

Edited for publication

IN THE MATTER OF

THE EXECUTIVE COUNSEL TO THE FINANCIAL REPORTING COUNCIL

-and-

SUSHOVAN HUSSAIN

SETTLEMENT AGREEMENT

1. This Settlement Agreement (“**Agreement**”) is made on the 30th day of January 2024 between Claudia Mortimore as the Deputy Executive Counsel¹ of the Financial Reporting Council (“**FRC**”), of 8th Floor, 125 London Wall, London, EC2Y 5AS (“**the Executive Counsel**”) and Sushovan Hussain (“**Mr Hussain**”). The Executive Counsel and Mr Hussain together are described as “**the Parties**”.
2. The Agreement is evidenced by the signatures of the Executive Counsel and by Mr Hussain.
3. The Formal Complaint alleging Misconduct against Mr Hussain as a Member of the Institute of Chartered Accountants in England and Wales (“**the ICAEW**”) was delivered by the Executive Counsel under paragraph 7(11) of the FRC Accountancy Scheme (“**the Scheme**”) on 17 May 2018 (“**Formal Complaint**”). The Formal Complaint as amended for the purposes of this Settlement Agreement (“**Amended Formal Complaint**”) and as now submitted to the Disciplinary Tribunal (“**the Tribunal**”) is annexed hereto.
4. The Amended Formal Complaint relates to the following conduct of Mr Hussain: He was convicted by a jury in California, USA on 30 April 2018 on 16 counts of the superseding indictment of 4 May 2017 (“**Indictment**”) against him (“**US Criminal Conviction**”). The Indictment, which charged him with (a) conspiracy to commit wire fraud, (b) wire fraud and (c) securities fraud (“**Offences**”), alleged that Mr Hussain engaged with others in “*a fraudulent scheme to deceive purchasers and sellers of [Autonomy Corporation Plc] (“**Autonomy**”) securities about the true performance of Autonomy’s business, its financial condition, and its prospects for growth*”.²

¹ In accordance with paragraph 2(1) of the FRC Accountancy Scheme, all references to the Executive Counsel shall also be interpreted as referring to the Deputy Executive Counsel.

² Paragraph 19 of the Indictment.

5. In addition, Mr Hussain has been found liable for fraud in parallel civil proceedings (arising out of the same subject matter as the counts set out in the Indictment) commenced on behalf of Hewlett Packard, with quantum of loss yet to be decided.³
6. Under paragraph 16(1)(ii) of the Scheme, the fact that a Member has been convicted⁴ of an offence before a Court outside the United Kingdom which would have constituted a criminal offence had the matter been prosecuted in the United Kingdom⁵ shall, for the purposes of the Scheme, be conclusive evidence of Misconduct by the Member. The Offences would have constituted criminal offences had Mr Hussain been prosecuted in the United Kingdom⁶. The commission by, and conviction of, Mr Hussain of the Offences therefore constitutes Misconduct.
7. Mr Hussain accepts that the US Criminal Conviction as set out in the Amended Formal Complaint amounts to Misconduct. He further accepts that such conduct is in breach of the Fundamental Principle of the ICAEW Code of Ethics to act with Integrity.
8. Upon consideration of all the circumstances, most notably Mr Hussain's US Criminal Conviction, the Executive Counsel does not consider that it is in the public interest for the Tribunal to decide upon the substantive Allegations contained in the Formal Complaint (as unamended and issued on 17 May 2018). As detailed in the Amended Formal Complaint at paragraph 19, there is significant overlap of subject matter between those Allegations and the Indictment and subsequent US Criminal Conviction.
9. The Parties recognise that the determination to be made in this case is a matter for the Tribunal in accordance with paragraph 8(5) of the Scheme.

Sanction

10. Whereas pursuant to an Interim Order dated 2 November 2018 Mr Hussain was suspended from membership of the ICAEW ("**Order of Suspension**"). The Parties agree and acknowledge that if the decision of the Tribunal is to approve the Agreement, the Order of Suspension shall be revoked and superseded by the following sanction in respect of Mr Hussain's Misconduct, which shall take effect in accordance with paragraph 26 below:

Mr Hussain shall be Excluded from membership of the ICAEW for a recommended period ending no earlier than 1 November 2038. The total period of Exclusion in respect of the Misconduct (including the period covered by the Order of Suspension) therefore

³ [Autonomy & Ors v Lynch and Hussain \[2022\] EWHC 1178 \(Ch\)](#).

⁴ Mr Hussain's appeal against his US Criminal Conviction was rejected by a US Court of Appeals on 26 August 2020.

