In the matter of:

The Executive Counsel to the Financial Reporting Council

- and -

(1) KPMG LLP

(2) Peter Noel Meehan

(3) Alistair Wright

(4) Richard William Kitchen

(5) Adam David Bennett

(6) Pratik Paw

Decision of the Disciplinary Tribunal

Mark Ellison QC, Nicholas Medcroft QC, Kathryn Hughes and Daniel Carall-Green, instructed by Gowling WLG (UK) LLP, represented the Executive Counsel to the FRC

James Brocklebank QC and Ralph Morley, instructed by Linklaters LLP, represented KPMG.

Ian Croxford QC and Helen Evans QC, instructed by Clyde & Co LLP, represented Mr Meehan

David Turner QC and Will Cook, instructed by Osborne Clarke LLP, represented Mr Wright

Fionn Pilbrow QC and Edward Harrison, instructed by Reed Smith LLP, represented Mr Kitchen.

Gideon Cammerman QC and Henry Hughes, instructed by K&L Gates LLP, represented Mr Bennett

Scott Allen, instructed by Reynolds Porter Chamberlain LLP, represented Mr Paw.

Introduction

1. This is the Decision of the Disciplinary Tribunal, consisting of the Right Hon. Sir Stanley Burnton (Chairman), J Gordon Jack (accountant member) and Tania Brisby (lay member) appointed by the Convenor under

paragraphs 9(2) and 11(2) of the Accountancy Scheme ("the Scheme")1 to hear the Formal Complaint in this matter.

2. The allegations in the Formal Complaint relate to the conduct of two separate FRC audit inspections (known as Audit Quality Reviews, or AQRs), namely the AQR of KPMG's audit of the financial statements of Regenersis plc ("Regenersis") for the year ended 30 June 2014 ("FY2014") and the AQR of KPMG's audit of the financial statements of Carillion plc ("Carillion") for the year ended 31 December 2016 ("FY2016"). We refer to the AQR of the Regenersis 2014 audit as "the Regenersis AQR" and to the AQR of the Carillion 2016 audit as "the Carillion AQR".

3. In summary, it is alleged that:

    (1) Each of the Second to Sixth Respondents, on one or more occasions during those inspections, was involved in the creation of false and/or misleading documents, either with the intention that the FRC would be misled into accepting those documents as genuine, or alternatively, being reckless as to whether the FRC would be so misled.

    (2) Each of the Second to Sixth Respondents, on one or more occasions during those inspections, made or was knowingly associated with false and/or misleading representations to the FRC concerning documents alleged by them to have been created during the course of audits, either knowing that the representations were false and/or misleading, or alternatively, being reckless as to the truth of the representations.

    (3) Each of the Second to Sixth Respondents thereby acted dishonestly, or with a lack of integrity, and thereby committed Misconduct as defined in paragraph 2(1) of the Scheme.

[1] The Accountancy Scheme was effective from 1 January 2021 and reissued on 30 March 2021. References in this Decision to paragraph numbers of the Scheme are to the paragraph numbers in the 30 March 2021 reissue.

4. KPMG, the First Respondent, accepted throughout that it was liable for the Misconduct of the Second to Sixth Respondents, if proven, under paragraph 5(11) of the Accountancy Scheme. We refer further to KPMG's position below.

5. The proceedings between the Executive Counsel and [Regenersis Audit Engagement Partner], who had been the Seventh Respondent, were the subject of a Settlement Agreement dated 11 January 2022 between the Executive Counsel, [Regenersis Audit Engagement Partner] and KPMG (which accepted liability for [Regenersis Audit Engagement Partner's] actions on the basis set out in the preceding paragraph), to which we refer below. The negotiations between the Executive Counsel and [Regenersis Audit Engagement Partner] led to an application to re-amend the Formal Complaint. References and citations below to the Formal Complaint are to the Re-Amended Formal Complaint.

Misconduct

6. Misconduct is defined in Paragraph 2(1) of the Scheme:

> *Misconduct means an act or omission or series of acts or omissions, by a Member or Member Firm in the course of their professional activities … 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.*

7. Guidance as to the conduct that "falls significantly short of the standards reasonably to be expected of a Member or Member Firm" may be taken from the Code of Ethics of the Institute of Chartered Accountants of England and Wales (universally referred to as the ICAEW) as it applied from 2 January 2011 (the "Code").

8. Paragraph 1.1 of the Code stated:

One of the principal objects of the Royal Charter is to maintain a high standard of efficiency and professional conduct by members of ICAEW. The Code of Ethics ('this Code') applies to all members of ICAEW.*

9. It provides:

100.5 A professional accountant shall comply with the following fundamental principles:*

(a) Integrity – to be straightforward and honest in all professional and business relationships.

….

110.1 The principle of integrity imposes an obligation on all professional accountants to be straightforward and honest in all professional and business relationships. Integrity also implies fair dealing and truthfulness.

It follows that a professional accountant's advice and work must be uncorrupted by self-interest and not be influenced by the interests of other parties.

110.2 A professional accountant shall not knowingly be associated with reports, returns, communications or other information where the professional accountant believes that the information:

(a) Contains a materially false or misleading statement;

(b) Contains statements or information furnished recklessly; or

(c) Omits or obscures information required to be included where such omission or obscurity would be misleading.

When a professional accountant becomes aware that the accountant has been associated with such information, the accountant shall take steps to be disassociated from that information.

10. There have been a number of judgments in which the Court has discussed the requirement of integrity. In *Solicitors Regulation Authority v Chan* [2015] EWHC 2659 (Admin) Davis LJ, with whom Ouseley J agreed, said:

48. As to want of "integrity", there have been a number of decisions commenting on the import of this word as used in various Regulations. In my view, it serves no purpose to expatiate on its meaning. Want of integrity is capable of being

identified as present or not, as the case may be, by an informed tribunal or court by reference to the facts of a particular case.

11. There was an important discussion of the meaning of dishonesty and integrity in the decision of the Court of Appeal in *Wingate v Solicitors Regulation Authority* [2018] 1 WLR 3969. At paragraph 93, Jackson LJ said:

> *93. …. Honesty is a basic moral quality which is expected of all members of society. It involves being truthful about important matters and respecting the property rights of others. Telling lies about things that matter or committing fraud or stealing are generally regarded as dishonest conduct. …. The legal concept of dishonesty is grounded upon the shared values of our multicultural society. Because dishonesty is grounded upon basic shared values, there is no undue difficulty in identifying what is or is not dishonest.*
>
> *…*
>
> *95. … As a matter of common parlance and as a matter of law, integrity is a broader concept than honesty.*
>
> *96 Integrity is a more nebulous concept than honesty. Hence it is less easy to define, as a number of judges have noted.*
>
> *97 In professional codes of conduct, the term "integrity" is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members.*
>
> *….*
>
> *100 Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty. To take one example, a solicitor conducting negotiations or a barrister making submissions to a judge or arbitrator will take particular care not to mislead. Such a professional person is expected to be even more scrupulous about accuracy than a member of the general public in daily discourse.*
>
> *101 The duty to act with integrity applies not only to what professional persons say, but also to what they do.*

12. Dishonest conduct in the course of professional activities will generally, if not always, constitute Misconduct. Acting without integrity will also generally constitute Misconduct. Whether the Respondents' conduct

involved their acting dishonestly and/or without integrity as alleged by the Executive Counsel are issues that we address in this Decision.

The hearings

13. The substantive hearing before us began on 10 January 2022 and continued until 31 January 2022 when there was a break to enable the Parties to consider their closing submissions. The hearing resumed to hear those submissions on 8 February 2022 and continued until 11 February 2022.

14. The Executive Counsel and all of the Respondents agreed that the Tribunal should prepare and distribute on a confidential basis a draft decision on the substantive issues, to enable the Parties to correct any factual errors and, in the event of adverse findings, to prepare their submissions on the decisions on sanction, and costs. The Tribunal distributed its draft decision on 22 March 2022, and a hearing on consequential matters was held on 12 and 13 May 2022.

15. We were greatly assisted by the comprehensive submissions, written and oral, on behalf of the Parties.

16. We have referred to documents on the Opus 2 website set up for these proceedings using the protocol A/25/35, where A identifies the bundle in question, the first number identifies the tab (and therefore the document) in that bundle and the third number identifies the page number. In many cases the document is of one page only, in which case the second number may be omitted. Similarly, reference to a document as a whole has only one number after the tab number. Thus B/3 refers to the Accountancy Regulations of 30 March 2021 at tab 3 in the Bundle of Legislation and Procedural Documents, and B/3/1 refers to page 1 of those Regulations. However, transcripts of the evidence before the Tribunal are referred to by Day number and page, so that a reference to Day 5/51 is to page 51 of the transcript of Day 5.

17. The findings, conclusions and decisions of the Tribunal are unanimous.

The Respondents

18. The First Respondent, KPMG, is a member firm of the ICAEW. It was the statutory auditor of Regenersis and the statutory auditor of Carillion in relation to the financial years of those companies in question in these proceedings.

19. KPMG's audit of the financial statements of Regenersis in respect of FY2014 ("the Regenersis 2014 Audit") was performed by, among others, the following individuals:

    (1) [Regenersis Audit Engagement Partner], who was an audit director of KPMG and the senior statutory auditor and audit engagement partner for Regenersis from the financial year ended 30 June 2013;[2]

    (2) the Third Respondent ("Mr Wright"), who was a manager at the time of the audit and was promoted to senior manager in October 2014 following the audit; and

    (3) the Fifth Respondent ("Mr Bennett"), who was a KPMG assistant manager at the time of the audit and was promoted to manager in October 2014 following the audit.

20. The Second Respondent ("Mr Meehan") had been the Regenersis audit partner. He had ceased to be such on 25 September 2012 and at the time of the Regenersis 2014 Audit he was acting as KPMG's Non-Audit Relationship Partner ("NARP") for Regenersis.

[2] "Engagement partner" is defined in ISA (UK) 220 as "the partner or other person in the firm who is responsible for the audit engagement and its performance, and for the auditor's report that is issued on behalf of the firm, and who, where required, has the appropriate authority from a professional, legal or regulatory body."

21. KPMG's audit of Carillion's financial statements in respect of FY2016 (the "Carillion 2016 Audit") was performed by, among others, the following individuals:

    (1) Mr Meehan, who was the senior statutory auditor and audit engagement partner for Carillion;

    (2) Mr Wright, who was a KPMG senior manager with responsibility for the group audit;

    (3) the Fourth Respondent ("Mr Kitchen"), who was the KPMG group senior manager with responsibility for the UK construction component of the Carillion 2016 Audit;

    (4) Mr Bennett, who was a KPMG senior manager with responsibility for the UK services component of the Carillion 2016 Audit;

    (5) the Sixth Respondent ("Mr Paw"), who was a KPMG assistant manager with responsibility for the UK services component of the Carillion 2016 Audit (under Mr Bennett).

22. Mr Meehan, Mr Wright, Mr Kitchen, Mr Bennett and Mr Paw are collectively referred to as "the Individual Respondents".

23. With the exception of Mr Paw, each of the Individual Respondents is and was at all material times a member of the ICAEW. Mr Paw has been a member of the ICAEW since 28 November 2017, but at the time of the events that are the subject of the Formal Complaint he had not completed his accountancy qualifications and was only a provisional member of the ICAEW.

The Allegations of Misconduct

24. We summarise the Allegations of Misconduct in this part of our Decision.

25. Allegation 1 concerned [Regenersis Audit Engagement Partner], and consequently KPMG, and is relatively straightforward. It charged that he informed the AQR of the Regenersis 2014 Audit that Mr Meehan, then the

NARP for Regenersis, had not been present at meetings of the audit committee of Regenersis that took place on 9 July 2014 and 16 September 2014 while being reckless as to whether his statements were misleading and as to whether the AQR would be misled. The result of the settlement of the proceedings against him was that the Tribunal ceased to be concerned with this Allegation in relation to [Regenersis Audit Engagement Partner]. The sanction in relation to KPMG, on the basis of its responsibility for [Regenersis Audit Engagement Partner's] Misconduct, remains to be determined.

26. Allegations 2, 3 and 4 allege dishonesty and/or lack of integrity on the part of those Respondents against whom those Allegations are made.

27. Allegation 2, relating to the Regenersis AQR, is made against Mr Bennett and Mr Wright and, consequently, KPMG. It concerns what purports to be an audit working paper on goodwill ("the Goodwill Paper"). This Allegation is divided into three. Allegation 2A alleges that Mr Bennett and Mr Wright were involved for the purposes of the Regenersis AQR in the creation of the Goodwill Paper, which was a false or misleading document purporting to be an audit working paper. Allegation 2B alleges Mr Bennett and Mr Wright were responsible for false or misleading representations as to when and in what circumstances the Goodwill Paper was created. Allegation 2C alleges that Mr Bennett and Mr Wright made false or misleading representations about the audit work that had been carried out on goodwill.

28. Allegations 3 and 4 relate to the Carillion AQR and are similarly divided. Allegation 3 is made against Mr Meehan, Mr Wright, Mr Kitchen, Mr Bennett and Mr Paw, and, consequently, against KPMG. It relates to what purport to be minutes of KPMG's meetings with overseas auditors of Carillion's non-UK components, held to further the objective required under the relevant auditing standards for KPMG as group auditors to obtain

sufficient and appropriate evidence regarding the financial information of the components, so as to express an opinion on whether the group financial statements were prepared, in all material respects, in accordance with the applicable financial reporting framework. We refer to these purported minutes as "the Minutes". As in the case of Allegation 2, Allegation 3 is divided into three. Allegation 3A, made against Mr Meehan, Mr Wright, Mr Kitchen, Mr Bennett and Mr Paw, relates to the creation of the Minutes; Allegation 3B, made against the same Respondents, alleges false representations made to the AQR as to when and in what circumstances the Minutes were created; and Allegation 3C, made against Mr Meehan, Mr Wright and Mr Kitchen alleges that the contents of the Minutes, i.e., the descriptions of the meetings to which they relate, were false.

29. Allegation 4 relates to what is referred to as the CCS Paper. The CCS Paper was an Excel spreadsheet that purported to evidence audit work carried out by KPMG on Carillion's construction contracts, and in particular its work on selecting the contracts on which substantive testing was appropriate and in determining the nature of that work: whether a desk-top or oral update was sufficient or whether a position paper on the contract was required from Carillion management. Allegation 4A was made against Mr Meehan, Mr Kitchen and Mr Bennett, and relates to the creation of the CCS Paper; Allegation 4B is made against Mr Meehan, Mr Kitchen and Mr Bennett and alleges the making of false or misleading representations to the AQR as to when and in what circumstances the CCS Paper was created. Allegation 4C is made against Mr Kitchen and alleges that he made false or misleading representations as to the audit work performed on Carillion's construction contracts.

30. All of the Allegations are also made against KPMG, as being responsible for the Misconduct of the other Respondents.

31. The Formal Complaint in this case was long: the Re-amended Formal Complaint was of no less than 184 pages. Given that the factual issues before the Tribunal were relatively few, this length was in our view excessive. It resulted from a degree of unnecessary duplication.

32. KPMG criticised the division of each Allegation into three parts, A, B and C. We sympathise with this criticism. In respect of each Allegation, there were really only two issues: did the Respondent in question create (or participate in the creation of) a document, such as minutes of a meeting with the intention of misrepresenting it to the AQR as a document created during the audit to which it related, and did that Respondent present the document in question to the AQR as a truthful account of the facts it described when, as that Respondent knew, it was a false account? Thus, in relation to Allegation 3C the question in relation to each Minute is whether it gave a true account of the meeting to which it related, and if not was the Respondent responsible for presenting that false document aware that its contents were false?

The position of KPMG

33. The position of KPMG, in relation to Allegations 2 to 4, was helpfully summarised in its summary of its Written Submissions as follows:

> *1. These proceedings concern allegations that individuals in KPMG LLP audit teams misled the accountants' and auditors' regulator, the Financial Reporting Council, in the course of separate routine regulatory reviews of two audits, one in 2015 relating to the audit of Regenersis plc for the year ending 30 June 2014 and the other in 2017 relating to the audit of Carillion plc for the year ending 31 December 2016. In both cases, it is alleged that the relevant individuals acted with a lack of integrity in dishonestly or recklessly misleading the regulator.*
>
> *2. The matters forming the subject of these proceedings came to light as a result of KPMG's own internal investigations and were self-reported to the FRC by KPMG. KPMG has since provided its full cooperation to the FRC. The Firm's principal*

concern has been and remains to assist the FRC in the investigation of the underlying facts and to facilitate the effective resolution of the resulting proceedings. KPMG does so in recognition of the vital public interest in the robust regulation of auditors.

3. The Firm has admitted misconduct in respect of each of the allegations. In particular, as regards the allegations based on the provision to the regulator of documents created after the event in circumstances where they appeared to be contemporaneous audit documents, KPMG has made clear its view that the FRC was misled and that this was conduct in breach of the obligation of integrity required of professional accountants and auditors.

4. KPMG is a respondent to the proceedings on the basis that the individual respondents' alleged misconduct was committed in the course of their employment with KPMG. The Firm is therefore a respondent as a result of its vicarious responsibility for the acts of the individual respondents. All of those individuals have left the firm and all of them are separately represented in these proceedings. It is for the Tribunal to reach a conclusion on the allegations against the individual respondents on the basis of the evidence to be presented to it.

34. On the face of it, KPMG admitted that there had been Misconduct and admitted vicarious liability for the Misconduct of the Individual Respondents who themselves deny that Misconduct. This situation is anomalous.

35. The Executive Counsel based her allegation of KPMG's liability on paragraph 5(11) of the Accountancy Scheme. The text, as set out in the Scheme (reissued 30 March 2021) is as follows:

5(11) For the avoidance of doubt:

(i) anything said, done or omitted by an employee of a Member Firm within the scope of their employment, either actual or ostensible, or as an agent of the Member Firm within the scope of their authority, either actual or ostensible, shall be taken as having been said, done or omitted by that Member Firm;

(iii) [sic] nothing in this paragraph will remove the liability to investigation or disciplinary proceedings for a Member who is an employee or agent of a Member Firm.

36. Earlier versions of the Scheme included the same provision, so that there is no question as to its applicability to the Regenersis and Carillion AQRs.

37. It was suggested on behalf of the Executive Counsel that there is a question as to whether paragraph 5(11) extends to the state of mind and knowledge of an individual: is it to be attributed to the Member Firm by which he or she is employed? As can be seen, this question is not expressly addressed in the text of paragraph 5(11).

38. In the opinion of the Tribunal, it is unnecessary to determine the precise scope of paragraph 5(11). It begins with the words "For the avoidance of doubt", which is a clear indication that this paragraph is not the exclusive basis of the liability of a Member Firm. Member Firms are liable for the Misconduct of their employees or partners on the general principle of vicarious liability. A Member Firm can only commit Misconduct by the actions of individuals for whom it is responsible. If the state of mind of an individual were not attributable to the Member Firm, the Scheme would be deprived of much of its utility, and paragraph 5(11) itself would be a deceptive provision.

39. In this connection, we note that KPMG accepted, in its written submissions (see paragraph 4 of its above summary), that its liability is indeed vicarious.

The Respondents' Defences

40. KPMG has throughout admitted that it is responsible for any Misconduct that is proved against any of the Individual Respondents. Indeed, it self-reported to the FRC the matters that are the subject of the Allegations. We believe that it is only because KPMG made those reports to the FRC that these Allegations have come to light.

41. All of the Individual Respondents initially denied any Misconduct. However, on 1 December 2021 Mr Wright's solicitors served a draft Amended Defence and a Second Witness Statement in which he made important admissions, to which we refer below. The Tribunal permitted Mr Wright to amend his Defence and to file his Second Witness Statement. His Amended Defence was served on 8 December 2021.

The settlement between the Executive Counsel and [Regenersis Audit Engagement Partner]

42. On 10 January 2022 the Executive Counsel, [Regenersis Audit Engagement Partner] and KPMG came to a proposed Settlement Agreement concerning his Misconduct and KPMG's resulting responsibility. Their Agreement involved the amendment of the Formal Complaint in relation to Allegation 1, for which the Tribunal gave its permission on 10 January 2022.

43. Paragraphs 4, 5 and 6 of the Agreement were as follows:

> *4. The relevant Misconduct is set out in Allegation 1 of the Re-amended Formal Complaint. It concerns representations made by KPMG and [Regenersis Audit Engagement Partner] during an inspection of the audit of the financial statements of Regenersis plc for the financial year ended 30 June 2014 by the Audit Quality Review ("AQR") inspectors of the FRC. The Allegation is that [Regenersis Audit Engagement Partner] made or was responsible for representations which were misleading (namely that Mr Meehan, as the Non-Audit Relationship Partner for Regenersis, had not attended any Audit Committee meetings), while being reckless (a) as to whether those representations were misleading and (b) as to whether the FRC's AQR inspectors and/or the FRC would be misled by them.*
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> *5. The Allegation also records that [Regenersis Audit Engagement Partner] acted at all material times in the course of his employment by KPMG and/or as an agent of KPMG acting within the scope of his actual or ostensible authority. The acts and omissions of [Regenersis Audit Engagement Partner] are to be attributed to KPMG pursuant to paragraph 5(11) of the Accountancy Scheme.*

6. KPMG and [Regenersis Audit Engagement Partner] admit the Misconduct set out in Allegation 1.

44. Paragraph 10 of the Settlement Agreement recorded that the Executive Counsel and [Regenersis Audit Engagement Partner] had agreed the sanctions to be imposed in relation to his admitted Misconduct:

a. That [Regenersis Audit Engagement Partner] be excluded from the ICAEW for a recommended period of three years.

b. That [Regenersis Audit Engagement Partner] pay a Fine of £150,000.

c. The Fine shall be paid not later than 28 days after the date when this Agreement takes effect.

45. KPMG accepted that it was liable for costs, to be determined in due course by the Tribunal.

46. On 11 January 2022, pursuant to paragraph 8(5) of the Accountancy Scheme, the Tribunal decided that it was appropriate for the agreement to be entered into, and it was then entered into.

The burden of proof

47. It was agreed that the burden of proof of the Allegations was on the Executive Counsel. She had to prove her case separately against each Respondent on the balance of probabilities, it being borne in mind that proof of dishonesty or lack of integrity requires cogent evidence, particularly where the allegation is made against a professional person of previous unassailable good character.

The scope of these proceedings

48. These proceedings are concerned solely with the conduct of the Regenersis AQR and of the Carillion AQR. Save in so far as it is necessary to do so in order to determine the Allegations, the Tribunal is not concerned with the conduct of either the Regenersis audit or the Carillion audit or the adequacy

of those audits. Our decision should not be read as extending into these matters.

49. Secondly, we have not found it necessary to address KPMG's ethics education, training and internal publications. No accountant should require any education or training to realise that deliberately misleading anyone, but especially a regulator, is at least incompatible with integrity and, barring special circumstances, dishonest.

The evidence before the Tribunal

General

50. We had a very great volume of evidence, documentary and oral. It was too great for it all to be sensibly summarised or referred to in our Decision. Much the same applies to Counsels' submissions. We have referred to the documents we have considered relevant, to the more important testimony to which we had regard and to the more significant submissions. We have, however, considered all of the evidence and submissions put before us, and the lack of a reference to any item of evidence or submission should not be taken to mean that it was ignored.

Documents

51. We had a large volume of contemporaneous documents before us. They of course have the advantage of being unaffected by the vagaries of recollection and the possible partiality of witness evidence. Counsel for all Parties impressed on us the emphasis to be given to the documentary evidence, and inherent probabilities, in deciding the factual issues. As will be seen, we agree with this approach.

52. We greatly benefited from the availability of the documents on the Opus 2 website, which enabled speedy display of documents referred to in the

hearing. Hyperlinks from transcripts and written submissions to the contemporaneous documents were a very useful aid.

53. We were provided by the Executive Counsel with a Chronology[3], a list of Dramatis Personae[4] and a Glossary.[5] These were informative and very helpful documents.

54. However, the organisation of the documents was in some respects unhelpful. The core bundle included many documents that were never referred to in the hearing or at all.[6] Conversely, many significant documents were omitted from the core bundle.[7] Some documents were filed in the paper ring binder out of chronological order.[8]

55. We had transcripts of interviews conducted in the course of the FRC's inquiries "in respect of [the FRC's] accountancy scheme investigation into the conduct of KPMG and certain members in relation to the suspected provision of false and misleading documents and information to the FRC in connection with AQR reviews of the audits of Regenersis and Carillion."[9] However, the utility of these transcripts was reduced by the absence of identification of documents shown to the interviewee. For example, the transcript of [KPMG Audit Team Member 1's] interview includes the following passage:

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[3] A/10

[4] A/11.

[5] A/12.

[6] An example is the 263-page document inserted in the Core Bundle at CB/84.8.

[7] As can be seen from the number of documents to which we have referred that have D references (i.e., to the chronological bundle) rather than CB references to the core bundle.

[8] For example, the document at tab 95.1 dated 10/10/2017 (D3/115) was followed by the document at tab 96.1 dated 5 October 2017 (D3/127).

[9] See, e.g., the transcript of [KPMG Senior Central Support Member 5's] interview at E/44/2.

d. And, if we could turn to a couple of documents in the bundle, so it's bundle two, and it's tabs 45, 63 and 67.[10]

A footnote tells us that the full FRC document references are: 45-1, 63-1 and 67-1, but we are left none the wiser. We simply do not know to what documents [KPMG Audit Team Member 1] was referred.

