IN THE MATTER OF:

THE EXECUTIVE COUNSEL TO THE FINANCIAL REPORTING COUNCIL

– and –

(1) STEPHEN HILL
(2) DAVID WELLS

FORMAL COMPLAINT

THE FINANCIAL REPORTING COUNCIL

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 dated, at the date of this Complaint, of 8 December 2014 ("**the Scheme**").

2. By paragraph 7(11) of the Scheme, if having reviewed any representations received for the purpose of paragraph 7(10) of the Scheme, the Executive Counsel to the FRC ("**the Executive Counsel**") considers that there is a realistic prospect that a Tribunal will make an Adverse Finding against a Member or Member Firm[1] and that a hearing is desirable in the public interest, then the Executive Counsel shall deliver a Formal Complaint against the Member or Member Firm to the Conduct Committee of the FRC. An Adverse Finding is a finding by Tribunal that a Member or Member Firm has committed "Misconduct".

3. By paragraph 2(1) of the Scheme "Misconduct" is defined 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*

[1] References to "Member Firm" and "Member" in this document relate to the definition as set out in paragraph 2(1) of the Scheme. References to "member firm" and "member" denote their membership of the ICAEW.

likely to bring, discredit to the Member or the Member Firm or to the accountancy profession".

4. This is the Executive Counsel's paragraph 7(11) Formal Complaint detailing the allegations of Misconduct against the Respondents.

THE CODE OF ETHICS

5. The standards of conduct reasonably to be expected of the Respondents included those set out in the Fundamental Principles and Statements contained in the Code of Ethics ("**the Code**") applicable at the material time, issued by the ICAEW. The Fundamental Principles and Statements contained in the Code are made in the public interest and are designed to maintain a high standard of efficiency and professional conduct by all members and member firms of the ICAEW. The Fundamental Principles required the Respondents to act with, amongst other things, integrity, objectivity and professional competence and due care (as defined and set out below in Appendix A).

CONNAUGHT PLC AND THE CONNAUGHT GROUP

6. Connaught plc ("**Connaught**") was at all material times a FTSE 250 company operating in the social housing, public sector and compliance markets. It had a number of subsidiaries, including Connaught Partnerships Limited ("**CPL**"). References herein to "the Group" are to Connaught plc and its subsidiaries.

7. CPL was the main subsidiary. At the material times, CPL provided social housing landlords throughout the UK with a range of 'planned' and 'reactive' maintenance services. Planned maintenance involved providing programmed refurbishment work. This work was often in connection with the Government's "Decent Homes" Programme (which aimed to provide a minimum standard of housing conditions for those housed in the public sector). Reactive maintenance involved responsive repair work. It was provided ad hoc, often in response to a breakdown or emergency.

8. Mark Tincknell was Connaught's Chairman until around 15 December 2009 when he stood down. He was subsequently appointed Group Chief Executive, with effect from 1 February 2010. He resigned as Chief Executive on or around 7 July 2010.

9. The First Respondent, Stephen Hill, was at all material times Group Finance Director and a director of Connaught and CPL. He joined Connaught in

September 2006 having previously been Corporate Finance Director at Serco Group plc.

10. The Second Respondent, David Wells, was at all material times the Group Deputy Finance Director. He was a director of Connaught until 1 September 2006 when Mr Hill joined the company. Following Mr Hill's appointment, Mr Wells became responsible for the Group's treasury management. He was Connaught's Company Secretary until 1 July 2009. He was at all material times a director of CPL.

11. The Group financial statements for the year ended 31 August 2009[2], dated 28 October 2009, showed revenue of £660 million and profit before tax of £27 million. Connaught announced in its annual report, sent to shareholders on 11 November 2009, that it had produced "*another set of excellent results in 2009*".

12. On or around 18 March 2010, Connaught's auditors, PwC, agreed with the management of Connaught to perform certain limited scope procedures in relation to the half year position (namely, the 6 month period ending 28 February 2010) and to provide a private report to the Board summarising their observations.

