IN THE MATTER OF

THE EXECUTIVE COUNSEL TO THE

FINANCIAL REPORTING COUNCIL

Complainant

and

1. DELOITTE & TOUCHE
2. MR MAGHSOUD EINOLLAHI

Respondents

REPORT OF THE TRIBUNAL

1 At all material times the First-named Respondent was one of the "Big Four" professional services firms. On 10th January 2003 Deloitte & Touche LLP was incorporated as a Limited Liability Partnership. The Annual report and financial statements of Deloitte & Touche for the year-end 2004 stated that on 1st August 2003 the business previously carried on by Deloitte & Touche, ("Deloitte") a partnership with unlimited liability under English Law, was transferred to Deloitte & Touche LLP. On 1st December 2008 Deloitte & Touche LLP changed its name to Deloitte LLP.

2 Throughout the whole of this time the First-named Respondent and its successor practice was a member firm of the Institute of Chartered Accountants in England and Wales (ICAEW).

3 The Second-named Respondent was at all material times a member of the ICAEW. He is a Chartered Accountant and although he has retired from Deloitte he remains a member of the ICAEW. He qualified as a Chartered Accountant in 1978 and became a partner in Spicer & Pegler in 1988. Spicer & Pegler amalgamated with Deloitte and he became head of Deloitte's UK corporate finance practice outside London. Throughout his practice as an accountant he has specialised in corporate finance. He was based at the Manchester Office. He is now 59 years of age.

4 On 12th January 2012 the Executive Counsel to the Accountancy and Actuarial Discipline Board made a complaint against the Respondents in respect of the Respondents' conduct in relation to four individuals known as the Phoenix Four and the MG Rover Group.

5 The Executive Counsel alleges that the two principal transactions referred to in the complaint (Project Platinum and Project Aircraft) benefited the interests of the Phoenix Four rather than the MGRG and benefited the Respondents in the light of the fees received by the first-named Respondent.

6 The first allegation was that:

Between 1 January 2001 and 31 December 2001, in relation to the transaction known as "Project Platinum", the conduct of Deloitte and Mr Einollahi fell short of the standards reasonably to be expected of, respectively, a member firm and a member of the ICAEW in that:

1.1 Between 1 January 2001 and 31 December 2001 they failed adequately to consider the public interest before accepting or continuing their engagement in relation to Project Platinum (in particular as corporate finance advisers to the Phoenix Four) and failed thereby to act in accordance with Fundamental Principle 2 and the guidance in Statement 1.201 (paras 1.1 and 1.4) and, from 1 August 2001, with the guidance in Statement 1.200 (paras. 2.2, 2.4 and 2.5);

1.2 Between 1 January 2001 and 20 September 2001 they failed adequately to identify which of MGRG, PVH, or the Phoenix Four was Deloitte's client and failed thereby to act in accordance with Fundamental Principle 2 and the guidance in Statement 1.201 (paras. 1.1 and 1.5), Statement 1.203 (para. 3.0) and Statement 1.204 (para. 40);

1.3 Between 1 January 2001 and 31 December 2001 they failed adequately to identify and consider potential or actual conflicts of interest between MGRG, the A-C shareholders in PVH, and the Phoenix Four and failed thereby to act in accordance with Fundamental Principle 2 and the guidance in Statement 1.201 (paras. 1.1 and 1.5), Statement 1.203 (para. 3.0) and Statement 1.204 (para. 4.0).

1.4 Between 1 January 2001 and 31 December 2001 they failed (i) to make it clear to MGRG that Deloitte did not represent them or act in their interests; (ii) to obtain informed consent from MGRG to Deloitte acting as corporate finance advisers to the Phoenix Four and (iii) to consider discontinuing with its engagement, and failed thereby to act in accordance with Fundamental Principle 2 and the guidance in Statement 1.203 (paras. 3.2 and 3.4);

1.5 Between 1 January 2001 and 31 December 2001 they failed to consider and put in place any or any adequate safeguards as between the Phoenix Four and MGRG, including advising MGRG to seek independent advice, and failed thereby to act in accordance with Fundamental Principle 2 and the guidance in Statement 1.203 (para. 4.0) and Statement 1.204 (paras. 4.0 – 4.4).

1.6 Between 1 January 2001 and 31 December 2001, they held themselves out as advising MGRG, or allowed MGRG to believe that they were advising them, when in fact they were advising the Phoenix Four, and failed thereby to act in accordance with Fundamental Principle 2 and, with due care, in accordance with Fundamental Principle 4;

1.7 They proposed a contingent fee of £7.5 million and a 5% equity stake in the company to be owned by the Phoenix Four and in so doing failed adequately to identify, consider and safeguard against the self-interest threat namely that Deloitte had an interest in completing the transaction, earning a large contingent fee and acquiring an interest in the venture. They failed thereby to act in accordance with Fundamental Principle 2 and the guidance in Statement 1.201 (paras. 1.1, 1.4 and 1.5), Statement 1.203 (para. 9.0), Statement 1.204 (paras. 2.0 – 2.3) and Statement 1.210 (4.0).

7 The second allegation was that:

Between January 2002 and August 2002 Deloitte and Mr Einollahi advised and acted in relation to a transaction known as "Project Aircraft". The conduct of Deloitte and Mr Einollahi fell short of the standards reasonably to be expected of, respectively, a member firm and a member of the ICAEW in that they:

2.1 Failed adequately to consider the public interest before accepting or continuing their engagement in relation to Project Aircraft (in particular in representing and providing services to the Phoenix Four, PVH and Phoenix Venture Leasing Limited (formerly MCC Leasing (No. 18) Limited) and failed thereby to act in accordance with Fundamental Principle 2 and the guidance in Statement 1.200 (paras. 2.2, 2.4 and 2.5) and Statement 1.201 (paras 1.1 and 1.4).

2.2 Failed adequately to identify and consider potential or actual conflicts of interest between the Phoenix Four, PVH and Phoenix Venture Leasing Limited (formerly MCC Leasing (No. 18) Limited and MGRG (an existing audit and advisory client of Deloitte and a client on project Salt/ Slag) and other Deloitte clients, namely Barclays Bank plc, Itochu Corporation, Sumitomo Corporation and Thompson Travel Group plc and failed thereby to act in accordance with Fundamental Principle 2 and the guidance in Statement 1.201 (paras. 1.1 and 1.5), Statement 1.203 (para. 3.0) and Statement 1.204 (para.. 4.0)

2.3 Failed (i) to make it clear to MGRG that Deloitte did not represent them or act in their interests (ii) to obtain informed consent from MGRG to Deloitte acting for Phoenix Venture Leasing Limited (formerly MCC Leasing (No. 18) Limited), the Phoenix Four and/or PVH and (iii) to consider discontinuing with its engagement and failed thereby to act in accordance with Fundamental Principle 2 and the guidance in Statement 1.203 (paras. 3.2 and 3.4);

2.4 Failed to consider and put in place any or any adequate safeguards as between Phoenix Venture Leasing Limited (formerly MCC Leasing (No. 18) Limited), the Phoenix Four, PVH and MGRG, including advising MGRG to seek independent advice, and failed thereby to act in accordance with Fundamental Principle 2 and the guidance in Statement 1.203 (para. 4.0) and 1.204 (paras. 4.0 – 4.4);

2.5 Wrongly asserted that the letter of engagement dated 26 May 2000 issued in respect of Project Slag was the appropriate letter of engagement for Project Aircraft, and failed to acknowledge that the engagement on Project Aircraft was with a different client with underlying interests that now conflicted with other group entities since the re-structuring, the previous engagement having been prior to the re-structuring. They failed thereby to act in accordance with Fundamental Principle 2 and the guidance in Statement 1.201 (paras. 1.1 and 1.5), Statement 1.203 (para. 3.0), Statement 1.204 (para. 4.0) and with due care, in accordance with Fundamental Principle 4;

2.6 Proposed a contingent fee of 15% of the net cash to be received by PVH, which would give rise on completion of the transaction to a fee of approximately £2 million, without (i) giving any or any proper consideration as to whether such a fee was appropriate having regard to the nature of the client's business, the complexity of its operation and the work to be performed (ii) adequately identifying, considering and safeguarding against the self-interest threat arising from charging a contingent fee and (iii) engaging in proper client engagement acceptance procedures. They failed thereby to act in accordance with Fundamental Principle 2 and the guidance in Statement 1.201 (paras. 1.1, 1.4 and 1.5), Statement 1.203 (para. 9.0), Statement 1.204 (paras. 2.0 – 2.3) and Statement 1.210 (paras. 2.2 and 4.0).

8 Following the Formal Complaint a Tribunal was appointed to hear the allegations made against the Respondents and to determine them. The Tribunal consisted of Mr D Anthony Evans Q.C. (Chairman), Mr Richard Kennett FCA and Mr George Helsby FIoD. Ms Mary Timms was appointed Secretary to the Tribunal.

9 On 17th April 2012 the Respondents requested further information of the Formal Complaint and such information was provided, pursuant to that request, on 18th May 2012.

10 On 9th May 2012 the Tribunal held a Directions Hearing. At this and all other hearings of the Tribunal the Executive Counsel to the Financial Reporting Counsel was represented by Mr Timothy Dutton Q.C. and Mr Nicholas Medcroft of Counsel instructed by Russell Jones and Walker and the Respondents were represented by Ms Sue Carr Q.C. and Mr Ben Jaffey of Counsel instructed by Freshfields Bruckhaus Deringer. At that hearing Directions were given. Amongst the directions that were given was that there should be a hearing on 26th July and 27th July 2012 to consider an application on behalf of both

Respondents that Allegation 2 of the Formal Complaint should be dismissed. The hearing took place on 26th and 27th July and the Tribunal refused to order that the said allegation be dismissed. The decision was given on 27th July and the reasons given in writing on 16th August 2012.

11 On 12th October 2012 the Respondents in a Defence set out their answer to the allegations in the Formal Complaint as amplified and explained in the Response.

12 On 11th January 2013 there was a further directions hearing and further directions were made including a direction that the full hearing of the complaint would start on 4th March 2013. The hearing started before the Tribunal on 5th March 2013 and concluded on 28th March 2013. The Tribunal sat on 5th, 6th, 7th, 8th, 11th, 12th, 13th, 14th, 15th, 18th, 19th, 20th, 26th 27th and 28th March. The Tribunal then adjourned to consider its decision.

13 We heard oral evidence from a number of witnesses and also received their written statements or reports in evidence. Philippa Hill, Ralph Chatfield and John Millett, (he gave evidence on 8th, 11th and 12th March and was then recalled on 20th March 2013), John Parkinson and Robert Beddow gave oral evidence on behalf of the Executive Counsel. Messrs Maghsoud Einollahi, Ian Burton, David Hume, Michael Holmes, Philip Johnson and Nicholas Standen gave oral evidence on behalf of the Respondents. Mr Standen, a member of the ICAEW and a partner in KPMG LLP gave expert evidence and produced his report. All those who gave oral evidence were cross-examined by Counsel for the other parties. In addition to the above evidence we were referred at length to the Report by the Inspectors appointed by the Secretary of State for Trade and Industry on the affairs of Phoenix Venture Holdings Limited, MG Rover Group Limited and 33 other Companies and in particular to Chapters VII and XI. We accepted in the main the findings of the Inspectors and noted that Counsel for the Executive Counsel stated that the findings of the Inspectors were accepted. We were also referred to the Grant Thornton Report, a Report about which Philippa Hill and Ralph Chatfield gave evidence. In addition to the above we were referred to large numbers of contemporaneous documents.

14 Further to the evidence referred to above we received written and oral opening and closing submissions by Counsel for both the Executive Counsel and the Respondents. We found those submissions to be of great assistance both as to the facts and to the legal aspects of the matters that we have had to consider. We have also been assisted by the very full transcripts which we have received each day and which have been most useful in reviewing the evidence.

15 We have been provided with the ICAEW Members Handbooks of 2000 and 2001, Statement 1.200 Guide to Professional Ethics Introduction and Fundamental Principles (revised with effect from 1st August 2001), The Accountancy Regulations 18th October 2012 and the Accountancy Scheme 18th October 2012.

16 This Report is divided essentially into 3 parts: Part 1 The Law, Part 2 The separate allegations and our separate conclusions, Part 3 Conclusion.

17 The primary and principal matter that we have had to consider is whether the Respondents, or either of them, have committed an act or acts of misconduct. Paragraph 2(1) of the Accountancy Scheme provides that an act of misconduct is conduct in the course of professional, business or financial activities which falls short of the standards reasonably to be expected of a member or a member firm. They are set out in the Formal Complaint (Annex A) herein.