Witness evidence

56. The Executive Counsel called [Regenersis AQR Inspector 1], [Regenersis AQR Inspector 2], [KPMG Audit Team Member 2], [Carillion AQR Inspector 1], [Carillion AQR Inspector 2] and [Regenersis Audit Engagement Partner].

57. Each of the Individual Respondents gave evidence on his own behalf. As mentioned in the previous paragraph, [Regenersis Audit Engagement Partner] gave evidence, having been called by the Executive Counsel.

58. All of the witnesses before us confirmed the truth of their witness statements and were then cross-examined. Mr Kitchen also gave oral evidence in chief.

59. On 24 January 2022 the Tribunal permitted Mr Kitchen to file a statement of [KPMG Audit Team Member 1]. She did not give oral evidence. It was agreed that the weight, if any, to be given to her statement was a matter for the Tribunal.

60. The witness evidence was characterised by the evident difficulty of all witnesses to recall the precise details of events and conversations both in their witness statements and under subsequent cross examination.

[10] E/45.1/19.

The AQR inspections

61. An AQR (Audit Quality Review) inspection by the FRC focuses on the appropriateness of the key audit judgements made in reaching the audit opinion and the sufficiency and appropriateness of the audit evidence obtained. The main reference point for any AQR inspection is the audit file. The audit file should contain all the contemporaneous documents created by the auditors and audit evidence that are necessary to record and explain the audit procedures performed and the conclusions reached which underpin the audit opinion. We bear in mind the provisions of the International Standard on Auditing (UK and Ireland) 230 of October 2009.[11] Paragraph 8 of the ISA provides:

> *8. The auditor shall prepare audit documentation that is sufficient to enable an experienced auditor, having no previous connection with the audit, to understand:*
>
> *(a) The nature, timing and extent of the audit procedures performed to comply with the ISAs (UK and Ireland) and applicable legal and regulatory requirements;*
>
> *(b) The results of the audit procedures performed, and the audit evidence obtained;*
>
> *and*
>
> *(c) Significant matters arising during the audit, the conclusions reached thereon, and significant professional judgments made in reaching those conclusions.*[12]

62. The integrity of the audit file is fundamental to the AQR inspection process, and the AQR should be able to rely on the audit file as a comprehensive record of the audit work and evidence.

63. Both inspections that are the subject of the Formal Complaint commenced with a reminder from the FRC to KPMG that its audit files and working

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[11] B/12. The ISA has since been updated. The updated ISA (revised June 2016) is at B/13.

[12] B/12/6.

papers were to be provided to the AQR "*without addition or alteration*".[13] Thus, the FRC's letter to KPMG dated 15 January 2015 stated, in bold type:

> *In accordance with the standard procedures followed by the FRC Audit Quality Review team, please make the electronic audit files and other audit working papers supporting the firm's audit opinion available to us within three working days of the date of this request. These must be provided to us without addition or alteration.*[14]

64. It does happen that work papers and other documents relating to work carried out on an audit that should be on the audit file (which of course is now and was at the times relevant to this Decision electronic) are, through administrative error, omitted from the file. The evidence before us and the experience of the accountant member of the Tribunal is that, where the audit work is actually done and evidenced, this occurs relatively infrequently. Paragraph 16 of ISA 230, to which we refer below, is relevant in this regard.

65. The importance of the audit file as reliable and normally comprehensive evidence of the audit work was demonstrated by the practice of KPMG at that time to close and to archive the audit file within a relatively short time after the sign off of the audit report, namely 45 days.[15] Once the audit file is archived, documents on it cannot be amended and no new documents can be added to it.

66. The practice of KPMG was intended to comply with ISA 230, which provides:

> *14. The auditor shall assemble the audit documentation in an audit file and complete the administrative process of assembling*

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[13] D1/284.

[14] CB/23.

[15] KPMG has since reduced this time.

the final audit file on a timely basis after the date of the auditor's report.

15. After the assembly of the final audit file has been completed, the auditor shall not delete or discard audit documentation of any nature before the end of its retention period.

67. Paragraphs 13 and 16 of ISA 230 are of particular relevance.

13. If, in exceptional circumstances, the auditor performs new or additional audit procedures or draws new conclusions after the date of the auditor's report, the auditor shall document:

(a) The circumstances encountered;

(b) The new or additional audit procedures performed, audit evidence obtained, and conclusions reached, and their effect on the auditor's report; and

(c) When and by whom the resulting changes to audit documentation were made and reviewed.

16. In circumstances other than those envisaged in paragraph 13 where the auditor finds it necessary to modify existing audit documentation or add new audit documentation after the assembly of the final audit file has been completed, the auditor shall, regardless of the nature of the modifications or additions, document:

(a) The specific reasons for making them; and

(b) When and by whom they were made and reviewed.

THE REGENERSIS ALLEGATIONS

Goodwill in the 2014 Regenersis accounts

68. In FY2014 Regenersis had made significant corporate acquisitions. As a result, the valuation of goodwill was a material element in its financial statements. The diagram at page 5 of KPMG's 2014 audit plan[16] showed the valuation of goodwill as the highest audit risk. Under the heading

[16] D1/51/5

"What we do – Financial statement audit risks – key areas of focus" and the subheading "Valuation of goodwill" was the statement:

> *The level of recent acquisitions and the associated significant goodwill recognised gives rise to a risk over recoverability. This is because the value in use of the cash generating units, which include the goodwill asset and is the level at which goodwill is assessed for recoverability, is dependent on the businesses generating sufficient cash flows in the future.*
>
> *Due to the inherent uncertainty involved in forecasting and discounting future cash flows, which are the basis of the assessment of recoverability, this is one of the key judgemental areas that our audit is concentrated on.*[17]

69. The valuation of goodwill is assessed by taking the estimated future income flows from each cash generating unit of the businesses Regenersis had acquired and discounting it back to arrive at present-day value. Thus, there are two important elements in the valuation: the estimate of future income and the decision on the discount factor. The audited entity should, when appropriate, benchmark its discount factor, that is, it should compare it with other companies' discount factors for the period in question, normally using published information. The auditor of that entity's financial statements may consider whether the discount factor applied by management was appropriate, and for that purpose may consider whether suitable benchmarks were considered and if not why not.

70. The valuation of the goodwill of an acquisition at less than its cost or the previous value attributed to that acquisition in the previous financial statements of an audited entity is referred to as the impairment of that goodwill.

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[17] D1/51/6.

The Regenersis 2014 Audit

71. The KPMG audit team for the Regenersis 2014 audit included [Regenersis Audit Engagement Partner] as the audit partner, Mr Wright, Mr Bennett and [KPMG Audit Team Member 2]. [KPMG Audit Team Member 2] was the Audit Assistant involved in the audit work on goodwill. At paragraph 14 of her witness statement, she said:

> *My work on the Regenersis 2014 Audit was supervised by Adam Bennett. Mr Bennett was my direct line manager. I had previously worked closely with him and had a good working relationship with him and was comfortable turning to him for advice and guidance. My understanding is that Mr Bennett normally briefed Alistair Wright and [Regenersis Audit Engagement Partner], as the three of them would have regular catch-ups in relation to Regenersis.… Whereas Mr Bennett would review all of my work on the Regenersis 2014 Audit, Mr Wright and [Regenersis Audit Engagement Partner] would focus their reviews on those audit sections that involved a high risk of material misstatement. This included the recoverability of goodwill, as I explain below.*

72. Regenersis management's paper on impairment was sent to Mr Bennett attached to an email dated 26 August 2014.[18] The attached spreadsheet[19] stated, at tab "Methodology for WACC Calc":

> *(1) External benchmarking has been carried out on any published WACC rates in the prior year.… This exercise identified that the Regenersis calculation method yielded a WACC which was comparable to the indisutry [sic]. This analysis has not been repeated in FY14 as it is assumed that the WACC for external companies will not have varied significantly…*
>
> *External benchmarking has been carried out on quoted discount rates for industry peers, competitor companies and key customers in the prior year. For the same reasons outlined in*

[18] CB/7.

[19] CB/9N.

(1) above, this analysis has not been repeated – see "Comparative discount rates" sheet for prior year analysis.

This spreadsheet was referred to in the hearing as "the Client Goodwill Paper".

73. On 26 August 2014, Mr Bennett emailed [Regenersis Audit Engagement Partner], with copies to Mr Wright and [KPMG Audit Team Member 2] stating, among other things:

> *Goodwill impairment: Had first draft this afternoon – [KPMG Audit Team Member 2] looking at tomorrow am. Growth rates look very ambitious.*[20]

74. On 27 August 2014, [KPMG Audit Team Member 2] prepared a paper entitled "Goodwill impairment review" and referred to in the hearing as "the Original Goodwill Summary".[21] At page 4 it stated:

> *Discount factors have been calculated by using group WACC as a base. WACC has been calculated at 10.99% (2014: 10.75%) in the attached spreadsheet 3.2.10.4.TOD1. 0010.*
>
> ….
>
> *These pre-tax discount rates were compared / benchmarked by the client against 'similar/related' companies and were noted relatively consistent. See 3.2.10.4.TOD1.001.. KPMG have agreed the key comparisons to third party data.*

75. The summary did not mention expressly that the benchmarking had not been carried out by reference to the latest available figures, but assumed that there was no material difference from the prior year's figures.

76. Mr Bennett forwarded the email from Regenersis and attachments to [KPMG Audit Team Member 2] on 1 September 2014.[22] On the same date [KPMG Audit Team Member 2] emailed Regenersis asking for a hard

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[20] D1/77, CB/9.1.

[21] CB/10.

[22] CB/12.

coded Goodwill Impairment Review because the numbers linked to Cognos, the Regenersis data system, "are gone".[23]

77. [KPMG Audit Team Member 2] prepared a spreadsheet with the KPMG reference 3.2.10.4 TOD 1.0010 Goodwill Impairment Review FY1.[24] It was referred to as "the Original Spreadsheet". The Summary tab stated, among other things:

> *KPMG agreed PY b/f goodwill per CGU to PY audit work paper.*

78. The tab "Comparative discount rates" stated:

> *KPMG audit work*
>
> *This spreadsheet had been agreed to PY, and this calculation is not updated in 2014 as no significant differnece [sic] expected.*

79. Similarly, in the tab "Methodology for WACC Calc", in the column headed "KPMG assessment" it was stated, under the heading "Summary of WACC calculation":

> *1. External benchmarking has been carried out in any published WACC rates in the prior year. This exercise identified that the Regenersis calculation method yielded a WACC which was comparable to the industry. This analysis has not been repeated in FY14 as it is assumed that the WACC for external companies will not have varied significantly …*
>
> *2. External benchmarking has been carried out on quoted discount rates for industry peers, competitor companies and key customers in the prior year. For the same reasons outlined in (1) above, this analysis has not been repeated …*
>
> Against this was the note:
>
> *Spreadsheet had been agreed to PY audit work.*

---

[23] D1/127

[24] CB/11.

80. In her interview, [KPMG Audit Team Member 2] was asked about these entries:

> *Q. … So, this confirms that your work was to agree to it, to the prior year audit file. And as far as you can recall, was that the end of the matter, that was the extent of the work that was done on the comparative discount rates tab?*
>
> *[KPMG Audit Team Member 2]: Yes. I have not done much around this one, rather than agree it back to last year and make sure those rates they pick is reasonable.*[25]

81. In her interview, [KPMG Audit Team Member 2] was clear that Mr Bennett had agreed that it was unnecessary to update the work on impairment:

> *I would have asked Adam Bennett, about this question. I remember that, because I ask him particularly and say, "Do we really need to refresh this document? Do you we need to do something else?" I remember the discussion saying what, Adam mention, "Well, probably at this point of time, we don't need to update it because the market didn't change that significantly, we don't believe there will be significant changes".*[26]

82. However, [KPMG Audit Team Member 2] was less clear in her evidence before the Tribunal. At Day 4/35 there was the following exchange during her cross-examination on behalf of Mr Wright:

> Q. Now, what you, I think, suggest was Mr Bennett said this was a job you didn't need to do, you didn't need to update the discount rate data?
> A. Yes.
> Q. Is that really your recollection?
> A. Sorry, can you repeat your question again?
> Q. Is it really your recollection that you had such a conversation with Mr Bennett?
> A. I can only vaguely remember.

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[25] E/45/19.

[26] E/45/20.

Q. Can you recall any other conversations with Mr Bennett in which he said: no, you don't need to update information to the current year?
A. No.
Q. I'm going to suggest to you it's not the sort of thing that he would generally say to you, is it?
A. I can only say I can't remember we had that conversation.
Q. You can't remember having that conversation; is that what you're saying?
A. Yes.

83. Perhaps more importantly, in her witness statement [KPMG Audit Team Member 2] said:

> *I cannot recall any discussion about identifying more recent discount rates for those companies that had already been selected by Regenersis.*

84. However, [KPMG Audit Team Member 2] was clear that she had not updated the discount rates. In paragraph 31 of her witness statement, she said:

> *As my notes record, I agreed the WACC rates, the discount rates and the list of comparators with the prior year position (i.e., the position shown in the 2013 financial statements, which used 2012 data). By saying "I agreed", I mean that I matched the information in the "Comparative discount rates" worksheet tab with information in the prior year's audit. I did not perform, or require the client to perform, a fresh benchmarking exercise or obtain up-to-date WACC rates and discount rates and/or additional comparators. This was because I understood that the audit team's view was that there had been no significant changes since the prior year and as such we could use the data from the prior year.*

85. Mr Bennett denies that he instructed [KPMG Audit Team Member 2] not to carry out the updating. In paragraph 25 of his witness statement, he simply said:

I was not involved in the work on goodwill audit work or Goodwill Paper during the 2014 Regenersis Audit.

86. Mr Wright's evidence is that he was not involved in the audit work on impairment. At paragraph 3.8 of his witness statement he said:

As far as I can recall, I was not part of the audit team at the time the scope of the work feeding into the Original Goodwill Paper was agreed. This was undertaken by others in the team under [KPMG Audit Team Member 5's] direction before he left KPMG.

87. In paragraph 35 of his Closing Submissions, Mr Bennett referred to a number of documents that show that the updating was carried out during the audit, or at least that he was assured it had been. However, none of them clearly refers to the omission of the updating. For example, Mr Bennett refers to D1/83/5, [Regenersis Audit Engagement Partner's] notes on Acquisitions. At page 5, the printed text reads:

The discount rates have been calculated based on the Group's weighted average cost of capital estimated at 12.78% and then flexed to reflect factors such as geographical spread, customer concentration, historical profitability and possibility of technical change. They have also been benchmarked against a relevant peer group and are reasonable.

88. [Regenersis Audit Engagement Partner] made a note to make the last sentence read:

We have also benchmarked against a relevant peer group and found them to be reasonable.

Neither the printed text nor his note made it clear when the benchmarking had been carried out. [Regenersis Audit Engagement Partner's]

amendments were incorporated in the KPMG paper for the Regenersis Audit Committee,[27] but the same comment applies.

89. The document at D1/335 records that the Original Goodwill Workpaper was prepared by [KPMG Audit Team Member 2] on 27 August 2014, reviewed by Mr Wright on 28 August 2014, by [Regenersis Audit Engagement Partner] on 2 September 2014 and then by [KPMG Senior Audit Team Member 3] as Engagement Quality Control Reviewer on 22 September 2014. The timing was such that we have difficulty in seeing that the work in question, recorded as performed by [KPMG Audit Team Member 2] on 27 August 2014, could have been her work on impairment, since she was requesting a hard coded copy of the Regenersis paper on 1 September.

90. Mr Bennett's case is that he understood that the goodwill benchmarking was updated during the audit. However, there is no documentary trace of this. We accept that the work could have been done by a junior other than [KPMG Audit Team Member 2]. However, no reason has been put forward why someone other than [KPMG Audit Team Member 2] should have been asked to carry out this work, and we have no evidence, from Mr Bennett or Mr Wright or [Regenersis Audit Engagement Partner], that they asked for this work to be carried out. Furthermore, any such work would have had to be documented, or it would have been a waste of time. The Individual Respondents contended that documents on the KPMG electronic file system could be overwritten, and therefore lost. However, there was no evidence that this had happened and the suggestion is only unsupported speculation.

[27] D1/224/11.

91. The Regenersis 2014 Audit was completed on 22 September 2014 and the audit file was closed on 6 November 2014.

92. KPMG's clean audit opinion on the 2014 financial statements included the following:

> *Recoverability of goodwill (£81.8 million)*
>
> - ***The risk*** *– The recoverability of goodwill is considered to be a significant audit risk due to the high level of recent business combinations and the associated significant goodwill balance. The value in use of the cash generating units, which include the goodwill asset and is the level at which goodwill is assessed for recoverability, is dependent on the related businesses generating sufficient cash flows in the future. Due to the inherent uncertainty involved in forecasting and discounting future cash flows, which are the basis of the assessment of recoverability, this is one of the key judgemental areas that our audit is concentrated on.*
> - ***Our response*** *- In this area our audit procedures included, among others, testing of the Group's budgeting procedures upon which the forecasts are based and the principles and integrity of the Group's discounted cash flow model. We evaluated the assumptions and methodologies used by the Group, in particular those relating to the forecast revenue growth and profit margins. We compared the Group's assumptions to externally derived data as well as our own assessments in relation to key inputs such as projected economic growth, competition, cost inflation and discount rates, as well as performing break-even analysis on the assumptions. We compared the sum of the discounted cash flows to the Group's market capitalisation to assess the reasonableness of those cash flows. We also assessed whether the Group's disclosures about the sensitivity of the outcome of the impairment assessment to changes in key assumptions reflected the risks inherent in the valuation of goodwill.*[28]

[28] D1/236/62.

93. As can be seen, although the opinion stated that assumptions were compared to externally derived data, the report did not specify when this took place or specifically refer to an updating of the benchmarking of the discount rate used against peer comparators.

94. In late October 2014, the audit was the subject of a "*post-signing review*" ("PSR") by [KPMG Senior Central Support Member 4], a retired KPMG Partner who undertook consultancy work. The PSR was a KPMG internal process intended "*to identify any learning points and to make suggestions for improvement of the documentation of* [the audit] *team's work prior to the finalisation of the files or in the future*".[29]

95. On 30 October 2014, [KPMG Senior Central Support Member 4] emailed Mr Bennett, with a copy to Mr Wright, "draft comments so far". On the same day, Mr Bennett emailed Mr Wright, [KPMG Audit Team Member 2] and [Regenersis Audit Engagement Partner], attaching the draft PSR report. [KPMG Senior Central Support Member 4] recorded the following view in relation to KPMG's audit work on impairment:[30]

> *In the response section of the goodwill risk in the Audit Report you note that 'We compared the Group's assumptions to externally derived data as well as our own assessments in relation to key inputs such as projected economic growth, competition, cost inflation and discount rates'. In the cross referenced audit report at 4.7.3.0020 the support for this comment is given as 3.2.10.4 TOD 1.0050 [i.e., the Original Goodwill Summary] but in looking at this paper and the other papers in the goodwill section I didn't see a great deal of evidence to support this comment, apologies if I missed it.*

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[29] frcc001:00284017, page 1, first paragraph [D1/242/1]; c.f. [Regenersis Audit Engagement Partner] 1, at 6.1 (C/14/19), and Bennett 1, at 28 [C/12/7].

[30] frcc001:00284017, page 8, row "*Impairment*", third column, third bullet (D1/242/8).

96. In his covering email Mr Bennett stated:

> *There is not too much on here (so far) and all seems fair and good points (except the non-audit fee one, which I dispute!).*
>
> *I have been through each point and put an action in. A bit of tightening up wording. All of it is on the contentious issues that are well known. Probably the most difficult is exceptionals.*
>
> *I will do the couple of points I have allocated to myself tomorrow. …*
>
> *If we get an updated version tomorrow (unlikely given his timekeeping) I will fill in further actions as required.*
>
> *[Regenersis Audit Engagement Partner]– one action for you, review 3.2.10.4.TOD 5.0010.*[31]

97. 3.2.10.4.TOD 5.0010 was the Original Goodwill Spreadsheet. No one then suggested that it was an out-of-date document.

98. On 31 October 2014 [KPMG Senior Central Support Member 4] emailed his review to, among others, [Regenersis Audit Engagement Partner], Mr Wright and Mr Bennett. In an annotated version of the review, saved to the shared drive and last modified by [Regenersis Audit Engagement Partner] at 18:55 on 5 November 2014, [Regenersis Audit Engagement Partner] added the following response:[32]

> *This is a really good point – what externally derived data have we compared to? Make clearer. I think we looked at others for disc rates?? Growth rates??*

99. We have no record of a response to this response.

100. We have concluded that the benchmarking was not updated for the purposes of the Regenersis 2014 Audit. There is no documentary evidence or clear trace of that work having been done, no oral evidence that

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[31] CB/18.

[32] frcc001:00293245, page 9, first row, last column (under the red heading "[Regenersis Audit Engagement Partner] *comment*") [D1/255/9].

instructions for this work were given or that it was done; and the person ([KPMG Audit Team Member 2]) who would have been expected to carry out that work did not do so. The suggestion that the work was carried out and the documentary record lost, having been overwritten, is unsupported speculation. Lastly, subsequent events, to which we refer below, do not suggest that the work was carried out or that it was carried out and was lost.

101. We would have expected [KPMG Audit Team Member 2] to have discussed with Mr Bennett whether the benchmarking should be updated, given her status in KPMG, but her evidence on this is insufficiently reliable.

The Regenersis AQR

102. In 2015, the FRC's AQR team carried out an inspection of KPMG's Regenersis 2014 Audit ("the Regenersis AQR"). The FRC's AQR team included [Regenersis AQR Inspector 2], an AQR inspector; and [Regenersis AQR Inspector 1], the AQR team leader. He was subsequently the Inspections Director for the Carillion inspection.

103. By letter dated 15 January 2015 from [Regenersis AQR Inspector 1] to [KPMG Senior Central Support Member 5] and [Regenersis Audit Engagement Partner] as the audit engagement partner,[33] KPMG was informed that the FRC's AQR team had selected KPMG's audit of the FY2014 financial statements of Regenersis for an AQR. The letter stated that the review would be carried out by [Regenersis AQR Inspector 2], the AQR Inspector for the Regenersis AQR, and, as set out in paragraph 63 above, it included the standard statement for the making available of the electronic audit files and other audit working papers without addition or alteration within 3 working days of the date of the letter.

[33] CB/23.

104. It would seem, however, that this letter was sent later than its date, since on 29 January 2015 [Regenersis AQR Inspector 1] sent an email[34] to [KPMG Senior Central Support Member 5], with copies to [Regenersis AQR Inspector 2] and [KPMG Central Support Member 6] (then Senior Manager in KPMG's Audit Quality and Risk Management Department) informing them of the AQR. Both the letter and the email requested KPMG to provide the electronic audit file. The email asked for the email and attachments to be copied to [Regenersis Audit Engagement Partner], as the audit engagement partner. It attached the letter dated 15 January 2015, described as a cover note, to which we have referred in the previous paragraph, which included the standard notice in bold:

> *In accordance with the standard procedures followed by the FRC Audit Quality Review team, please make the electronic audit files and other audit working papers supporting the firm's audit opinion available to us within three working days of the date of this request. These must be provided to us without addition or alteration.*

105. There was also a standard form questionnaire[35] to be completed on behalf of KPMG, and a request for other relevant documents, such as KPMG's report to the Regenersis audit committee.

106. Also on 29 January 2015, [KPMG Central Support Member 6] told [Regenersis Audit Engagement Partner] that the Regenersis 2014 audit had been selected for review, and sent him a PowerPoint presentation entitled "*How to have a successful AQRT (formerly AIU) Engagement Review*".[36] This included two references to the impairment of goodwill as being an area of particular interest to AQR inspectors. It also stated a requirement that "audit files and working papers must be provided to the AQRT without

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[34] CB/22

[35] CB/24.

[36] CB/21

addition or alteration". [Regenersis Audit Engagement Partner] forwarded the presentation to Mr Wright and Mr Bennett.

107. On 3 February 2015, KPMG provided answers to the questionnaire.[37] On the same date [Regenersis AQR Inspector 2] sent to [Regenersis Audit Engagement Partner], Messrs Wright, Bennett and [KPMG Senior Central Support Member 5], and to [KPMG Central Support Member 6] and [KPMG Central Support Member 1], an agenda[38] for their opening meeting, which was held on 5 February 2015. It included among the matters to be discussed:

> *Key aspects of the audit approach for significant account balances and/or areas*
>
> - *Acquisition accounting …*
> - *Valuation of goodwill*

108. Following that meeting, [Regenersis AQR Inspector 2] reviewed the audit file. On or about 24 February 2015 she prepared a note on the audit of goodwill.[39] It stated:

> *Reference in the Audit Committee report and the audit report to benchmarking to a relevant peer group however, this work was not carried out in 2014. This exercise was carried out in the prior year – 2013. Compared to December 2012.*

109. On 4 March 2015, [Regenersis AQR Inspector 2] sent a set of questions to KPMG (in a "Queries Tracker"),[40] raising questions about (among other things) how KPMG had audited the recoverability of goodwill:

> *23. Recoverability of goodwill*

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[37] frcc001:00284212; CB/33

[38] CB/36, attached to the email at CB/35.

[39] CB/39.

