with copies to Mr Napper in relation to the various options previously proposed by M1 stating with regard to option 3 as follows:

“Option 3 – Remove the interest element...I think this can be achieved by removing the interest element and replacing it with a non-executive directors fee. £5.7m would be treated as equity = 38%..”

104. The evidence of GT is that they never received this email. Be that as it may, on 6 and 7 January 2009, Mr Flynn sent final draft documentation to GT by emails each with the subject “*Project Victor*”. This draft documentation comprised an investment agreement (the “**Investment Agreement**”) providing for the issue of shares with no interest coupon, a management agreement (“**Management Agreement**”) between AssetCo (Abu Dhabi) Limited and another company [XYZ2] connected with XYZ and a yet further related company (XYZ3), and share warrant instruments. Clause 3 of the draft Management Agreement provided for the payment of fees to a special purpose management company. Those fees were expressed to be £900,000 per annum, i.e. a figure which matched exactly the earlier proposed interest payment. The services to be provided were broadly defined as “*management and strategic consultancy services and advice in connection with the funding and development of the Business and the securing of additional contracts, including advice and assistance in developing the Business Plan, researching opportunities for further Business in [Abu Dhabi.]*”
105. In a long email to Mr Napper dated 8 January 2009, M1 provided his review of the proposed agreement and set out his concerns surrounding the separation of the management charge from the preference shares. On the same day, the email was forwarded by Mr Napper to Mr Flynn. The email is important because it is relied upon in particular by Mr Flynn to justify the structure of the arrangement that was entered into. Although certain words are illegible, it stated in material part as follows:

“...Management charge payable to [XYZ3]

[XYZ3] have the contacts in the far east and therefore their involvement in the project is imperative to the success of the proposed project. Management therefore consider the proposed management fee to represent a fair price for their input and consider the management agreement to be a separate document which has been negotiated at an arms length basis and has no

bearing on the terms of either the Investor Agreement or the Warrant Agreement. The management charge could remain in place even after the preference shares have been settled.

3. Grant Thornton's considerations

Accounting for the preference share liability:

As your auditors we consider the principles of your proposed accounting treatment to be acceptable. We agree with management that the redeemable preference shares are a liability. This is because they are redeemable in either 1, 2 or 5 years and their redemption depends on conditions outside the control of AssetCo.

Management fee payable to [XYZ3]

Our concerns surround the separation of the management charge from the preference shares. Essentially it is a critical judgement area that the management fee represents an arms length deal between two related parties. (i.e. stands up on its own without the debt and warrant contract) We therefore need to understand management's considerations when determining that this is an arms length deal.

[???] arms length deal we might expect the wording of the contract to be more prescriptive on what the entity providing the service were obliged to do. We might also expect to see clauses enabling AssetCo to cancel the agreement or withhold payment if the provider did not fulfil these obligations or AssetCo were not happy with the service provided. We recommend management expand the agreement in this respect.

An important consideration in determining the appropriateness of the management charge would be its magnitude in the context of AssetCo's estimated returns associated with winning this contract. A robust estimate of the potential net cash flows associated with the deal would provide support for management's judgement in this regard. The documents refer to a business plan which would assist our understanding of management's judgement in this respect.

If this is a critical judgement in applying the accounting policies appropriate disclosure will need to be given in accordance with IAS 1.113.

If the management fee is not considered to be arms length then the £900,000 fee per annum (or the unjustified portion of it) should be considered to be part of the preference share deal and this portion would be treated as additional liability on initial recognition (max £4.5 million over 5 years equates to approximately £3 million based on discount rate of 20%). This would impact on Income statement particularly in later years as the

discounted liability is unwound. There would also be a [???] of costs from operating costs to finance charges in these circumstances.

Period over which finance costs should be accrued/liability should be discounted:

As there is a variable period over which the instrument might be redeemed management will need to estimate when they expect the instrument to be redeemed. This will need to be reassessed at each period end. Interest will then be accrued in accordance with LAS 39.AG8. Just because there is an end date on which the instrument must be redeemed does not mean that this is the assumed period over which the finance charges accrue. The assumptions management have made take into account in the illustrations above assume repayment will not occur until the end of the loan term (5 years)....”

106. In the event, the Investment Agreement was executed on 12 January 2009 and the Management Agreement shortly thereafter on 28 January 2009 – both in materially the same terms as the original drafts. The Management Agreement was signed by Mr Shannon on behalf of AssetCo. In summary:

- (a) The Investment Agreement provided for a £15 million investment on the terms of the original draft. The special purpose vehicle was AssetCo (Abu Dhabi) Limited, a Bermudan company. Clause 5 limited the use of the £15 million raised to projects in Abu Dhabi save for Clause 5.2 which permitted a £5 million loan to AssetCo for use in the wider AssetCo business.
- (b) The Management Agreement provided for the services to be provided for the duration of the “Term” which ceased on the “End Date” being (as defined) the date the preference shares were redeemed. Clause 3.1 provided for the annual fee of £900,000, and clause 3.2 provided for a reduction in that fee upon redemption (or transfer to AssetCo) of any of the preference shares so that the fee was reduced proportionately with the extent of the redemption. Thus, it is important to note that the amount of the “management fee” was not referable to the extent of any services provided but rather the number of preference shares outstanding.

107. On 6 May 2009, in the course of the 2009 Audit, M1 emailed Mr Flynn (copying, amongst others, Mr Boyle) under the subject heading “*Significant audit issues.*” One of those issues was the Management Agreement said to be with XYZ3 and said to pay XYZ3 £900,000. M1 noted that “*there is risk that the two contracts could be considered to be closely related*”. He stated that his concerns surrounded the separation of the

management charge from the preference shares. Further, M1 noted that clause 3.2 (which was apparently not in the draft provided to GT) appeared to be an indicator that the contracts were closely related. The email continued in material part as follows:

“The other factors we need to consider are the services that [XYZ2] are providing and whether the fair value of those services totals £900,000 per annum, that is, the transaction is at arms length.

This is an area we discussed again on Friday and I look forward to receiving your paper on the boards consideration of this issue. I suggest your paper now also considers why the substance of the service arrangement appropriately decreases in line with the preference shares issued.

Finally, if the £900,00 payment was considered in substance to be simply part of the financing arrangement (i.e. related to the financial instrument issue), then this would substantially increase the amount of the liability on the balance sheet. I am yet to receive Matt's workings on the split between debt and equity but the above issues will have a significant impact on these calculations.”

108. On 8 June 2009, Mr Flynn emailed Mr Boyle his explanation of the management charge. The email was forwarded immediately by Mr Boyle to GT. The explanation provided by Mr Flynn in that email was as follows:

“As you are aware, [XYZ2] provides management consultancy services and advisory services to AssetCo (Abu Dhabi) Limited, for an annual fee of £900k.

These services include management and strategic consultancy services and advice in connection with the funding and development of business, the securing of additional contracts and researching opportunities for further development of our business in Abu Dhabi.

Doing business in the Middle East is unlike doing business in the UK. Business in the Middle East is relationship driven where trust has been built up over a number of years. The [XYZ] team, behind [XYZ2], bring this experience and having been doing business in the Middle East for years and they also have funds under management for the Abu Dhabi Sovereign Funds. This enables them to provide services, open doors and make sure that we progress the contract opportunities we currently have in the region.

Although [XYZ3] are not required to devote a fixed amount of time to the provision of services the £900k was calculated on the basis of [Mr X, the CEO of XYZ] time at £20k a day for 3 days a month (£20k x 35 days) being £700k

and the balance of £200k relates to the rest of the [XYZ] team. [Mr X's] time includes his travel time.

The fees have been charged on an arms length basis and we believe that [XYZ] will be critical to assisting AssetCo Abu Dhabi Ltd securing contracts with revenues in excess of £500m within the next 12-24 months...

109. The documents show that there must then have been a conversation on 11 June 2009 between Mr Flynn and M1; and on 15 June 2009, M1 sent Mr Boyle and Mr Flynn an email setting out his understanding of what Mr Flynn had told him during that conversation, stating in material part:

“...Should the Abu Dhabi contract not be won after the two years it is management’s opinion that the services received from [the management company] would not be yielding a return. On this basis management reserve the right to redeem the preference shares and cancel the management fee...it is management’s opinion, that although legally the Investment Agreement and the Management Agreement appear closely related, in substance the two contracts are both contingent on the same factor which is outside management’s control, that is, [the management company] being able to negotiate the Abu Dhabi contract on their behalf.

By linking the fair value of the management fee, and the services provided under the contract, to the redemption of the shares and the award of the agreement management have managed internal risk of [the management company] not acting in their interest and aligned AssetCo and [the management company’s] goals.

To conclude, in substance these two agreements were negotiated independently from one another. However certain clauses were included to ensure that, in the event the [management company] did not deliver the services outlined in the contract effectively and the Abu Dhabi contract was not awarded, AssetCo could reduce the management fee to better reflect the value they were receiving. This was affected (sic) by referring tying (sic) the fee into the redemption clauses in the preference share contract which had already been agreed with [XYZ2] and is also dependent on the success of the Abu Dhabi contract...”

110. At the end of that email, M1 requested Mr Flynn to confirm that he (M1) had understood the conversation they had had correctly – which Mr Flynn duly confirmed by email later that same day.
111. In the 2009 Financial Statements, the liability element of the preference shares was stated to be £7.045 million with equivalent statements in the 2010 Financial Statements.

112. The treatment was discussed in GT's Key Issues Memorandum and at an audit committee meeting attended by Mr Shannon, but at no point did he disabuse GT of their understanding of the Management Agreement, based on the information provided by Mr Flynn.
113. There is no evidence that any tangible services were ever provided by XYZ2. Indeed, in Mr Shannon's written response to the Executive Counsel, he stated "*I am unaware of [XYZ2] providing any tangible services...*". Given that Mr Shannon was the member of AssetCo mostly closely involved with the Abu Dhabi business, he would certainly be someone who would have been aware if any such tangible services had been provided. This further confirms that the ostensible management fee was a disguise.
114. Against that background, it is our conclusion that, so far as Mr Flynn is concerned, Allegations 16 and 17 are proven. In our view, that is the obvious inference to be drawn from the following:
- (a) As appears from the emails in December 2008, Mr Flynn was directly involved from the outset in selecting "Option 3" with a view to considering and reducing the amount of the liability.
 - (b) The ostensible "management fee" i.e. £900,000 per annum was identical to the original proposed interest coupon in the Investment Agreement. In our view, the possibility that this exact matching was a coincidence is not credible.
 - (c) In our view, the ostensible "management fee" was plainly a significant sum and, if it had been part of a genuine arms length transaction, it is inconceivable that it would not be reflected in or evidenced by some contemporaneous documentation which would support the calculation of the ostensible "management fee" by reference to time costs (as Mr Flynn sought to explain in his email dated 8 June 2009) or any negotiation of the management agreement. But there is none. In our view, it follows that the explanation given by Mr Flynn with regard to the calculation of the ostensible fee was, and was known by him, to be false.
 - (d) It is plain that Mr Flynn's assertion as recorded in M1's email dated 15 June 2009 (subsequently confirmed by Mr Flynn's email later that same day) that the Investment Agreement and the Management Agreement were "*negotiated independently*" is patently false.

- (e) The explanation with regard to the structure of the Investment Agreement and the Management Agreement given by Mr Flynn to M1 as set out in M1's email dated 15 June (and confirmed by Mr Flynn) is convoluted in the extreme. It bears all the hallmarks of a dishonest scheme designed to disguise the true nature of the arrangement.
 - (f) As stated above, there is no evidence of any tangible services ever being provided by XYZ2; and Mr Shannon's own evidence that he was unaware of any such tangible services being provided further confirms that the ostensible management fee was a disguise for what was, in truth, an interest payment.
 - (g) The result was that the 2009 and 2010 Financial Statements understated what was, in truth, the liability relating to the preference shares and therefore did not accurately or completely represent the true facts with regard to the XYZ Investment, viz. that it was no more than a false mechanism to reduce the amount shown to be payable on partial redemption of the preference shares.
 - (h) Mr Flynn approved the 2009 and 2010 Financial Statements knowing the XYZ Investment to be misstated, and acted dishonestly in breach of the Code as aforesaid.
 - (i) Mr Flynn committed Misconduct by dishonestly providing a false explanation of the Management Agreement to GT by email on 8 June 2009 and an email confirming GT's understanding of the position on 15 June 2009. Those explanations were dishonest because, as set out above in relation to Allegation 17, Mr Flynn knew the true position about the XYZ Investment.
115. Further, it is our conclusion that Allegation 10 against Mr Shannon is also proven, viz. he approved the treatment of the XYZ Investment in the 2009 and 2010 Financial Statements based on the Management Agreement, despite knowing that it did not represent the true position. Mr Shannon was well aware that no significant services were specified (confirming after the event that none were provided), yet, despite receiving GT's KIM and attending the audit committee meeting at which the Management agreement was discussed, he failed to correct GT's understanding of the position. This was dishonest and Mr Shannon failed to act in accordance with fundamental principles of integrity and objectivity. He also dishonestly failed to ensure the financial statements represented the facts accurately and completely and thereby brought discredit to the profession.