13. An Audit Committee meeting was held on 21 April 2010 attended by, amongst others, Mr Hill and PwC. It was convened to consider PwC's private report to the Board, the Finance Director's Report and the draft Interim Financial Statements for the 6 month period ending 28 February 2010. The Finance Director's Report recorded "*operating profit to operating cash conversion of 71 – 72%".*

14. The Group's Interim Financial Statements for the 6 month period ending 28 February 2010 were approved for issue, and issued, on 27 April 2010 ("the Interim Financial Statements"). They disclosed revenue of £354 million and profit before tax of £11 million. On the same date, 27 April 2010, the Group issued a positive statement to shareholders in respect of those interim results. That statement recorded, amongst other things, that "*Cash generated from operating activities, excluding from acquisition, was £8.5 million in the first half, up from £2.6 million last year, delivering a rolling 12 month conversion of 72% operating profit to operating cash (H1 2009: 62%) in line with our 70% target*." Mark Tincknell, Connaught's Chief Executive, said, "*This is another good set of results as Connaught continues its strong growth in all three of its divisions*".

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[2] Comprising the Consolidated Income Statement, the Consolidated Statement of Changes in Equity, the Consolidated Balance Sheet, the Consolidated Cash Flow Statement, the Statement of Consolidated Accounting Policies and the related notes.

15. Within a few months, however, a very different picture emerged of the Group's financial health:

    a. On 25 June 2010, Connaught issued a profits warning. The company explained that the emergency budget introduced by the new government had damaged the company's profitability. Following this announcement, the market value of Connaught fell by £300 million.

    b. On 6 August 2010, in an announcement to the Stock Market, Connaught warned of a 'material loss' for the year ended 31 August 2010 and stated that it anticipated making provision for future losses on current contracts. It also stated that it anticipated making significant write-downs in respect of the carrying value of assets as at 31 August 2009 and that this was before taking into account the impact of its ongoing assessment into the accounting policy for mobilisation costs.

    c. On 8 September 2010, Connaught and a number of its subsidiaries were put into administration.

    The Executive Counsel does not contend that the matters complained of in this Complaint caused or materially contributed to the collapse of Connaught.

THE GROUP'S CASH CONVERSION RATIO

16. The Group's 'cash conversion ratio' was a key measure for analysts. Cash conversion is a measure of the rate at which operating profits are represented by cash inflows. For example, if operating cash profits were £10 million and cash inflows from operating activities were £8 million, then the cash conversion ratio would be 80%. As the statement to shareholders in respect of the interim results recorded (paragraph [14] above), the Group's cash conversion target at the material time was 70%, and the ratio stated to be achieved was 72%.

17. The cash conversion ratio was one of a number of figures used by analysts and the wider market when assessing Connaught's financial performance and when making investment decisions about Connaught.

18. A sense of the importance of the cash conversion ratio to the management of the Group is evident from internal communications at the time. For example, in an email to *inter alia*, David Wells on 26 October 2009, Mr Hill stated:

"*Cash flow. In the words of one investor, if we have another period of not delivering 70% conversion………., we are "toast".*"

19. In an email to Steve Andrews, CPL's Finance Director, dated 14 January 2010, Mr Hill stated, in response to questions about the Group's proposed 5-year plan:

    "*Clearly growth is important but without cash conversion of at least 70% at group level we won't be around to worry about growth level. So cash conversion key*."

20. The cash position was especially important at the half year end, because Mark Davies had recently announced his departure as CEO causing the market to speculate about Connaught's financial position. In a document dated 26 January 2010, called 'Scenario Planning', Senior Management sought to anticipate the types of challenging questions investors and analysts might ask: "*Is this the first sign of rats fleeing a sinking ship? Are there any problems with C we should be aware of? Has MD been fired because of cashflow concerns?".*

21. An email Mr Hill sent to [redacted] of Altium Securities dated 26 January 2010, subject "Cash conversion rumour" stated:

    "*Morning* [redacted]*. I have just heard a ribour* [sic] *that* [redacted] *thinks she heard from you that we are not going to deliver the rolling twelve cash conversion target of 70% at half year!? I am sure you wouldn't have said this but you know how sensitive the market is to cash at the moment… could you make sure she heard you right? For the record, I am sticking to the twelve month cash conversion target as in previous years and gunning for it!"*

22. Mr Hill clearly regarded a failure to meet the cash conversion target as having potentially serious adverse consequences for the business.

