

**IN THE MATTER OF**

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

**-and-**

**(1) GRANT THORNTON UK LLP**

**(2) ROBERT NAPPER**

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**SETTLEMENT AGREEMENT**

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This Settlement Agreement ("**Agreement**") is made on the 14<sup>th</sup> day of March 2017 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 ("**the Executive Counsel**") of the first part, and Grant Thornton UK LLP of Grant Thornton House, Melton Street Euston Square, Euston, London, NW1 2EP ("**GT**") of the second part and Mr Robert Napper, of Oxfordshire, UK ("**Mr Napper**") of the third part. The Executive Counsel, GT and Mr Napper together are described as "**the Parties**".

1. The Agreement is evidenced by the signatures of the Executive Counsel on his own behalf, by Owen Brookman, General Counsel, on behalf of GT and by Mr Napper on his own behalf.
2. The Particulars of Fact and Acts of Misconduct against GT and Mr Napper ("**the Particulars**") as a member firm and member respectively of the Institute of Chartered Accountants in England and Wales ("**ICAEW**") were prepared by the Executive Counsel in accordance with the FRC Accountancy Scheme ("**the Scheme**") and are annexed. The Particulars relate to the conduct of GT and Mr Napper in relation to the audits of the 2009 and 2010 financial statements of AssetCo plc ("**AssetCo**"). More specifically: (1) the conduct of each of GT and Mr Napper fell significantly short of the standards reasonably to be expected of them in issuing unqualified audit opinions in respect of AssetCo's 2009 Financial Statements and 2010 Financial Statements having committed the various failings in relation to the audits of those financial statements that are further set out in the Particulars; and (2) the conduct of GT fell significantly short of the standards reasonably to be expected of it in respect of its quality control obligations arising under ISQC (UK and Ireland) 1.
3. GT and Mr Napper admit the Particulars, including the Acts of Misconduct alleged against each of them.
4. The Parties recognise that the determination to be made in this case is a matter for the Tribunal member in accordance with paragraph 8(4) (ii) of the Scheme.

## **GT - Sanction**

5. The Executive Counsel and GT have agreed the following terms of settlement:

A Fine of £3,500,000, adjusted for aggravating and mitigating factors and discounted for settlement to £2,275,000 and a Severe Reprimand. The Fine shall be paid not later than 28 days after the date when the Settlement Agreement takes effect.

6. In reaching this Agreement with GT, the Executive Counsel considered the following stages and took account of the following factors in accordance with the FRC's Sanctions Guidance ("**the Sanctions Guidance**"):

### ***Nature and Seriousness of the Misconduct***

- a. The Misconduct could undermine confidence in the standards of conduct in general of Member Firms;
- b. The Misconduct adversely affected or potentially adversely affected a significant number of people in the United Kingdom. AssetCo was publicly listed, quoted on the Alternative Investment Market and attracted substantial investment from the public. The 2008 AssetCo Annual Report stated that market capitalisation was c.£140m. The share price in 2009 (c.£6) reflected financial statements which contained an inflated balance sheet and included some significant revenue which was fictitious, which would not have been reported in the Financial Statements absent the Misconduct. The share price fell to £1 by 31 March 2011, which logically would have resulted in large losses for shareholders.
- c. A number of the transactions to which the Misconduct relates were material, and indeed highly substantial, to the financial statements of AssetCo;
- d. The nature, extent and importance of the standards breached. The Misconduct relates to Mr Napper's breach of one of the Fundamental Principles of the ICAEW Code of Ethics. Much of the Misconduct goes to professional scepticism, which is at the heart of auditors' duties in discharging their role;
- e. Mr Napper was an experienced partner of 23 years' experience at the time of the Misconduct and held supervisory responsibilities;
- f. The extent to which any potential financial crime (such as fraud) was able to occur as a result of the Misconduct. GT and Mr Napper were deliberately misled by AssetCo's management, but the exercise of proper scepticism would have led to dishonesty being uncovered. The lack of professional scepticism exercised by GT and Mr Napper was one of the reasons why investors were unaware of AssetCo's true financial position and the behaviour of the AssetCo management.
- g. The effectiveness of GT relevant procedures, system or internal controls and/or its implementation of ISQC 1. Act 12 (as described in the Particulars) explains the failings by GT in respect of its obligations under ISQC 1, as evidenced by Acts 1 – 11.
- h. The Misconduct was not dishonest, deliberate or reckless.