PART 5: ACCOUNTANCY ALLEGATIONS

116. The remainder of the [principal] allegations in the Formal Complaint concerns what have been described as “accountancy allegations”. Each of these allegations relates to different elements of the 2009 and 2010 Financial Statements. However, the main thrust of the allegations is fundamentally the same, i.e., in effect, it is said that the Respondents knowingly presented the accounts in a false way that substantially overstated the true position of AssetCo. In particular, it is said that this was done by overstating the value of “goodwill” in certain respects and other treatments based on what are alleged to be fictitious increases in value. It is convenient to deal with this group of allegations under the following heads:

- (a) Goodwill of Subsidiaries, viz. UV Modular Limited (“UVM”), The Vehicle Application Centre Limited (“TVAC”) and Simentra Limited (“Simentra”):
 - (i) Mr Shannon: Allegation 8
 - (ii) Mr Flynn: Allegation 22
 - (iii) Mr Boyle: Allegation 27
- (b) London Fire Fictitious Revenue:
 - (i) Mr Shannon: Allegations 5,6,7
 - (ii) Mr Flynn: Allegations 18, 19, 20
 - (iii) Mr Boyle: Allegation 25
- (c) EFCC Contract:
 - (i) Mr Flynn: Allegation 21
 - (ii) Mr Boyle: Allegation 26

Section 1: Goodwill of Subsidiaries

117. The allegations under this head against Mr Shannon, Mr Flynn and Mr Boyle are as follows:

Mr Shannon: Allegation 8

In approving the 2009 and 2010 Financial Statements for the AssetCo group of companies, Mr Shannon's conduct fell significantly short of the standards reasonably to be expected of a Member in that:

- (a) the 2009 and 2010 Financial Statements record a goodwill value for UVM of £7,543,000, which was not justified by any documentation. Mr Shannon knew or ought to have known of UVM's operating losses and net liabilities; and/or**
- (b) the 2009 and 2010 Financial Statements record a goodwill value for TVAC of £7,574,000, which was not justified given that TVAC was loss-making and was put into insolvent administration on 18 December 2008 (and Mr Shannon knew or ought to have known such matters); and/or**
- (c) the 2009 and 2010 Financial Statements record a goodwill value for Simentra Limited of £506,000, which was not justified by any documentation. Mr Shannon knew or ought to have known of its net liabilities and little reported trade in 2008.**

In so doing, he:

- (a) recklessly failed to act in accordance with the fundamental principle of integrity (contrary to paragraphs 110.1 or 110.2 of the Code); and/or**
- (b) recklessly failed to act in accordance with the fundamental principle of objectivity (contrary to paragraph 120.1 of the Code); and/or**
- (c) recklessly failed to ensure that those Financial Statements represented the facts accurately and completely (contrary to paragraph 320 of the Code); and/or**
- (d) has brought or is likely to bring discredit to the accountancy profession or to himself as a Member (contrary to paragraph 150.1 of the Code).**

Mr Flynn: Allegation 22

In approving the 2009 and 2010 Financial Statements for the AssetCo group of companies, Mr Flynn's conduct fell significantly short of the standards reasonably to be expected of a Member in that:

- (a) the 2009 and 2010 Financial Statements record a goodwill value for UVM of £7,543,000, which was not justified by any documentation.**

Mr Flynn knew or ought to have known of UVM's operating losses and net liabilities;

- (b) the 2009 and 2010 Financial Statements record a goodwill value for TVAC of £7,574,000, which was not justified given that TVAC was loss-making and was put into insolvent administration on 18 December 2008 (and Mr Flynn knew or ought to have known such matters); and**
- (c) the 2009 and 2010 Financial Statements record a goodwill value for Simentra Limited of £506,000, which was not justified by any documentation. Mr Flynn knew or ought to have known of Simentra Limited's net liabilities and little reported trade in 2008.**

In so doing, he:

- (a) recklessly failed to act in accordance with the fundamental principle of integrity (contrary to paragraphs 110.1 or 110.2 of the Code); and/or**
- (b) recklessly failed to act in accordance with the fundamental principle of objectivity (contrary to paragraph 120.1 of the Code); and/or**
- (c) recklessly failed to ensure that those Financial Statements represented the facts accurately and completely (contrary to paragraph 320 of the Code); and/or**
- (d) has brought or is likely to bring discredit to the accountancy profession or to himself as a Member (contrary to paragraph 150.1 of the Code).**

Mr Boyle: Allegation 27

In preparing the 2009 and 2010 Financial Statements for the AssetCo group of companies, Mr Boyle's conduct fell significantly short of the standards reasonably to be expected of a Member in that:

- (a) the 2009 and 2010 Financial Statements record a goodwill value for UVM of £7,543,000, which was not justified by any documentation. Mr Boyle knew or ought to have known of UVM's operating losses and net liabilities;**
- (b) the 2009 and 2010 Financial Statements record a goodwill value for TVAC of £7,574,000, which was not justified given that TVAC was loss-making and was put into insolvent administration on 18 December 2008 (and Mr Boyle knew or ought to have known such matters); and**

- (c) **the 2009 and 2010 Financial Statements record a goodwill value for Simentra Limited of £506,000, which was not justified by any documentation. Mr Boyle knew or ought to have known of Simentra Limited’s net liabilities and little reported trade in 2008.**

In so doing, he:

- (a) **recklessly failed to act in accordance with the fundamental principle of integrity (contrary to paragraphs 110.1 or 110.2 of the Code); and/or**
- (b) **recklessly failed to act in accordance with the fundamental principle of objectivity (contrary to paragraph 120.1 of the Code); and/or**
- (c) **recklessly failed to ensure that those financial statements represented the facts accurately and completely (contrary to paragraph 320 of the Code); and/or**
- (d) **has brought or is likely to bring discredit to the accountancy profession or to himself as a Member (contrary to paragraph 150.1 of the Code).**

118. As stated above, these allegations relate to three subsidiaries of AssetCo, viz. UVM, TVAC and Simentra. In each case, the 2009 and 2010 Financial Statements included substantial values for goodwill which, after later investigation following the appointment of the new Board, could not be substantiated and were restated to zero in the 2011 Financial Statements. In passing, we should note that the 2009 and 2010 Financial Statements did not themselves set out a breakdown of individual values for goodwill in respect of *inter alia* particular subsidiaries but it is plain that the total amount of goodwill allowed in those statements included amounts as set out in the following table.

	2009 £ million	2010 £ million	2011 £ million
U V Modular (“UVM”)	7.543	7.543	zero
The Vehicle Application Centre Limited (“TVAC”)	7.574	7.574	zero
Simentra Limited (“Simentra”)	0.506	0.506	zero

In passing, we should note that these reductions in the value of goodwill form only part of the overall reductions in the value of goodwill as explained at p65 of the 2011 Financial Statements.

119. UVM was acquired by AssetCo on 22 December 2007. It's core business was the building of ambulances and mobility buses for the UK NHS. UVM's financial statements for the period 2 July 2007 to 31 March 2008 were signed by Mr Flynn on behalf of the board which included Mr Shannon. They showed (a) a loss on ordinary activities for that period of £836,000; (b) a loss for the prior period of over £1.4 million, and (c) net liabilities of £2,754,000. On any view, those figures show that UVM was in a parlous financial condition. No further public accounts appear to have been produced for UVM. However, on 15 January 2010 (i.e before the end of FY2010), UVM entered administration. So far as AssetCo's own accounts are concerned, these show in material part as follows viz. (i) in the 2008 Financial Statements, a "provisional fair value" figure of £3,467,000 was given (p97) for goodwill in respect of UVM; and it would seem from earlier sections (in particular at p72) that no impairment of goodwill was recognised in that year; and (ii) in the 2009 Financial Statements, the notes at p76 state: "*UVM: A further £1m deferred consideration has arisen following a detailed fair value review of the business in the year. This has resulted in an additional £1m of goodwill generated in relation to acquisition of this subsidiary.*"
120. TVAC was acquired by AssetCo in December 2007. It was principally engaged in chassis conversions and the construction of fire appliances. The documents show that TVAC went into administration on 18 December 2008 resulting in a £5.2 million loss. We have not seen detailed accounts in relation to TVAC in the period prior to that date but, according to Mr Shannon's own written answers to questions posed by the Executive Counsel, it was an "*...operational disaster. I have presumed that goodwill was impaired in 2008*". However, AssetCo's 2009 and 2010 Financial Statements show there was no impairment to goodwill. It appears that this was on the basis of what is stated in GT's Key Issues Memorandum for 2009 ("**2009 KIM**") that "per management", TVAC generated £7.0m of goodwill "*...which was attributable to a skill set of labour that allowed all assets for the London Contract to be generated in-house...*"; and that GT had reviewed the management assumptions and calculations.
121. According to Mr Shannon, Simentra was acquired by AssetCo on 16 April 2007. As described by him in his written answers to the Executive Counsel, it "*...was positioned to sell UK Emergency Response Expertise as a boutique consulting house, leveraging off individuals with significant experience and industry recognition*" but had no more than 3 employees. Simentra's last filed financial statements were for the year ended

31 December 2008. These showed no income in that year or the previous year, a loss for 2008 of £165, and for 2007, a loss of £172,630, no assets, and net liabilities of £345,695. It was dissolved on 21 September 2012. According to the 2009 KIM, GT accepted what was described as “*managements judgment*” in respect of the stated figure for goodwill of £506,000.

122. The main question then arises as to the basis upon which the stated figures for goodwill for these subsidiaries came to be included in the 2009 and 2010 AssetCo Financial Statements and whether such figures can properly be justified.
123. As to that question, Mr Shannon provided certain written answers which were, in summary, as follows:
 - (a) With regard to both UVM and TVAC, he was unaware as to how the goodwill was assessed. However, “*...the GT Due Diligence Report and the GT Strategic Industry Report and Consolidation Plan would have been part of the assessment*”. In relation to Simentra, he stated that he was not involved in the “*acquisition accounting*”.
 - (b) He presumed that the Group Financial Controller (i.e. Mr Boyle) carried out the work.
 - (c) He did not himself review the figure.
 - (d) He believed that all acquisitions would have been discussed with GT as part of the audit process.
 - (e) In response to the specific question as to whether he thought that the goodwill should have been impaired at any point, his answers were as follows:
 - (i) In relation to UVM, he stated: “*UVM won a number of significant new contracts early into 2008 that appeared to support the acquisition rationale (including London Ambulance Service) and the concept of the larger vehicle build operation, however it became evident that as the business grew the cash requirements to support the business also grew outside what had been forecast...*”

- (ii) In relation to TVAC, as already noted above, he stated that TVAC was an operational disaster and that he presumed that goodwill was impaired – although (again as noted above) there was in fact no impairment to goodwill recorded in the 2009 and 2010 (AssetCo) Financial Statements.
- (iii) In relation to Simentra, he stated: *“Given the fact the Company secured the SOC Contract with the UAE Armed Forces within 2 years of the acquisition, I am uncertain as to why goodwill should have been impaired.”*

124. Mr Flynn was asked various questions with regard to the topic of goodwill in the course of his interview in June 2015. In summary, his responses (starting at p177) were as follows. So far as Simentra is concerned, he accepted that it was not generating any cash flows; and he could not recollect how the figure for goodwill was assessed. With regard to both TVAC and UVM, he accepted that both companies were not doing particularly well at the time. In particular, as to UVM: *“...it wasn't losing money and there was a lot of new contracts coming up in the ambulance sector and the due diligence had highlighted a number of fairly straightforward areas where the businesses could be improved and synergy by having the vehicle-assembly business, which we then would have had, and Papworth in UVM in Leeds... That isn't what actually happened. In hindsight, that isn't what happened but that's what the strategy was and the rationale at the time...”* At p180, Mr Flynn continued: *“...the climate of the time was that [the purchase] was cheap. It was widespread, and we'd had been on the back of making investments which had all gone very well. I suppose, as we said, in hindsight it didn't work out that way...”* When asked specifically about how the goodwill was assessed in relation to UVM and TVAC, his response was (at p181): *“...I think it was assessed that we were still in the process of finding out exactly what was happening within the businesses [i.e. UVM and TVAC] and still of the view that the businesses should be able to be turned around reasonably quickly. So, for the 2008 accounts, they would have been bought in December, we'd just bought them. And then, by 2009, we'd had a year under our belt...”* In his letter to the Tribunal dated 11 January 2018, Mr Flynn stated that the issue of goodwill was considered on an annual basis and was fully addressed in GT's Key Issues Memorandum for 2009 and 2010. So far as is relevant, we have already referred to relevant passages above. In his letter, Mr Flynn also states with regard to the goodwill figure for UVM that although the ambulance side of UVM had gone into administration *“...the other half of UVM was Trekka Bus which had been independently*

valued at £5m and with regards to Goodwill was classified as held for sale in accordance with IFRS 5 – full details in the 2010 GT KIM... ”. In that regard he stated that there had been an independent valuation of Treka Bus which had valued it at £4m at the time. However, we have not seen such independent valuation.

125. Similarly, Mr Boyle was asked questions about this topic in the course of his interview in June 2015. His answers spread over large parts of the transcript of that interview are not entirely coherent; and it is not easy to summarise what he said. But, doing the best we can, we would summarise those responses in relevant respect as follows:

- (a) His view was that AssetCo was run like a “*corner-shop*”. The PLC board did not stand up to John Shannon. He would come up with some “*hare-brained idea*”; and there was “*zero challenge. They hated [Mr Flynn]...*” (p57).
- (b) Mr Shannon made a unilateral decision to buy UVM and TVAC. Mr Boyle did not think that the board had been consulted. There had been no commercial due diligence (p56).
- (c) In 2008, he had a very frank conversation with Mr Flynn because he was concerned that UVM was a “*...massively loss-making business..*”; UVM was making a loss on each order (p48). Orders were being obtained at a very low price just to boost turnover (p.49); but when the order book was checked, it was found that “*half the orders didn’t exist..*” (p56).
- (d) The “guys” in charge (which is plainly a reference to Mr Shannon and Mr Flynn) just wanted to live in a world where “*...everything was fantastic..*”. (p55)

126. So far as GT is concerned, the evidence of Mr Napper as set out in his witness statement with regard generally to goodwill was as follows:

“...In paragraph 75 of the Defence, Mr Flynn alleges that goodwill relating to the group was reviewed annually "in consultation" with Grant Thornton and that we provided confirmation of the accounting for goodwill. Again, I do not agree with the insinuation that we were in some way advising the directors on their accounts, which would have been inconsistent with our role as auditors. The role we performed as auditors did not include the provision of consulting advice about impairment. As I have explained above, in indicating that we accepted the accounting proposed by management, we were not providing expert corroboration of a preliminary view formed by

management on which they could rely in approving the accounts. Instead, we were making known that we were not challenging management's position and would not be qualifying our audit opinion in relation to that particular aspect of AssetCo's accounts."

127. In the course of his oral evidence, the Tribunal asked Mr Napper certain specific questions with regard generally to the topic of goodwill, and specifically with regard to UVM in particular, concerning the process that GT would undertake in order to satisfy themselves that the goodwill element in relation to the subsidiaries was correctly included in the AssetCo accounts. In broad terms, his responses (Transcript Day 2 p184) were that GT would have "explored" the value of UVM's underlying assets and that although they would have discussed the goodwill element with Mr Flynn and the other directors at the audit committee meetings, the discussion was, in effect, limited to satisfying themselves (i.e. GT) that they (i.e the directors) had looked at the value and included an appropriate sum for goodwill in the draft accounts. The Tribunal also asked Mr Napper certain questions with regard to Mr Flynn's explanation concerning goodwill in respect of "Treka Bus". Mr Napper's evidence in this regard was somewhat vague. In summary (Transcript Day 2 p185), his evidence was that Treka might have been part (i.e. a division) of UVM; that, as at 31 March 2010, the Treka Bus operation was "up for sale"; that it was subsequently sold; and that, although he could not remember the "numbers", it was "conceivable that there could be some goodwill there." We note at p94 of AssetCo's 2010 Financial Statements a reference to a company called "Treka Bus Limited (formerly Blue Amber Red Limited)". On this basis, it was submitted by the Executive Counsel that Treka Bus was an independent entity and therefore irrelevant in the present context. However, we are not persuaded that that is necessarily so: it would seem possible that Treka Bus may have been a subsidiary of UVM. We do not have sufficient information on this point.
128. The evidence of M1 as set out in his witness statement was in relevant respects as follows:

"...In paragraph 75 of the Defence, Mr Flynn alleges that goodwill relating to AssetCo's investments in its subsidiaries was reviewed annually "in consultation" with Grant Thornton and that AssetCo took decisions on the basis of Grant Thornton's "confirmation that the accounting treatment was appropriate". I do not agree with this description of the audit assessment of AssetCo management's review of impairment, and repeat my comments made at paragraph 27 above. At no stage of my dealings with AssetCo did it seem

to me that Grant Thornton was being expected by Mr Flynn, or anyone else, to assume responsibility to the directors for some aspect of the financial statements (in addition to providing an audit opinion).

...AssetCo's management, in preparing each set of annual accounts, were required to review the carrying value of investments in AssetCo's subsidiaries for impairment, and such reviews therefore had to take place annually. That review was not a joint effort with Grant Thornton; the audit involved forming an independent judgment on the management's review.