THE TINCKNELL LOAN

23. In February 2010, shortly before the half year end on 28 February 2010, Mr Tincknell made payments totalling approximately £4 million to Connaught. The Executive Counsel's case is that that is was a short term loan.

24. The loan was paid in six separate instalments between 22 February and 26 February 2010 as follows:

Date	Transfer type	Payment from	Payment to	Amount (£)
22/02/10	CHAPS Transfer	Mark and [redacted] Tincknell Barclays account	Connaught NatWest account 32165382	675,872
22/02/10	Bill Payment	Mark and [redacted] Tincknell Barclays account	Connaught NatWest account 32165382	297,275
25/02/10	CHAPS Transfer	Unknown	Connaught NatWest account 32165382	824,325
26/02/10	CHAPS Transfer	Mark and [redacted] Tincknell Barclays account	Connaught NatWest account 32165382	351,478
26/02/10	CHAPS Transfer	Mark and [redacted] Tincknell Barclays account	Connaught NatWest account 32165382	917,228
26/02/10	CHAPS Transfer	Mark and [redacted] Tincknell Barclays account	Connaught NatWest account 32165382	878,860
			Total	**3,945,038**

25. The monies were substantially repaid to Mr Tincknell and his wife in instalments over the period 15 March to 29 April 2010:

Date	Transfer type	Payment from	Payment to	Amount (£)
15/03/10	CHAPS Transfer	Connaught NatWest account 32165382	Mark and [redacted] Tincknell Barclays account	102,558
22/04/10	CHQ 000898	Connaught NatWest account 32165382	Mark and [redacted] Tincknell Barclays account	1,500,000
28/04/10	Standard Transfer	Connaught NatWest account 32165382	Netjets Europe [3]	144,587
29/04/10	Bill Payment	Connaught NatWest account 32165382	Mark and [redacted] Tincknell Barclays account	246,712
29/04/10	CHQ 000904	Connaught NatWest account 32165382	Mark and [redacted] Tincknell Barclays account	1,942,450
			Total	**3,936,337**

26. Accordingly, £1.64 million was repaid to Mr Tincknell before the Interim Financial Statements were approved and released to the market, on 27 April 2010. Most of the remaining monies were repaid between 28 April 2010 and 29 April 2010.

THE ACCOUNTING TREATMENT

27. The amount received from Mr Tincknell (the payments set out in paragraph 24 totalling £3,945,038) constituted a short term loan. The amount was not accounted for as a loan, however. The amount was posted to the supplier rebate account which formed part of the overall ‘Trade and other payables’ balance contained in the Interim Financial Statements, the balance sheet for the month of February.

28. The amount received from Mr Tincknell should have been classified as a loan within ‘Borrowings’ in the consolidated interim balance sheet and within ‘Net debt’ in the ‘Analysis of net debt’.

[3] Netjets Europe is a company fractional jet ownership.

29. As a consequence of the Tincknell payments not being accounted for as a loan, Borrowings and the disclosure of Net debt were both understated by about £4 million. If the amount had been included within 'Borrowings' there should have been (but was not) a cash inflow from financing activities of £3.9 million shown in the cash flow statement. By accounting for the payments in 'Trade and other payables', rather than 'Borrowings', Connaught recognised an additional £4 million (or thereabouts) as an operating cash inflow (rather than a cash inflow from financing activities) in its Interim Financial Statements. Connaught thereby overstated cash generated from operations by approximately £4 million. This materially increased Connaught's cash conversion rate. But for the Tincknell payments, the Group would have fallen somewhere between 6 and 11% short of their 70% cash conversion target.

