

THE FINANCIAL REPORTING COUNCIL

IN THE MATTER OF

EXECUTIVE COUNSEL TO THE FRC

- and -

WILLIAM ROLLASON

REPORT OF THE DISCIPLINARY TRIBUNAL

INTRODUCTION

1. On 7 June 2013 a Disciplinary Tribunal, appointed under paragraph 7(2) of the Accountancy Scheme (“the Scheme”) of the Financial Reporting Council (“the FRC”), convened to hear an Amended Formal Complaint made by Mr Gareth Rees QC, Executive Counsel to the FRC, against William Rollason, a member of the Institute of Chartered Accountants in England and Wales (“ICAEW”).
2. The members of the Disciplinary Tribunal were Mr David Blunt QC (Chairman), Mr George Bardwell CBE, and Mr Christopher Whittington, MA, FCA. The Secretary to the Tribunal was Ms Mary Timms.
3. At the hearing, Patrick Lawrence QC, and Mr Jonathan Kinnear QC, instructed by solicitors Kingsley Napley LLP, appeared on behalf of the Executive Counsel. Mr Rollason was represented at the hearing by Mr Michael Green QC, instructed by solicitors DAC Beachcroft LLP.
4. The Formal Complaint, alleging misconduct against Mr Rollason, in his capacity as a member of the ICAEW, and against others, also accountants, was issued by the Executive Counsel under paragraph 6(9) of the Scheme, on 19 April 2012.

5. The Formal Complaint was subsequently amended to withdraw some of the allegations of misconduct against Mr Rollason and all of the allegations against the other original respondents.

MISCONDUCT AND CODE OF ETHICS

Meaning of Misconduct

6. An act of “*misconduct*” is defined in paragraph 2 of the Scheme as meaning:-

“any Member’s or Member Firm’s conduct in the course of his or its professional, business or financial activities (including as a partner, member, director or employee in or of any organisation or as an individual), which falls short of the standards reasonably to be expected of a Member or Member Firm.”

Codes of Ethics in force at the relevant date

ICAEW Code of Ethics

7. The ICAEW Ethical Code for 2004/5 provides under Fundamental Principle 1 of Integrity:

“A member should behave with integrity in all professional and business relationships. Integrity implies not merely honesty but fair dealing and truthfulness. A member’s advice and work must be uncorrupted by self-interest and not be influenced by the interests of other parties.”

MR ROLLASON

8. Mr Rollason is and at all material times was a member of the Institute of Chartered Accountants in England and Wales (“ICAEW”). At all material times he was a “Member” for the purposes of the Scheme. He qualified as an accountant with Peat Marwick Accountants in 1986.
9. On 8 January 2003 Mr Rollason was appointed chief executive of Kleeneze plc (“Kleeneze”), subsequently renamed European Home Retail plc (“EHR”).

He was also a director of a number of EHR's subsidiary companies, including Farepak Food and Gifts Limited ("Farepak").

BACKGROUND

Farepak

10. Farepak plc was a company which allowed customers to pay in advance for the provision of hampers and high street vouchers for the Christmas period.
11. The Farepak business was established in the mid-1960s by Robert Johnson. The business grew into a nationwide network of agents who would collect money from customers door to door. By the year 2000, the company's turnover had grown to £107 million.
12. In 1995, Farepak plc purchased Kleeneze Homecare. In 1999 Farepak plc changed its name to Kleeneze plc. The newly named company operated two subsidiary businesses through Farepak and Kleeneze Homecare.
13. An unfortunate acquisition made in 2000 led to a £12.8 million deficit in shareholders' funds as at 28th April 2004, this figure representing the excess of Kleeneze's liabilities over assets.
14. In September 2005, Kleeneze changed its name from Kleeneze plc to European Home Retail plc ("EHR").