In undertaking their review, clients might have asked us for some guidance, but it would remain their review. My recollection is that we dealt with Mr Boyle in relation to goodwill impairment reviews, and I do not have any recollection of Mr Flynn asking us for our views or guidance on impairment. It was for AssetCo's management to form their judgments about whether there had been impairment, and I have some recollection of asking for justification from Mr Boyle for management's view that investments were not impaired...

129. As to this evidence, our observations and conclusions are, in summary, as follows:

- (a) UVM was plainly in a parlous financial condition. Although the evidence is extremely vague and uncertain with regard to Treka Bus, we recognise the possibility that there may have been some goodwill attributable to that operation. However, whatever such goodwill element might have been, it does not provide any justification for the very large figure for goodwill included for UVM in the 2009 and 2010 accounts. On the contrary, it is our conclusion that there was no proper justification for the stated figure for goodwill being included in the 2009 and 2010 Financial Statements.
- (b) TVAC was in a similar position. We accept that, using Mr Shannon's own words, it was an "operational disaster". [...] Again, it is our conclusion that there was no proper justification for that figure for goodwill being included in the 2009 and 2010 Financial Statements.
- (c) Simentra appears to fall into a somewhat different category. As noted above, it had no income at all with only limited personnel. [...], it is our conclusion that there was no proper justification for that figure for goodwill being included in the 2009 and 2010 Financial Statements.

130. It is also our conclusion that the allegations against each of Mr Shannon (Allegation 8), Mr Flynn (Allegation 22) and Mr Boyle (Allegation 27(ii),(iii) and (iv)) are proven.

In particular:

- (a) As for Mr Shannon:
 - (i) He was the CEO of AssetCo and a director of each of the subsidiaries. He therefore knew, or wilfully chose not to know, of the poor trading position (and, in substance, insolvency) of the subsidiaries.
 - (ii) He knew and expressly stated to the FRC in the course of its investigation that TVAC was an “operational disaster” whose goodwill should have been impaired in 2008. It is to be inferred from the clear recollection and strength of the phrase “operational disaster” that Mr Shannon knew this at the time.
 - (iii) Therefore, Mr Shannon should not have approved the 2009 and/or 2010 Financial Statements with those goodwill figures.
 - (iv) Mr Shannon either read the Financial Statements and approved them with the wrong figures included, or did not read them but nevertheless chose to approve them.
 - (v) In either event he was reckless in that he knew such conduct might involve a breach of the Code but proceeded nevertheless, and failed to turn his mind to the accuracy or otherwise of the financial statements.
- (b) The same analysis applies to Mr Flynn in relation to Allegation 22: he was CFO of AssetCo and a director of the subsidiaries.
- (c) The same analysis applies to Mr Boyle in relation to Allegation 27. As Group Financial Controller principally involved with the preparation of the 2009 and 2010 Financial Statements, Mr Boyle was closely involved. The poor trading history of the subsidiaries was apparent from the company’s accounts. Mr Boyle either did appraise himself of the position as stated in the accounts but so superficially that he allowed the goodwill to be recorded inaccurately or alternatively, he failed to do so but nevertheless allowed the goodwill figure to be included. On either analysis, he was at least reckless.

PART 5: ACCOUNTANCY ALLEGATIONS

Section 2: London Fire Revenue

131. The allegations under this head against Mr Shannon, Mr Flynn and Mr Boyle are in relevant respect as follows:

Mr Shannon: Allegation 5

In approving the 2009 Financial Statements, which recognised 14 years' purported income as accrued revenue and a related debtor relating to modifications, including foam pumps, provided to London Fire, Mr Shannon's conduct fell significantly short of the standards reasonably to be expected of a Member, in that Mr Shannon knew or ought to have known that the income did not in fact exist. In so doing, Mr Shannon:

- (a) recklessly failed to act in accordance with the fundamental principle of professional competence and due care (contrary to paragraph 130.1); and/or**
- (b) recklessly failed to ensure that financial statements represented the facts accurately and completely (contrary to paragraph 320 of the Code); and/or**
- (c) has brought or is likely to bring discredit to the accountancy profession or to himself as a Member (contrary to paragraph 150.1 of the Code).**

Mr Shannon: Allegation 6

In approving the 2010 Financial Statements, which recognised 13 years' purported income as accrued revenue and a related debtor relating to TICs provided to London Fire, Mr Shannon's conduct fell significantly short of the standards reasonably to be expected of a Member, in that Mr Shannon knew or ought to have known that the income did not in fact exist. In so doing, Mr Shannon:

- (a) recklessly failed to act in accordance with the fundamental principle of professional competence and due care (contrary to paragraph 130.1); and/or**
- (b) recklessly failed to ensure that financial statements represented the facts accurately and completely (contrary to paragraph 320 of the Code); and/or**

- (c) **has brought or is likely to bring discredit to the accountancy profession or to himself as a Member (contrary to paragraph 150.1 of the Code).**

Mr Shannon: Allegation 7

In approving the 2010 Financial Statements, which recognised 13 years' purported income as accrued revenue and related debtor relating to additional assets provided to London Fire for the EFCC Contract, Mr Shannon's conduct fell significantly short of the standards reasonably to be expected of a Member, in that Mr Shannon knew or ought to have known that this income did not exist. In so doing, Mr Shannon:

- (a) **recklessly failed to act in accordance with the fundamental principle of professional competence and due care (contrary to paragraph 130.1); and/or**
- (b) **recklessly failed to ensure that financial statements represented the facts accurately and completely (contrary to paragraph 320 of the Code); and/or**
- (c) **has brought or is likely to bring discredit to the accountancy profession or to himself as a Member (contrary to paragraph 150.1 of the Code).**

Mr Flynn: Allegation 18

In approving the 2009 Financial Statements, which recognised 14 years' purported income as accrued revenue and a related debtor relating to modifications, including foam pumps, provided to London Fire, Mr Flynn's conduct fell significantly short of the standards reasonably to be expected of a Member, in that the income did not in fact exist. In so doing, Mr Flynn:

- (a) **failed to act in accordance with the fundamental principle of professional competence and due care (contrary to paragraph 130.1); and/or**
- (b) **failed to ensure that financial statements represented the facts accurately and completely (contrary to paragraph 320 of the Code); and/or**
- (c) **has brought or is likely to bring discredit to the accountancy profession or to himself as a Member (contrary to paragraph 150.1 of the Code).**

Mr Flynn: Allegation 19

In approving the 2010 Financial Statements, which recognised 13 years' purported income as accrued revenue and related debtor relating to TICs provided to London Fire, Mr Flynn's conduct fell significantly short of the standards reasonably to be expected of a Member in that the income did not in fact exist. In so doing, Mr Flynn:

- (a) failed to act in accordance with the fundamental principle of professional competence and due care (contrary to paragraph 130.1); and/or**
- (b) failed to ensure that financial statements represented the facts accurately and completely (contrary to paragraph 320 of the Code); and/or**
- (c) has brought or is likely to bring discredit to the accountancy profession or to himself as a Member (contrary to paragraph 150.1 of the Code).**

Mr Flynn: Allegation 20

In approving the 2010 Financial Statements, which recognised 13 years' purported income as accrued revenue and a related debtor relating to additional assets provided to London Fire for the EFCC Contract, Mr Flynn's conduct fell significantly short of the standards reasonably to be expected of a Member in that this income did not in fact exist. In so doing, Mr Flynn:

- (a) failed to act in accordance with the fundamental principle of professional competence and due care (contrary to paragraph 130.1); and/or**
- (b) failed to ensure that financial statements represented the facts accurately and completely (contrary to paragraph 320 of the Code); and/or**
- (c) has brought or is likely to bring discredit to the accountancy profession or to himself as a Member (contrary to paragraph 150.1 of the Code).**

Mr Boyle: Allegation 25

In providing the 10 June Papers to Grant Thornton Mr Boyle's conduct fell significantly short of the standards reasonably to be expected of a Member in that he dishonestly provided false information to Grant Thornton in relation to income purportedly payable by London Fire which was neither owing by nor billed to London Fire. Those items of income were:

- (a) a monthly amount of £46,975 marked “PL/P2” purportedly relating to the foam pump modifications;
- (b) a monthly amount of £57,910 marked “TICs”; and
- (c) a monthly amount of £71,095 marked “Capital Guard”.

By doing so, Mr Boyle:

- (a) failed to act in accordance with the fundamental principles of integrity and objectivity (contrary to paragraphs 110.1 and 120.1 of the Code); and/or
- (b) has brought or is likely to bring discredit to the accountancy profession or to himself as a Member (contrary to paragraph 150.1 of the Code).

132. The core of the London Fire fictitious revenue allegation is that Mr Boyle provided a document to GT purporting to support additional revenue when in fact that revenue did not exist, and the documentation sent to London Fire in support of AssetCo’s invoice did not include that additional revenue.

133. There were three classes of additional revenue: (i) modifications to fire engines including foam pumps; (ii) the installation of thermal imaging cameras (“TICs”); and (iii) services and assets in relation to a five-year contract with London Fire to provide a 700-strong emergency fire crew capability service (the “**EFCC Contract**”, also known as “**London Guard**” or “**Capital Guard**”).

134. The fictitious revenue can be identified by comparing two ostensibly similar spreadsheets setting out the calculations for AssetCo’s invoice to London Fire for April 2010:

- (a) On 10 June 2010, in the course of the 2010 Audit, Mr Boyle sent the “10 June Papers” to GT. These included a spreadsheet which appears on its face to show the calculation of the Unitary Payment (“**UP**”) that London Fire owed AssetCo under the London Contract for April 2010. For present purposes, there are three entry rows of relevance: (i) the second entry marked PL/P at the top of the spreadsheet just above the first highlighted row (for foam pump modifications); (ii) a highlighted row marked “Capital Guard” in the middle of the spreadsheet; and (iii) a highlighted row marked “TICs” (i.e. thermal imaging cameras) towards the bottom. Each of these entries were said to amount to additional payments that

London Fire owed to AssetCo with an indication that these additional slots would be revenue generating throughout the remaining life of the contract.

(b) The equivalent spreadsheet shows what was in fact sent to London Fire in support of the April 2010 invoice. None of the three rows referred to was included in the invoice to London Fire. We should also note that upward variations in the unitary payment required prior negotiation and agreement with London Fire Brigade and we were presented with no evidence of such discussions.

135. Thus, by the 10 June Papers, Mr Boyle presented to GT fake monthly revenue for which AssetCo was not in fact billing London Fire. GT relied on the 10 June Papers to calculate the revenue for the lifetime of the London Fire contract, leading to an overstatement of over £4 million of revenue in 2009 and £12 million of revenue in 2010.

136. The proper treatment of this revenue was considered by Mr Flynn in the course of the preparation of the financial statements such that he knew of the issue. In particular, the treatment of this revenue was included as one of GT's requests in relation to outstanding matters sent to Mr Flynn on 16 June 2010. In his letter to the Tribunal dated 11 January 2018, Mr Flynn denies that he knew that Mr Boyle had overstated revenue and that he cannot be held responsible for information provided by Mr Boyle. However, Mr Boyle's evidence in his interview with the Executive Counsel is that he would have reviewed those papers in conjunction with Mr Flynn. We consider this further below. So far as Mr Shannon is concerned, the allegations against him are, in effect, that given the nature of the underlying contracts, he knew or was (at least) reckless as to the proper statement of this revenue in circumstances where he, as a Member, signed off on the accounts where this substantial amount of revenue overstatement was expressly referred to in the notes. Again, we consider the specific allegations against Mr Shannon below.

Foam Pump Modifications

137. During FY09, AssetCo made certain modifications including the addition of foam pumps to the fire engines provided under the London Contract. The documents show that AssetCo was said to have charged £2.6 million upfront to London Fire in respect of its consultancy work with a cost incurred of £100,000. AssetCo also claimed that these modifications led to an additional monthly payment as part of the UP. The documents show that Mr Boyle and Mr Flynn were both involved in discussions with GT about the

proper accounting treatment of this additional payment and it is clear from these documents that they both wanted to have as much revenue as possible recognised in 2009.

138. The additional monthly income was presented to GT in a spreadsheet, which included this income as a line entry titled “PL/P2” in the sum of £46,975 per month. (The same extra figure was included in the 10 June Papers where it was marked as a second entry called “PL/P” in the same place and in the same amount.)
139. GT relied on the spreadsheets and information provided in order to determine the proper accounting treatment of this revenue, which it considered with Mr Flynn and Mr Boyle. In the event, the additional revenue was treated as a finance lease debtor (on the basis that the London Fire contract was longer than the useful economic life of the modifications). As submitted on behalf of the Executive Counsel, we accept that the exchange of emails at that time show that Mr Boyle and Mr Flynn were specifically discussing revenue with GT which they knew did not exist. The fact the revenue did not exist is also clear from the version of the spreadsheet sent to London Fire to support the invoice: it did not contain the second entry.
140. The 2009 Financial Statements specifically noted the £4.991 million finance lease debtor which was the result of these modifications. Since this revenue did not exist, it should not have been included.

Thermal Imaging Cameras (TICs)

141. In July 2009, AssetCo agreed to provide TICs to London Fire under AssetCo’s existing contract with London Fire. That contract provided for “slots” for assets, and each TIC took a slot. A slot price of £2,367.45 was proposed and agreed for each of 140 cameras. This was a price of £331,443 per year or £27,620 a month. The £27,620 amount should have appeared as part of the calculation of the UP for a given month.
142. On 14 August 2009, AssetCo placed a purchase order with a supplier of the TICs for 147 cameras at £842,400. On 29 October 2009, Mr Flynn wrote to Mr Napper of GT stating that the cameras were to be supplied at a cost of £842,000 and AssetCo would charge £160,000 for the modification and fitting of the TICs: a total of £1.002 million.
143. The 10 June Papers provided by Mr Boyle show two rows for TICs, one showing an annual slot price of £2,367.45 consistent with contract proposal. The second highlighted

row had a price of £4,826. Mr Boyle claimed that this was additional revenue forming part of a number of items to be treated as a finance lease.

144. The additional highlighted row for the TICs indicated a monthly extra UP of £57,910. Mr Boyle used that figure to calculate a net present value of the TICs for finance lease purposes of £5,875,614.
145. As with the modifications, it is our conclusion that the additional monthly cost was a fiction. It was not included in the spreadsheet sent to London Fire. GT's work proceeded on the basis that additional monthly income did exist. GT twice requested evidence (first from Mr Boyle, then from Mr Flynn) of the terms by which the TICs were provided to London Fire to justify the proposed treatment, but none was provided.
146. The TICs were treated in the 2010 Financial Statements as a sale under a finance lease (along with EFCC revenue dealt with below). There was specific reference to the TICs in note 2.12 to those financial statements. This extra revenue did not in fact exist and was reversed in 2011. The amount of the finance lease revenue referable to the TICs was £5,875,614.

Emergency Fire Crew Capability Service ("EFCC") Finance Lease Treatment

147. The EFCC contract was to run for some 5 years, i.e. from July 2009 to August 2014. In the 2010 Financial Statements, AssetCo treated certain EFCC income separately from the EFCC contract income as a finance lease. This related to various assets provided to London Fire described as "Capital Guard" or "London Guard" assets and described as "ladders and hoses". GT's audit work, for example the Key Issues Memorandum, proceeds on the basis that the income from this existed as separate and additional to that under the EFCC Contract.
148. Mr Boyle's 10 June papers provided for an additional amount marked as "Capital Guard", which was this additional finance lease revenue, in the monthly sum of £71,095. The documents show that Mr Boyle calculated this monthly income as having a net present value of £7.213 million, which set against a cost of £1.2 million (included in those same 10 June papers) meant an 83% profit margin. This assumed the contract would continue for 13 years (despite it being a five year contract) and no explanation or justification was provided for the high profit margin.

