

**THE FACTS SET OUT IN THIS DOCUMENT HAVE BEEN AGREED BETWEEN EXECUTIVE COUNSEL AND THE RESPONDENT. NO FINDINGS HAVE BEEN MADE, NOR SHOULD BE TAKEN TO HAVE BEEN MADE, AGAINST ANY OTHER PERSONS**

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**IN THE MATTER OF**

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

**-and-**

**MR JAMES RAKOW**

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**SETTLEMENT AGREEMENT**

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1. This Settlement Agreement ("**Agreement**") is made on the 21st day of April 2017 between Gareth Rees QC as the Executive Counsel to the Financial Reporting Council ("**FRC**"), of 8<sup>th</sup> Floor, 125 London Wall, London, EC2Y 5AS ("**the Executive Counsel**") of the first part, and Mr James Rakow of 1 Little New Street, London, EC4A 3TR ("**Mr Rakow**") of the second part. The Executive Counsel and Mr Rakow are together described as "**the Parties**".
2. The Agreement is evidenced by the signatures of the Executive Counsel on his own behalf, and by Mr Rakow on his own behalf.
3. The Formal Complaint, dated 22 August 2016, alleging Misconduct against Mr Rakow, as a member of the Institute and Faculty of Actuaries ("**the IFoA**"), was served by the Conduct Committee of the FRC under paragraph 9(11) of the FRC Actuarial Scheme ("**the Actuarial Scheme**"). Subsequently, Executive Counsel applied to the Disciplinary Tribunal ("**the Tribunal**"), pursuant to paragraph 9(4) of the Actuarial Scheme to amend the Formal Complaint. The amended Formal Complaint (annexed to this Agreement) has been approved by the Tribunal.
4. The Formal Complaint relates to the conduct of Mr Rakow in respect of the provision by him of actuarial services to Equity Syndicate Management Limited ("**ESML**"), and Syndicate 218. More specifically, in respect of the Statement of Actuarial Opinion ("**SAO**") engagements for the year ending 31 December 2008 and the year ending 31 December 2009, Mr Rakow's conduct fell significantly short of the standards reasonably to be expected of a Member in that, as a result of various failings, he was not in a position to sign, and therefore ought not to have signed, the 2008 and 2009 SAOs.
5. Mr Rakow admits all Allegations in the amended Formal Complaint.

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6. The Parties recognise that the determination to be made in this case is a matter for the Tribunal member in accordance with paragraph 8(5) of the Actuarial Scheme.
7. The Parties have agreed the following terms of settlement:
  - a) A Fine of £100,000 (reduced by 6% to £94,000 for mitigating factors and discounted for settlement by 20% to £75,200) shall be paid not later than 28 days after the date when the Agreement takes effect.
  - b) A Severe Reprimand.
8. In reaching this Agreement with Mr Rakow, the Executive Counsel considered the following stages and took account of the following factors in accordance with the Actuarial Scheme Sanctions Guidance (“**the Sanctions Guidance**”):

**Nature and Seriousness of the Misconduct**

- a) The Misconduct extended over two SAO engagements.
- b) SAOs are significant and important engagements, are provided pursuant to a regulatory requirement for solvency purposes, are addressed to Lloyd’s and concern the insurer’s underwriting liabilities, providing an opinion on whether the insurer’s technical provisions are no less than the actuary’s best estimate of future liabilities.
- c) Mr Rakow’s role was an important one, being both senior and having supervisory responsibilities. It is of note that in order to provide an SAO an actuary must be individually approved by the IFoA, and the SAO is given in the name of the individual actuary, not the actuary’s firm.
- d) Syndicate 218 was a major UK motor insurer with annual gross premium income of approximately £500 million.
- e) The admitted Misconduct involved failings in relation to many elements of the engagement, nearly all years of account in respect of which reserves were held, and include failings in relation to data, methodologies and communication.
- f) The Misconduct potentially contributed to the delay in the Syndicate becoming aware of underwriting losses in prior years of account and therefore the potential to take steps to address the weaknesses in its underwriting and reserving practices at an earlier stage.
- g) The Misconduct was not dishonest, deliberate or reckless, and no financial benefit was derived from it.
- h) The Misconduct of the management of Syndicate 218 made the engagement more difficult and thus contributed to the failings. In particular:

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- i. Syndicate 218 suffered from serious weaknesses in its ability to provide claims data broken down to the desirable level of detail and Mr Rakow advised it of these weaknesses;
- ii. ESML delivered a Data Accuracy Statement to Mr Rakow when it ought not to have done so; and
- iii. ESML adopted a claims reserve review process that served to hinder the analysis of claims reserves and this process was neither properly documented nor properly explained to Mr Rakow.

#### **Identification of Sanction**

9. Having assessed the seriousness of the Misconduct, the Executive Counsel has determined that a Fine of £100,000 and a Severe Reprimand is an appropriate sanction. Executive Counsel has then taken into account any aggravating and mitigating factors that exist (to the extent that they have not already been taken into account in relation to the seriousness of the Misconduct). Having considered those additional factors set out below, Executive Counsel has determined that a reduction of 6% at this stage, to reflect mitigating factors, is appropriate.

#### **Aggravating Factors**

10. The Executive Counsel considers that there are no aggravating factors.

#### **Mitigating Factors**

- a) The Misconduct took place 6 years ago and has not been repeated.
- b) Mr Rakow has been the subject of a five year investigation.
- c) Mr Rakow has co-operated fully with the investigation.
- d) Mr Rakow has an unblemished disciplinary record.

#### **Deterrence**

11. No adjustment for deterrence is required in this case.

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

12. Having taken into account the full admissions by Mr Rakow and the stage at which those admissions were made (in Stage 2 of the case in accordance with paragraph 61(b) of the Sanctions Guidance), the Executive Counsel determined that a reduction of 20% in respect of the Fine as a settlement factor is appropriate, such that a Fine of £75,200 is payable.

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**Other Considerations**

13. In accordance with paragraph 32 of the Sanctions Guidance, the Executive Counsel has taken into account Mr Rakow's financial resources and the effect of a Fine on Mr Rakow and his future employment. Executive Counsel has considered whether there are any arrangements which would result in Mr Rakow being indemnified in respect of part or all the Fine. Mr Rakow has confirmed that he has a benefit of an indemnity as regards the Fine.

**Costs**

14. The Executive Counsel and Mr Rakow have agreed the following terms of settlement. A sum of £400,000 shall be paid by Mr Rakow as a contribution towards Executive Counsel's costs of the investigation into the Misconduct set out in the Formal Complaint. The Costs shall be paid not later than 28 days after the date when the Settlement Agreement takes effect.
15. In accordance with paragraph 64 of the Sanctions Guidance, the Executive Counsel has taken into account Mr Rakow's financial resources, the impact of the Fine and whether there are any arrangements which would result in Mr Rakow being indemnified in respect of part or all of any award of costs. Mr Rakow has confirmed that he has the benefit of an indemnity regarding costs.
16. If the decision of the Tribunal member is to approve the Agreement, including the sanctions set out above, then the Agreement shall take effect from the next working day after the date on which the notice of the decision is sent to Mr Rakow in accordance with paragraph 8(5) of the Actuarial Scheme.
17. The Agreement and annex will remain confidential until publication in accordance with paragraph 8(6) of the Actuarial Scheme.

**Gareth Rees QC**

**Executive Counsel**

18 May 2017

**Date**

**James Rakow**

**Date**

17 May 2017