[40] frcc001:00259419; CB/40 and 41.

a) In response to the risk arising from the recoverability of goodwill the audit team noted in their audit report that they compared the group's assumptions to externally derived data. Furthermore in the report to the Audit Committee dated 16 September 2014 the audit team noted that the discount rate was benchmarked against a relevant peer group.

As the audit file notes that the benchmarking exercise was carried out in the prior year and not repeated in 2014, please clarify the accuracy of these statements.

b) The audit team also noted in their audit report that they tested the group's budgeting procedures and the principles and integrity of the group's discounted cash flow model. Please provide reference to this work on the eAudIT files.

110. [Regenersis Audit Engagement Partner] noted against this:

I thought we did?

111. On 6 March 2015, Mr Wright noted against the AQR's questions, in the column for the Audit team response:

a) This is an error – the discount rates were benchmarked as set out in the summary attached at 3.2.10.4 TOD 1.0050. The spreadsheet in TOD 1.0010 (tab "comparative discount rates") was updated but the final version appears to have not been reflected on the file.

b) The going concern assessment in 3.4.3.0010 and set out on 3.4.3 tested management's forecasting accuracy and budgeting procedures. In TOD 1.0010 (tab "goodwill review") the audit team recalculated the goodwill impairment review to ensure the group's discounted cash flow model was accurate and therefore the principles and integrity.[41]

112. In the margin, Mr Wright wrote:

Best I can come up with

[41] CB/46/14.

113. We have seen nothing to justify the proposed statement, and the comment "*Best I can come up with"* suggests that at this stage the statement was no more than a suggested response for consideration by the audit team.

114. Later on 6 March 2015, Mr Wright amended the response. He wrote:[42]

> *a) The discount rates were benchmarked to a relevant peer group as set out in the summary attached at 3.2.10.4 TOD 1.0050. We compared the factors used in deriving the WACC (such as risk free rates) to external data sources (as set out on the tab "WACC") such as US gilt rates. The spreadsheet in TOD 1.0010 (tab "comparative discount rates") was updated but the final version appears, inadvertently, to have not been reflected on the file.*
>
> *b) The going concern assessment in 3.4.3.0010 and set out on 3.4.3 tested management's forecasting accuracy and budgeting procedures. This was additionally addressed in the goodwill impairment review in 3.2.10.4.TOD 1.0050. In TOD 1.0010 (tab "goodwill review") the audit team recalculated the goodwill impairment review to ensure the group's discounted cash flow model was accurate and therefore the principles and integrity [sic].*

115. Mr Wright entered a note in the margin addressed to [KPMG Central Support Member 6]:

> *[KPMG Central Support Member 6] – not a great piece of work this one, preference for this or… we did agree to externally derived data, just that our assessment was that the difference year-on- year was not significant.*

116. Mr Wright was thus suggesting alternative responses: either that the audit team had updated the spreadsheet in TOD 1.0050 or that they had decided that it was unnecessary to do so because the year-on-year difference from the previous year was not considered significant. The fact that Mr Wright had not decided which version should be given to the AQR suggests that neither represented the audit work that had been carried out. If the

[42] CB/47/14

comparative discount rates applied by the audit team had been updated, and the benchmarking of discount rates been carried out, it would have been unnecessary to consider whether the difference year-on-year was significant.

117. In their evidence, both Mr Wright and Mr Bennett said that the opinion that "the difference year-on-year was not significant" could not be formed unless the discount rates had been updated.[43] However, it is in our judgment clear that Mr Wright was suggesting alternative responses to the AQR. Indeed, Mr Wright in his first witness statement at paragraph 6.9 so states. Moreover, as we have seen, Regenersis's management were able to conclude that the difference year-on-year was insignificant without investigating the updates, and that statement was accepted by [KPMG Audit Team Member 2] in the Original Goodwill Spreadsheet.[44] The fact that Mr Wright suggested these alternatives indicates that he did not know which was true, or indeed if either was true.

118. On 7 March 2015, [Regenersis Audit Engagement Partner] sent to [KPMG Central Support Member 6], Mr Wright and Mr Bennett what he described as "first cut at answering" to the Query Tracker.[45] In relation to the Query on recoverability of goodwill, he left unamended Mr Wright's second response (cited at paragraph 114 above). Mr Wright's margin note (cited at paragraph 115 above) remained.

119. [KPMG Central Support Member 6] responded by a note in the margin of the Query Tracker:

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[43] See Mr Bennett's evidence at Day 13/25 and /57-58.

[44] Paragraphs 72 and 78 above.

[45] See CB/48 and 49.

OK, noted.[46]

120. On 9 March 2015, [KPMG Senior Central Support Member 5] circulated the Query Tracker with his notes attached.[47] The text and Mr Wright's note on the recoverability of goodwill remained as drafted by Mr Wright. [KPMG Senior Central Support Member 5] did not address the proposed text on this subject. This version of the draft response did not include [KPMG Central Support Member 6's] comment "OK noted".

121. Later on 9 March 2015 [KPMG Central Support Member 6] responded to [KPMG Senior Central Support Member 5's] email, stating "My comments/tracked changes included".[48] The enclosed draft had Mr Wright's "not a great piece of work this one …" and her marginal note "OK, noted", but nothing new in relation to recoverability of goodwill.

122. On 11 March 2015, Mr Bennett sent to [Regenersis AQR Inspector 2] (with copies to [Regenersis AQR Inspector 1], [KPMG Senior Central Support Member 5], [KPMG Central Support Member 6], [Regenersis Audit Engagement Partner] and Mr Wright) KPMG's responses to the queries in the Queries Tracker.[49] The response to query a) on the recoverability of goodwill was the text drafted by Mr Wright set out at paragraph 113 above, including the statement:

… The spreadsheet in TOD 1.0010 (tab "comparative discount rates") was updated but the final version appears, inadvertently, to have not been reflected on the file.

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[46] D1/413/16.

[47] CB/50 and CB/51/16.

[48] D1/412.

[49] CB/52, frcc001:00259456

123. This was a clear representation to the AQR team that the comparative discount rates tab in the spreadsheet in question had been updated during the audit work. At this date, there was nothing to justify the statement.

124. On 19 March 2015, the AQR team sent to the Regenersis audit team and [KPMG Senior Central Support Member 5] and [KPMG Central Support Member 6] a draft Issues Tracker setting out their provisional formal findings.[50] The issue in respect of goodwill recoverability was as follows:

> *d) Benchmarking of discount rate*
>
> *Background*
>
> *In response to the risk arising from the recoverability of goodwill, the audit team noted in their audit report that the group's assumptions were compared to externally derived data. Furthermore, in the report to the Audit Committee dated 16 September 2014, the audit team stated that the discount rate was benchmarked against a relevant peer group.*
>
> *The audit file also noted that the benchmarking exercise was carried out. However, the spreadsheet where the benchmarking review was documented related to work undertaken in the prior year.*
>
> *Issue*
>
> *The audit work to address the risk arising from the recoverability of goodwill does not reflect the comparison of the discount rate to externally derived data or the audit team's assessment of the results of such a comparison. Were the comparison to have not been performed, the audit report was misleading in this respect.*[51]

125. On 24 March 2015 at 08.37 [Regenersis Audit Engagement Partner] sent to Mr Wright draft responses to the Issues Tracker. Against the issue on benchmarking of discount rates the KPMG response was the following:[52]

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[50] CB/54, frcc001:00259459

[51] CB/55/5.

[52] CB/57/7.

We do not consider that the audit report was misleading in this respect.

The discount rates were benchmarked to a relevant peer group a set out in the summary attached at 3.2.10.4 TOD 1.0050.

Numerous elements used in determining the discount rate were compared to externally derived data. For example, as set out on the tab "WACC", we compared the various factors used in deriving the WACC (such as a risk free rates) to external data sources (such as gilt rates). The spreadsheet in TOD 1.0010 (tab "comparative discount rates") also shows comparisons to external data. It notes that this comprises analysis from prior year and assesses that no significant difference would be expected. During finalisation of the audit this was in fact updated but the final version appears, inadvertently, to not have been reflected on the file.

Notwithstanding, as described above, the audit file therefore does evidence significant levels of comparison of the discount rate and the elements which go into its calculation to externally derived data and the audit team's assessment of these. This supports the description of our audit work in the audit report.

126. [Regenersis Audit Engagement Partner] entered marginal notes to this draft. The first was attached to "1.0050" and asked:

Which was prepared after the testing at .10? and so reflected our final assessments?

His second note was attached to the words "For example" in the third paragraph of the draft response, and stated:

We may as well pick out as many examples as we can of comparisons to externally derived data. Can someone look for all the others.

127. At 18.21 on 24 March 2015 Mr Bennett emailed [Regenersis Audit Engagement Partner] and Mr Wright, stating

I have read and updated slightly the issues tracker … and saved to U:drive. …

The text of his email referred to the audit work on tax.[53]

128. [Regenersis Audit Engagement Partner] responded at 22.29 on 24 March 2015:[54]

> *I have read and slightly modified. Just a couple of comments that – ideally – we can follow up on before it gets circulated to risk? Can someone pick up. I don't need to see again before it goes to risk – so let's get it to them as quickly as possible…*

129. On 25 March 2019 at 09.47 Mr Bennett sent to [KPMG Senior Central Support Member 5], [KPMG Central Support Member 6] and [KPMG Central Support Member 2], with copies to [Regenersis Audit Engagement Partner]and Mr Wright, and to [KPMG Senior Audit Team Member 3] "our draft issues tracker for review", stating that [KPMG Senior Audit Team Member 3], as Engagement Quality Control Reviewer, was also to look at it.[55] The attached draft retained the previous text, and showed [Regenersis Audit Engagement Partner's] notes cited above, together with a note by Mr Bennett "done"[56].

130. [KPMG Central Support Member 6][57] responded at 12.19 on 25 March 2015, stating that her comments and tracked changes were in the attached file.[58] The draft Issues Tracker she attached[59] included the following text. The deletions, shown by strike-through below, were in the original.

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[53] CB/58.

[54] Ibid.

[55] CB/59.

[56] CB/60/8.

[57] [KPMG Central Support Member 6's] maiden name "[…]" still showed on some systems at the time of the events in question. We have used […] married surname to avoid confusion.

[58] CB/61.

[59] CB/62.

We do not consider that the audit report was misleading in this respect. The discount rates were benchmarked to a relevant peer group as set out in the summary attached at 3.2.10.4 TOD 1.0050, which was prepared after the spreadsheet at 3.2.10.4 TOD 1.0010 and thus represented our final assessment.

Numerous elements used in determining the discount rate were compared to externally derived data as shown on the spreadsheet in TOD 1.0010. For example, as set out on the tab "WACC", the items we compared ~~the various factors used in deriving the WACC to external sources. These~~ included: risk free rate; small company premium; market risk premium and Beta. As set out on the tab "comparative discount rates" we also made further comparisons here to external data. It notes that this comprises analysis from prior year and assesses that no significant difference would be expected. During finalisation of the audit this was in fact updated but the final version appears, inadvertently, to not have ~~not~~ been reflected on the file.

Notwithstanding, as described above the audit file therefore does evidence significant levels of comparison of the discount rate and the elements which go into its calculation to externally derived data and the audit team's assessment of these. This supports the description of our audit work in the audit report.

Action

We will continue to ensure the audit report cross references to the procedures performed in the audit file by including a workpaper with more specific references from the audit report to the individual procedures performed.

131. The side notes in this draft included the earlier side notes to which we have referred but included some new notes.

132. [KPMG Central Support Member 6] inserted a margin note attached to the first paragraph of this text:

What date of information was used – in the background they seem to suggest we used PY work? Should we be challenging this? Or were we doing out turn analysis because presumably current year information is not available? Or was something mis-labelled?

133. [KPMG Central Support Member 6] also inserted 3 marginal notes in the draft against the sentence beginning "During finalisation …":

> *Because …..?*
>
> *Can we provide the final version as an attachment?*
>
> *And to make sure the final version of documents are attached to the eAudiT file?*

134. At 19.37 on 25 March Mr Bennett sent to [Regenersis Audit Engagement Partner] and Mr Wright a further draft of the responses to the Issues Tracker.[60] These included Mr Bennett's comment:

> *The file had some analysis for the PY and some for the current year (as set out below). The updated prior year analysis was not uploaded to the eAudit file.*

135. In relation to the Goodwill issue he made no changes to the previous draft.

136. On 26 March 2015, [Regenersis Audit Engagement Partner] sent the tracker responses to the AQR team.[61] The text of the Goodwill response was the following:

> *Context*
>
> *We do not consider that the audit report was misleading in this respect. The discount rates were benchmarked to a relevant peer group as described in the summary at 3.2.10.4 TOD 1.0050, which was prepared after the spreadsheet at 3.2.10.4 TOD 1.0010 and thus represented our final assessment.*
>
> *Further, numerous elements used in determining the discount rate were compared to externally derived data as shown on the spreadsheet in TOD 1.0010. For example, as set out on the tab "WACC", the items we compared to external data included: risk free rate; small company premium; market risk premium and Beta. As set out on the tab "comparative discount rates" we also made further comparisons here to external data. It notes that this comprises analysis of the discount rate to external data, but notes this is from prior year, although it assesses that*

[60] CB/63 and 64/9.

[61] CB/65.

no significant difference would be expected. During finalisation of the audit this was in fact updated (and is available if considered useful) but the final version appears, inadvertently, to not have been reflected on the file.

Notwithstanding, as described above, the audit file therefore does evidence significant levels of comparison of the discount rate and the elements which go into its calculation to externally derived data and the audit team's assessment of these. This supports the description of our audit work in the audit report.

Action

We will continue to ensure the audit report cross references to the procedures performed in the audit file by including a workpaper with more specific references from the audit report to the individual procedures performed.[62]

137. For present purposes, the important insertion from earlier drafts was the statement that the updated spreadsheet was available if considered useful. It was not available. No one sought to correct that statement at the next AQR meeting.

138. On 30 March 2015, there was a close-out meeting between the AQR team and KPMG, at which the AQR team asked further questions about KPMG's work on Goodwill. According to [Regenersis AQR Inspector 2]:

51. Although I do not specifically recall our discussion with the audit team I am certain that I would have requested a copy of the updated goodwill spreadsheet referred to by KPMG in the Issues Tracker. I am sure of this because (i) as I have explained, we were interested in this area and wanting to check whether the work really had been done; and (ii) we had been told that the updated version was "available if considered useful". So I am sure that we would have asked for it.[63]

We accept this evidence, which accords with the overwhelming probabilities and subsequent events.

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[62] CB/66/11.

[63] [Regenersis AQR Inspector 2's] first witness statement.

139. At 18.05 on 30 March 2015 Mr Bennett emailed the AQR team, with copies to [Regenersis Audit Engagement Partner], Mr Wright and [KPMG Central Support Member 6].[64] He stated, among other matters:

> *Also, an error on my part, during today's meeting I referred to our documentation of [Regenersis Senior Management] approving the deviation from policy on bad debts. It turns out I recalled this from the UK stats file (that I have been reviewing as part of the signing of the subsidiary accounts this week), rather than the closed out file. If you wish I can send you a copy of the (updated) paper that is on the stats file.*
>
> *Goodwill discount rate benchmarks will follow as soon as we have collated from team.*

140. "Collated from team" was an odd expression to use in this context. It suggested that the goodwill discount rate benchmarks were not set out in a single document, and perhaps not available from a single person. But it did imply that the goodwill discount rate benchmarks had been researched and documented.

141. Mr Bennett's evidence is that this wording was dictated to him by [Regenersis Audit Engagement Partner] and Mr Wright, and written by him without thought.[65]

142. At 19.07 on 30 March 2015 Mr Bennett sent to Mr Wright an invitation[66] to a meeting on "Regenersis aqr catch up" to be held between them on the following day, 31 March 2015, at 16.30. Mr Wright accepted the invitation.[67] It must be inferred that their meeting took place as planned and that they discussed the AQR.

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[64] CB/68.

[65] Paragraph 67 of Mr Bennett's first witness statement.

[66] CB/69.

[67] CB/70.

143. At 12.10 on 31 March 2015 Mr Bennett circulated an email[68] to the audit staff in the office:

> *Subject: Urgent help needed*
>
> *Hi All,*
>
> *Is there anyone in the office today that can help me with an urgent and important task? It should take less than an hour and is quite interesting.*

144. A few minutes later, [KPMG Audit Team Member 4] responded:

> *Hi Adam,*
>
> *Can I be of any help?*

145. Mr Bennett responded:

> *Yes please. I'll come and find you.*[69]

146. At 12.24 on 31 March 2015 Mr Bennett sent to [KPMG Audit Team Member 4] the spreadsheet TOD 10010 Goodwill Impairment Review FYI.xlsx.[70] This was what has been referred to as "Goodwill Paper Version 2". The tab "Comparative discount rates" showed 3 rates under the column "Pre-tax 30.6.14" for Emerging Markets Western Europe and Advanced Solutions, but no rates for individual companies. The column Discount Rate Pre-tax 31.12.13 showed 3 rates for 2 named companies and one labelled "Other". The changes made by Mr Bennett were set out at paragraph 169 of the Executive Counsel's closing submissions:

> (1) He had deleted the box which had previously been at the top (and which had stated, "KPMG audit work. This spreadsheet has been agreed to PY [prior year], and this calculation is not updated in 2014 as no significant differnece [sic] expected").

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[68] CB/71.

[69] Ibid.

[70] CB/72 and CB/72N; CB/73.

(2) He had moved to the top of the page the box which had previously been at the bottom (and which had stated, "KPMG audit work. The WACC has been compared to competitors and key customers. The key comparable pre tax rates have been agreed to discount factors").[71]

(3) He had inserted additional columns G to I, which gave discount rates at more recent dates (in 2013 and 2014) than had been present in the Original Goodwill Paper (which had shown 2011 and 2012 dates).

(4) He had hidden the columns showing the discount rates present in the Original Goodwill Paper (from 2011 and 2012).

147. At 15.50 on 31 March 2015 [KPMG Audit Team Member 4] sent an updated spreadsheet ("Goodwill Paper Version 3") to Mr Bennett. The tab "Comparative discount rates" now included comparative discount rates for a large number of named corporate entities under the column "Discount Rate Pre-tax 31.12.13".[72] [KPMG Audit Team Member 4] had also highlighted in yellow seven blank cells of column H that contained no discount rate. In relation to these, he commented in his covering email that he "was not able to figure out a few". [73]

148. The Executive Counsel alleges that Mr Bennett discussed the updated spreadsheet with Mr Wright at their meeting at 16.30. We comment on this below.

149. At 17.42 on 31 March 2015, Mr Bennett sent the updated spreadsheet ("Final Version of the Goodwill Paper") to [Regenersis AQR Inspector 2], with copies to [Regenersis AQR Inspector 1], [Regenersis Audit Engagement Partner], Mr Wright and [KPMG Central Support Member

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[71] frcc001:00259491, CB/73/1, tab "*Comparative discount rates*", rows 2 to 4.

[72] CB/75.

[73] CB/74.

6].[74] The attached spreadsheet differed from the spreadsheet Mr Bennett had received from [KPMG Audit Team Member 4] in that a blue box headed "KPMG Comparators" had been inserted in the tab "Comparative discount rates" with the names and discount rates of 3 companies, one of which was [Company A]. In addition, the box at the top was expanded so as to give a more comprehensive explanation of the audit work. In addition, a box, shaded in pale orange, set out the median, lower quartile, and upper quartile of the benchmark discount rates. The email is important. It was as follows:

> *Please see attached goodwill paper as promised, I believe that the only tab that is different to the version on the closed out file is the "Comparative discount rates" tab. Apologies for the delay, if I'm honest I have only just managed to get to sending this.*
>
> *I had forgotten in the meeting yesterday but the team did actually compare the discount rate to a few comparators' determined by us as well as ticking in the extensive list that Regenersis came up with. These are in the blue box on the top right.*
>
> *This is in addition to our comparison to third party data on the "WACC" tab (which is on the closed out file) as is already included in our response.*
>
> *We believe both the latter (as well as the former) are sufficient for us to demonstrate "our response" in the long form audit report is accurate in stating that we "compared the group's assumptions to externally derived data".*

150. On 7 April 2015 [Regenersis AQR Inspector 2] sent an updated draft issues tracker[75] to KPMG. The issue in relation to the recoverability of goodwill had been substantially amended. It read (excluding deletions):

> *In response to the risk arising from the recoverability of goodwill, the audit team noted in their audit report that the*

[74] CB/76 and 77.

[75] CB/78 and 79.

group's assumptions were compared to externally derived data. Furthermore, in the report to the Audit Committee dated 16 September 2014, the audit team stated that the discount rate was benchmarked against a relevant peer group.

The audit file also noted that the benchmarking exercise was carried out. However, the spreadsheet where the benchmarking review was documented stated that the external benchmarking of the discount rate was not updated in 2014 as the audit team did not expect there to be a significant difference from the prior year. The WACC comparisons for Beta, market risk premium and small company premium were compared to external sources by Regenersis and verified by the audit team.

The audit team informed us that, during the finalisation of the 2014 audit, Regenersis management benchmarked the discount rate against competitors and key customers and the audit team agreed this material to the latest financial statements. This work was not included on the group file.

Issue

Contrary to the procedures described in the audit report in response to the risk arising from the recoverability of goodwill, management undertook the discount rate benchmarking. There was insufficient evidence of procedures performed by the audit team to mirror those set out in the audit report.

151. This draft of the issues tracker retained the text of KPMG's response to the earlier issue.

152. On 9 April 2015 [Regenersis Audit Engagement Partner] emailed Mr Wright and Mr Bennett with the subject "AQR response – new draft".[76] He stated:

I have accepted their changes and tracked changes… Let me have your thoughts.

The enclosed draft of the Issues Tracker included in KPMG's response the statement:

[76] CB/80.

During finalisation of the audit this tab ["WACC"] was in fact updated with more up to date information but the final version appears, inadvertently, to not have been reflected on the file.[77]

153. On 10 April 2015, [KPMG Audit Team Member 2] emailed Mr Bennett, apparently about an investment review on Regenersis. For present purposes, the relevance of this email lies in the question she asked of Mr Bennett:

Have we ever compared Regenersis with [Company A]?

154. Mr Bennett replied:

Alistair [Wright]and I did in response to an AQR question!!

His response is evidence that, as alleged by the Executive Counsel, Mr Bennett and Mr Wright had met on 31 March and discussed the updated issues tracker and inserted the entry relating to [Company A].

155. On 14 April 2015 [Regenersis Audit Engagement Partner]sent an updated issues tracker to [Regenersis AQR Inspector 2], with copies to Mr Bennett and Mr Wright, [KPMG Central Support Member 6] and [KPMG Central Support Member 1], stating:

I have accepted your changes and left our changes as tracked so that you can see them readily.[78]

The updated issues tracker included the statement:

During finalisation of the audit this [WACC] tab was in fact updated with more up to date information but the final version appears, inadvertently, to not have been reflected on the file.[79]

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[77] CB/81/9.

[78] CB/84.

[79] CB/83/9.

156. Mr Wright, in his witness statement, states that he has little if any recollection of these events. However, he states, in relation to the meeting with the AQR on 30 March 2015:

> *6.23 Turning to the meeting itself, I remember broadly the topics discussed, the majority not relevant to the goodwill issue. I do, however, remember someone in our team agreeing with [Regenersis AQR Inspector 1] that KPMG would update the benchmarking tab and send it to the AQR team. I do not recall whether [Regenersis Audit Engagement Partner], Adam or I agreed to this.*
>
> *6.24 There is a possibility I misinterpreted the request, but I recall leaving the meeting believing the AQR team had requested that the discount rate benchmarking table was updated, because the AQR team knew that we could not locate the version of the Goodwill Paper that reflected the work done. In my mind, an updated table would have assisted the AQR team assess the relevance of the missing benchmarking exercise to the conclusions reached in the audit overall. I do not believe we would have made an offer to update the table or undertaken the work had we understood that the AQR team had requested us to locate the document created at the time of the audit.*

157. We reject the suggestion that the AQR team asked for an update to be created or that they were understood to have done so. Not only is this inconsistent with the clear evidence of [Regenersis AQR Inspector 2] and [Regenersis AQR Inspector 1]; it is also inconsistent with the email sent to them with the Final Version of the Goodwill Paper.

158. Mr Bennett's evidence is that he simply complied with instructions he received from Mr Wright. This included the false statement he inserted in his email of 31 March 2015 that "I had forgotten in the meeting yesterday but the team did actually compare the discount rate to a few comparators' determined by us". Mr Bennett's statement in his email apologising for the delay because he had only just managed to send it was also false: the delay had been due to the need to carry out work to the Goodwill Paper, including the work by [KPMG Audit Team Member 4]. We do not believe that a man of Mr Bennett's intelligence would not have appreciated that this statement

was false. Having done so, he should have refused to insert it into the email. We reject his evidence to the effect that he acted under instructions which he did not question during these events.

159. We find that the response to the AQR on Impairment was discussed between Mr Wright and Mr Bennett when they met to discuss the AQR on 31 March 2015, as confirmed by Mr Bennett's email stating that [Company A] had been compared to Regenersis by himself and Mr Wright in response to an AQR question. This may have been stated with some levity, but it was nonetheless true.