149. The £7.213 million figure was recognised as a finance lease (along with the extra TICs income) in the 2010 Financial Statements. The Capital Guard/EFCC assets were there described as “training equipment”.
150. As with the rest of the modifications and TICs, the invoice and associated spreadsheet sent to London Fire did not include this additional Capital Guard amount. It is our conclusion that it did not exist and was not payable.
151. Since the extra revenue did not exist, the finance lease associated with it should not have been included. This sum was removed by the 2011 restatement.
152. In light of the above, it is our conclusion that the various allegations under this head are proven. In particular:
- (a) Allegation 25 is that Mr Boyle dishonestly provided false information to GT about the revenue in the 10 June Papers. Each of (i) the modification revenue (“**PL/P2**” or “**PL/P**”); (ii) the second TICs entry; and (iii) the Capital Guard entry, was revenue that did not exist. London Fire neither owed, nor was it billed for, these sums. The sums were included falsely to improve AssetCo’s financial position. Mr Boyle acted dishonestly in breach of the Code requirements of integrity and objectivity and thereby committed Misconduct.
 - (b) Allegations 18 to 20 are individual allegations against Mr Flynn in respect of each of the modification revenue, the second TICs entry revenue, and the EFCC/Capital Guard revenue. It is important to note that the Executive Counsel does not allege (and we do not find) that Mr Flynn acted dishonestly in respect of these allegations, but we are satisfied that he nevertheless committed Misconduct as follows:
 - (i) As to Allegation 18 and the modification revenue, Mr Flynn was expressly aware of the proposed accounting treatment because Mr Boyle and GT included him in the discussions. Mr Flynn was the CFO of AssetCo. The substantial finance lease debtor was specifically disclosed in the 2009 Financial Statements and was a large amount. It is our conclusion that the obvious inference is that any Member who read the 2009 Financial Statements would have been aware of it. Mr Flynn was responsible for and approved the 2009 Financial Statements. This was an important entry which was specifically discussed and should have been considered. In approving

the 2009 Financial Statements, when the revenue was fictitious (and easily discoverable as fictitious), Mr Flynn, contrary to the Code (i) acted contrary to the fundamental principle of professional competence and due care; (ii) failed to ensure that the financial statements represented the facts accurately and completely; and (iii) brought or is likely to bring discredit on the profession or himself.

- (ii) Similar considerations apply in respect of Allegations 19 and 20 with regard to the TICs and EFCC finance lease debtor. Mr Flynn was aware of the 10 June Papers and these issues at the time of finalisation of the 2010 Financial Statements, which he approved and was responsible for. It is a very substantial debtor recognising extra revenue, and Mr Flynn's causing or permitting it to form part of the 2010 Financial Statements constitutes Misconduct.

- (c) Allegations 5 to 7 are individual allegations against Mr Shannon that he recklessly caused or permitted the Financial Statements to recognise the income that did not exist. The documents show that Mr Shannon was a main negotiator of the contract with London Fire; and so knew or ought to have known that the extra income did not exist. Any Member who read the Financial Statements would have been aware of the financial lease debtors given their size and the fact they were specifically disclosed. By approving the Financial Statements as CEO in those circumstances, Mr Shannon either read the 2009 Financial Statements such that he was aware of the debtor and wrongly permitted its recognition by turning a blind eye to whether or not the revenue existed, or alternatively did not read the 2009 Financial Statements. On either analysis, he was reckless as to the finance lease debtors.

PART 5: ACCOUNTANCY ALLEGATIONS

Section 3: Emergency Fire Crew Capability Service (“EFCC”) Contract

153. The allegations under this head concern only Mr Flynn and Mr Boyle (not Mr Shannon) and are as follows.

Mr Flynn: Allegation 21

In approving the 2010 Financial Statements, which recognised additional revenue and related debtor of £2,544,801 relating to the EFCC Contract, Mr Flynn’s conduct fell significantly short of the standards reasonably to be expected of a Member in that this revenue and debtor should not have been recognised as it did not exist. In so doing, Mr Flynn:

- (a) failed to act in accordance with the fundamental principle of professional competence and due care (contrary to paragraph 130.1); and/or**
- (b) failed to ensure that financial statements represented the facts accurately and completely (contrary to paragraph 320 of the Code); and/or**
- (c) has brought or is likely to bring discredit to the accountancy profession or to himself as a Member (contrary to paragraph 150.1 of the Code).**

Mr Boyle: Allegation 26

In providing work papers I5 and I5a to Grant Thornton, Mr Boyle’s conduct fell significantly short of the standards reasonably to be expected of a Member in that he dishonestly provided false information to Grant Thornton in relation to estimated total costs for the EFCC Contract. By doing so, Mr Boyle:

- (a) failed to act in accordance with the fundamental principles of integrity and objectivity (contrary to paragraphs 110.1 and 120.1 of the Code); and/or**
- (b) has brought or is likely to bring discredit to the accountancy profession or to himself as a Member (contrary to paragraph 150.1 of the Code).**

154. This allegation relates to AssetCo substantially understating costs still to be incurred under the EFCC contract. In essence, the allegation is that this allowed recognition of

revenue in the 2010 Financial Statements far beyond that which was justified, and which was subsequently reversed in the 2011 Financial Statements.

155. The EFCC Contract had a 5 year term. Payment under the EFCC Contract was structured as follows:

- (a) An up-front setup payment of £1,903,068 for setting up the reserve fleet;
- (b) “Steady State” monthly payments worth annually £1,428,677 when the reserve fleet was available but not used; and
- (c) Additional mobilisation payments if the fleet was mobilised.

156. The EFCC Contract was a fixed price contract. Note 2 to the 2010 Financial Statements describes how AssetCo accounted for fixed price contracts:

“Revenue is recognised based upon an internal assessment of the value of works carried out. This assessment is arrived at after due consideration of the performance against the programme of works, measurement of the works, detailed evaluation of the costs incurred and comparison to external certification of the work performed. The amount of profit to be recognised is calculated based on the proportion that costs to date bear to the total estimated costs to complete.”

157. In the 2010 Financial Statements, this proportion was calculated based on a work paper “I5” provided by Mr Boyle to GT. Work Paper I5 sets out the following to calculate the amount of profit to be recognised (using the proportion of costs incurred basis referred to in note 2 of the 2010 Financial Statements:

- (a) The total value of the EFCC contract is calculated at around £9 million.
- (b) The costs are then set out:
 - (i) Set up Costs Recognised: £1,014,656.94
 - (ii) Steady State Costs TB (trial balance i.e. incurred): £144,840.83
 - (iii) Steady State Costs to come £842,328.00
 - (iv) Total costs: £2,001,825.77
- (c) The percentage of costs recognised to date is calculated as 58% (being the sum of set-up costs recognised and the steady state costs TB divided by the total costs).

- (d) Accordingly, that means 58% of revenue ought to have been recognised after the 2010 Financial Statements were finalised. That is some £5.237 million.
 - (e) In fact, only around £2.693 million had been recognised to date.
 - (f) Accordingly, the difference of £2,544,800.97 was to be recognised.
158. This amount i.e. £2,544,800.97 was in due course recognised in the 2010 Financial Statements.
159. The present allegations relate to the figure stated for “*steady state costs to come*” which is said to be grossly understated. A reduction in these costs means the proportion of costs recognised to date would be greater than they would otherwise be, consequentially allowing a greater recognition of revenue than would otherwise be the case. The calculation of costs on work paper I5 is of costs over the life of the contract.
160. The calculation of the “*steady state costs to come*” element of the calculation is set out in work paper I5a also provided by Mr Boyle. From the footer, I5a appears to be a table of costs taken from AssetCo’s tender documentation and gives a “*total steady state costs analysis*” of £842,328. As submitted on behalf of the Executive Counsel, the only sensible inference from the use of the calculation in I5 and the reference to “total” is that this sum is represented as the costs that remain to be incurred over the life of the EFCC contract.
161. There are two fundamental misrepresentations of the position in workpaper I5a:
- (a) The costs on which it is based are not total costs for the life of the EFCC contract, but annual costs; and
 - (b) The “training” item has been arbitrarily and unjustifiably reduced by precisely £400,000.
162. The true position can be seen from a version of AssetCo’s bid tender emailed by Mr Flynn to GT on 21 May 2009. The relevant spreadsheet tab is called “AssetCoSteadyState”. This spreadsheet gives costs for a range of appliances from 14 to 27. It can be seen that these costs are annual costs from the supporting information provided with the tender:

- (a) Mr Flynn’s covering email states that the “*annual fee (recurring) is £739k-£1,429k*”. These figures are the same range of steady state costs at the end of the spreadsheet which provides for a fee of £738,640 for 14 appliances and £1,428,677 for 27 appliances.
- (b) The tender is provided subject to stated assumptions. Assumption 3 is that “*steady state costs are assumed to occur each year from project commencement*”;
163. Further, the annual nature is set out in certain of the various entries in the spreadsheet viz.: the references to (i) “*Costs to test per year*”; (ii) variable costs being “p.a.” i.e. *per annum*; (iii) “*Annual turnover of crew requiring training*”; (iv) fixed costs “*per annum*”; and (v) “*per annum*” insurance costs.
164. The figures in workpaper I5a are based on the figures for 27 appliances in the “AssetCoSteadyState” tab in the tender at the end of the spreadsheet. The figures are identical apart from two alterations:
- (a) The training costs have been reduced by precisely £400,000 from £1,032,112 to £632,112; and
- (b) The line entry marked “*markup on steady state costs*” has been removed.
165. If the true costs as contained in the tender documentation were used, the total steady costs would have been £6,211,640. That requires deducting the AssetCo profit margin and multiplying the annual amount by the five-year term of the contract as shown by the following table.

Annual amount for “steady state”	£1,428,677
Less AssetCo’s markup	- £186,349
Annual costs without mark up	£1,242,328
Total steady state costs over the contract - £1,242,328 x 5 years =	£6,211,640

166. As, according to workpaper I5, £144,840.83 of the steady state costs to date had already been recognised, that would leave £6,066,799 steady state costs to come – rather than the £842,328 claimed in I5. Only 16% of the costs of the EFCC contract had in fact been incurred.

167. As a result no revenue should have been recognised for the EFCC Contract in the 2010 Financial Statements as appears from the following table:

Total Value of EFCC Contract	£
Set Up Invoice Value	1,903,068.00
Steady State	7,140,000.00
Total Revenue Value	9,043,068.00
Cost Recognition:	
Set Up Costs Recognised	1,014,656.94
Steady State Costs TB [incurred]	144,840.83
Steady State Costs to Come [adjusted]	6,066,799.00
Total Costs [adjusted]	7,226,296.77
Costs Recognised So Far	1,159,497.77
% Recognised So Far [adjusted]	16%
Revenue to Recognise [adjusted]	1,446,890.80
Revenue Recognised So Far	2,693,126.00
Additional revenue to recognise [adjusted]	Nil

168. In summary:

- (a) Only 16% of the true costs had been incurred to date.
- (b) Therefore, only 16% of the revenue should be recognised by the 2010 Financial Statements.
- (c) 16% of the revenue on the EFCC contract is around £1.447 million, a sum less than the £2.693 million that had already been recognised.
- (d) Therefore, rather than recognising £2.5 million of revenue, no further revenue should have been recognised. Too much revenue had already been recognised before the 2010 Financial Statements.

169. Consequently, revenue and debtors were overstated in the 2010 Financial Statements by £2,544,801.

170. In light of the above, it is our conclusion that the allegations under this head are proven against Mr Boyle and Mr Flynn. In particular:

- (a) Allegation 26 is that Mr Boyle dishonestly provided false information to GT about the EFCC Contracts and thereby failed to act in accordance with the fundamental

principles of integrity and objectivity, and has brought or is likely to bring discredit to the accountancy profession or himself as a Member. As to such allegation, there can be no doubt whatsoever that (i) Mr Boyle provided the I5 and I5a work papers on which the calculation of the EFCC Contracts was based and (ii) the result of the exercise referred to above was to overstate AssetCo's revenue and debtors by a sum of over £2.5m. Moreover, we are satisfied that the only possible conclusion is that this exercise was carried out dishonestly. In reaching that conclusion we bear well in mind the pressures that Mr Boyle refers to in his interview with regard to his workload at the relevant time. However, we reject any possibility that the exercise performed by Mr Boyle could have been done other than dishonestly for the following reasons:

- (i) the overstatement was so large that it must have been obvious to any honest individual carrying out the exercise that the result was incorrect;
 - (ii) given the rest of the documentation, the presentation of annual costs as total costs was not an exercise that could have been carried out by an honest individual;
 - (iii) the reduction in training costs by precisely £400,000 bears all the hallmarks of a deliberate – and dishonest – manipulation of the relevant figures.
- (b) Allegation 21 is that Mr Flynn also committed Misconduct in approving the 2010 Financial Statements which recognised the £2.5 million additional revenue and related debtor that did not exist. In his letter dated 11 January 2018, Mr Flynn specifically denied this allegation. In particular, he stated in that letter that he was unaware that Mr Boyle overstated the EFCC revenues and that he is “at a loss” why the FRC alleges that he knew or ought to have known that there were alleged “errors” in Mr Boyle’s work papers. In considering these comments, it is important to note that there is no allegation of dishonesty against Mr Flynn in Allegation 21. However, there can be no doubt that (i) the true costs were set out in a tender sent by Mr Flynn; (ii) he was CFO and approved the financial statements; and (iii) the overstatement under this head, viz over £2.5 million, is a substantial amount. In light of the facts stated above and for all these reasons, we are satisfied that the only sensible inference is that Mr Flynn knew or ought to have known of the errors contained in work papers I5 and I5a; and that in so doing, he acted contrary to the

fundamental principle of professional competence and due care, failed to ensure that the financial statements represented the facts accurately and completely, and has brought or is likely to bring discredit to the profession or himself.