18 Before we can make a finding that the Respondents or either of them are guilty of misconduct and make a finding adverse to them we have to be satisfied not only that there has been a departure from the conduct reasonably to be expected of a member or a member firm but that that departure has been significant. Whether that departure is significant is a matter for our judgment. A trivial departure will not suffice. We have to be satisfied before we reach a conclusion that there has been such a departure, that the Executive Counsel has proved that no reasonable accountant would have acted in the way that the Respondents have acted.

19 It is agreed by both parties that the burden of proof is on the Executive Counsel and the Standard of Proof required is the "Civil Standard", namely, the balance of probability.

20 The standards to be expected of a member or a member firm are set out in the Fundamental Principles and Statements and are found in the Formal Complaint at Annex A.

21 The Principles and Statements are said by the Executive Counsel to be made in the public interest and recognise the fact that members of the ICAEW and member firms, whether they are acting as auditors, corporate advisers or in any other capacity owe duties not only to their clients or employers but also to the public. All have a duty to consider the public interest and its bearing on the work that they are doing and the potential or actual threats to their work.

22 We do not accept that, except in audit and reporting accountant work, the only duty that a member has is to his client provided that he is acting honestly and with integrity. It is this duty to consider the public interest that provides comfort to the client that matters are being dealt with properly and with integrity. It is however something which might put a chartered accountant at a disadvantage in corporate finance and other matters as against other parties who are not members of the ICAEW.

23 No member or member firms are excluded from the Fundamental Principles. The Statements provide guidance on what is expected of members and member firms in relation to matters that commonly arise in the course of practice. If the member or member firm abides by what is provided in the Fundamental Principles and Statements criticism or suggestions of misconduct will be difficult to make. If the provisions are not complied with there are

circumstances where it could easily be said that member or member firm has acted in a way that falls short of the standards reasonably to be expected of a member or member firm and that no reasonable professional would have acted in this way at the relevant time.

24 We accept the Respondents' contention that for the Respondents to be guilty of misconduct and to have acted in a way that no reasonable professional would have acted the conduct has to amount to more than mere carelessness or negligence and has to cross the threshold of real seriousness. It is not sufficient for the Executive Counsel to prove that the Respondents failed to act in accordance with good or best practice or that most or many members of the profession would have acted differently. The conduct has to be more serious than that.

25 The meaning of misconduct has been considered frequently by the Courts and particularly in cases involving the medical profession. In Calhaem v. General Medical Council (2007) EWHC 2606 (Admin) Jackson J said:

(a) Mere negligence does not constitute "misconduct" within the meaning of Section 35C(2)(a) of the Medical Act 1983. Nevertheless, and depending on the circumstances, negligent acts or omissions which are particularly serious may amount to "misconduct".

(b) A single negligent act or omission is less likely to cross the threshold of "misconduct" than multiple acts or omissions. Nevertheless, and depending upon the circumstances, a single negligent act or omission, if particularly grave, could be characterised as "misconduct".

It follows from the above that if a Complaint is made and a large number of allegations made and proved then the conduct proved is more likely to amount to misconduct than if, for example, only one allegation is proved.

26 The principles set out in Calhaem have been followed in other disciplinary cases and in particular in Spencer v. General Osteopathic Council (2012) EWHC 3147 (Admin).

Under the Osteopaths Act 1993 misconduct was defined as conduct falling below the standard required as a professional. This is not dissimilar to the words of the Scheme in this matter, namely that misconduct is "conduct....which falls short of the standards reasonably to be expected of a member or member firm".

In his judgment in Spencer Irwin J said:

> "…. "conduct" is behaviour, or the manner of conducting oneself. It seems to me that at first blush this simply does imply, at least to some degree, moral blameworthiness. Whether the finding is "misconduct" or "unacceptable professional conduct", there is in my view an implication of moral blameworthiness, and a degree of opprobrium is likely to be conveyed to the ordinary intelligent citizen. That is an observation not

merely about the natural meaning of the language, but about the likely effect of the findings in such a case as this, given the obligatory reporting of the finding under the Act."

27 Under the Scheme and the Regulations with which we are concerned we are satisfied that no element of moral blameworthiness or opprobrium is required for a member or member firm to be guilty of misconduct. If a member is inefficient or incompetent either in what he does or fails to do, he can be guilty of misconduct. In the various decisions in relation to Accountants disciplinary matters there does not seem to be any suggestion that there has to be a requirement of moral blameworthiness or opprobrium before a finding of misconduct can be made. If there is an element of moral blameworthiness or opprobrium it may be difficult to say that there has not been misconduct.

28 It is, however, sufficient if the Executive Counsel proves on the balance of probability that the Respondents fell below the standards reasonably to be expected of a professional accountant.

29 It is for the Tribunal to decide what standards were reasonably to be expected of the Respondents at that time and whether they fell below them. It would be expected that at least the Respondents would act in compliance with the Regulations, the Scheme, the Fundamental Principles and the Statements.

30 In considering what standards are reasonably to be expected we have to apply the standards of the time of the conduct of which complaint is made. We are not entitled to apply the standards of today if the complaint relates to matters that occurred years ago because regulatory standards do change over a period of time and we are not entitled to assume standards at the time to which a complaint relates to be the same as they are today.

31 We have to consider what the practice of the profession was at the time of the matters referred to in the complaint. In considering the above we have to decide whether the practice of the profession was reasonable and consistent with the standards reasonably to be expected of a member or member firm of good standing. We are of the view that if the practice of the profession is said to be reasonable it must follow the practice and procedure contained in the Principles and Statements of Guidance provided by the ICAEW at the time.

32 It has been submitted by the Executive Counsel, and we agree with these submissions, that the profession is not permitted to derogate from the standards it has set itself and been set. It does not excuse a course of conduct just because it is common or almost universal in the profession. We agree with those submissions and they seem to be in line with what was said by Lord Browne-Wilkinson in Bolitho v. City and Hackney Health Authority (1998) AC 232 at 241GV. Lord Browne-Wilkinson said:

"The use of these adjectives – responsible, reasonably and respectable – all show that the Court has to be satisfied that such an opinion has a logical basis - ..... the judge before accepting a body of opinion as

being responsible, reasonable or respectable, will need to be satisfied that in forming their views the experts have directed their minds to the question of comparable risks and benefits and have reached a defensible conclusion on the matter."

Lord Browne-Wilkinson went on to consider Edward Wong Finance Co Ltd v. Johnson, Stokes and Master (1984) AC 296, where a "body of professional opinion, though almost universally held, was not reasonable or responsible".

33 It may be suggested that a member or member firm have different duties and obligations depending on the work that is being done and to some extent that is correct. However, the overriding duty and obligation in all aspects of the work done by a member is that he or she must conduct his or her business in a way that could reasonably be expected and in accordance with the Principles and Statements of Guidance. That applies to all members of the ICAEW and to all work.

34 In relation to the charging of Fees, Statement 1.210 paragraph 4 states:

> "Fees should not be charged on a percentage, contingent or similar basis in respect of audit work, reporting assignments, due diligence and similar non-audit roles incorporating professional opinions and expert witness assignments."

The principle continues:

> "Even for other work such methods of charging may be perceived as a threat to objectivity and should therefore only be adopted after careful consideration".

Objectivity is important in all cases because a member must guard against self-interest. The principles upon which members engaged in corporate finance work are set out at Statement 1.203.

These principles mean that even, for example, in corporate finance work it is not sufficient to say that everybody acts on a contingency fee basis. There has to be careful consideration as to whether in a particular case it is appropriate to charge on a contingency fee basis even though we were told in evidence on a number of occasions that everybody doing corporate finance work acted on that basis because that is what the clients wanted. It may be that after careful consideration it would have been appropriate in the Platinum transaction for the fee to be charged on a contingency fee basis. Mr Standen accepted that in matters such as this a member might be at a disadvantage as, for example, against a banker in getting corporate finance work but the principles to be followed by members are laid down. Failure to follow the principles and not to consider, whether charging on a contingency basis was appropriate and charging on that basis could affect the member's objectivity in carrying out the work and make him at least liable to the charge that he was guilty of acting in self-interest.

35 One of the Fundamental Principles is, and was the case in 2001, that a member should strive for objectivity in all professional and business judgments. Objectivity is properly to be described as independence of mind and it applies to all work to be done or done by a member. This includes corporate finance work as well as audit work.

36 Statement 1.201 section 1.0 of the Guidance deals with the matter of Safeguarding Objectivity and sets out matters to be considered before deciding whether to accept an appointment. These are, inter alia, the expectations of those directly affected (and entitled to be affected) by the work, the public interest and its bearing on the work, the existing and potential threats to objectivity and the safeguards which are, or can be put, in place to offset any threats. In every case where objectivity (and acting in self-interest) might be prejudiced all the above matters must be actively considered by a member. This is so regardless of the work in which he or she is involved. It must be considered and acted on even if the result of the consideration is contrary to the interests of the member or the member firm. In our opinion it must follow that the same considerations apply to the continuation of an engagement.

37 In 1.200 at 1.2 it is provided that a member has duties to his client or employer and to the public. It follows, and is provided in 2.5 that members should take into consideration the public interest and reasonable and informed public perception in deciding whether to accept or continue with an engagement or appointment, bearing in mind that the level of public interest will be greater in large entities and entities which are in the public interest. Neither this statement nor the preceding one, 2.4, confine the category of work to audit work where the public interest has to be actively considered, although 2.4 does refer to audit work. It has been urged on us that in corporate finance work and tax work the only duty that a member owes is to his client provided that he acts with integrity and that the public interest is not a matter that needs to concern him. We do not accept this. If the public interest is not relevant to, for example, corporate finance work the principles and statements that refer to the public interest would either have specifically excluded corporate finance work from the work where a member has to consider the public interest or would have said that the work where the public interest had to be considered was confined to audit work. It is of relevance too that Mr Standen said that the public interest provision was a "statement of general application".

PART 2

38 We have to consider the separate allegations and we do so, firstly in relation to Project Platinum and the seven sub-allegations and secondly in relation to Project Aircraft and the six sub-allegations made.

39 The first allegation relates to Project Platinum and alleges that the Respondents fell short of the standards reasonably to be expected of, respectively, a member and a member firm.

40 Allegation 1.1 alleges that between 1 January 2001 and 31 December 2001 they failed adequately to consider the public interest before accepting or continuing their engagement in relation to Project Platinum (in particular as corporate finance advisers to the Phoenix Four) and failed thereby to act in accordance with Fundamental Principle 2 and the guidance in Statement 1.201 (paras. 1.1 and 1.4 and from 1 August 2001, with the guidance in Statement 1.200 (paras 2.2, 2.4 and 2.5).

41 In the ICAEW Guide Section 1.201 it says at 1.4 that "The public interest should be a factor which all members should bear in mind when accepting any assignment or appointment". Those words are plain and clear and Mr Standen, the expert witness called on behalf of the Respondents, said, in cross-examination on Day 12 of the hearing, "Absolutely. And the reliance on the objectivity and integrity....".

42 The consideration of the public interest is not confined to any particular assignment or appointment but applies to all assignments and appointments.

43 It seems to us that there are three questions that have to be considered in relation to this allegation and particularly in relation to public interest. The first is whether PVH Limited, the holding company of "the MG Rover Group", and/or any of the subsidiary companies, was a public interest company, and if so, the second is whether the Respondents were aware of it being a public interest company and, if the answer to the first and second question is affirmative was the fact that there was a public interest company relevant to the Respondents as a member and member firm.

44 The Executive Counsel in relation to the above matters, as in relation to all matters, has to satisfy us on the balance of probability, and on all the evidence, that he has made out his case.

45 We are completely satisfied that "the MG Rover Group" falls within the definition of being a public interest company and there is in our view abundant evidence of that. Much of that evidence comes from the Second-named Respondent himself and can be found in the Transcript Day 7 at pages 163 onwards.

46 There was huge interest in this car manufacturer, particularly locally in the West Midlands, but also nationally. There was great support for the Group from the public after it had been sold by BMW. There was a march for MG Rover through Birmingham. This was in support of the business. There was talk by the Phoenix Four and others about the saving of a major car manufacturer in the West Midlands and the saving of large numbers of local jobs. There was a great deal of political will to bring about a successful transaction and thus save a large number of jobs.

47 Deloitte themselves made an announcement on 9th May 2001 stating that the completion of the purchase from BMW was "a fantastic outcome for the Midlands and the motor industry". It further stated that "This new start for Rover

is the news that many businesses in the Midlands have been waiting and hoping for. It will be very welcome indeed".

48 In a letter to the Inland Revenue Mr Einollahi, the Second-named Respondent, stated "Rover currently employs in the region of 1,400 people directly and it is estimated that between 24,000 and 35,000 jobs in the West Midlands indirectly depend on the successful transformation of Rover". We find that the purpose of writing the aforesaid was to emphasise that this was a public interest company. In cross-examination it was put to Mr Einollahi that the reason the letter was written in those terms was to appeal to the Revenue on public interest grounds. He agreed that that was the case.

