

IN THE MATTER OF

THE EXECUTIVE COUNSEL TO THE FINANCIAL REPORTING COUNCIL

-and-

(1) MOORE STEPHENS (NI) LLP

(2) DAVID McCLEAN

SETTLEMENT AGREEMENT

1. This Settlement Agreement ("**Agreement**") is made on the 25th day of January 2016 between Jayne Astley as the Deputy Executive Counsel of the Financial Reporting Council ("**FRC**"), of 8th Floor, 125 London Wall, London, EC2Y 5AS ("**the Deputy Executive Counsel**") of the first part, and Moore Stephens (NI) LLP of 30/32 Lodge Road, Coleraine, Co. Londonderry, BT52 1NB ("**Moore Stephens**") of the second part and David McClean ("**Mr McClean**") of the third part. The Deputy Executive Counsel, Moore Stephens and Mr McClean together are described as "**the Parties**".
2. The Agreement is evidenced by the signatures of the Deputy Executive Counsel on her own behalf, by DAC Beachcroft LLP on behalf of Moore Stephens and by Mr McClean on his own behalf.
3. The Particulars of Fact and Acts of Misconduct against Moore Stephens and Mr McClean ("**the Particulars**") as a member firm and member respectively of the Chartered Accountants in Ireland, 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 Moore Stephens and Mr McClean in relation to the audit of the financial statements of Presbyterian Mutual Society ("**PMS**"). More specifically, the allegations of Misconduct relate to: in both 2007 and 2008 year ends, their failure to obtain an adequate general understanding of the legal and regulatory environment in which PMS operated, their failure adequately to test the assumption on the part of PMS's Board and management of compliance with PMS's own rules, and their failure to apply professional scepticism and obtain sufficient audit evidence to corroborate management's assurances and representations; and in the 2008 year end their failure to test adequately management's assertions, obtain sufficient audit evidence and exercise professional scepticism regarding liquidity and going concern.

4. For the avoidance of doubt the Executive Counsel: (a) does not allege that Moore Stephens and Mr McClean, as auditors, were expected to have known the answers to the legal and regulatory issues which the first of these allegations relates to or to have identified the "regulatory gap"¹; (b) does not allege that PMS's liquidity position rendered it inappropriate for management to use the going concern assumption in PMS's preparation of its financial statements for the year end 2007 or 2008, or that Moore Stephens ought to have issued an adverse opinion on that basis.
5. Moore Stephens and Mr McClean admit the Particulars, including Allegations 1 and 2.
6. 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.

Moore Stephens - Sanction

7. The Deputy Executive Counsel and Moore Stephens have agreed the following terms of settlement:

A Fine of £200,000, discounted for settlement to £140,000, and a Reprimand. The Fine shall be paid not later than 28 days after the date when the Settlement Agreement takes effect.
8. In reaching this Agreement with Moore Stephens, the Deputy 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 was not dishonest, deliberate or reckless;
- c. PMS was the largest industrial and provident society in Northern Ireland;
- d. Mr McClean held a senior position and supervisory responsibilities.

Identification of Sanction

¹ The Department for Enterprise, Trade and Investment in Northern Ireland ("**DETI**") was responsible for registering industrial and provident societies ("**IPSs**") and credit unions and carried out prudential supervision of credit unions but it considered that its powers did not extend to prudential supervision of IPSs. In the rest of the United Kingdom, the Financial Services Authority ("**FSA**") (as it then was) fulfilled the role of registrar for IPSs and was also responsible (both in Northern Ireland and in the rest of the UK) for authorisation under the Financial Services and Markets Act 2000 ("**FSMA 2000**") of any IPS whose activities were such as to require such authorisation. The FSA's evidence to the House of Commons Treasury Committee enquiry into the failure of PMS was that if, when considering the rules of an IPS as part of its function as registrar, it came across an IPS which needed to be authorised under FSMA 2000, it would raise this with the IPS. DETI's evidence was that it did not accept this was part of its function. The Committee's Report identified this difference in approach as a "regulatory gap"

Having assessed the seriousness of the Misconduct, the Deputy Executive Counsel has determined that a Fine and a Reprimand is an appropriate sanction. Deputy 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, Deputy Executive Counsel has determined that no adjustment to sanction is necessary.