PART 6: INFORMATION PROVISION

171. The following are the Information allegations in the Formal Complaint against Mr Shannon and Mr Boyle:

Mr Shannon: Allegation 9

In failing to be involved in or otherwise properly oversee the preparation of and approval of the 2009 and 2010 Financial Statements, Mr Shannon's conduct fell significantly short of the standards reasonably to be expected of a Member. In so doing, he:

- (a) recklessly failed to ensure that those financial statements represented the facts accurately and completely (contrary to paragraph 320 of the Code); and/or**
- (b) has brought or is likely to bring discredit to the accountancy profession or on himself as a Member (contrary to paragraph 150.1 of the Code).**

Mr Shannon: Allegation 12

In providing certain of the Written Answers which were false and/or misleading:

- (a) Mr Shannon dishonestly failed to comply with his obligations, pursuant to paragraph 14(1) of the Scheme, which included the obligations to co-operate fully with the Executive Counsel and comply with a Notice served pursuant to paragraph 14(2) of the Scheme; and/or**
- (b) Mr Shannon's conduct fell significantly short of the standards reasonably to be expected of a Member in that Mr Shannon dishonestly gave certain Written Answers which were false and/or misleading. By doing so, he failed to act in accordance with the fundamental principles of integrity (contrary to paragraph 110.1 of the Code) and/or has brought or is likely to bring discredit to the accountancy profession or to himself as a Member (contrary to paragraph 150.1 of the Code).**

Mr Boyle: Allegation 24

In providing to Grant Thornton the income forecast containing the £3M Increase, Mr Boyle's conduct fell significantly short of the standards reasonably to be expected of a Member in that he dishonestly provided a

false forecast to Grant Thornton which inflated the projected income. Thereby, Mr Boyle:

- (a) failed to act in accordance with the fundamental principles of integrity and objectivity (contrary to paragraphs 110.1 and 120.1 of the Code); and/or**
- (b) dishonestly failed to ensure that those financial statements represented the facts accurately and completely (contrary to paragraph 320 of the Code); and/or**
- (c) has brought or is likely to bring discredit to the accountancy profession or to himself as a Member (contrary to paragraph 150.1 of the Code).**

172. Allegations 9 and 12 against Mr Shannon in the Formal Complaint arise out of Written Answers provided by him to the Executive Counsel as follows:

Written Question Number	Written Question	Written Answer
4.3	Describe how the Financial Statements were prepared.	I have no detailed knowledge or information as to how the financial statements were prepared.
4.4	Describe your role in the preparation and finalisation of the 2008, 2009 and 2010 Financial Statements.	I had no role in the preparation and finalisation of the 2008, 2009 and 2010 Financial Statements.
4.5	Describe your role in preparing for the 2008, 2009 and 2010 audits and liaising with GT.	I had no role in preparing for the 2008, 2009 and 2010 audits and/or liaising with GT.
9	Impairment of goodwill and assets for the London/Lincoln CGU.	I am unaware of and not party to any accounting process or discussion with GT on the impairment of goodwill and assets for the London/Lincoln CGU.
10	Impairment of investments.	I am unaware of and not party to any accounting process or discussion with GT on the impairment of investments.

173. In considering these allegations, the starting point is, of course, that Mr Shannon was CEO and director of AssetCo, an AIM-listed company and also a qualified accountant. In that capacity, the preparation and approval of the financial statements were ultimately his responsibility. Further, pursuant to section 393 of the Companies Act 2006, directors must not approve accounts “*unless they are satisfied that they give a true and fair view*”. As such, Mr Shannon’s written answers as quoted above (in particular, stating that he

had “no role” in preparing and finalising the financial statements and associated audits and that he was not party to any process in relation to impairment of goodwill and assets or investments) are, on their face, an abrogation of such responsibilities with regard to the preparation of the 2008-2010 Financial Statements. By not involving himself in the preparation of the financial statements, Mr Shannon could not satisfy himself that they gave a true and fair view, and did so recklessly. This constitutes a reckless failure to ensure that the financial statements represent the facts accurately and completely. In so doing, Shannon has brought or is likely to bring discredit to the profession or himself as a member. For these reasons, it is our conclusion that Allegation 9 against Mr Shannon is proven.

174. It is also our conclusion that Allegation 12 is proven viz that contrary to his obligations in paragraphs 14(1) and 14(2) of the Scheme, Mr Shannon dishonestly gave false and misleading answers to the Executive Counsel as summarised in the following table:

Written Question Number	Written Question	Written Answer	Relevant references in this Formal Complaint
4.11	Describe the communication you had with GT’s ⁵ audit teams	I had no communication with GT’s audit team.	<p>There are emails and references to calls between Mr Shannon and Mr Napper, including:</p> <ul style="list-style-type: none"> • Attendance at audit committee meetings in both 2009 and 2010 • Email 10 June 2009 to Mr Shannon from Mr Napper on the related party note. • Email 9 June 2009 from Mr Napper referring to a conversation between him and Mr Shannon. • Email 15 June 2009 to Mr Napper relating to disclosure on fixed assets. • Emails 21 June and 22 June 2010 from Mr Shannon to Mr Napper relating to cash balances.

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			<ul style="list-style-type: none"> • Email 22 June 2010 from Mr Shannon to Mr Napper attaching a fax relating to payment of an invoice. • Email 8 July 2010 from Mr Shannon to Mr Napper on the related party note. • Mr Napper stated in interview that Mr Shannon would call to discuss the XYZ Investment or disclosure relating to Jaras and Graphic. <p>Mr Shannon was sent or copied into various emails discussing audit issues, attaching minutes of meetings and drafts of the annual report for his review.</p>
4.13	Describe the relationship between [Raymond] Frank Flynn and Robert Napper in relation to the audit.	I would have met Mr Napper prior to GT's meeting with the PLC's Audit Committee, however I was never party to these meetings and would only have been introduced to him as a matter of courtesy.	Paragraph 95 Mr Shannon attended the audit committee meeting by telephone.
13.5	What were the reasons for the [Jaras] payment?	The payment was a Board approved rental prepayment on a lease for premises at Roughfort Road, Mallusk.	Paragraphs 40 to 60 The payment was made solely for Mr Shannon's or Jaras' personal benefit.
13.6	What was the [Jaras payment] money used for?	The money was used by AssetCo to effect a discounted advance rental payment to cover the period from 2009 to 2015.	Paragraphs 40 to 60 The payment was made solely for Mr Shannon's or Jaras' personal benefit.
13.14	Explain how the advance payment of rent related to your exercise of an option to buy Jaras.	...Jaras had been re-acquired in approximately mid-2009.	Paragraph 42 Jaras was acquired by Mr Shannon on or around 17 June 2008, having been appointed as a director of Jaras on 13 June 2008.

175. With regard to Allegation 24 against Mr Boyle, the main thrust of the allegation is that he provided false information to GT in relation to the value of a core “cash generating

unit” (“CGU”) of AssetCo in the course of an impairment review to assess whether it was necessary to recognise any impairments to the value of goodwill and other assets related to the CGUs. AssetCo’s principal CGU related to the London and Lincoln contracts, and was called “Emergency Support Services” in 2008 “Integrated Support Services” in 2009 and “Fire and Rescue Services” in 2010. As to such allegation, our observations and conclusions are set out below.

176. In the course of the 2010 impairment review, on 26 May 2010, Mr Boyle emailed M1 of GT “*working documentation for impairment testing*”. That email proves that Mr Boyle knew this documentation would be used by GT for its impairment review (which it in due course was). The documentation included an income forecast for *inter alia* AssetCo London Limited and specifically a forecast for FY10 of £7,196,880 for additional charges under the London Contract. That figure was precisely £3 million more than in another forecast provided by him to GT when he provided a forecast for FY2010 in the course of the 2009 Audit for the purposes of an equivalent impairment review which forecast £4,196,880 in additional charges under the London Contract. Further, on 9 June 2010, Mr Boyle provided a work paper titled FY11 Budget to GT for the purposes of a going concern review which included an amount of £4.599 million figure forecast for FY11 consistent with the lower £4.196 million as the correct figure as set out in the 2009 impairment review calculation.
177. The £3 million increase in the 2010 Audit impairment review documentation was unjustified and unsupported by evidence. In particular, (i) no explanation, data or assumptions have been provided; (ii) it was not included in the 2009 Audit impairment review papers and is inconsistent with the FY11 Budget; and (iii) the true figure of £2,308,839 was available but not used. In our view, the obvious and necessary inference is that the inclusion of the £3 million increase was done deliberately and dishonestly by Mr Boyle to increase the goodwill for the following reasons viz.
- (a) Mr Boyle provided the relevant workpaper and it is to be inferred he made the alteration.
 - (b) It is not in our view conceivable that the £3 million increase was accidental and given other forecasts were set out precisely down to the nearest thousand, the only sensible inference is that there was deliberate inflation of the figure.

- (c) Mr Boyle had a specific motive in increasing the figure in impairment review documentation: to avoid impairment.
- (d) The other workpapers do not contain the £3 million increase.

178. For all these reasons, it is our conclusion that Allegation 24 against Mr Boyle is proven.

PART 7: SANCTIONS

179. Following the independent review of sanctions undertaken by a panel chaired by Sir Christopher Clarke⁶, the FRC published updated sanctions guidance for Disciplinary Tribunals, dated April 2018 (the “**Guidance**”). The Guidance states that it is effective from 1 June 2018. The relevant framework for sanction is contained in the Guidance which is made pursuant to paragraph 3(ii) of the Scheme (see paragraph 4 of the Guidance). No transitional provisions have been provided for existing disciplinary cases. It was Executive Counsel’s submission (which we accept) that it follows that the Guidance is applicable to any Disciplinary Tribunal considering sanctions on or after 1 June 2018, such as the current matter⁷. Needless to say it, the Guidance is only advisory and not binding.

180. Paragraph 7 of the Guidance explains the relevance of prior cases⁸:

“The guidance should be considered alongside any principles emerging from cases decided in previous cases under the Scheme. Tribunals may have regard to sanctions imposed in other cases. They must however, determine the sanction which they think appropriate on the facts and circumstances of the case before them and should not feel constrained by the sanctions imposed (or not imposed) in earlier cases to impose a sanction which they do not think appropriate.”

181. Paragraph 9 of the Guidance identifies the objectives of sanctions in the context of professional discipline (the “**Objectives**”). The Objectives are: (a) to declare and uphold proper standards of conduct amongst Members and Member Firms and to maintain and enhance the quality and reliability of accountancy work; (b) to maintain and promote public and market confidence in the accountancy profession and the quality of corporate reporting and in the regulation of the accountancy profession; (c) to protect the public from Members and Member Firms whose conduct has fallen significantly short of the standards reasonably to be expected of that Member or Member Firm; and (d) to deter members of the accountancy profession from committing Misconduct.

182. Paragraph 9 of the Guidance makes plain that the primary purpose of the sanctions is not to punish but to protect the public and wider public interest. Paragraph 10 explains how

⁶ Independent Review of the Financial Reporting Council’s Enforcement Procedures Sanctions Review Panel Report, October 2017

⁷ See Disciplinary and Regulatory Proceedings 9th Edition (2017) Treverton-Jones QC *et al* at 10.34 applying *Jobson v The Statutory Committee of the Pharmaceutical Society of Great Britain CA*, unreported, 13 November 1980.

⁸ These words are not contained in the previous guidance.

the sanctions are intended to achieve the Objectives, including by tailoring sanctions to the particular case, are proportionate, eliminate financial gain, and deter Misconduct.

183. Paragraph 18 of the Guidance sets out the six-stage approach (the “six steps”) to determine the sanction to be imposed that should be adopted by the Tribunal:

- (i) Assess the nature and seriousness of the Misconduct found by the Tribunal (paragraphs 20 - 24). Paragraph 21 gives a (non-exhaustive) list of factors which the Tribunal will normally consider in assessing the nature and seriousness of the misconduct (although not all factors will be applicable in a given case).
- (ii) Identify the sanction or combination of sanctions that the Tribunal considers potentially appropriate having regard to the Misconduct identified in (i) above (paragraphs 25 to 55);
- (iii) Consider any relevant aggravating or mitigating circumstances and how those circumstances affect the level of sanction under consideration (paragraphs 56 to 65);
- (iv) Consider any further adjustment necessary to achieve the necessary deterrent effect (paragraphs 66 and 67);
- (v) Consider whether a discount for admissions or settlement is appropriate (paragraphs 68 to 74);
- (vi) Decide what sanction(s) to order and the level/duration of the sanction(s) where appropriate (paragraph 18(f)).

184. In the course of her submissions, Ms Smith QC referred the Tribunal to the Judgment of Lord Bingham MR in *Bolton v Law Society* [1994] 1 WLR 512, 518-9 where he set out, in the context of solicitors’ regulation, (i) the wider public interest objectives of regulatory sanctions, (ii) the consequences of a finding of dishonesty measured against those objectives, and (iii) the relatively limited relevance of personal mitigation in those circumstances.

“Any solicitor who is shown to have discharged his professional duties with anything less than complete integrity, probity and trustworthiness must expect severe sanctions to be imposed upon him by the Solicitors Disciplinary Tribunal. Lapses from the

required high standard may, of course, take different forms and be of varying degrees. The most serious involves proven **dishonesty**, whether or not leading to criminal proceedings and criminal penalties. **In such cases the tribunal has almost invariably, no matter how strong the mitigation advanced for the solicitor, ordered that he be struck off the Roll of Solicitors.** Only infrequently, particularly in recent years, has it been willing to order the restoration to the Roll of a solicitor against whom serious dishonesty had been established, even after a passage of years, and even where the solicitor had made every effort to re-establish himself and redeem his reputation. **If a solicitor is not shown to have acted dishonestly, but is shown to have fallen below the required standards of integrity, probity and trustworthiness, his lapse is less serious but it remains very serious indeed in a member of a profession whose reputation depends upon trust. A striking off order will not necessarily follow in such a case, but it may well.** The decision whether to strike off or to suspend will often involve a fine and difficult exercise of judgment, to be made by the tribunal as an informed and expert body on all the facts of the case. Only in a very unusual and venial case of this kind would the tribunal be likely to regard as appropriate any order less severe than one of suspension.

It is important that there should be full understanding of the reasons why the tribunal makes orders which might otherwise seem harsh. There is, in some of these orders, a punitive element: a penalty may be visited on a solicitor who has fallen below the standards required of his profession in order to punish him for what he has done and to deter any other solicitor tempted to behave in the same way. Those are traditional objects of punishment. But often the order is not punitive in intention. Particularly is this so where a criminal penalty has been imposed and satisfied. The solicitor has paid his debt to society. There is no need, and it would be unjust, to punish him again. In most cases the order of the tribunal will be primarily directed to one or other or both of two other purposes. One is to be sure that the offender does not have the opportunity to repeat the offence. This purpose is achieved for a limited period by an order of suspension; plainly it is hoped that experience of suspension will make the offender meticulous in his future compliance with the required standards. The purpose is achieved for a longer period, and quite possibly indefinitely, by an order of striking off. **The second purpose is the most fundamental of all: to maintain the reputation of the solicitors' profession as one in which every member, of whatever standing, may be trusted to the ends of the earth. To maintain this reputation and sustain public confidence in the integrity of the profession it is often necessary that those guilty of serious lapses are not only expelled but denied re-admission.... A profession's most valuable asset is its collective reputation and the confidence which that inspires.**

Because orders made by the tribunal are not primarily punitive, it follows that **considerations which would ordinarily weigh in mitigation of punishment have less effect on the exercise of this jurisdiction than on the ordinary run of sentences imposed in criminal cases.** It often happens that a solicitor appearing before the tribunal can adduce a wealth of glowing tributes from his professional brethren. He can often show that for him and his family the consequences of striking off or suspension would be little short of tragic. Often he will say, convincingly, that he has learned his lesson and will not offend again. On applying for restoration after striking off, all these points may be made, and the former solicitor may also be able to point to real efforts made to re-establish himself and redeem his reputation. All these

*matters are relevant and should be considered. But none of them touches the essential issue, which is the need to maintain among members of the public a well-founded confidence that any solicitor whom they instruct will be a person of unquestionable integrity, probity and trustworthiness. Thus it can never be an objection to an order of suspension in an appropriate case that the solicitor may be unable to re-establish his practice when the period of suspension is past. If that proves, or appears likely, to be so the consequence for the individual and his family may be deeply unfortunate and unintended. But it does not make suspension the wrong order if it is otherwise right. **The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price.***”

185. Executive Counsel submitted that this reasoning applies equally to the professional regulation of accountants in business, since it rests principally on the notion of a “profession” and the need for public confidence in those professions. We agree.
186. In considering a fine, we also accept the submissions advanced on behalf of Executive Counsel as to the applicable principles which were, in summary, as follows:
- (a) The Guidance indicates that the Panel may have regard to sanctions in previous cases, but in so doing should bear in mind that such cases were concerned with different facts and decided at different times (see the summary of the law at [330]-[331] in *Connaught*).
 - (b) A Respondent’s means may be a relevant consideration in calculating the appropriate sanction as to the level of fines and costs (see *D’Souza v Law Society* [2009] EWHC 2193 (Admin) at [18]).
 - (c) In circumstances where the Respondents have been specifically invited to address the Tribunal as to means, the Tribunal should adopt the approach in *Disciplinary and Regulatory Proceedings* at 10.79:

“...in the absence of evidence of limited means a tribunal is entitled to assume that the defendant’s means do not justify a reduction of the amount of the fine that would otherwise be imposed for an offence of the gravity in question. If a respondent asserts that he is unable to pay a fine (or costs), it is important that the regulator can properly investigate the accuracy of that assertion...”
 - (d) Paragraph 42(b) of the Guidance requires the Tribunal to disregard the possibility of any costs order.