160. Much stress was placed on the fact that the tab "Comparative discount rates" in the spreadsheet sent to the AQR was highlighted in red and that Mr Bennett's covering email to [Regenersis AQR Inspector 2] of 31st March 2015 (CB/76/1) referred to the Comparative Discount Rate tab differing from the version on the closed out file. It was suggested that this was done to indicate to the AQR that the contents of this tab were new. The difficulty with this inference is that it is inconsistent with the emails to the AQR to the effect that the spreadsheet had been created during the audit but not found its way onto the audit file.

161. We have concluded that both Mr Bennett and Mr Wright knew that the statement set out in paragraph 151 above, namely:

> *During finalisation of the audit this tab ["WACC"] was in fact updated with more up to date information but the final version appears, inadvertently, to not have been reflected on the file*

was false. Neither of them had any factual justification for it. As we have mentioned, there was no evidence for it in the audit file or, so far as the evidence goes, elsewhere. Even if they thought that the work had been carried out during the audit (which we reject), but its documentation lost, we do not believe that either of them could have thought that they were accurately duplicating that work.

162. It follows that we find Allegations 2A, 2B and 2C proved. We find Mr Wright and Mr Bennett were party to the deliberate misleading of the AQR. Their conduct was dishonest and fell significantly short of the standards reasonably to be expected of a Member or Member Firm and was likely to bring discredit to them and to KPMG and to the accountancy profession. They were guilty of Misconduct.

THE CARILLION ALLEGATIONS

Introduction

163. In this part of our Decision, we address the Allegations made by the Executive Counsel relating to the minutes of meetings and an audit paper on contract evaluation (the CCS Paper) that were presented to the AQR as having been created during and as part of the audit of Carillion's 2016 financial statements but were in fact created long afterwards, during and for the purposes of the AQR. As stated above, it was and is no part of our task to make any findings on the adequacy or otherwise of that audit, and we should not be taken as doing so.

General remarks

164. In 2016, Carillion was engaged in a large number of construction projects, in the UK, the Middle East and Canada. Sums due to it under its construction contracts would of course form part of its assets; conversely, valid claims against the company, and costs it had incurred in performing its contracts would form part of its liabilities. Estimates of the future costs and revenue under its contracts would be important, in accounting for the profit or loss from such contracts.

165. Thus, in order to form its opinion of a construction company's financial statements, its auditor should design and perform audit procedures that are appropriate for the purpose of obtaining sufficient and appropriate evidence

in relation to the historical and estimated future costs and revenue under its construction contracts.

166. The auditors of a large construction company such as Carillion could not and would not review every contract entered into by the Company, whether large or small. Small contracts, the results of which are immaterial to the Company's results, could generally be ignored. The auditor may decide to select specific contracts, which would typically include high value or key contracts, to test from the wider population of contracts. Carillion had so many significant construction contracts that some judgment had to be exercised by its auditor to decide which contracts should be reviewed. There was then a secondary decision to be made. In some cases, it would be thought sufficient to have what was referred to as a verbal update or desk-top review, which might involve a discussion with management and a review of the company's documents. Where the contract was more substantial, or there was reason for concern, KPMG would require the Company to produce a written position paper on the contract.

167. Carillion had a number of substantial overseas subsidiaries and joint ventures that were audited by firms other than the UK firm KPMG, the financial results of which would be included in Carillion's consolidated financial statements. KPMG's objective was to obtain sufficient and appropriate evidence regarding the financial information of the components to enable it to express an opinion on whether the group financial statements were prepared, in all material respects in accordance with the applicable financial reporting framework. For this purpose, KPMG would participate in a Clearance Meeting with the component auditor. The components in question were referred to as Canada, [Joint Venture A], Oman and MENA (Middle East and North Africa). KPMG's notes of the meetings would normally be typed up as minutes of the meeting, generally by the junior audit member present at the meeting, and placed on the audit file as evidence of KPMG's audit work in question. The

accountant typing up the minutes would have the benefit of the agenda for the meeting, and his or her manuscript notes taken during the meeting, together with, if necessary, the notes of the more senior KPMG accountant and/or the partner who had attended the meeting, and, if the minutes were produced soon after the meeting, his recollection of the meeting.

Events

168. On 16 January 2017 KPMG Canada, who were the auditors of the Canada component, emailed Mr Meehan asking a question about revenue recognition. Mr Meehan forwarded the email to Mr Kitchen and Mr Bennett, and Mr Bennett responded to KPMG Canada on 17 January 2017.[80]

169. The Clearance Meeting relating to Carillion Canada Group was held on 19 January 2017 (the agenda for the meeting was misdated January 19 2016). The meeting was attended by Mr Meehan and Mr Kitchen, both of whom made notes.[81] They also attended Clearance Meetings with the auditors of the [Joint Venture A] (17 January 2017), which [KPMG Audit Team Member 1] and members of the [Joint Venture A] also attended, and they attended the meeting on the Oman components (1 February 2017).[82] Mr Wright also attended the Oman Clearance Meeting and also made notes of the meeting.[83] The meeting on MENA, attended by Mr Meehan and Mr Kitchen, was held on 3 February 2017.

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[80] CB/136.

[81] Mr Kitchen's notes on the Canada, [Joint Venture A], Oman and MENA meetings are at CB/86.

[82] Mr Meehan's manuscript notes on the Canada meeting, made on the agenda, and his notes on the [Joint Venture A] and MENA meetings, are at CB/85.

[83] CB/89.

170. The financial statements of Carillion for 2016[84] were signed on behalf of the Company on 1 March 2017. They showed profit before taxation of £146.7 million, and proposed an increased distribution of dividend. The Company's performance was said to be in line with expectations. The Annual Report showed that much of the business of the Company included construction services in the Middle East and Africa (with underlying operating profit of £16.1 million) and construction services in the UK and Canada (with underlying operating profit of £41.3 million).

171. KPMG's audit report, signed by Mr Meehan and also dated 1 March 2017, stated, among other things:

> *We have audited the Group financial statements of Carillion plc for the year ended 31 December 2016 which comprise the Group consolidated income statement, the Group consolidated and Parent Company balance sheets, the Group consolidated statement of comprehensive income, the Group consolidated and Parent Company statement of changes in equity, the Group consolidated cash flow statement and the related notes. In our opinion:*
>
> *- the financial statements give a true and fair view of the state of the Group's and of the Parent Company's affairs as at 31 December 2016 and of the Group's profit for the year then ended;*
>
> *- the Group financial statements have been properly prepared in accordance with International Financial Reporting Standards as adopted by the European Union;*
>
> *- the Parent Company financial statements have been properly prepared in accordance with UK Accounting Standards, including FRS101 Reduced Disclosure Framework; and*
>
> *- the financial statements have been prepared in accordance with the requirements of the Companies Act 2006 and, as regards the Group financial statements, Article 4 of the IAS Regulation.*

[84] D3/98.1.

172. In other words, KPMG gave a clean audit report. Its audit file was closed on 3 July 2017.

173. On 10 July 2017, Carillion announced that it had undertaken "an enhanced review of all of the Group's material contracts" which resulted in a "contract provision of £845m at 30 June 2017".[85] It stated:

> *This review has resulted in an expected contract provision of £845m at 30 June 2017, of which £375m relates to the UK (majority three PPP projects) and £470m to overseas markets, the majority of which relates to exiting markets in the Middle East and Canada.*
>
> *The associated future net cash outflows in respect of these contracts is [sic] £100m-£150m (primarily in 2017 and 2018).*[86]

174. KPMG's audit was the subject of a report by [KPMG Senior Central Support Member 4]. KPMG claimed privilege in respect of his report, and we did not see it. Mr Bennett read the report and emailed comments on it to Mr Meehan.[87]

175. On Monday 18 September 2017, the FRC informed KPMG that the AQR team had selected for review the audit of Carillion for the year ended 31 December 2016. The FRC's email stated that the inspectors would be [Carillion AQR Inspector 2] and [Carillion AQR Inspector 1], the inspection leader would be [FRC Employee 1], and the review would commence in the week commencing 2 October 2017.[88] The FRC's email included the usual statement:

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[85] Page 711 of the electronic chronological bundle.

[86] The announcement was cited in the Construction Enquirer magazine: https://www.constructionenquirer.com/2017/07/10/carillion-profit-warning-unearths-845m-contract-black-hole/.

[87] Day 13/102.

[88] CB/94.1.

In accordance with the standard procedures followed by the FRC Audit Quality Review team, please make the electronic audit files (Group and UK components) and any other audit working papers supporting the firm's group audit opinion available to us, within five working days of the date of this request. These must be provided to us without addition or alteration.

The email attached an engagement questionnaire, which the AQR wanted to be returned at least 3 days before the opening meeting, which was to take place on 3 October 2017.

176. On 18 September 2017, [KPMG Central Support Member 6] forwarded the FRC email to Mr Meehan, with copies to Mr Wright and others.[89] She stated:

Following previous years AQR interest, can you ensure that any files that sit outside audit (eg in relation to tax) that are part of the audit working papers, are made available for review, as well as those that sit with audit.

…

We will have an opening meeting with the AQR inspectors to introduce them to our audit, so please can you prepare a briefing pack for the opening meeting. Some areas for inclusion might be a brief company overview, team structure (particularly any overseas components or subsidiary teams and specialists involved in the audit), an overview of the financial statements (e.g. key figures), significant risks and key audit focus areas. The AQR are likely to have reviewed the financial statements prior to the meeting and may ask questions about certain figures or disclosures which are significant or unusual.

Please also ensure that you provide a copy of the latest and the prior year Audit Committee papers and the final signed financial statements to the AQR as well.

177. Given the Company's announcement of a very substantial write-down, it would be natural for the audit team to have some concern about the AQR. Indeed, Mr Meehan accepted he felt anxious about it. He would have

[89] D3/80.

realised that the areas of focus of the AQR were likely to include Carillion's construction business and the consideration given by KPMG to the audits of non-UK components.

178. Mr Wright immediately forwarded [KPMG Central Support Member 6's] email (which included the FRC email) to Mr Kitchen and Mr Bennett, with a copy to Mr Meehan. The email was headed "AQR file selection KPMG LLP # 19 – Carillion plc". He asked:

> *FYI – can we meet F2F Wednesday maybe?*[90]

179. On the following day, 19 September 2017, Mr Meehan emailed [KPMG Central Support Member 6] and [KPMG Senior Central Support Member 5], with copies to Messrs Bennett, Wright and Kitchen:

> *… The "current" year is 2016 for all AC papers I presume. Further, do the AQR have any right if [sic] access to our 2017 H1 files – work due to finish with their announcement on 29 September?*

180. [KPMG Senior Central Support Member 5] responded:

> *Peter, correct re 2016. They would not normally look at either interim review files or the subsequent audit file but we may want to use various papers to respond to questions if the AQR tries to use hindsight.*[91]

181. Mr Paw's evidence was that he was recruited by Mr Kitchen to work on the AQR.[92] On 18 September 2017 Mr Kitchen forwarded the AQR email to Mr Paw. Mr Paw responded on 19 September 2017:

> *I'd like to help out with the AQR on Carillion if at all possible?*[93]

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[90] D3/81/4

[91] D3/82.

[92] Day 15/22.

[93] D3/81/2.

182. On Sunday 1 October 2017 Mr Meehan was on holiday in Madeira. He was sufficiently concerned by the AQR to email Mr Kitchen, Mr Wright and Mr Bennett, copied to Mr Paw:

> *Chaps*
>
> *Do you have time after the AQR meet to sit down and discuss the [KPMG Senior Central Support Member 4] comments in csq please? I think it will be a good exercise to go through to consider if he has missed some info/ we can show him we did do stuff?, is there mitigating work on file to address his points? Remind ourselves on what we did at the time on some areas that should be addressable e.g. No minutes of overseas clearance meetings, Suads not followed up or considered from overseas etc.*
>
> *Painful but we need to. Benno not really needed but I would really value him at the session.*
>
> *If a prob can we do wed.needs to be f2f and all having read the papers please Thx Peter .*[94]

183. Given the Company's announcement, it is not surprising that Mr Meehan mentioned the missing minutes of the overseas clearance meetings as one of the matters to be addressed.

184. KPMG produced an audit briefing document dated 3 October 2017 for the AQR inspection on Carillion's financial statements for the year ended 31 December 2016.[95] It named as the contacts at KPMG in connection with the audit Mr Meehan as Lead Audit Partner, Mr Wright as Group Senior Manager, Mr Kitchen as Construction Senior Manager and Mr Bennett as Services Senior Manager. It stated:

> *The Group has four business segments*
>
> *Support services - this includes facilities management, facilities services, energy services, rail services, road maintenance and utility services.*

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[94] D3/100, CB/94.6.

[95] D3/111/4

Public Private Partnership (PPP) projects - this includes investing activities in PPP projects in sectors including defence, health, education, transport, energy services and other Government accommodation.

Middle East construction services - this includes building and civil engineering activities in the Middle East.

Construction services (excluding the Middle East) - this includes consultancy, building, civil engineering and developments activities in the UK and construction activities in Canada.

185. The opening meeting with the AQR team was held on 3 October 2017. It was attended by [KPMG Senior Central Support Member 5], Mr Wright, Mr Bennett, Mr Kitchen and [KPMG Central Support Member 6]. Mr Meehan attended remotely.

186. Following the meeting, Mr Meehan emailed Mr Wright, Mr Bennett and Mr Kitchen:

Well done guys. The lack of questions on the 2017 events surprised me a lot.…[96]

187. On 9 October 2017 [Carillion AQR Inspector 1] emailed Mr Bennett and Mr Kitchen, with a copy to [Carillion AQR Inspector 2]:

We are looking forwards to seeing you tomorrow. It will be useful if you can talk us through the Contact [sic] cycle and show us where to find the work on file. We'd like to cover;

….

4. Sample selection for contracts – how are risk criteria determined and how do they change year on year? E.g. qualitative factors

5. Comfort obtained over contracts not selected in the risk based sample

6. Work on the central contract provisions.[97]

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[96] D3/107.

[97] CB/97.

188. On 9 October 2017 Mr Bennett emailed Mr Kitchen and Mr Wright, with copies to Mr Meehan and [KPMG Central Support Member 6]. He stated that he could cover items 4 and 5 of [Carillion AQR Inspector 1's] email for services and suggested that Mr Wright should attend the forthcoming meeting with the AQR.[98]

189. On 10 October 2017 Mr Kitchen sent a meeting invitation to [Carillion AQR Inspector 2], [Carillion AQR Inspector 1] and Mr Bennett, stating:

> *As agreed this meeting has been arranged for both Adam and I to talk you through our relevant contract sections as well as assist in navigating through the file.*

190. On 10 October 2017, [Carillion AQR Inspector 2] prepared a note of the questions she wished to ask.[99] Under the heading "Group reporting" she wrote, among other things:

> *2. Where are details of the site visits – in terms of what was reviewed etc.?*
>
> *3. How was it determined which components would be visited and where is this documented? Why was Canada (given the significance) not visited?*

Under the heading "Construction contracts", she wrote:

> *1. Risk criteria and selection – how was this determined and why have they change [sic] from the 2013 file? Why are for some projects the criteria is met but then not looked int [sic]*
>
> *From 2013 file*
>
> *Interim selection:*
>
> - *YTD margin >2% of CCS gross profit >3%*
> - *YTD margin <£(1.0m) <£2.5m*
> - *Contract debtors >2% of CCS total contract debtors*
> - *Movement between CY and PY EOL >1.0% 2%*

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[98] D3/151

[99] CB/99.

- *Movement between cumulative margin to-date and EOL >1.0% 2%*
- *Listed on HY Risks and Opportunities schedule*

The above resulted in 36 contracts being selected with coverage as follows:

- *Revenue 42%*
- *GP profit making 59%*
- *Goodwill Paper loss making 79%*
- *WIP 54%*

3. Is there an overall approach paper

4. Desktop reviews what does this involve?

5. What is done over costs to complete and the accuracy of estimating these and do these additional amounts under claims have any impact on revenue recognition.

6.

7. Higher level controls – is there any further detail/support of how these controls were tested

191. Before the meeting Mr Bennett sent Mr Meehan a message promising to let him know how it went.[100]

192. The meeting between the AQR team and KPMG took place on 10 October 2017. It was attended by Mr Bennett, Mr Kitchen and (for part of the meeting) Mr Wright (by telephone). There is a dispute as to whether Mr Bennett left the meeting early to attend an Audit Conference from 12:30 and as to whether Mr Kitchen left the meeting early to catch a train back to Birmingham.

193. [Carillion AQR Inspector 2], whose evidence we accept, stated that she recalled that she "asked the audit team in that meeting about the minutes of what were referred to as "clearance meetings" held in respect of various

[100] D3/160.

parts of Carillion's business which were located beyond the UK".[101] She said that she believed that Mr Wright, as the person responsible for group reporting, said he would look into this.

194. It is clear that at that meeting there was some discussion of the CCS paper, i.e., the version on the audit file. It is referred to as "the Original CCS Paper".[102] This paper was a spreadsheet used by KPMG to decide which construction contracts should be reviewed, and if so whether by verbal update or the obtaining of a position paper from management. The figures in the Original CCS Paper were based on what were called CAVs (Cost and Value) management spreadsheets setting out the financial position of the contracts to which the CAVs related. It was apparent that there were mistakes in the Original CCS Paper. For example, as mentioned below, the Coverage tab indicated that KPMG had considered only 14 per cent of contracts by revenue, and only 6 per cent of contracts by gross profit: highly unlikely figures. It recorded that the December 2016 CAVs had been obtained and reviewed, but did not in fact contain any December 2016 CAVs or any other evidence that the selection process had been updated using new data, apart from a tab called "Dec Update", which showed nothing apart from three headings.

195. It is common ground that Mr Kitchen, who was responsible for the work on the CAVs, was greatly exercised in the meeting by the defects in the Original CCS Paper. According to [Carillion AQR Inspector 2], he said that the Original CCS Paper did not show the work that KPMG had actually done.[103] Whether this was true is something we address below. Mr

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[101] [Carillion AQR Inspector 2] 1, at 32 [C/1/10] to 34 [C/1/11].

[102] CB/92.

[103] Day3/188

Kitchen's evidence in his witness statement is to the effect that there was fairly detailed consideration of the Paper. He said:

> *19. … One of the purposes of the meeting was for Adam and I to explain KPMG's contract selections to [Carillion AQR Inspector 2] and [Carillion AQR Inspector 1]. I therefore opened the contract scoping workpaper on the audit file…. From an initial glance, the first tab looked sensible and was as expected, but when we looked at the second tab and subsequent tabs it became clear that the paper did not document the contract selection process that had been carried out in respect of the December CAVs and contained a number of errors. I recall being shocked and confused during the meeting as the spreadsheet was obviously wrong, and did not reflect the changes Peter, [KPMG Audit Team Member 1] and I had discussed in early 2017.…*[104]

196. The file name of the Original CCS Paper was TOD 1.0010 CCS CONTRACT SCOPING 2016. The Approach tab set out the criteria applied to data in the CAVs to decide which contracts were to be reviewed. Thus, under the heading "Risk Assessment" it was stated:

> *On receipt of the August and December CAVs 100% of the contracts are reviewed in order to select the contracts posing the biggest risks. Key contracts are then selected on the basis of the quantitative and qualitative data to address the key risk areas.*

197. The Selection Criteria were stated to be:

> *Quantitative Criteria*
>
> *1 FY16 Margin > 3% of CCS gross profit;*
>
> *2 FY16 Margin < £(2.25)m;*
>
> *3 Contract debtors > 2% of CCS total contract debtors;*
>
> *4 Movement between FY15 v FY16 yearly margin <2% or >2%;*
>
> *5 Movement between FY15 v FY16 EoL [end of life] margin <2% or >2%;*
>
> *Qualitative Criteria*

[104] Mr Kitchen's first witness statement, C/11/5.

Listed on HY16 clearance meeting;

Identified as a 'risk' contract from BUR [business unit review].[105]

198. As can be seen, the first five Selection Criteria were described as "Quantitative criteria" and the last two as "Qualitative criteria". Next to each of the first and third Selection Criteria was a "Benchmark", which was described as having been "Agreed to CCS RF4 forecast".[106] Application of the quantitative Selection Criteria depended on numerical data about the CCS Contracts called "cost and value" figures, recorded in the Carillion CAVs.

199. The second visible tab was labelled "Coverage". That tab set out the 33 CCS Contracts that KPMG proposed to test or had tested, and calculated and/or recorded the proportion of total revenue and gross profit attributable to those 33 CCS Contracts (stated as 14% and 6% respectively).

200. The third visible tab was labelled "Contract List". That tab appeared to list all the CCS Contracts that met at least one of the Selection Criteria. Of the CCS Contracts listed, 20 were also highlighted in blue. On the subject of the blue highlighting, the tab contained the following note:

The contracts highlighted in blue are those which have been selected for further discussion therefore with CCS management and this dicussion [sic] will be enabled either by the provision of positon [sic] papers or a verbal update given by CCS management.

201. In addition to the 20 contracts highlighted in blue, a further 13 were identified as "Other Contracts to Review per discussions with management at half year and interim". The third visible tab (Contract List) also contained the following note, the contents of which conflicted with the

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[105] CB/92N.

[106] I.e., Carillion management's fourth re-forecast.

contents of the notes set out at paragraph 196 above in that it did not refer to the December CAVs:

> *KPMG have assessed the Aug 2016 CAVs an [sic] applied the criteria discussed on the approach tab to produce the following list of contracts for potential selection. Using information gained from the half year review, BUR meeting attendances and ongoing discussions with the Construction mangagement [sic] teams this list has been further condensed to select key risk contracts. These key risk contracts are those where there are WIp [sic] [work in progress] balances which have been building up over time and include claims and variations which are not as clearly defined with the client.*

202. The 20 CCS Contracts highlighted in blue in the third tab ("*Contract List*"), together with the 13 CCS Contracts identified in the third tab as "*Other Contracts to Review*" corresponded with the 33 CCS Contracts listed in the second tab ("*Coverage*").

203. The fourth to ninth visible tabs contained the CAVs as at August 2016. The tenth to fifteenth visible tabs contained the CAVs as at December 2015. The sixteenth visible tab was labelled *Dec Update*". It was empty apart from three headings: "*Additional Contracts Highlighted*", "*Interim Meeting*", and "*December BURs* [business unit reviews]".

204. After the meeting, Mr Meehan emailed Mr Kitchen, with copies to Mr Wright and Mr Bennett:

> *Rich*
>
> *Can you put something in for us 4 to chat please ...*[107]

205. Mr Bennett drafted, but apparently did not send, a message to Mr Wright:

> *Went okay. They don't care about services whatever I try! Rich needs to be more positive. Some areas they are making sensible*

[107] CB/103.

points – worth a call the four of us tomorrow? (Sent this to Peter also)[108]

The message in these terms was sent to Mr Meehan, without the words in brackets.[109] The reference to Mr Kitchen was generous, when compared to the descriptions given to us of his reaction to the Original CCS Paper at the meeting. Mr Kitchen sent an email to Mr Bennett thanking him for trying to bring the focus onto Services rather than Construction.[110]

206. Mr Pilbrow made the point that if, during the AQR meeting, Mr Kitchen had realised that an updated CCS Paper had been made, but apparently there had been a failure to put it on the audit file, he would not have been so exercised. Mr Pilbrow suggested that it was the obvious defects in the work recorded in the Original CCS Paper that so upset Mr Kitchen.[111] We agree.

207. After the meeting Mr Wright emailed Mr Kitchen, Mr Paw and Mr Meehan:

I've gone back through my emails to try and find all the clearance meeting minutes for the components (i.e. Canada, [Joint Venture A] and Oman which [KPMG Senior Central Support Member 4] observed weren't on the file) and I've realised I was on Pat leave until February so I guess I must not have attended.

Who did attend and where are the minutes? We must have them somewhere.[112]

208. At 17.54 on 10 October 2017 Mr Paw responded to Mr Wright's email by emailing Mr Kitchen:

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[108] CB/100, 102.

[109] CB/100.

[110] CB/104.

[111] Day 14/68.

[112] CB/106.

> *From going back through the diaries it seems like you and Peter may have attended a couple of these by yourself and [KPMG Audit Team Member 1] attended one and I've been through her files on the u drive but couldn't find any minutes.*[113]

209. At 18.07 on 10 October 2017 Mr Wright sent a long email to [Carillion AQR Inspector 1] and [Carillion AQR Inspector 2], with copies to Mr Bennett, [KPMG Central Support Member 6], Mr Kitchen and Mr Meehan. In it he referred to the missing minutes:

> *In drafting this email I note that a number of completion meeting minutes are missing from the file in error. I have asked the team to dig these out to provide to you as unfortunately I was on paternity leave for the whole of January (which included the clearance meetings with [Joint Venture A], Oman and Canada etc.).*[114]

210. Mr Bennett said that this email made him aware that the minutes were not on the file.[115] However, having read [KPMG Senior Central Support Member 4's] report, he already knew this.

211. It is common ground that there were indeed no minutes on the audit file. Clearly, Mr Paw had been unable to find them, and Mr Kitchen and Mr Meehan, who had been at all of the meetings on [Joint Venture A], Oman, MENA and Canada, had not suggested that they had, or had ever seen, any minutes. Moreover, it was Mr Kitchen who would have been expected to produce the minutes of the meetings at which he had been the KPMG junior member of staff, so that his silence indicated that there had been no minutes prepared. Indeed, as he stated in his evidence, Mr Kitchen knew he did not have the minutes and that he had not written them up.[116] Mr Wright's statement was that there were or had been minutes, and that they were

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[113] CB/107

[114] CB/108/2. The copy at D3/193 shows it was blind copied to Mr Meehan.

