

## Financial Reporting Council

### The Executive Counsel to the Financial Reporting Council

and

Mr Barry Tootell

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### Settlement Agreement

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1. This Settlement Agreement ("Agreement") is made on the 19<sup>th</sup> day of September 2016 between Gareth Rees QC as the Executive Counsel of the Financial Reporting Council ("FRC"), of 8<sup>th</sup> Floor, 125 London Wall, London EC2Y 5AS ("Executive Counsel") of the first part, and Barry Tootell ("Mr Tootell") former Chief Financial Officer ("CFO") and then Chief Executive Officer ("CEO") of the Co-operative Bank plc ("Co-op Bank") of the second part. The Executive Counsel and Mr Tootell together are described as "the Parties".
2. The Agreement is evidenced by the signatures of Executive Counsel on his own behalf, and by Mr Tootell on his own behalf.
3. On 14 January 2016 the Prudential Regulation Authority ("PRA") published a Final Notice ("Final Notice") in connection with Mr Tootell's conduct as Chief Financial Officer and Chief Executive Officer at Co-op Bank which is annexed. During the period between 1 January 2009 and 10 May 2013 Mr Tootell breached Statement of Principle 6 of the Statements of Principle and Code of Practice for Approved Persons, which provides that an approved person performing an accountable function must exercise due skill, care and diligence in managing the firm for which he is responsible in his accountable function. Furthermore, during the period between 22 July 2009 and 10 May 2013 Mr Tootell was knowingly concerned in the contravention by Co-op Bank

of Principle 3 of the Principles for Business, in that it failed to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.

4. The Parties have agreed terms of settlement with respect to the findings made in the Final Notice.
5. The adverse findings of the PRA set out in the Final Notice are, pursuant to paragraph 16(3) of the FRC Accountancy Scheme ("the Scheme"), conclusive evidence of Misconduct by Mr Tootell for the purposes of the Scheme.
6. The Parties recognise that the determination to be made in this case is a matter for the person appointed under paragraph 8(4)(i) of the Scheme. The Parties have agreed the following terms of settlement:
  - (a) Exclusion of Mr Tootell as a member of the Institute of Chartered Accountants in England and Wales ("ICAEW") for a recommended period of six years;
  - (b) A sum of £20,000 to be paid by Mr Tootell for the Executive Counsel's costs of, and incidental to, the investigation. The costs shall be paid not later than 28 days after the date when the Agreement takes effect.
7. In reaching this Agreement, Executive Counsel considered the following stages and took account of the following factors in accordance with the FRC's Sanctions Guidance:

**Nature and Seriousness of the Misconduct**

- i. The Misconduct could undermine confidence in the standards of conduct in general of Members, and financial reporting and corporate governance in the United Kingdom, and in the profession generally;
- ii. The Misconduct risked the loss of significant sums of money;

- iii. The Misconduct had the potential to adversely affect a significant number of people in the United Kingdom;
- iv. The nature, extent and importance of the standards breached;
- v. Mr Tootell held a senior position and had supervisory responsibilities;
- vi. The Misconduct was not dishonest, deliberate or reckless;
- vii. The Misconduct did not involve a failure to act or conduct business with integrity;
- viii. Mr Tootell was not solely responsible for the Misconduct.

#### **Identification of Sanction**

- i. The Misconduct was significant as Mr Tootell was CFO and CEO of a major UK bank;
- ii. The Misconduct was repeated and occurred over an extended period of time;
- iii. The action and sanction imposed by the PRA.

Having assessed the nature and seriousness of the Misconduct and taken into account the factors set out above, Executive Counsel determined that exclusion from the ICAEW for a recommended period of seven years is the appropriate sanction. Executive Counsel has then taken into account the aggravating and mitigating factors that exist (to the extent that they have not already been taken into account in relation to the seriousness of the Misconduct). Having considered these factors as set out below, Executive Counsel has determined that an adjustment to sanction is appropriate by reducing the recommended period of exclusion to six years.

#### **Aggravating Factors**

No aggravating factors are relevant

#### **Mitigating Factors**


- i. Mr Tootell co-operated during the investigation;

- ii. Mr Tootell did not stand to gain any profit or benefit from the Misconduct;
- iii. Mr Tootell has a good disciplinary record;
- iv. Mr Tootell has acknowledged and accepted responsibility for the Misconduct.

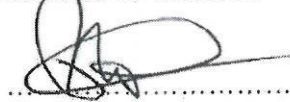
**Deterrence**

No adjustment for deterrence is required in this case.

- 8. Having considered the above factors, Executive Counsel determined that an order for exclusion as a member of ICAEW for a recommended period of six years is appropriate.
- 9. If the decision of the person appointed under paragraph 8(4)(i) of the Scheme is to approve the Agreement, including the sanctions set out at paragraph 6 above, then the Agreement shall take effect from the next working day after the date on which notice of the decision is given to Mr Tootell in accordance with paragraph 8(4)(iv) of the Scheme.
- 10. The Agreement and annex will remain confidential until publication in accordance with paragraph 8(6) of the Scheme.



**Gareth Rees QC**  
Executive Counsel



**Barry Tootell**

19<sup>th</sup> September 2016

Date

19/9/2016

Date