**IN THE MATTER OF**

**THE EXECUTIVE COUNSEL TO THE FINANCIAL REPORTING COUNCIL**

**AND**

**PETER MILLER**

1. This is the report of the Disciplinary Tribunal of the Financial Reporting Council into the complaint against Mr. Peter Miller. Mr. Miller is a member of the Institute of Chartered Accountants of England and Wales (ICAEW). From 1 May 2005 to 30 June 2009 he was the Finance Director of Welcome Financial Services Ltd (Welcome), a wholly owned subsidiary of Cattles PLC (Cattles). Cattles was a publicly listed financial services company, and Welcome was authorised and regulated by the FSA. Welcome's principal business was retail consumer lending, providing low value secured, unsecured and hire purchase loans to sub-prime borrowers at high levels of interest. This was a very significant part of the Cattles Group business, as the Cattles 2007 Annual Report showed that it represented about 89.5% of Cattles' revenue.

2. In its Annual Report and Financial Statements for the period ending 31 December 2007, and its rights issue prospectus dated 23 April 2008 (that raised £200 million), Cattles published false and misleading information about the credit quality of Welcome's loan book.

3. It was stated that as at 31 December 2007

a. Around £2.1 billion of Welcome's approximately £3.0 billion loan book was "neither past due nor impaired", ie not in contractual arrears;
b. The business (ie the business of Cattles conducted through Welcome) treated a loan account as impaired when the account was 120 days in contractual arrears; and
c. Cattles had made a pre-tax profit of £162.5m for the year ended 31 December 2007.

4. Welcome's 2007 Annual Report, which contained false and misleading information, was approved by Welcome's Board (including Mr. Miller, who signed the financial statements) and was consolidated into Cattles' Annual Report and Financial Statements for the year ending 31 December 2007.

5. Welcome's 2007 Annual Report contained false and misleading information about the credit quality of Welcome's loan book, in that they provided arrears figures and profit figures based on International Financial Reporting Standard 7 (IFRS 7) without clarifying the role played by deferments in calculating the figures provided.

6. Welcome, to Mr. Miller's knowledge, used a system of deferments. A missed payment, contractually due, could be deferred to the end of the loan period. This often happened without any communication to or from the customer. A deferment was deemed either to restart or pause the arrears clock. The effect was that a loan on which interest payments had been deferred might be deemed by the business to be

a. up to date and not in arrears notwithstanding the fact a number of payments contractually due had been missed; or
b. in arrears, but not impaired (ie not more than 120 days in arrears) despite more than four contractual monthly payments having been missed.

7. Had IFRS7 been properly applied (as it was not), then the use of deferments which were regularly used by Welcome would have resulted in loans which had been deferred being treated as past due or renegotiated. The consequence of failing to strip out the deferments from the "neither past nor impaired" category was extremely significant. About £2.1 billion of the loan book was disclosed as not being in contractual arrears, and this was highly misleading. It indicated that far more customers were repaying their loans on time than was actually the case. It is axiomatic that the level of a lender's contractual arrears as a proportion of the loan book is a key measure of financial performance.

8. Had loans which had been deferred been treated as being in contractual arrears, the application of Cattles' impairment trigger would have resulted in a pre-tax loss of £96.5m. This would be a reduction of £261.7m against the pre-tax profit of £165.2m. When the figures were re-stated, Welcome itself made a loss of £94.9m (a reduction of £224.9m).

9. When the true picture emerged, there was a catastrophic impact on shareholders (who lost all or virtually all of their investment), and on market confidence. During the relevant period, Cattles was a member of the FTSE 250, and at its height had a market

capitalisation of over £1.0 billion. Once the true state of the loan book emerged in early 2009, trading in Cattles' shares was suspended. On 16th December 2009, Cattles announced that its shares "are likely to have little or no value". Had the true state of the loan book been known, it is probable that the 2008 rights issue would not have been as successful.

10. The role played by Mr. Miller in approving Welcome's 2007 Annual Report, and his acts and omissions between August 2007 and February 2009 were subjected to an investigation by the FSA. On 28th March 2012, a Final Notice was issued. By that notice, it imposed upon Mr. Miller a financial penalty of £200,000 for

    a. engaging in market abuse as defined by s.118 (7) Financial Services and Markets Act 2000 (FSMA); and
    b. being knowingly concerned in the failure of Welcome to take reasonable care to organise and control its affairs responsibly and effectively in breach of Principle 3 (Management and Control).

11. A prohibition order was imposed, prohibiting Mr. Miller from performing any function in relation to any regulated activity carried on by any authorised person, exempt person or exempt professional firm on the grounds that he was not a fit and proper person as his conduct described in the Final Notice demonstrated a lack of integrity.