49 From the above it appears to us that the Respondents were clearly aware of the public interest. There were other matters that drive us to that conclusion.

50 Mr Einollahi said in the course of his evidence that as far as the MG Rover group was concerned he considered it to be a quasi-public interest company because there was public support for it. He said that the Phoenix Four had public sympathy and were seeking public support and when he was asked about a Deloitte client assessment form he said there was a strong political will to secure a large number of jobs by keeping Rover as a volume manufacturer and that this was something that engaged the public interest. He had earlier said that the letter written to the Inland Revenue had been written in the terms to appeal to the Revenue on Public Interest grounds.

The final matter that we have had to consider is whether the matter of public interest is relevant to the Respondents as a member and a member firm.

51 Statement 1.201 of September 1997 sets out that the public interest should be a factor which all members should bear in mind when accepting any assignment or appointment. This in our opinion applies to every assignment or appointment and to every member.

52 Statement 1.200 of August 2001, at paragraph 1, provides that a member has duties to his client and also to the public. In the same statement it is provided that the term "public interest" relates to matters of public concern and this extends inter alia to the concern of clients, government, financial institutions, employers, employees, investors and the business and financial community. This imposes a public interest responsibility on the chartered accountancy profession. Mr Standen gave evidence about this and said that it was a statement of general application and he went on to say that if there was a conflict between market practice and the ICAEW guidelines the guidelines are to take precedence.

53 It was argued on behalf of the Respondents that the obligation is not simply to consider the public interest but the public interest in its bearing on the work. It was said that the public interest will bear heavily on audit work, especially of a major company. We agree with this last sentence but it is not confined to audit work and the public interest must be very relevant to a company in the

circumstances of the MG Rover Group and its acquisition and running and in the corporate finance work done in relation to it.

54 Mr Johnson gave oral evidence to us and was cross-examined on behalf of the Respondents. He said "So certainly from my perspective, the statement that I am making there is that this group was a private company, there was nothing in relation to public interest with regard to corporate finance". We do not accept that this is the case. We are quite satisfied that the public interest has to be adequately considered.

55 In her closing submissions Miss Carr argued that the public interest is a concern in cases where the work of the accountant is being relied upon "to support the propriety and orderly functioning of commerce." A corporate financier, she said, provides support for commerce by giving best advice to his or her client, not by assuming the role of the market or regulators or government and deciding which bidder in a corporate transaction has the public interest on their side. We do not accept this to be the position. It suggests that the Respondents in the case of Project Platinum had no obligation to consider the public interest and this is not consistent with the ICAEW guidelines. It was important for them to consider the public interest because it was important from the point of view of the Phoenix Four that the loan book came into "friendly hands".

56 We have reviewed hereinbefore some of the matters that are relevant to allegation 1.1 and we have re-read the statements, the transcripts and part of the Inspectors' Report as well as many of the documents to which we were referred during the hearing.

57 We are quite satisfied that MG Rover was a public interest company. We do not accept the evidence of Mr Einollahi when he said in evidence that he had difficulty identifying the public interest issue.

58 We are further satisfied that the Respondents were aware of the public interest. We find it difficult to see how they could possibly not have been.

59 We are further satisfied that the public interest aspect was relevant to the Respondents as a member and member firm. On Day 7 of the Tribunal's hearing Mr Einollahi said "I regard the MG Rover car business..... a quasi-public interest company (and that) anything that was to do with that business and took profits out of it or took assets out of it: there was a public interest potential issue". This contrasts with what he said when he was cross-examined again about the public interest and he said that there was not a public interest issue consideration in relation to Project Platinum. We do not accept that evidence.

60 In the circumstances and in the light of the above we are satisfied to the extent that we have to be that Allegation 1.1 is proven.

61 Allegation 1.2 alleges that between 1 January and 20 September 2001 the Respondents failed adequately to identify which of MGRG, PVH or the Phoenix

Four was Deloitte's client and failed thereby to act in accordance with Fundamental Principle 2 and the guidance in Statement 1.201 (paras. 1.1 and 1.5), Statement 1.203 (para. 3.0) and Statement 1.204 (para. 4.0);

62 There is no doubt that one of the obligations on the Respondents was to consider the identity of their client or clients. In our view this should be done as soon as possible but there is no doubt that in corporate finance work there are times when the identity of the client is not immediately known and thus cannot be identified. Such circumstances can arise when there is exploratory work being done and it is not known, while it is being done, for whom the member will ultimately be acting.

63 In Mr Einollahi's written statement he said that in the case of Project Platinum it was always the case that the Respondents were acting for the benefit of the Phoenix Four and on their instructions. He went on to say further in the statement that negotiations with BMW and HBOS were on-going and thus the final structure was still subject to change but it was always for the benefit of the Phoenix Four and on their instructions. In those circumstances it seems clear that there was really no difficulty in identifying the client or clients at an early stage. He went on in the statement to say that the engagement letter could not have been finalised earlier than 20th September 2001. In the light of the statement and what he said in evidence we find it impossible to say that the client was not identifiable from the very beginning of the work and we do not accept that the engagement letter could not have been finalised a lot earlier than 20th September 2001.

64 We are confirmed in the aforesaid view by answers given in evidence by Mr Einollahi. He accepted that he had a client at a much earlier stage than 20th September. It was put to him that he should have entered into a client engagement letter at a much earlier stage. He agreed that it would have been advisable for him to have done so. He said "....it seems my actions may form a contract and therefore, I did have a client much earlier". He went on to agree that the client was the Phoenix Four, not one of the companies in the Group and he was emphatic about that. He then went on to say that his client was the Phoenix Four or any other company that they nominated. All these matters about which he was asked were on Day 8 of the hearing.

65 There can be no doubt that the Respondents were required to identify their client and to consider carefully that identity. This is because under Statement 1.203 paragraph 3.0 it is provided that all reasonable steps should be taken to ascertain whether there is a conflict of interest existing or likely to arise between a firm and its clients. This relates both to new transactions or engagements and to changing circumstances in relation to existing clients and engagements. If the identity of the client is not known it is not possible to identify and consider whether there is any conflict existing or potential. That is the real importance of identifying the client. Here the client was known to the Respondents a substantial time before the final existence of a letter of engagement and nothing was done about it.

66 The Phoenix Four were always the client, Deloitte were at all times acting on their behalf. We know too that the Respondents were represented at an MG Rover Group Limited Board Meeting and made a presentation to the Board thus suggesting that they were acting for MG Rover and not the Phoenix Four.

67 In our view the Respondents should have identified which of MGRG, PVH or the Phoenix Four was the client of Deloitte and the second-named Respondent substantially before they did and in those circumstances Allegation1.2 in relation to Project Platinum is proven.

68 Allegation 1.3 states that between 1st January 2001 and 31st December 2001 the Respondents failed adequately to identify and consider potential or actual conflicts of interest between MGRG, the A-C shareholders in PVH, and the Phoenix Four and failed thereby to act in accordance with Fundamental Principle 2 and the guidance in Statement 1.201 (paras. 1.1 and 1.5), Statement 1.203 (para. 3.0) and Statement 1.204 (para. 4.0).

69 In his written closing submissions the Executive Counsel sets out a number of questions that are relevant to Allegation 1.3. Firstly, what is the proper approach to potential or actual conflicts under the Fundamental Principles and Statements? Secondly, what did the Fundamental Principles and Statements require the Respondents to do to identify and consider potential or actual conflict on Project Platinum? Thirdly, what potential or actual conflicts of interest (if any) existed between each of: (a) MGRG (b) the A-C Shareholders in PVH (c) the Phoenix Four on Project Platinum? Fourthly, were any required steps taken by the Respondents? Fifthly, has there been a significant departure from the standards to be expected of the Respondents? We are satisfied that that is the correct approach.

70 The first step is to ascertain whether a conflict or potential conflict of interest exists between a firm and its clients or is likely to arise in the future. Before being able to decide this matter it is necessary to identify who the client is.

71 If there is a conflict or a potential conflict the member must consider it and if he thinks that the conflict is not material and unlikely to affect his clients he may accept the engagement but before doing so the clients must be informed in writing.

72 It should be made clear that there is no complete bar on a member firm having two clients whose interests are in conflict with each other but great care should be taken in such circumstances to ensure that the work for one client does not affect adversely the work for the other. Whether it is wise for a firm to act for two clients whose interests are in conflict is another matter. In similar circumstances lawyers would not be allowed to do so but it must be a matter for the ICAEW as to whether it is allowed.

73 Before a member firm acts in a case where there is a conflict or potential conflict it should identify the clients or potential clients and in this case we agree with the Executive Counsel that the clients or potential clients are one or more

of MGRG, PVH, the Phoenix Four or any company yet to be formed. It should identify any conflict of interest between the firm and its clients, it should consider whether the conflict is material and the conclusions must be recorded in writing.

74 The steps to ascertain whether or not there is a conflict must start as soon as work starts on any project and it should be a continuing exercise throughout the work being done. In this case such exercise should certainly have been repeated when it became apparent that the client was going to be the Phoenix Four and that the Phoenix Four had decided that they wanted to secure the profits for themselves and not for MGRG, PVH or any other company in the Group. This was about June 2001 after the Phoenix Four had been on holiday together in Portugal and had concluded that there were very large sums of money to be made by them.

75 In fact no further checks as to whether or not there was a conflict between the firm and its client were made until the middle of October 2001. It then became apparent that Deloitte who appeared to have been acting for MGRG were being instructed to act on behalf of the Phoenix Four. This was a different client and there was an obvious conflict.

76 In 2001 Mr Philip Johnson was a National Risk Partner at Deloitte. He gave evidence to us on the 18th March. In the course of his evidence he dealt with the question of conflict. Counsel for the Executive Counsel has referred us in some detail to the evidence of Mr Johnson.

77 Mr Johnson accepted that in February 2001 MGRG had been a client of Deloitte in respect of what was the Rover Financial Service's work. He went on to say that when Deloitte were starting to work for the Phoenix Four on this transaction, Project Platinum, a conflict arose and the consent in writing of MGRG should have been sought. Mr Holmes of Deloitte confirmed this in his evidence.

78 Mr Dutton in his written submissions set out the conflicts that he said existed. We agree with and accept what he said. Mr Dutton went on to say that there was no written record to suggest that the Respondents identified the conflicts to which he referred and therefore they did not consider them. We agree with that submission. Had the conflicts been identified and properly considered then we are satisfied that the Respondents should have disclosed to MGRG that they were acting for the Phoenix Four themselves.

79 It is of note that even though the Respondents registered their interests to the Deloitte Compliance team on 31st January 2001 none of the conflicts to which Mr Dutton now refers were mentioned or apparently identified in the "Conflicts Search" conducted in February 2001.

80 The Client Acceptance Form was completed on the same date as the Engagement Letter and there is no reference to the role of MGRG or PVH in the Platinum Project.

81 Mr Dutton finally submitted in his written submissions that there were obvious actual or potential conflicts of interest between MGRG and the Phoenix Four. We agree.

82 Miss Carr on behalf of the Respondents submitted that there is nothing improper for a firm to have two clients whose interests are in conflict with each other. Guidance 4.2 however says that "The work of the member firm for one client must not adversely affect the work of the firm for another client. Furthermore if a firm is going to work for two clients whose interests conflict with each other certain safeguards must be put in place. Those safeguards include informing all the relevant clients that in the particular circumstances of the matter with which they are dealing that they may wish to seek alternative independent advice and also obtaining informed consent to act from all the clients concerned".

83 Miss Carr said that in relation to Corporate Finance matters it would be neither reasonable nor necessary to discontinue acting in any capacity in anticipation of every potential conflict and this recognises the difference between audit work and corporate finance work. That may be the case in some circumstances but here we have the member acting ostensibly for MGRG who would appear to be getting the benefit of the sale of Rover Financial Services and then acting for the Phoenix Four.

84 It may be that MGRG could do nothing at all about the Phoenix Four deciding to make a great deal of money but there was no doubt that there was a substantial conflict between the interests of MGRG and the Phoenix Four. The interests of MGRG included the interests of PVH and the A-C shareholders. There were substantial conflicts in the work to be done for MGRG and for the Phoenix Four.

85 It is noticeable that in his written statement Mr Einollahi said that they were always acting for the Phoenix Four. He gave evidence orally to us on Day 8 of the hearing. He said that he was holding himself out to third parties as acting for the Group.

86 However there was evidence that the Respondents were in fact not acting for the Phoenix Four but for MGRG. Evidence in support of this was that in correspondence between the Respondents and third parties there were references to various companies in the group and there was evidence that Mr Einollahi was holding himself out as working for MGRG. It is of note too that the Confidentiality Agreement entered into by BMW was with MGRG. This is not surprising in the light of the fact that Mr Einollahi seemed to be at least implying that he was acting for MGRG.