[115] Day 13/156.

[116] Day 11/24/19.

missing from the file "in error". However, given the terms of Mr Wright's email referred to above at paragraph 207, we take it that he then believed that there were minutes "somewhere".

212. Be that as it may, Mr Wright's email clearly referred to minutes that had been created during the audit and already existed: hence the reference to digging them out. As stated above, Mr Kitchen knew that he had not written up any minutes of the meetings, as would have been his responsibility, but he did not correct Mr Wright's statement.

213. It is therefore not surprising that [Carillion AQR Inspector 2] said, in her first witness statement:

> *36. … I understood Mr Wright's email to mean that the Minutes had been prepared at the time of the Carillion 2016 Audit, but had not made it onto the audit file, and so he was asking his team to go back through their emails and documents to locate the contemporaneous Minutes.*
>
> *37. I accepted Mr Wright's statement that the Minutes had been left out of the audit file "in error" at face value. I did not give any thought at the time to the nature of the error or who was responsible.*

214. Mr Bennett clearly read Mr Wright's email, since he praised it in his email sent at 18.50 on 10 October 2017:[117]

> *Very good email. Should shut these down. Need to get those mins across asap to convince them we have not spent a few days rewriting them!*
>
> *Not optimistic about construction.*

215. Mr Bennett was asked whether his reference to rewriting the minutes was "a funny coincidence". He responded:

> *Well, it is not a funny coincidence for me. At the time of this I genuinely thought the minutes existed. That's why I used the word "those", "Get those minutes across ASAP". And yes,*

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[117] *CB/110.*

clearly now that's not the way that I would have wanted to describe it, but I never thought they were going to be rewritten over the next couple of days. [118]

We accept that the third sentence of the email was written in jest, although our findings on Regenersis suggest a more serious interpretation. We find Mr Bennett's evidence confused. If Mr Wright's email alerted him to the fact that there were no minutes on the audit file, as he said in evidence,[119] why did he make this comment? Much the same applies if, as alleged in his Defence, he already knew that there were no minutes on the file. In fact, Mr Meehan's email of 1 October and his reading of the [KPMG Senior Central Support Member 4] report had already alerted him to the fact that there were no minutes on the audit file.

216. Mr Bennett's statement that he was "Not optimistic about construction" is consistent with the defects in the Original CCS Paper having been raised at the meeting with the AQR team.

217. Later still in the evening of 10 October 2017 Mr Bennett sent an important email[120] to Mr Meehan, Mr Wright and Mr Kitchen. In it, he stated:

As hard as I tried they are ignoring services and focussing on construction…

Points I think they were making without them explicitly making them. Completely draft and some proposed actions added to discuss. I am being super critical here deliberately (not beating you up Rich, many apply to services as well) to give us best place to defend from

1) We have not documented Carillion's accounting policies (i.e. accounting handbook) and rules well – so how do we know they have followed them (Think this is fairly minor as a standalone point)

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[118] Day 13/116.

[119] Day 13/157.

[120] CB/111.

2) We have not documented HLCs (MPC and BURs) well enough to determine precision etc. Also where have we tested IPE. IPE we gave an okay answer but precision is a bigger issue. Anything we can do to reinforce the message in future meetings that they look to much greater detail than we need for a control would be helpful

3) We have not documented historical accuracy of claim recovery, costs etc. Rich gave good answers here but they will circle back with a more specific point

4) Judgements on contracts have not been properly looked at:

a. If they have recognised 30% or 50% or 70% of a claim how have we audited that %. Rich gave great answers on why different contracts had different percentages but we have not addressed how we audit them. ***Action: Peter to talk very confidently about some construction claim percentages and how we have determined they are appropriate.***

b. How do we review EOL costs Action: Let's look at the margin movements on contracts over last few years and hopefully they stay stable? What else could we do?

5) Sample selection is weak:

a. Criteria have changed from 2013 to pick fewer contracts. Again Rich gave strong answer that we now take a controls approach. I added that now services is bigger and so we pick more contracts there – they aren't buying that!!

b. Not all contracts that meet the criteria are selected. We don't appear to have explained why

c. Coverage spreadsheet percentages are clearly wrong

d. Where have we assessed position in December

e. What have we done over remaining populations and where is this documented – Rich said desktop reviews which is a good start

Action: Rich to urgently draft an email which explains how the spreadsheet, works all the judgements we have made etc. Unfortunately this needs to go asap so they have a chance to respond before you go and I think all three of us need to review before it goes. I think we need to be open about bits not on file (as Alistair was in his email) BUT show our sample selection was reasonable and provides good coverage

6) Central contract provisions work does not tie to the work at a divisional level or what we say in the ACD.

Rich pointed out work over this which I think addresses many of the points. We double teamed explaining why they weren't corrected audit adjustments which [Carillion AQR Inspector 2] understood and overruled [Carillion AQR Inspector 1] on. But allocation against the risk is a bigger point [Carillion AQR Inspector 1]: "Just because it is the same percentage of risk as last year does not mean it is appropriate"

Rich – have I missed anything?

I left for bit where AW dialled in but I think he nailed all of these in his email just now so hopefully will go away

The emphasis is in the original.

218. It follows from the action point in relation to Mr Kitchen that he had not suggested, in the meeting with the AQR team or afterwards, that the Original CCS Paper was only a draft that had been replaced by a later paper that had been omitted from the audit file.[121] When Mr Bennett referred to "an email which explains how the spreadsheet works", he was referring to the Original CCS Paper, which was on the audit file, not to another, lost or mislaid spreadsheet.[122] In this connection we note that in her FRC interview [KPMG Audit Team Member 1] said that the Original CCS Paper was the final version.[123] Her statement provided to Mr Kitchen's solicitors seems to resile from this, but it was not tested in cross-examination. The sign off history[124] shows that the Original CCS Paper was signed off as prepared by [KPMG Audit Team Member 1] on 28 February 2017 and reviewed by Mr Kitchen on 2 March 2017, which is inconsistent with the document being a draft replaced by a later missing spreadsheet. The communications between Mr Kitchen and [KPMG Central Support Member 3] (who had

[121] See Mr Bennett's evidence at Day 14/1-2.

[122] See Mr Bennett's evidence at Day 13/119/25-120/6.

[123] E/45.1/63

[124] D4/129

carried out a 2LD review[125] of the audit) that addressed the CCS Paper also suggest that the Original CCS Paper incorporated [KPMG Central Support Member 3's] suggestions. The metadata shows that the Original CCS Paper was in final form within a day of Mr Kitchen emailing the Carillion 2LD tracker to [KPMG Central Support Member 3]. Clearly, the Original CCS Paper was not an interim and partial draft.[126]

219. Of course, if Mr Kitchen had produced an email, as Mr Bennett suggested, it would have appeared to the AQR team that at the very least the documenting of the process of selection of construction contracts for substantive testing had been wanting, certainly in relation to coverage spreadsheet percentages. Mr Bennett's statement that "I think we need to be open about bits not on file" speaks in his favour. Since Mr Kitchen did not respond to Mr Bennett's question as to whether he, Mr Bennett, had missed anything, it is fair to infer that Mr Kitchen did not think he had done so.

220. Mr Kitchen's evidence was that:

> *22. … In my mind, it was very clear that I had been asked to go away and prepare a document for [Carillion AQR Inspector 2] and [Carillion AQR Inspector 1] that enabled them to understand how KPMG had selected the contracts. In providing the explanation, it was logical for this to be done by updating the Original CCS Paper. I did not believe that anyone was expecting me to look for a version of the CCS Paper that had been prepared at the time but saved locally, outside the audit file.*[127]

221. His evidence was contradicted by [Carillion AQR Inspector 1], who said:

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[125] Second Line of Defence, an internal KPMG review of audit work.

[126] See the Carillion 2LD tracker at D2/392.2N.

[127] C/11/6.

> *I did not understand this to be Mr Kitchen's task and I do not recall him suggesting that this was what he was intending to do.*[128]

222. [Carillion AQR Inspector 2] said in her first witness statement:

> *I would not expect new documents reflecting work done during the audit to be generated for the purpose of an AQR inspection unless the AQR team had specifically requested this to be done which, in my experience, would very rarely be the case.*[129]

223. We accept this evidence of [Carillion AQR Inspector 1] and [Carillion AQR Inspector 2]; we reject Mr Kitchen's evidence to the contrary, which is unsupported by any contemporaneous documents and is inconsistent with subsequent events, as well as the requirements of ISA 230 (to which we have referred above). We do not accept that Mr Kitchen believed that he had been asked to create a new document.

224. Mr Meehan read Mr Bennett's email carefully[130] and forwarded it to Mr Paw on 10 October 2017 at 20.07.[131] He said in evidence:

> *I think Adam Bennett's note of the meeting did highlight that there were some potential shortcomings in what had been discussed around contract selection.*[132]

225. On 10 October 2017 Mr Meehan added Mr Paw to the request for a meeting with Mr Wright, Mr Kitchen and Mr Bennett, as well as himself, to be held at 15.00 on 11 October 2017, on "Carillion AQR catch-up."[133] The meeting was later brought forward to 14.30.

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[128] [Carillion AQR Inspector 1's] first witness statement, C/2/7.

[129] C/1/6.

[130] Day 6/178.

[131] CB/113.

[132] Day 6/77.

[133] CB/105 and CB/112. It seems from CB/114 that Mr Paw in fact accepted at 23.56 on 10 October 2017, but nothing turns on the date he was invited to the meeting

226. Mr Meehan accepts it is likely,[134] and Mr Paw admits,[135] that there was a discussion of the AQR at that meeting. Mr Wright, in his first witness statement, said that the purpose of their meeting was to discuss the AQR team's requests.[136] Given that the subject for the meeting was "Carillion AQR catch-up", we find that the AQR was discussed. Given too the unsuccessful searches for the minutes of the close-out meetings that [KPMG Senior Central Support Member 4] had stated were missing, Mr Meehan's reference to the missing minutes in his email from Madeira, and the significance of the non-UK losses announced by Carillion, it is highly likely that the lack of those minutes was discussed, and we find that they were discussed. Indeed, Mr Kitchen said:

> *The majority of the discussion on 11 October related to the minutes of the overseas clearance meetings and the contract scoping work paper.*[137]

He added:

> *Peter confirmed he wanted Alistair to take charge of the minutes and for me to take charge of the contract work scoping paper.*

He said in his oral evidence:

> *"… at that meeting I stated that I had not written up the minutes".*[138]

227. Mr Meehan also admitted that it is a reasonable inference that by the end of the meeting agreement had been reached as to who of Messrs Wright,

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[134] Mr Meehan's defence, at paragraph 42.b [A/3/11]; Mr Meehan's first witness statement at paragraphs 81 and 82 [C/8/22]. See too Mr Wright's amended defence, at paragraph 90(b**)** [A/4/18].

[135] Mr Paw's defence, at 52.1 at A/8/12.

[136] Paragraph 10.15.

[137] Mr Kitchen's first witness statement at paragraph 28 at C/11/8.

[138] Day11/27:11- Day11/27:12.

Bennett and Kitchen would take responsibility for which parts of the response to be made to the AQR team.[139] According to Mr Wright's Amended Defence at paragraph 90(d):

> *Mr Wright recalls that at this meeting, or possibly (but less likely) at the meeting at 13:00 on 12 October 2017 referred to at paragraph 193 of the Formal Complaint, Mr Meehan gave an instruction that the clearance meeting minutes should be typed up. Mr Meehan also said words to the effect that if the AQR Team asked any questions about the minutes, KPMG had the handwritten notes.*

228. Mr Paw's evidence was to a similar effect. In his first witness statement he said, at paragraph 33:

> *…, I believe that it most likely would have been during this discussion [i.e., the meeting on 11 October 2017] (or shortly afterwards) that I was asked to type up manuscript notes of the Clearance Meetings. I don't remember who specifically asked me to type them, although I believe all of the Senior Managers and Peter knew I was doing it.*[140]

229. When he was cross-examined before us, Mr Paw was asked why he had this belief. He said:

> *So I think it comes from the next couple of days in essence because if this was discussed in the meeting I think everyone might have attended it, so they'd have been present when I was asked to type up the minutes, and also across the 11 and 12 October I liaised with all of these, all the three senior managers and Peter in regards to the minutes, so everyone must have been knowing that I was working on the minutes and typing them up.*[141]

230. According to Mr Bennett:

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[139] A/3/11 at paragraph 42b. See too Mr Meehan's first witness statement at paragraphs 81 and 82, C/8/22.

[140] C/13/9.

[141] Day 15/43.

> *It was agreed that Mr Kitchen would respond to queries regarding the CCS Paper, Mr Wright would respond to queries regarding the clearance meeting minutes, and I would respond to queries regarding Services. This reflected our roles on the audit and the work we could speak to.*[142]

231. In his first witness statement, Mr Kitchen stated:

> *I explained that the Original CCS Paper was an out of date draft and that a version reflecting the decisions actually made during the 2016 Audit did not exist. Peter gave his authority for me to go away and prepare a document that reflected the discussions that had taken place during the audit. …*[143]

232. Mr Bennett's evidence was that he had no recollection of Mr Kitchen saying that during the meeting or at any time.[144]

233. Similarly, Mr Bennett disagreed with Mr Kitchen's statement, in his second witness statement that:

> *... it was agreed specifically at this meeting that I would update the CCS Paper in order to reflect the discussions that had taken place during the audit.*[145]

234. Mr Bennett's evidence was that he believed that the new CCS Paper had been created at the time of the audit, having been so told by Mr Meehan.[146]

235. Mr Meehan denies that he gave instructions for new documents to be created.[147]

236. In his FRC interview, Mr Bennett said:

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[142] Mr Bennett's witness statement at C/12/30.

[143] C/11/8, paragraph 28.

[144] Day 13/128. See too the exchange at Day 14/53.

[145] C/19/4 and Day 13/128.

[146] Day 13/131.

[147] Day6/110:25; Day6/112:13; Day6/112:19; Day6/115:22.

> *I think at that meeting [the one at 2.30 on the 11th] he [Mr Kitchen] hadn't had a chance to look -- go back through and look at the audit file, in terms of responding to those queries, which is why a meeting was put in for the next day.*[148]

237. If this is correct, and we find that it is, Mr Kitchen had not even then suggested that there had been an updated CCS Paper that somehow had not been put on the audit file.

238. We think it likely that the missing minutes were discussed and that the action Mr Paw was to take, namely for the minutes to be typed up, was agreed at the team's meeting. If, however, that action was not then agreed, it must have been soon afterwards, because of the action taken by Mr Paw later that day and the fact that Mr Meehan and Mr Kitchen provided their handwritten notes of the clearance meetings and Mr Kitchen sent Mr Paw copies of the meeting agendas.

239. Mr Meehan accepts that he provided his handwritten notes of the clearance meetings. We find that Mr Meehan provided his notes so that they would be incorporated into the typed minutes that were to be prepared.

240. At 16.19 on 11 October 2017, Mr Kitchen sent to Mr Paw alone the agenda for the [Joint Venture A] close-out meeting held on 17 January 2017.[149] Two minutes later, Mr Kitchen sent to Mr Paw the agenda for the Carillion Canada Clearance meeting.[150] There was no explanatory text to either email, but Mr Paw had been led to expect them, doubtless at the meeting that he had just attended. He confirmed this in his evidence on Day 15/102:

> *A. Yes, I think that was either discussed during the meeting on the afternoon of 11 October or very shortly afterwards.*

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[148] E/32/40. See also Day 14/99.

[149] CB/119. The agenda itself is at CB/120.

[150] CB/121.

241. The purpose was for Mr Paw to use the agendas to prepare minutes of those meetings. This purpose had been shared with Mr Paw, who would otherwise have asked why they were sent to him. There was no other purpose in Mr Kitchen sending the agendas to Mr Paw.

242. At 16.45 on 11 October 2017 Mr Kitchen sent [Carillion AQR Inspector 1] and [Carillion AQR Inspector 2] (i.e., the AQR team), with copies to Mr Bennett, [KPMG Central Support Member 6] and Mr Wright, an email in which he stated:

> *This is to confirm that tomorrow morning I will provide you with the clearance meeting minutes that in error are missing from our file as well as an update on Construction scoping.*
>
> *Sorry that I have not been able to provide this information today however, I hope you will understand that my time has been restricted due to several client commitments that needed to be completed before I go on my honeymoon on Friday.*[151]

243. The statements in this email relating to the minutes were false. Mr Kitchen had not found the minutes, and they did not yet exist. To state that they were "in error missing from our file" was misleading. The apology was for the same reason also false. Mr Bennett and Mr Wright, who had received the email, also knew that those statements were misleading. The AQR, reading this email, would take it that the minutes already existed and had been produced during the audit.

244. The vague reference to "an update on Construction scoping" is significant. Mr Kitchen did not in this email state that he had found the audit workpaper that should have replaced the Original CCS Contract Scoping Paper on the audit file.

245. According to Mr Paw:

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[151] CB/123.

I recall that I spoke to Peter and maybe also Richard either that afternoon or possibly the following morning (or possibly both) in order to clarify certain parts of their handwritten notes, and I believe one or both of them provided further details of what was said in the meetings for me to include in the typed up version of the Clearance Meeting Minutes or in some cases told me what to type.[152]

246. Mr Paw enlarged on this evidence during his cross-examination on Day 15:

A. As I had no knowledge of the subject matter, it's difficult to write up anything when you don't know what's -- what had happened in the meeting or when you weren't there or when you've just got zero knowledge, so you need to speak to the people that actually went to the meetings and took the notes to understand what actually happened and what needs to be written down.
Q. So is that clarification that would have extended beyond the literal word that was within their handwritten notes, to ask them a bit more about what happened but which isn't actually written directly on the notes?
A. Yes.
Q. Yes. And you would obviously just take them at word? You would put in whatever it was they said, would you?
A. Yes, whatever I was asked to include on the minutes, I would put in from them.[153]

247. He gave the [Joint Venture A] minutes as an example:

I'd have the notes from the [Joint Venture A] meeting as an example from Peter and Richard. I've got the agenda now from Richard which he's forwarded on to me, so I'd have taken what I can from the notes, from their meeting notes and put it on to the agenda, and if I was unsure of anything or needed further clarifications or help, in essence, I would have had to go to -- well, I know that I definitely spoke to Peter and potentially Richard for further clarification, . . .[154]

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[152] See Mr Paw's witness statement at paragraph 36.

[153] Day 15/54.

[154] Day 15/55.

248. At 19.56 on 11 October 2017 Mr Kitchen sent to Mr Paw a spreadsheet entitled "CCS Contract Scoping 2016".[155] This document was referred to as "CCS Paper Version 1".[156] According to its metadata, it was last modified by Mr Kitchen at the same time and date.[157] Again, there was no text in the email, so that Mr Kitchen's purpose in sending it to Mr Paw must also have already been discussed. It differed from the Original CCS Contract Scoping Paper in minor respects, for example that the word "Aug" at the top of the Contract List tab had been changed to "Dec".

249. At 20.19 on 11 October 2017 Mr Paw sent an email to Mr Kitchen attaching the spreadsheet entitled "CCS Contract Scoping 2016.xlsm" ("CCS Paper Version 2"), which had a "last modified" date of 11 October 2017 at 20:18.[158]

250. At 20.53 on 11 October 2017 Mr Paw sent to Mr Kitchen the documents entitled [Joint Venture A] Clearance meeting and Carillion Canada meeting. These were the agendas with insertions (greater in the [Joint Venture A] document) in red apparently reflecting discussions at the respective meeting. The metadata on Canada Clearance Meeting showed its creation at 17.16 on 11 October 2017; the metadata on the [Joint Venture A] Clearance meeting showed its creation at 16.32 on 11 October 2017.[159] In his first witness statement Mr Paw stated:

> *I cannot recall why I did this, but believe it would have been because Richard had asked to see how much progress I had*

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[155] CB/125, 126.

[156] CB/126.

[157] CB/130N

[158] CB/128.

[159] The documents were attached to the email at CB/130N.

made in typing up the minutes. I had not made a great deal of progress with the minutes at that time …[160]

251. At 09.57 on 12 October 2017 Mr Bennett forwarded to Mr Paw the exchange of emails between himself and the auditor of Carillion Canada in January 2017 on an issue as to revenue recognition.[161] We cannot see that there could have been any purpose for Mr Bennett to have done this other than for Mr Paw to include the subject of that exchange in the Canada minute. Mr Bennett said that he sent it because:

> *I understood that KPMG were collating examples of interactions with overseas auditors as this was considered to be a relevant topic for audits at the time. I was asked to provide examples of these interactions to Mr Paw by either Mr Meehan or Mr Wright. At the time of this e-mail I had not received or reviewed a copy of the agenda for the Canada clearance meeting and I was not aware that the content of the e-mail might relate to matters discussed at the Canada clearance meeting in 2016.*

However, Mr Bennett did not apparently send to Mr Paw any other examples of such interactions, and there is no evidence that anyone other than Mr Bennett was asked to do so. Mr Bennett said that there was an understanding that such interactions were a hot topic for the AQR and something that had come up in a number of AQRs, but it was not suggested that there had been any request in the Carillion AQR for such interactions. The timing of Mr Bennett's email, and the fact that it was sent to Mr Paw, who was preparing the typed minutes, point strongly to Mr Bennett having sent his email for its content to be incorporated into the typed minutes. Moreover, Mr Paw seems to have known what to do with the information in the email, since he incorporated it into the document referred to as Canada Version 2,[162] and he then sent the draft

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[160] Paragraph 38.

[161] CB/136.

[162] CB/146.

meeting notes to Mr Bennett.[163] Mr Paw did not raise the possibility that the email exchange had been sent to him for any other purpose. In his evidence Mr Paw said:

> *A. I don't recall doing it but clearly given the similarity of the wording from "no ongoing obligation" that I have put it into the ex meeting minutes, so I'd have assumed that I'd have done it upon instruction because I don't think I'd have known that this was to do with WOHC revenue forecast, so someone would have had to tell me where to put it, in essence, and also I wouldn't have even known that this email existed at the time as I was never party to it in January 2017 as well.*[164]

252. The most obvious person to have instructed Mr Paw was Mr Bennett, who knew of his exchange with Canada.

253. Mr Paw's text on the WOHC revenue forecast was inserted by him into Canada version 2 but was removed from later versions.

254. According to Mr Bennett, it was during the morning of 12 October that Mr Paw told him that he was typing up the completion meeting minutes, and that there were none on the audit file.[165] Mr Bennett said:

> *I knew they were documents that were not on the audit file, but my understanding was they were manuscript notes, copies of the handwritten minutes.*[166]

255. In his first witness statement, Mr Paw said about his sending the draft minutes to Mr Bennett:

> *I cannot now remember why I sent the Clearance Meeting Minutes to Adam but must have believed he would be involved in reviewing them, whether because that was what someone told*

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[163] CB/144.

[164] Day 15/62.

[165] Day 13/124 and /133.

[166] Day 13/127.

me or for some other reason. I don't think I could have been at the meeting at this time or I would have known that Adam was not the correct recipient.[167]

256. For these reasons, we find that Mr Bennett sent the Canada email exchange to Mr Paw so that it could be incorporated in the Canada clearance minutes.

257. On 12 October 2017 at 10.22 Mr Kitchen sent an email to Mr Bennett. The subject was "CCS Contract Scoping 2016.xlsm" and he attached the spreadsheet CCS Contract Scoping 2016.xlsm' (referred to as "CCS Paper Version 3"), which has a last modified date of 12 October 2017 at 10:21 and states the author of its last modification as Mr Kitchen.[168] Mr Kitchen stated:

Sorry for the delay let me know when you are free.
Peter is coming down at 11am.

258. We infer that, as alleged by the Executive Counsel, the meeting with Mr Kitchen was to discuss the spreadsheet.

259. According to Mr Kitchen:

"The purpose of the meeting was for Adam to have a cold review of CCS Paper Version 3 to check whether it made sense to someone who did not have a detailed knowledge of the contracts, and whether anything needed to be clarified".[169]

260. Mr Bennett's evidence is that he believed that the Paper discussed at this meeting had been created during the audit and that Mr Kitchen had found it.[170] He did not suggest that Mr Kitchen told him this, or that he asked Mr Kitchen where he had found the spreadsheet. Furthermore, if Mr Kitchen

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[167] Paragraph 45.

[168] CB/137 and 138

[169] Kitchen 1, at 51 (C/11/13; c.f. Kitchen 2, at 13 (C/19/6)

[170] See Mr Bennett's Carillion Defence at paragraph 5.2 at A/7/3.

misled Mr Bennett or Mr Meehan, there was a risk that they would notice the differences between the document they discussed and that provided to the AQR. In this connection, it appears from Mr Bennett's email to [Carillion AQR Inspector 1] dated 20 October 2017[171] that he had a good knowledge of the contents of the Final Version of the CCS Paper. According to Mr Kitchen, he

> *went over the draft with Mr Meehan… Mr Meehan wanted to ensure that the document reflected his approach and understanding at the time of the Carillion 2016 Audit".*[172]

261. At 11.08 on 12 October 2017 Mr Paw sent a meeting invitation to Mr Meehan, Mr Wright, Mr Kitchen and Mr Bennett for "Carillion AQR catch up", to take place at 13.00 that day.[173] Mr Paw, as the junior member of the team, would not have sent out the invitation on his own initiative. Mr Bennett, Mr Meehan and Mr Wright accepted the invitation.[174]

262. At 11.49 on 12 October 2017 Mr Kitchen sent to Mr Meehan, Mr Wright, Mr Bennett and Mr Paw the draft of an important email to [Carillion AQR Inspector 1] "that we will go through at 1pm".[175] Mr Kitchen's email stated the subject to be "Response to AQR". The text of the draft included the following:

> *Hi [Carillion AQR Inspector 1],*
>
> *To keep things simple I have included all of the information that you have requested to date in this email.*
>
> *Attached are the clearance meeting minutes that in error are missing from our file.*

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[171] CB/183

[172] Mr Kitchen's defence, at paragraph 35 [A/5/16].