Aggravating Factor

The Misconduct occurred over an extended period of time.

Mitigating Factor

Moore Stephens has a good compliance history and disciplinary record.

Deterrence

No adjustment for deterrence is required in this case.

Discount for Admissions and Settlement

Having taken into account full admissions by Moore Stephens 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 Deputy Executive Counsel determined that a reduction of 30% as to the Fine as a settlement factor is appropriate.

Other Considerations

In accordance with paragraph 32 (ii) of the Sanctions Guidance, the Deputy Executive Counsel has taken into account the size and financial resources of Moore Stephens; that Moore Stephens is a legally distinct and economically separate entity from Moore Stephens U.K. and Moore Stephens International; and that there are no arrangements that would result in part or all of the Fine being paid or indemnified by insurers, Moore Stephens U.K. or Moore Stephens International.

Moore Stephens - Costs

9. The Deputy Executive Counsel and Moore Stephens have agreed the following terms of settlement:

No contribution towards the Executive Counsel's costs of, and incidental to, the investigation.

In accordance with paragraph 62 of the Sanctions Guidance, the Deputy Executive Counsel has taken into account that Moore Stephens is a legally distinct and economically separate entity from Moore Stephens U.K. and Moore Stephens International; and that there are no arrangements that would result in part or all of any award of costs being paid or indemnified by insurers, Moore Stephens U.K. or Moore Stephens International.

Mr McClean - Sanction

10. The Deputy Executive Counsel and Mr McClean have agreed the following terms of settlement:

A Fine of £29,000, discounted for settlement to £20,000, and a Reprimand. The Fine shall be payable in equal instalments over a 24 month period in total, commencing not later than 28 days after the date when the Settlement Agreement takes effect.

In reaching this Agreement with Mr McClean, the Deputy 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 was not dishonest, deliberate or reckless;
- c. PMS was the largest industrial and provident society in Northern Ireland;
- d. Mr McClean held a senior position and supervisory responsibilities.

Identification of Sanction

Having assessed the seriousness of the Misconduct, the Deputy Executive Counsel has determined that a Fine and a Reprimand is an appropriate sanction. Deputy 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, Deputy Executive Counsel has determined that no adjustment to sanction is necessary.

Aggravating Factor

The Misconduct occurred over an extended period of time.

Mitigating Factor

Mr McClean has a good compliance history and disciplinary record.

Deterrence

No adjustment for deterrence is required in this case.

Discount for Admissions and Settlement

Having taken into account full admissions by Mr McClean 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 Deputy Executive Counsel determined that a reduction of (approximately) 30% as to the Fine as a settlement factor is appropriate.

Other Considerations

In accordance with paragraph 32 (iii) of the Sanctions Guidance, the Deputy Executive Counsel has taken into account Mr McClean's financial resources; and that there are no arrangements that would result in part or all of the Fine being paid or indemnified by insurers, Moore Stephens, Moore Stephens U.K. or Moore Stephens International.

Mr McClean - Costs

11. The Deputy Executive Counsel and Mr McClean have agreed the following terms of settlement:

No contribution towards the Executive Counsel's costs of, and incidental to, the investigation.

In accordance with paragraph 62 of the Sanctions Guidance, the Deputy Executive Counsel has taken into account Mr McClean's financial position and the impact of the Fine; and that there are no arrangements that would result in part or all of any award of costs being paid or indemnified by insurers, Moore Stephens, Moore Stephens U.K. or Moore Stephens International.

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

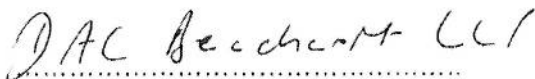


Jayne Astley

Deputy Executive Counsel

25.01.2016

Date

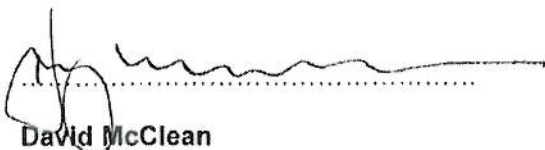


DAC Beachcroft LLP

On behalf of Moore Stephens (NI) LLP

25.1.16

Date



David McClean

25.1.16

Date