12. The findings of the FSA (which are, together with the complaint, the settlement agreement and the Final Notice, annexed to this

Report) include a finding that Mr. Miller, as finance director of Welcome, signed the representation letter of 18 March 2008 to Welcome's auditor, PricewaterhouseCoopers, as to the veracity of the information provided to compile Welcome's 2007 Annual Report, without having made adequate enquiries to satisfy himself that the statements were true. Mr. Miller was found to have disseminated false and misleading information in that he could reasonably have been expected to have known that the information given in the Welcome 2007 Annual Report in relation to the loan book was false and misleading, and he knew it would be disseminated to the market.

13. The FSA also concluded that given Mr. Miller's responsibility as a director, he should have been concerned with the obligation to take reasonable care to organise and control Welcome's affairs responsibly and effectively, and he was knowingly concerned in a failure to do so.

14. The FSA considered whether Mr. Miller acted with integrity in discharging his responsibilities. The factors considered by the FSA included his responsibilities as Finance Director of a company which had a loan book of over £3.0 billion, to which IFRS7 had particular relevance, and which was capable of generating a stated pre-tax profit of £130m to be consolidated into the accounts of a listed company capable of generating a stated pre-tax profit of £164.2m.

15. This should have led to Mr. Miller's relying on and asserting his position and authority as an experienced Finance Director;

ensuring a culture of transparency and openness in relation to financial statements; and taking a rigorous interest in the treatment of deferrals and their impact on impairment.

16. The FSA concluded that Mr. Miller failed to act with integrity in not doing what he should have done.

17. Under the Accountancy Scheme, Paragraph 13(3), those findings by the FSA are conclusive evidence of an act of misconduct. Executive Counsel to the FRC has raised a formal complaint under Paragraph 6(8) of the Scheme relying upon those findings. The parties have entered into a settlement agreement dated 19 February 2013. Mr. Miller admits that the complaint sets out the findings of the FSA as described in the Final Notice, and that those findings constitute conclusive evidence of an act of misconduct for the purpose of the Scheme and the formal complaint.

18. By the settlement agreement, the parties have (provisionally, and subject to the discretion of the Tribunal) agreed upon the sanction which should be imposed. If the Tribunal should not accept the proposals, then the recommendations as to sanctions shall be of no effect. The recommended sanction is that Mr. Miller shall be excluded from ICAEW for a period of six years; any application for re-admission after the six year period shall not necessarily be approved and shall be considered by ICAEW on its merits; and that there shall be no other penalty nor any order as to costs.

19. We have reviewed the relevant principles in the linked case of Mr. Corr, the Group Finance Director of Cattles. We repeat what we then concluded.

20. "The primary purpose of sanctions in a disciplinary context, we remind ourselves, is not to punish but to protect the public interest. We consider that when deciding what sanctions should be imposed we should bear in mind the following:

    a. the need to protect the public from Members whose conduct has fallen short of the standards reasonably to be expected of Members;
    b. the need to maintain and promote public and market confidence in the accountancy profession and the quality of corporate reporting;
    c. the need to declare and uphold proper standards of conduct amongst Members; and
    d. the need to encourage high standards of conduct among Members.

21. We have considered with care (i) the principle of proportionality, that is that the sanction must be commensurate to the seriousness of the misconduct, and proportionate to all the circumstances of the case; (ii) the principle of deterrence, that is the necessity to deter Members who commit misconduct from further misconduct; and (iii) the need for the public to have confidence that the FRC takes firm action to protect the public interest and promote compliance with professional standards of conduct."

22. We turn to the issue of seriousness. It will be readily apparent from our description of the factual background and from the findings of the FSA that this is serious misconduct at the high end of the scale. The extent of the professional failings, the findings of lack of integrity, and the scale of the harm done to investors, and the impact upon public confidence, support that view.

23. The aggravating features of the misconduct include the following: there was repeated misconduct over a significant period; there were many opportunities to inform or consult the board of directors of Welcome; the scale of damage caused to Cattles and Welcome; and the impact upon investors.

24. The mitigating features include the following: the events were over five years ago, and will have weighed heavily upon Mr. Miller; the FSA has investigated the facts thoroughly and has imposed a substantial penalty and prohibition notice; full co-operation with Executive Counsel; and Mr. Miller's age, 55.

25. After balancing all of the factors, and considering the helpful submissions from Mr. Payne and Mr. Mansell, we have concluded that the proposed order is an appropriate sanction.

26. The unanimous ruling of the Tribunal is that Mr. Miller be excluded from ICAEW for six years; this order is to take effect 29 days after 19 February 2013; any application for re-admission after the six year period shall not necessarily be approved and shall be considered by ICAEW on its merits; there shall be no other penalty or order as to costs.

Richard Jones QC

Arthur Harverd FCA

Ian Abrams

19th February 2013