THE FACTS SET OUT IN THIS DOCUMENT HAVE BEEN AGREED BETWEEN EXECUTIVE COUNSEL AND THE RESPONDENT. NO FINDINGS HAVE BEEN MADE, NOR SHOULD BE TAKEN TO HAVE BEEN MADE, AGAINST ANY OTHER PERSONS.

IN THE MATTER OF:

THE EXECUTIVE COUNSEL TO THE FINANCIAL REPORTING COUNCIL

- and -

PHILIP JOHN JAMES

PARTICULARS OF FACT AND ACTS OF MISCONDUCT

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 "**Scheme**").

2. This is the Executive Counsel's Particulars of Fact and Acts of Misconduct ("**the Particulars**") in relation to the preparation and approval of the financial statements of Tech Data Limited ("**Tech Data**")[1] for the financial years ended 31 January 2012 ("**FY12**") and 31 January 2013 ("**FY13**").

Mr James

3. The Respondent to the Particulars is Mr Philip James ("Mr James"), the former Finance Director of Tech Data Limited ("Tech Data") and a member of the ACCA[2]. By virtue of his membership of ACCA, Mr James is also a Member for the purpose of the Scheme.

4. Mr James was the Finance Director of Tech Data from 19 January 2007 until he resigned on 20 March 2013. He was a statutory director and member of the Tech

[1] Until 4 October 2013, Tech Data was named Computer 2000 Distribution Limited. References to Tech Data also include any predecessor company.

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

Data board during this period. Mr James had been admitted to membership of the ACCA in 1996. As Finance Director, Mr James was responsible for the oversight of the preparation of the figures on which the draft financial statements of Tech Data would be based. Mr James was head of a department which included other experienced professional accountants, including KS who was Financial Management Controller and reported directly to Mr James. Further, Mr James, along with the other directors of Tech Data, was ultimately responsible for the preparation and approval of the financial statements of Tech Data in accordance with the applicable laws and regulations and was not to approve the financial statements unless they were collectively satisfied that they gave a true and fair view of the assets, liabilities, financial position and profit or loss of Tech Data for that period.

THE RELEVANT STANDARDS & NATURE OF MISCONDUCT

The relevant standards of conduct

5. The standards of conduct reasonably to be expected of Members included those set out in the Fundamental Principles and Statements contained in the Code of Ethics (the "**Code**"), as applicable at the material time, issued by the relevant professional body, namely by the ACCA. The Fundamental Principles and Statements contained in the Code are made in the public interest and they are designed to maintain a high standard of efficiency and professional conduct by all members of the ACCA.

6. Executive Counsel refers to and relies upon those Fundamental Principles and Statements, as well as the Statement of Principles, as extracted and annexed to the Particulars at Annex A.

7. In particular, at all material times, the Fundamental Principles in each of the Codes required Mr James to act with '*integrity*', which required him to be straightforward and honest in all professional and business relationships and to:

   "*not knowingly be associated with reports, returns, communications or other information where the professional accountant believes 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."

11. The Fundamental Principles and the accompanying Conceptual Frameworks contained in Part A of the Codes are supplemented by Part B of the Codes in relation to professional accountants in public practice and Part C of the Codes in relation to professional accountants in business.

12. Paragraph 320.1 of Part C of the Codes requires that:
"A professional accountant in business shall prepare or present [financial or management] *information fairly, honestly and in accordance with relevant professional standards so that the information will be understood in its context."*

13. The standards of conduct reasonably to be expected of professional accountants also include the Statement of Principles (the "**Statement of Principles**" and "**SoPs**") issued by the Accounting Standards Board, which sets out the principles which should underlie the preparation and presentation of general purpose financial statements.

14. The Statement of Principles sets out, inter alia, *"*[i]*nformation provided by financial statements needs to be reliable"* (SoPs 3.7 and 3.8) and *"*[f]*inancial statements need to reflect, in an appropriate manner and as far as is practicable, the effects of transactions and other events on the reporting entity's financial performance and financial position."*

The relevant accounting standards

15. For FY12 and FY13, Tech Data prepared its financial statements under UK Generally Accepted Accounting Practice ("**GAAP**"). GAAP refers to the standard framework for financial accounting used in any given jurisdiction. UK GAAP comprises applicable UK law and UK Accounting Standards as issued by the FRC. Tech Data's interim financial information, compiled for its parent company, was prepared under US GAAP.

The Respondent's Misconduct

16. Paragraph 2(1) of the Scheme defines "Misconduct" 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."

17. As set out more particularly below, the admitted Acts of Misconduct relate to Mr James' conduct, in that it fell significantly short of the standards reasonably to be expected of a Member in the following respects:

a. Mr James did not act in a straightforward or honest manner and/or prepared, or allowed to be prepared, financial information for the purpose of the financial statements for Tech Data that he knew to be false and/or misleading in relation to:

(i) the use of a balance sheet general ledger ("**GL**") account bearing the name "*Other liabilities/Supplier rebates*" (account 35075000) (the "**Other Liabilities Account**");

(ii) the use of a balance sheet GL account (account 29138000) (the **"DSA Account**");

(iii) credit received from a supplier, HTC;

(iv) the balance and ageing of a debt owed by a customer, Shop Direct;

b. further, Mr James authorised the recording of details of a refund made by Tech Data to Tesco plc ("**Tesco**") which details he knew to be false.

BACKGROUND

The Tech Data Group

18. Tech Data is a wholly owned subsidiary of Tech Data Corporation ("**Tech Data Corp**"), which is one of the world's largest wholesale distributors of technology products and services. Tech Data Corp is headquartered in Clearwater, Florida, USA. It was ranked 108 in the 2016 Fortune 500 listing of US companies and 409 in the Fortune Global 500 and its group employs approximately 9,000 people. For the year ended 31 January 2016, Tech Data Corp had:

   a. total net sales of US$26.4bn;

   b. net income of US$266m; and

   c. total assets of US$6,358m.

19. Within the wider Tech Data group, Tech Data carries on business as a trade-only distributor to the computer and mobile communications industry operating through a number of product divisions. Customers are exclusively dealers and value added resellers in the UK and Ireland.

Restatement of Financial Statements

20. On 21 March 2013, Tech Data Corp announced that it would be restating some or all of its quarterly and audited financial statements for FY11 and FY12 and some or all of the quarters of FY13. Tech Data Corp stated that it anticipated that the restatement would be made to correct improprieties primarily related to how Tech Data reflected vendor accounting.

21. On 5 February 2014, Tech Data Corp reported a restatement in its FY13 group financial report. The restatements resulted in a cumulative reduction in consolidated net income of US$61 million for FY09 to FY13 inclusive.

22. At the same time as the restatements were published, a press release was issued by Tech Data Corp confirming that an independent investigation had identified the following weaknesses in internal control over financial reporting:

a. inadequate control environment in the primary operating subsidiary in the UK (i.e. Tech Data) and two other European subsidiaries;

b. inadequate controls over manual journal entries in Europe and in two Latin American countries;

c. inadequate account reconciliation procedures in Europe over certain aspects of vendor accounting; and

d. inadequate anti-fraud programme controls and monitoring.

23. The restatements included adjustments relating to the inadequate control environment set out at paragraph 22a. above which were necessary primarily to correct errors arising as a result of the following:

a. improper accounting for transactions with the Company's product suppliers, including the recognition of vendor incentives, product discounts/price variances, promotions and other vendor credits. These errors primarily affected inventory, accounts payable and cost of goods sold;

b. improper manual journal entries and the override of key balance sheet reconciliation controls by local management. These errors affected multiple accounts within the Company's balance sheet and income statement;

c. improper recognition of net foreign currency exchange losses, which resulted in an overstatement of cost of goods sold during the three fiscal years ended January 31, 2013. Multiple accounts on the balance sheet were affected during this period;

d. improper accounting for accounts receivable, including improper cash application and recording of value added taxes. These errors primarily affected accounts receivable, accrued expenses and net sales;

e. improper cut-off of certain inventory transactions at period end, which resulted in a net understatement of inventory and understatement of accounts payable or cost of goods sold;

f. improper cut-off of certain cash receipts at period end, which resulted in an overstatement of cash and understatement of accounts receivable.

24. On 30 June 2014, Tech Data signed its financial statements in the UK for FY13 containing significant restatements to the financial statements for FY12. The directors' report in the financial statements for FY13 stated:

"*The preparation of this report and financial statements was delayed pending the completion of an internal investigation of the Company's accounting practices. This investigation was initiated after significant accounting irregularities were identified in March 2013. The Company has engaged substantial internal and external resources to perform supplemental procedures to assist in reviewing its financial statements and accounting practices.*

The Company has restated its financial statements to correct improper accounting. There were a number of instances where there was improper timing of recognition in the profit and loss account of certain vendor incentives, product discounts, price variances, promotions and other vendor credits. There were also errors related to accounting for accounts receivable, manual journal entries, cash cut-off, certain inventory transactions, improper recognition of foreign exchange gains and losses and certain other errors."