87 In our view there is abundant evidence that the Respondents acted on behalf of MGRG and also on behalf of the Phoenix Four in relation to Rover Financial Services. This in our judgment means that it could not be said that the work for one client did not adversely affect the work for another. Any work on behalf of the Phoenix Four would be in conflict with work on behalf of MGRG.

88 It follows that the Respondents failed adequately to identify and consider actual or potential conflicts of interest between MGRG, the A-C shareholders in PVH and the Phoenix Four. They failed to implement the necessary safeguards and particularly to advise relevant clients that, in the circumstances appertaining here, they might wish to seek other independent advice and to obtain informed and written consent from the clients to act for more than one party in a transaction where there was a conflict between two or more clients.

89 In those circumstances we are satisfied, to the extent required, that allegation 1.3 is proven.

90 We can deal in this Report with allegations 1.4, 1.5 and 1.6 together although we are very conscious that we have to look at the evidence in respect of each allegation separately and reach separate decisions in relation to each allegation.

91 The allegations 1.4, 1.5 and 1.6 all relate to matters that we have had to consider in the wider allegation 1.3.

92 In allegation 1.4 it is said that between 1st January and 31st December 2001 the Respondent failed (i) to make it clear to MGRG that the Respondents did not represent them or act in their interest (ii) to obtain informed consent from MGRG to the Respondents acting as Corporate Finance Advisers to the Phoenix Four and (iii) to consider discontinuing with its engagement and, because of the aforesaid, they failed to act in accordance with Fundamental Principle 2 and the guidance in Statement 1.203 (paragraphs 3.2 and 3.4).,

In allegation 1.5 it is said that between the aforesaid dates the Respondents failed to consider and put in place any or any adequate safeguards as between the Phoenix Four and MGRG, including advising MGRG to seek independent advice, and because of the aforesaid to act in accordance with Fundamental Principle 2 and the guidance in Statement 1.203 (paragraph 4.0) and Statement 1.204 (paragraphs 4.0 – 4.4).

In allegation 1.6 it is said that between the aforesaid dates the Respondents held themselves out as advising MGRG, or permitted MGRG to believe that they were advising them, when in fact they were advising the Phoenix Four and because of the aforesaid they failed to act in accordance with Fundamental Principle 2 and with due care in accordance with Fundamental Principle 4.

93 Most, if not all, of the allegations in 1.4, 1.5 and 1.6 have been referred to herein under our decision in relation to allegation 1.3.

94 We have found and we are quite satisfied that there were definite conflicts of interests between MGRG and the other companies in the Group and the Phoenix Four. It is difficult to think that the Respondents would not have been aware of these conflicts. It would appear that they chose to ignore their existence. There can be no doubt that both MGRG and the Phoenix Four were concerned in trying to purchase Rover Financial Services. Both the Phoenix

Four and MG Rover were clients of the Respondents. There was because of that an inevitable and obvious conflict.

95 In the circumstances it was necessary for the Respondents to identify the conflict or conflicts and as to whom they were between. It would appear that although the conflict was obvious no attempt was made to identify it or to take any steps to consider whether it was material.

96 No conflict having been identified obviously no attempt was made to consider whether the conflicts were material.

97 In his written closing submissions a number of conflicts were identified by Counsel on behalf of the Executive Counsel. He divided them between the conflicts between MGRG and the Phoenix Four and the conflict between the A-C shareholders and the D Shareholders of PVH.

98 The conflicts between MGRG and the Phoenix Four were a competing interest in acquiring the loan book, a conflict in relation to the cash collateral and a conflict in relation to the structure of the transaction. Mr Dutton gives substantial detail in his written submissions. We agree with and accept those submissions as to the conflicts.

99 He set out in detail the conflict between the A-C shareholders and the D shareholders of PVH. We agree with and accept Counsel's summary of the conflict.

100 We have no doubt that the conflicts specified were material. In those circumstances the Respondents should have notified all the relevant clients either that they were proposing to continue with the engagement in spite of those conflicts, that they had put safeguards in place and the details of those safeguards or that they proposed to discontinue. Neither course was adopted. Neither was anybody advised about the taking of independent advice.

101 In our view it was important in the context of Project Platinum that all the clients who were party to this transaction were advised in writing. It was particularly important that MGRG were so informed in this case as one client appears to have been underwriting the risk and the other getting the benefit.

102 We have referred earlier to what appears to have been contradictory evidence given by Mr Einollahi. At one time he was saying that the Phoenix Four were always his clients and at another he seems to have been saying that he was holding himself out as having been acting for MGRG. On 14th March 2013 Mr Einollahi gave evidence to the Tribunal. He was cross-examined by Mr Dutton (page 47 of the Transcript)"

Q: "....you did not think you had a client...."

A: (Pause) I think that is fair, that I didn't believe I contractually had a client.

At the same time, on further reflection it is I did have a client because I was holding myself out to be advisers to a client.

Q: Exactly

A: But

Q: And the problem is the one that I have alluded to already, that you would be holding yourself out to third parties as acting for, in this case, the group,

A: Nods.

The cross-examination on this aspect continued and at that time there is undoubtedly contradictory evidence given by Mr Einollahi.

103 The Defence put forward by the Respondents in relation to these allegations seems to be that there was no relevant or material conflict of interest. We find it impossible to accept that Mr Einollahi was not aware of such a conflict,

104 We heard from Mr Einollahi that his client was the Phoenix Four and that the Respondents were always acting for them and on their instructions but we also heard from him that he had been holding himself out as always acting for the Group. There seems to have been confusion but there seems to be no evidence that MGRG were advised that the Respondents were in fact acting for the Phoenix Four alone.

105 We have examined the evidence in relation to Allegations 1.4, 1.5 and 1.6 separately in compliance with our duty to reach separate conclusions in respect of each allegation. Some of the evidence, of course, relates to more than one allegation,

106 We are satisfied to the extent required that the allegations have been made out in each case.

107 The Final allegation in relation to Project Platinum is 1.7 and relates to a contingency fee and an equity interest.

108 Allegation 1.7 alleges that the Respondents proposed a contingent fee of £7.5 million and a 5% equity stake in the company to be owned by the Phoenix Four and in so doing failed adequately to identify, consider and safeguard against the self-interest threat namely that Deloitte had an interest in completing the transaction, earning a large contingent fee and acquiring an interest in the venture. They failed thereby to act in accordance with Fundamental Principle 2 and the guidance in Statement 1.201 (paras 1.1, 1.4 and 1.5), Statement 1.203 (para. 9.0), Statement 1.204 (paras. 2.0-2.3) and Statement 1.210 (4.0).

109 The Respondents seem principally to say two things. Firstly that all corporate finance work was done on a contingent fee basis because the clients were not prepared to accept any other basis of payment. It may well be that most clients, if not all, preferred payment on a contingency fee basis. That does not, of itself, answer the allegation made. Secondly that in the context of Deloitte's annual fee income the fee of £7.5 million was not really a very large fee. There is no doubt that the annual fees earned by Deloitte were large but regardless of that the fee proposed for this one transaction was substantial. It was clear from the evidence given by Mr Einollahi that he considered himself to be at the top of his profession. He told us that when asked to do a corporate finance transaction he fixed his fee and was not prepared to be cut down. Having seen and heard Mr Einollahi we have little doubt that his quotation would have been at the top of the bracket. His pride would not have allowed it to be otherwise and it might be justified.

110 Statement 1.201 deals essentially with the safeguarding of integrity, objectivity and independence. Statement 1.203 refers to Corporate Finance Advice and paragraph 9.0 deals with Fees. It provides that if a member undertakes an engagement which is contingent upon the successful outcome of a transaction that member should take particular care to ensure that the arrangements do not prejudice his or her independence and objectivity with regard to any or any other role which he or she or the member firm might have.

111 Statement 1.204 deals with Conflicts of Interest and paragraph 2.2 with safeguards. Paragraph 2.3 refers to disengagement and in the event of safeguards not being available the firm should consider refusing or discontinuing the engagement.

112 Statement 1.201 deals with the Quotation and Estimate of Fees. Paragraph 4.0 refers to Percentage and Contingent Fees. It suggests that fees should not be charged on a percentage or contingent basis for audit and similar work. It goes on to say that even for other work, and that must include corporate finance work, such methods of charging may not be appropriate and may be seen as a threat to objectivity and should therefore only be adopted after careful consideration. It is of note that the paragraph does not exclude contingency fees but says that there must be careful consideration given before such fees are charged.

113 Receipt of a contingent fee depends on the success or failure of the relevant transaction. If the transaction is successful then payment is made if the transaction is unsuccessful then the corporate financier receives no payment.

114 When he gave evidence before us Mr Einollahi accepted that contingent fees gave rise to "a huge self-interest threat". That must be the case. This was confirmed by Mr Standen, the Respondents' expert witness, who said that any contingent fee was a threat to the duty of a chartered accountant to guard against self-interest and a threat to his objectivity particularly when the fee was in total very large. We are entitled to find that, while this may not have been the largest contingency fee paid, it was substantial and there is no evidence that a

contingent fee of this size was justified in the light of the work done or the result of the transaction.

115 It was put to Mr Einollahi when he gave evidence that

> "...the individual corporate finance team, when considering their own objectivity in relation to their conduct in the course of this transaction, must carefully consider, mustn't they, whether a contingent fee is appropriate?
>
> A: Yes.
>
> Q: It's size?
>
> A: Yes."

116 It seems to us that Mr Einollahi would charge a contingency fee of a size he thought that he would be paid by the client without considering whether it was appropriate or not. Again when he gave evidence he was cross-examined and we refer to one question and answer.

> "Q: ...you did not like to negotiate fees downwards?
>
> A: I didn't – I didn't act for people who wanted to negotiate my fees downwards. I didn't need to."

It is perhaps worthy of note that the Respondents have produced no evidence which suggests that a contingent fee of this size was justified.

117 In our view the Respondents entered into a contingent fee agreement solely because that is the basis on which Mr Einollahi wanted to do business and because that is the way clients normally wanted to do that business. It meant that if he did business on that basis he could fix his fee regardless of whether it was an appropriate fee and he was not prepared to be negotiated downwards.

118 He wanted that fee of £7.5 million and realised that his best prospects of achieving that fee were by a deal between the Phoenix Four and HBOS rather than between MGRG and First National Finance or MGRG and HBOS.

119 The Inspectors found that one of the reasons that Mr Einollahi was not willing or keen to approach First National Finance much earlier than 28th August 2001 was because he knew that he would be unlikely to obtain this substantial contingency fee that he was looking for from the deal with HBOS.

120 In our view Mr Einollahi failed adequately to identify consider and safeguard against the self-interest threat and was intent on ensuring that he obtained the substantial contingency fee. We consider that his intention was to obtain that fee, and the equity interest that was later abandoned, without guarding against self-interest. We consider that he acted as he did because he saw that as the best way of obtaining that fee.

121 We are satisfied that we have heard no evidence that the Respondents considered adequately or at all any question of self-interest or to guard against it. We are satisfied that that was because they wanted to obtain the contingency fee and therefore we are satisfied that Allegation 1.7 is made out.

Project Aircraft

122 We turn to Project Aircraft.

123 The first allegation in relation to Project Aircraft (Allegation 2.1) is that the Respondents failed adequately to consider the public interest before accepting or continuing their engagement in relation to Project Aircraft and thereby failed to act in accordance with Fundamental Principle 2 and the guidance in Statement 1.200 (paras. 2.2, 2.4 and 2.5) and Statement 1.201 (paras 1.1 and 1.4). It is not necessary to set out at this point the full particulars of the allegation, they are set out in paragraph 7 hereinbefore.

124 This allegation is very similar in principle to allegation 1.1 in relation to Project Platinum.

125 Project Aircraft was a scheme to benefit from MGRG's accumulated tax losses. These losses were transferred to a subsidiary of PVH. That was a company in which MGRG had no interest. There was also a sale and leaseback arrangement entered into by MGRG in relation to MGTF Tooling. MGRG did not receive any gain from the scheme and it was not planned by the directors who controlled the PVH group that it should.

126 Prior to Project Aircraft there was Project Salt/Slag which supposedly had very much the same aim as Project Aircraft. Salt/Slag was presented to the Inland Revenue on the basis that the benefit of the transaction would accrue to MGRG. The Inland Revenue refused to give their approval to the Project.