187. In light of our conclusions on liability and bearing in mind these principles, we propose to consider the issue of sanctions with regard to each of the Respondents in turn.

Mr Shannon

Step 1: Nature and Seriousness of Misconduct.

188. In our view, Mr Shannon's misconduct was of the most serious kind. As submitted on behalf of Executive Counsel, the following factors are relevant:

- (a) Guidance Para 21(a): "*financial benefit derived or intended to be derived*". There was substantial personal unwarranted financial benefit derived or intended to be derived. In particular:
 - i The Jaras transaction (Allegations 1-2) related to a personal payment for the benefit of Mr Shannon which he presented as being a true rental payment, Mr Shannon intended to derive £1.5 million of personal benefit to which he was not entitled.
 - ii The treatment of the Graphic debt (Allegations 3-4) resulted in a debt of £685,000 to Mr Shannon's son being written off. As with Jaras, this is a personal financial benefit derived from treating the company's money as his own.
 - iii As to the accountancy allegations (Allegations 5-9) and the XYZ Investment Allegation (Allegation 10), AssetCo's financial position was thereby misrepresented to the market. As a result, Mr Shannon continued to benefit financially from his position as (a well-remunerated) CEO and a major shareholder who received or had the opportunity and expectation of receiving substantial dividends. He directly benefitted from the maintenance of AssetCo's share price, through the use of his shares as security for a personal loan.
- (b) Guidance para 21(b): "*the gravity and the duration of the Misconduct*"
 - (i) We have held Mr Shannon to have acted dishonestly in relation to 7 allegations, recklessly in relation to a further 5. The conduct includes the procuring of company funds for his own benefit (and seeking to conceal the

fact) and falsely claiming a debt due to him, for the benefit of his son. Furthermore, we have found that he lied under oath in relation to winding up proceedings.

- (ii) The Misconduct spanned two financial years.
 - (iii) The Misconduct in lying to Executive Counsel about the underlying allegations is itself further dishonesty in a separate and later period.
- (c) Guidance para 21(c): “*Misconduct caused or risked the loss of significant sums of money*”. That is certainly the case so far as Mr Shannon’s conduct is concerned. In particular:
- (i) The events concerning Jaras and Graphic led to AssetCo losing significant amounts of money.
 - (ii) The accountancy allegations and the XYZ Investment Allegations caused or risked the loss of significant sums as a result of the misrepresentation of the financial state of AssetCo. The financial collapse of AssetCo caused very substantial losses: the share price collapsed from 60p to 1.75p and the banks agreed in principle to write off £36 million of lending. While Executive Counsel was unable to identify the extent to which these losses were caused by the above allegations, the false presentation of AssetCo’s account for 2009 and 2010 presented the company in a healthy state for at least two years contrary to the true position, which, at the lowest, risked the loss of significant sums.
- (d) Guidance paras 21(d)(e)(f) and (g): “*failure to comply with professional standards was intentional or unintentional*”, “*nature, extent and importance of standards breached*”; “*failure to act or conduct business with integrity*”; “*dishonest, deliberate or reckless*”. As submitted on behalf of Executive Counsel, Mr Shannon’s Misconduct was deliberate and largely dishonest in breach of fundamental principles of professional ethical behaviour. Specifically:
- (i) The Jaras and Graphic Allegations were deliberate dishonest breaches of professional standards that lacked integrity.

- (ii) Similarly, by the XYZ Investment Mr Shannon knowingly and dishonestly disguised payments as management payments when, in fact, they were interest payments.
- (iii) The Accountancy Allegations were reckless failings on the part of Mr Shannon of core standards of integrity and objectivity.
- (iv) Mr Shannon was dishonest in his provision of information to CARB, in his witness statement, and in certain respects to Executive Counsel.
- (e) Guidance paras 21(j) and (k): “*whether the Misconduct was isolated, or repeated or ongoing*”, “*if repeated or ongoing, the length of time over which the Misconduct occurred*”. We have found no less than 12 separate occurrences of Misconduct against Mr Shannon during the two financial years in question and further Misconduct was committed in subsequent years (allegations 11 and 12).
- (f) Guidance para 21(l): “*potential financial crime (such as fraud) was facilitated or able to occur as a result of (i) deficiencies in the governance or management of the entity...or (ii) the Misconduct*”. While there have been no actual convictions, certain of the activities contained within the allegations could be characterised as causing or facilitating fraud. The Jaras and Graphic Allegations amount to fraud on AssetCo by Mr Shannon. The XYZ Investment was also a fraud.
- (g) Guidance para 21(n): “*Misconduct adversely affected, or potentially adversely affected, a significant number of people in the United Kingdom*”. By misrepresenting the position of AssetCo, an AIM-listed company, the market was misled. Misstated audited financial statements affect investors (including professional investors) and potentially creditors – see the Tribunal’s decision in *Connaught* at 310. Further, HMRC, and so the public purse, was a significant creditor. Further still, since AssetCo’s business was providing emergency fire and rescue services to public bodies, and thereby to the public, financial failings in AssetCo and potential disorderly insolvency risked harming the public safety. This concern and the potential adverse effect was recognised by *inter alia* an Early Day Motion in Parliament⁹ and press coverage of the collapse.¹⁰

⁹ <https://www.parliament.uk/edm/2010-12/2104>

¹⁰ <https://www.theguardian.com/uk/2011/may/22/assetco-london-fire-brigade-privatisation>

- (h) Guidance para 21(q): “*Misconduct undermines the purpose or effectiveness of the disciplinary arrangements*”. Mr Shannon’s dishonest responses to the FRC in his written answers undermine the effectiveness of the Scheme and abrogate his duty to co-operate fully with the FRC (Allegation 12).
- (i) Guidance para 21(r): “*Misconduct could undermine confidence in the standards of conduct in general of Members...and/or in financial reporting and/or corporate governance in the United Kingdom and/or in the profession generally*”. As set out in the Code (at paragraph 300.2), investors, creditors and the market may rely on professionals in business preparing and signing off on financial statements (and see also *Connaught* at [310]). Mr Shannon’s deliberate and dishonest failings in relation to the financial reporting undermine that confidence in corporate governance and the profession. More generally, any dishonest conduct on the part of a professional by definition undermines confidence in the profession generally and/or the standards of conduct of members.
- (j) Guidance para 21(u): “*whether the Member caused or encouraged other individuals to commit Misconduct*”. In the case of the Jaras and Graphic Allegations (which were for Mr Shannon’s own benefit) he caused and encouraged Mr Flynn and Mr Boyle to commit Misconduct. Particularly in relation to the Jaras allegation, Mr Shannon was the driving force behind the accountancy treatment and overrode Mr Flynn’s queries about the treatment.
- (k) Guidance para 21(v): “*whether the Member held a senior position and/or supervisory responsibilities*”. Mr Shannon held the most senior position: as CEO he was the executive director ultimately in charge. He had supervisory responsibility for the Financial Statements.
- (l) Guidance para 21(w): “*whether the Member was solely responsible for the Misconduct*”. While Mr Shannon was not solely responsible, he instigated and was principally responsible for the Misconduct relating to the Jaras and Graphic Allegations.

189. In summary, it is our conclusion that Mr Shannon’s Misconduct is of the most serious kind. There were repeated dishonest acts. The accountancy allegations were reckless. The standards breached were fundamental ones of integrity and objectivity. Mr Shannon acted

for his personal benefit treating the company's money as his own. The elements of the Misconduct were substantial and wide-ranging in time, taking place over a number of years and involving different transactions. The public was very significantly affected given the collapse of AssetCo that followed with £millions written off. Consequently, there was substantial loss to the public and significant damage to the public's confidence in the profession.

Step 2: Identification of Potentially Appropriate Sanctions

190. The range of sanctions the Guidance requires the Tribunal to consider is: a reprimand, a severe reprimand, a condition, exclusion, a fine, preclusion or exclusion.
191. Starting at the lower end, paragraphs 27 to 28 of the Guidance distinguish between a (mere) Reprimand and a Severe Reprimand. Having regard to the circumstances, these sanctions alone may be appropriate where the Misconduct was unintended or does not cast doubt on the general competence of the Member, or where the Misconduct was not so damaging to public and market confidence that a higher sanction would be appropriate. However, here, the Misconduct was intended. Such Misconduct not merely casts doubt on Mr Shannon's competence but, as we have found, involves acts of dishonesty and recklessness and is highly damaging to the public interest. In those circumstances, even a severe reprimand is not, in our view, an appropriate sanction.
192. Equally, we do not consider that a (mere) condition would be appropriate: this was not a technical failing in relation to accountancy matters which could be rectified by education or training, but conscious and intentional dishonest wrongdoing over a period of time and in a range of contexts.
193. The Guidance at paragraph 33 lists the following factors which should normally be considered when determining the appropriateness of a fine:
 - (a) Whether deterrence can be achieved by a Reprimand/Severe Reprimand alone. For the reasons given, it cannot. That is insufficient in this case.
 - (b) Whether the Member has derived any financial gain or benefit. Mr Shannon has, for the reasons given.
 - (c) Whether the Misconduct involved or caused or put at risk the loss of significant sums of money. Both AssetCo and investors lost significant sums.

- (d) Whether a fine was ordered in similar cases. They were - see below.
 - (e) In determining the amount of a fine, para 34 of the Guidance states that the Tribunal should aim to impose one that is (a) proportionate to the Misconduct; (b) will act as an effective deterrent and (c) promote public confidence. Para 35 of the Guidance sets out certain factors which we may and do take into account in setting the amount of any fine. Paragraph 35 states that there is no upper limit on the Fine that a Tribunal can impose. Paragraph 39 states that a Member's remuneration is likely to be an appropriate starting point, and paragraphs 40-41 set out how a Member's financial resources should be calculated, including that the Tribunal will need to obtain information about resources and employment prospects when a Member is no longer in employment.
194. Here, Executive Counsel seeks a fine of £250,000 against Mr Shannon, subject to the Tribunal's determination having regard to Mr Shannon's financial resources and the other matters contained in paragraph 39 of the Guidance. In our view, that is an appropriate figure having regard to all the circumstances which we have already summarised above. In arriving at that figure, we also bear in mind the following matters viz.
- (a) Mr Shannon was paid £300,000 in 2010 and £250,000 in 2009 .
 - (b) So far as may be relevant, the conduct was more serious than previous cases in which the FRC imposed a fine on members in business or Executive Counsel agreed to the same. Further, the conduct was, in our view, worse than that of the individual auditors in *Connaught* and *RSM Tenon* who were fined £150,000.
195. As to Mr Shannon's financial resources, the evidence he has submitted is, at best, extremely flimsy. Although he provided some time ago a brief sworn statement of assets and liabilities, the fact is that Mr Shannon has lied on oath (as we have found in relation to Allegation 11) and generally been dishonest in relation to his own financial position (in relation to Jaras and, for his family's benefit, in relation to Graphic). In such circumstances, we do not consider that we can give any weight to such evidence. While Mr Shannon has claimed to have no disposable income and that he could not fly to the UK for interview, he was a well-remunerated CEO for a substantial period of time. For

these reasons, we do not consider that there is any proper justification for adjusting the figure of £250,000.

196. In addition, having regard to paragraph 50 of the Guidance and in all the circumstances, it is our conclusion that an order of exclusion is appropriate in particular because the Misconduct of Mr Shannon is fundamentally incompatible with continued membership. As to the period of exclusion, we note that paragraph 55 of the Guidance specifically recommends that, where a Member has been found to have been dishonest, he should normally be excluded from membership of a relevant entity for at least 10 years. Here, we have found Mr Shannon to be dishonest in respect of multiple allegations. In our view, this would indicate a period of exclusion well in excess of 10 years.

Step 3: Aggravating and Mitigating Factors

197. Aggravating factors are set out at paragraphs 60-61 of the Guidance and mitigation at paragraph 62 of the Guidance.
198. Here, as submitted by Executive Counsel, the relevant aggravating factors are:
- (a) Mr Shannon failed to bring the Misconduct to the FRC's attention and hindered the FRC's investigation by reason of his false answers.
 - (b) Mr Shannon was a member of senior management, was aware of the Misconduct, and sought to conceal it.
 - (c) In respect of Jaras and Graphic, there was a breach of fiduciary duty such that the Misconduct was an abuse of trust.
 - (d) The Misconduct was repeated (there were two separate acts for personal gain: Jaras and Graphic), and occurred over an extended period of time (of at least two years).
 - (e) The Misconduct was committed with a view to profit: Mr Shannon personally benefitted from Graphic and Jaras, and he also benefitted from his position as CEO and major shareholder from the continued presentation of AssetCo as a successful company.
199. In mitigation, Executive Counsel recognises that Mr Shannon has no previous disciplinary record.

200. Paragraph 63 of the Guidance follows the requirement of paragraph 14(2) of the Accountancy Scheme, namely that Members will cooperate with an investigation conducted under the Scheme. Paragraph 64 explains that a failure to provide the level of cooperation required will be considered as an aggravating factor and lists “non-exhaustive” examples of such failures. Here Mr Shannon is in breach of:

- (i) Factor (a): incomplete provision of documents and information; and
- (ii) Factor (b): failure to provide adequate explanation of information.

Step 4: Adjustment for Deterrence

201. We have considered whether there should be any further adjustment for deterrence as considered in paragraphs 66 and 67 of the Guidance. However, in our view, no further adjustment is required for deterrence.

Step 5: Discount for Admissions or Settlement

202. There have been no admissions or settlement. On the contrary, Mr Shannon has not engaged with the disciplinary process or been co-operative with Executive Counsel (as found in relation to Allegation 12).

Step 6: Decision on Sanctions including Level and Duration

203. For all these reasons, it is our conclusion that Mr Shannon be ordered to pay a fine of €250,000; and that, in addition, we should order exclusion of Mr Shannon from Chartered Accountants Ireland (“CAI”) for a period of 16 years. We should also make plain that any application for readmission after this period shall not necessarily be approved, but shall be considered by CAI on its merits.