[173] CB/139

[174] See CB/140. 141, 143 re Mr Meehan, Mr Bennett and Mr Wright.

[175] CB/142.

As you may have guessed from my reaction in the meeting on Tuesday the construction scoping on file was an outdated version, being August 2016. Instead December 2016 should have been uploaded as this was prepared at year end 2016 following discussions between Peter, [KPMG Audit Team Member 1] and me, and is attached to this email.

We have addressed each of your questions in the email below in turn.

263. Mr Bennett's recollection, according to his witness statement, was that the minutes and the CCS Paper were not discussed at the meeting. Given that its purpose was to go through Mr Kitchen's draft email, we think it unlikely that the draft email, and the matters referred to in it, were not considered.

264. At 13.18 on 12 October 2017, Mr Paw sent to Mr Bennett an email[176] attaching the following documents:

(1) "[Joint Venture A] Clearance Meeting" ("[Joint Venture A] Version 2");

(2) "'Carillion Canada Meeting" ("Canada Version 2"); and

(3) "Qatar & Oman Clearance Meeting" ("Oman & MENA Version 1").

These were draft minutes showing, in the case of [Joint Venture A] and Canada, insertions in red to the agendas for those meetings.

265. Mr Bennett forwarded these documents to Mr Wright and Mr Kitchen at 14.34 on 12 October 2017.

266. At 14.55 on 12 October 2017 Mr Wright sent the following email to Mr Paw:

Please can you pull out the actual attendees for these from diaries

[176] CB/144, 145, 146, 147.

We also need to paste the words back into word documents created in Feb this year – please find a doc on your hard drive from the time of the audit.[177]

267. Mr Wright followed this up with a second email to Mr Paw at 15.01:

Also the formatting – they should look like minutes created at the time.

Maybe grab some minutes off the file and we can drop the words in.[178]

268. Mr Paw responded at 16.02:

Will amend at 5pm when course is finished – no access to laptop until then.

269. Having initially denied any Misconduct in relation to the minutes, in his second witness statement Mr Wright accepted that he had intended the AQR team to be misled. In the course of his cross-examination there was the following exchange:

THE CHAIRMAN: Mr Wright, I think the position is that you accept, and correct me if I'm wrong because it is important, that your purpose in asking Mr Paw to do the work as described in your emails was to create something which would mislead the AQR?
A. Yes, sir.[179]

270. At 16.15, Mr Wright emailed Mr Meehan, Mr Kitchen, Mr Bennett and Mr Paw, on the subject "Response to AQR" (i.e., the same subject as Mr Kitchen's email at 11.49):

Can you please stick updated version in a word doc so we can overlay then I will do final tweak of words before it goes.

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[177] CB/151.

[178] CB/152

[179] Day 8/53.

271. The Carillion Canada Clearance Meeting minutes were modified (to be Canada Version 3) at 16.15 on 12 October, according to its metadata by Mr Wright.

272. At 16.18 Mr Kitchen sent the "Response to AQR" Word file to Mr Meehan, Mr Wright, Mr Bennett and Mr Paw, stating:

> *Let me know when you have been through, as be good to catch-up before sending.*[180]

273. At 16.19 Mr Wright replied to Mr Kitchen:

> *Going to be a while as I need to sort these clearance meeting minutes first.*

274. The "sorting" was the creation of the documents to be sent to the AQR. Existing documents would not need to be sorted, as we find Mr Kitchen was well aware.

275. In his FRC interview Mr Paw said that he had spoken to Mr Meehan about the minutes he was creating.[181] He said:

> *I can recall speaking to Peter, asking him to like clarify words, if I couldn't read his handwriting, or -- because I'd never been involved in it before; I didn't know the terminology and the contracts being discussed, and so I needed some clarification, so I can recall going up to Peter; I can't recall for certain, if I went up like with my laptop, to just type up the notes, whatever he was saying whilst I was there, or whether I may have tried to memorise it, and then go back to my desk; I can't recall that. And I can't recall speaking to Richard the same that I spoke to Peter. But, I didn't have any other notes or I had no knowledge of what's going on in these meetings; so my only other sources of information were Richard, Peter, and their notes.*

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[180] CB/156 and 156.1.

[181] E/30/22.

276. In cross-examination, Mr Paw said he had spoken to Mr Meehan about the minutes soon after the meeting on 11 October, when he handed him his notes.[182]

277. We consider that the contents of the minutes support Mr Paw's evidence. They include information additional to Mr Meehan's and Mr Kitchen's handwritten notes that would have come from them, for example, the statement in the Canada minutes that [Robert] "confirmed that the sample of contracts discussed with Peter during his visit …."[183] Paragraph 4 of Canada Version 4 states that "PNM asked about the situation." Oman Version 3 states "PNM commented he had visited the site [of Muscat Airport]. PNM is referred to at paragraph 5 of [Joint Venture A] Version 4. Such statements would not have been included without Mr Meehan's input.

278. At 16.31 Mr Bennett emailed Mr Wright and Mr Kitchen with "Some minor changes" to the draft AQR response.[184] In relation to the minutes, the only change was the deletion of the words "in error".

279. Mr Wright responded to Mr Kitchen and Mr Bennett at 18.23 attaching the Word document "AQR responses" and stating:

> *Nothing substantial – need to make sure all the attachments are attached!!*[185]
>
> In relation to the minutes, the words "Alistair noted" were inserted where formerly the words "in error" had appeared.

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[182] Day 15/116-7.

[183] CB/155/1.

[184] CB/158, 159.

[185] CB/164 and 165.

280. At 18.53 Mr Paw emailed Mr Kitchen, with the heading "Mins", the following documents. There was no text in his email.

(1) typed minutes for the Oman meeting entitled 'Oman.doc' ("Oman Version 3");

(2) typed minutes for the MENA meeting, entitled 'MENA.doc' ("MENA Version 3");

(3) typed minutes for the [Joint Venture A] meeting, entitled "[Joint Venture A].docx" ("[Joint Venture A] Version 4"); and

(4) typed minutes for the Canada meeting, entitled "Canada.docx" ("Canada Version 4").[186]

281. At 19.47 on 12 October 2017 Mr Kitchen sent the most crucial email to the AQR team, with copies to Mr Meehan, Mr Wright, Mr Bennett and [KPMG Central Support Member 6].[187] It began:

> *Hi [Carillion AQR Inspector 1],*
>
> *To keep things simple I have included all of the information that you have requested to date in this email.*
>
> *Attached are the clearance meeting minutes that Alistair noted are missing from our file.*
>
> *As you may have guessed from my reaction in the meeting on Tuesday the construction scoping on file was an outdated version, being August 2016. Instead December 2016 should have been uploaded as this was prepared at year end 2016 following discussions between Peter, [KPMG Audit Team Member 1] and I. For reference I attach a copy to this email.*

282. The Individual Respondents contended that the second sentence was capable of an entirely innocent interpretation. The clearance meeting minutes were indeed not on the audit file, as Mr Wright had noted, and they should have been. However, the email must be read with the previous email

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[186] See CB/166, 167, 168, 169, 170.

[187] CB/171.

sent at 16.45 on 11 October 2017[188] and as a whole. The AQR team were expecting the minutes promised in the earlier email. The second sentence of the later email must also be read in the light of what follows in relation to the CCS paper, which was manifestly false. The minutes had not been "missing from our file", because they had not existed when the file was closed. The minutes had only just been created. There was no Eureka moment, no query as to where the minutes had been found, or who had typed them up. These passages were misleading, and we are driven to conclude that they were deliberately so, as Mr Meehan, Mr Wright, Mr Kitchen and Mr Bennett were aware.

283. None of the Individual Respondents suggests that Mr Kitchen represented to them that the Final Version of the CCS Paper, attached to this email, was a document created during the audit. We reject Mr Kitchen's suggestion that his email could have been read, or could have been intended to be read, otherwise. The Final Version of the CCS Paper was clearly represented to be a document created during the audit. Yet no one suggests that he asked Mr Kitchen where he had found the document.

284. The Close-out meeting between the AQR and KPMG was held on 12 January 2018.[189] No question was raised as to the creation of the minutes or of the CCS Paper, and the AQR team accepted them as audit work papers. The AQR draft of "Findings not to be included in the AQR report" stated:

> *The following working papers failed to be included on the audit file;*
>
> - *minutes of clearance meetings at the year-end to cover overseas component findings,*

[188] See paragraph 242 above.

[189] D4/103.

- *the UK construction contract sample.*

The audit team provided these to us as part of our review. However these are important pieces of evidence and in future the audit team should ensure a thorough review is completed to ensure all audit evidence is on the audit file.[190]

285. Three days later, on 15 January 2018, Carillion went into liquidation.

286. [FRC Employee 2] of Audit Quality Review sent an email to KPMG on 18 January 2018, stating:

Our work has uncovered a number of issues which the inspection team consider to be significant (for some of these issues, we have been promised additional information from the audit team). In the light of the nature of those issues, I have concluded that this matter should be referred to the FRC Case Examiner, [FRC Employee 3], for consideration under the FRC's Audit Enforcement Procedure…

In the light if this, I do not believe that it would be appropriate for us to continue with the inspection of the 2016 audit. I have therefore called a halt to the inspection. …[191]

287. On 7 November 2018, KPMG's solicitors wrote to the FRC, making a self-report in relation to the Carillion AQR. The letter began:

It has come to KPMG's attention in the course of reviewing documents and meeting with witnesses in advance of the FRC's upcoming interviews with members of the audit team that documents previously thought to have been prepared during the 2016 year-end audit were in fact prepared later, in October 2017.

On 12 October 2017, Richard Kitchen sent an email (copying Peter Meehan, Alistair Wright, Adam Bennett and [KPMG Central Support Member 6] and blind copying Pratik Paw) to [Carillion AQR Inspector 1] and [Carillion AQR Inspector 2], the inspectors assigned to the Audit Quality Review ("AQR") of the Carillion 2016 year-end audit (DOC_00084875). Attached to that e-mail were documents which had been identified as

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[190] CB/192/1

[191] D4/135.

missing from the 2016 year-end audit file. Those documents included a spreadsheet as "CCS Contract Scoping" and a series of clearance meeting minutes.[192]

288. By letter dated 21 May 2019 KPMG, by its solicitors, self-reported the issue concerning the Regenersis Goodwill Paper.[193]

289. These proceedings were begun by the service of the Formal Complaint on the Respondents on 15 March 2021.

Allegations 3A and 3B: the Tribunal's Findings

Mr Meehan

290. Mr Meehan knew that there were no minutes on the audit file and that none had been found elsewhere. Given Carillion's announcement of substantial provisions, the meetings to which they related were important. He presided over the meeting on 11 October 2017,[194] and the decision to produce typed minutes was taken then or shortly afterwards. He provided his handwritten notes of the meetings for Mr Paw. Given the relative paucity of his handwritten notes, in particular in relation to the Canada meeting, he must have realised that merely typing them up would not result in adequate minutes. He gave Mr Paw information to be incorporated in the minutes he was creating. He was copied into Mr Wright's email sent at 18.07 on 10 October, referring to minutes as existing documents when in fact there were none, but did not react to it. He was sent and must have considered Mr Kitchen's draft email[195] at the meeting at 13.00 on 12 October 2017, if not before. In his first witness statement, Mr Meehan said:

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[192] D4/160.

[193] D4/165.1

[194] See paragraph 226 and ff above.

[195] CB/142.

> *Although I do not remember the meeting at all, or the draft response to the AQR team, I accept it is probable that we discussed at the meeting the initial draft of the response to the AQR team that Richard Kitchen had circulated by email at 11:49 a.m.…..*

291. Mr Meehan must have appreciated from the text of the draft that the minutes were to be represented as documents created during the audit. He did not require that text to be changed and did not correct the false representation in the email[196] sent to the AQR. He failed to comply with the requirements of paragraph 16 of ISA 230 cited above.

292. We reject the suggestion that his team "*deliberately deceived* [him] *as to what they were actually doing*".[197] We see no motive for their doing so. He was copied into important emails and attended, and presumably presided at, meetings with the team, such as that on 12 October referred to above. The importance of the minutes was such that we do not accept that he would not have considered them before they were submitted to the AQR. He certainly should have done so.

293. Mr Meehan was a party to the dishonest misleading of the AQR. His conduct fell significantly short of the standards reasonably to be expected of a Member or Member Firm and was likely to bring discredit to him and to KPMG and to the accountancy profession. He was guilty of Misconduct.

294. We find Allegations 3A and 3B proved against Mr Meehan.

Mr Wright

295. Mr Wright admitted conduct that clearly constituted Misconduct by creating Minutes that were falsely represented as having been created

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[196] CB/171.

[197] Day 6/109:18

during the Carillion audit, intending to mislead the AQR team.[198] His conduct was dishonest. Allegations 3A and 3B were proved against him.

Mr Kitchen

296. Mr Kitchen knew that if the minutes had been typed up, normally it would have been for him to do so, and he had not done so.[199] He accepts that he knew that there were no typed up minutes, and therefore any minutes provided to the AQR team had to be created.[200]

297. Mr Wright received Mr Kitchen's draft email sent at 11.49 on 12 October 2017.[201] That afternoon Mr Kitchen emailed him, saying:

> *Let me know when you have been through [the draft email], as be good to catch-up before sending.*

298. Mr Wright replied:

> *Going to be a while as I need to sort these clearance meeting minutes first.*

If minutes already existed, they would not have required sorting out. The sorting out was the creation of the minutes.

299. Mr Kitchen forwarded agendas to Mr Paw so that Mr Paw could use them to create the Minutes. He provided his notes to Mr Paw for the purposes of drafting the content of the Minutes. At 18.53 on 12 October 2017 Mr Paw sent him the minutes he had created.[202]

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[198] See paragraph 269 above.

[199] Day 11/8; Day 11/24.

[200] See Mr Kitchen's Defence at paragraph 6.5.

[201] CB/142.

[202] CB/166.

300. Mr Kitchen drafted the email at CB/142, proposing a misleading email[203] to go to the AQR, knowing that neither the minutes nor the updated CCS Paper existed when he sent the draft email to his colleagues. He then sent the misleading email at CB/171.

301. In so acting, he acted without the integrity required of a professional accountant. He was a party to the deliberate and dishonest misleading of the AQR. His conduct fell significantly short of the standards reasonably to be expected of a Member or Member Firm and was likely to bring discredit to him and to KPMG and to the accountancy profession. We find that Mr Kitchen committed Misconduct and we find Allegations 3A and 3B proved.

Mr Bennett

302. Mr Bennett, having received Mr Meehan's email of 1 October 2017, knew that there were no minutes of the clearance meetings on the audit file. Moreover, he said that he had read [KPMG Senior Central Support Member 4's] report and provided comments to Mr Meehan by email.[204] In his Defence, he accepted that he had known that the minutes were not on the audit file before the meeting with the AQR on 10 October. He received a copy of Mr Wright's misleading email of 10 October 2017, stating he would "dig these out"[205]. In evidence, Mr Bennett said that this email, copied to him, for the first time made him aware that the minutes were not on the file,[206] but this statement ignores the email that Mr Meehan had sent to him on 1 October and his own evidence that he had read the [KPMG

[203] As to which see paragraph 282 above.

[204] Day 13/103.

[205] CB/108/2.

[206] Day 13/157.

Senior Central Support Member 4] report and commented on it to Mr Meehan.

303. Mr Bennett attended the AQR meeting on 10 October 2017, when the question of the missing minutes was raised by [Carillion AQR Inspector 2].

304. Mr Bennett was also present at the meeting between Mr Meehan, Mr Kitchen, Mr Paw, Mr Wright and himself at 14.30 on 11 October, when the missing minutes were discussed.

305. As mentioned above, Mr Bennett was told by Mr Paw that he, Mr Paw, was typing up the minutes, obviously for the AQR. We accept Mr Paw's evidence that he liaised with all four of his superiors, of whom Mr Bennett was one.

306. Mr Bennett sent the exchange of emails with KPMG Canada on revenue exchange for it to be incorporated in the Canada minutes.[207]

307. Finally, Mr Bennett did not dissent from or react to Mr Kitchen's misleading email to the AQR sent at 19.47 on 12 October 2017.

308. We find that Mr Bennett knew that Mr Paw was creating the clearance meeting minutes and was involved in their creation. He knew that they were to be presented as minutes that had been "dug out", but were in fact newly created. Mr Bennett was a party to the deliberate and dishonest misleading of the AQR. His conduct fell significantly short of the standards reasonably to be expected of a Member or Member Firm and was likely to bring discredit to him and to KPMG and to the accountancy profession. He was guilty of Misconduct. Allegations 3A and B have been proved.

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[207] Paragraph 168 above.

Pratik Paw

309. We have considerable sympathy for Mr Paw. He was the junior of the Individual Respondents, and expected to carry out the instructions of his superiors. As an ambitious young man, he was keen to do so. As we have seen, he volunteered to help out with the AQR,[208] and must, therefore, have had a sufficient idea of what an AQR was. We do not think he would have volunteered if he had no idea what was involved.

310. As an employee of a highly reputable firm of accountants, he was entitled to assume that those giving him instructions or requesting him to carry out work were acting honestly, unless he had compelling evidence to the contrary.

311. However, he did have compelling evidence to the contrary, to the effect that the minutes he helped to create were intended to mislead the AQR into accepting them as documents created during the 2016 audit. Why else did Mr Wright state to him that the minutes "should look like minutes created at the time"?[209] Moreover, he inserted the text of the draft minutes he produced into 4 different documents dating from shortly after the dates of the meetings to which the minutes related. For example, Mr Paw pasted the text of the Canada minutes into a document created on 26 January 2017, a week after the Canada meeting.[210] He pasted the text of the [Joint Venture A] minutes into a document created on 2 February 2017:[211] the [Joint Venture A] meeting had taken place on 17 January 2017. He pasted the Oman minutes into a document created on 13 February 2017[212]; the

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[208] D3/81/2.

[209] See paragraph 267 above.

[210] CB/169N.

[211] CB/170N.

[212] CB/168N.

meeting had taken place on 1 February 2017. None of the texts of the minutes was pasted into a document created before the date of the meeting to which they related.

312. Mr Paw objected that it had not been alleged against him in the Re-amended Formal Complaint that he had decided so to proceed, and it was not put to him in cross-examination that he had chosen to do so. In fact, he was asked by the Chairman why he had not simply taken one document in which to paste separately each of the minutes he had created.[213]

> *The Chairman: …, why didn't you just take one document from earlier in the year, paste text in for one meeting, save it, and then do exactly the same to the same original document with the others? Why did you do it on different documents?*
>
> *A. It is difficult as I don't recall what happened in terms of the specifics after my course, sir, but all I know is that as I didn't understand these emails at the time, whatever Alistair would have said to me under a time pressured scenario, I would have just carried out those instructions as quickly as I could to move on to my other work which I had been missing due to my attendance at the course. It is not something that I put my mind to, I literally just saw it as an administrative task that needed doing quickly as it clearly got sent to Richard and then to the AQR a short time after that. It is not something I ever considered.*

313. We have not decided the case against Mr Paw on the basis that he was responsible for the decision to use 4 base documents. However, if Mr Paw was not responsible for the decision to use 4 base documents, it must follow that he was instructed to do so, presumably by Mr Wright. Those instructions made it all the more obvious that the documents he helped to create were intended to be represented to the AQR as minutes made shortly after the meetings to which they related. There was no other conceivable reason for those instructions.

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[213] Day 15/79-80.

314. Mr Paw's evidence is that he complied with the instructions he was given without thought as to their propriety. We do not accept that evidence. Mr Paw is an intelligent man, and the instructions he says he was given by Mr Wright were highly unusual, and would have raised questions in anyone's mind. Mr Paw chose to implement them. We find that Mr Paw should have questioned Mr Wright's instructions, and if he received no appropriate answer (and we cannot see what that could have been) he should have raised their propriety with his performance manager[214] or KPMG's Ethics and Independence Partner.

315. Later in 2017, Mr Paw completed KPMG's Ethics and Independence Confirmation.[215] It included the following confirmations that he gave. The Confirmation Period to which they refer is the year ended 30 September 2017.

> *3.1 KPMG personnel are required to promptly report breaches or suspected breaches relating to ethics and independence matters to KPMG's Ethics and Independence Partner.*
>
> *I was in compliance with the Firm's policy regarding the reporting of breaches or suspected breaches during the Confirmation Period.*
>
> *3.2 I am aware that KPMG has a SpeakUp hotline for reporting concerns related to possible illegal, unethical or improper conduct which is available in circumstances where I do not feel able to make use of internal reporting lines.*

316. We have taken into account his action to which he referred in paragraph 44 of his witness statement. Why he corrected draft wording on that occasion, but carried out Mr Wright's instructions on the minutes is known only to Mr Paw. We have reached the conclusion that we find inevitable. In complying with Mr Wright's instructions Mr Paw acted without the

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[214] As to which see his evidence on Day 15/108.

[215] D4/72. He submitted it on 27 November 2017.

integrity required of an accountant and became a party to the deliberate misleading of the AQR. His conduct fell significantly short of the standards reasonably to be expected of an accountant and was likely to bring discredit to him and to KPMG and to the accountancy profession. It follows that Allegations 3A and 3B are proved against him and that he committed Misconduct.

KPMG

317. As has already been stated, KPMG is responsible for the Misconduct of its partner Mr Meehan and its employees Mr Wright, Mr Kitchen, Mr Bennett and Mr Paw that we have found under Allegations 3A and 3B.

Allegation 3C

318. The onus is on the Executive Counsel to establish:

    (1) that the Minutes as presented to the AQR give a false account of the meetings to which they respectively related; and

    (2) if the Minutes did misrepresent the meetings, that any Respondent against whom this Allegation is made knew of their falsity, or was at least reckless as to that falsity.

319. In principle, the first issue should be easy of proof. Statements could have been sought from the auditors of the component entities in question, and/or from members of the component's management who were present at the meetings, addressing the accuracy or otherwise of the Minutes. The Tribunal could also have been provided with any minutes of the meetings produced by the component auditors or management. We have no reason to believe that there were attempts to obtain such evidence.

320. Instead of such evidence, we have the detailed alleged discrepancies set out by the Executive Counsel in Appendices B, C and D to the Formal Complaint.

321. We do not have the benefit of any Respondent's detailed comment on the contents of the Minutes, doubtless for good forensic reasons given their cases on their responsibility for the contents of those Minutes.

322. A difficulty with the Executive Counsel's case is that if, as she alleges, Mr Meehan and Mr Kitchen provided input for the creation of the Minutes that may be because they supplemented their handwritten notes from their memories of those meetings. Similarly, it does not follow from the fact that there are statements in the Minutes addressing subjects of interest to the AQR that those subjects were not discussed. We are not persuaded that the omissions of entries in the handwritten notes from the Minutes were not normal editing.

323. For these reasons we have determined that Allegation 3C has not been proved against any of Mr Meehan, Mr Kitchen, Mr Wright or KPMG. Mr Paw and Mr Bennett were not the subject of Allegation 3C.

Allegations 4A and B: the Tribunal's Findings

324. Mr Kitchen's evidence on this is inconsistent. While saying that the AQR team asked him to produce a new document (see paragraph 220 above), when he sent the Final Version of the CCS Paper to the AQR he represented it as having been produced during the audit. There is no evidence that he ever explained to anyone whether he had found the Final Version of the CCS Paper, and we are clear that it was not found but created for the AQR.

325. In her Closing Submissions the Executive Counsel gave detailed reasons to reject the suggestion that the Final Version of the CCS Paper represented work carried out during the audit. We think it sufficient to point out that there is no contemporaneous document supporting the contention that the Final Version of the CCS Paper represented work carried out during the audit. Moreover, there is an absence of documents that we would have expected to find on the audit file, such as copies of certificates referred to

where the Paper states that amounts were "Agreed to cert". We refer to the Notes on Barts Square Phase 1[216], Arundel Great Court[217] and A14,[218] all of which related to very large sums. As Mr Meehan said, he "*would expect a record of any such certification to be on the file*".[219]

326. Similarly, there is no evidence on the audit file that Mr Meehan considered or agreed to the important imposition of a threshold of £1.5 million as applied in the Final Version of the CCS Paper. [KPMG Audit Team Member 1] told Mr Kitchen's solicitors that "She cannot recall PM changing [the £300,000] to £1.5k".[220] As mentioned above,[221] in her FRC interview she stated that the Original CCS Paper was the final version. As discussed above, this statement is consistent with the history of that document. We find that it is correct. We reject the suggestion that the Final Version of the CCS Paper represented work carried out during the audit.