The Farepak Trading Cycle

15. Farepak's customers generated substantial positive cash flow from January to October through their weekly payments. By 2005 this was approximately £4 million per month. The cash taken by Farepak represented a liability that would be paid by Farepak in Christmas hampers or, more commonly, vouchers redeemable at high street retailers. The vouchers were principally provided by Choice Gift Vouchers Limited ("Choice").
16. Choice offered payments terms that only required Farepak to pay for the vouchers once they had been redeemed with a high street retailer. This meant

that Farepak paid for the majority of redeemed vouchers in December, January and February. Farepak therefore collected cash throughout the year, generating significant cash balances, with liabilities to be settled in three large payments to Choice in December, January and February. The payment due on 30 January 2006 was £12.1m.

The Group Treasury Function and Banking Facility

17. EHR operated a central treasury function whereby, at the close of business each day, the available cash resources from EHR's subsidiaries were pooled in EHR's bank account held by the Bank of Scotland ("BOS"). This included the funds received from Farepak's customers. These were not held separately. The effect of the pooling was to create an intercompany loan that would be repaid, as and when Farepak needed to pay off liabilities. BOS provided EHR with a secured credit facility.
18. Since 2002 the EHR Group had had a credit facility of £40 million with BOS. This was renewed on 21 December 2005.
19. On 23rd December 2005 the EHR Group Financial Controller emailed Mr Rollason. In relation to "Cash Forecasting" she stated:

"We have currently identified an 8 week period where we may exceed the £40m BOS facility starting at the end of January. The cash forecasting has been refined several times over the last few weeks and the numbers have not shifted significantly. This area requires immediate attention."

20. Mr Rollason and Mr Fowler, the finance director of EHR, attended a meeting with Mr Griffiths of BOS on 20th January 2006 to request an extension to EHR's borrowing facilities. They requested a temporary £5 million extension to the Group's banking facility so that the payment to Choice could be made at the end of the month and for the Group to have sufficient headroom for the next few months. Mr Griffiths left both Mr Rollason and Mr Fowler with the

impression that BOS would grant the extra £5m on the facility in time for the Choice payment to be made.

21. At this time Choice itself was in financial difficulties, since a major debtor, Family Hampers, was also in difficulty. On 25 January 2006 Mr Rollason met with a representative of Choice, which was requesting the early payment of Farepak's February voucher payment because of the financial difficulties which Choice was experiencing. Mr Rollason suggested meeting with Argos, Choice's principal creditor, to see if a deal could be brokered which would ensure Choice's survival. Choice agreed to this, and over the next few days attempts were made to arrange a meeting with Argos.
22. At around 10am on 30th January 2006 Mr Griffiths informed Mr Fowler that the £5m temporary extension could not be made available until they had met with his superior, Mr Winton and that Mr Winton could not meet until 1 February 2006. Mr Griffiths said that they could have a fact finding pre-meeting the next day on 31 January 2006, which they did.
23. As a consequence, on 30th January 2006 EHR was unable, and failed, to pay back Farepak £12.1 million from the intercompany loan between the two companies . As a result, Farepak was unable to pay Choice. On 31st January 2006, Mr Rollason endeavoured to arrange a meeting with Choice and Argos for the following day, but instead Choice entered administration. On the same date Farepak made a payment of £6.5 million to Choice's administrator, leaving £5.6m outstanding.
24. On 1st February Mr Rollason and Mr Fowler met with Mr Griffiths and Mr Winton of BOS. It was by this time known that Choice had entered administration. An extension of £1.2 million of EHR's borrowing facilities was agreed. As a result of the administration of Choice Mr Rollason and Mr Fowler did not ask for the full £5m extension. However, Mr Winton indicated that if they were unable to reach agreement with Choice's administrators on 6 February (a meeting had already been arranged), and needed the full £5m extension, he would be prepared to recommend it to his credit committee.