25. In respect of Tech Data, the restatement resulted in:

a. a decrease of £8,701,000 in the profit before tax (and £5,931,000 in the profit after tax) for FY12;

b. a reduction in net assets of £21,961,000, meaning that £16,030,000 of the cumulative net asset restatement related to accounting periods prior to FY12.

26. The main captions before and after the restatement were as follows:

Profit and loss account	FY12 before restatement	Restatement	FY12 after restatement
Sales	1,431	(3)	1,428
Cost of sales	(1,352)	(2)	(1,354)
Gross profit	79	(5)	74
Operating costs	65	(4)	(69)
Tax and interest	(5)	3	(2)
Retained profit	9	(6)	3

Balance sheet	FY12 before restatement	Restatement	FY12 after restatement
Intangible assets	7	-	7
Tangible assets and investments	2	-	2
Stock	72	(8)	64
Debtors	191	(5)	186
Cash	66	(8)	58
Creditors and provisions	(252)	(1)	(253)
Share capital and share premium	(10)	-	(10)
Profit and loss account	(76)	22	(54)

27. Note 23 to Tech Data's FY13 financial statements included the following narrative explanations to support the main adjustments summarised in the table in paragraph 26 above:

a. Turnover adjustments primarily reflected the impact of appropriately presenting sales of vendor warranty services on an agency basis.

b. Cost of sales adjustments primarily reflected the impact of correcting vendor accounting errors such as the incorrect recording of rebates, discounts, price variances and other credits, and the presentation of sales of vendor warranty services on an agency basis.

c. Operating costs adjustments consisted of various errors including the incorrect recording of bad debts and payroll costs.

d. Stock included adjustments to amend the value for estimated sales returns, correct the impact of various cut-off errors, correct goods in transit accounting and various other errors.

e. Debtors had been adjusted primarily to reduce the balance for cash at bank cut-off errors and to adjust for irrecoverable balances.

f. Cash at bank and in hand included adjustments to reduce cash to correct bank reconciliation cut-off errors that incorrectly recognised cash in transit from customers.

28. Tech Data's auditors in respect of both FY12 and FY13 were Ernst & Young LLP ("**EY**").

THE ADMITTED ACTS OF MISCONDUCT

ACTS 1 – 4: USE OF THE OTHER LIABILITIES ACCOUNT

29. The Other Liabilities Account was a GL account which was designed to be used to record liabilities. It formed part of the caption "*accounts payable*" in Tech Data's financial statements which, in turn, was a component of "*current liabilities*". During FY13, a number of inappropriate entries were included in the Other Liabilities Account. These entries were as follows:

    a. the transfer of an irrecoverable debt of £900,528.97 due from a supplier named Philips (the "**Philips debt**") (see Act 1 below);

    b. the transfer of a credit of £535,495 that arose from purchase discounts but which was accounted for separately from inventory (the "**ZBUP Credit**") (see Act 2 below);

    c. the transfer of a credit of £861,568.19 relating to VAT liability on a construction project in respect of Tech Data's distribution centre in the Midlands known as Magna Park (see Act 3 below).

30. Further, a falsified breakdown of the balance on the Other Liabilities Account which was then sent to Tech Data's auditors, EY, with the agreement and/or approval of Mr James (see Act 4 below).

ACT 1

In relation to the preparation of Tech Data's financial statements for FY13, the conduct of Mr James fell significantly short of the standards reasonably to be expected of a Member in that Mr James procured and/or agreed to or approved the transfer of the Philips debt to the Other Liabilities Account with the intention of obscuring the existence of losses and inflating reported income within the financial statements and thereby Mr James failed to act in accordance with the Fundamental Principle of Integrity contained in the Code and/or section 320 of Part C of the Code and/or SoPs 3.8, 4.1, 4.33, 4.34, 5.25. 5.26(b), 7.11 and 7.13.

Particulars of Act 1

31. In September 2012, Tech Data arranged with Philips to settle all outstanding payments under a business model that had ceased being used in February 2011.

    a. On 26 September 2012, the exposure in Tech Data's accounting records across all Philips trade payables, trade receivables and vendor receivables was calculated by Tech Data at a net debit (receivable) value of £508k.

    b. However, on 28 September 2012, Mr James agreed to settle all outstanding Philips balances for a net payment to Philips from Tech Data of £30k.

    c. Accordingly, this would have entailed a write off of £538k for Tech Data.

32. In October 2012, it became clear that there was a further exposure to Philips of £401k in respect of "*management fee invoices*". Mr James was informed of this by email on 23 October 2012. In his response later that day, Mr James asked,

    "…*does this mean that we are writing off £400k? This is not what you guys told me before I agreed to it, I understood that it is all net off. I think you need to run through with Kevin* [Silverwood] *when he is back to ensure that we know the accounting entries, then I can manage how*".

33. This discovery meant that the exposure to Philips was not in fact £508k (as had previously been thought) but instead was in excess of £900k. Mr James was clearly unhappy with this increased exposure and in emails sent on 6 November 2012, Mr James stated that, "*I have just been through the numbers with Kevin and it appears*

that the management fees for Philips are a write off…", "*£500k is bad enough, £900k is a completely different ball game*". Mr James sought a "*proposal on how we manage it through so it's not just left to me and Kevin to sort out*".

34. On 6 December 2012, KS emailed the Senior Management Accountant in Tech Data stating:

"*Can you move the following balances to 11009900, to sit with the other Philips flip please:*

Dr 11009900 £401,343.60
Cr 35075000 £401,343.60"

35. On 31 January 2013, KS emailed Mr James requesting a meeting and stated:

"*In short, we have now settled with Philips on this (which resulted in a £30k payment to them), and we currently have around £900k on our balance sheet, following the clear down on outstanding management fee amounts. I need to understand what we have to mitigate this balance for year end purposes*."

36. On 6 February 2013, KS emailed the Senior Management Accountant in Tech Data requesting that £900k relating to Philips be moved from account 11009000[3] (SAP-Trade Receivables Domestic > One) to the Other Liabilities Account. In light of the events set out in paragraphs 31 to 35 above, it should be inferred that the instruction was given with the express or implied agreement or approval of Mr James.

37. There was no accounting justification for transferring the Philips debt to the Other Liabilities Account. As an experienced professional accountant, Mr James would have known that there was no justification for doing so but nonetheless proceeded as set out above. The Philips debt should instead have been written off in full and included within the profit and loss account which Mr James, as an experienced professional accountant, would have known. It should be inferred that, by acting as he did, Mr James intended to obscure the visibility of the Philips debt balance, to

[3] It is not clear whether the use of GL account 11009900, and then 11009000, was a mistake or intentional. However, they form part of the same caption ("*trade receivables*") on the balance sheet.

avoid the need to consider its recoverability and make provision for the debt and by failing to do so thereby inflate reported income.

38. In light of the matters set out in paragraphs 31 to 37 above, Mr James' conduct in relation to the transfer of the Philips debt to the Other Liabilities Account:

a. breached the Fundamental Principle of Integrity in that he did not act in a straightforward or honest manner and/or was knowingly associated with information which he knew contained materially false or misleading statements and omitted and obscured information in a way that was misleading (contrary to ACCA 100.5(a), 110.1 and 110.2);

b. failed to present information fairly, honestly and in accordance with the relevant professional standards (contrary to ACCA 320.1 and 320.4A);

c. was contrary to the following SoPs:

(i) SoP 3.8 because he was associated with information that did not represent faithfully what it either purported to represent or could reasonably be expected to represent and was not free from material error, and therefore was not reliable;

(ii) SoP 4.1. because his conduct led to items being inaccurately classified within Tech Data's financial statements;

(iii) SoPs 4.33, 4.34. 7.11 and 7.13 because his conduct inappropriately offset assets and liabilities and gains and losses; and

(iv) SoP 5.25 and 5.26(b) because his conduct failed to recognise a loss and that an asset no longer existed.

<u>ACT 2</u>

In relation to the preparation of Tech Data's financial statements for FY13, the conduct of Mr James fell significantly short of the standards reasonably to be expected of a Member in that Mr James procured and/or agreed to or approved the transfer of the ZBUP Credit to the Other Liabilities Account with the intention of obscuring and partly offsetting the Philips debt within the financial statements and thereby Mr James failed to act in accordance with the Fundamental Principle of Integrity contained in the Code and/or section 320 of Part C of the Code and/or SoPs 3.8, 4.1, 4.33, 4.34, 7.11 and 7.13.

Particulars of Act 2

39. On 6 February 2013 (i.e. the same day that KS sent the email in relation to the Philips debt, as described in paragraph 36 above), KS also emailed a Management Accountant in Tech Data stating:

"*I need to utilise some of the TDM ZBUP – please can you move 535,495 from 10406 to the 35075000 account*".

40. "ZBUP" credits reflected advantageous purchase prices, where the discount was accounted for in a separate GL account. The discount was held separately to avoid affecting the book price of the stock and cost of sales, mainly as an incentive to the sales force to maintain the previous margins.