⁵ On 19 January 2015 the Serious Fraud Office announced that "*The Director of the Serious Fraud has closed the SFO's investigation into the sale of Autonomy to the Hewlett-Packard company (HP) in 2011. This investigation was commenced in early 2013, following a referral from HP. In respect of some aspects of the allegations, the SFO has concluded that, on the information available to it, there is insufficient evidence for a realistic prospect of conviction. In respect of other aspects and on the application of well-established principles, jurisdiction over the investigation has been ceded to the US authorities whose investigation is ongoing.*"

⁶ Fraud contrary to s.1(1) Fraud Act 2006, conspiracy to defraud at common law/s.1(1) Criminal Law Act 1977, attempted fraud contrary to s.1(1) Criminal Attempts Act 1981, and aiding and abetting the same.

amounts to 20 years in total. Any application for readmission after the specified period – 2 November 2018 to 1 November 2038 – shall not necessarily be approved, but shall be considered by the ICAEW on its merits.

11. In determining the appropriate sanction, the Executive Counsel has considered the following stages and took account of the following factors in accordance with the Scheme Sanctions Guidance (March 2021):

Nature and Seriousness of the Misconduct

12. Mr Hussain has been convicted of criminal offences.
13. As evidenced by and/or determined pursuant to the US Criminal Conviction:
 - a. The Misconduct was dishonest, deliberate and gave rise to criminal liability. As such, it involved a failure to act with Integrity in accordance with the fundamental principle of the ICAEW Code of Ethics.
 - b. Mr Hussain benefited financially from the Misconduct to the sum of approximately US\$6,100,000. Mr Hussain was ordered to forfeit this sum as part of the sanctions ordered following the US Criminal Conviction.
 - c. The Offences committed under the fraudulent scheme to defraud spanned three financial years (FY2009, FY2010 and HY2011). These were not one-off or isolated incidents.
 - d. As set out at paragraph 19 of the Amended Formal Complaint, the methods used by Mr Hussain in furtherance of the scheme to defraud included making false and misleading statements relating to the financial performance of Autonomy to Autonomy's independent auditor and to Autonomy's regulators.
14. The Misconduct seriously undermines public confidence in the standards of conduct in general of Members, and/or in financial reporting and/or in the profession generally. Indeed, the Misconduct has brought discredit to the accountancy profession.
15. As Chief Financial Officer of Autonomy Mr Hussain held a senior position and supervisory responsibilities.

Identification of Sanction

16. The Executive Counsel considers that the Misconduct of Mr Hussain is so damaging to the wider public and market confidence in the standards of conduct of Members and in the accountancy profession, and the quality of corporate reporting in the United Kingdom, that exclusion from his profession is the appropriate outcome in order to protect the public or otherwise safeguard the public interest.
17. Having assessed the seriousness of the Misconduct, the Executive Counsel has determined that a total period of Exclusion of 20 years from membership of the ICAEW is an appropriate sanction.
18. The 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). Following that consideration set out below, the Executive Counsel has determined that no adjustment to sanction is necessary.

Aggravating Factor

19. The Executive Counsel has concluded that there are no aggravating factors to be taken in account that have not already been considered at paragraphs 12 – 15 above.

Mitigating Factor

20. The Executive Counsel has concluded that there are no mitigating factors to be taken into account.

Deterrence

21. No adjustment for deterrence is required in this case in light of the sanction imposed.

Discount for Admissions and Settlement

22. In light of the circumstances giving rise to this settlement, the Executive Counsel determines that no discount for settlement should be applied.

Other Considerations

23. Mr Hussain was ordered to pay financial penalties of approximately US\$10,000,000 following the US Criminal Conviction. In view of this, and in accordance with paragraph 23 of the Scheme Sanctions Guidance, the Executive Counsel does not consider it would be proportionate or necessary, in light of the aims and objectives of the Scheme, to impose any Fine in this case.

Costs

24. The Executive Counsel and Mr Hussain have agreed that a sum of £450,000 (inclusive of VAT) be paid by Mr Hussain as a contribution towards the Executive Counsel's costs of, and incidental to, the investigation. The costs shall be paid not later than 28 days after the date when the Agreement takes effect.
25. In accordance with paragraph 75 of the Scheme Sanctions Guidance, the Executive Counsel has taken into account Mr Hussain's financial position; and whether there are arrangements that would result in part or all of any award of costs being paid or indemnified by insurers.
26. If the decision of the Tribunal is to approve the Agreement, including the sanction 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 Hussain in accordance with paragraph 8(5) of the Scheme.

27. The Agreement and annex will remain confidential until publication in accordance with paragraph 8(6) of the Scheme.

[Redacted]

30 January 2024

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Claudia Mortimore
Deputy Executive Counsel

Date

[Redacted]

15 January 2024

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Sushovan Hussain

Date