Mr Flynn

Step 1: Nature and Seriousness of Misconduct

204. As submitted by Executive Counsel, the following are relevant factors as against Mr Flynn:

- (a) “*financial benefit derived or intended to be derived*” (para 21(a)). There was substantial unwarranted financial benefit derived or intended to be derived:

- (i) While Mr Flynn did not benefit personally from Jaras or Graphic, Mr Shannon did and Mr Flynn intended him to derive that benefit.
 - (ii) As to the accountancy allegations (Allegations 5-9) and the XYZ Investment Allegation (Allegation 10), AssetCo's financial position was falsely stated and thereby misrepresented to the market. As a result, Mr Flynn continued to benefit from his position as (a well-remunerated) CFO and a major shareholder, who was paid and/or had the opportunity and expectation to benefit from substantial dividends.
- (b) *“the gravity and the duration of the Misconduct (para 21(b))*
- (i) The Misconduct was plainly very serious. Mr Flynn has been found to have acted dishonestly in relation to 3 allegations and recklessly in relation to a further 3. The most serious conduct includes: (a) disguising “a dishonest scheme” by, *inter alia*, dishonestly providing a false explanation to GT; and (b) assisting Mr Shannon in hiding a payment for personal benefit, by again misleading GT.
 - (ii) The Misconduct spanned two financial years.
- (c) *“Misconduct caused or risked the loss of significant sums of money” (para 21(c)).*
It did, and the analysis is generally the reverse of that of the previous paragraph:
- (i) Both Jaras and Graphic led to AssetCo losing significant amounts of money.
 - (ii) The accountancy allegations and the XYZ Investment Allegations caused or risked the loss of significant sums as a result of the misrepresentation of the financial state of AssetCo. The financial collapse of AssetCo caused very substantial losses: the share price collapsed from 60p to 1.75p and the banks agreed in principle to write off £36 million of lending. While Executive Counsel could not identify the extent to which these losses were specifically caused by the above allegations, the false presentation of AssetCo's financial statements for 2009 and 2010 presented the company in a healthy state for at least two years contrary to the true position, which, at the lowest, risked the loss of significant sums.

- (d) *“failure to comply with professional standards was intentional or unintentional”, “nature, extent and importance of standards breached”; “failure to act or conduct business with integrity”; “dishonest, deliberate or reckless”* (para 21(d)(e)(f) and (g)). As we have found, Mr Flynn’s Misconduct was deliberate and dishonest in breach of fundamental principles of professional ethical behaviour. These were not breaches of technical accounting or audit standards. Specifically:
- (i) The Jaras and Graphic Allegations were deliberate dishonest breaches of professional standards that lacked integrity.
 - (ii) Similarly, by the XYZ Investment Mr Flynn knowingly and dishonestly re-structured the XYZ Investment to replace the interest payable on the loan agreement with a fee for purported services under the Management Agreement.
 - (iii) In respect of the goodwill of the subsidiaries (Allegation 22), Mr Flynn acted recklessly in presenting substantial amounts of goodwill for subsidiaries in AssetCo’s financial statements in circumstances where he either knew of the poor state of the subsidiaries which did not justify that goodwill or (it is to be inferred from the clear position of the subsidiaries of which he was a director) deliberately closed his eyes to the position.
205. *“whether the Misconduct was isolated, or repeated or ongoing”, “if repeated or ongoing, the length of time over which the Misconduct occurred”* (para 21(j) and (k)). There are 10 separate findings of Misconduct against Mr Flynn. It was repeated during the two financial years in question.
206. *“potential financial crime (such as fraud) was facilitated or able to occur as a result of (i) deficiencies in the governance or management of the entity...or (ii) the Misconduct”* (para 21(l)). While there have been no convictions, each of the activities contained within the allegations could be characterised as causing or facilitating fraud. The Jaras and Graphic allegations amount to fraud on AssetCo by Mr Shannon. The XYZ Investment was a fraud facilitated by Mr Flynn in that XYZ2 was purportedly paid for services it did not provide; when rather, the truth was that the payment was a disguised interest payment.
207. *“Misconduct adversely affected, or potentially adversely affected, a significant number of people in the United Kingdom”* (para 21(n)). By misrepresenting the position of

AssetCo, an AIM-listed company, the market was misled. HMRC, and so the public purse, was a significant creditor. Further, since AssetCo's business was providing emergency fire and rescue services to public bodies, and thereby to the public, financial failings in AssetCo and potential disorderly insolvency risked harming the public safety. This concern and the potential adverse effect was recognised by *inter alia* an Early Day Motion in Parliament¹¹ and press coverage of the collapse.¹²

208. “*Misconduct could undermine confidence in the standards of conduct in general of Members...and/or in financial reporting and/or corporate governance in the United Kingdom and/or in the profession generally*” (para 21(r)): As set out in the Code (at paragraph 300.2), investors, creditors and the market may rely on professionals in business preparing and signing off on financial statements. Mr Flynn’s deliberate and dishonest failings in relation to the financial reporting undermines that confidence in corporate governance and the profession. More generally, any dishonest conduct on the part of a professional by definition undermines confidence in the profession generally and/or the standards of conduct of members.
209. “*whether the Member held a senior position and/or supervisory responsibilities*” (para 21 (v)). Mr Flynn held a senior position: as CFO he was an executive director. He had supervisory responsibility for, and signed off, the Financial Statements.
210. In summary, it is our conclusion that the Misconduct is of the most serious kind. There were repeated dishonest acts. The accountancy allegations were reckless. The standards breached were fundamental ones of integrity and objectivity. The elements of the Misconduct were substantial and wide-ranging in time, taking place over years, and involving different transactions. The public was very significantly affected given the collapse of AssetCo that followed with millions written off. Consequently, there was substantial loss to the public and significant damage to the public’s confidence in the profession.
211. *Step 2: Identification of Potentially-Appropriate Sanctions*
212. Having regard to the terms of the Guidance, it is our conclusion that the most appropriate sanctions are (a) a fine and (b) exclusion, and that such sanctions are proportionate in all

¹¹ <https://www.parliament.uk/edm/2010-12/2104>

¹² <https://www.theguardian.com/uk/2011/may/22/assetco-london-fire-brigade-privatisation>

the circumstances of the case. We reach this conclusion for reasons similar to those in the case of Mr Shannon which it is unnecessary to repeat.

213. In determining the amount of a Fine, we again bear in mind that we should aim to impose one that is (a) proportionate to the Misconduct; (b) will act as an effective deterrent and (c) promote public confidence; and that we should and do take into account the factors listed at paragraph 35 of the Guidance, which include the seriousness of the Misconduct and the Member's financial resources (as set out at paragraph 39 of the Guidance).
214. Here, Executive Counsel seeks a £150,000 fine (subject to the Tribunal's determination having regard to Mr Flynn's financial resources and the other matters contained in paragraphs 39-41 of the Guidance). In our view, that is an appropriate figure having regard to all the circumstances which we have already summarised above. In arriving at that figure, we also bear in mind the following matters viz.
- (a) Mr Flynn was paid £250,000 in 2010 and £125,000 in 2009 although we recognise, as Mr Flynn strenuously argued, these figures were gross i.e. before tax; and that the net figures after tax were very much lower.
 - (b) The Misconduct was worse than previous cases of members in business (of *James, Mehigan, Silverwood* and *O'Connor*), and also of the recent cases in *Connaught* and *RSM Tenon*, such that the proper starting point should be £150,000 (being the highest award in those cases).
215. As previously stated, in advance of the hearing on 11 June 2018, Mr Flynn submitted evidence with regard to his financial resources. Such evidence included a letter dated 19 December 2017, a further letter dated 14 May 2018 and an email dated 21 May 2018 together with various attachments. In addition, he submitted further material and gave further explanations in answer to queries raised by Executive Counsel as well as specific questions put to him orally by the Tribunal at the hearing on 11 June 2018. In summary, it was his evidence that he has limited assets and income; that he would be unable to pay a fine of £150,000 or any substantial fine; that a fine of £150,000 (or any substantial fine) would (or at least probably would) result in him having to declare himself bankrupt; and that, in the circumstances, a fine of £150,000 (or any substantial fine) was not just or appropriate.

216. We have carefully considered the evidence and explanations provided by Mr Flynn as to his financial resources. Accepting such evidence and explanations at face value, we readily recognise that the imposition of a fine of £150,000 will cause him financial hardship. However, we do not consider that such financial hardship justifies any reduction in the fine of £150,000. We reach this conclusion for the following reasons:

- (a) As we have concluded, Mr Flynn's Misconduct was of the most serious kind and caused serious damage to the public, with consequential very serious damage to public confidence. His actions have caused or contributed to substantial losses by third parties. In such circumstances, we do not consider that it is in the public interest to reduce the fine which we consider appropriate on the basis that it will cause him financial hardship.
- (b) In reaching this conclusion, we bear well in mind Mr Flynn's assertion that the imposition of a fine of £150,000 or any substantial fine will (or at least may) result in his bankruptcy. However, for the reasons set out below, it is our conclusion that the risk of bankruptcy in such circumstances is low. In any event, it would be our conclusion that in all the circumstances and having regard to the public interest, the risk of bankruptcy does not justify any reduction in the proposed fine.
- (c) To the extent Mr Flynn blames the investigation into AssetCo for his financial position, he is the author of his own misfortune.
- (d) As to Mr Flynn's financial resources, the evidence which he submitted before the Tribunal falls into two broad categories viz (i) assets/liabilities; and (ii) present and likely future income. With regard to the former, the schedule of assets/liabilities which he produced dated 10 May 2018 shows net assets of £38,711.30. However, we note that this includes an amount of £21,000 in respect of a Land Rover. Mr Flynn's evidence to the Tribunal was that this was necessary for his work. Whilst we accept that the use of a car may be necessary for his work, we do not consider that he would need such an expensive car. More importantly, the schedule produced by Mr Flynn did not include any amount in respect of any "pension pot". Further details of such "pot" were produced by Mr Flynn following requests by Executive Counsel. These showed that he had two "pots" viz (i) The Hargreave Hale Pension C072183 with a valuation on 31/7/2017 of £140,390; and (ii) The Royal London Pension F/3573424 with a valuation on 31/7/2017 of £97,387.07. The total value

of these two “pots” on 31 July 2017 was, therefore, in excess of £235,000. We did not have any more recent valuations. However, it seems likely that the present valuation would exceed a figure of £240,000. Mr Flynn explained that these pensions had been omitted from his schedule of assets/liabilities because “...if I have to declare myself bankrupt the pensions remain beyond the reach of any sanctions imposed by the FRC....” Even if that is correct (as to which we make no finding), we see no reason why such pensions should be ignored in considering Mr Flynn’s financial resources. A further point raised by Mr Flynn was that if he cashed in these pots now to pay for any fine, he would have to pay tax on at least part of these “pots”. We assume that this is probably correct. However, in the ordinary course, the first 25% (say £60,000) would be tax free and even assuming a tax rate of 55% on the balance, the cash available to Mr Flynn would be approximately [£60,000 + (55% x £180,000)] £159,000. Thus, the conclusion we have reached is that Mr Flynn’s net assets total approximately £200,000 which is more than sufficient to pay a fine of £150,000. For the avoidance of doubt, we repeat that it would in any event be our conclusion that in all the circumstances and having regard to the public interest, the risk of bankruptcy does not justify any reduction in the proposed fine.

- (e) As for Mr Flynn’s present and likely future income, the position is somewhat uncertain. His evidence was that he expected his earnings to be £4000 gross per month although he had no “visibility” for how long these earnings would continue and he said that they may well cease when he has to disclose the final outcome of these proceedings and the sanction imposed upon him.

217. Bearing all the above in mind and given that it may take a little time for Mr Flynn to cash in his pensions, it is our conclusion that (subject to any further adjustment in light of additional matters considered below) Mr Flynn be ordered to pay a fine of £150,000 payable in two tranches viz. £75,000 payable within 3 months of the date of publication of this Report and (ii) a further £75,000 payable within 6 months of the date of publication of this Report.

218. In addition, having regard to all the circumstance, it is our view that we should order exclusion of Mr Flynn from CAI. As already stated above, paragraph 55 of the Guidance specifically recommends that, where a Member has been found to have been dishonest,

he should normally be excluded from membership of a Participant for at least 10 years. Here, we have found Mr Flynn to be dishonest in respect of three allegations. As submitted by Executive Counsel, that deliberate and dishonest conduct (and reckless conduct) of this seriousness is fundamentally incompatible with continued membership of CAI. For all the reasons given above, the misconduct was of the most serious kind and caused serious damage to the public, with consequential very serious damage to public confidence. The dishonesty was concealed, in relation to Jaras, Graphic, and XYZ, in that false explanations were given to GT. In our view, this would indicate a period of exclusion in excess of 10 years although slightly less than Mr Shannon.

Step 3: Aggravating and Mitigating Factors

219. As submitted by Executive Counsel, the relevant aggravating factors (see para 61) are:

- (a) Mr Flynn failed to bring the Misconduct to the FRC's attention.
- (b) Mr Flynn was a member of senior management, was aware of the Misconduct, and sought to conceal it.
- (c) The Misconduct involved an abuse of a position of trust, as he owed fiduciary duties as a director of AssetCo.
- (d) The Misconduct was repeated and occurred over an extended period of time (of at least two years).
- (e) The Misconduct was committed with a view to profit: Mr Flynn benefitted from his position as CEO and major shareholder from the continued presentation of AssetCo as a successful company, and Mr Flynn's involvement with Jaras and Graphic permitted Mr Shannon to benefit personally.

220. In mitigation, Mr Flynn has no previous disciplinary record.

Step 4: Co-operation

221. It is fair to say that Mr Flynn did cooperate and engage with the present proceedings to some extent as summarised above. In arriving at the appropriate sanction, we take such cooperation into account.

Step 5: Adjustment for Deterrence

222. In our view, the Misconduct in the present circumstances justifies a strong sanction. However, we do not consider that there should be any special uplift for aggravating circumstances.

Step 5: Discount for Admissions or Settlement

223. There have been no admissions or offers of settlement by Mr Flynn although we note and bear in mind that following circulation of an early draft of this Report and whilst maintaining his position that the allegations against him were unfounded, he (Mr Flynn) acknowledged that a period of exclusion was appropriate and suggested 5 years.

Step 6: Decision on Sanctions including Level and Duration

224. For all these reasons, it is our conclusion that Mr Flynn be ordered to pay a fine of £150,000 payable in two tranches viz. £75,000 payable within 3 months of the date of publication of this Report and (ii) a further £75,000 payable within 6 months of the date of publication of this Report; and that, in addition, we should order exclusion of Mr Flynn from CAI for a period of 14 years. We should also make plain that any application for readmission after this period shall not necessarily be approved, but shall be considered by CAI on its merits.

