

IN THE MATTER OF:

THE EXECUTIVE COUNSEL TO THE FINANCIAL REPORTING COUNCIL

- and -

ANDREW PAUL RAYNOR

PARTICULARS OF FACT AND ACTS OF MISCONDUCT

Introduction

1. The Financial Reporting Council ("**the FRC**") is the independent disciplinary body for the accountancy and actuarial professions in the UK. The FRC's rules and procedures relating to accountants are set out in the Accountancy Scheme of 8 December 2014 ("**the Scheme**").
2. This is the Executive Counsel's Particulars of Fact and Acts of Misconduct ("**the Particulars**") in relation to the preparation and approval of the financial statements of RSM Tenon Group plc ("**RSM Tenon**") for the financial year ended 30 June 2011 ("**FY11**").

Mr Raynor

3. The Respondent to the Particulars is Mr Andrew Paul Raynor ("**Mr Raynor**"), a member of the ICAEW¹ and the former Chief Executive Officer of RSM Tenon. By

¹ References to "Member" in this document relate to the definition as set out in paragraph 2(1) of the Scheme. References to "member" denote membership of the ICAEW.

virtue of his membership of the ICAEW, Mr Raynor is also a Member for the purposes of the Scheme.

4. Mr Raynor was admitted to membership of the ICAEW in 1981. He joined RSM Tenon in November 2001 following the acquisition of the practice formerly known as BDO Stoy Hayward East Midlands of which Mr Raynor was the managing partner. He acted as RSM Tenon's Finance Director before being appointed as Chief Executive Officer ("**CEO**") in March 2003. He was also a member of the board of RSM Tenon. Mr Raynor remained in that position until his resignation in January 2012.
5. As a director of RSM Tenon, Mr Raynor, along with the other directors, was ultimately responsible for the preparation and approval of the financial statements of RSM Tenon in accordance with the applicable laws and regulations and was not to approve the financial statements unless he was satisfied that they gave a true and fair view of the state of affairs of RSM Tenon and the profit and loss for that period. In reaching this conclusion, he was entitled to delegate to and rely upon the work of other appropriately qualified and experienced accountants under his supervision, whilst retaining ultimate collective responsibility with the Board for the financial statements. RSM Tenon had a number of qualified and experienced accountants on its Board and Audit Committee in addition to those in the finance team. There were a number of acknowledged technical accountancy experts within the company. Mr Raynor relied on the work of the finance team, and sought the advice of such internal technical experts, to assist in his role as CEO.

Misconduct under the Scheme

6. Paragraph 2(1) of the Scheme defines "Misconduct" as *"an act or omission or series of acts or omissions, by a Member or Member Firm in the course of his or its professional activities (including as a partner, member, director, consultant, agent, or employee in or of any organisation or as an individual) or otherwise, which falls significantly short of the standards reasonably to be expected of a Member or Member Firm or has brought, or is likely to bring, discredit to the Member or the Member Firm or to the accountancy profession."*

The relevant standards of conduct

7. The standards of conduct reasonably to be expected of Mr Raynor as a member of the ICAEW in the conduct of his role as CEO included those set out in the Fundamental Principles contained in Part A of the Code of Ethics (“**the Code**”) issued by the ICAEW. Executive Counsel refers to and relies upon relevant extracts annexed to the Particulars as Annex A.
8. The Fundamental Principles set out in Paragraph 100.5 of Part A of the Code required Mr Raynor, inter alia, to act with “Professional Competence and Due Care”. This includes the requirement that Mr Raynor act diligently and in accordance with applicable technical standards and professional standards of the ICAEW. As a professional accountant in business, Mr Raynor was further required to comply with Part C of the Code.

The Respondent’s Misconduct

9. As set out more particularly below, the admitted Acts of Misconduct relate to Mr Raynor’s conduct as a member of the ICAEW, in that it fell significantly short of the standards reasonably to be expected of a Member in that, in relation to the preparation and approval of the financial statements of RSM Tenon for FY11, he failed to obtain the necessary level of assurance required of a Member to enable him to sign off the statements on the basis that they were in accordance with applicable accounting standards and represented a true and fair view of the state of affairs of RSM Tenon.
10. The admitted Acts of Misconduct relate to Mr Raynor’s approval as a member of the ICAEW of two specific items in the financial statements for FY11: the accrual of bonus payments and the accounting treatment of the Econocom Leases.

RSM Tenon

11. Executive Counsel does not contend that the matters complained of in this Proposed Particulars of Fact and Acts of Misconduct caused or materially contributed to RSM Tenon being placed into administration in 2013. The following information about the company is provided for context only.