327. It follows that Mr Kitchen's statement in his email to the AQR team[222] that:

> *… the construction scoping on file was an outdated version, being August 2016. Instead December 2016 should have been uploaded as this was prepared at year end 2016 following discussions between Peter, [KPMG Audit Team Member 1] and me, and is attached to this email.*

was untrue when made. Mr Kitchen knew that the document attached to his email was a new document and that it did not record work carried

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[216] CB/176/1, tab "*Contract List*", rows 18 and 64.

[217] CB/176/1] tab "*Contract List*", rows 19 and 66.

[218] CB/176/1, tab "*Contract List*", rows 50 and 81.

[219] P Meehan 1, at 127 [C/8/33].

[220] H/59/1.

[221] Paragraph 218.

[222] CB/171.

out during the audit, and therefore that his statement to the AQR was false.

328. Less clear is the issue whether Mr Bennett and Mr Meehan knew that the Final Version of the CCS Paper was a new document.

329. According to Mr Kitchen, at the meeting at 14.30 on 11 October 2017, he:

> *clarified with Mr Meehan that his task was to provide an explanation of the decisions made in respect of contract selection for the purpose of the Carillion 2016 Audit. Mr Meehan said that he wanted to review Mr Kitchen's draft the following day, and that Mr Bennett should give it a high-level review before then, to ensure that it was clear to somebody without knowledge of the detail.*[223]

330. In addition, he said:

> *I explained that the Original CCS Paper was an out of date draft and that a version reflecting the decisions actually made during the 2016 Audit did not exist. Peter gave his authority for me to go away and prepare a document that reflected the discussions that had taken place during the audit. Peter wanted me to show the document to Adam so he could sense-check it from the perspective of someone who was not familiar with the contract detail, following which Peter requested that he review the final draft the following morning at 11.00 am before it went to the AQR team.*[224]

331. If these statements are true, both Mr Meehan and Mr Bennett were well aware that the Final Version of the CCS Paper was a new document created for the purposes of the AQR. However, since we do not accept that the Final Version of the CCS Paper recorded work done during the audit, the truth of Mr Kitchen's evidence of Mr Meehan's instructions must be in doubt.

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[223] Mr Kitchen's defence, at 26 **(**A/5/14).

[224] Kitchen 1, at 28 (C/11/8); see also Kitchen 2, at 6 (C/19/4).

332. The fact that soon after their meeting Mr Kitchen sent CCS Paper Version 1 to Mr Paw supports Mr Kitchen's evidence that the paper was discussed at the meeting and that it was agreed that he would produce a new Paper. Mr Paw did work on the Paper, producing CCS Paper Version 2 that he returned to Mr Kitchen.

333. As we found above, the CCS Paper, then a draft, was discussed on 12 October 2017.[225] The CCS Paper was not then in its final form. Since, so far as the evidence before us shows, Mr Kitchen had not represented to Mr Meehan or Mr Bennett that he had found the updated CCS Paper, we find it difficult to accept that he was not asked about the Paper.

334. Mr Meehan's evidence is that he was not aware that a CCS Paper was being prepared and had not asked for it to be prepared.[226] However, given its importance, we find it highly improbable that Mr Meehan would not have considered the Paper before it was sent to the AQR.

335. Mr Bennett's evidence was that he too believed that Mr Kitchen had found the Paper that should have been on the audit file, having been so informed by Mr Meehan.[227]

336. Furthermore, in distinction from the evidence in relation to the Minutes, Mr Paw did not suggest that anyone other than Mr Kitchen spoke to him about the work he carried out on the CCS Paper. There was the following exchange during his evidence:

> *THE CHAIRMAN: If you didn't understand what someone was asking you to do, you'd say something about it, wouldn't you?*

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[225] Paragraph 258 above.

[226] Mr Meehan's first witness statement at paragraph 98. See too paragraphs 120, 121 (C/8/32).

[227] Day 13/123/13.

A. I don't know, not necessarily always, sir, to be honest because one that springs to mind is the construction scoping spreadsheet where Richard sent me the spreadsheet, came over to my desk, told me -- spoon-fed me exactly where the numbers need to come from on the audit file, told me to put them in the Excel spreadsheet and send it back to him. At the time I didn't know what I was doing, what that spreadsheet was, but it was just
something that I did within, like, a 20-minute period without fully understanding what was being asked of me, just because a senior manager had asked me to do it …[228]

337. However, Mr Kitchen worked on the paper and sent the result, CCS Paper Version 3, to Mr Bennett. His apology in his email to Mr Bennett for the delay can be explained only on the basis that Mr Bennett was expecting to receive a version of the CCS Paper that Mr Kitchen had been working on, as indeed he had. It was sent to Mr Bennett so that it could be discussed at their meeting, bearing in mind that Mr Meehan was due at 11.00 a.m.. The obvious purpose for Mr Meehan to come to see Mr Kitchen was to discuss the CCS Paper. It is noteworthy that Mr Kitchen did not state, in his email to Mr Bennett, that he had found the CCS Paper that should have replaced that on the audit file, and on the evidence before us no one ever asked where or how the spreadsheet had been found.

338. On 12 October 2017 there was the meeting to consider Mr Kitchen's draft email to the AQR.[229] Given its clear (if false) representation about the CCS Paper, we find it inconceivable that Mr Bennett and Mr Meehan, if they did not know the origin of the Final CCS Paper, did not ask Mr Kitchen where he had found it. They do not suggest that they did so.

339. We find that both Mr Meehan and Mr Bennett knew that the Final Version of the CCS Paper was a new document produced for the purposes of the

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[228] Day 15/162.

[229] See paragraphs 261 and 262 above.

AQR. In allowing it to be falsely represented to the AQR as an audit workpaper, they acted without the integrity appropriate to an accountant. Their conduct fell significantly short of the standards reasonably to be expected of a Member or Member Firm and was likely to bring discredit to themselves and to KPMG and to the accountancy profession. They were guilty of Misconduct.

340. It follows that we find Allegations 4A and 4B proved against Mr Meehan and Mr Bennett. These allegations are also proved against Mr Kitchen, who prepared the Final Version of the CCS Paper and falsely represented it to be an audit work paper, and thereby acted dishonestly. His conduct fell significantly short of the standards reasonably to be expected of a Member or Member Firm and was likely to bring discredit to him and to KPMG and to the accountancy profession. He was guilty of Misconduct.

Allegation 4C

341. For the reasons we have set out above, we do not accept that the Final Version of the CCS Paper represented work carried out during the audit. We refer to paragraphs 218 and 326 above. If that work had been carried out, it should have been documented, yet we have no such documentation and no explanation as to what could have happened to that documentation. Instead, the Final Version of the CCS Paper included recent work by Mr Paw and Mr Kitchen. We do not believe that Mr Kitchen could have remembered, or did remember, undocumented work carried out during the audit and reproduced it in the Final Version of the CCS Paper.

342. Mr Kitchen knew that the Final Version of the CCS Paper did not represent work done during the audit. In representing it as such to the AQR he acted dishonestly. His conduct fell significantly short of the standards reasonably to be expected of a Member or Member Firm and was likely to bring discredit to him and to KPMG and to the accountancy profession. He was guilty of Misconduct.

KPMG

343. The Allegations against KPMG are proved to the extent that they have been proved against the Individual Respondents.

SANCTIONS AND COSTS

344. The Tribunal's substantive findings made it necessary to consider the appropriate orders to be made in relation to sanctions and costs. The hearing on sanctions and costs was marked by powerful and cogent submissions on behalf of the Parties, and in particular on behalf of the Individual Respondents. We have of course borne them fully in mind in reaching our decisions.

345. Each of the Individual Respondents filed a statement of his assets and income that the Tribunal determined could and should be kept confidential. We have taken those confidential statements into account, but have sought to avoid including in our Decision, which will be public, the confidential information in question.

SANCTIONS

General considerations

346. The seriousness of the Misconduct that we have found proved scarcely needs explanation. Effective audits are essential to the financial system. Management and investors should be able to rely on the audited financial reports of the company in question. The purpose of AQRs is to assess, and where appropriate suggest improvements to, the effectiveness of audits. We are reminded of the old question: *Quis custodiet ipsos custodes*? Who is the custodian of the custodians? In the case of auditors of public companies, it is the FRC. Its AQRs play an essential part in the regulation of auditors of public companies. The effectiveness of the regulation of auditors and audits depends on the accurate disclosure to the AQR Team of the audit work

carried out by the auditor. Misleading the AQR undermines the effectiveness of its work; indeed, it may deprive the AQR of any useful result.

347. Findings of dishonesty are at the top end of the spectrum of Misconduct. Paragraph 8.3 of the Clarke Review stated:[230]

> *In the case of individuals, suspension or expulsion will be appropriate if there has been dishonesty, intentional wrongdoing or recklessness. In respect of dishonesty we think that the guidance should make particular provision. Dishonesty is so inimical to everything that a profession stands for, and so destructive of public confidence, that those who are guilty of it have no place in the profession and should normally be excluded for a substantial period and, quite possibly, never admitted to it again. When a Tribunal or other decision maker decides that an individual should be excluded as a Member of one or more Participants it recommends a period of time for such exclusion. Although the individual can apply for re-admittance before the expiry of the period he is unlikely to secure that, and, even after the expiry of the period, he will still have to ask for readmission. In our view, where an individual has been found to have been dishonest the recommendation should normally be that he be excluded for at least 10 years.*

348. We endorse this statement as to the significance of a finding of dishonesty. We point out, however, that the FRC's Accountancy Scheme does not include a provision for a former Member to apply to shorten the period of Exclusion, however meritorious the application may otherwise be.

349. Findings of lack of integrity without a finding of dishonesty are less grave, but nonetheless serious.

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[230] The Independent Review of the FRC's Enforcement Procedures Sanctions, SB/17/43.

350. However, it is necessary to focus on the facts of the Misconduct we have found. We agree with the summary in KPMG's Submissions on Sanctions and Costs:[231]

> *(1) KPMG acknowledges that it is responsible for acts of Misconduct in February-April 2015 (Allegations 1 and 2) and in October 2017 (Allegations 3 and 4) and that, accordingly, the starting point and endpoint for the Misconduct in issue are two and a half years apart.*
>
> *(2) This is not, however, a case where the Misconduct that has been found was repeated or ongoing over that period (as with, for example, a persistent failure in half-year and year-end audit work over a number of audit years, or participation in a dishonest enterprise ongoing over a period of months or years). Rather, it is a case where the Tribunal has to impose a sanction in respect of three very serious, but discrete episodes of Misconduct – one in February-March 2015; one in March-April 2015; and one in October 2017.*
>
> *(a) For Allegation 1, the Misconduct began with an e-mail sent on 3 February 2015 and ended with an e-mail sent on 11 March 2015. The Settlement Agreement between the Executive Counsel, [Regenersis Audit Engagement Partner] and KPMG said that this Misconduct was "isolated, not repeated, and took place over a short period of a matter of days".*[232]
>
> *(b) For Allegation 2, the conduct in question was also over a short period. Although earlier documents had falsely referred to work having been updated, the document presented to the AQR, the AQR Version of the Goodwill Paper, was created on a single day, 31 March 2015 and presented to the AQR that same day. False representations were made on several other occasions in the period from 11 March 2015 to 14 April 2015.*
>
> *(c) For the Carillion Allegations (Allegations 3 and 4), the Misconduct essentially concerns a single period of three days from 10 October 2017 to 12 October 2017. The key dishonest misrepresentations were made in one email,*[233] *which also attached the false documents.*

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[231] At paragraph 28: SB/4/9.

[232] H/40.

[233] CB/171.

351. There was an obvious similarity in and connection between the Misconduct relating to the Carillion Minutes and that relating to the CCS Paper. Both involved a number of the same small group of people, related to the same AQR and occurred during a period of 2 or 3 days. Both involved the creation of documents that were falsely represented to the AQR team as documents created during and for the purposes of the same audit. Of course, the Misconduct in Allegation 3 and in Allegation 4 must be viewed together, and are more serious than if either had been committed in isolation. On the other hand, we do not think it right to regard the Misconduct under Allegations 3 and 4 as if they were committed on entirely separate occasions.

352. In reaching our decisions, we have taken fully into account the Sanctions Guidance issued by the FRC, and we shall refer to it below. Paragraphs 9 and 10 of the Sanctions Guidance[234] are relevant to our decisions:

> *9. In determining the appropriate sanction, a Tribunal should have regard to the reasons for imposing sanctions for Misconduct in the context of professional discipline. Sanctions are imposed to achieve a number of objectives, namely:*
>
> *a. to declare and uphold proper standards of conduct amongst Members and Member Firms and to maintain and enhance the quality and reliability of accountancy work;*
>
> *b. to maintain and promote public and market confidence in the accountancy profession and the quality of corporate reporting and in the regulation of the accountancy profession;*
>
> *c. 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; and*
>
> *d. to deter members of the accountancy profession from committing Misconduct.*
>
> *10. This guidance has been developed to help Tribunals achieve these objectives by imposing sanctions which:*

[234] B/5/6

a. improve the behaviour of the Member or Member Firm concerned;

b. 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;

c. are proportionate to the nature of the Misconduct and the harm or potential harm caused;

d. eliminate any financial gain or benefit derived as a result of the Misconduct; and

e. deter Misconduct by the Member, Member Firm or others.

353. Thus sanctions should act as a deterrent rather than punishment. However, it has to be recognised that it is difficult to impose a sanction that is a deterrent without a degree of punishment. For example, paragraph 34 of the Guidance states that a Tribunal should aim to impose a fine that will act as an effective deterrent to future Misconduct. It is difficult to see that a fine which is an effective deterrent will not be punitive, and that the fine will be regarded as such by the person on whom it is imposed.

354. It is important to bear in mind that the Sanctions we impose must be viewed as a whole. A Fine cannot be viewed in isolation, as if it were the only Sanction to be imposed. Exclusion, particularly for persons of the ages of the Messrs Wright, Kitchen, Bennett and Paw, is a grave sanction, the personal and financial effects of which will be greater than any Fine of a sensible amount. The Tribunal's findings, together with the imposition of Exclusions, are themselves a very considerable deterrent.

355. It is also important to bear in mind that each of the Individual Respondents had a clean disciplinary record until the events in question in these proceedings.

356. Paragraphs 18 and 19 of the Guidance set out the normal approach to determining the sanction:

18. It follows, therefore, that the normal approach to determining the sanction to be imposed in a particular case should be to:

a. assess the nature and seriousness of the Misconduct found by the Tribunal (paragraphs 20 to 24);

b. identify the sanction or combination of sanctions that the Tribunal considers potentially appropriate having regard to the Misconduct identified in a. above (paragraphs 25 to 55);

c. consider any relevant aggravating or mitigating circumstances and how those circumstances affect the level of sanction under consideration (paragraphs 60 to 65);

d. consider any further adjustment necessary to achieve the appropriate deterrent effect (paragraphs 66 and 67);

e. consider whether a discount for admissions or settlement is appropriate (paragraphs 68 to 74); and

f. decide which sanction(s) to order and the level/duration of the sanction(s) where appropriate.

19. Tribunals should ensure that their decisions give reasons which indicate what view they have reached on the matters above and why.

357. Paragraph 21 of the Guidance lists a number of non-exclusive factors that may be considered by the Tribunal. We have taken each of those factors into account in the case of each of the Respondents. Most of the factors are common to all of the Respondents, and can therefore be stated at this point in our Decision. We shall refer to other matters below in our consideration of the sanctions to be ordered against each Respondent.

358. First, none of the Respondents stood to derive any immediate financial gain from their misconduct (subparagraph a). At most, their actions might have protected or enhanced their standing in the firm. A moment's thought should have led them all to realise that their Misconduct could lead to personal losses on their part far, far greater than the admission of deficiencies in their audit work or in its documenting. It is in part because the Misconduct we have found was not committed for immediate financial gain, and was not intended to cause financial loss, that we accept that it was not at the top end of seriousness.

359. We have already commented on the gravity of the Misconduct and the importance of the standards breached: sub-paragraphs b and e. The Misconduct was liable to undermine confidence in the standards of conduct in general of Members and Member Firms, and/or in financial reporting: subparagraph r.

360. Subparagraph b: in all cases, the Misconduct was brief, a matter of days. In the case of the Carillion AQR, in particular, it was committed over a period of 2 or 3 days. We refer to the summary in KPMG's Submissions on Sanctions and Costs at paragraph 350 above.

361. Subparagraphs j and k: in the cases of Mr Bennett and Mr Wright, their Misconduct in relation to the Regenersis AQR was repeated in relation to the Carillion AQR. The Misconduct of the other Individual Respondents was isolated.

362. Subparagraphs d, f and g: we have made express findings above on the dishonesty of the conduct involved, or, where we thought it appropriate, the failure of a Respondent to act with integrity or his having acted recklessly. Clearly, as we have found, there were failures to comply with professional standards of honesty and/or integrity. Our Decision identifies that no single Respondent was responsible for the Misconduct, other than the Misconduct that is the subject of Allegation 4C, for which Mr Kitchen alone was responsible.

363. Subparagraph c: the Misconduct did not cause or risk financial loss: the audits in question had been completed well before the AQR took place.

364. Subparagraphs h, i, l, m, n, o and q are inapplicable.

365. Subparagraph p: having regard to our decisions on sanctions and the action taken by KPMG, to which we refer below, we consider that there is little if any likelihood of the same type of Misconduct being committed by any of the Respondents.

366. To the extent that they are applicable, we consider below the factors set out in subparagraphs s to w in relation to each Respondent.

367. The Guidance offers some recommendations on particular sanctions.

368. Paragraph 55 of the Guidance is of particular relevance:

> *55. Where a Member has been found to have been dishonest the recommendation should normally be that he be excluded from membership of a Participant for at least 10 years.*

369. The origin of this paragraph is paragraph 8.3 of the Clarke Review,[235] which we have set out above.

370. As we have mentioned above, most, and perhaps almost all, of the Misconduct that has engaged the FRC in the past has been that of audit partners or company directors. All, or certainly the great majority, of the instances in which Exclusion was imposed related to respondents of such seniority. We suspect that paragraph 8.3 of the Clarke Report and paragraph 55 of the Guidance were formulated with such respondents in mind. For someone such as Mr Meehan, a former partner now aged 60 who has no real need to work in the regulated sector in the future, a long period of Exclusion may not involve any substantial hardship. On the other hand, apart from [Regenersis Audit Engagement Partner] and Mr Meehan, the Individual Respondents are young men who were at an early stage of their working lives. An Exclusion for a period of 10 years, with no provision for a respondent to apply for it to be abbreviated if he can show his commitment to honesty and competence, may bear much more hardly on them. We have kept this in mind in determining the appropriate periods of Exclusion.

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[235] The Independent Review of the FRC's Enforcement Procedures Sanctions, SB/17/43.

371. Paragraphs 32 and following of the Guidance relate to Fines. Paragraph 39 states:

> *39. A Member's remuneration is likely to be an appropriate starting point when considering the level of Fine that would (i) be appropriate to reflect the Misconduct involved and (ii) be necessary to act as a credible deterrent.*

372. We question whether this is aptly worded. A starting point usually gives a figure that is increased or decreased according to the facts. This paragraph does not address a Member's net assets, or the very important difference between Misconduct that does not involve dishonesty or a lack of integrity, such as cases of gross negligence, and Misconduct that does. As suggested to us by counsel, we think that paragraph 39 of the Guidance should be interpreted as requiring the Tribunal to take into account the remuneration of the Member.

Negotiations and settlements

373. It is not controversial that an admission of Misconduct will normally lead to a discount being applied to the Sanction that would otherwise be appropriate. Since the terms of a settlement between a Respondent and the Executive Counsel will include an admission or admissions, the same will normally apply to the determination of the appropriateness of the agreed sanctions.

374. Some Individual Respondents contended that the fact that they had tried to negotiate a settlement with the Executive Counsel should be taken into account as a mitigating factor. We reject this contention. The terms of the negotiation were privileged as without prejudice communications. We could not, therefore, know whether the terms sought by the Respondent in question were excessive, or his proposed admission inadequate. Conversely, we could not know whether the Executive Counsel's demands were appropriate or excessive. It was always open to the Individual Respondents to make open admissions of Misconduct, and if they had done

so they would of course have gone to reduce the Sanction otherwise appropriate.

Insurance and indemnities

375. Paragraph 42 of the Guidance provides:

> *42. When deciding the level of Fine to impose, a Tribunal should:*
>
> *a. when considering a Member or Member Firm's financial resources, establish whether there are any arrangements that would result in part or all of any Fine being paid or indemnified by insurers, or by a Member's firm, partnership, company or employer.*
>
> *The existence of any such arrangements should not be a ground for increasing any Fine beyond the level that would otherwise be considered appropriate by the Tribunal;*
>
> *and*
>
> *b. disregard the possibility that the Member or Member Firm may be liable for the costs of the case. ….*

376. While the amount of any fine should not be increased because the Member is insured, it does not follow that the absence of any such arrangement as is referred to in subparagraph *a* should not lead to a reduction in the fine that might otherwise have been imposed if the financial resources of the Member had been greater. Conversely, in general it would be inappropriate to reduce a fine on account of the other resources of the Member if he is entitled to be indemnified by insurers or others.

377. Most, if not all, professional liability insurance policies exclude cover for dishonesty. Not surprisingly, therefore, the Individual Respondents were informed that:

> *The insurers' provisional and indicative view is that, based on the findings set out in the Draft Decision as it stands, there are reasons to anticipate that the policy exclusion regarding dishonesty has been engaged in relation to each Individual Respondent. The consequence for each Individual Respondent could be that they will not be indemnified for Loss under the*

policy (including any financial sanction imposed by the Tribunal upon each Individual Respondent).[236]

378. In these circumstances, the Tribunal has proceeded on the basis that the Individual Respondents are not entitled to be indemnified against the Fines that we consider appropriate. The situations of Mr Meehan and Mr Bennett require particular consideration, as appears below.

Precedents

379. A number of previous decisions of the FRC's disciplinary tribunals were cited to us. They must in our judgment be treated with caution. They of course relate to different facts. Tribunal decisions are generally not intended to be precedents. Furthermore, there has been a clear tendency to increase the severity of sanctions in recent years. Decisions reached some time ago, particularly those reached before the Clarke Report of October 2017,[237] may be an unreliable guide to decisions to be made now. Consistency of decisions is desirable, but the desirability of consistency must not lead to decisions that are inappropriate to the particular facts of the case to be decided. The Guidance provides:

7. … Tribunals may have regard to sanctions imposed in other cases. They must however, determine the sanction which they think appropriate on the facts and circumstances of the case before them and should not feel constrained by the sanctions imposed (or not imposed) in earlier cases to impose a sanction which they do not think appropriate.

380. We therefore echo the statement of the Tribunal in *Silentnight*:

The search for consistency with previous decisions involves the difficulty that they are concerned with different facts, and decided at different times, and are therefore not directly

[236] Linklaters' letter dated 5 May 2022 at SB/21.

[237] The Independent Review of the FRC's Enforcement Procedures Sanctions, SB/17.

comparable. Further sanctions imposed by a disciplinary tribunal are not designed as precedents.

The Tribunal added:

Nonetheless, previous cases may contain features by reference to which some measure of consistency and predictability can be achieved by a Tribunal in its approach to sanctions.[238]

381. However, with one exception, all of the decisions cited to us concerned senior accountants, partners in their firms or persons of similar status. They are an unreliable guide to the sanctions appropriate to relatively junior accountants. As the Executive Counsel rightly submitted:

87. Previously-decided cases provide little guidance on fines to be imposed on non-partners (or other individuals who did not themselves lead the teams in question). However, EC submits that such fines should be considerably lower than the fines generally imposed on partners. This would reflect differences not only in levels of responsibility but also in remuneration.[239]

382. The one case cited to us concerning a junior accountant was one in which the respondent acted without integrity. The agreed sanction was a Severe Reprimand. That sanction was imposed under a settlement. The function of the Tribunal, where there has been a settlement proposed between the Executive Counsel and the respondent is to assess whether the proposed sanction is within the range of appropriate sanctions. It is not, therefore, a decision to impose that particular sanction.

383. What is important is to seek consistency between the Sanctions ordered against the Individual Respondents.

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[238] CA/67 at paragraph 385.

[239] SB/3/38.

KPMG

384. As we have already mentioned, KPMG accepted its liability for the Misconduct of the Individual Respondents.

385. The Executive Counsel submitted that the following sanctions are appropriate for KPMG's admitted Misconduct:

(1) A severe reprimand.

(2) A direction requiring an external review of KPMG's processes relating to its engagement with AQR inspections.

(3) A financial sanction with a starting-point of £20,000,000, reduced by 20% for mitigating factors to reach £16,000,000, and then reduced by a further 10% for admissions, so as to reach £14,400,000.

386. KPMG agreed that these sanctions are appropriate. It is insured in respect of the Fine proposed, but as we have stated that is not a reason to increase a Fine that would otherwise be appropriate. KPMG also agreed to pay the Executive Counsel's costs in the agreed sum of £3,950,000 and the Tribunal's costs in the sum of £317,937.88. It had also paid the substantial legal costs of each of the Individual Respondents.

387. We have already commented on the seriousness of the Misconduct. KPMG is vicariously liable for the Misconduct of six Individual Respondents in respect of four different matters, the subject of Allegations 1 to 4, involving dishonesty, a lack of integrity and recklessness.