41. Despite the instruction for the transfer being given on 6 February 2013, the transfer was in fact backdated to 31 January 2013 (i.e. the last day of Tech Data's financial year). This was done on the basis that the transfer would then be reversed following Tech Data's year end, and the transfer was indeed then reversed later in February 2013.

42. In interview with the FRC, Mr James described the ZBUP Credit as "*good news that would offset that £900,000*". Given Mr James' willingness to offset so-called "*bad news*" (i.e. the Philips debt) with "*good news*" (i.e. the ZBUP Credit), his involvement with the transfer of the Philips debt as described above and his position as Finance Director of Tech Data, it should be inferred that KS's instructions to others within the Tech Data finance team (as described in paragraph 39 and 41 above) were given with the express or implied agreement or approval of Mr James.

43. There was no accounting justification for the transfer of the ZBUP credit into the Other Liabilities Account and the backdating and then reversal of the transfer. As an experienced professional accountant, Mr James would have known that there was no justification for doing so but nonetheless proceeded as set out above. It should be inferred that, by acting as he did, Mr James intended to obscure and partly offset the Philips debt by this transfer. In addition, the transfer of the ZBUP Credit to the Other Liabilities Account led to the valuation of stock being overstated.

44. In light of the matters set out in paragraphs 39 to 43 above, Mr James' conduct in relation to the transfer of the ZBUP Credit to the Other Liabilities Account:

a. breached the Fundamental Principle of Integrity in that he did not act in a straightforward or honest manner and/or was knowingly associated with information which he knew contained materially false or misleading statements and omitted and obscured information in way that was misleading (contrary to ACCA 100.5(a), 110.1 and 110.2);

b. failed to present information fairly, honestly and in accordance with the relevant professional standards (contrary to ACCA 320.1 and 320.4A);

c. was contrary to the following SoPs:

(i) SoP 3.8 because he was associated with information that did not represent faithfully what it either purported to represent or could reasonably be expected to represent and was not free from material error, and therefore was not reliable;

(ii) SoP 4.1. because his conduct led to items being inaccurately classified within Tech Data's financial statements; and

(iii) SoPs 4.33, 4.34. 7.11 and 7.13 because his conduct inappropriately offset assets and liabilities.

<u>ACT 3</u>

In relation to the preparation of Tech Data's financial statements for FY13, the conduct of Mr James fell significantly short of the standards reasonably to be expected of a Member in that Mr James procured and/or agreed to or approved the transfer of a credit balance in relation to VAT due in respect of Magna Park to the Other Liabilities Account with the intention of obscuring and partly offsetting unrecoverable debts within the financial statements and thereby Mr James failed to act in accordance with the Fundamental Principle of Integrity contained in the Code and/or section 320 of Part C of the Code and/or SoPs 3.8, 4.1, 4.33, 4.34, 7.11 and 7.13.

Particulars of Act 3

45. Tech Data's distribution centre in the Midlands was known as Magna Park. Phase 2 of Magna Park was a construction project to extend the distribution centre. Tech Data had agreed with its landlord that the landlord would fund the construction project but that payments would be made via Tech Data whom the contractors would invoice.

46. During 2012, Tech Data was invoiced by the contractors £5,071k consisting of £4,226k plus VAT of £845k. In addition, Tech Data incurred professional fees of £42k plus VAT of £8k. Tech Data in turn invoiced the landlord exactly the same amounts (i.e. £4,268k plus VAT of £853k, totalling £5,121k). The input VAT in respect of the costs was posted to a VAT GL account and would have formed part of Tech Data's VAT returns.

47. On 7 November 2012, Mr James was emailed with a list of questions on behalf of the Tech Data group. These questions included the following in relation to Magna Park:

"*10. Magna Extension*

a. Have final invoices been received (do you expect any additional cash out/increase in prepaid)?

b. *When is the prepaid expected to clear? When will 965k balance be reimbursed?*"

48. On 9 November 2012, KS replied to the above questions (copying in Mr James) in the following terms:

"*10. I have confirmed… that we are still expecting the final invoice, which will cover the final amount. We have received two amounts in the post month end period, and are expecting a final settlement of the final amount outstanding in the next few days*".

49. On 7 January 2013, KS, following an instruction to do so from Mr James, sent the following email request to a Management Accountant in Tech Data:

"*Can we please move the balance of £861,568.16 – Magna Phase 2 extension from 19100000 to 35075000 account*".

50. This credit balance was in a "*prepaid expenses*" GL account (19100000) and was exactly £8k more than the total VAT output tax which Tech Data had invoiced to the landlord in respect of Magna Park.

51. The reimbursement arrangement with the landlord was clear and provided no opportunity for Tech Data to make a profit. The credit balance that remained represented the total VAT output tax on Tech Data's invoices to the landlord. Despite this, Mr James made use of the credit balance as "*good news*" that could be used within Tech Data's financial statements. Subsequently, the VAT was paid to HMRC together with a penalty.

52. As a professional accountant, Mr James should have taken steps to verify any potential profit before allowing an entry that credited income but failed to do so. Further, any release of profit (if genuine) should have been separately treated within the profit and loss account rather than offset with a charge arising from an unrelated matter. No professional accountant could have considered it appropriate to recognise a gain arising from the Magna Park arrangement in the manner that it was recorded. There was no possible justification for taking this course and Mr James must have realised that his actions would serve unjustifiably to obscure and partly offset unrecoverable debts, such as the Philips debt.

53. In light of the matters set out in paragraphs 45 to 52 above, Mr James' conduct in relation to the transfer of the credit balance in respect of VAT due in relation to Magna Park to the Other Liabilities Account:

   a. breached the Fundamental Principle of Integrity in that he did not act in a straightforward or honest manner and/or was knowingly associated with information which he knew contained materially false or misleading statements and omitted and obscured information in a way that was misleading (contrary to ACCA 100.5(a), 110.1 and 110.2);

b. failed to present information fairly, honestly and in accordance with the relevant professional standards (contrary to ACCA 320.1 and 320.4A);

c. was contrary to the following SoPs:

(i) SoP 3.8 because he was associated with information that did not represent faithfully what it either purported to represent or could reasonably be expected to represent and was not free from material error, and therefore was not reliable;

(ii) SoP 4.1. because his conduct led to items being inaccurately classified within Tech Data's financial statements; and

(iii) SoPs 4.33, 4.34. 7.11 and 7.13 because his conduct inappropriately offset assets and liabilities.

ACT 4

In relation to the preparation of Tech Data's financial statements for FY13, the conduct of Mr James fell significantly short of the standards reasonably to be expected of a Member in that Mr James agreed to or approved the provision of an analysis of the Other Liabilities Account to Tech Data's auditors that he knew was false and/or misleading and thereby Mr James failed to act in accordance with the Fundamental Principle of Integrity contained in the Code and/or section 320 of Part C of the Code and/or SoP 3.8.

Particulars of Act 4

54. Three versions of a spreadsheet containing analysis of the Other Liabilities Account for FY13 were prepared:

a. A "full" version. This was produced after the start of the investigation into accounting irregularities within Tech Data which was announced in March 2013. It contained over 80 lines of analysis.

b. A "ST" version. This was sent by the Senior Management Accountant ("ST") to KS on 19 February 2013, described as an "*amended version*", and contained 56 lines of analysis.

c. A "KS" version. This was sent by KS to ST later on 19 February 2013 and was then forwarded by ST to the EY audit team on 21 February 2013. This version contained just six lines of analysis.

55. The table below compares the contents of the three spreadsheets by category (aggregating common line analyses). The "final version" column shows the components following the completion of the investigation into accounting irregularities.

Category description	**Full version £**	**ST version £**	**KS version £**	**Final version £**
Canon	86,991	86,991	-	-
CI flip	212, 865	212,865	-	-
Finance	(845,974)	[1] (1,749,185)	-	(200,755)
Philips	427,588	427,588	-	260,000
Philips "old balance"	-	-	[2]39,968	-
Philips BOG	-	-	212,142	-
Q3	(764,410)	(764,410)	-	-

Category description	**Full version £**	**ST version £**	**KS version £**	**Final version £**
Retail Pot	37,996	37,996	-	-
TD Mobile	1,058,093	1,058,093	-	-
Magna	(861,568)	(861,568)	-	[3] (861,568)
Philips 3PL	900,529	-	-	-
13041000	(985,298)	-	-	(985,298)
Pass Thru/BS flips Jan 13	-	-	(985,298)	-
13042000	(818,442)	-	-	-
Pass Thru/BS flips Jan 13	-	-	(818,442)	-
Total	**(1,551,630)**	**(1,551,630)**	**(1,551,630)**	**(1,787,621)**

[1] This is equivalent to the lines *"Finance", "Philips 3PL", "13041000"* and *"13042000"* in full version. ST version shows no analysis of the £1,749,185 credit.

[2] Becomes £401,344 *"management fee"* on second tab (which therefore does not agree to first tab).

[3] Retained as a VAT liability pending agreement with HMRC on late declaration.