30. Further, since Mr Tincknell was a 'related party' and the transaction was material, the payments should have been (but were not) disclosed as a 'related party transaction' in the Interim Financial Statements in accordance with paragraphs 16 and 17 of IAS 34 (Interim Financial Reporting) and paragraphs 9 and 17 of IAS 24 (Related Party Disclosures).

MR HILL

31. In his responses to questions raised by the (then) AADB dated 30 March 2012 Mr Hill stated he could not recall whether any monies had been paid by Mr Tincknell; if they had been, Mr Hill stated he believed that such payments would have related to Mr Tincknell's personal pension contributions. Mr Hill repeated this explanation in his response to the Proposed Formal Complaint. Mr Hill now accepts that he must have known, from 14 February 2010 at the latest, that the payments were in fact a loan and not, as he had originally understood the position, a pension contribution.

32. Mr Hill's case is that he initially understood that these payments related to a proposed 'top-up' payment' to Mr Tincknell's pension. It is not in dispute that negotiations surrounding Mr Tincknell's remuneration package were on-going in the lead up to his appointment as Chief Executive (announced on 29 January 2010) or that there was anything inherently improbable about such a proposed top-up payment being made.

33. By no later than 14 February 2010, and at the time the payments were made, Mr Hill accepts that he must have been made aware that the payments did not relate to Mr Tincknell's pension but were, in fact, a short term loan by Mr Tincknell to the company to be paid back after the half year end.

34. Mr Hill knew at the material time that some of those responsible for the compilation of the accounts had previously been told that the payments related to pension payments.

35. Mr Hill knew that a loan and a pension contribution should be accounted for in the 2010 interim results in different ways. Specifically, as a loan the payments should have been accounted for within borrowings and within net debt.

36. Mr Hill knew that, since the monies from Mr Tincknell were a loan and not a pension contribution, they could not properly be accounted for as an operating cash inflow and therefore that they should not be included in any calculation of Connaught's cash conversion ratio, a measure to which the market attached significant importance.

37. In the premises, there was an obvious risk (of which Mr Hill was aware) that (i) the loan would not properly be accounted for and that, as a result (ii) the interim results would be materially misstated and (iii) the cash conversion ratio would be artificially improved.

38. Given his position and the circumstances known to him (as set out above), Mr Hill's failure to take any steps to ensure that (i) the monies were properly accounted for and (ii) that both the auditors and the Audit Committee were fully informed as to the position constituted a serious and reckless disregard for, or indifference to, the obvious risks set out in paragraph 37 above. More particularly:

    a. He was an experienced accountant and Finance Director of a FTSE 250 company.

    b. He must have known, by no later than 14 February 2010, that the payments from Mr Tincknell were not a pension payment but were in fact a short term loan.

    c. This was (as Mr Hill must have appreciated) a significant cash transaction at around the half year end. It had a material bearing on Connaught's cash conversion ratio.

    d. Mr Hill well understood the importance of the cash conversion ratio to investors and analysts and that the market based their investment decisions in part on the cash conversion ratio and the interim results.

    e. Mr Hill had numerous opportunities to address his mind to the risk that the Tincknell monies might not be properly accounted for and that this was likely to impact upon the accuracy of the cash conversion ratio. Mr Hill was Group Finance Director and, in that capacity, necessarily kept abreast of cash management. For example, minutes of Connaught board meeting of 27 January 2010 record the following (under Finance Director's Report): "*Stephen [Hill] reported on the activity underway in the Group to ensure the delivery of the cash target and cash flow conversion. It was noted that there was a detailed plan which was being managed by David Well*s." Minutes of a Connaught board meeting on 10 March record (under Finance Director's Report) that "*Stephen [Hill] reported on the significant focus on cash collection for the half year…..It was noted that initial forecasts indicated that the net debt and cash conversion targets for the City have been achieved*".

f. Mr Hill had numerous opportunities to inform PwC and Connaught's Audit Committee of the true nature of the payments, and to ensure that PwC and the Audit Committee were not misled. For example he wrote the Finance Director's Report (which omitted any reference to the loan and stated, erroneously, "operating profit to operating cash conversion of 71 – 72%") and he attended the Audit Committee meeting on 21 April 2010 which was convened to consider PwC's private report to the Board and the Interim Financial Statements.

g. The interim results were very important to the market (as Mr Hill will have appreciated) particularly since, as set out above, they were being published at a time when there was some uncertainty as to Connaught's financial position.

