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IN THE MATTER OF:

THE EXECUTIVE COUNSEL TO THE FINANCIAL REPORTING COUNCIL

-and-

(1) HILLIER HOPKINS LLP

(2) PHILLIP COLLINS

PARTICULARS OF FACT AND ACTS OF MISCONDUCT

I. 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 of 8 December 2014 (“**the Accountancy Scheme**”).
2. This is the Executive Counsel’s Particulars of Fact and Acts of Misconduct (“**the Particulars**”) in respect of the following, together “**the Respondents**”:
3. Hillier Hopkins LLP (“**Hillier Hopkins**”), a member firm of ICAEW and Mr Phillip Collins (“**Mr Collins**”), a member of the ICAEW, as regards their conduct in relation to the audit of the financial statements of a UK registered charity (No. 1129044) known as the Cup Trust (“**the Charity**”) for the years ended 31 March 2010 (“**the 2010 Financial Statements**”) and 31 March 2011 (“**the 2011 Financial Statements**”) (together, “**the Financial Statements**”). Between January and November 2010 the Charity participated in a tax avoidance scheme utilising Gift Aid relief (“**the Scheme**”).
4. Each of the Respondents is a member or member firm of the ICAEW, and consequently are Members or a Member Firm for the purposes of the Accountancy Scheme.

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The Respondents

5. Hillier Hopkins LLP is an accountancy firm with offices in London, Watford, Aylesbury and Milton Keynes. According to its website, the firm provides

“advice and support to individuals and businesses ranging from small family enterprises to large international corporations”.
6. Mr Phillip Collins was the engagement partner responsible for signing the audit opinion in the Financial Statements. He qualified as a chartered accountant in 1983. He is described on Hillier Hopkins’ website as *“primarily an Audit Partner, responsible for a portfolio of corporate, charity and pension scheme clients”.*
7. Hillier Hopkins was appointed as the Charity’s auditor in March 2011 and conducted the audits of the Financial Statements.

The Relevant Standards of Conduct

8. The standards of conduct reasonably to be expected of the Respondents included those set out in the Fundamental Principles and Statements contained in the ICAEW Code of Ethics (“**the Code**”). The Fundamental Principles and Statements in the Code apply to all members and member firms of the ICAEW. A new version of the Code came into force on 1 January 2011, and the extracts set out below are from that version. There is no material difference between these parts and those contained in the prior version, dated September 2006, and the nature of the obligations thereunder.
9. Fundamental Principle (c) set out in paragraph 100.5¹ of the Code provides that:-

“A professional accountant shall comply with the following fundamental principles:

*(c) **Professional Competence and Due Care** – to maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent*

¹ 2006 Code - paragraph 100.4.

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professional services based on current developments in practice, legislation and techniques and act diligently and in accordance with applicable technical and professional standards.”

10. Fundamental Principle (c) is supplemented by guidance in section 130.1, which provides that:-

“The principle of professional competence and due care imposes the following obligations on all 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.”

The Relevant Accounting Standards

11. The Charities (Accounts and Reports) Regulations 2008 required the 2010 and 2011 Financial Statements to be prepared in accordance with the methods and principles set out in the Statement of Recommended Practice for Accounting and Reporting by Charities, issued by the Commission on 4 March 2005 (“**the Charities SORP**”). The Charities SORP includes (at paragraph 3) that:-

“The accounting recommendations of this SORP apply to all charities in the United Kingdom that prepare accounts on the accruals basis to give a true and fair view of a charity’s financial activities and financial position regardless of their size, constitution or complexity.”

And (at paragraph 16), that:-

“In all but exceptional circumstances, charities preparing accruals accounts should follow this SORP’s accounting recommendations to assist in ensuring that their accounts give a true and fair view.”

12. The Charities SORP is based on the application of UK GAAP accounting standards. For both of the Financial Statements, the UK accounting standards comprised Statements of Standard Accounting Practice (“**SSAPs**”) and Financial Reporting Standards (“**FRSs**”).

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The Relevant Auditing Standards

13. In relation to the audit of the 2010 Financial Statements and 2011 Financial Statements (the “**2010 Audit**” and the “**2011 Audit**” respectively), the relevant auditing framework was that of the International Standards on Auditing (UK and Ireland) (“**ISAs**”), issued by the Auditing Practices Board (“**the APB**”). An auditor was also required to comply with the APB’s ethical standards for auditors (re-issued December 2004); and Practice Note 11 ‘The audit of charities in the United Kingdom’ (Revised) issued December 2008 (“**PN11**”, in respect of the 2010 Audit), as further revised in March 2011 (“**PN11 revised**”, in respect of the 2011 Audit).
14. The purpose of ISAs is to establish standards and general principles with which auditors are required to comply in the conduct of any audit. PN11 and PN11 revised, also issued by the APB, provide guidance on the application of ISAs to the audit of charities in the United Kingdom.
15. As to the position of Mr Collins, the Engagement Partner is defined by ISA 220² as “*the partner...responsible for the audit engagement and its performance, and for the auditor’s report that is issued on behalf of the firm.*” The responsibilities of the Engagement Partner include³ that:-

“The engagement partner should take responsibility for the direction, supervision and performance of audit engagement in compliance with professional standards and regulatory and legal requirements, and for the auditor’s report that is issued to be appropriate in the circumstances.”