127 The Inspectors dealt with Project Aircraft in some detail in Chapter XI of their Report. They referred to the fact that a number of Directors had given evidence before them to the effect that they believed that the profits from Project Aircraft would be used for the benefit of inter alia MGRG. Mr Edwards said that "from (his) standpoint, the whole point of using MG Rover tax losses was to generate funds for the continued operation of MG Rover", which was loss making. Mr Stephenson said that his understanding was that the profits would be used for the benefit of the Group generally; he also expressed the view that, if the parent company made a gain from tax losses the companies in the group would benefit from that and that therefore that was fine". Mr Towers said "frankly, for us, what mattered was there was a possibility here of creating cash, additional cash for the group and most particularly, for the cash-consuming part of the group which was the car company". Mr Beale's evidence was to the effect that MGRG benefited from the transaction because "it gave the group additional cash reserves which it could lend to MG Rover as and when required". The Inspectors said at Chapter XI paragraph 17 "In practice, much of the money

which the Group generated from Project Aircraft was used to fund a payment to the Guernsey Trust". (The beneficiaries of which included Messrs Beale, Edwards, Stephenson and Towers.) The Inspectors continued "Immediately before Barclays Bank made its £121 million loan, PVH had credit balances on its bank accounts totalling £2,184,083. The loan increased the credit balances to £14,736,629, enabling the company on 26 June 2002, without having received any money from any outside source in the interim, to pay £7,905,125 to the Guernsey trust (as well as paying £2,261,875 to Deloitte in respect of fees for Project Aircraft). No payment was made by PVH to MGRG at this stage, or in fact at any time before November 2003.

128 The Inspectors went on to say that the Phoenix Consortium were reluctant to accept that there was a link between Project Aircraft and the £7.7 million paid to the Guernsey Trust. We find it difficult to accept that there was no such connection or that the Phoenix Consortium did not realise the link existed.

129 We are reinforced in our views by the conclusion reached by the Inspectors at Chapter XI paragraph 17, of their Report. They said "Our own view is that the £7.7 million payment can fairly be attributed, at least in large part, to the money received from Project Aircraft. Without Project Aircraft, PVH simply would not have been in a position to make a payment of that size and Mr Beale at least intended that money from Project Aircraft should be used to pay bonuses. Moreover, it seems to us that every member of the Phoenix Consortium should have known how the payment was being funded". We agree entirely with the conclusions reached by the Inspectors and are satisfied that they are correct.

130 Mr Einollahi undoubtedly played a significant part in Project Aircraft. He must have been aware, and admits that he was so aware, that the Phoenix Four were on holiday in Portugal in 2001 and while on holiday agreed between themselves to pay themselves very substantial bonuses. They in fact paid themselves collectively about £7 million after the conclusion of the Project Aircraft transaction. These sums came essentially from assets of MGRG and were used to make these very substantial payments to the Phoenix Four. They received the whole of the proceeds and MGRG received none. We agree with the contention of the Executive Counsel that that was not in the interest of MGRG and there is no doubt in our view that MGRG was a public interest company. In those circumstances the Respondents should have considered the public interest in relation to this transaction. It is of note also that the Inspectors said that the arrangements for the payment of these bonuses were not in the best interests of either MGRG or of its creditors.

131 The Inspectors referred to the point made on behalf of the Phoenix Consortium that "It is not unusual for tax losses to be surrendered and utilised within a group without any direct payment or any direct corresponding payment being made by or on behalf of the recipient of the tax benefits to the entity which surrendered the losses in question." They said that this appeared to be a common practice.

132 The Inspectors went on to say that "There may well be no harm in tax losses being surrendered at nil consideration where the companies making the surrenders are of undoubted solvency. If, however, there is a perception that it is legitimate for even a company in financial difficulties, or which is in fact insolvent by one or more measures, to surrender tax losses for no consideration without regard to whether doing so will in fact be of benefit to the company, it seems to us that that perception needs to be dispelled".

133 It was, as we have already stated, not in the interests of MGRG for payments from tax losses to which MGRG was entitled to be transferred to a subsidiary of PVH a company in which MGRG had no interest.

134 MGRG was a public interest company. We have set out our reasons for saying this when referring to Allegation 1.1 in relation to Project Platinum.

135 In those circumstances the Respondents should have given consideration to the public interest when acting as they did and should have considered whether to accept or continue with their engagement in Project Aircraft. They should have considered whether Project Aircraft itself was in the public interest, their assessment should have been recorded in writing, when it became apparent to them that the assets of MGRG were going to be used to benefit the Phoenix Four or might be, they should have declined to continue their engagement.

136 There was an obligation on the Respondents to consider adequately the public interest. In our view it was not considered at all and this was a substantial and significant departure from the standards reasonably to be expected of a member or member firm of the ICAEW. Mr Einollahi seems now to accept that he should have recognised the risk of the Phoenix Four doing and benefiting as they did.

137 In our view the allegation is made out and proven.

138 Allegation 2.2 alleges that the Respondents failed to identify and consider potential or actual conflicts of interest between the Phoenix Four, PVH, Phoenix Venture Leasing and MGRG and other Deloitte clients and failed to act in accordance with Fundamental Principle 2, Statement 1.201 (paras. 1.1 and 1.5) Statement 1.203 (para. 3.0) Statement 1.204 (para. 4.0).

139 The Executive Counsel says that the Respondents were obliged to take all reasonable steps to ascertain whether a conflict of interest existed or was likely to arise in the future between Deloitte and its clients in regard to Project Aircraft and to the changing circumstances of existing clients. This includes any implications arising from the possession of confidential information. Statement 1.203 paragraph 3.0 refers to this, saying further that "relationships with clients and former clients could give rise to familiarity or trust threat. Before accepting a new appointment such relationships should be reviewed and regularly thereafter. A relationship which ended over 2 years before is unlikely to constitute a conflict. Where it is clear that a material conflict of interest exists a firm should decline to act as corporate finance adviser."

140 Statement 1.203 paragraph 3.2 says "Where there appears to be a conflict of interests between clients but after careful consideration the firm considers that the conflict is not material and unlikely to seriously prejudice the interest of any of those clients, the firm may continue the engagement, but not without first informing the clients concerned." This should normally be done in writing.

141 Statement 1.203 paragraph 4.0 sets out the sort of reasonable safeguards that should be taken. The firm or the partner concerned should, in this case, have identified the client or clients on Project Aircraft. They were the Phoenix Four, PVH and MGRG. Deloitte should have identified their existing client relationships with the Project Aircraft parties and considered whether any conflict was material and likely to prejudice seriously the interests of those clients.

142 It does not appear to be in dispute that there was a potential conflict of interest between the Phoenix Four, PVH and MGRG as to how the proceeds from Project Aircraft should be distributed. It seems to have been accepted by Mr Einollahi in his evidence that there was this conflict or potential conflict. The principal conflict was the way in which it was proposed that any profits from Project Aircraft would be utilised. MGRG had an interest in ensuring, if they could, that any profits were used for the benefit of MGRG. There is no doubt that MGRG needed all that they could get in order to try to ensure the continuation of the business. The Phoenix Four wished – and this was a conflict between the two – to have profits to be used for their benefit, for them to take for their own use and profit.

143 There can be really no doubt that the Respondents were acting for all the Group Companies.

144 There were other and additional issues in relation to conflict. One, for example, being whether MGRG, a company that was probably insolvent, should surrender their tax losses without consideration. A second being whether the Phoenix Four should share the profits with MGRG when the Phoenix Four would not have been able to achieve those profits without MGRG's tax losses and the entering into a sale and leaseback of MGTF Tooling by MGRG.

145 It is notable that no separate engagement letter was written for Project Aircraft. It has been said that one was not necessary because the engagement letter for the Project Salt/Slag was appropriate for Project Aircraft. In our view this cannot be the case and was obviously not the case.

146 On 15th April 2002, a conflict form was completed by Deloitte. It related to the acquisition of MCCL18, a subsidiary of Barclays, by PVH. Whilst it did mention that Deloitte had relationships with subsidiaries of Itochu Corporation and Sumitomo to whom MCCL18 leased assets and who sub-leased assets to the Thomson Travel Group, it did not mention that they had an existing relationship with MGRG nor that MGRG was one of their clients in relation to Project Aircraft.

147 All the above matters should have been identified on the form. There can be no proper explanation for their omission.

148 The Respondents' defence to the allegation seems to be that there was no professional conflict of interest created. We do not agree. There is no doubt that Mr Einollahi was aware of this potential or actual conflict of interest. Neither he nor anybody at Deloitte seems to have dealt with the question of these conflicts adequately or at all.

149 In our view the allegation 2.2 is made out and proven.

150 The next allegation is 2.3. It is alleged that the Respondents failed (i) to make it clear to MGRG that Deloitte did not represent them or act in their interests. (ii) to obtain informed consent from MGRG to Deloitte acting for Phoenix Venture Leasing Ltd (formerly MCCL18) the Phoenix Four and/or PVH and (iii) to consider discontinuing with its engagement and failed thereby to act in accordance with Fundamental Principle 2 and the guidance in Statement 1.203 (paras. 3.2 and 3.4).

151 When he gave evidence before us Mr Standen, the Respondents' expert, said that if an adviser acts for a group of shareholders who do not have the same interests or are in conflict the adviser should make it clear to everybody concerned for whom he was acting. This is made clear in paragraph 3.2 of Statement 1.203.

152 Paragraph 3.4 of Statement 1.203 states that where a conflict of interests is likely seriously to prejudice the interests of a client an engagement should not be accepted or continued even at the informed request of both the clients concerned.

153 There can be no doubt that both PVH and MGRG were clients of the Respondents. They were concerned in the same transaction and the Respondents should therefore, in order to comply with Statement 1.203 and in particular paragraph 3.2, have informed both PVH and MGRG of the actual or potential conflict. Without doing this they should not have accepted the engagement. In this particular case we are of the view that even if there had been consent to them doing so it would not have been appropriate without first advising MGRG that they should take their own independent advice.

154 The Respondents say in answer to this allegation that they made it clear that they did not represent MGRG or act in its interests in respect of the consideration for tax losses and that Messrs Millett and Coggins were content with the position having fully understood it and that there was no real reason for them to consider discontinuing the engagement.

155 In our view there was undoubtedly a conflict, or at the very least a potential conflict which required the above action to be taken. Even if it had been, and it is accepted that it was not, it is difficult to see how the interests of the Phoenix Four, PVH and its shareholders and MGRG were to be protected. The Respondents were acting for the Phoenix Four and PVH and even if MGRG

were informed formally of the true position which they were not but should have been and they had given their consent to them acting it would not have been appropriate for them to act.

156 None of the required steps were taken as they should have been and this allegation is proven.

157 Allegation 2.4 states that the Respondents failed to consider and put in place any or any adequate safeguards as between Phoenix Venture Leasing Ltd (formerly MCCL18), the Phoenix Four, PVH and MGRG including advising MGRG to seek independent advice and failed thereby to act in accordance with Fundamental Principle 2 and the guidance in statement 1.203 (para. 4.0) and 1.204 (paras. 4.0 – 4.4).

158 The Executive Counsel says that there is no evidence that the Respondents considered what, if any, safeguards would have been put in place in order to manage the conflict that existed. They should have done so but did not which is not surprising when they say they neither identified nor considered the conflict, actual or potential.

159 The Respondents say that independent advice was not necessary. We do not agree. In our view MGRG should have been given the opportunity to take such advice and the option.

160 In our view this allegation is quite clearly made out.

161 Allegation 2.5 states that the Respondents wrongly asserted that a letter of engagement of 26th May 2000 issued in respect of Project Slag was appropriate for Project Aircraft.

162 The case against the Respondents is that the engagement on Project Aircraft was with a different client with underlying interests that now conflicted with other group entities since the restructuring, the previous engagement having been prior to the restructuring.

163 It is alleged that their conduct is in breach of Fundamental Principle 2 and the guidance in Statement 1.201 (paras. 1.1 and 1.5), Statement 1.203 (para. 3.0), Statement 1.204 (para. 4.0) and with due care, in accordance with Fundamental Principle 4.

164 In Corporate Finance matters it would appear that there is not any obligation on the adviser to enter into an engagement letter. Mr Standen, the Respondents' expert witness, told us this in evidence and we accept his evidence. However, in respect to the matters with which we are concerned the Respondents entered into an engagement letter in respect of the Project Slag/Salt engagement.

165 The Respondents' case is that no guidance or statement requires an engagement letter and that when no separate engagement letter is entered into for Project Aircraft it matters not because of there being no necessity for one and that the Deputy Chairman of PVH agreed that the original agreement was

effective for Project Aircraft. They go further and say that on 26th May 2000 Deloitte issued an engagement letter on Project Salt/Slag to the effect that Deloitte would give tax advice to Techtronic and its subsidiaries. Techtronic was the top company in the MGRG at the time and PVH did not exist. The argument on behalf of the Respondents was that the engagement in respect of Project Aircraft was with PVH and its subsidiaries as PVH had by then become the new principal company and had taken over from Techtronic.

166 The importance of any letter of engagement is to ensure that the company/ individual to whom the corporate finance services are being provided knows exactly what those services were and the terms on which they are to be carried out.