39. Mr Hill showed a serious disregard for and indifference to the obvious risks that the interim results materially misstated Connaught's financial position. In so doing, Mr Hill failed to act with integrity. As set out more particularly below (**Allegation 1**), Mr Hill's conduct fell significantly short of the standards reasonably to be expected of a member.

MR WELLS

40. Mr Wells was questioned about the Tincknell payments when interviewed by the (then) AADB. In summary, Mr Wells explained that Mr Hill had told him that the payments were related to Mr Tincknell's pension contributions. Mr Wells stated that he considered this explanation to be plausible and accepted it in good faith but that he now felt that he "was not given the full picture". Mr Wells stated in interview that he had come to understand that they were not pension contributions in March and April. When questioned about his understanding at the time the Interim Financial Statements were signed off, Mr Wells replied, "*It wasn't front of mind. It had moved on. I don't recall ever thinking that I had better just check that the disclosure is right. I was focused on the liquidity, the cash not on the disclosure of the balance sheet in the interim statements. It was not something I specifically looked at, understood and checked*". Mr Wells acknowledged that he did not tell PwC at the time. He stated, "*At that time, my mind had moved on*".

41. Mr Wells was the Deputy Finance Director of Connaught and Group Treasurer. He had responsibility for Connaught's treasury management, for monitoring and controlling the Group's cash flow and for maintaining cash forecasts.

42. He appreciated that the cash conversion ratio was a key measure for analysts and investors. He was aware of the importance of the 70% cash conversion target for the company at the half year and well understood that Mr Hill wanted Connaught to meet a cash conversion target of 70%. Mr Hill regularly emphasised the importance of cash generation and of the cash conversion target.

43. Mr Wells was aware that Mr Tincknell was intending to make the payments to Connaught well before the payments were made and, on 22 February 2010, provided Mr Tincknell with a list of the payments which he (Mr Tincknell) should make that week.

44. Mr Wells accepts that, from 14 February 2010 at the latest, and at the time the payments were made, it had become clear to him that the payments did not relate to Mr Tincknell's pension but were, in fact, a short term loan to be repaid after the half year end. Mr Wells further understood that the purpose of the short term loan from the CEO was to ensure that the 70% cash conversion ratio target was met.

45. Mr Wells believed at the time that it was appropriate for the Tincknell loan monies to be included as operating cash in the Financial Statements for the purposes of calculating the cash conversion ratio. Such an accounting

treatment was plainly wrong. Mr Tincknell was acting as a financier and the monies should not have impacted the operating cash total.

46. Further, Mr Wells failed to appreciate that, in accordance with accounting principles and standards, a substantial loan from the Company's CEO made shortly before the year end which was, to his knowledge, to be repaid shortly after the balance sheet date was highly unusual, material, and a related party transaction, which was required to be disclosed to the Audit Committee and the Auditors and included in the Interim Statements.

47. Mr Wells had numerous opportunities to consider the cash flow statement and the Interim Financial Statements and to raise the loan with the Auditor and the Audit Committee. For example:

    a. He was responsible for Connaught's treasury management and for reviewing cash forecasts;

    b. He was one of the two primary contacts for PwC in relation to the agreed upon procedures for Connaught's 2010 Interim Financial Statements and liaised with PwC in relation to the cash position;

    c. He was present at the planning meeting with PwC on 9 March 2010;

    d. He was provided with numerous iterations of the draft Interim Financial Statements for comment; and

    e. He was present at the clearance meeting held with PwC on 15 April 2010 at which there was a cash flow presentation.