25. At 01.30am on 2nd February 2006 Mr Rollason sent an email to Mr Fowler entitled “Memo to the Board”. Attached were a draft of a memorandum on the subject “*Update on Bank Facilities and Family Hampers/Choice Voucher*” and a weekly cashflow forecast for the next 20 weeks.
26. At 14.51 on 2nd February 2006 Mr Rollason faxed or emailed a further and final version of the 2nd February 2006 memorandum to the members of the EHR Board and copied it to Mr Fowler. Attached to the memorandum was an amended version of the 20 week cashflow forecast.
27. On 6 February 2006, Mr Rollason and Mr Fowler met with Choice’s administrators to discuss payment terms of the outstanding amounts due from Farepak. It was agreed that payment did not need to be made immediately and that a proposal would be made shortly. Subsequently, agreement was reached with the administrators as to payment terms, and Farepak paid all the sums due to Choice in accordance with that agreement.
28. Mr Rollason, in his role as Chief Executive of EHR and as part of the accounts process, signed a letter, dated 7th February 2006, addressed to Farepak. The letter was written to support the Financial Statements of Farepak for the period ending 28th April 2005, which were due to be, and were, signed shortly thereafter on the going concern basis. The letter stated:
- “The Directors of European Home Retail plc (formerly Kleeneze plc) have confirmed that it will continue to support Farepak Food and Gifts Limited to enable it to meet its liabilities as they fall due and accordingly, the going concern basis can be adopted for the financial statements.”*
29. Mr Rollason knew that this letter would be provided to and considered by the auditors, Ernst and Young (“&Y”), as part of their audit of the Farepak Financial statements.

30. The Farepak Financial Statements, for the year ended 28th April 2005, were signed by Mr Rollason and Farepak's Finance Director on 8th February 2006.
31. On 13th February 2006 E&Y signed an unqualified audit report.
32. Farepak and EHR continued in business for some months, but both entered administration on 13 October 2006.

THE AMENDED COMPLAINT

33. The allegations against Mr Rollason in the Amended Formal Complaint, following amendment on 30 January 2013, were in the following terms:-

“WILLIAM ROLLASON

51. *Mr Rollason breached the Fundamental Principle of Integrity of the ICAEW Guide to Professional Ethics and committed acts of misconduct in the respects set out below.*

Allegation 1: Memorandum to EHR Board dated 2nd February 2006

52. *On or around 2nd February 2006 Mr Rollason drafted and distributed to his fellow directors of EHR, a memorandum which he knew was misleading and did not reflect the financial position of EHR on 2nd February 2006 in that it:*

- (a) *failed to include the fact that EHR was unable and had failed to pay the intercompany debt owed to its subsidiary Farepak when requested to do so on 30th January 2006; and/or*
- (b) *failed to include the fact that Farepak was unable and had failed to pay Choice £12.1 million on 30th January 2006; and/or*
- (c) *failed to include the fact that Farepak had attempted to make the payment of £12.1million on 30th January 2006*

but had been unable to execute the transaction through a lack of funds; and/or

(d) failed to include the fact that BoS had refused to increase EHR's borrowing facilities on 30th January 2006 in order to allow EHR to provide funds to Farepak to make the payment of £12.1 million to Choice; and/or

(e) falsely stated that the reason why Farepak had not paid Choice £5.6 million was, "to force them to negotiate with the retailers to guarantee a longer term solution to the Family problem".

53. *In drafting this memorandum and distributing it to the EHR board, Mr Rollason's conduct:*

a. fell below the professional standard expected of him and was contrary to the Fundamental Principle of Integrity of the ICAEW Guide to Professional Ethics that Members should behave with integrity in all professional and business relationships; and/or

b. was dishonest.

Allegation 2: The letter of support from EHR to Farepak dated 7th February 2006

54. *Mr Rollason signed a letter on 7th February 2006 on behalf of EHR to Farepak stating that: "it [EHR] will continue to support Farepak Food and Gifts Limited to enable it to meet its liabilities as they fall due". Mr Rollason knew that this letter was misleading in that it failed to acknowledge:*

- a. *the fact that EHR had failed to provide support to Farepak in relation to the payment of £12.1 million to Choice on 30th January 2006; and/or*
- b. *the fact that Farepak had an outstanding debt to Choice's administrator of £5.6 million as at 8th February 2006, which EHR was unable to support Farepak in paying.*

55. *In doing so, Mr Rollason's conduct:*

- a. *fell below the professional standard expected to him and was contrary to the Fundamental Principle of Integrity of the ICAEW Guide to Professional Ethics that Members should behave with integrity in all professional and business relationships; and/or*
- b. *was dishonest.*

Allegation 3: The Financial Statements of Farepak for the period ended 28th April 2005