12. RSM Tenon was an accounting firm that grew rapidly through a series of acquisitions. It was incorporated on 17 February 2000 and its shares were admitted to trading on AIM in March 2000. RSM Tenon later obtained a full listing on the London Stock Exchange in May 2010 at which time the company had a market capitalisation of £140 million.
13. RSM Tenon's acquisitions in the year to 30 June 2010 included the purchase of Vantis plc and RSM Bentley Jennison Limited.
14. From this point in time, RSM Tenon was divided into five service lines: ATA (Audit, tax and advisory), Recovery, Risk Management, Financial Management and Specialist Tax.
15. Set out below are summaries of (i) RSM Tenon's profit and loss account and (ii) balance sheet, in both cases for the 5 years to 30 June 2012²:

Profit & Loss Account	2008 £'000	2009 £'000	2010 £'000	2011 £'000	2011 Restated £'000	2012 £'000
	160,269	150,809	190,422	249,087	228,422	208,230
Operating profit/(loss) A³	17,636	19,008	26,324	30,117	18,538	(8,882)
Operating profit/(loss) B⁴	13,947	14,580	8,822	13,890	3,373	(92,235)
Profit/(loss) before tax	12,435	11,971	7,843	9,457	(1,486)	(101,822)
Retained profit/(loss)	8,723	8,212	4,090	7,462	966	(88,694)

² By 30 June 2012, RSM Tenon was ranked as the seventh largest accounting firm in the UK.

³ Operating profit/(loss) A is stated before amortisation of acquired intangible assets, deferred consideration interest and exceptional items

⁴ Operating profit/(loss) B is stated after such costs

Summary Balance Sheet	2008 £	2009 £	2010 £	2011 £	2011 Restated £	2012 £
Assets						
Non-current assets	97,547	98,245	189,451	188,179	190,513	129,539
Current assets	68,812	65,613	86,350	88,683	81,455	74,411
Total assets	166,359	163,858	275,801	276,862	271,968	203,950
Liabilities						
Non-current liabilities	32,545	29,819	63,696	72,090	73,303	14,227
Current liabilities	48,787	44,548	65,286	56,815	59,184	140,028
Total liabilities	81,332	74,367	128,982	128,905	132,487	154,255
Total equity	85,027	89,491	146,819	147,957	139,481	49,695
Total liabilities and equity	166,359	163,858	275,801	276,862	271,968	203,950

16. Whilst RSM Tenon's revenue increased during this period on account of its growth through acquisitions, increases in underlying profit were offset by amortisation and temporary exceptional costs of integration and its profit before tax did not therefore increase. RSM Tenon's gross assets also increased significantly over this period as a result of these acquisitions and there was an increase in goodwill on account of RSM Tenon generally paying greater than the carrying value of the book assets of its acquisitions. Throughout the period from 2008 onwards, the net debt position of RSM Tenon increased each year, as funding was utilised for acquisitions.
17. In May 2011, RSM Tenon issued a profits warning stating that, as a result of the uncertain economic outlook, underlying profits for the group for FY11 would be below market expectations. In July 2011, RSM Tenon released its pre-close update for FY11 and stated that underlying profits were in line with the reduced expectations at that time.
18. In October 2011, RSM Tenon's Finance Director was replaced, very shortly before the financial statements for FY11 were approved on 31 October 2011. Soon thereafter, a number of material accounting errors in the financial statements of RSM Tenon were discovered.

19. In February 2012, RSM Tenon released its interim results for the six months ended 31 December 2011. These interim results included explanations that the previous financial statements for the financial year ended 30 June 2010 (“FY10”) and FY11 required restatement because of material accounting errors and a change in accounting policy. In addition, the interim results for the six months ended 31 December 2011 reflected a write down in goodwill of £60.7 million.
20. The restatements identified in the interim results for the six months ended 31 December 2011 were the following:

The nature of the adjustments and the impact on the group financial statements are set out below:-

	30 June 2011 £000	31 December 2010 £000	30 June 2010 £000
Equity attributable to owners of the parent as previously reported	147,960	147,211	144,751
Restatement of accounting errors			
Finance lease	(336)	-	-
Accrued income	(721)	-	-
Amounts recoverable on contract and associated contingent consideration	(2,946)	(2,103)	(429)
Bank arrangement fees	(509)	-	-
Employee bonuses	(4,350)	(2,707)	(691)
	(8,862)	(4,810)	(1,120)
Restatement for change in accounting policy			
Prepaid referrer costs	(3,253)	(2,324)	(1,629)
	(12,115)	(7,134)	(2,749)
Impact of restatements on taxation	3,356	1,987	770
Net equity attributable to the owners of the parent as restated	139,201	142,064	142,772

21. The material accounting errors resulting in restatements were in relation to the following areas:
- (a) the accrual of bonus payments;
 - (b) the recognition of WIP and AROC;
 - (c) bank arrangement fees; and
 - (d) the Econocom Leases.
22. The change in accounting policy was in relation to the recognition of prepaid fees for the purpose of obtaining IVA appointments.