167 Even though it is now asserted properly that an engagement letter is not essential for corporate finance work there is no doubt that the Respondents' usual work practice was to issue them. If such a letter is issued it must be full and accurate. It cannot be a defence to the matters alleged in this allegation to say that as it was not essential and it does not matter if there are inaccuracies in it and omissions from the engagement letter.

168 If the letter is issued it must identify the client (this ensures that there is no doubt as to who it is) and specify all the services that are going to be provided. ("This again ensures that there is no doubt"). Not only does the letter do as above for the company to whom the services are being provided it gives comfort and protection to the adviser.

169 We wish to add one thing at this point. It may be suggested that if a company has a holding company above it, and a number of other companies in the same group, these companies bind the other companies in the same group in relation to a contract. This is not so. Each company is its own legal entity with separate statutory and corporate responsibilities. Thus it is quite wrong to say that "PVH stood in the shoes of Techtronic". This was said on behalf of the Respondents. It is wrong.

170 The Project Salt/Slag letter of agreement was an engagement letter on behalf of Techtronic in May 2000 and 2 years later PVH, which had a very different shareholding and with potentially conflicting interests became involved in a similar but not the same or identical project. It is clear that for both Salt/Slag and Aircraft the Respondents thought a letter of engagement was appropriate. It was a new letter of engagement that was required, not the old one. Mr Standen said in evidence that "the first engagement had stopped.....typically you would have a new engagement.... You would want to make it clear.... Who you were acting for".

171 We would refer to further evidence given by Mr Standen. We refer to the transcript of his evidence on the 12th day of the Tribunal hearing:

> "Q: If you're engaged as a corporate financial adviser... in the year 2000 for a client.... 2 years later another similar transaction for a

different client, would you expect to enter into a fresh engagement?

A: Yes it's a different client.

Q: Setting out terms that apply to that engagement?

A: Yes.

Q: You wouldn't expect to continue under the same engagement without making any changes?

A: I think that must be right.... did the transaction sort of stop and then start again or did it continue?

Q: It came to a halt.... then comes into being two years later which is similar but not the same.

A: Yes, so you effectively – the first engagement has stopped?..... I think ....you would typically have a new engagement letter, yes.

Q: Yes. You would want to make it clear, because of what happened in the past, who you were acting for?

A: I think – yes....."

172 The letter of engagement in relation to Project Aircraft was quite inappropriate. The Respondents lost their objectivity in that they seemed unable to recognise that Project Aircraft was a separate project to Project Slag/Salt, was with a different client and was two years later, resulting in a conflict with other group entities after the restructuring of the Group. The claim by the Respondents that the obtaining of the consent of the Deputy Chairman of PVH to the using of the original letter is no defence and no justification not to issue a new and accurate letter of engagement for an entirely different project with a different company and which required a wider scope of involvement than the original "tax advice" for Project Slag/Salt.

173 In our view the Respondents failed to comply with the Principles and statements referred to in allegation 2.5 and this allegation is made out.

174 The final allegation in relation to Project Platinum is 2.6 and relates to a proposed contingent fee of 15%. It is alleged that the Respondents proposed a contingent fee of 15% of the net cash to be received by PVH on the completion of the transaction. This would have ensured that Deloitte would have received a fee of approximately £2 million and this proposal was put forward and suggested without proper consideration as to whether such a fee was appropriate having regard to the client's business, the complexity of its operation, the work to be performed and adequately identifying, considering and safeguarding against the self-interest threat arising from charging a contingent fee and engaging in proper client engagement procedures. It is alleged that the

Respondents were in breach of Fundamental Principle 2 and the guidance in Statement 1.201 (paras. 1.1, 1.4 and 1.5), Statement 1.203 (para. 9.0), Statement 1.204 (paras 2.0 – 2.3) and Statement 1.210 (paras 2.2 and 4.0).

175 In our view the principles, with different facts, are very similar to the matters that we have dealt with in Allegation 1.7 which relates to Project Platinum.

176 The Respondents' defence to the allegation, put broadly, is that the fee was an entirely proper and legitimate professional fee, calculated as a percentage of the proceeds of the transaction, which aligns the interests of the clients and Deloitte. Miss Carr said that the fee was appropriate when one takes into consideration the fact that if a transaction fails nothing is paid.

177 We have noted, with some interest, Chapter XXIII of the Inspectors' report at paragraph 54. It says "Some of Deloitte's non-audit fees were on a contingent basis: in some cases these were or stood to have been, very substantial.... Deloitte's initial Engagement Letter in respect of Project Slag (which in the event did not proceed) provided for Deloitte to receive as much as £17.8 million: although Deloitte issued a revised engagement letter in September 2000, following changes to the proposed split of tax benefits between the group and Barclays, it was still anticipated that Deloitte's fee may be in the region of £10 million." We refer also to footnote 64 and particularly 65. Footnote 65 refers to a letter from Deloitte to Barclays which stated that Barclays would pay Deloitte a conditional or contingent fee of £1.7 million for arranging the transaction. There does not appear to have been a justification for this payment.

178 In our view the plain feature of the Project Aircraft is, as Counsel for the Executive Counsel put in his closing submissions, that the Respondents undertook this work under the engagement letter between Deloitte and Techtronic in 2000. This was a totally different transaction between different parties and it did not bear fruit. There does not appear to us to have been any careful consideration, or indeed any consideration, as to whether the contingent fee either in principle or in amount was appropriate.

179 There are no documents to support the contention that anybody had thought or considered whether a contingent fee was appropriate or how it should be charged. Miss Carr said that there was no obligation to keep records as to how a contingent fee was assessed and that it would not have been market practice at the time to do so. We find this very difficult to accept even at that time and cannot envisage that there would have been no documentary support for careful consideration if there had been any.

180 We acknowledge that in a contingent fee case there is a risk of the corporate financier receiving no payment at all but the Fundamental Principles, the statements and the standards of the ICAEW do and did apply to corporate financiers.

181 In concluding we adopt the principle to which we referred when considering the allegation in 1.7 and we are satisfied that this allegation is proven. We are

satisfied that there has been no attempt to identify, consider and safeguard against the self-interest threat which arises from the charging of a contingent fee.

182 In this matter the Complaint has 2 principal allegations against the Respondents, the first in relation to Project Platinum and the second in relation to Project Aircraft. In relation to Project Platinum there are seven sub-allegations and in relation to Project Aircraft six sub-allegations.

183 We have considered each of the allegations and sub-allegations separately and reached separate conclusions although there have been occasions when the evidence we have heard has been relevant to more than one and we have considered whether the case has been made out against the Respondents in each case. We have looked at each Respondent separately but it has not been suggested in the course of the case that different decisions are appropriate in the case of each Respondent.

184 We are satisfied that both the allegations and all the sub-allegations within them are made out.

185 We have to consider whether to make an Adverse Finding in respect of some or all of the alleged acts of misconduct. An Adverse Finding means in this matter, a finding by Disciplinary Tribunal that a member/member firm has committed an act of misconduct.

186 In the course of Miss Carr's closing submissions Mr Dutton made what he described as "in part a concession on the law, in relation to misconduct".

187 He said "On misconduct, we are agreed that the test is: have some respondents fallen below the standards reasonably to be expected of a member or member firm?" We agree with this.

188 He adopted what had been said by Mr Jaffey, on behalf of the Respondents, "In making such findings the Committee was.... to consider inter alia:

(a) "The duties and responsibilities of that member or member firm in relation to the matter under enquiry.

(b) The importance of the work in relation to which the matter has arisen in terms of the magnitude of the sums of the money involved.

(c) The known or potential consequences of any shortcoming revealed by the enquiry.

(d) The need for high standards of professional work to be considered in the light of the reasonable exercise of professional judgment.

(e) The differing responsibilities of members [who are and] who are not in public practice". [error in transcript corrected].

These features, we accept, can and should fairly be taken into account by you. The consequences, known or potential, so you can look at potential consequences....".

189 Mr Dutton continued:

"We are agreed that you need to decide: what are the requisite standards? Have the Respondents fallen below the standards reasonably expected of them, and has that failure been significant?....You can look at potential circumstances and obviously you'll look at this in the context of the facts as a whole. That's something for you to keep in mind as you work your way through your decision."

CONCLUSION

190 In considering the question of misconduct we have reminded ourselves that a single negligent act or omission is less likely to amount to misconduct than a number of acts. There is in our mind no doubt that some of the allegations made are more serious than others and on their own amount to misconduct. The others that are proven in their aggregate amount to misconduct.

191 We are satisfied that the sub-allegations 1.1 and 1.7 which relate to Project Platinum and sub-allegation 2.1 which relates to Project Aircraft , are each by themselves of such seriousness that the breach of each one of them amounts to misconduct. We do not consider that they are negligent acts or omissions but that the acts which amount to the misconduct were quite deliberate acts perpetuated by Mr Einollahi who knew exactly what he was doing.

192 We are quite satisfied that MG Rover Group was a 'public interest company'. We are satisfied that the Respondents knew that it was a 'public interest company'. We are reinforced in our views because they emphasised in correspondence with the Inland Revenue that MG Rover Group was a public interest company. We do not accept that they did not understand that it was such a company. It would be unrealistic to suggest otherwise. Mr Einollahi was an experienced member of the ICAEW and was aware that the Fundamental Principles and Statements of guidance required that the Respondents should bear in mind the public interest when accepting any assignment or appointment.

193 It was particularly important in the case of both Project Platinum and Project Aircraft that the public interest be considered because of the concern of inter alia the Government, employees, other employers, particularly in the West Midlands, creditors and the general public about the continuation of large scale car manufacturing in the West Midlands.

194 The importance of considering the public interest is further emphasised because both the Projects resulted in very large sums of money that might have been utilised for the benefit of the MG Rover Group in the running of its business instead, being used for the benefit of individuals, including the Phoenix Four.

195 There is no evidence of the public interest having been considered adequately or at all. Had it been considered properly they would have realised that the payment of these large sums to the Phoenix Four and in the case of Project Aircraft the transfer of assets of MGRG at no value were not in the public interest nor of MGRG.

196 This failure to consider the public interest is an undoubted failure to comply with the need for high standards of professional work in the light of the reasonable exercise of professional judgment, it also fails to consider the importance of the work in terms of the sums of the money involved and the known or potential consequences of the breaches.

197 The evidence before us shows that Project Platinum's objectives could have been realised by either First National Finance or Bank of Scotland who had expressed an interest in becoming the joint-venture partner. It is clear in our view, and we so find, that the Respondents would only have been satisfied by the contingency fee of £7.5 million and equity stake. The Respondents opted to deal with Bank of Scotland. Only they were able to satisfy the Respondents' requirements. The Inspectors concluded that "On balance, we think it likely that Mr Einollahi decided not to approach First National.... because Abbey was a client of Deloitte and,.... involving Abbey could prejudice Deloitte's fee arrangements". We cannot say whether the Bank of Scotland deal was better commercially than the Abbey deal although the Inspectors described the Abbey deal as an "obvious entity for a joint venture". They went on to say that the Respondents were intent on their contingency fee and equity stake objectives and were therefore not prepared to enter into negotiations with any party other than the Bank of Scotland because they considered that to be the best chance of achieving their contingent fee and equity stake. We agree with what the Inspectors said and this is further support for our view that the public interest was not considered.

198 We heard evidence that in corporate finance matters contingency fees were the norm and not the exception. We were told that clients were normally not willing to accept the charging of fees other than on a contingent basis and that is why Deloitte and Mr Einollahi charged them.

199 There would seem to be little doubt that corporate financiers who are not members of the ICAEW and thus not subject to the Fundamental Principles and Statements of Guidance of the ICAEW may be at an advantage over members of the ICAEW in acting in corporate finance matters. It follows that a practice may arise in such matters that is at variance with the standards required by the ICAEW. However we are quite satisfied that members and member firms must be guided by and adhere to the Fundamental Principles and Statements of Guidance. They are applicable to all members and member firms and this includes those engaged in corporate finance work.

200 We are quite satisfied that Deloitte and Mr Einollahi were well aware of this and in respect of sub-allegations 1.1, 1.7 and 2.1 chose to ignore this. They placed their own interests ahead of that of the public and compromised their own

objectivity. This was a flagrant disregard of the professional standards expected and required and was in each individual case, and of its own, serious misconduct.

201 The breaches that we have found in relation to the sub-allegations in the Complaint may in some cases not be as serious individually as those in 1.1, 1.7 and 2.1 but they are nevertheless serious. Even if individually they may not amount to significant misconduct – although we are not convinced of that – taken together they show a persistent disregard of the Fundamental Principles and Statements. This persistent and, in our view, deliberate disregard, is significant misconduct.