56. *The Financial Statements for the period ended 28th April 2005 for Farepak were signed by Mr Rollason and Mr Hicks on 8th February 2006. The financial statements were misleading in that they stated, at page 10 under Note 1, that "European Home Retail plc. (formerly Kleeneze plc.) has confirmed that it will continue to support the Company to enable it to meet its liabilities as they fall due and accordingly the going concern basis has been adopted for the financial statements".*

Mr Rollason knew this to be misleading in that:

- a. *EHR had failed to provide support to Farepak in relation to the payment of £12.1 million to Choice on 30th January 2006; and/or*

b. *Farepak had an outstanding debt to the administrators of Choice of £5.6 million as at 8th February 2006 which EHR was unable to support Farepak in paying.*

57. *In signing the Financial Statements, Mr Rollason's conduct:*

a. *fell below the professional standard expected of him and was contrary to the Fundamental Principle of Integrity of the ICAEW Guide to Professional Ethics that members should behave with integrity in all professional and business relationships; and/or*

b. *was dishonest.*

58. *Each allegation that Mr Rollason knew that a statement or document was misleading is to be understood as an allegation that he knew that the statement/document was misleading, alternatively that he was reckless as to whether the statement/document was misleading in the sense that he did not care whether it was liable to mislead."*

MR ROLLASON'S DEFENCE

34. In his Defence, dated 16 November 2012, Mr Rollason emphatically denied any breach of the Fundamental Principle of integrity or the acts of misconduct as alleged against him, and further denied that he had acted dishonestly, recklessly, or with any lack of integrity in the respects alleged or at all.

35. More particularly Mr Rollason:-

(1) In relation to Allegation 1, denied that the memorandum sent to the Board of EHR on 2 February 2006 was misleading; he asserted that that memo had been redrafted to meet the Chairman's request to focus on the way forward;

- (2) In relation to Allegation 2, asserted that the letter of support dated 7 February 2006 was both accurate and true;
- (3) In relation to Allegation 3, contended that the Note in the accounts was accurate and not misleading because EHR had confirmed that it would continue to support Farepak by its letter dated 7 February 2006.

SETTLEMENT

36. At the commencement of the hearing on 7 June 2013 the parties requested the Tribunal to consider the terms of a settlement agreement made between them.

37. By the agreement

- (1) the Executive Counsel absolved Mr Rollason from any charge of dishonesty;
- (2) it was recorded that the Executive Counsel had decided not to pursue Allegation 3 of the Amended Formal Complaint;
- (3) Mr Rollason admitted misconduct in respects set out within redrafted terms of Allegations 1 and 2.
- (4) whilst recognizing that the final determination of the appropriate sanctions and questions as to costs are a matter for the Tribunal, the parties set out the range of outcomes which they considered to be applicable in the circumstances of the case, recording:-

3. *The parties agree that the appropriate range of sanctions are:-*

- a. *Reprimand or Severe Reprimand;*
- b. *Fine - up to a maximum of £50,000.*

4. *The Executive Counsel makes an application for costs in the sum of £50,000.*

5. *The total of any fine and costs should not exceed £100,000.*

38. The terms of the redrafted allegations were as follows:-

Allegation 1

On 2 February 2006 Mr Rollason drafted and distributed to his fellow directors of European Home Retail plc (“EHR”) a memorandum which could mislead in that it:

- (a) failed to state that EHR was unable and had failed to pay the intercompany debt owed to its subsidiary Farepak Food and Gifts Limited (“Farepak”) when requested to do so on 30th January 2006; and*
- (b) failed to state that Farepak was unable and had failed to pay Choice Gift Vouchers Limited (“Choice”) the full amount of £12.1 million on 30th January 2006; and*
- (c) failed to state that Bank of Scotland (“BoS”) had not authorised an increase in EHR’s borrowing facilities on 30th January 2006 in order to allow EHR to provide funds to Farepak sufficient to make payment in full of £12.1 million to Choice; and*
- (d) stated that the only reason why Farepak had not paid Choice £5.6 million of the £12.1 million was, “to force them to negotiate with the retailers to guarantee a longer term solution to the Family problem”.*

For these reasons, the memorandum omitted and obscured information in circumstances where such omission and obscurity could mislead.