56. The "Finance" line as contained in the "full" version contained a number of entries including the ZBUP Credit of £535k. The ST version also included the ZBUP Credit of £535k described as "*Release of £535k ZBUP credit*" and in her email to KS of 19 February 2013 attaching the ST version, ST asked KS, "[p]*lease check you are happy & also give an explanation for the ZBUP balance*".

57. However, in contrast, the KS version that he sent back to ST later on 19 February 2013 did not mention the ZBUP entry or the other items within the "Finance" line. Given this omission, ST responded to KS on the following day stating, "[s]*orry to bother you on your day off, but this does not include the ZBUP entry from Laura* [of Tech Data] *that Natalie* [of EY] *already knows the other side is in 35075*". Notwithstanding this query, ST then sent the KS version to the EY audit team on the following day.

58. In the premises, it should be inferred that the analysis sent to EY was altered in a deliberate attempt to conceal the correct analysis of the Other Liabilities Account from Tech Data's auditors. Given the use that had been made of the Other Liabilities Account (as described above regarding the transfer of the Philips debt, and the ZBUP and Magna Park credits) and his position as Finance Director, it should be inferred that, in altering the analysis to be provided to EY, others within the Tech

Data finance team acted with the express or implied agreement and/or approval of Mr James.

59. In light of the matters set out in paragraphs 54 to 58 above, Mr James' conduct in relation to the provision of information to Tech Data's auditors relating to the Other Liabilities Account:

a. breached the Fundamental Principle of Integrity in that he did not act in a straightforward or honest manner and/or was knowingly associated with information which he knew contained materially false or misleading statements and omitted and obscured information in a way that was misleading (contrary to ACCA 100.5(a), 110.1 and 110.2);

b. failed to present information fairly, honestly and in accordance with the relevant professional standards (contrary to ACCA 320.1 and 320.4A); and

c. was contrary to SoP 3.8 because he was associated with information that did not represent faithfully what it either purported to represent or could reasonably be expected to represent and was not free from material error, and therefore was not reliable.

ACTS 5 – 8: USE OF THE DSA ACCOUNT

60. Drop shipment accruals ("**DSAs**") were created when inventory was shipped directly from the vendor to the customer, without going through Tech Data's warehousing and inventory systems.

61. As a result of the inventory being shipped directly to the customer, sales invoices would sometimes be raised by Tech Data before corresponding vendor invoices had been received. When this happened, purchase orders ("**POs**") were raised to record the liabilities where vendor invoices had not yet been received. When those vendor invoices were later received, duplicate POs were raised to match the vendor invoice. However, sometimes the earlier PO would not be cleared, leaving duplicated POs and therefore duplicated liabilities. The DSA liability account (29138000) in the GL captured these liabilities.

62. DSA-related accounting entries affect "*accounts receivable*" and "*accounts payable*" in the balance sheet, and "*sales*" and "*cost of sales*" in the profit and loss account.

63. During FY12 and FY13, a number of inappropriate entries were made in relation to the DSA Account. These entries were:

    a. the transfer of receivables owed by Hewlett Packard and Acer to the DSA Account in FY12 (see Act 5 below);

    b. the transfer of expenses and other items to the DSA Account in FY13 (see Act 6 below); and

    c. the transfer of debit entries to the DSA Account in FY13 (see Act 7 below).

64. Further, the analysis of the DSA Account prepared in December 2012 for release to Tech Data's internal auditors was falsified by omitting and altering material components (see Act 8 below).

<u>ACT 5</u>

In relation to the preparation of Tech Data's financial statements for FY12, the conduct of Mr James fell significantly short of the standards reasonably to be expected of a Member in that Mr James procured and/or agreed to or approved the transfer of receivables owed by Hewlett Packard and Acer to the DSA Account with the intention of obscuring the existence of losses and inflating reported income within the financial statements and thereby Mr James failed to act in accordance with the Fundamental Principle of Integrity contained in the Code and/or section 320 of Part C of the Code and/or SoPs 3.8, 4.1, 4.33, 4.34, 5.25. 5.26(b), 7.11 and 7.13.

Particulars of Act 5

65. In around late 2011, two groups of receivables owed to Tech Data by Hewlett Packard and Acer respectively were transferred to the DSA Account.

66. In respect of Hewlett Packard:

  a. 20 transactions had taken place between 26 January 2010 and 26 August 2011. The total transaction value was £2,351k.

  b. All of the amounts owing were recorded as over 180 days past due date save for two that were recorded as between 90 and 180 days past due date.

  c. The 20 transactions plus an unidentified balancing amount of £361 were then consolidated into one line of £2,351k for Tech Data's September 2011 balance sheet and given a new single transaction date of 30 September 2011. As a result, the ageing of the debt was designated as current.

  d. A journal posted on 31 October 2011 then transferred the £2,351k to the DSA Account.

67. In respect of Acer:

  a. 35 transactions had taken place between 31 March 2008 and 31 July 2010. The total transaction value was £830k.

  b. All of the amounts owing were recorded as over 180 days past due date.

c. The 35 transactions were then consolidated into one line of £830k for Tech Data's September 2011 balance sheet and given a new single transaction date of 15 September 2011. As a result, the ageing of the debt was designated as current.

d. Out of that balance, £717k was then transferred to the DSA Account by an entry dated 31 October 2011.

68. The above transfers were made by the Senior Management Accountant in Tech Data under the instructions of Mr James.

69. There was no accounting justification for:

a. changing the dates of the Hewlett Packard and Acer transactions: transaction dates are fixed and the age of a transaction is a principal indicator of a debt's recoverability;

b. re-ageing the debts as current: correct ageing determines whether any provision is required against irrecoverable receivables; and

c. transferring the Hewlett Packard or Acer debt to the DSA Account: the ability to evaluate debt balances for recoverability is facilitated by balances being held in appropriate GL accounts. Transferring balances to unrelated GL accounts obscures the ability to do so.

Instead, the Hewlett Packard and Acer debts should have been written off and included within the profit and loss account of Tech Data.

70. As an experienced professional accountant, Mr James would have known that there was no justification for the conduct described above. It should be inferred that, by acting as he did, Mr James sought to obscure the existence of losses and inflate reported income within the financial statements of Tech Data.

71. In light of the matters set out in paragraphs 65 to 70, Mr James' conduct in relation to the transfer of the Hewlett Packard and Acer receivables to the DSA Account:

a. breached the Fundamental Principle of Integrity in that he did not act in a straightforward or honest manner and/or was knowingly associated with information which he knew contained materially false or misleading statements and omitted and obscured information in a way that was misleading (contrary to ACCA 100.5(a), 110.1 and 110.2);

b. failed to present information fairly, honestly and in accordance with the relevant professional standards (contrary to ACCA 320.1 and 320.4A);

c. was contrary to the following SoPs:

   (i) SoP 3.8 because he was associated with information that did not represent faithfully what it either purported to represent or could reasonably be expected to represent and was not free from material error and therefore was not reliable;

   (ii) SoP 4.1 because his conduct led to items being inaccurately classified within Tech Data's financial statements;

   (iii) SoPs 4.33, 4.34. and 7.13 because his conduct inappropriately offset assets and liabilities; and

   (iv) SoP 5.25 and 5.26(b) because his conduct failed to recognise a loss and that an asset no longer existed.

ACT 6

In relation to the preparation of Tech Data's financial statements for FY13, the conduct of Mr James fell significantly short of the standards reasonably to be expected of a Member in that Mr James procured and/or agreed to or approved the transfer of expenses and other items to the DSA Account with the intention of understating expenses and inflating reported income within the financial statements and thereby Mr James failed to act in accordance with the Fundamental Principle of Integrity contained in the Code and/or section 320 of Part C of the Code and/or SoPs 3.8 and 4.1.

Particulars of Act 6

72. On 6 November 2012, KS emailed a Management Accountant in Tech Data stating:

"*I'm going to post a journal to adjust for some of the balance sheet items that need to be corrected in the system. Could you post the following for me please?*"

73. The entries that followed (13 in total) were set out with just the GL account numbers for the debit and credit, plus the amounts. All of the debits were to the DSA Account. The credits were as set out in the table below (comments on the appropriateness of the entries have been included):

Account name	GL account (of credit entry)	Amount £	Comments on appropriateness of entries
Inventory buy ups-corporate burdens	10406000	196,100	Cost of Sale credits arising from favourable purchase terms or discounts
SD/BW-corrections	13044600	265,983	Unclear
Social security liabilities	37400000	320,000	Payroll-related liability, unrelated to DSAs
Other liabilities/supplier reb.	35075000	525,620	Liability unrelated to DSAs
Accruals-rebates to customers	29015000	350,000	Liability unrelated to DSAs
Accruals-employee incentive plans	28400000	151,230	Liability unrelated to DSAs
Severance costs, not sub. to social charges	60510000	30,000	Profit & Loss charge
Wages and salaries	60200000	50,000	Profit & Loss charge
Expenses for temporaries (agencies)	63066000	45,000	Profit & Loss charge
Commissions to employees non-management	60220000	30,000	Profit & Loss charge

Account name	GL account (of credit entry)	Amount £	Comments on appropriateness of entries
Incentive payments to officers	60250000	30,000	Profit & Loss charge
Car insurance	64240000	30,000	Profit & Loss charge
Employers contribution to social security	61010000	25,000	Profit & Loss charge
Total		**2,048,933**	

74. The transfers were made, with the express or implied agreement and/or approval of Mr James, who had instructed KS to achieve profit targets and targets for individual expense lines.