23. The admitted Acts of Misconduct relate to Mr Raynor's approval as a member of the ICAEW of only two of the areas identified above: (a) the accrual of bonus payments; and (b) the accounting treatment of the Econocom Leases.
24. On 17 October 2012, RSM Tenon issued their financial statements for the financial year ended 30 June 2012 ("FY12") which included the effect of the above prior year adjustments and change in accounting policy.

Bonus Accruals

25. The total accrual for director and other staff bonuses in the financial statements of RSM Tenon for FY11 was £4.8 million. That accrual represented bonuses which were payable to directors and staff in relation to their performance in FY11 but payment may not have in fact been made until after the financial year end.
26. The amount of bonuses actually paid by RSM Tenon for FY11 was £7.7 million. In addition, RSM Tenon subsequently identified £1.4 million that should have been accrued during FY11 which included amounts relating to prior year bonuses which had not been paid. As a result, RSM Tenon's operating expenses for FY11 and prior years were understated by £4.3 million and profit was overstated by that amount.
27. At the time that the financial statements for FY11 were signed off on 31 October 2011, bonus payments amounting to £5.1 million had already been paid in respect of FY11.
28. The bonus accrual included in the financial statements of RSM Tenon for FY11 was materially incorrect as it was insufficient to cover all of the "legal or constructive" obligations (as required under International Accounting Standard 19) on the company to pay director or staff bonuses for their services during FY11.

Econocom Leases

29. On 1 June 2011, RSM Tenon entered into two agreements with a business called Econocom, as follows:

(a) An “Equipment Purchase Agreement” under which RSM Tenon sold various assets (mainly office and IT equipment) to Econocom in return for £2 million.

(b) A “Systems Lease Contract” under which Econocom leased back the same assets to RSM Tenon in return for 36 monthly payments of approximately £61,000, totalling £2.2 million.

30. Accordingly, under these agreements (the Econocom Leases), RSM Tenon raised approximately £2 million in cash to assist its liquidity position whilst retaining use of the assets. In addition, side letters were entered into between RSM Tenon and Econocom which allowed for the repurchase of the leased non-IT assets for £1 and the leased IT assets for approximately £18,000 at the end of the lease term.

31. Mr Raynor was involved in discussions with the finance team as to the correct accounting treatment for the Econocom Leases, and whether it was necessary to recognise the leases as a liability on the balance sheet. Mr Raynor received feedback from the finance team and one of the internal technical experts within RSM Tenon that they may be able to treat the leases as operating leases.

32. In its financial statements for FY11, RSM Tenon accounted for the Econocom Leases as “operating” leases and therefore did not recognise the assets or, more particularly, liabilities on its balance sheet but instead the lease payments were accounted through RSM Tenon’s income statement.

33. Following the review of the financial statements of RSM Tenon in late 2011/early 2012, a prior year adjustment was made to reclassify the Econocom Leases as “finance” leases. On this basis, RSM Tenon recognised on its balance sheet the full cost of the assets together with a corresponding liability for the lease payments. This adjustment served to increase net debt at 30 June 2011 by £1.95 million and to decrease profit before tax by £0.336 million.

34. In accordance with International Accounting Standard 17, the Econocom Leases should have been classified as finance leases within the financial statements of RSM Tenon for FY11.

ADMITTED ACTS OF MISCONDUCT

APPROVAL OF THE FINANCIAL STATEMENTS OF RSM TENON

In relation to the approval of the financial statements of RSM Tenon for FY11, the conduct of Mr Raynor fell significantly short of the standards reasonably to be expected of a Member in that Mr Raynor failed to obtain the necessary level of assurance required of a Member, in relation to the accounting treatment of the bonus accruals and the Econocom Leases, to sign off on the financial statements of RSM Tenon for FY11 on the basis that they were in accordance with applicable accounting standards and represented a true and fair view of the state of affairs of the company, and thereby failed to act in accordance with the Fundamental Principle of Professional Competence and Due Care contained in the Code and/or section 320 of Part C of the Code.