### ***Identification of Sanction***

Having assessed the seriousness of the Misconduct, the Executive Counsel has determined that a Fine of £3,500,000 and a Severe Reprimand is an appropriate sanction. Executive Counsel has then taken into account any 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 those additional factors set out below, Executive Counsel has determined that no adjustment to the sanctions is necessary because the aggravating and mitigating factors balance against each other.

### ***Aggravating Factors***

- a. The Misconduct, as set out in the Particulars, was extensive. There are 12 Acts of Misconduct in respect of GT, which relate to many and varied areas of the audit work. Further, the Misconduct occurred over two financial years.
- b. GT was fined £1,600,000 (reduced to £975,000 for settlement) on 8 July 2015 for Misconduct in relation to the audit of Manchester Building Society.
- c. Whilst neither GT nor Mr Napper made any collateral monetary gain from the various transactions by AssetCo relevant to the Misconduct, and in fact GT was never paid for much of the work it performed on the 2010 audit, AssetCo was a significant client for the office from which Mr Napper practised and the firm stood to gain in respect of fees arising from continuing the audit engagements and providing non-audit services to AssetCo (provided it had been able to recover them).

### ***Mitigating Factors***

- a. GT has co-operated fully and transparently at all stages of the investigation, including providing candid and prompt responses to requests for information.
- b. GT has admitted the Misconduct and expressed contrition and disappointment in respect of it.
- c. In some instances, GT and Mr Napper were deliberately misled by AssetCo management in respect of certain transactions to which their Misconduct relates (as set out in the Particulars).

### ***Deterrence***

No adjustment for deterrence is required in this case.

### ***Discount for Admissions and Settlement***

Having taken into account full admissions by GT and the stage at which those admissions were made (in Stage 1 of the case in accordance with paragraph 59 of the Sanctions Guidance), the Executive Counsel determined that a reduction of 35% as to the Fine as a settlement factor is appropriate, such that a fine of £2,275,000 is payable.

### ***Other Considerations***

In accordance with paragraph 32 (ii) of the Sanctions Guidance, the Executive Counsel has taken into account the size and financial resources of GT and the effect of a Fine on its business; and whether there are arrangements that would result in part or all of the Fine being paid or indemnified by insurers.

### **GT - Costs**

7. The Executive Counsel and GT have agreed the following terms of settlement:

A sum of £200,000 to be paid by GT, being the Executive Counsel's entire costs of, and incidental to, the investigation in respect of GT and Mr Napper. The costs shall be paid not later than 28 days after the date when the Settlement Agreement takes effect.

In accordance with paragraph 62 of the Sanctions Guidance, the Executive Counsel has taken into account GT's financial position and the impact of the Fine; and whether there are arrangements that would result in part or all of any award of costs being paid or indemnified by insurers.

### **Mr Napper - Sanction**

8. The Executive Counsel and Mr Napper have agreed the following terms of settlement:

Exclusion from the ICAEW for a recommended period of 3 years; any application for readmission after the specified period shall not necessarily be approved, but shall be considered by the ICAEW on its merits.

A Fine of £200,000, adjusted for aggravating and mitigating factors and discounted for settlement to £130,000. The Fine shall be paid in the following seven instalments:

- (a) £40,000 not later than 28 days after the date when the Settlement Agreement takes effect.
- (b) £15,000 on or before the 28<sup>th</sup> day of each calendar month, commencing from the first month after payment of the instalment referred to at paragraph (a) above.

In reaching this Agreement with Mr Napper the Executive Counsel considered the following stages and took account of the following factors in accordance with the Sanctions Guidance:

### ***Nature and Seriousness of the Misconduct***

- a. The Misconduct could undermine confidence in the standards of conduct in general of Members;
- b. The Misconduct adversely affected or potentially adversely affected a significant number of people in the United Kingdom. AssetCo was publicly listed, quoted on the Alternative Investment Market and attracted substantial investment from the

public. The 2008 AssetCo Annual Report stated that market capitalisation was c.£140m. The share price in 2009 (c.£6) reflected financial statements which contained an inflated balance sheet and included some significant revenue which was fictitious, which would not have been reported in the Financial Statements absent the Misconduct. The share price fell to £1 by 31 March 2011, which logically would have resulted in large losses for shareholders.