48. Notwithstanding these opportunities, Mr Wells failed adequately to review the cash flow statement and the Interim Financial Statements and to identify that, in accordance with accounting principles and standards:

    a. the loan needed to be (but had not been) included within 'Borrowings' in the consolidated balance sheet and within net debt in the analysis of net debt.

    b. there should have been (but was not) a cash inflow from financing activities of around £4 million (representing the loan) shown in the cash flow statement. It should have been included as financing cash inflow, yet the only figure (in this category c. £5.8m) related to the issue of new shares.

    c. The loan was a material, related party transaction, which was required to be disclosed in the Interim Financial Statements.

49. Further, Mr Wells failed to raise the loan with the Auditor and the Audit Committee.

50. Mr Wells failed to appreciate that by including around £4million as an operating cash flow, the Interim Financial Statements were misstated and the cash conversion measure was wrong.

51. The matters set out at paragraphs [45] – [50] immediately above constitute a serious failure to act in accordance with Professional Competence and Due Care.

52. Further, Mr Wells breached the Fundamental Principle of Objectivity. In failing to appreciate the facts and matters and/or take the steps above (paragraphs [45] – [50]), Mr Wells failed to act in accordance with accounting principles and standards and was reckless as to whether the loan was properly accounted for. It is to be inferred that Mr Wells allowed Mr Tincknell's and Mr Hill's ambition to meet the cash conversion target of 70%, and the pressures (or perceived pressures) associated with this, to impair his professional judgement and compromise his independence of mind.

53. By reason of the facts and matters set out above, and as set out more particularly below (**Allegation 2**), Mr Well's conduct fell significantly short of the standards reasonably to be expected of a Member.

Allegation 1 - Tincknell loan

In relation to Connaught's consolidated interim results for the six month period ending 28 February 2010 announced on 27 April 2010 and in relation to the accounting treatment of payments made by Connaught's Chief Executive of approximately £4 million to Connaught, which was a 'related party transaction' within the meaning of paragraph 9 of IAS 24 (Related Party Disclosures), and 'material' within the meaning of paragraph 23 - 25 of IAS 34 (Interim Financial Reporting), Stephen Hill's conduct was sufficiently reckless to have amounted to acting with a lack of integrity.

Particulars

1. Mr Hill failed recklessly to disclose to PwC and to Connaught's Audit Committee the true nature of the payments, namely, that they were a loan, notwithstanding the obvious risk that PwC and the Audit Committee would thereby be misled.

2. Mr Hill recklessly permitted the payments to be classified in the consolidated interim balance sheet as 'Trade and other payables,' notwithstanding the obvious risk that this was incorrect and would artificially improve the Group's cash conversion rate.

3. Mr Hill recklessly permitted the Group to publish Interim Financial Statements notwithstanding the obvious risk that they would misstate the Group's affairs in that they (i) omitted to disclose the nature of a related party relationship and information about the loan and the outstanding balance which, pursuant to paragraph 17 of IAS 24 and paragraphs 16 and 17 IAS 34, the Group was required to disclose and (ii) overstated cash generated by operations by approximately £4 million.

Allegation 2 - Tincknell loan

In relation to Connaught's consolidated interim results for the six month period ending 28 February 2010 announced on 27 April 2010 and in relation to the accounting treatment of payments made by Connaught's Chief Executive of approximately £4 million to Connaught, which was a 'related party transaction' within the meaning of paragraph 9 of IAS 24 (Related Party Disclosures), and 'material' within the meaning of paragraph 23 - 25 of IAS 34 (Interim Financial Reporting), <u>David Wells</u> failed to act in accordance with the Fundamental Principles (B) 'Objectivity' and (C) 'Professional Competence and Due Care' in the ICAEW Code of Ethics.

<u>**Particulars**</u>

1. As set out in paragraphs [27] – [30] above, the loan from Mr Tincknell was not properly accounted for and, as a result, the Interim Financial Statements (including the cash flow statement) were materially misstated and the cash conversion measure was wrong.