75. There was no accounting justification for the transfer of these entries (consisting of expenses from seven lines totalling £240k in the profit and loss account and entries totalling £1,809k from six balance sheet accounts) to the DSA Account. The profit and loss transfers inflated reported income. As an experienced professional accountant, Mr James would have known that there was no justification for the transfers being made. It should be inferred that, by acting as he did, Mr James sought to inflate income and achieve targets for individual expense lines.

76. In light of the matters set out in paragraphs 72 to 75 above, Mr James' conduct in relation to the transfer of the above expenses and other items to the DSA Account:

a. breached the Fundamental Principle of Integrity in that he did not act in a straightforward or honest manner and/or was knowingly associated with information which he knew contained materially false or misleading statements and omitted and obscured information in a way that was misleading (contrary to ACCA 100.5(a), 110.1 and 110.2);

b. failed to present information fairly, honestly and in accordance with the relevant professional standards (contrary to ACCA 320.1 and 320.4A);

c. was contrary to the following SoPs:

(i) SoP 3.8 because he was associated with information that did not represent faithfully what it either purported to represent or could reasonably be expected to represent and was not free from material error, and therefore was not reliable; and

(ii) SoP 4.1 because his conduct led to items being inaccurately classified within Tech Data's financial statements.

ACT 7

In relation to the preparation of Tech Data's financial statements for FY13 or otherwise, the conduct of Mr James fell significantly short of the standards reasonably to be expected of a Member in that Mr James procured and/or agreed to or approved the transfer of debit entries to the DSA Account in a way that was intended to obscure the existence of losses and inflate reported income within the financial statements and thereby Mr James failed to act in accordance with the Fundamental Principle of Integrity contained in the Code and/or section 320 of Part C of the Code and/or SoPs 3.8, 4.1, 4.33, 4.34, 7.11 and 7.13.

Particulars of Act 7

77. In March 2013, it was discovered that the following further entries had been posted to the DSA Account:

Description	Amount £k	Comments
"Clear down T Mobile-now finished" (dated March 2012)	1,695	Unrelated to DSAs
"ME bonus alignment" (dated January 2013)	230	Unrelated to DSAs
"OCOGS adjustment" (dated December 2011)	400	Credits other cost of goods sold
Other items (net)	142	
Total "Other items in account"	**2,467**	

78. The effect of these transfers (together with the other entries in respect of the DSA Account) was to leave a net credit balance within the DSA Account of £816k at FY13.

79. All of these transfers were subsequently found to be unsupported and almost all were written off or transferred out of the DSA Account. There was no technical or accounting justification for these entries being included in the DSA Account, to which account their subject matter did not relate. As an experienced professional accountant, Mr James would have known that there was no justification for these transfers. Mr James used the DSA Account, which he alleged had a balance which was over-accrued, to offset so-called "*bad news*" in other parts of the financial statements in order to arrive at the overall financial targets that he wished to meet. Instead, a release of any genuine income should have been separately treated within the profit and loss account and not simply offset with a charge arising from an

unrelated matter. As an experienced professional accountant, Mr James would have known that to be the case. Given his role within Tech Data and the use of the DSA Account, it should be inferred that the transfers referred to in paragraph 77 above were procured and/or agreed to or approved by Mr James.

80. In light of the matters set out in paragraphs 77 to 79 above, Mr James' conduct in relation to the transfer of the above debit entries to the DSA Account:

a. breached the Fundamental Principle of Integrity in that he did not act in a straightforward or honest manner and/or was knowingly associated with information which he knew contained materially false or misleading statements and omitted and obscured information in a way that was misleading (contrary to ACCA 100.5(a), 110.1 and 110.2);

b. failed to present information fairly, honestly and in accordance with the relevant professional standards (contrary to ACCA 320.1 and 320.4A);

c. was contrary to the following SoPs:

(i) SoP 3.8 because he was associated with information that did not represent faithfully what it either purported to represent or could reasonably be expected to represent and was not free from material error, and therefore was not reliable;

(ii) SoP 4.1 because his conduct led to items being inaccurately classified within Tech Data's financial statements; and

(iii) SoPs 4.33, 4.34. 7.11 and 7.13 because his conduct inappropriately offset assets and liabilities and gains and losses.

ACT 8

In relation to the preparation of Tech Data's financial statements for FY13, the conduct of Mr James fell significantly short of the standards reasonably to be expected of a Member in that Mr James provided, or agreed to or approved the provision of, an analysis of the DSA Account to Tech Data's internal auditors that he knew was false and/or misleading and thereby Mr James failed to act in accordance with the Fundamental Principle of Integrity contained in the Code and/or section 320 of Part C of the Code and/or SoP 3.8.

Particulars of Act 8

81. In January 2013, an analysis of the DSA Account as at December 2012 was prepared by the Senior Management Accountant in Tech Data and reviewed by KS before being sent to Tech Data's internal auditors as part of their FY13 roll-forward testing. This "testing version" of the analysis of the DSA Account was materially inaccurate and misleading. Its contents can be contrasted with a "full version" of the analysis that was prepared in March 2013 following the commencement of an investigation into accounting irregularities within Tech Data.

82. The table below contains a comparison of the two versions of the analysis.

Component	**Full version £k**	**Testing version £k**
Aged DSA balances from "waterfall" table	(13,613)	(7,633)
Total "Other items in account"	6,091	-
"Timing differences"	(2,504)	-
"Oct 11 to Dec 12 manual adj"	940	-
"Sales/COS interrogations"	738	-
"Aged, built up from March 10 and prior, prior year balance for 11015"	715	-
Total in SAP	**(7,633)**	**(7,633)**

83. The DSA balances were altered in the testing version in the following manner:

Age	**Full version £**	**Testing version £**	**Difference £**
July 12	57,775	57,775	-
Aug 12	394,440	94,440	300,000
Sep 12	353,797	353,797	-
Oct 12	2,417,312	17,312	2,400,000

Age	Full version £	Testing version £	Difference £
Nov 12	1,619,765	1,619,765	-
Dec 12	8,770,348	5,490,079	3,280,269
Total	**13,613,437**	**7,633,168**	**5,980,269**

84. The figures contained in the testing version had been falsified, in some cases, simply by removing the first one or two digits.

85. Given his position as Finance Director, his motivation to achieve financial targets and his inappropriate use of the DSA Account, it should be inferred that the falsification of the testing version was also carried out with the express or implied agreement and/or approval of Mr James. There was no accounting justification for preparing the testing version in the form submitted to the internal auditors and Mr James would have known that was the case. It should be inferred that, by acting as he did, Mr James sought to obscure the manner in which the DSA Account had been used and avoid inquiry by the internal auditors.

86. In light of the matters set out in paragraphs 81 to 85 above, Mr James' conduct in relation to provision of information to Tech Data's internal auditors relating to the DSA Account:

a. breached the Fundamental Principle of Integrity in that he did not act in a straightforward or honest manner and/or was knowingly associated with information which he knew contained materially false or misleading statements and omitted and obscured information in a way that was misleading (contrary to ACCA 100.5(a), 110.1 and 110.2);

b. failed to present information fairly, honestly and in accordance with the relevant professional standards (contrary to ACCA 320.1 and 320.4A); and

c. was contrary to SoP 3.8 because he was associated with information that did not represent faithfully what it either purported to represent or could reasonably be expected to represent and was not free from material error, and therefore was not reliable.

ACTS 9 & 10: HTC ACCOUNT

87. HTC was a supplier of handsets to Tech Data Mobile Limited (**"Tech Data Mobile"**) which were then sold on to its customers. In preparing Tech Data's financial statements for FY13:

a. a rebate that Tech Data Mobile had negotiated that it would receive from HTC was included as income within Tech Data's financial statements for FY13 when it should have been included in the subsequent financial period (see Act 9 below); and

b. Tech Data provided information to its auditors which understated the balance owed to HTC (see Act 10 below).

ACT 9

In relation to the preparation of Tech Data's financial statements for FY13, the conduct of Mr James fell significantly short of the standards reasonably to be expected of a Member in that Mr James knew that income from the supplier HTC was recognised in the incorrect accounting period and thereby Mr James failed to act in accordance with the Fundamental Principle of Integrity contained in the Code and and/or section 320 of Part C of the Code and/or SoPs 3.8 and 5.6.

Particulars of Act 9

88. In November 2012, Tech Data Mobile (sister company of Tech Data, however HTC was accounted for within Tech Data) agreed with HTC, a supplier of handsets, that Tech Data Mobile would receive a credit (by way of rebate) of £473k in FY13 in respect of purchases ordered in FY13 but scheduled for delivery in FY14. Given that delivery of the handsets was to take place in FY14, a credit to Cost of Sales within Tech Data's financial statements should have been recognised in FY14 (rather than in FY13, which is in fact where it had been recorded).