- c. Mr Napper was an experienced partner of 23 years' experience at the time of the Misconduct and held supervisory responsibilities;
- d. A number of the transactions to which the Misconduct relates were material, and indeed highly substantial, to the financial statements of AssetCo;
- e. The nature, extent and importance of the standards breached. The Misconduct relates to Mr Napper's breach of one of the Fundamental Principles of the ICAEW Code of Ethics. Much of the Misconduct goes to professional scepticism, which is at the heart of auditors' duties in discharging their role;
- f. The extent to which any potential financial crime (such as fraud) was able to occur as a result of the Misconduct. GT and Mr Napper were deliberately misled by AssetCo's management, but the exercise of proper scepticism would have led to dishonesty being uncovered. The lack of professional scepticism exercised by GT and Mr Napper was one of the reasons why investors were unaware of AssetCo's true financial position and the behaviour of the AssetCo management.
- g. The Misconduct was not dishonest, deliberate or reckless.

#### ***Identification of Sanction***

Executive Counsel has assessed the seriousness of the Misconduct, and had regard to paragraphs 44 and 45 of the Sanctions Guidance.

Executive Counsel considers that the Misconduct of Mr Napper, in its totality, 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.

In accordance with paragraph 45, Executive Counsel has fully considered all other available sanctions, to ensure that exclusion is the most appropriated sanction (either on its own or in conjunction with another sanction or sanctions) and is proportionate taking into account all the circumstances of the case.

Executive Counsel has determined that Exclusion from membership and a Fine are the appropriate sanctions. Executive Counsel has then taken into account any 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 those additional factors set out below, Executive Counsel has determined that no adjustment to sanction is necessary because the aggravating and mitigating factors balance against each other.

### ***Aggravating Factors***

- a. The Misconduct, as set out in the Particulars, was extensive. There are 11 Acts of Misconduct in respect of Mr Napper, which relate to many and varied areas of the audit work. Further, the Misconduct occurred over two financial years.
- b. Whilst neither GT nor Mr Napper made any collateral monetary gain from the various transactions by AssetCo relevant to the Misconduct, and in fact GT was never paid for much of the work it performed on the 2010 audit, AssetCo was a significant client for the office from which Mr Napper practised and the firm stood to gain in respect of fees arising from continuing the audit engagements and providing non-audit services to AssetCo (provided it had been able to recover them).

### ***Mitigating Factors***

- a. Mr Napper has co-operated fully and transparently at all stages of the investigation, including providing candid and prompt responses to requests for information.
- b. Mr Napper has admitted the Misconduct and expressed contrition and disappointment in respect of it.
- c. In some instances, Mr Napper was deliberately misled by third parties in respect of certain transactions to which their Misconduct relates (as set out in the Particulars).
- d. Mr Napper has a good compliance history and disciplinary record.
- e. Mr Napper has retired from audit practice and the Misconduct is therefore unlikely to be repeated.

### ***Deterrence***

No adjustment for deterrence is required in this case.

### ***Discount for Admissions and Settlement***

Having taken into account full admissions by Mr Napper and the stage at which those admissions were made (in Stage 1 of the case in accordance with paragraph 59 of the Sanctions Guidance), the Executive Counsel determined that a reduction of 35% as to the Fine as a settlement factor is appropriate such that a fine of £130,000 is payable.

### ***Other Considerations***

In accordance with paragraph 32 (iii) of the Sanctions Guidance, Executive Counsel has taken into account Mr Napper's financial resources; and whether there are arrangements that would result in part or all of the Fine being paid or indemnified by insurers, or his firm.

### ***Mr Napper - Costs***

9. The Executive Counsel and Mr Napper have agreed that there shall be no order for costs against Mr Napper.

10. If the Tribunal member approves the Agreement, including the sanctions set out above, then it shall take effect from the next working day after the date on which the notice of the decision is sent to GT and Mr Napper in accordance with paragraph 8(4) (iv) of the Scheme.
11. The Agreement and annex will remain confidential until publication in accordance with paragraph 8(6) of the Scheme.



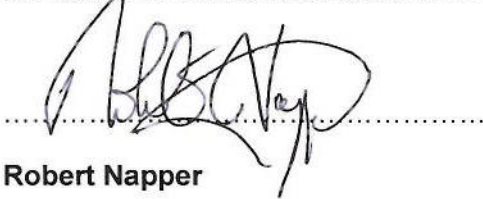
Gareth Rees QC

Executive Counsel



OWEN BROOKMAN

On behalf of Grant Thornton UK LLP



Robert Napper

14 March 2017

Date

13 March 2017

Date

13 March 2017

Date