Mr Boyle

Step 1: Nature and Seriousness of Misconduct

225. As submitted by Executive Counsel, the following are relevant factors as against Mr Boyle:

- (a) *“financial benefit derived or intended to be derived”* (para 21(a)). Substantial financial benefit was derived or intended to be derived, in relation to Jaras (Allegation 23). Mr Shannon personally benefitted financially at the expense of AssetCo, and Mr Boyle facilitated that benefit.
- (b) *“the gravity and the duration of the Misconduct”* (para 21(b)). Here, we have found Mr Boyle to have acted dishonestly in relation to four allegations and recklessly in relation to a fifth. The nature of his Misconduct meant that it was likely to be concealed. He dishonestly misled the auditors, thereby undermining the statutory audit of an AIM listed company, in relation to four separate matters. The

Misconduct spanned two financial years. In our view, his Misconduct is no less serious than that of Mr Flynn.

(c) *“Misconduct caused or risked the loss of significant sums of money”* (para 21(c)). It did, and the analysis is generally the reverse of that of the previous paragraph:

(i) The Jaras transaction lost AssetCo £1.5 million.

(ii) As already stated, the accountancy allegations caused or risked the loss of significant sums as a result of the misrepresentation of the financial state of AssetCo. The financial collapse of AssetCo caused very substantial losses: the share price collapsed from 60p to 1.75p, and the banks agreed in principle to write off £36 million of lending. While Executive Counsel cannot identify the extent to which these losses were caused by the above allegations, the false presentation of AssetCo’s account for 2009 and 2010 presented the company in a healthy state for at least two years contrary to the true position, which, at the lowest, risked the loss of significant sums.

(d) *“failure to comply with professional standards was intentional or unintentional”, “nature, extent and importance of standards breached”; “failure to act or conduct business with integrity”; “dishonest, deliberate or reckless”* (para 21(d)(e)(f) and (g)). Mr Boyle’s Misconduct was deliberate and largely dishonest in breach of fundamental principles of professional ethical behaviour. These were not breaches of technical accounting or audit standards. Specifically:

(i) His conduct in relation to Jaras was dishonest: Mr Boyle knew the true position and misrepresented it.

(ii) By his conduct in the Accountancy Allegations, Mr Boyle dishonestly deliberately provided false information to GT about additional purported revenue which simply did not exist.

(e) *“whether the Misconduct was isolated, or repeated or ongoing”, “if repeated or ongoing, the length of time over which the Misconduct occurred”* (para 21j) and (k)). There are 5 findings of Misconduct against Mr Boyle, which continued over two financial years. It was repeated during the two financial years in question and further Misconduct was committed in subsequent years (allegations 11 and 12).

- (f) *“potential financial crime (such as fraud) was facilitated or able to occur as a result of (i) deficiencies in the governance or management of the entity...or (ii) the Misconduct”* (para 21(l)). While there have been no convictions, it is our view that Mr Boyle’s conduct in the Accountancy Allegations allowed non-existent revenue to be fraudulently presented to the public, and his complicity in the Jaras transaction concealed financial wrongdoing.
- (g) *“Misconduct adversely affected, or potentially adversely affected, a significant number of people in the United Kingdom”* (para 21(n)). By misrepresenting the position of AssetCo, an AIM-listed company, the market was misled. HMRC, and so the public purse, was a significant creditor. Further, since AssetCo’s business was providing emergency fire and rescue services to public bodies, and so on to the public, financial failings in AssetCo and potential disorderly insolvency risked harming the public safety. This concern and the potentially adverse effect was recognised by *inter alia* an Early Day Motion in Parliament¹³ and press coverage of the collapse.¹⁴
- (h) *“Misconduct could undermine confidence in the standards of conduct in general of Members...and/or in financial reporting and/or corporate governance in the United Kingdom and/or in the profession generally”* (para 21(r)). As set out in the Code (at paragraph 300.2), investors, creditors and the market may rely on professionals in business preparing and signing off on financial statements. Mr Boyle’s deliberate and dishonest failings in relation to preparing the financial statements undermines that confidence in corporate governance and the profession. More generally, any dishonest conduct on the part of a professional by definition undermines confidence in the profession generally and/or the standards of conduct of members.
- (i) *“whether the Member held a senior position and/or supervisory responsibilities”* (para 21(v)). While not as senior as Mr Shannon or Mr Flynn, Mr Boyle was “group financial controller” with direct and personal responsibility for the financial information generated.

¹³ <https://www.parliament.uk/edm/2010-12/2104>

¹⁴ <https://www.theguardian.com/uk/2011/may/22/assetco-london-fire-brigade-privatisation>

(j) “*whether the Member was solely responsible for the Misconduct*” (para 21(w)). On the available evidence, Mr Boyle was solely responsible for presenting the fictitious revenue to GT in the 10 June Papers and in relation to the £3 million increase.

226. In conclusion, it is our view that Mr Boyle’s Misconduct is of the most serious kind. There were repeated dishonest acts in relation to the financial statements. The standards breached were fundamental ones of integrity and objectivity. The elements of the Misconduct were substantial and wide-ranging in time, taking place over a number of years affecting different transactions. The public was very significantly affected given the collapse of AssetCo that followed with millions written off. Consequently, there was substantial loss to the public and significant damage to the public’s confidence in the profession.

Step 2: Identification of Potentially-Appropriate Sanctions

227. As in the case of Mr Shannon and Mr Flynn, Mr Boyle’s Misconduct was not a technical failing and, in our view, the imposition of a (mere) Condition, Reprimand, or Severe Reprimand would not be sufficient or appropriate in the light of our conclusions concerning Mr Boyle; and that the appropriate sanction is a fine and exclusion order.

228. In determining the amount of a Fine, we bear in mind the factors referred to in the Guidance as summarised above which it is unnecessary to repeat. More specifically, we bear in mind Mr Boyle’s lower level of personal benefit and seniority within AssetCo, and the seriousness of the Misconduct. Mr Boyle has provided an email as to means stating his income but silent as to assets. This is a mere assertion and no supporting evidence has been provided. In such circumstances, we do not consider that it is appropriate to adjust any fine by reference to Mr Boyle’s financial resources.

229. In addition, given our findings with regard to Mr Boyle’s Misconduct, it is our conclusion that, as in the case of Mr Shannon and Mr Flynn, he should likewise be subject to an order for exclusion. In our view, deliberate and dishonest conduct of this seriousness is fundamentally incompatible with continued membership of CAI. For all the reasons given above, the misconduct was of the most serious kind and caused serious damage to the public, with consequential very serious damage to public confidence. The dishonesty

was concealed in relation to the Accountancy Allegations, in that false explanations were given to GT.

230. As already stated, paragraph 55 of the Guidance specifically recommends that, where a Member has been found to have been dishonest, he should normally be excluded from membership of a Participant for at least 10 years. Here we have found Mr Boyle to have been dishonest in respect of four allegations which would suggest a period of exclusion in excess of 10 years.

Step 3: Aggravating and Mitigating Factors

231. As submitted by Executive Counsel,] there are three relevant aggravating factors (para 61):

- (a) Mr Boyle has a previous finding of dishonesty: he is currently excluded from CAI as a result of misappropriating funds from AssetCo. Paragraph 61(k) of the Guidance deals with the effect of a poor disciplinary record:

“...the Member or Member Firm has a poor disciplinary record (for example, where an adverse finding has previously been handed down against the Member or Member by the FRC or another disciplinary or regulatory body). The more serious and/or similar the previous Misconduct or breach, the greater the aggravating factor. The fact that a Sanction has previously been imposed will not automatically be regarded as a significant aggravating factor. Much will depend on the degree of similarity, the time that has elapsed since the earlier sanction was imposed, the changes that have taken place since then, and the response (or lack of it) to any previous finding or sanction imposed...”

Since the previous Misconduct was dishonest conduct relating to financial impropriety it is similar to the Misconduct now found and also serious such that it is a significant aggravating factor.

- (b) The Misconduct in this case was repeated.
- (c) Mr Boyle has hindered the FRC’s investigation. He cancelled interview appointments with the FRC eight times, seven of the eight times on the morning of the interview.

232. There are no mitigating factors.

Step 4: Co-operation

233. The absence of any co-operation is an aggravating factor in light of the matters set out above and paragraph 64 of the Guidance.

Step 5: Adjustment for Deterrence

234. We do not consider that any separate uplift is justified under this head.

Step 5: Discount for Admissions or Settlement

235. No admissions or settlement have occurred.

Step 6: Decision on Sanctions including Level and Duration

236. For all these reasons, it is our conclusion that Mr Boyle be ordered to pay a fine of £100,000; and that, in addition, we should order exclusion of Mr Boyle from CAI for a period of 12 years to run concurrently with his existing order of exclusion. We should also make plain that any application for readmission after this period shall not necessarily be approved, but shall be considered by CAI on its merits.

PART 8: COSTS

237. Paragraph 9(8)(ii) of the Scheme gives the Tribunal a wide jurisdiction to order a Member to pay “*the whole or part of the costs of and incidental to the investigation and the hearing of the Formal Complaint...*”. In circumstances where Executive Counsel has succeeded on all counts, it is our view that, in principle, the Respondents should pay for the costs of and incidental to the investigation by Executive Counsel and the hearing. For the avoidance of doubt, this includes the fees and expenses of the Tribunal.
238. Executive Counsel has submitted a costs schedule with a breakdown showing its own costs to be £346,340.92 and has requested a summary determination. As submitted by Executive Counsel this approach is supported by paragraph 9(8)(i) of the Scheme; and in our view, it would be proportionate and in the interests of all parties to resolve these proceedings finally by making a determination now. The stated figure is limited to the costs of and incidental to the investigation and proceedings against the Respondents only. The costs of and associated with investigating GT and Mr Napper have been excluded from this, and where there have been areas of overlap, Executive Counsel has divided the costs 70% to GT and Mr Napper and 30% to the Respondents up to the date of the settlement with GT and Mr Napper. In our view, this “split” is reasonable.
239. We recognise that the costs claimed by Executive Counsel are substantial. However, we bear well in mind that the present proceedings involved numerous discrete allegations against the Respondents over an extended period. We were told that Executive Counsel had to review several hundreds of thousands of electronic documents and emails; and some 150 hard-copy lever arch files. The time spent by solicitors on the disclosure exercise for the current proceedings was some 336 hours. Executive Counsel has tried to limit the costs substantially by keeping the majority of the work in-house and instructing appropriate counsel, rather than using external solicitors. Work done internally by Executive Counsel is charged at a rate without a profit element. The hourly rates sought for forensic accountants (£60/90ph), internal lawyer (£115ph) and external solicitors (£350/£225ph ex VAT) are, in our view, entirely reasonable.
240. The stated figure excludes any amount in respect of the Tribunal’s own fees and expenses which total £51,480.96 [Venue (IDRC): £5,063.54; Tribunal Members: £35,725.27; Convener/Tribunal Secretary: £6,763.65; Stenographer: £3,928.50]. The total figure in respect of costs therefore amounts to £346,340.92 + £51,480.96 = £397,821.88.

241. In considering the impact of a costs award on the Respondent, paragraph 75 of the Scheme provides that the Tribunal “*may take account of*” the “*impact of*” any fine it is proposed to award. The fine and costs both go to CAI (who indemnify Executive Counsel for costs) such that the sums are owed to the same person. However, the structure of the Guidance is essentially that the fine takes precedence: paragraph 42(b) of the Guidance requires the Tribunal to disregard costs in setting the level of the fine whereas paragraph 75(a) expressly refers to the impact of the fine.
242. Executive Counsel accepted that, in making a costs award, the Tribunal should take into account the means of respondents to pay any order for costs so far as they are proved. However, as stated in *SRA v Davis and McGlinchey* [2011] EWHC 232 at [21], it is for each respondent “*to put before the Tribunal sufficient information to persuade the Tribunal that he lacks the means to meet an order for costs in the sum at which they would otherwise arrive.*” See also at [24]: the regulating authority must be afforded a reasonable opportunity to test the evidence. So far as Mr Shannon and Mr Boyle are concerned, we do not propose to repeat what we have already said with regard to the evidence they have submitted concerning their means. For present purposes, it is sufficient to say that the information which they have provided fails to persuade us that they lack the means to meet an order for costs in the sum at which we would otherwise arrive. We deal with the position of Mr Flynn separately below.
243. Executive Counsel seeks an order that all the Respondents be jointly and severally liable for the costs. As a matter of principle, we accept that respondents should generally be liable for the costs that can be fairly and reasonably related to the process against each of them: see *Tinkler v SRA* [2012] EWHC 3645 (Admin) at [57]; and we bear that general principle well in mind. However, in this case there were multiple allegations against each Respondent, the costs of which were incurred in investigating the same two financial years; there was very substantial overlap in the allegations against each Respondent; and, in our view, the costs of the investigation can be reasonably attributed to all of the Respondents. For these reasons, it is our conclusion that (subject to the qualification in the next paragraph) they should all be jointly and severally liable for such costs.
244. However, it seems to us relevant to consider whether, if the proceedings had been brought against only one Respondent, the costs incurred in such proceedings would have been lower than the total figure stated above. In such circumstances, it seems to us just and

appropriate to “cap” the total recoverable costs against that particular Respondent. We recognise that such “capping” exercise is difficult and necessarily broad-brush. However, in our view, the appropriate order is that each of the Respondents is jointly and severally liable for the total costs stated above save that the total amount recoverable in respect of costs against any one of the Respondents shall be as follows:

- (i) Mr Shannon: £300,000.
- (ii) Mr Flynn: £250,000 (subject to further reduction to take account of means).
- (iii) Mr Boyle: £150,000

245. So far as Mr Flynn is concerned, we do not propose to repeat what we have already said concerning the evidence submitted by him with regard to his means. For present purposes, it is sufficient to say that we can and do take into account both the impact of the fine which we have imposed on him and also his means. In all the circumstances, it is our conclusion that the total amount recoverable against Mr Flynn in respect of costs should be “capped” at a reduced figure of £50,000 payable within 6 months of the date of publication of this Report.

PART 9: ORDER

246. For all these reasons, we have reached unanimous agreement on the conclusions and findings as set out above and hereby unanimously **ORDER** as follows:

- (a) Payment by Mr Shannon of a fine of £250,000 forthwith.
- (b) Exclusion of Mr Shannon from Chartered Accountants Ireland for a period of 16 years. Any application for readmission after this period shall not necessarily be approved, but shall be considered by CAI on its merits.
- (c) Payment by Mr Flynn of a fine of £150,000 payable in two tranches viz. £75,000 payable within 3 months of the date of publication of this Report and (ii) a further £75,000 payable within 6 months of the date of publication of this Report.
- (d) Exclusion of Mr Flynn from Chartered Accountants Ireland for a period of 14 years. Any application for readmission after this period shall not necessarily be approved, but shall be considered by CAI on its merits.
- (e) Payment by Mr Boyle of a fine of £100,000 forthwith.
- (f) Exclusion of Mr Boyle from Chartered Accountants Ireland for a period of 12 years to run concurrently with his existing order of exclusion. Any application for readmission after this period shall not necessarily be approved, but shall be considered by CAI on its merits.
- (g) Mr Shannon, Mr Flynn and Mr Boyle are jointly and severally liable to pay costs which we hereby determine in the sum of £397,821.88 save that the total amount payable by each of the Respondents in respect of costs shall be as follows:
 - i Mr Shannon: £300,000 payable forthwith.
 - ii Mr Flynn £50,000 payable within 6 months of the date of publication of this Report.
 - iii Mr Boyle £150,000 payable forthwith.

SIR BERNARD EDER (Tribunal Chair)DATED.....