89. The agreement between Tech Data Mobile and HTC was set out in an email dated 26 November 2012 sent by HTC to the Managing Director of Tech Data Mobile. In this email, HTC stated:

"*As a gesture of goodwill and as an exception, HTC will support TDM's financial year end by issuing a credit for £473.3k (The Desire C support item) on Jan 31st. This credit will only be paid if TDM submit enough POs to generate the credit value no later than January 10th, 2013. These POs must have requested delivery dates within February 2013 and March 2013*".

90. This email was forwarded to Mr James later on 26 November 2011. Accordingly, Mr James was aware of this agreement and, it should be inferred expressly or impliedly agreed and/or approved it.

91. There was no accounting justification for booking a credit to income in FY13 when the activity causing that credit occurred in FY14. The credit of £473k should have been recognised in FY14, not FY13. By recognising the credit early, this reduced the reported cost of sales in the profit and loss account and the amounts payable in the balance sheet.

92. As an experienced professional accountant, Mr James would have known that the credit should not have been recognised in FY13. It should be inferred that, by acting as he did, Mr James sought to inflate reported profit within the financial statements of Tech Data.

93. In light of the matters set out in paragraphs 88 to 92 above, the conduct of Mr James in relation to the recognition of the rebate from HTC:

a. breached the Fundamental Principle of Integrity in that Mr James did not act in a straightforward or honest manner and/or was knowingly associated with information which he knew contained materially false or misleading statements and omitted and obscured information in a way that was misleading (contrary to ACCA 100.5(a), 110.1 and 110.2);

b. failed to present information fairly, honestly and in accordance with the relevant professional standards (contrary to ACCA 320.1 and 320.4A);

c. was contrary to the following SoPs:

(i) SoP 3.8 because Mr James was associated with information that did not represent faithfully what it either purported to represent or could reasonably be expected to represent and was not free from material error;

(ii) SoP 5.6 because the non-cash effects of the £473k HTC credit should have been reflected in the financial statements in the accounting period in which they occurred (FY14) not in the period in which any cash was received (FY13).

ACT 10

In relation to the preparation of Tech Data's financial statements for FY13, the conduct of Mr James fell significantly short of the standards reasonably to be expected of a Member in that Mr James provided, or agreed to or approved the provision of, information to Tech Data's auditors which he knew understated the balance owed to HTC and thereby Mr James failed to act in accordance with the Fundamental Principle of Integrity contained in the Code and and/or section 320 of Part C of the Code and/or SoP 3.8.

Particulars of Act 10

94. On 13 February 2013, Mr James emailed the CFO of Tech Data Mobile in relation to HTC balances. He explained that there was a vendor receivable balance of £2.2m for HTC of which £1.2m was aged and £1m was current. Mr James also stated:

"*With regards to the risk, it is provided (through the balance sheet) within the UK books for the total of this amount (£1.2m), but not in TDM, (but can do in February if not sorted). Overall, no risk*."

95. Later on 13 February 2013, Mr James sent a further email in which he stated:

"[C]*an we send over the details of all the items we believe are outstanding? I know that is more than £2.2m*."

96. On 18 February 2013, Mr James was forwarded an email from HTC dated 14 February 2013 that stated:

"*As discussed I really need your strong support to ensure that in the UK we are following through on the agreement that has been reached between our local teams at the end of last year. We have done our part and have released credit notes of GBP 3.4M. We need your local team to take in the stock as per agreed plan*".

97. On 18 February 2013, KS forwarded an email to Mr James showing the components of *"13047 summary".* The analysis included £1,760,182 for HTC. This GL account was designated in the GL listing as *"Other receivables, supplier rebate"*.

98. On 25 February 2013, Mr James asked KS if it was sufficient to send to the auditors the original email from HTC dated 26 November 2012 (referred to in paragraph 89 above) as support for the HTC balance. In two further emails sent later that day, Mr James stated:

"*We just need to ensure that (only) if the auditors ask, we can back up the VR with something. We are not showing the aging*"

"*There will be a legal document drafted shortly that will commit to 200k units for the rest of the year. This letter of comfort will release 3dot4m of CN* [£3.4m of credit notes]. *That's the last I understood. We need all of those to the BS at least initially*"

"*please don't send unless really needed*".

99. On 26 February 2013, EY emailed KS asking for evidence for certain balances which included an HTC balance of £1,755k. In response, KS forwarded the HTC email of 26 November 2012 (referred to in paragraph 89 above).

100. In fact, as was subsequently discovered following the investigation into the accounting irregularities within Tech Data, the correct balance for HTC (including rebates) at that time was £3,821k. Mr James knew that the £1,755k figure released to EY was understated and he was reluctant to release support to EY. Nonetheless, information was provided to the auditors, with Mr James' express or implied agreement and/or approval, in support of a balance which Mr James knew was understated. It should be inferred that this was a deliberate attempt on the part of Mr James to conceal the full amount of the HTC receivable from the auditors.

101. In light of the matters set out in paragraphs 94 to 100 above, Mr James' conduct in relation to the provision of information to Tech Data's auditors relating to the HTC account:

a. breached the Fundamental Principle of Integrity in that he did not act in a straightforward or honest manner and/or was knowingly associated with information which he knew contained materially false or misleading statements and omitted and obscured information in a way that was misleading (contrary to ACCA 100.5(a), 110.1 and 110.2);

b. failed to present information fairly, honestly and in accordance with the relevant professional standards (contrary to ACCA 320.1 and 320.4A); and

c. was contrary to SoP 3.8 because he was associated with information that did not represent faithfully what it either purported to represent or could reasonably be expected to represent and was not free from material error and therefore was not reliable.

ACT 11: SHOP DIRECT ACCOUNT

ACT 11

In relation to the preparation of Tech Data's financial information during FY13 the conduct of Mr James fell significantly short of the standards reasonably to be expected of a Member in that Mr James procured and/or agreed or allowed adjustments to be made to the total balance and ageing of a debt owed by a customer (Shop Direct) in a way that he knew was inappropriate and misleading and thereby Mr James failed to act in accordance with the Fundamental Principle of Integrity contained in the Code and/or section 320 of Part C of the Code and/or SoPs 3.8, 4.33, 4.34, 5.25. 5.26(b), 7.11 and 7.13.

Particulars of Act 11

102. Shop Direct was a Tech Data customer which during FY13 had exceeded its credit terms. Accordingly, on 18 October 2012, Mr James (and others) received an email informing him that Tech Data had decided to remove Shop Direct's credit facility and place its account on hold with immediate effect.

103. The decision to place the account on hold was not well received by Shop Direct who indicated that all further trading with Tech Data would cease and that Shop Direct would instead use an alternative supplier. This prompted competing concerns for Tech Data which on the one hand wanted to preserve its trading relationship with Shop Direct but on the other hand wanted to limit the credit risk which it faced.

104. On 12 November 2012, Mr James emailed others within Tech Data stating:

"…*we have done a lot of work on Shop Direct today and can give you an up to date position.*

We have received a payment from them last week and as a result, we now have a balance on the account of £2.1m.

The balance of this that is over 60 days is £538k. This is down from £1m+, but is obviously the issue that causes us a problem. The £538k is broken down as follows:
£291k Puma
£76k unpaid invoices, so genuine queries between the 2 organisations
£171k Philips rebate claims.

The £76k is work in progress.

The £171k has been agreed with Philips and we have in writing that the credits are agreed. I can pass this on if needed.

We have prepayment plan over 6 months for the £291k. This was a genuine issue on their side due to a lot of miscommunication internally there, but they have admitted they owe, but asked for time to work through. I believe that this is a good result for us as they will tie in to us for a period of time. I will add a clause in to say that it becomes due immediately for any missed payments. We do understand that the normal provisioning rules apply to this…

…I am now comfortable that we are in a position to go forward and as such we should ask for a continuation of the £3.5m limit…"

105. Following Mr James' email, a spreadsheet of the Shop Direct account was prepared which showed a balance outstanding of £2,461k. Included with this spreadsheet was a separate list of items totalling £361,663, against which the following narrative was stated "*Cleared to 29132000 (Retail Provision)*". A journal entry debiting that amount (£361,663) to account 29132000, headed "*Shop Direct clearing to 29132000*" was subsequently signed by KS.

106. On 13 November 2012, a revised version of the spreadsheet of the Shop Direct account was sent to Mr James. The table below summarises the differences between the original spreadsheet (referred to in paragraph 105 above) and the revised version.

Revised version of Shop Direct spreadsheet		**Original**	**Difference**
Age/overdue	**£k**	**£k**	**£k**
180 days +	7	18	(11)
90+	316	579	(263)
61-90	217	301	(84)
31-60	(11)	(11)	0
1-30	374	395	(21)
Not due	1,196	1,179	17
Total	**2,099**	**2,461**	**362**

107. In the revised version, the total balance owed by Shop Direct had fallen by £361,663, being the exact value of the transfer to account 29132000 (referred to in paragraph 105 above).