388. It is obvious that a Severe Reprimand is appropriate for the Misconduct.

389. As to the amount of the Fine, in the Clarke Review, the Panel advised:

> *5.31. … it seems to us that, if one of the Big 4 firms was guilty of seriously bad incompetence, in respect of the audit of a major public company, where the errors were measured in nine figures or more and there had in consequence been either widespread actual loss or the risk thereof, a financial penalty of*

£10 million or more (before any discount) could be appropriate as being;

(a) commensurate with the seriousness of the wrongdoing;

(b) a meaningful deterrent; and

(c) sufficient to meet the primary objectives of sanctions.

That assumes that the failings did not involve dishonesty or conscious wrongdoing. If they did, the figure could be well above that.[240]

390. In the present cases the failings did involve dishonesty. On the other hand, there was no actual loss or risk of financial loss.

391. We bear in mind that there has been no allegation relating to the conduct of any other employees or partners of the Firm, let alone its senior management.

392. These proceedings were not concerned with KPMG's audit work as such: KPMG's Carillion audit work is the subject of a different inquiry. Nor did we consider the adequacy or otherwise of KPMG's training or ethics education, although we accept that the conduct of the Individual Respondents was contrary to their training from, and was in breach of their obligations to, KPMG. We accept KPMG's submission that it does not follow from the fact that its procedures did not prevent the Misconduct that those procedures were deficient.

393. The Tribunal has been favourably impressed by the action taken by KPMG once it became aware of an issue in relation to the Carillion AQR. We have also borne in mind that, as we commented at paragraph 40 above, it is only because KPMG self-reported the underlying facts that the Misconduct came to light. KPMG's comprehensive provision of contemporaneous

[240] The Independent Review of the FRC's Enforcement Procedures Sanctions, SB/17/38.

emails and other documents was fundamental to the fair conduct of the proceedings and the decisions of the Tribunal.

394. KPMG has also taken steps to seek to ensure that there is no recurrence of Misconduct such as that we have found. The procedures now applicable to the provision of information to the AQR are summarised under paragraph 30 of KPMG's Submissions on Sanctions and Costs:

> *(a) If the audit team wishes to provide any information to the AQR that is not on the audit file, it must first obtain approval from KPMG's Central Inspection Support Team (the "Central Team").*
>
> *(b) The audit team is given clear instructions about how such information should be presented, including as to its provenance and as to the requirement that it must be information that was in the audit team's possession at the time they signed the audit opinion.*
>
> *(c) If approval is given, the Central Team, not the audit team, provides the document to the AQR.*
>
> *(d) The Central Team is larger than it was during the Regenersis and Carillion AQRs. It is now complemented by the Engagement Support Team, comprising individuals with relevant AQR experience and industry knowledge.*
>
> *(e) The Central Team and Engagement Support Team take a proactive role, briefing audit teams, attending all meetings with the AQR inspectors, holding additional discussions with the relevant audit team, and carrying out further review and challenge of the audit team's responses to the AQR inspectors.*
>
> *(f) The Central Team's briefing includes updated guidance on how information should be provided to AQR inspectors. This includes the requirement to act with integrity and the requirement to make sure that the source of any information provided outside the audit files is "clear i.e. whether this document is something which existed prior to the signed opinion, is from prior year audit files or is a newly created document";*
>
> *(g) KPMG's Intranet also includes a dedicated section on AQRs which contains links to KPMG's own internal policies and guidelines to assist audit team members.*

395. We think it right that the public should know the further action taken by KPMG in response to the Allegations, in addition to its cooperation with the investigation and these proceedings. We have therefore set it out in the Appendix 1 to our Decision.

396. In assessing the amount of the Fine, we have had regard to KPMG's financial resources. They are very substantial indeed: total revenue in 2021 was over £2.4 billion. Its ability to pay a fine of any sensible size would be unaffected by any lack of financial resources. In the *Autonomy* case, the Tribunal stated, in terms with which we agree:

> *871. … for the size of the fine to be a credible deterrent (both to Deloitte and other Member Firms) we must take these very large profit and revenue figures into account. Other firms which have not committed Misconduct would rightly expect to see the fine imposed on one of the world's largest accountancy firms to be one reflecting its stature, revenues and profitability.*

We think that the fine proposed by the Executive Counsel and accepted by KPMG satisfies this test.

397. Curiously, although there is agreement between the Executive Counsel and KPMG as to the amount of the Fine, they disagree as to the relevance of KPMG's disciplinary record. The Executive Counsel contends that previous findings of Misconduct on the part of KPMG are an aggravating factor. KPMG submits that the previous disciplinary findings against it would be an aggravating factor if they were similar to the Misconduct that we have found, and there is no such similarity. We have not found it necessary to resolve this difference. There are no other aggravating factors.

398. For reasons that appear from our substantive decision and what we have stated above, we accept that it is appropriate for the fine to be reduced on account of the mitigating factors to which we have referred above and

KPMG's contrition and admissions. Its contrition is apparent from the statement of Mr Jon Holt, its chief executive, issued on 10 January 2022:[241]

> *The misconduct that this Tribunal will hear about over the coming weeks is disturbing and upsetting for me and for my colleagues, who are committed to serving the public interest with honesty and integrity.*
>
> *We became aware of the misconduct at the centre of this case as a result of our own internal investigations and immediately reported it to our regulator. We have co-operated fully with their investigation since then.*
>
> *This misconduct is a violation of our processes and clearly against our values. It is unacceptable, we do not tolerate or condone it in any way, and I am very sorry that it occurred in our firm.*
>
> *Since this misconduct came to light, we have worked hard, and with complete transparency to our regulator, to assure ourselves that it does not represent the wider culture or practice of our firm.*
>
> *It is of course for the Tribunal to reach a conclusion on the allegations as they relate to the individuals concerned. Nevertheless, it is clear to me that misconduct has occurred and that our regulator was misled.*

399. If, as the Guidance provides, we should take the steps set out in paragraph 18 of the Guidance, we are now in a position to do so:

(1) We have assessed the nature and seriousness of the Misconduct we have found.

(2) (a) A Severe Reprimand is undoubtedly appropriate.

(b) Given the seriousness of the Misconduct and KPMG's resources, a Fine with a starting point of £20 million is appropriate.

(c) The proposed Direction appropriately focuses on the Misconduct we have found relating to AQRs.

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[241] SB/10.1/1.

(3) As we have stated, but subject to what we said in paragraph 397 above, there are no aggravating factors. On the other hand, there are impressive mitigating factors, namely KPMG's conduct in bringing the Misconduct to the attention of the FRC, its co-operation with the FRC's inquiry, and the action it has taken to address the possibility, hopefully remote, of recurrence. We consider that the reductions proposed by the Executive Counsel and accepted by KPMG are entirely appropriate.

(4) We agree that the special direction referred to at paragraph 385(2) above is appropriate in the terms proposed. We set out the terms of the direction in Appendix 2 to this Decision.

(5) We see no reason to make any further adjustment to the sanctions proposed, other than the discount for admission.

400. For these reasons the Tribunal endorses the imposition of the Sanctions set out in paragraph 385 above.

Mr Meehan

401. The Executive Counsel submitted that the Tribunal should impose on Mr Meehan the following Sanctions:

(1) Exclusion for 15 years.

(2) A fine of £400,000.

402. In his Submissions, Mr Meehan contended that the period of Exclusion proposed by the Executive Counsel is excessive, and that the appropriate Fine to be imposed on him is one of £250,000.

403. The most important factors for the determination of the appropriate Sanction are the seriousness of Mr Meehan's Misconduct and his financial resources.

404. The Tribunal has found that Mr Meehan was a party to the dishonest misleading of the AQR in relation to the Minutes of overseas clearance meetings with Carillion's overseas auditors: paragraph 293 above. He acted without integrity as regards the creation of and the representations about the CCS Paper: paragraph 339 above.

405. We have commented above on the seriousness of the Misconduct we have found proved.

406. The seriousness of Mr Meehan's conduct is aggravated by the fact that he was the senior statutory auditor and audit engagement partner for Carillion. As such, it was his responsibility to ensure that the members of his audit team, and in particular the other Individual Respondents, acted not only with competence, but also honestly and with integrity. He singularly failed to fulfil this responsibility.

407. Mr Meehan's submissions include an analysis of, and comparisons with, previous Tribunal decisions. We have not found this helpful, for the reasons we have given. In addition, we have not found a comparison with the sanctions proposed by the Executive Counsel in relation to the other Individual Respondents helpful. Each Individual Respondent's Sanctions have to be decided in relation to his particular facts and resources, and the impact of the Tribunal's findings on their future careers and earnings.

408. Mr Meehan is aged 60. Quite apart from these proceedings, he would be towards the end of his working career in KPMG. We accept what is stated at paragraph 83 of his Submissions on Sanctions:[242]

> *83. … Mr Meehan is considerably older than the other Respondents, and as such is much less able to transition to a new career (and in any event would have less time in which to earn anything from it). His reputation has been much more*

[242] SB/5/19.

publicly and repeatedly associated with Carillion and his career was effectively ended when he was suspended at the outset of this process. He anticipated working at KPMG for longer and then taking up other roles thereafter. He has now accepted that this will no longer be possible.

409. Mr Meehan was suspended in November 2018. He continued to be paid, but his receipts were less than he would normally have received. He left KPMG at the end of January 2021 earlier than he would have planned. We take into account the financial information he has provided to us on a confidential basis. He has submitted that an order that he pay much more than £200,000 is likely to require him to sell property, although this is subject to any indemnity he may receive from KPMG's insurers.

410. As in the case of all of the Individual Respondents, Mr Meehan's legal costs, which must have been very substantial, are being paid by KPMG.

411. Having considered Mr Meehan's resources, his relative lack of liquid assets, and the obvious effect of our findings on his future income, we have concluded that a Fine of £250,000, a substantial sum, is sufficient. Our findings of Misconduct alone have had and will have a dramatic effect on his resources in the future. A fine of this size, imposed on a professional man of his age, with little if any possibility of further gainful work, combined with the inevitable Exclusion, will be a deterrent to those otherwise tempted to err. These are the appropriate sanctions.

412. We take into account Mr Meehan's apology, in his witness statement dated 28 April 2022:

19. I would like to apologise unreservedly to the FRC, and in particular the AQR team and to Carillion stakeholders, for my involvement in the preparation and sending of misleading documentation in connection with the AQR review. I fully understand the importance that attaches to AQR reviews being performed on the basis of reliable and true information and I deeply regret that this was not the case. I recognise that I ought to have prevented any misleading or potentially misleading material being sent to the FRC and to have played no part in

facilitating its creation. I acknowledge that the findings of the Tribunal represent a serious failing on my part for which I am deeply sorry. I also regret, and apologise for the damage to the reputation of the profession as a whole that has resulted from this matter. Finally. I apologise to KPMG for my part in this matter, and am very sorry for the reputational damage and expense it has caused to the firm.

413. This apology was late, but significant, and we have taken it into account. In our view, however, because it was late it does not justify reducing the Fine below the sum we consider to be appropriate.

414. There are no aggravating or, apart from his apology, mitigating factors to be taken into account as increasing or reducing the appropriate Sanction.

415. We have been asked to apportion the Fine we order between the Misconduct under Allegations 3A and 3B, on the one hand, where the finding is of dishonesty, and the finding under Allegations 4A and 4B, where the finding is of a lack of integrity. Somewhat reluctantly, we are prepared to make an apportionment. He seeks an apportionment of 60/40, on the basis that a lack of integrity is less serious than dishonesty. We think that the suggested apportionment is apt, and we endorse it.

416. As mentioned above, the Executive Counsel seeks an Exclusion period of 15 years. The Guidance cited at paragraph 368 above states that in cases of dishonesty this period should be at least 10 years.

417. An Exclusion period of 15 years, expiring when Mr Meehan is aged 75, would in our view be excessive. Moreover, given the likely effect of our findings on the possibility of his working again, it would be largely of no practical effect. We think that Exclusion for the period of 10 years will suffice and be appropriate, and we shall so order.

418. Mr Meehan asked to be allowed to pay the Fine in two instalments, the first instalment of £150,000 to be paid within 2 months of the date on which this Decision is notified to him and the second instalment, of £100,000, to be

paid within 6 months of that date. We consider this proposal to be appropriate and we so order.

Mr Wright

419. The Executive Counsel described the seriousness of Mr Wright's Misconduct at paragraph 83 of her Submissions on Sanctions and Costs:

> *83.1 Mr Wright's Misconduct was not isolated, but related to multiple audit issues;*
>
> *83.2 Mr Wright's Misconduct was not confined to the making of false representations, but also involved the use of false documents to make or support those representations; and*
>
> *83.3 Mr Wright occupied a position of responsibility, and his Misconduct involved or implicated more junior members of the KPMG team.*

420. A period of Exclusion is clearly inevitable. The Executive Counsel submits that, having regard to the gravity of his Misconduct, the appropriate period of Exclusion is 12 years, and that there should a Fine. She submits that the starting point for the fine should be £100,000.

421. We think that Mr Wright's conduct during these proceedings is relevant to assessing the appropriate period of Exclusion and the Fine. Until a late stage, he denied all the Allegations against him. However, in his second witness statement dated 1 December 2021 he resiled from his previous evidence in regard to the Carillion minutes:

> *I therefore now accept:*
>
> *(i) That I must have intended in the 14.55 Email that the typed-up minutes should be created in a way to increase the chance that the AQR team would be misled as to whether the typed-up minutes provided had been prepared contemporaneously to the audit;*

422. In his evidence before the Tribunal he was more forthright. We refer to his evidence cited at paragraph 269 above.

423. It remains the case that his involvement of Mr Paw in the creation of the Minutes exacerbates the seriousness of his Misconduct.

424. We bear in mind that, like all the Individual Respondents, Mr Wright had an unblemished disciplinary record until the events with which we have been concerned. We note, also, that Allegations 2 and 3 concerned events some 2½ years apart, during which it is not suggested that he was responsible for any other Misconduct. Nonetheless, the repetition of the Misconduct, represented by the Tribunal's findings on Allegations 2 and 3, is an obvious aggravating feature.

425. We were impressed by Mr Wright's admission, although it did not extend to Allegation 2. We note also his apology to Mr Paw and his colleagues. In his third witness statement dated 28 April 2022 Mr Wright said;

> *2.4 I also apologise unreservedly to Mr Paw, for allowing him to become involved in the preparation of the Minutes. I profoundly regret my actions, and the impact of those actions on my former colleagues and on the trust the public places in the auditing profession.*

426. As to the risk of a repetition of his Misconduct, his written Submissions stated at paragraph 13(p):

> *The events with which the Tribunal has been concerned have provided a salutary lesson to Mr Wright, in the full glare of publicity. He has expressed his deep contrition in respect of his admitted Misconduct. He no longer works for KPMG or in the audit profession and it is unrealistic to suppose that Mr Wright would ever work as an auditor again. The same type of Misconduct will not recur; …*[243]

427. We accept that this is likely to be the case.

428. Mr Wright is a young man, married with two young children. He and his wife have the responsibility to provide for them. Until the matters with

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[243] SB/6/10.

which the Tribunal has been concerned came to light, he received a salary from KPMG such that a fine of £100,000 would represent roughly twice his net annual earnings from KPMG.

429. We must also take account of the effect of our findings on Mr Wright's future. Until the events we have had to consider, he was on the path to a partnership with an income many times his previous salary. That future has been destroyed. The financial impact of our findings for him will involve a loss of income of several million pounds. At best, he will for some considerable time have an income of the kind of amount he received from KPMG in the last few years of his employment.

430. For the finding of dishonesty, the starting point is Exclusion for 10 years. We think this needs to be reduced on account of Mr Wright's admission. We have regard to the other matters to which we have referred. We think that an appropriate sanction is a period of Exclusion of 8 years plus a Fine.

431. The Executive Counsel's proposed fine of £100,000 would in our view be disproportionate to Mr Wright's resources. We bear in mind paragraph 39 of the Guidance, to which we have referred above. We have concluded that the appropriate Fine is one of £50,000 reduced on account of Mr Wright's admission to £45,000. Mr Wright did not seek an extension of the time for him to pay his Fine, beyond that inherent in paragraph 9(12)(i) of the Scheme.

Mr Kitchen

432. The Executive Counsel submits, rightly, that the matters referred to in paragraph 83 of her submissions, cited above in relation to Mr Wright, apply equally to Mr Kitchen. She submits that the Tribunal's findings, and those matters, justify a period of Exclusion of 12 years and a Fine of £100,000.

433. We note however that Mr Kitchen was only involved in Misconduct related to the Carillion AQR and was a more junior and less experienced member of the team. On the other hand, he was the only Individual Respondent who, as we found, knew that the Final Version of the CCS Paper did not represent work done during the audit.

434. The seriousness of Mr Kitchen's Misconduct is evident. Nonetheless, we do not consider that a period of Exclusion in excess of 10 years is justified.

435. Like Mr Wright, he is a young man. He and his wife are expecting the birth of their first child. He was on the path to a rewarding career as an accountant. He has put his career in peril. He has not undertaken any audit work since he left KPMG in May 2018, and he states that he has no intention of doing so.

436. We have taken into account the information he has provided as to his financial situation and prospects.

437. We must also bear in mind that the crucial events relating to the Carillion AQR took place over a short period of 2 or 3 days when Mr Kitchen was under pressure to complete his work before going on honeymoon.

438. He has apologised for his Misconduct, but only after the Tribunal had made its findings. He said, in his witness statement:

> *I wish to say at the outset that I am profoundly sorry for and deeply regret those matters which form the basis of the Tribunal's findings of Misconduct against me.*

We do not think this justifies a significant reduction in the Sanction that would otherwise be appropriate, although we bear it in mind.

439. His salaries have been modest, and in net terms were probably less than half of the Fine proposed by the Executive Counsel. His savings are modest.

440. Weighing up all these matters, the conclusion we have come to is that a period of Exclusion of 7 years and a Fine of £30,000 are the appropriate sanctions for Mr Kitchen.

441. Mr Kitchen has requested the period of 6 months from the date of our Decision for payment of his Fine. We think it appropriate for a payment to be made within a considerably shorter period. We shall direct the Fine to be paid as to the sum of £10,000 within 2 months of the date of notification of our Decision and the balance within the period of 6 months from that date.

Mr Bennett

442. Mr Bennett, like Mr Wright, was guilty of Misconduct in relation to both the Regenersis and the Carillion AQRs. He involved [KPMG Audit Team Member 4] in the creation of the updated Goodwill Paper.

443. The Executive Counsel proposes an Exclusion period of 12 years and a Fine of £100,000.

444. Most of the statements above are applicable in relation to his Misconduct and his situation. He was a trusted high flyer, expected to make partnership. He has sacrificed that career and the rewards that would have come with it. He left KPMG on 31 January 2021 and has set up business as a career consultant.

445. Mr Bennett's resources are limited. He has relatively few assets. His income for the tax year ended 5 April 2022 was low. He estimates that his likely future income will be modest. A Fine of the amount proposed by the Executive Counsel would be unaffordable.

446. We consider that the appropriate sanction is a Fine of £40,000 and a period of Exclusion of 8 years, reduced from 10 on account of his age and the effect of our findings on his future career.

447. Mr Bennett has requested that the Fine be apportioned to reflect the greater seriousness of the findings of dishonesty as to 71% for his Misconduct under Allegations 2A-2C and 34-3B and 29% for the finding of his having acted with lack of integrity (Allegations 4A-4B). We consider this allocation to be appropriate and we shall so order.

448. Mr Bennett has also asked for time to pay the Fine. He proposes payment of £10,000 within 28 days of the date of our Decision and the balance by monthly payments of £500. Having regard to the order we are making in respect of Mr Meehan, we extend Mr Bennett's time for payment of the sum of £10,000 to 2 months from the date of notification of our Decision. However, Mr Bennett's proposal for payment of the balance of the Fine would involve the balance being paid over a period of 5 years. We regard this period as excessive. The longest period that we consider to be appropriate is the period of 2 years, and we shall so order.

Mr Paw

449. As we said at paragraph 309 above, we have considerable sympathy for Mr Paw. We gave reasons for that sympathy. He was a young man, able but not yet qualified, recruited and instructed by more senior accountants who should not have committed Misconduct, and should not have involved him in it. He was led to commit his Misconduct by his desire to assist his seniors.

450. We have no reason to believe that he will again be guilty of Misconduct.

451. The Executive Counsel submits that the appropriate Sanction for Mr Paw is Exclusion for a recommended period of 4 years and a fine of £50,000.

452. Mr Paw is employed as a Commercial Finance Business Partner and intends to remain with his present employer for the foreseeable future. His salary is modest as are his capital resources. It is uncertain whether KPMG's insurers will indemnify him against any Fine; we suspect that they

would. Any such indemnity would not go to increase the appropriate fine, if there is such.

453. In our judgment, the unusual, and hopefully unique, circumstances of his Misconduct require an unusual order from the Tribunal. He must be subject to a Severe Reprimand. We do not think that a Fine or a period of Exclusion is appropriate.

COSTS

454. As stated above, KPMG has agreed to pay the costs of the Executive Counsel, the Individual Respondents and the Tribunal. No decision is therefore required by the Tribunal.

SUMMARY

455. We have concluded that the sanctions set out in the following paragraphs are appropriate and should be imposed.

456. **KPMG**

(1) A severe reprimand.

(2) A direction in the terms set out in Appendix 2 to this Decision.

(3) A Fine of £14,400,000.

457. **Mr Meehan**

(1) Exclusion from Membership of the ICAEW for a recommended period of 10 years.

(2) A Fine of £250,000, apportioned 60%/40% between Allegations 3 and Allegations 4, payable as to £150,000 within 2 months of the date on which this Decision is notified to him and the balance of £100,000 within 6 months of that date.

458. **Mr Wright**

(1) Exclusion from Membership of the ICAEW for a recommended period of 8 years.

(2) A Fine of £45,000.

459. **Mr Kitchen**

(1) Exclusion from Membership of the ICAEW for a recommended period of 7 years.

(2) A Fine of £30,000, payable as to £10,000 within 2 months of the date on which this Decision is notified to him and the balance of £20,000 within 6 months of that date.

460. **Mr Bennett**

(1) Exclusion from Membership of the ICAEW for a recommended period of 8 years.

(2) A fine of £40,000, apportioned as to 71% for his Misconduct under Allegations 2A-2C and 34-3B and 29% for his Misconduct under Allegations 4A-4B, payable as to £10,000 within 2 months of the date on which this Decision is notified to him and the balance of £30,000 within 2 years of that date.

461. **Mr Paw**

(1) A severe reprimand.

The Right Hon Sir Stanley Burnton

Dated: 30 May 2022

APPENDIX 1

ACTION TAKEN BY KPMG

(1) When the Firm self-reported, it (i) identified the relevant documents; (ii) explained that they were not prepared during the 2016 year-end audit but in October 2017; and (iii) ensured that that information was available to the FRC at an early stage, before KPMG had completed its own internal investigations.

(2) At the same time, KPMG also suspended the Individual Respondents, with the result that they were no longer conducting audit (or non-audit) work for the Firm.

(3) The Firm agreed with the FRC a comprehensive review exercise. In summary, in February 2019 KPMG agreed with the FRC to undertake three separate reviews, of which it has borne the costs:

    (1) Review A was the label given to KPMG's review of communications from the audit team in relation to the Carillion AQR, which ultimately became part of KPMG's engagement in these proceedings.

    (2) Review B was a structured review of interactions between KPMG audit teams in the Midlands (including the Birmingham office) and external reviewers, the AQR and the ICAEW's Quality Assurance Department. KPMG's internal forensic team and its solicitors reviewed six of the external inspections, examining 117 documents and 879 individual propositions conveyed by audit teams to the external inspectors to verify them by reference to the contemporaneous audit evidence. This Review brought to light the facts and matters underlying the Regenersis Allegations, which KPMG self-reported on 21 May 2019 (Allegation 2) and 4 October 2019 (Allegation 1). No other instances of Misconduct were identified and no further action was required by the FRC.

(3) Review C was an external review carried out by [Company B] to examine KPMG's governance, controls and culture. KPMG implemented recommendations in accordance with a plan agreed with the FRC.

(4) KPMG's senior management instigated changes to the training, guidance and supervision provided by the Firm in relation to AQRs to address the risk of individuals acting dishonestly to mislead the AQR in future.

APPENDIX 2

THE TERMS OF THE DIRECTION IMPOSED ON KPMG

1. Within two months of the date on which the FRC Disciplinary Tribunal sends its final Report to the FRC Conduct Committee (or within such other timeframe as agreed between KPMG and the FRC), KPMG shall, at its own cost, instruct appropriate person(s), agreed with the FRC and independent of KPMG (the "External Reviewer") to conduct a review in the terms specified below to consider the effectiveness of KPMG's current AQR policies and procedures (the "Revised AQR Framework") in supporting high quality engagement with the AQR inspectors. The review will encompass the following two phases which will run sequentially:

   (1) Phase 1: will consist of a review of the policies, controls and procedures that constitute the Revised AQR Framework; and

   (2) Phase 2: will comprise a review of the effectiveness of the Revised AQR Framework in the context of a sample of six AQR cases (the "Sample Cases").

   (together the "AQR Framework Review").

2. The exact terms of the AQR Framework Review and selection criteria for the Sample Cases shall be agreed with the Executive Counsel within the said two-month period.

The External Reviewer will provide a confidential written report to KPMG and the FRC which sets out the key highlights, themes and recommendations from the review. KPMG will be given an opportunity to review and comment on a draft of the report before it is provided to the FRC.