Particulars of Admission

Mr Raynor was required to act diligently and in accordance with applicable technical standards and professional standards of the ICAEW but failed to do so in that:

1. In relation to bonus accruals, given the importance of payroll expenditure to a professional services business like RSM Tenon, Mr Raynor, together with others within RSM Tenon, should have ensured that the mechanisms for the measurement and capture of such expenditure were sufficiently robust so that they were in a position to accurately brief the wider board. The absence of such robust mechanisms resulted in bonus accruals that had been included in the financial statements for FY11 that were less than the payments of bonuses subsequently made in respect of that period. Mr Raynor was involved in the authorisation of bonus payments, and therefore should have ensured such robust mechanisms existed or should have taken further steps to review the amount that had been provided for in respect of bonuses in the financial statements for FY11 compared with the amount of anticipated payment of bonuses (which review would have been available had such robust mechanisms been in place) to ensure that the accrual for bonuses was adequate. However, Mr Raynor in relying upon inadequate mechanisms and the assurances of others failed to take sufficient steps to do so.

2. Mr Raynor was aware that previously there had been uncertainty as to whether the correct accounting treatment of the Econocom Leases was to treat them as operating (rather than finance) leases. He had been involved in discussions with others within RSM Tenon as to the possible accounting treatments and had accepted what he understood to be their technical analysis. The Econocom Leases were included within the financial statements of RSM Tenon as operating leases, when they should have been classified as finance leases. Given the previous discussions, Mr Raynor should have confirmed with the board and PwC, as auditors, whether the Econocom Leases were correctly accounted for within the financial statements for FY11.

ANNEX A
EXTRACTS FROM THE ICAEW CODE OF ETHICS

Part A Introduction and Fundamental Principles

Paragraph 100.5 Fundamental Principles

A professional accountant shall comply with the following fundamental principles:

- (c) **Professional Competence and Due Care** - to maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent professional services based on current developments in practice, legislation and techniques and act diligently and in accordance with applicable technical and professional standards.

Part C Professional Accountants in Business

Section 320 Preparation and Reporting of Financial Information

- 320.1 Professional accountants in business are often involved in the preparation and reporting of information that may either be made public or used by others inside or outside the employing organisation. Such information may include financial or management information, for example, forecasts and budgets, financial statements, management's discussion and analysis, and the management letter of representation provided to the auditors during the audit of the entity's financial statements. A professional accountant in business shall prepare or present such information fairly, honestly and in accordance with relevant professional standards so that the information will be understood in its context.
- 320.2 A professional accountant in business who has responsibility for the preparation or approval of the general purpose financial statements of an employing organisation shall be satisfied that those financial statements are presented in accordance with the applicable financial reporting standards.
- 320.3 A professional accountant in business shall take reasonable steps to maintain information for which the professional accountant in business is responsible in a manner that:

- (a) Describes clearly the true nature of business transactions, assets, or liabilities;
- (b) Classifies and records information in a timely and proper manner; and
- (c) Represents the facts accurately and completely in all material respects.

320.4 Threats to compliance with the fundamental principles, for example, self-interest or intimidation threats to objectivity or professional competence and due care, are created where a professional accountant in business is pressured (either externally or by the possibility of personal gain) to become associated with misleading information or to become associated with misleading information through the actions of others.

Accordingly, professional accountants shall not be associated with reports, returns, communications or other information where they believe that the information:

- *Contains a materially false or misleading statement;*
- *Contains statements or information furnished recklessly;*
- *Omits or obscures information required to be included where such omission or obscurity would be misleading.*

320.5 The significance of such threats will depend on factors such as the source of the pressure and the degree to which the information is, or may be, misleading. The significance of the threats shall be evaluated and safeguards applied when necessary to eliminate them or reduce them to an acceptable level. Such safeguards include consultation with superiors within the employing organisation, the audit committee or those charged with governance of the organisation, or with ICAEW.

320.6 Where it is not possible to reduce the threat to an acceptable level, a professional accountant in business shall refuse to be or remain associated with information the professional accountant determines is misleading. A professional accountant in business may have been unknowingly associated with misleading information. Upon becoming aware of this, the professional accountant in business shall take steps to

be disassociated from that information. In determining whether there is a requirement to report, the professional accountant in business may consider obtaining legal advice. In addition, the professional accountant may consider whether to resign.