108. Further, the only remaining items aged over 60 days totalled £540k and were explained as follows:

a. £291k under the heading "*Pumas*" and also annotated "*6 month repay with price bump"*;

b. £79k under the heading "*Invoice*" and also annotated "*pursuing SD directly*"; and

c. £171k marked as "*Philips debit*" and also annotated "*Confirmed in email to be raised by Philips*".

109. Accordingly, the effect of the £362k adjustment (referred to in paragraph 105 above) was to remove all items aged over 60 days from the Shop Direct account analysis save for the three items mentioned in paragraph 108 above.

110. Later on 13 November 2012, the revised spreadsheet was used to support a request within the wider Tech Data group that Shop Direct's credit facility be reinstated. That request was made by email, copied to Mr James (amongst others). That email stated:

"*We do have an issue at present relating to Overdues and ageing although the majority of this relates to three major issues which have been or are in the final stages of being resolved. Full details in the AR report in attachments*".

111. The reference to "*three major issues*" was to the three items referred to in paragraph 108 above and the "*AR report*" was the revised spreadsheet referred to in paragraph 106 above. Following this request, the Shop Direct account was reactivated.

112. On 20 December 2012, Tech Data received a settlement offer of £31,500 for some stock that had been supplied to Shop Direct. On the same day, KS received an email informing him that "*this goes against some of the exposure on SD I think we posted to the Retail pot. If you can confirm the GL code, we'll raise the relevant*

invoice". KS replied (also on 20 December 2012) stating: "[t]*his should go to GL code 29132000 (Retail Pot)*".

113. During the subsequent investigation into accounting irregularities at Tech Data, the £361k transfer that had been made to account 29132000 was reversed.

114. There was no accounting justification for the above adjustments to the total balance and ageing of the debt owed by Shop Direct. As an experienced professional accountant, Mr James would have known that to have been the case, yet despite that he procured or allowed the adjustments to be made. It should be inferred that the adjustments were made in order for the Shop Direct account to be re-activated, in respect of which there was commercial pressure within the Tech Data business to do so.

115. Further, the revised ageing of the Shop Direct debt and the subsequent reactivation of its account avoided a mandatory provision for irrecoverable receivables (which would have been required under Tech Data's Uniform Accounting Policies) and which would have reduced reported income.

116. In light of the matters set out in paragraphs 102 to 115 above, Mr James' conduct in relation to the Shop Direct account:

a. breached the Fundamental Principle of Integrity in that he did not act in a straightforward or honest manner and/or was knowingly associated with information which he knew contained materially false or misleading statements and omitted and obscured information in a way that was misleading (contrary to ACCA 100.5(a), 110.1 and 110.2);

b. failed to present information fairly, honestly and in accordance with the relevant professional standards (contrary to ACCA 320.1 and 320.4A);

c. was contrary to the following SoPs:

(i) SoP 3.8 because he was associated with information that did not represent faithfully what it either purported to represent or could reasonably be expected to represent and was not free from material error and therefore was not reliable;

(ii) SoPs 4.33, 4.34. 7.11 and 7.13 because his conduct inappropriately offset assets and liabilities and gains and losses; and

(iii) SoP 5.25 and 5.26(b) because his conduct failed to recognise a loss and that an asset no longer existed.

ACT 12: YEAR-END CASH

ACT 12

In relation to the preparation of Tech Data's financial statements for FY13, the conduct of Mr James fell significantly short of the standards reasonably to be expected of a Member in that Mr James authorised the recording of details of a refund made by Tech Data to Tesco plc ("Tesco") which he knew were false and thereby Mr James failed to act in accordance with the Fundamental Principle of Integrity contained in the Code and/or section 320 of Part C of the Code.

Particulars of Act 12

117. In January 2013, Tech Data arranged with one of its customers, Tesco, that Tesco would pay Tech Data approximately £2m in excess of what Tesco would normally have paid to Tech Data shortly before Tech Data's financial year end of 31 January 2013. Tech Data was then to repay Tesco the same amount before 20 February 2013 (being in advance of Tesco's own financial year end). The effect of this arrangement was to increase Tech Data's reported cash figure in its FY13 balance sheet (and decrease trade receivables). In return, Tech Data agreed that Tesco could defer payment of its invoices from February 2013 to March 2013.

118. This arrangement was confirmed in an email from Tesco on 25 January 2013 which stated:

"*As per our discussion below are the outcomes.*
Against the attached list of invoices we will be paying you £2,003,762.92 on 31st January 2013 (cleared funds in your bank on 31st Jan, 2013). You will repay us back the same amount on 20th February, 2013 (cleared funds in our bank on 20th February, 2013).
In lieu of this –we will be paying you for all of these invoices on 27th March, 2013 (cleared funds in your bank account on 27th March, 2013) instead of original due date of 28th February, 2013.
Can you please confirm these agreements for us to go ahead?"

119. Later that day, the above email was forwarded to Mr James, with the question, "*quid pro quo – you ok with it?*" Mr James responded, *"I am yes*". On the same day, Mr James also sent an email stating, *"…you…need to phone them on the day we expect*

the money to ensure they haven't "forgotten". If you remember that is what happened last time they said that they would pay to help us at a period end".

120. In the event, the sum of £2,003,762.92 was received by Tech Data from Tesco on 5 February 2013 but nonetheless recorded as if it had been received as cash within FY13, i.e. by 31 January 2013.

121. A Tech Data refund form was then raised on 18 February 2013 in respect of the sum of £2,003,762.92 and authorised by Mr James on 19 February 2013. The form provided the refund details as the following:

"*Tesco overpaid EOM Jan—mistaken duplicate payment of £2mil of invoices*"

122. The details provided on that refund form misrepresented the circumstances in which the original payment was received from Tesco. The payment was not a "*mistaken duplicate payment*": it was deliberately made as part of an agreed arrangement with Tesco (as described above) in order artificially to boost Tech Data's cash balance at FY13. Mr James, who had approved the arrangement with Tesco knew that to be the case and that the refund details which he authorised therefore misrepresented the true position.

123. In light of the matters set out in paragraphs 117 to 122 above, Mr James breached the Fundamental Principle of Integrity in that he failed to act in a straightforward or honest manner and/or was knowingly associated with information (namely the details on the refund form) which he knew contained a materially false or misleading statement (contrary to ACCA 100.5(a), 110.1, 110.2 and 320.4A).

ANNEX A

RELEVANT STANDARDS OF CONDUCT

EXTRACTS FROM THE ACCA RULEBOOK

SECTION 100 INTRODUCTION AND FUNDAMENTAL PRINCIPLES

100.5

A professional accountant shall comply with the following fundamental principles:

(a) Integrity – to be straightforward and honest in all professional and business relationships.

(b) Objectivity – to not allow bias, conflict of interest or undue influence of others to override professional or business judgments.

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

(e) Professional Behaviour – to comply with relevant laws and regulations and avoid any action that discredits the profession.

100.9

A professional accountant shall take qualitative as well as quantitative factors into account when evaluating the significance of a threat. When applying the conceptual framework, a professional accountant may encounter situations in which threats cannot be eliminated or reduced to an acceptable level, either because the threat is too significant or because appropriate safeguards are not available or cannot be applied. In such situations, the professional accountant shall decline or discontinue the specific professional service involved or, when necessary, resign from … the employing organization (in the case of a professional accountant in business).

100.12

…(e) Intimidation threat – the threat that a professional accountant will be deterred from acting objectively because of actual or perceived pressures, including attempts to exercise undue influence over the professional accountant.

100.21

Where a matter involves a conflict with, or within, an organization, a professional accountant shall determine whether to consult with those charged with governance of the organization, such as the board of directors or the audit committee.

SECTION 110 INTEGRITY

110.2

A professional accountant shall not knowingly be associated with reports, returns, communications or other information where the professional accountant believes 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.
When a professional accountant becomes aware that the accountant has been associated with such information, the accountant shall take steps to be disassociated from that information.

SECTION 320 PREPARATION AND REPORTING OF INFORMATION

320.1

Professional accountants in business are often involved in the preparation and reporting of information that may either be made public or used by others inside or outside the employing organisation. Such information may include financial or management information, for example, forecasts and budgets, financial statements, management's discussion and analysis, and the management letter of representation provided to the auditors during the audit of the entity's financial statements. A professional accountant in business shall prepare or present such information fairly, honestly and in accordance with relevant professional standards so that the information will be understood in its context.

320.2

A professional accountant in business who has responsibility for the preparation or approval of the general purpose financial statements of an employing organization shall be satisfied that those financial statements are presented in accordance with the applicable financial reporting standards.

320.3

A professional accountant in business shall take reasonable steps to maintain information for which the professional accountant in business 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
(c) Represents the facts accurately and completely in all material respects.

320.4

Threats to compliance with the fundamental principles, for example, self-interest or intimidation threats to integrity, objectivity or professional competence and due care, are created where a professional accountant in business is pressured (either externally or by the possibility of personal gain) to prepare or report information in a misleading way or to become associated with misleading information through the actions of others.