2. Mr Wells was Deputy Finance Director and Group Treasurer. He had responsibility for monitoring and controlling the group's cash flow and for maintaining cash flow forecasts. He was one of the two primary contacts for PwC in relation to the agreed upon procedures for the Interim Financial Statements and was involved in the preparation of the Interim Financial Statements. Mr Wells had a numerous opportunities to consider the cash flow statement and the Interim Financial Statements (see paragraph [47] above). Mr Wells failed adequately to review this material and to identify that, in accordance with accounting principles and standards:

    a. the loan needed to be (but had not been) included within 'Borrowings' in the consolidated balance sheet and within net debt in the analysis of net debt.

    b. there should have been (but was not) a cash inflow from financing activities of around £4 million (representing the loan) shown in the cash flow statement.

    c. a substantial loan from the Company's CEO made shortly before the year end which was, to his knowledge, to be repaid shortly after the balance sheet date was highly unusual, material and a related party transaction, and needed to be disclosed to the Audit Committee and the Auditors and included in the Interim Statements.

3. Mr Wells failed to appreciate that, in accordance with accounting principles and standards, a loan could not permissibly be included as an operating cash flow and used to improve the perceived cash conversion ratio.

4. Mr Wells failed to raise the loan with the Auditor and the Audit Committee.

5. Mr Wells failed to appreciate that by including around £4million as an operating cash flow, the Interim Financial Statements were misstated and the cash conversion measure was wrong.

6. The matters set out in particulars [2] – [5] immediately above constitute a serious failure to act in accordance with Professional Competence and Due Care.

7. Further, Mr Wells breached the Fundamental Principle of Objectivity. In failing to appreciate the facts and matters and/or take the steps above (particulars [2] – [5]), Mr Wells was reckless as to whether the loan was properly accounted for and allowed Mr Tincknell's and Mr Hill's ambition to meet the cash conversion target of 70%, and the pressures (or perceived pressures) associated with this, to impair his professional judgement and compromise his independence of mind.

Signed:

GARETH REES QC
EXECUTIVE COUNSEL

Date:

APPENDIX A

EXTRACTS FROM THE ICAEW CODE OF ETHICS

(with effect from 1 September 2006)

FUNDAMENTAL PRINCIPLES

(a) Integrity

A professional accountant should be straightforward and honest in all professional and business relationships.

(b) Objectivity

A professional accountant should not allow bias, conflict of interest or undue influence of others to override professional or business judgments.

(c) Professional Competence and Due Care

A professional accountant has a continuing duty to maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent professional service based on current developments in practice, legislation and techniques. A professional accountant should act diligently and in accordance with applicable technical and professional standards when providing professional services.

Each of these fundamental principles is addressed in more detail in Sections 110-150.

Section 110 Integrity

110.1 The principle of integrity imposes an obligation on all professional accountants to be straightforward and honest in professional and business relationships. Integrity also implies fair dealing and truthfulness.

110.2 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.

110.3 A professional accountant will not be considered to be in breach of paragraph 110.2 if the professional accountant provides a modified report in respect of a matter contained in paragraph 110.2.

Section 120 Objectivity

120.1 The principle of objectivity imposes 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.

Objectivity is a state of mind which has regard to all considerations relevant to the task in hand but no other

120.2 A professional accountant may be exposed to situations that may impair objectivity. It is impracticable to define and prescribe all such situations. Relationships that bias or unduly influence the professional judgement of the professional accountant should be avoided.

Section 130: Professional competence and due care

130.1 The principle of professional competence and due care imposes the following obligations on professional accountants:

(a) To maintain professional knowledge and skill at the level required to ensure that clients or employers receive competent professional service; and

(b) To act diligently in accordance with applicable technical and professional standards when providing professional services.

130.3 The maintenance of professional competence requires a continuing awareness and an understanding of relevant technical, professional and business developments. Continuing professional development develops and maintains the capabilities that enable a professional accountant to perform competently within the professional environments.

130.4 Diligence encompasses the responsibility to act in accordance with the requirements of an assignment, carefully, thoroughly and on a timely basis.

130.5 A professional accountant should take steps to ensure that those working under the professional accountant's authority in a professional capacity have appropriate training and supervision.