Mr Rollason did not act dishonestly in drafting and distributing the memorandum. However, by preparing a document which could mislead he acted recklessly in a way that was contrary to the Fundamental Principle of Integrity (as set out in the ICAEW Guide to Professional Ethics). He thereby fell below the professional standard to be expected of him as a Member of the ICAEW.

Allegation 2

On 7 February 2006 Mr Rollason signed a standard form letter on behalf of EHR to Farepak stating that: "it [EHR] will continue to support Farepak Food and Gifts Limited to enable it to meet its liabilities as they fall due" in the knowledge that the letter would be relied on by Farepak's auditors in connection with Farepak's financial statements for 2004-05. This letter could mislead in that it failed to acknowledge that EHR had failed to provide support to Farepak in relation to the payment of the full amount of £12.1 million to Choice on 30th January 2006. Mr Rollason had no reason to suppose that Farepak's auditors were aware of that fact.

Mr Rollason did not act dishonestly in signing the standard form letter. However, by signing it, he acted recklessly in a way that was contrary to the Fundamental Principle of Integrity (as set out in the ICAEW Guide to Professional Ethics). He thereby fell below the professional standard to be expected of him as a member of the ICAEW.

39. The Tribunal, which had had the opportunity of reviewing the critical material, including the witness statements and contemporaneous documents included in the voluminous bundles prepared for the hearing, was of the view that the terms were entirely appropriate, satisfactory, and acceptable.
40. An Adverse Finding by the Tribunal being the inevitable consequence of the admissions of misconduct, the Tribunal, at the request of the parties, adjourned

the hearing until the 11th June 2013 to enable Mr Rollason's mitigation to be prepared.

SANCTIONS

Guidance

41. In February 2013 the Conduct Committee of the FRC issued an advisory document, entitled "Sanctions Guidance" ("the Guidance") providing guidance for members of the FRC's Disciplinary and Appeal Tribunals when considering the imposition of sanctions under paragraph 7(7) of the Scheme.

42. The Guidance confirms that:-
 - (1) Sanctions are imposed to achieve a number of objectives, namely:
 - to deter members of the accountancy profession from committing 'Misconduct';
 - 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;
 - to maintain and promote public and market confidence in the accountancy profession and the quality of corporate reporting; and
 - to declare and uphold proper standards of conduct amongst Members and member Firms; and that

 - (2) The primary purpose of imposing sanctions for acts of Misconduct is not to punish, but to protect the public and the wider public interest.

43. In the Guidance it is suggested that the normal approach to determining the sanction to be imposed in a particular case should be to:

- i. Assess the nature and seriousness of the Misconduct found by the Tribunal;
- ii. Identify the sanction or combination of sanctions that the Tribunal considers potentially appropriate having regard to the Misconduct identified in i above;
- iii. Consider any relevant aggravating or mitigating circumstances and how those circumstances affect the level of sanction under consideration;
- iv. Consider any further adjustment necessary to achieve the appropriate deterrent effect;
- v. Consider whether a discount for admissions or settlement is appropriate;
- vi. Decide which sanction(s) to order and the level/duration of the sanction(s) where appropriate; and
- vii. Give an explanation at each of the six stages above, sufficient to enable the parties and the public to understand the Tribunal's conclusions.

The Misconduct

44. The acts admitted are serious acts of misconduct:-

- (1) The memorandum sent to the EHR Board on 2 February 2006, unlike the draft prepared earlier on that day (which, of course, the EHR Board never saw) obscured the gravity of the cash crisis affecting Farepak and EHR. It involved a failure to report to the Board, fairly and squarely, the relevant facts relating to the cash flow crisis, and the company's inability to pay the Choice debt in full. Effective corporate governance requires that members in business should act with

complete integrity when providing information to boards of directors, which will include non-executive directors who will trust Members such as Mr Rollason to keep them properly informed.

(2) The letter of support which Mr Rollason signed on 7 February 2006 involved a making of a potentially misleading representation to the company's auditors. Reliable financial reporting requires that Members in business should act with complete integrity when making representations in the knowledge that they will be relied upon by auditors.