320.4A

Accordingly, a professional accountant in business shall not be associated with reports, returns, communications or other information where the professional accountant in business believes that the information:
(a) contains a materially false or misleading statement;
(b) contains statements or information furnished recklessly;
(c) has been prepared with bias; or
(d) omits or obscures information required to be included where such omission or obscurity would be misleading.

EXTRACTS FROM STATEMENT OF PRINCIPLES FOR FINANCIAL REPORTING (SoP)

Chapter 3 The qualitative characteristics of financial information

3.7 Information provided by financial statements needs to be reliable.

3.8 Information is reliable if:

(a) it can be depended upon by users to represent faithfully what it either purports to represent or could reasonably be expected to represent;
(b) it is free from deliberate or systematic bias (ie it is neutral);
(c) it is free from material error; …

Chapter 4 The elements of financial statements

Principles

- Assets are rights or other access to future economic benefits controlled by an entity as a result of past transactions or events.

- Liabilities are obligations of an entity to transfer economic benefits as a result of past transactions or events.

4.1 Financial statements need to reflect, in an appropriate manner and as far as is practicable, the effects of transactions and other events on the reporting entity's financial performance and financial position. This involves a high degree of classification and aggregation. Order is imposed on this process by specifying and defining the classes of items—the elements of financial statements—that encapsulate the key aspects of the effects of those transactions and other events.

4.2 The elements of financial statements are:

(a) in the case of the balance sheet (or statement of financial position)—assets, liabilities and ownership interest; …

4.13 Capacity to obtain future economic benefits is the essence of an asset and is common to all assets irrespective of their form. Therefore, to be an asset, the right or other access must be capable, singly or in combination with other assets, of yielding economic benefits.

4.14 This future economic benefit need not, however, be certain. Indeed, there is always some uncertainty whether expected future economic benefits will be obtained either to the extent expected or at all. In some cases, that uncertainty is so great that the asset is not recognised.

4.33 When a transaction or other event gives rise to a number of rights and obligations, it is necessary to consider whether some or all of those rights and obligations need to be offset either with each other or with rights and obligations that arise from other transactions or events. This raises issues of:

(a) definition—when do rights and obligations represent separate assets and liabilities and when should some or all of them be aggregated or offset? This issue is considered in paragraphs 4.34 to 4.36.
(b) recognition—when should rights that represent an asset and obligations that represent a liability be combined and recognised as a single asset or liability? This Statement envisages no circumstances in which assets and liabilities will be

treated in this way.

(c) presentation—when is it appropriate to present assets offset against liabilities (or vice versa) in the balance sheet? This issue is considered in Chapter 7.

4.34 If a right to receive future economic benefits and an obligation to transfer future economic benefits exist and the reporting entity has the ability—which is assured—to insist on net settlement of the balances, the right and obligation together form a single asset or liability regardless of how the parties intend to settle the balances.

Chapter 5 Recognition in financial statements

Principles

- An asset or liability will be wholly or partly derecognised if:

  (a) sufficient evidence exists that a transaction or other past event has eliminated all or part of a previously recognised asset or liability; or

  (b) although the item continues to be an asset or a liability, the criteria for recognition are no longer met.

5.1 The objective of financial statements is achieved to a large extent through the recognition of elements in the primary financial statements—in other words, the depiction of elements both in words and by monetary amounts and the inclusion of those amounts in the primary financial statement totals. This recognition process has the following stages:

(a) initial recognition, which is where an item is depicted in the primary financial statements for the first time;

(b) subsequent remeasurement, which involves changing the amount at which an already recognised asset or liability is stated in the primary financial statements; and

(c) derecognition, which is where an item that was until then recognised ceases to be recognised.

5.5 A transaction or other event could have one of several effects on a reporting entity's assets and liabilities. …

(c) It might change some aspect of an already recognised asset or liability. This change may involve: …

  (ii) a change to the flow of benefits associated with an already recognised asset or liability….. Doubts about the creditworthiness of a debtor may alter perceptions of the collectability of the amount due from that debtor… . A change in the flow of benefits associated with an item may require a change in the amount at which the item is stated. Changes in the amount at which an item is stated (in other words, subsequent remeasurements) are considered in Chapter 6.

5.6 The references in the definitions of assets and liabilities to past transactions or events ensure that the non-cash effects of transactions and other events will, as far as is possible, be reflected in the financial statements in the accounting period in which they occur and not, for example, in the period in which any cash involved is received or paid. This is commonly referred to as the 'accruals concept'.

5.9 If uncertainty exists, totally reliable information will become available only when the uncertainty has resolved itself. However, to defer a stage of the recognition process until the uncertainty has resolved itself will often reduce the relevance of the financial statements. It may also reduce their reliability because they will not represent faithfully the transactions and other events of the reporting period. Financial statements achieve a balance between these competing demands by seeking to provide information that has no more than an acceptable degree of uncertainty but not seeking to provide information that is totally free from uncertainty.

5.25 After initial recognition, an asset or liability will usually continue to be recognised until it has been eliminated, at which point it will be derecognised. It is possible, however, that, although there has been no significant change in the inherent nature of an already recognised asset or liability—in other words, although the asset or liability has not been eliminated—the criteria for recognition described in paragraphs 5.14 and 5.17 are no longer met. For example, an event may have occurred since initial recognition that has resulted in there no longer being sufficient evidence that the asset or liability concerned exists. Similarly, an event may have created additional uncertainty and, as a result, a previously recognised asset or liability can no longer be measured with sufficient reliability. On the rare occasions when this is the case, that asset or liability will be derecognised even though it has not been eliminated.

5.26 ...[A]ssuming no contribution from owners or transfer to owners is involved: …

(b) a loss will be recognised if, and to the extent that, previously recognised assets have been reduced or eliminated or cease to qualify for recognition as assets without a commensurate increase in other assets or reduction in liabilities. Similarly, a loss will be recognised when and to the extent that a liability is incurred or increased without a commensurate increase in recognised assets or a reduction in other liabilities.

5.29 Almost all expenditure is undertaken with a view to acquiring some form of benefit in exchange. Consequently, if matching were used in an unrestricted way, it would be possible to delay the recognition in the performance statement of most items of expenditure insofar as the hoped-for benefits still lay in the future. The Statement imposes a degree of discipline on this process because only items that meet the definitions of, and relevant recognition criteria for, assets, liabilities or ownership interest are recognised in the balance sheet.

5.30 This means that the Statement does not use the notion of matching as the main driver of the recognition process. Nevertheless, the Statement envisages that:

(a) if the future economic benefits embodied in the asset are eliminated at a single point in time, it is at that point that the asset will be derecognised and a loss recognised; and

(b) if the future economic benefits are eliminated over several accounting periods—typically because they are being consumed over a period of time—the cost of the asset that comprises the future economic benefits will be recognised as a loss in the performance statement over those accounting periods.

5.32 Two implications of adopting the approach in the Statement, rather than using matching as a main driver of recognition, are that:

(a) expenditure or some other form of loss that cannot justifiably be shown to be associated with control of rights or other access to future economic benefits will be recognised in the performance statement as a loss in the period in which it is incurred; and

(b) expenditure incurred with a view to future economic benefits but whose relationship to such benefits is too uncertain to warrant recognition of an asset will be recognised immediately as a loss.

Chapter 7 Presentation of financial information

7.6 In order to facilitate the analysis of the information provided, items that are similar are presented together in the financial statements and distinguished from dissimilar items.

7.11 Gains and losses are generally not offset in presenting information on financial performance. For example, as explained in Chapter 4, if a transaction involves both a receipt and a cost (as is the case, for example, when an item of stock is sold), the transaction will usually be best presented by showing the gain (the receipt) separately from the loss (the cost). However, gains and losses will be offset if:

(a) they relate to the same event or circumstance; and
(b) disclosing the gross components is not likely to be useful for an assessment of either future results or the effects of past transactions and events.

For example, if a profit is made on the disposal of a fixed asset, that profit is usually best presented by showing it as a gain rather than by showing the sales proceeds as a gain separately from the depreciated cost of the asset.

7.12 In assessing the financial position of an entity, users are most interested in the types and amounts of assets and liabilities held and the relationship between them, and in the function of the various assets. Information on the reporting entity's financial position therefore needs to be presented in a way that focuses attention on these aspects. Good presentation typically involves:

(a) recognising only assets, liabilities and ownership interest in the balance sheet;
(b) delineating the entity's resource structure (major classes and amounts of assets) and its financial structure (major classes and amounts of liabilities and ownership interest). The main basis for deciding the number of classes and the content of each is that the result will help users to assess the nature, amounts and liquidity of available resources and the nature, amounts and timing of obligations that require or may require liquid resources for settlement.
(c) distinguishing assets by function. For example, assets held for sale will be reported separately from assets held on a continuing basis for use in the entity's activities.

7.13 In presenting information on the reporting entity's financial position, assets will not be offset against liabilities.