202 We should say before we go on to next part of this Report that the conclusions set out hereinbefore are the conclusions of each member of the Tribunal and, after lengthy discussion of the matters that we have to consider, we have been unanimous.

203 In the light of our conclusions we have had to consider two further matters the questions of costs and the appropriate sanctions.

204 We held an oral hearing on Monday 29th July 2013. (2 days were set aside for the hearing but it was concluded in one day).

205 Before the oral hearing we had asked for and received written submissions on behalf of the Executive Counsel and on behalf of the Respondents. As at the previous hearings the Executive Counsel was represented by Mr Dutton Q.C. and Mr Medcroft. Miss Carr Q.C., who had represented the Respondents with Mr Jaffey at all the earlier hearings, had been appointed a High Court Judge in June 2013 and was unable to represent them at the hearing on 29th July 2013. The Respondents were represented at that hearing by Mr Bankim Thanki Q.C. and Mr Jaffey. They were also responsible for the contents of the Written Submissions on behalf of the Respondents.

206 We are dealing firstly with the matter of Costs because by the time of the hearing some substantial agreement had been reached between the parties.

207 In their Written Submissions of 17th July 2013 Counsel for the Executive Counsel asked the Tribunal to award costs against the Respondents jointly and severally in the sum of £3,963,856. On any basis this is a large sum. The written submissions set out the figures in detail. They were referred to in the body of the submissions and behind Tabs 7 and 8.

208 The figures and the basis of their calculation were challenged by Mr Thanki and Mr Jaffey in detailed submissions. They challenged the amounts and the principles on which they were claimed.

209 In the light of our earlier findings we do not think it could be seriously suggested that an order for costs should not be made against the Respondents. This had been a hard fought, complicated and lengthy matter. Queen's Counsel and Junior Counsel had been instructed on both sides and two large firms of

solicitors were also involved. The amount of work involved, not least by members of the Tribunal, was very substantial. In our view it is not possible to say that the employment of so many lawyers was unnecessary and the Tribunal was greatly assisted by their labours.

210 Whereas the making of an order for costs could not really be argued against the amounts involved could be. In the absence of agreement between the parties it is essentially a matter for the Tribunal to adjudicate on the matter. We were all of the view that we were completely unqualified to make such a judgment and none of us relished the task.

211 Fortunately by 29th July 2013 whereas there was no agreement as to the total amount to be paid there was agreement as to the procedure. Mr Dutton told us (Transcript of 29th July 2013 pages 3 and 4):-

> "We have reached agreement as follows on costs, that there should be an order that the respondents pay the costs of the Executive Counsel, the final amount to be paid to be the subject of an assessment on the standard basis if not agreed and that there should be an interim payment towards those costs of £1.75 million within 28 days.... We have agreed that the appropriate order would be for you to direct that the amount be the amount due on an assessment. That would be a conventional assessment by a High Court Master who will be an expert in costs matters, with an interim payment of £1.75 million within 28 days. That ensures that any points which can't be agreed on costs can be the subject of an assessment."

Mr Thanki agreed to this. There was further discussion but we do not need to do or say anything further at this stage.

212 Matters have progressed since the date of the hearing. On 8th August 2013 the Respondents' Solicitors wrote to the Tribunal Secretary saying that the Executive Counsel and the Respondents have reached agreement as to the Order that they invited the Tribunal to make in the light of the Adverse Findings the Tribunal had indicated they intended to make. The agreed Order is:-

> "It is ordered that:
>
> 1. The Respondents shall pay to the Executive Counsel the costs of, and incidental to, the investigation and the hearing of the Formal Complaint, subject to the matters set out below.
>
> 2. The Respondents shall make an interim payment of £1,750,000 (one million seven hundred and fifty thousand pounds) on account of costs by close of business on Tuesday 27th August 2013.
>
> 3. There be an assessment of the Executive Counsel's costs by a costs judge of the High Court pursuant to Section 70 of the Solicitors Act 1974.

4. Costs shall be assessed on the standard inter parties basis.

5. For the avoidance of doubt: (a) costs shall not be assessed on the Solicitor and client basis; (b) the costs judge shall be at liberty to consider the necessity and proportionality of each item claimed: and (c) the costs judge shall rule on the recoverability of investigation costs in relation to matters not pursued in the Formal Complaint".

213 We now turn to the matter of sanctions.

214 The Tribunal had directed that there should be written submissions from both the Executive Counsel and the Respondents to assist the Tribunal in relation to both sanctions and costs. It is right to say that we have been greatly assisted by both the written and the oral submissions.

215 We think we should refer at this point to one preliminary matter raised in writing and orally by Mr Thanki.

216 At Section B of the Respondent's written submissions there is reference to Regulation 28 of the FRC Accountancy Regulations. This sets out, they say, the representations that may be made to the Tribunal in connection with sanctions.

> "The Disciplinary or Appeal Tribunal shall, at an appropriate stage in the proceedings but before making, affirming or amending an order or orders under paragraphs 7(7) or 8(11)(i) of the Scheme, invite representations from the Member or Member Firm concerned in respect of the possible orders that the Tribunal may make, affirm or amend under Appendix 1 to the Scheme. Such representations may be made orally (which may be made by a Representative) and/or in writing. The Member or Member Firm concerned may call witnesses in support of their representations; the representations shall not be directed to the validity of the findings of the Tribunal. The Executive Counsel shall inform the Tribunal of any previous findings made either under this Scheme or by a disciplinary body of a Participant against the Member or the Member Firm". (The underlining was added.)

The Accountancy Regulations were amended on 24th July 2013 and the former Regulation is now Regulation 35 of the Regulations dated 24th July 2013.

217 Mr Thanki submitted that under the Scheme and Regulations the Member or Member Firm may make representations as to sanctions but that the Executive Counsel's role is limited to informing the Tribunal of antecedents and applying for costs and that sanctioning is a matter for the Tribunal.

218 Mr Thanki was therefore submitting that the role of the Executive Counsel was very limited and akin to a prosecutor in a criminal case. He was reinforced in his submissions by a letter dated 12th August 2008 from the Executive Counsel to the Joint Disciplinary Scheme.

219 There is no doubt that the Executive Counsel in this matter went a great deal further than Mr Thanki says he was entitled to. He invited the Tribunal to order a severe reprimand in respect of Deloitte to exclude Mr Einollahi from the profession and to impose a fine, greater than ever before imposed, on Deloitte. Mr Thanki said that he was not entitled to do that and asked us essentially to take regard only of the Sanctions Guidance, the representations made by him in writing and orally and the representations of the Executive Counsel in respect of antecedents.

220 We are grateful to Mr Thanki for his submissions but he conceded in the course of his oral submissions that the Tribunal has an overriding discretion as to how its proceedings are conducted. He referred us to the Attorney-General's guidelines that were appended to Mr Dutton's submissions. The Attorney-General says that "The appropriate disposal of a criminal case after conviction is as much a part of the criminal justice process as the trial of guilt or innocence. The prosecution advocate represents the public interest, and should be ready to assist the Court to reach its decision as to the appropriate sentence....". In our view similar principles apply to Disciplinary proceedings under the Scheme.

221 Mr Thanki went on to refer to a further paragraph of the Attorney-General's guidelines where it says that "The Prosecution advocate may also offer assistance to the Court by making submissions ... as to the appropriate sentencing range. Mr Thanki says that Mr Dutton has gone too far, that he has been much more specific and has suggested and recommended particular orders and penalties. We think there is some force in what Mr Thanki says but we need as much help as we can be given. We are aware that what Mr Dutton has said are no more than submissions for us to accept or reject as we think proper. We do not have to follow his submissions blindly and as is apparent from what follows we have not done so. The matters of sanctions and costs are matters for the Tribunal and not for Counsel. We have found some of Mr Dutton's submissions helpful and others not so helpful. We have made up our own minds about them and reached our own conclusions. Mr Dutton says that: "What Mr Thanki is doing, very skilfully but incorrectly, is to conflate the obligation of the Executive Counsel to provide details of antecedents with a prohibition on the Executive Counsel from assisting the tribunal on behalf of the Executive Counsel in respect of sanction, and the scheme does not prohibit a wider role". We agree with Mr Dutton on this point.

222 We have, of course, been greatly assisted by the submissions of both Counsel. We would have found our task more difficult without them but the conclusions reached are ours not those of Counsel and it is worthy of comment that while we are now unanimous in our findings those findings were reached after lengthy discussion and give and take before complete unanimity was achieved.

223 We have dealt with the aforesaid matters at some length as we promised at the oral hearing to do so.

224 We now turn to the question of sanctions and we will deal firstly with sanctions generally, then with sanctions in relation to the first Respondents and finally with sanctions in relation to the second Respondent, Mr Einollahi.

225 The FRC published revised Sanctions Guidance in February 2013 after a period of consultation. The Sanctions Guidance can be found behind Tab 1 of the Executive Counsel's written submissions. Leading Counsel referred to them in detail and there is substantial agreement about them. We feel it necessary to refer to them in some detail in this report.

226 Paragraph 5 of the Guidance emphasises that the Guidance is solely advisory and not binding on a Tribunal. Each Tribunal must decide what, if any, sanction to impose having regard to its findings but that if a Tribunal is going to depart from the guidance it should explain its reasons for so doing.

227 Sanctions are imposed under the FRC's Disciplinary Scheme when a Tribunal finds that a Member or Member Firm has conducted an act of Misconduct or has failed to comply with any obligations under the Scheme. Misconduct is defined in the Scheme and is set out in paragraph 8 of the Guidance.

228 Paragraphs 9 and 10 of the Guidance are important. Paragraph 9 sets out the reasons for the imposition of sanctions in the context of professional discipline. They are (i) to deter members of the accountancy profession from committing "Misconduct"; (ii) to protect the public from Members and Member Firms whose conduct has fallen significantly short of the standards reasonably to be expected of that Member or Member Firm; (iii) to maintain and promote public and market confidence in the accountancy profession and the quality of corporate reporting: and (iv) to declare and uphold proper standards of conduct amongst Members and Member Firms.

The paragraph concludes that the primary purpose of imposing sanctions for acts of Misconduct is not to punish, but to protect the public and the wider public interest.

229 Paragraph 10 refers to the imposition of sanctions which (i) improve the behaviour of the Member or Member Firm concerned; (ii) are tailored to the facts of the particular case and take into account the nature of the Misconduct and the circumstances of the Member or Member Firm concerned; (iii) are proportionate to the nature of the Misconduct and the harm or potential harm caused (iv) eliminate any financial gain or benefit derived as a result of the Misconduct; and (v) deter Misconduct by the Member, Member Firm or others.

230 Paragraph 16 of the Guidance summarises the approach to Determining Sanction. The normal approach is to (i) Assess the nature and seriousness of the Misconduct found by the Tribunal (paragraphs 17 to 21); (ii) identify the sanction (including the range within which any fine might fall) or combination of sanctions that the Tribunal considers potentially appropriate having regard to the Misconduct identified in (i) above (paragraphs 22-47); (iii) Consider any relevant aggravating or mitigating circumstances and how those circumstances

affect the level of sanction under consideration (paragraphs 48 to 57); (iv) Consider any further adjustment necessary to achieve the appropriate deterrent effect (paragraphs 55 and 56); (v) Consider whether a discount for admissions or settlement is appropriate (paragraphs 57 to 61); (vi) Decide which sanction(s) to order and the level/duration of the sanction(s) where appropriate; and (vii) Give an explanation at each of the six stages above, sufficient to enable the parties and the public to understand the Tribunal's conclusions.

231 Both the Executive Counsel and the Respondents accepted in the course of their submissions that the above is the proper approach. However in their submissions to the Tribunal as to the appropriate sanctions in this case there was, not unexpectedly a very substantial difference.

232 The Executive Counsel, at the conclusion of his written submissions, submitted that Deloitte should receive a Severe Reprimand and a fine of between £15 million and £20 million. He further submitted that Mr Einollahi should be excluded from membership of the ICAEW for a period of 6 years and be fined in an amount to be determined following receipt of further information regarding the financial benefit he derived from the conduct and his present financial resources. We are aware and have been for some time that to some extent any financial penalty imposed upon Mr Einollahi is irrelevant because Deloitte are going to pay any fine that he may be ordered to pay and will reimburse him in respect of any sum of costs.

233 Mr Thanki submitted in his written submissions that the appropriate sanctions in respect of Deloitte are a severe reprimand and a fine of £1 million and in respect of Mr Einollahi a reprimand.

234 It is clear from the above the extent of the difference between the parties. We have to resolve that difference and reach the appropriate conclusion.

235 Mr Thanki has urged upon us that a severe reprimand for Deloitte would be an appropriate sanction. He says that such a sanction, combined with the publication of the Tribunal's Report is a heavy penalty for a major Member Firm. Deloitte have never previously received a severe reprimand and we are satisfied that there are no previous relevant findings against them. It is not suggested otherwise. There are a number of minor disciplinary findings against Deloitte and Deloitte LLP. They are not comparable, they do not relate to corporate finance, not taking the public interest into consideration, conflicts or the question of contingency fees and we ignore them.