(3) Mr Rollason held a senior position in the EHR Group and the acts of misconduct, for which he was solely responsible:-

- were capable of undermining confidence in the standards of conduct of Members generally, and in particular in connection with financial reporting and corporate governance;
- involved a failure to act with integrity;
- though not intentional, were reckless.

(4) were in breach of standards of great importance.

45. However, the Tribunal was and is satisfied that Mr Rollason, when he acted as he did, did not do so for the purposes of deriving any financial benefit for himself, and nor did he derive any such benefit:

- The demise of the EHR Group was investigated by the Department of Trade and Industry (as it was known in 2006), and on 26 January 2011, the Secretary of State commenced proceedings under Section 8 of the Company Directors Disqualification Act 1986 ("CDDA") against nine

Defendants who were directors of EHR and/or Farepak. These included Mr Rollason.

- The trial of the CDDA proceedings began in the Companies Court on 24 May 2012 before Mr Justice Peter Smith (“the Judge”). The Secretary of State’s witnesses were cross-examined. After the conclusion of the Secretary of State’s evidence, the claim was discontinued and the Secretary of State agreed to pay the Defendants’ costs on an indemnity basis.
 - On the following day, 21 June 2012, the Judge took the unusual step of delivering a statement in open court, reviewing the reasons for the collapse of the case and setting out his view as to why EHR and Farepak had collapsed. In the course of that statement he said that as far as he could see Mr Rollason and his co-directors “... *did everything possible to save the group*”.
46. Furthermore, having heard the submissions of both parties and having considered the matter carefully, the Tribunal was satisfied that the misconduct which Mr Rollason admitted to (as set out above) did not in any way contribute to the demise of either Farepak or EHR. Executive Counsel for the FRC did not suggest otherwise. Hence, this misconduct did not in fact have an adverse effect on those companies.

Range of Sanctions

47. Mr Rollason’s misconduct was, however, an isolated event, and there being no reason to suppose that such a lapse of standards is likely to be repeated, the Tribunal was of the view that a Reprimand or a Severe Reprimand together with appropriate financial impositions would be of an adequate deterrent effect.
48. Before reaching its final conclusion the Tribunal took into account:-

- Mr Rollason's hitherto unblemished record;
- The fact that his misconduct occurred during a period of significant stress and against a background of fast-moving events;
- The fact that he had entered into the settlement accepting the revised allegations, and had apologised for his misconduct;
- The fact that the CDDA proceedings and the present proceedings will necessarily have resulted in his experiencing considerable anxiety and distress over several years;
- His current financial circumstances;
- The fact that the sanctions imposed would have the potential to affect his future earning capacity.

49. It was submitted on behalf of Mr Rollason that effectively he had no alternative but to contest these proceedings so long as Executive Counsel persisted in alleging that he had acted dishonestly, and that accordingly he was not to be criticized for the lateness of his admissions. The Tribunal was not impressed by this submission, and would have given Mr Rollason significantly greater credit if he had at an earlier stage admitted the misconduct which he has now admitted.

50. So far as his financial position is concerned, the Tribunal was satisfied that because of his financial obligations to his former wife and in respect of his children he would have difficulty in paying any financial impositions out of his current income, but concluded that he has not inconsiderable capital assets in the form of real property which, notwithstanding the current economic climate, should be capable of being marketed successfully over time.

Conclusion

51. The Tribunal concluded that the case merited a Severe Reprimand and a fine of £15,000, together with an order for costs.


Finding and Order

52. For the reasons given above, therefore the Tribunal:-

- (1) pursuant to paragraph 7(6) of the Scheme, made an Adverse Finding against Mr Rollason in respect of his admitted misconduct; and
- (2) ordered that he
 - i. be administered a Severe Reprimand; and
 - ii. pay a fine of £15,000;
 - iii. pay £50,000 towards the Executive Counsel's costs.

Unanimity

53. This report records the unanimous agreement of the Tribunal on its findings, conclusions, and orders.


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David Blunt QC (Chairman)

Dated the 3rd day of July 2013.