“Before the auditor’s report is issued, the engagement partner, through review of audit documentation and discussion with the engagement team, should be satisfied that sufficient appropriate audit evidence has been obtained to support the conclusions reached and for the auditor’s report to be issued.”

² The extract cited is from the 2004 version, which was applicable at the time of the 2010 Audit. The 2010 version is in materially identical terms.

³ At paragraphs 38 and 39.

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II. THE RESPONDENTS' MISCONDUCT

16. Paragraph 2(1) of the Accountancy Scheme defines an "Adverse Finding" (inter alia) as a "*finding by a Disciplinary Tribunal that a Member or Member Firm has committed Misconduct.*"
17. "Misconduct" is defined under Paragraph 2(1) of the Scheme 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."
18. As set out in further detail below, the Respondents' conduct fell significantly short of the standards reasonably to be expected of each of them in that they failed to carry out the 2010 and 2011 audits in accordance with the applicable professional and technical standards and provided an unqualified audit opinion on the Financial Statements when they had not been prepared in some respects in accordance with the relevant accounting standards.
19. It should be noted that proof of the allegations against any of the Respondents does not require the Executive Counsel to demonstrate either that participation by the Charity in the Scheme was unlawful, or that the Scheme is not effective as a matter of tax law.

Background to the Allegations

20. The Charity was registered as a UK charity on 7 April 2009 having been established by declaration of trust on 10 March 2009 with the general charitable object of applying its income and capital "*for all and any charitable purposes*". The trustee of the Charity was (and remains) Mountstar (PTC) Limited ("**Mountstar**"), a company incorporated in the BVI on 2 January 2009, which had 3 directors during the relevant period, of which Mr Mehigan was one from 20 January 2009 through to the present.

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21. There was no evidence on the audit file that the Respondents were informed, or were otherwise aware, of the wider connections between Mr Mehigan and his business associate, or of those between that business associate and the other parties involved in the Scheme, or of that associate's involvement in the promotion of the Scheme, and the benefits that flowed to him (Mr Mehigan's business associate) and others as a result.

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THE ALLEGATIONS AGAINST HILLIER HOPKINS AND PHILLIP COLLINS

ALLEGATIONS 1 AND 2

The conduct of Hillier Hopkins and Mr Collins fell significantly short of the standards reasonably to be expected of a Member Firm and a Member respectively, in that, in respect of the audit of the 2010 (Allegation 1) and 2011 (Allegation 2) Financial Statements they signed an unqualified audit opinion that the statements gave a true and fair view in accordance with United Kingdom Generally Accepted Accounting Practice and had been prepared in accordance with the Charities Act 1993 when there was insufficient evidence that the presentation of income and fundraising costs was appropriate and complied with FRS 5. Hillier Hopkins and Mr Collins thereby failed to act diligently and in accordance with applicable technical standards pursuant to Fundamental Principle (c) 'Professional competence and due care' in the ICAEW Code of Ethics.

ALLEGATIONS 3 AND 4

The conduct of Hillier Hopkins and Mr Collins fell significantly short of the standards reasonably to be expected of a Member Firm and a Member respectively, in that, in respect of the audit of the 2010 (Allegation 3) and 2011 (Allegation 4) Financial Statements they signed an unqualified audit opinion that the statements gave a true and fair view in accordance with United Kingdom Generally Accepted Accounting Practice and had been prepared in accordance with the Charities Act 1993 when in fact the disclosure of contingent liabilities did not comply with FRS 12 and paragraph 345 of the Charities SORP such that the Financial Statements did not give a true and fair view and/or were not prepared in accordance with applicable technical standards.

ALLEGATIONS 5 AND 6

The conduct of Hillier Hopkins and Mr Collins fell significantly short of the standards reasonably to be expected of a Member Firm and a Member respectively, in that, in respect

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of the audit of the 2010 (Allegation 5) and 2011 (Allegation 6) Financial Statements they signed an unqualified audit opinion that the statements gave a true and fair view in accordance with United Kingdom Generally Accepted Accounting Practice and had been prepared in accordance with the Charities Act 1993 when in fact they did not comply with FRS 8 and the Charities SORP in relation to the disclosure of related party transactions such that the Financial Statements did not give a true and fair view and/or were not prepared in accordance with applicable technical standards and were, accordingly, misleading. Further, in respect of the 2010 and 2011 audits and related party transactions, Hillier Hopkins and Mr Collins failed to comply with 2004 ISA 500 and PN11 (2010) and 2010 ISA 550 and PN11 revised (2011). Hillier Hopkins and Mr Collins thereby failed to act diligently and in accordance with applicable technical and professional standards pursuant to Fundamental Principle (c) 'Professional competence and due care' in the ICAEW Code of Ethics.