236 Mr Thanki invited us to take into account what he said were a number of mitigating factors. They are set out in some detail in the Respondents' written submissions and were referred to in his oral submissions.

237 The Respondents do not suggest that they can ask for any discount in sanctions for any admissions or for an early settlement. This matter has been fiercely fought from the very beginning to end. There therefore can be no discount. The Respondents suggest that the Executive Counsel are saying that

it is an aggravating factor that the disciplinary proceedings were so contested. We do not agree. In our opinion, while there can be no discount if a matter is fought, no Member or Member Firm should be punished or penalised for contesting a charge or charges and we do not increase in any way the sanctions because the matter was fought. There is one proviso to this last matter. Had the matter not been defended it would have lasted a much shorter time. There would have been no strike out application and the substantive hearing would have lasted no more than a day or so. The fact that the matter has been unsuccessfully defended means that far greater costs have been incurred and the Respondents, as the unsuccessful parties, are going to have to pay a very substantial part of those costs.

238 There has been criticism by the Executive Counsel of the cross-examination of Mrs Hill, a chartered accountant who was at the time employed by Messrs Grant Thornton, and of Mr Millett who was at the relevant time the Finance Director of MGRG and who was the most important witness called as to fact on behalf of the Executive Counsel. Both of these witnesses were cross-examined forcefully and at length by experienced Queen's Counsel. It must be remembered that these were adversarial proceedings. In our view there was nothing improper about either of those cross-examinations. Had there been so any such cross-examination would have been stopped by the Tribunal.

239 We do not think it appropriate to say that these cross-examinations were unjustified. We found Mrs Hill to be an impressive and truthful witness and make no criticism of her. It may be unfortunate that she, as a young member of the Grant Thornton team, had to give evidence rather than somebody more experienced but she impressed us in the way that she gave her evidence.

240 We do not think it right to make any criticism of Mr Millett. Counsel for the Respondents thought it right to explore a number of matters with him in cross-examination and made a number of submissions about his evidence. In our view both the cross-examination and the submissions were perfectly proper.

241 In the light of the aforesaid we accede to the submissions on behalf of the Respondents that an appropriate sanction in relation to Deloitte is one of a severe reprimand. This will mark our disapproval of Deloitte's misconduct which we have already described as serious. We are satisfied that there should also be a financial penalty in the case of Deloitte. We will come to deal with the sum after we have dealt with the non-financial sanction in respect of Mr Einollahi. Suffice to say at this stage a fine of £1 million suggested by Mr Thanki is not appropriate.

242 We have found that the misconduct in this case was serious. The principal person responsible was Mr Einollahi. He is a Chartered Accountant and became a member of the ICAEW in 1982. He held a senior position in Deloitte. He was a partner in Deloitte's corporate finance department and was in charge of the U.K. corporate finance department outside London. In the corporate finance department he was responsible for the supervision of, amongst others, Ian Barton and Nigel Birkett. Mr Dutton refers to him in his written submissions

as highly intelligent, charismatic and on occasion overbearing. There can be little doubt but that he set the tone of the corporate finance team. We agree with the description given to him by Mr Dutton. There can be no doubt that he was the "boss" and people did what he said. There appeared to be little control of him. He was responsible for safeguarding the firm's objectivity and for considering the public interest.

243 The evidence that we heard in the course of the substantive hearing made it clear that he was responsible for all the misconduct. We are quite satisfied that he was very experienced, he was aware of the Fundamental Principles and the guidance and in many cases he chose to ignore them.

244 We have referred previously to the Sanctions Guidance of February 2013. Paragraph 9 provides that sanctions are imposed to achieve a number of objectives. They are set out in Paragraph 9. They are (i) to deter members of the accountancy profession from committing "Misconduct"; (ii) to protect the public from Members and Member Firms whose conduct has fallen significantly short of the standards reasonably to be expected of that Member or Member Firm; (iii) to maintain and promote public and market confidence in the accountancy profession and the quality of corporate reporting (iv) and to declare and uphold proper standards of conduct amongst Members and Member Firms. It summarises the position by saying the primary purpose of imposing sanctions for acts of Misconduct is not to punish, but to protect the public and the wider public interest.

245 Paragraphs 44 to 47 of the February 2013 Sanctions Guidance set out the general matters that have to be considered when Exclusion from membership is being considered.

246 Paragraph 44 provides that the ability to exclude from membership is because certain Misconduct is so damaging to the wider public and market confidence in the standards of conduct of Members and in the accountancy profession and the quality of corporate reporting in the United Kingdom that removal of the Member's professional status is the appropriate outcome in order to protect the public or otherwise safeguard the public interest.

247 Before ordering exclusion of a Member all other available sanctions should be considered to ensure that exclusion is the most appropriate sanction, either on its own or in conjunction with another or other sanctions and is proportionate taking into account all the circumstances of the case.

248 Paragraph 46 of the Guidance sets out what may be obvious in that it provides that exclusion is likely to be the appropriate sanction when the Misconduct is fundamentally incompatible with membership.

249 Paragraph 43 sets out a number of matters that have to be considered when considering Preclusion and paragraph 47 says that those matters will also normally be relevant when a Tribunal is considering Exclusion.

250 We have taken all those matters into consideration as we have the specific circumstances referred to in paragraph 47.

251 We have also considered paragraph 49 of the Guidance where it is provided that if a Tribunal concludes that the Misconduct was intentional it will be a material factor in determining the sanction or sanctions to be imposed. We would further refer to paragraphs 191, 200 and 201 herein.

252 In the course of the hearing on 29th July 2013 we raised with Mr Thanki the question of whether Mr Einollahi would be prepared to provide a formal undertaking to relinquish his practising certificate. By a letter dated 8th August 2013 from Messrs Freshfields it is stated that "he does not wish to do so, as he considers that this would effectively amount to agreeing that an exclusion is the appropriate sanction. However, he has confirmed that he is not practising as a Chartered Accountant and currently has no intention of doing so in the foreseeable future". Without the surrender of his practising certificate or without exclusion there is nothing to prevent Mr Einollahi from practising as a Chartered Accountant in Corporate Finance or any other field with immediate effect. He could work for another firm or even start a firm on his own.

253 Paragraph 18 of the Sanctions Guidance sets out a number of factors that should be considered when considering sanctions. We have considered them. By no means all are relevant to this matter but a number are. We are satisfied that there was substantial financial benefit intended to be, and actually derived, from the Misconduct, that the Misconduct caused the loss of significant sums of money, that the Misconduct involved deliberate failure to comply with professional standards, that the breaches were substantial and of importance, that there was a failure to act with complete integrity, that the Misconduct could undermine confidence in the standards of conduct in general of Members and Member Firms and in the profession generally, that Mr Einollahi caused other individuals to commit misconduct, that Mr Einollahi held a senior position and had supervisory responsibility and that he was solely (or almost solely) responsible for the Misconduct.

254 These are all very serious matters. The public must be protected from Misconduct of this nature. There seems to be no contrition or remorse on the part of Mr Einollahi only an attempt at justification of the Misconduct. It seems to be being suggested that we have been attempting to set new standards and principles. This is not the case. We have found breaches in the Regulations which have been in existence for a lengthy period of time.

255 We have concluded that in the circumstances the appropriate sanction in the case of Mr Einollahi is one of exclusion from the profession for a period of 3 years. We take the view the public will not be sufficiently protected if there is a possibility of Mr Einollahi being in practice as a Chartered Accountant, nor will the public's confidence in the accountancy profession be satisfied, nor proper standards of conduct be upheld.

256 We should add that we did consider whether in the case of Mr Einollahi a sufficient sanction would be a severe reprimand. Had he been prepared to relinquish his practising certificate we would have been more disposed to make such an order. We consider it very important that he not be permitted to practise as a Chartered Accountant and thus without that certainty the sanction of a severe reprimand is not appropriate.

257 In the case of both Deloitte and Mr Einollahi we are satisfied that fines must also be imposed to meet the justice of their cases.

258 We have been told that no matter what fine is imposed in the case of Mr Einollahi it will in fact be paid by Deloitte. It might be said that in those circumstances there is no purpose in imposing any financial penalty. We do not agree with that. We are quite satisfied that we should impose a fine of the amount that would be appropriate if Mr Einollahi were to be personally responsible. We need to make it plain to senior members of the accountancy profession the sort of financial penalty that is likely to be imposed when they are having to make payment themselves rather than their firm paying.

259 In determining an appropriate fine we have paid regard to paragraph 34 of the Sanctions Guidance. We bear in mind that the Guidance provides that where the Member is no longer in employment (as is the case here) because, for example, he has left the Member Firm, the Tribunal will need to obtain information about the Members' existing financial resources and future employment prospects.

260 At the hearing on 29th July 2013 a request was made for such information. The request has been addressed, but only to a very limited extent, in a letter from Freshfields dated 8th August 2013. The information contained in the letter is not sufficient to make an accurate assessment of the Member's financial resources as referred to in paragraph 34. We have to do the best that we can on the limited information we have been given in the letter and with which we have been provided in the course of the case. In the circumstances and doing the best that we can we impose a fine of £250,000. This takes into account elements of financial gain and a factor of deterrent.

261 We have said hereinbefore that in the case of both Respondents we are satisfied that fines have to be imposed rather than a reprimand or exclusion alone.

262 In the case of Deloitte a combination of sanctions is appropriate because the financial benefit arising out of the misconduct is substantial and the nature and seriousness of the breaches in their totality renders a deterrent inadequate if it is only a severe reprimand. In consequence, in addition to a severe reprimand, a fine which recognises the effect and the repercussions of the serious misconduct is warranted to ensure that Deloitte are deprived of financial benefit. The fine of £1 million suggested by Mr Thanki is in our view quite inadequate.

263 The factors which we have considered in ordering a severe reprimand on Deloitte have to be reconsidered in determining the appropriate level of fine that should be imposed.

264 We have tried to quantify the extent of the financial benefit to Deloitte from Project Platinum and Project Aircraft as an alternative to fixing the fine by arithmetical reference to the annual revenues, profit before tax, total assets, members' equity or average profit per member. All these are important but they do not represent, in our view, a sensible starting point. A more meaningful approach is the deprivation of financial gain or benefit arising from the misconduct. A deterrent element should be added to this. This deterrent element should be calculated by reference to the remaining factors referred to in paragraph 18 of the Guidance and considering whether or not interest on the benefit is applicable and after making adjustments for aggravating and for mitigating factors set out in the submissions of the Executive Counsel and the Respondents.

265 The Sanctions Guidance provides that the appropriate fine has to have regard to the deprivation of financial gain by Deloitte combined with a deterrent element. We have assessed the financial gain from the fees attributable to both Project Platinum and Project Aircraft with a deduction for the total amount of recorded costs against these projects. We have added interest at 1% over base rate to deny Deloitte any financial gain from the misconduct.

266 In considering the deterrent element we have had regard to the loss of funds by MGRG to the disadvantage of its creditors and employees together with the notional adverse impact on customers and others. We have also included in this sanction the adverse effect on the chartered accountant's profession arising from the nature, extent and importance of the standards breached.

267 Given that paragraph 9 of the Sanctions Guidance provides that "The primary purpose of imposing sanctions for acts of misconduct is not to punish but to protect the public and the wider public interest". We have to try to arrive at a fine which is proportionate to the misconduct of the case, will act as an effective deterrent to future misconduct and will promote public confidence in the regulation of the chartered accountant's profession. We have to take into consideration the seriousness of the misconduct and take into account Deloitte's financial resources. We have borne very much in mind that Deloitte is not insured against the imposition of a fine and has undertaken to indemnify Mr Einollahi against any fine imposed upon him.

268 The factors considered in determining the seriousness of the misconduct have been weighed in terms of importance in arriving at an appropriate fine and we hope reflect any aggravating or mitigating circumstances that have been brought to our attention by the parties. We make it clear that we do not increase the fine by any sum because of the fact that this has been a strongly contested matter so that the Respondents do not gain the benefit that they would have if there had been total co-operation, confession and contrition from the start. There have been none.

269 We have been referred to a number of authorities by the parties. We are grateful but have not found them of great help. Each case depends on its own facts and we do emphasise that the PWC case to which we have been referred frequently is very different.

270 In the light of the above and taking into account the submissions of the parties and our own findings we impose on Deloitte a fine of £14 million in addition to the severe reprimand.

271 This report has been signed by the Chairman alone but it has been compiled and prepared by all Members of the Tribunal who are unanimous in their findings.

2/IX/2013

D. ANTHONY EVANS Q.C.
CHAIRMAN